IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Civil Action No. 2012-CP-10-03870
Appellate Case No. 2013-001449

Peter T. Phillips and Summar C. Phillips ..... Respondents,

v.

Omega Flex, Inc., John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., ... Defendants,

Of Whom John Wieland Homes and Neighborhoods of the Carolinas, Inc. is the Petitioner

And Omega Flex, Inc, AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., are..... Respondents.

APPENDIX

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IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2012-CP-10-03870

Peter T. Phillips and Summar C. Phillips ..... Respondents,

v.

Omega Flex, Inc., John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., ... Defendants,

Of Whom John Wieland Homes and Neighborhoods of the Carolinas, Inc. is the .....Appellant,

And Omega Flex, Inc, AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., are.....Respondents.

RECORD ON APPEAL

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-10-3870

Peter T. Phillips and Summar C. Phillips
PLAINTIFF(S)

Omega Flex, Inc., John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc.
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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

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

☐ **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.

FILED
2013 APR 25 AM 9:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY

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 JUDGMENT 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:

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

4/28/13
Date

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Peter T. Phillips and Summar C. Phillips, Plaintiffs, Omega Flex, Inc., John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., Defendants.	IN THE COURT OF COMMON PLEAS CASE NUMBER: 2012-CP-10-3870 ORDER

FILED
2013 APR 25 AM 9:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter came to be heard before me on December 18, 2012. Counsel representing all of the parties were in attendance.

The matter was before the court upon the motion of the Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc. (Hereafter John Wieland Homes), to compel arbitration in this matter. The court has received memoranda both supporting and against the motion. The court also entertained arguments of counsel and all present were allowed to speak. After consideration of the matter, the court concludes that the motion to compel arbitration should be denied.

In determining the issues before it, the court had the pleadings of the parties, the contract between the Plaintiffs and John Wieland Homes and the affidavit of Dennis Black, with exhibits, and the affidavit of Andrew R. McBride. The McBride affidavit concerned John Wieland Homes' attempt to require the other Defendants to arbitrate with the Plaintiffs and John Wieland Homes.

As an initial matter, there seems to be no issue that the contract between the Plaintiffs and John Wieland Homes did not comply with the provisions of South Carolina's Uniform Arbitration Act, §15-48-10(a), S.C. Code Ann. (2005). The language of the contract requiring mandatory arbitration appears on page four (4) of the document and in order for the provisions of South Carolina's Uniform Arbitration Act to apply, the language concerning mandatory arbitration was required to be on the front page of the document in emboldened letters and underlined. §15-48-10(a) supra. Without such designation, according to the statute, "the contract shall not be subject to arbitration." id. As a consequence, the viability of the contract's mandatory arbitration provision depends upon the application of the Federal Arbitration Act (hereafter FAA), 9 U.S.C.A. §§1-16 (2009 and supp. 2012). I have concluded that under recent South Carolina jurisprudence, the determination of this dispute depends on whether the contract between the Plaintiffs and John Wieland Homes was for the construction of a dwelling or for the sale of a home. Bradley v. Brentwood Homes, Inc., et al. 398 S.C. 447, 730 S.E. 2d 312 (2012). If the former, the FAA would apply; but if the latter, the FAA would not apply and under established South Carolina law, mandatory arbitration would not take place. As the court views all of the material submitted in connection with this matter by all parties, it has concluded the transaction between the parties as contained in the agreement was a contract for the sale of a home and not for the construction of a house.

The Bradley case was decided by the South Carolina Supreme Court and filed on July 11, 2012. In connection with its motion to compel arbitration, John Wieland

Homes submitted the affidavit of Dennis A. Black, Division Quality Manager for John Wieland Homes. The affidavit was dated October 29, 2012, some three months after the decision in Bradley. In that affidavit, Mr. Black averred his belief on behalf of the Defendant John Wieland Homes that the parties "entered a purchase agreement...to buy a home located at 1417 Hooper Street, Charleston, SC 29492." In view of the law as established by Bradley, his choice of words is significant. Nowhere in his affidavit does he indicate the contract involved the construction of a home. The agreement itself negates the idea that this was a contract for the construction of a home in the traditional sense. Under this contract, the seller, John Wieland Homes, had a right to build as it deemed fit. It had ultimate discretion on materials. The provision of the agreement allowing the Plaintiffs to make certain selections was marked as not applicable. John Wieland Homes reserved the right to decide home placement, driveway location, number of deck steps and all exterior colors. The seller was not required to gain the purchaser's permission prior to making any of these decisions. The agreement further provided that no structural or mechanical changes could be made once framing was complete. Importantly, under the contract the Plaintiffs did not even have the right to enter the property without the written permission of the seller until the walk through prior to closing. If the Plaintiffs had questions concerning the home, they were required under the contract to direct them to the sales agent or community coordinator for the neighborhood and not the seller, John Wieland Homes.

The purchase agreement entered into by the parties was a contract for the sale of a completed home. Only incidental choices could be made by the Plaintiffs and these

would not have affected the "essential character of the agreement" which "was strictly for the purchase of a completed residential dwelling and not [its] construction." Bradley, supra. Since this was a purchase agreement for a completed home, South Carolina law for an intrastate transaction applies and the provision for mandatory arbitration fails since it is not subject to the FAA.

Defendant John Wieland Homes' motion is, therefore, denied.

J. C. NICHOLSON, JR.
JUDGE, NINTH JUDICIAL CIRCUIT

Charleston, South Carolina
April 23 2013.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-10-3870

Phillips
PLAINTIFF(S)

Omega Flex
DEFENDANT(S)

FILED
2013 MAY 30 PM 4:44
JULIE J. ARMSTRONG
CLERK OF COURT

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

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

☐ **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: John Wieland Homes' Motion to Reconsider is **Denied**.

ORDER INFORMATION

This order ☒ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT 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)
		$
		$
		$

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

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.**

_____ 2117 5/29/13
Circuit Court Judge — Judge Code — Date

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Peter T. Phillips and Summar C. Phillips,)
Plaintiff(s))

vs.

Omega Flex, Inc, John Wieland Homes and Neighborhoods of the Carolinas, Inc, AAA Plumbing, LLC, Fogel Services, Inc, Charleston LEC, Inc.,)
Defendant(s))

CIVIL ACTION COVERSHEET

12-CP-10-3870

(Please Print)
Submitted By: JOHN F. McKENZIE
Address: McDonald, McKenzie Et, Al.
Post Office Box 58 Columbia SC 29202

SC Bar #: 15994
Telephone #: 803-252-0500
Fax #: 803-252-6705
Other:
E-mail: jackm@mmrml.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply)*

***If Action is Judgment/Settlement do not complete**

- [x] **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
- ☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- [x] This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION *(Check One Box Below)*

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-CP-_____-_____

- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- [x] Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ **Date:** 6/13/12

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Peter T. Phillips and Summar C. Phillips,

Plaintiffs,

-vs-

Omega Flex, Inc., John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc., Charleston LEC, Inc.

Defendants.

IN THE COURT OF COMMON PLEAS
CIVIL CASE NO.: 12-CP-10-3870

SUMMONS
(Jury Trial Demanded)

FILED
2012 JUN 14 AM 11:32
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the subscriber at his office at 1704 Main Street, Post Office Box 58, Columbia, South Carolina 29202 within (30) days after the service hereof, exclusive of the day of such service; and if you fail to appear and defend by filing an answer to the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

McDONALD, McKENZIE, RUBIN, MILLER AND LYBRAND, L.L.P.

BY: _____
JOHN F. McKENZIE
ROBERT A. McKENZIE
Attorneys for the Plaintiffs
1704 Main Street
Post Office Box 58
Columbia, South Carolina 29202
(803) 252-0500

Columbia, South Carolina
June 14, 2012

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS CIVIL CASE NO.: 12-CP-10-3870
Peter T. Phillips and Summar C. Phillips, Plaintiffs, -vs- Omega Flex, Inc., John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc., Charleston LEC, Inc. Defendants.	)	**COMPLAINT** **(Jury Trial Demanded)**

FILED
2012 JUN 14 AM 11:32
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiffs complaining of the Defendants would respectfully show unto the Court that:

1. The Plaintiffs are residents and citizens of Charleston County, South Carolina.

2. Defendant Omega Flex, Inc. (hereafter "Ornega"), upon information and belief, is a corporation registered in the state of Pennsylvania that does business in Charleston County, South Carolina. At all relevant times, Defendant Omega was the manufacturer, seller, and/or distributor of corrugates stainless steel tubing ("CSST"), including the CSST which was involved in the fire which is the subject of this lawsuit.

3. Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc. (hereafter "John Wieland Homes"), is a corporation organized in the state of Georgia and registered in the State of South Carolina that does business in Charleston County, South Carolina. At all relevant times, Defendant John Wieland Homes was the building contractor and seller of the Plaintiff's home.

4. Defendant Fogel Services, Inc. (hereafter "Fogel Services."), is a domestic corporation, incorporated under the laws of the State of South Carolina and doing business in

Charleston County, South Carolina. Upon information and belief, Defendant Fogel Services installed, tested, and certified the CSST used in the construction of the Plaintiff's home.

5. Defendant Charleston LEC, Inc. (hereafter "Charleston LEC"), is a domesticated corporation, incorporated under the laws of the State of Texas and doing business in Charleston County, South Carolina. Defendant Charleston LEC was the electrician used during construction of the Plaintiff's home and/or Defendant Charleston LEC installed the CSST used in the construction of the Plaintiff's home.

6. This court has jurisdiction over the parties and the subject matter.

7. The Plaintiffs are the original owners of real property located at1417 Hooper Street, Daniel Island, South Carolina 29492.

8. The CSST line at issue was located on the third floor of the Plaintiff's home and supplied gas to the gas water heater and heat exchanger.

9. On June 25, 2009, the Plaintiff's home caught fire.

10. The fire resulted from a lightening strike which created a hole in the CSST, and caused the natural gas to ignite at the hole in the CSST. The ignited gas which escaped the hole in the CSST ignited surrounding materials and spread, creating an extensive fire.

11. As a result of the fire, the Plaintiffs' home and its contents were severely damaged and as a result, the Plaintiffs was deprived of the use of their home and its contents for a substantial period of time. The Plaintiffs' home depreciated in value, and the Plaintiffs incurred costs for the clean-up, demolition, and remediation of his home and the replacement of its contents not capable of being restored.

FOR A FIRST CAUSE OF ACTION
(Negligence as to Defendant Omega)

12. Each and every preceding allegation consistent with this cause of action is realleged.

13. Defendant Omega owed the Plaintiffs a duty to design the CSST free from defects and according to industry standards so that it would not be damaged by the foreseeable act of lightening and would not allow natural gas to leak, causing fire.

14. Defendant Omega was negligent and breached such duty in one or more of the following particulars, to wit:

(a) In designing, manufacturing, and/or distributing dangerous and/or defective CSST;

(b) In manufacturing a product that did not meet the standards known to defendant or which should have been known to defendant;

(c) In failing to properly warn and/or advise consumers as to the dangerous and/or defective condition of the CSST at issue;

(d) In failing to test the CSST properly;

(e) In failing to discover the dangerous and/or defective condition of the CSST;

(f) In failing to take necessary precautions to avoid an incident such as the one at issue;

(g) In failing to adequately consider and/or guard against the possibility of the CSST being energized by lightening;

(h) In failing to design a product which could withstand the foreseeable effect of being energized by lightening;

(i) In failing to exercise that degree of due care a reasonably prudent manufacturer would have employed under the circumstances; and

(j) In other particulars as will be shown at trial.

15. The Plaintiffs' damages directly and proximately resulted from the negligence,

carelessness, and recklessness of the Defendant Omega in failing to design the CSST free from defects and not subject to failure upon normal conditions.

FOR A SECOND CAUSE OF ACTION
(Breach of Express Warranty as to Defendant Omega)

16. All of the preceding allegations consistent herewith are realleged.

17. Defendant Omega represented that the CSST to be used in Plaintiffs' home would be supported by an express warranty.

18. That as a direct and proximate result of the fire damage resulting from the failure of the CSST, the Defendant breached its express warranty.

19. As a direct and proximate result of Defendant's breach of warranty, the Plaintiffs have been damaged as alleged above and are entitled to an award of actual and consequential damages pursuant to S.C. Code Ann. § 36-2-313 (1976 as amended).

FOR A THIRD CAUSE OF ACTION
(Breach of Implied Warranty of Merchantability as to Defendant Omega)

20. Each and every preceding allegation consistent herewith is realleged.

21. Pursuant to S.C. Code Ann. §36-2-314 (1976 as amended), Defendant Omega warranted that the CCST would be merchantable and fit for ordinary purposes.

22. As a direct and proximate result of the failure of the CSST to properly function without catching on fire, showing that the CSST was not fit for ordinary purposes, the Defendant breached its implied warranty of merchantability.

23. As a direct and proximate result of Defendant Omega's breach of warranty, the Plaintiffs have been damaged as alleged above and are entitled to an award of actual and consequential damages.

FOR A FOURTH CAUSE OF ACTION
(Breach of Implied Warranty of Fitness for Particular Purpose as to Defendant Omega)

24. Each and every preceding allegation consistent with this cause of action is realleged.

25. Defendant Omega knew or had reason to know of the particular purpose for which the CSST was required under S.C. Code §36-2-315 (1976 as amended), and the Plaintiffs relied on the same.

26. The CSST failed to function for the particular purpose that the Plaintiffs relied upon, therefore the Defendant breached its implied warranty for fitness for a particular purpose.

27. As a direct and proximate result of Defendant Omega's breach of warranty, the Plaintiffs has been damaged as alleged above and is entitled to an award of actual and consequential damages.

FOR A FIFTH CAUSE OF ACTION
(Strict Liability as to Defendant Omega)

28. Each and every preceding allegation consistent herewith is realleged.

29. Defendant Omega is engaged in the business of designing, manufacturing, supplying, and/or selling CSST and that Defendant Omega sold such a product to the Plaintiffs as contemplated by S.C. Code § 15-73-10 (1976 as amended).

30. The CSST designed, constructed, and manufactured by the Defendant was defective when it left Defendant's control in that it was not reasonably safe for foreseeable uses since it malfunctioned and caused severe fire damage during the course of ordinary use.

31. The CSST designed, manufactured, supplied, and/or sold by Defendant Omega reached the Plaintiffs without substantial change in the condition in which it was sold.

32 As a direct and proximate result of the defective and/or dangerous condition of the

CSST at issue, the Plaintiffs has been damaged. Defendant Omega is subject to strict liability for physical harm caused to the Plaintiffs' property and the Plaintiffs is entitled to an award of actual and consequential damages pursuant to S.C. Code Ann. § 15-73-10.

FOR A SIXTH CAUSE OF ACTION
(Negligence as to Defendant John Wieland Homes)

33. Each and every preceding allegation consistent with this cause of action is realleged.

34. The incident at issue resulted directly and proximately from the negligence and carelessness of the builder, Defendant John Wieland Homes, individually and/or through its agents, sub-contractors, employees, and/or servants, to wit:

(a) In supplying and/or installing a defective and/or dangerous product;

(b) In failing to properly warn and/or advise consumers as to the dangerous and/or defective condition of the product at issue;

(c) In suppling and/or installing a product that did not meet the standards known to defendant or which should have been known to defendant;

(d) In failing to test the product adequately;

(e) In failing to discover the dangerous and/or defective condition of the CSST;

(f) In failing to take necessary precautions to avoid an incident such as the one at issue;

(g) In providing a product that the defendant knew or should have known was dangerous and/or defective and/or constituted a hazard when used properly;

(h) In failing to properly install the CSST;

(i) In failing to properly ground and/or bond the CSST;

(j) In utilizing CSST for a natural gas fireplace instead of a lightning resistant alternative;

(k) In failing to exercise that degree of due care a reasonably prudent building

contractor would have employed under the circumstances;

(l) For the negligent acts of its agents, sub-contractors, employees, and/or servants pursuant to the doctrine of respondeat superior; and

(m) In other particulars as will be shown at trial.

35. The Plaintiffs' damages directly and proximately resulted from the negligence, carelessness, and recklessness of Defendant John Wieland Homes.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract as to Defendant John Wieland Homes)

36. Each and every preceding allegation consistent herewith is realleged.

37. The Plaintiffs and the Defendant John Wieland Homes entered into a contract by which Defendant John Wieland Homes would build and sell the Plaintiffs' home and install or oversee the installation of gas lines in the Plaintiffs' home in a workmanlike manner.

38. This agreement constituted a bilateral contract between the Plaintiffs and Defendant John Wieland Homes.

39. Defendant, individually and/or through its agents, sub-contractors, employees, and/or servants, breached said contract by failing to properly install and ground the CSST in the Plaintiffs' house, causing the Plaintiffs' home to catch on fire.

40. As a direct and proximate result of Defendant's breach of contract, the Plaintiffs have been damaged as alleged above and is entitled to an award of actual and consequential damages.

FOR AN EIGHTH CAUSE OF ACTION
(Breach of Implied Warranty of Workmanlike Service as to Defendant John Wieland Homes)

41. Each and every preceding allegation consistent herewith is realleged.

42. Defendant John Wieland Homes held itself out to be specifically qualified to

perform work of a particular character, namely building and selling homes and properly installing necessary utility supply lines, including gas supply lines, or subcontracting such installation work to competent subcontractors.

43. This holding out to be specifically qualified caused an implied warranty to arise that the work which Defendant undertook would be of proper workmanship and reasonably fitted for its intended purpose.

44. The installation of the CSST was not of proper workmanship and was not reasonably fitted for its intended purpose as is shown by the fact that it caught the Plaintiffs' home on fire.

45. Such failure constitutes a breach of the implied warranty.

FOR A NINTH CAUSE OF ACTION
(Breach of Implied Warranty of Habitability as to Defendant John Wieland Homes)

46. Each and every preceding allegation consistent with this cause of action is realleged.

47. As builder and seller of the Plaintiffs' home, Defendant John Wieland Homes held itself out as an expert and represented to the Plaintiffs that the home it constructed was reasonably suitable for habitation. The Plaintiffs relied on such representation.

48. The home was not reasonably suitable for habitation as evidenced by the fact that the CSST was dangerous and/or defective and caused a fire in the Plaintiffs' home.

49. Such failure constitutes a breach of the implied warranty.

FOR A TENTH CAUSE OF ACTION
(Negligence as to Defendant Fogel Services)

50. Each and every preceding allegation consistent with this cause of action is realleged.

51. The incident at issue resulted directly and proximately from the negligence and carelessness of subcontractor Defendant Fogel Services, individually and/or through its agents, sub-contractors, employees. and/or servants, to wit:

(a) In supplying and/or installing a defective and/or dangerous product;

(b) In failing to properly warn and/or advise consumers as to the dangerous and/or defective condition of the product at issue;

(c) In suppling and/or installing a product that did not meet the standards known to defendant or which should have been known to defendant;

(d) In failing to test the product adequately;

(e) In failing to discover the dangerous and/or defective condition of the CSST;

(f) In failing to take necessary precautions to avoid an incident such as the one at issue;

(g) In providing a product that the defendant knew or should have known was dangerous and/or defective and/or constituted a hazard when used properly;

(h) In failing to properly install the CSST;

(i) In failing to properly ground and/or bond the CSST;

(j) In utilizing CSST for a natural gas fireplace instead of a lightening resistant alternative;

(k) In failing to exercise that degree of due care a reasonably prudent subcontractor would have employed under the circumstances;

(l) For the negligent acts of its agents, sub-contractors, employees, and/or servants pursuant to the doctrine of respondeat superior; and

(m) In other particulars as will be shown at trial.

52. The Plaintiffs' damages directly and proximately resulted from the negligence, carelessness, and recklessness of Defendant Fogel Services.

FOR AN ELEVENTH CAUSE OF ACTION
(Breach of Contract as to Defendant Fogel Services)

53. Each and every preceding allegation consistent with this cause of action is realleged.

54. The Plaintiffs, by virtue of their contract with Defendant John Wieland Homes, entered into a subcontract with Defendant Fogel Services by which Defendant Fogel Services would install or oversee the installation of plumbing and gas lines in the Plaintiffs' home in a workmanlike manner.

55. This agreement entered into by Defendant John Wieland Homes, on behalf and for the benefit of the Plaintiffs, constituted a contract between the Plaintiffs and Defendant Fogel Services

56. Defendant Fogel Services, individually and/or through its agents, sub-contractors, employees, and/or servants, breached said contract by failing to properly install and ground the CSST in the Plaintiffs' house, causing the Plaintiffs' home to catch on fire.

57. As a direct and proximate result of Defendant Fogel Services's breach of contract, the Plaintiffs have been damaged as alleged above and is entitled to an award of actual and consequential damages.

FOR A TWELFTH CAUSE OF ACTION
(Breach of Implied Warranty of Workmanlike Service as to Defendant Fogel Services)

58. Each and every preceding allegation consistent with this cause of action is realleged.

59. Defendant Fogel Services held itself out to be specifically qualified to perform work of a particular character, namely subcontracting for the installation of plumbing and gas supply lines.

60. This holding out to be specifically qualified caused an implied warranty to arise that the work which Defendant undertook would be of proper workmanship and reasonably fitted for its intended purpose.

61. The installation of the CSST was not of proper workmanship and was not reasonably fitted for its intended purpose as is shown by the fact that it caught the Plaintiff's home on fire.

62. Such failure constitutes a breach of the implied warranty.

FOR A THIRTEENTH CAUSE OF ACTION
(Negligence as to Defendant AAA Plumbing.)

63. Each and every preceding allegation consistent with this cause of action is realleged.

64. The incident at issue resulted directly and proximately from the negligence and carelessness of Defendant AAA Plumbing., who installed, certified, and tested the CSST, through its agents and/or servants, to wit:

(a) In supplying and/or installing a defective and/or dangerous product;

(b) In failing to properly warn and/or advise consumers as to the dangerous and/or defective condition of the product at issue;

(c) In suppling and/or installing a product that did not meet the standards known to defendant or which should have been known to defendant;

(d) In failing to test the product adequately;

(e) In failing to discover the dangerous and/or defective condition of the CSST;

(f) In failing to take necessary precautions to avoid an incident such as the one at issue;

(g) In providing a product that the defendant knew or should have known was dangerous and/or defective and/or constituted a hazard when used properly;

(h) In failing to properly install the CSST;

(i) In failing to properly ground and/or bond the CSST;

(j) In utilizing CSST for a natural gas fireplace instead of a lightening resistant alternative;

(k) In failing to exercise that degree of due care a reasonably prudent pipe installer would have employed under the circumstances; and

(l) In other particulars as will be shown at trial.

65. The Plaintiffs' damages directly and proximately resulted from the negligence, carelessness, and recklessness of Defendant AAA Plumbing.

FOR A FOURTEENTH CAUSE OF ACTION
(Breach of Contract as to Defendant AAA Plumbing.)

66. Each and every preceding allegation consistent with this cause of action is realleged.

67. The Plaintiffs and Defendant John Wieland Homes entered into a contract by which Defendant John Wieland Homes would build the Plaintiffs' home and install or oversee the installation of CSST lines in the Plaintiff's home in a workmanlike manner. On behalf and for the benefit of the Plaintiffs, a subcontract with Defendant AAA Plumbing was entered into for the installation of CSST lines in the Plaintiffs' home.

68. This agreement constituted a bilateral contract between the Plaintiffs and Defendant AAA Plumbing.

69. Defendant AAA Plumbing, through its agents and/or servants, breached said contract by failing to properly install and ground the CSST in the Plaintiffs' house, causing the Plaintiffs' home to catch on fire.

70. As a direct and proximate result of Defendant AAA Plumbing's breach of

contract, the Plaintiffs have been damaged as alleged above and is entitled to an award of actual and consequential damages.

FOR A FIFTEENTH CAUSE OF ACTION
(Breach of Implied Warranty of Workmanlike Service as to Defendant AAA Plumbing)

71. Each and every preceding allegation consistent with this cause of action is realleged.

72. Defendant AAA Plumbing held itself out to be specifically qualified to perform work of a particular character, namely subcontracting for the installation of CSST lines.

73. This holding out to be specifically qualified caused an implied warranty to arise that the work which Defendant undertook would be of proper workmanship and reasonably fitted for its intended purpose.

74. The installation of the CSST was not of proper workmanship and was not reasonably fitted for its intended purpose as is shown by the fact that it caught the Plaintiffs' home on fire.

75. Such failure constitutes a breach of the implied warranty.

FOR A SIXTEENTH CAUSE OF ACTION
(Negligence as to Defendant Charleston LEC)

76. Each and every preceding allegation consistent with this cause of action is realleged.

77. The incident at issue resulted directly and proximately from the negligence and carelessness of Defendant Charleston LEC, who installed and tested the CSST, through its agents and/or servants, to wit:

(a) In supplying and/or installing a defective and/or dangerous product;

(b) In failing to properly warn and/or advise consumers as to the dangerous and/or defective condition of the product at issue;

(c) In suppling and/or installing a product that did not meet the standards known to defendant or which should have been known to defendant;

(d) In failing to test the product adequately;

(e) In insufficiently examining a defective and/or dangerous product;

(f) In failing to discover the dangerous and/or defective condition of the CSST;

(g) In failing to take necessary precautions to avoid an incident such as the one at issue;

(h) In providing and/or certifying a product that the defendant knew or should have known was dangerous and/or defective and/or constituted a hazard when used properly;

(i) In failing to properly install the CSST;

(j) In failing to properly ground and/or bond the CSST;

(k) In utilizing CSST for a natural gas fireplace instead of a lightening resistant alternative;

(l) In failing to exercise that degree of due care a reasonably prudent pipe installer would have employed under the circumstances;

(m) For the negligent acts of its agents, sub-contractors, employees, and/or servants pursuant to the doctrine of respondeat superior; and

(n) In other particulars as will be shown at trial.

78. The Plaintiffs' damages directly and proximately resulted from the negligence, carelessness, and recklessness of Defendant Charleston LEC.

FOR A SEVENTEENTH CAUSE OF ACTION

(Breach of Contract as to Defendant Charleston LEC.)

79. Each and every preceding allegation consistent with this cause of action is realleged.

80. The Plaintiffs and Defendant John Wieland Homes entered into a contract by which Defendant John Wieland Homes would build the Plaintiffs' home and install or oversee the installation of CSST lines in the Plaintiff's home in a workmanlike manner. On behalf and for the benefit of the Plaintiffs, a subcontract with Defendant Charleston LEC was entered into for the installation of CSST lines in the Plaintiffs' home.

81. This agreement constituted a bilateral contract between the Plaintiffs and Defendant Charleston LEC.

82. Defendant Charleston LEC, through its agents and/or servants, breached said contract by failing to properly install and ground the CSST in the Plaintiffs' house, causing the Plaintiffs' home to catch on fire.

83. As a direct and proximate result of Defendant Charleston LEC's breach of contract, the Plaintiffs have been damaged as alleged above and is entitled to an award of actual and consequential damages.

FOR A EIGHTEENTH CAUSE OF ACTION
(Breach of Implied Warranty of Workmanlike Service as to Defendant Charleston LEC)

84. Each and every preceding allegation consistent with this cause of action is realleged.

85. Defendant Charleston LEC held itself out to be specifically qualified to perform work of a particular character, namely subcontracting for the installation of CSST lines.

86. This holding out to be specifically qualified caused an implied warranty to arise that the work which Defendant undertook would be of proper workmanship and reasonably fitted for its intended purpose.

87 The installation of the CSST was not of proper workmanship and was not

reasonably fitted for its intended purpose as is shown by the fact that it caught the Plaintiffs' home on fire.

88 Such failure constitutes a breach of the implied warranty.

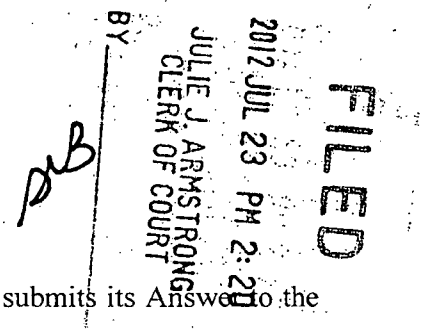
WHEREFORE, the Plaintiffs prays for judgment against Defendants in a sum sufficient to adequately compensate them for their actual damages and consequential damages, the costs of this action, for punitive damages, and for such other and further relief as this Court may deem proper.

McDONALD, McKENZIE, RUBIN,
MILLER AND LYBRAND, L.L.P.

BY: _____
JOHN F. McKENZIE
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Columbia, South Carolina
June 17, 2012

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS C/A NO. 2012-CP-10-3870
Peter T. Phillips and Summar C. Phillips, Plaintiffs, vs. Omega Flex, Inc., John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc., Charleston LEC, Inc., Defendants.	**Answer of Charleston LEC, Inc.**



NOW COMES Charleston LEC, Inc. (hereinafter "LEC"), and submits its Answer to the Plaintiffs' Complaint in this action as follows:

Answering the Background Facts and Jurisdiction

1. Upon information and belief, LEC denies Paragraph 1.
2. LEC is without information sufficient to form a belief as to the truth of Paragraphs 2-4, and thus said allegations stand denied.
3. In response to Paragraph 5, LEC admits that it is a Texas corporation that does business in Charleston. Upon information and belief, LEC admits that it provided electrical services to the Plaintiff's home, but denies that it installed the CSST used in the Plaintiff's home.
4. Paragraph 6 is a legal conclusion that requires no response of this defendant. To the extent a response is required, LEC denies Paragraph 6.
5. Upon information and belief, LEC admits Paragraph 7.
6. LEC is without information sufficient to form a belief as to the truth of Paragraphs 8-11, and thus said allegations stand denied.

7. Paragraphs 12-75 contain no allegations against this defendant, and thus no response is required. To the extent a response is required, LEC denies Paragraphs 12-75.

Answering the Sixteenth Cause of Action

8. In response to Paragraph 76, LEC incorporates its prior responses herein.

9. LEC denies Paragraphs 77-78 and demands strict proof thereof.

Answering the Seventeenth Cause of Action

10. In response to Paragraph 79, LEC incorporates its prior responses herein.

11. LEC denies Paragraphs 80-83 and demands strict proof thereof.

Answering the Eighteenth Cause of Action

12. In response to Paragraph 84, LEC incorporates its prior responses herein.

14. LEC denies Paragraphs 85-88 and demands strict proof thereof.

15. LEC denies all allegations not previously answered, including those contained in the prayer for relief.

Further Answering the Complaint and as an Affirmative Defense Thereto
(Failure to State a Claim)

16. The Plaintiffs' claims against LEC are barred because the Complaint fails to state facts sufficient to constitute a cause of action against LEC.

Further Answering the Complaint and as an Affirmative Defense Thereto
(Failure to Mitigate)

17. The Plaintiffs' claims against LEC are barred by the Plaintiffs' failure to properly mitigate their damages.

Further Answering the Complaint and as an Affirmative Defense Thereto
(Statute of Limitations)

18. The Plaintiffs' claims against LEC are barred by the applicable statute of limitations.

Further Answering the Complaint and as an Affirmative Defense Thereto
(Disclaimer of Implied Warranties)

19. The Plaintiffs' claims against LEC for implied warranty are barred as a matter of law because LEC did not provide any implied warranties, and to the extent any implied warranties were made (which they were not), they were effectively disclaimed, thereby barring Plaintiffs' claim against LEC.

Further Answering the Complaint and as an Affirmative Defense Thereto
(Implied Warranties Bar Negligence Claim)

20. The Plaintiffs' claims against LEC for negligence are barred to the extent implied warranties are determined to apply.

Further Answering the Complaint and as an Affirmative Defense Thereto
(Laches/Waiver/Estoppel)

21. The Plaintiffs' claims against LEC are barred by the doctrines of laches, waiver, and/or estoppel.

Further Answering the Complaint and as an Affirmative Defense Thereto
(Sole Negligence of Others)

22. The Plaintiffs' claims against LEC are barred because the alleged damages suffered by the Plaintiffs, if any, were solely due to and caused by the negligence, carelessness, recklessness, willfulness, and wantonness of an entity or entities other than LEC.

Further Answering the Complaint and as an Affirmative Defense Thereto
(Comparative Negligence)

23. The Plaintiffs' claims against LEC are barred or must be reduced because even if LEC was negligent as alleged by the Plaintiffs, which is specifically denied, LEC's negligence must be measured against the negligence of Plaintiffs and/or their agents.

Further Answering the Complaint and as an Affirmative Defense Thereto
(Intervening/Superseding Cause)

24. The Plaintiffs' claims against LEC are barred because even if LEC was negligent as alleged by the Plaintiffs, which is specifically denied, the intervening and/or superseding negligence of an entity or entities other than LEC was the direct and proximate cause of the damages allegedly suffered by the Plaintiffs.

Further Answering the Complaint and as an Affirmative Defense Thereto
(Spearin Doctrine)

25. The Plaintiffs' claims against LEC are barred by the Spearin Doctrine.

Further Answering the Complaint and as an Affirmative Defense Thereto
(Spoliation of Evidence)

26. The Plaintiffs' claims against LEC are barred by the doctrine of spoliation of evidence due to the destruction and/or modification of the subject property.

Further Answering the Complaint and as an Affirmative Defense Thereto
(Unclean Hands)

27. The Plaintiffs' claims against LEC are barred by the doctrine of unclean hands.

Further Answering the Complaint and as an Affirmative Defense Thereto
(Betterment)

28. The Plaintiffs' claims against LEC are barred, or must be reduced, by the Doctrine of Betterment.

Further Answering the Complaint and as an Affirmative Defense Thereto
(Punitive Damages)

29. Plaintiffs' claim for punitive damages is barred to the extent Plaintiffs seek to recover absent clear and convincing evidence of willful or reckless behavior by LEC.

Further Answering the Complaint and as an Affirmative Defense Thereto
(Failure to Maintain Project)

30. The claims against LEC are barred by the Plaintiffs' failure to properly maintain the project.

Further Answering the Complaint and as an Affirmative Defense Thereto
(Lack of Standing)

31. The claims against LEC are barred because the named Plaintiffs lack standing or are not the real party in interest.

Further Answering the Complaint and as an Affirmative Defense Thereto
(Act of God)

32. The claims against LEC are barred because the subject incident was an Act of God and would have occurred even in the exercise of due care by LEC.

Further Answering the Complaint and as an Affirmative Defense Thereto
(Reservation of Affirmative Defenses)

33. LEC reserves the right to assert any and all other defenses either in contract or under the law as may be asserted, or which have been asserted, by any other Defendants in this action, or that may become evident through its investigation and discovery.

WHEREFORE, having fully answered the Plaintiffs' Complaint, LEC prays that the same be dismissed, that it be awarded costs and attorney's fees in the defense of this claim, and for such other and further relief as this Court deems just and proper.

[Signature block on following page]

ROBERTSON HOLLINGSWORTH & FLYNN
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177 Meeting St., Suite 300
Charleston, South Carolina 29401
(843) 723-6470
(843) 853-9045 fax

By: _____
R. Patrick Flynn
Christopher M. Ramsey
Attorneys for Charleston LEC, Inc.

Charleston, South Carolina
July 19, 2012

STATE OF SOUTH CAROLINA	)	**THE COURT OF COMMON PLEAS**
	)	
COUNTY OF CHARLESTON	)	
Peter T. Phillips and Summar C. Phillips	)	**Civil Action No.: 2012-CP-10-3870**
	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Omega Flex, Inc., John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc. Charleston LEC, Inc.	)	**ANSWER (Jury Trial Demanded)**
	)	
Defendants.	)	

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT
BY

COMES NOW, the Defendant, Fogel Services, Inc. ("Fogel"), by and through its undersigned attorneys, answering the Complaint of the Plaintiffs, would allege and show unto the Court:

FOR A FIRST DEFENSE

1. Each and every allegation of the Plaintiffs' Complaint not specifically admitted herein is denied.

2. The allegations of Paragraph 1 are admitted upon information and belief.

3. The allegations of Paragraph 2 are admitted upon information and belief.

4. The allegations of Paragraph 3 are admitted upon information and belief.

5. Answering Paragraph 4, Defendant Fogel admits so much as alleged that it is a corporation under the laws of the State of South Carolina doing business in Charleston, South Carolina. Fogel further admits that it installed CSST in the construction of the Plaintiffs' home as part of the installation of the gas plumbing. All allegations inconsistent herewith are denied.

6. The allegations of Paragraph 5 are admitted upon information and belief.

7. The allegations of Paragraph 6 are admitted.

8. The allegations of Paragraph 7 are admitted upon information and belief.

9. Answering Paragraph 8, Fogel admits that the CSST line was installed in the Plaintiffs' home and supplied gas to a gas water heater and heat exchanger. Fogel is without sufficient information to form a belief as to which line is at issue in this matter and, therefore, denies all allegations related thereto.

10. The allegations of Paragraph 9 are admitted upon information and belief.

11. Defendant is without sufficient information to form a belief as to the allegations of Paragraph 10 and, therefore, denies same.

12. Defendant is without sufficient information to form a belief as to the allegations of Paragraph 11 and, therefore, denies same.

13. Answering Paragraph 12, Fogel incorporates all allegations and defenses set forth herein to the extent not inconsistent herewith.

14. Upon information and belief, the allegations of Paragraph 13 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

15. Upon information and belief, the allegations of Paragraph 14 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

16. Upon information and belief, the allegations of Paragraph 15 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

17. Upon information and belief, the allegations of Paragraph 16 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

18. Upon information and belief, the allegations of Paragraph 17 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

19. Upon information and belief, the allegations of Paragraph 18 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

20. Upon information and belief, the allegations of Paragraph 19 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

21. Upon information and belief, the allegations of Paragraph 20 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

22. Upon information and belief, the allegations of Paragraph 21 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

23. Upon information and belief, the allegations of Paragraph 22 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

24. Upon information and belief, the allegations of Paragraph 23 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

25. Upon information and belief, the allegations of Paragraph 24 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

26. Upon information and belief, the allegations of Paragraph 25 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

27. Upon information and belief, the allegations of Paragraph 26 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

28. Upon information and belief, the allegations of Paragraph 27 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

29. Upon information and belief, the allegations of Paragraph 28 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

30. Upon information and belief, the allegations of Paragraph 29 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

31. Upon information and belief, the allegations of Paragraph 30 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

32. Upon information and belief, the allegations of Paragraph 31 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

33. Upon information and belief, the allegations of Paragraph 32 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

34. Upon information and belief, the allegations of Paragraph 33 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

35. Upon information and belief, the allegations of Paragraph 34 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

36. Upon information and belief, the allegations of Paragraph 35 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

37. Upon information and belief, the allegations of Paragraph 36 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

38. Upon information and belief, the allegations of Paragraph 37 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

39. Upon information and belief, the allegations of Paragraph 38 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

40. Upon information and belief, the allegations of Paragraph 39 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

41. Upon information and belief, the allegations of Paragraph 40 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

42. Upon information and belief, the allegations of Paragraph 41 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

43. Upon information and belief, the allegations of Paragraph 42 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

44. Upon information and belief, the allegations of Paragraph 43 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

45. Upon information and belief, the allegations of Paragraph 44 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

46. Upon information and belief, the allegations of Paragraph 45 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

47. Upon information and belief, the allegations of Paragraph 46 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

48. Upon information and belief, the allegations of Paragraph 47 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

49. Upon information and belief, the allegations of Paragraph 48 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

50. Upon information and belief, the allegations of Paragraph 49 are not directed at this Defendant and require no response therefrom. To the extent any factual allegation contained therein may be construed against Fogel, the same is denied.

51. Answering Paragraph 50, Fogel incorporates all allegations and defenses set forth herein to the extent not inconsistent herewith.

52. Paragraph 51 is denied.

53. Paragraph 52 is denied.

54. Answering Paragraph 53, Fogel incorporates all allegations and defenses set forth herein to the extent not inconsistent herewith.

55. Paragraph 54 is denied.

56. Paragraph 55 is denied.

57. Paragraph 56 is denied.

58. Paragraph 57 is denied.

59. Answering Paragraph 58, Fogel incorporates all allegations and defenses set forth herein to the extent not inconsistent herewith.

60. Paragraph 59 is denied.

61. Paragraph 60 is denied.

62. Paragraph 61 is denied.

63. Paragraph 62 is denied.

64. Upon information and belief, the allegations of Paragraphs 63 through 88 are not directed at this Defendant and require no response therefrom. To the extent any of the allegations contained therein may be construed against Fogel, the same are denied.

FOR A SECOND DEFENSE

65. The allegations contained in Paragraphs 1 through 64 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

66. The Defendant would show that this action is barred by the applicable Statute of Limitations, S.C. Code Ann. §15-3-530, enforcement of which is a matter of public policy in South Carolina.

FOR A THIRD DEFENSE

67. The allegations contained in Paragraphs 1 through 66 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

68. The Defendant would show that the Plaintiffs, Complaint fails to state any claim upon which relief can be granted, under state or federal law. Therefore, it should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

69. The allegations contained in Paragraphs 1 through 68 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

70. The Defendant would show that such injuries or losses that Plaintiffs sustained, if any, were due to and caused by their negligence, willfulness, wantonness, or recklessness, which exceeded that of this Defendant, so Plaintiffs' recovery is barred by this state's doctrine of comparative negligence.

FOR A FIFTH DEFENSE

71. The allegations contained in Paragraphs 1 through 70 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

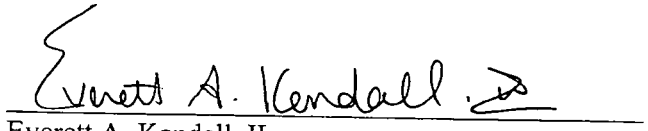
72. The Defendant would show that such injuries or losses that Plaintiffs sustained, if any, were not caused by any negligence on the part of the Defendant, but were rather due to and caused by the intervening and superseding fault, breach of warranty or act or omission of a third party, over which this Defendant had no control.

WHEREFORE, having fully answered, the Defendant prays that the Plaintiffs' Complaint be dismissed with costs, for attorney's fees and such other and further relief this Court deems just and proper.

The Defendant demands a jury trial.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.



Everett A. Kendall, II
J. Eric Cavanaugh
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233
ATTORNEYS FOR DEFENDANT FOGEL SERVICES, INC.

Columbia, South Carolina
August 8, 2012

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Peter T. Phillips and Summar C. Phillips, Plaintiffs, vs. Omega Flex, Inc., John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc., Charleston LEC, Inc., Defendants.	)	IN THE COURT OF COMMON PLEAS CASE NO.: 2012-CP-10-3870 **ANSWER OF DEFENDANT AAA PLUMBING, LLC TO PLAINTIFFS' COMPLAINT** **(JURY TRIAL DEMANDED)**

FILED
2012 AUG 20 PM 4:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: JOHN F. MCKENZIE, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

The defendant, AAA Plumbing, LLC (hereinafter referred to as "defendant" or "AAA Plumbing"), answering the Complaint of the plaintiffs, above named, alleges and says as follows:

1. That the defendant admits so much of the allegations contained in paragraphs 1 through 7 of the Complaint that establish jurisdiction. The remaining allegations contained in paragraphs 1 through 7 of the Complaint are denied.

2. That the defendant lacks sufficient information to form a belief as to the allegations of paragraphs 8 through 10 of the Complaint.

3. That the defendant denies the allegations contained in paragraph 11 of the Complaint.

4. That no response is required from this defendant to the allegations contained in paragraphs 12 through 62 of the Complaint because they do not state a cause of action against this defendant. If and to the extent the allegations are later held to state a cause of action against this defendant, the same are denied.

5. In response to the allegations of paragraph 63, the defendant hereby realleges and incorporates by reference paragraphs 1 through 62 as fully and effectively as if set forth herein verbatim.

6. That the defendant denies the allegations contained in paragraphs 64 through 75 of the Complaint.

7. That no response is required from this defendant to the allegations contained in paragraphs 76 through 88 of the Complaint because they do not state a cause of action against this defendant. If and to the extent the allegations are later held to state a cause of action against this defendant, the same are denied.

8. That the defendant denies each and every allegation of the Complaint not hereinabove specifically admitted or modified.

FOR A FIRST AFFIRMATIVE DEFENSE

(Failure to State Facts Sufficient)

9. That the claim of Plaintiffs fail to state facts sufficient to constitute a cause of action for habitability and should be dismissed pursuant to the provisions of SCRCP Rule 12(b)(6).

FOR A SECOND AFFIRMATIVE DEFENSE

(Failure to State Facts Sufficient)

10. That the claim of Plaintiffs fail to state facts sufficient to constitute a cause of action for unfair trade practices and should be dismissed pursuant to the provisions of SCRCP Rule 12(b)(6).

FOR A THIRD AFFIRMATIVE DEFENSE

(Failure to Maintain)

11. That Plaintiffs were obligated to maintain the structure against normal wear, tear and deterioration due to age and the elements and failed to do so and such is the direct and proximate cause of the damages suffered and therefore constitutes a complete defense to all claims.

FOR A FOURTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

12. That Plaintiffs have failed to take prompt and reasonable action under the circumstances to avoid the occurrence of additional damage to the structure and such failure to mitigate damages constitutes a complete defense as to that portion of damages which could have been otherwise avoided by reasonable and prompt action.

FOR A FIFTH AFFIRMATIVE DEFENSE

(Payment in Full)

13. That AAA Plumbing has been paid in full for all work performed under the subcontract agreement and AAA Plumbing therefore pleads full payment as a bar and complete defense to all the claims for breach of contract.

FOR A SIXTH AFFIRMATIVE DEFENSE

(Failure to Comply with the Limitations within Agreement)

14. That Plaintiffs have failed to commence this action within the time required by the applicable provisions of the agreement between the parties and the failure to timely commence the action constitutes a bar and complete defense to all claims.

FOR A SEVENTH AFFIRMATIVE DEFENSE

(Contractual Obligations Merged in Deed)

15. That subsequent to the execution of the agreement between the parties for the sale of real property, the parties closed such sale and at that time Crawford Contracting and Consulting executed and delivered to Plaintiffs a deed to such property, which was accepted; and the execution, delivery and acceptance of the deed supersedes the terms of the contract and all terms thereof were merged in such deed, and such constitutes a complete defense to any claims based upon the terms of the written agreement.

FOR AN EIGHTH AFFIRMATIVE DEFENSE

(Contractual Responsibility Limited By Scope Of Agreement)

16. That the conditions and deficiencies alleged to exist are not within the scope of services which were requested of AAA Plumbing, whose responsibility is limited only to those conditions and deficiencies, if any, which are within the scope of services described in the agreement; and such constitutes a complete defense to all claims for breach of contract.

FOR A NINTH AFFIRMATIVE DEFENSE

(Final Payment as Waiver or Release)

17. That the owner of the project has previously made final payment to AAA Plumbing for all work performed pursuant to the agreement between the parties and such final payment, according to the terms of the agreement and the customs of the industry, constitutes a waiver and release of all claims of the nature set forth herein, and therefore such final payment constitutes a defense to all claims for breach of contract.

FOR A TENTH AFFIRMATIVE DEFENSE

(Estoppel By Contract)

18. That the claims of Plaintiffs are contrary to the plain language of the agreement, and Plaintiffs are therefore estopped by the terms and provisions of the agreement from asserting the claims and matters set forth in its pleadings.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE

(No Warranty Expressed)

19. That the written agreement between the parties contains an integration clause, and the terms thereof contain no such warranty as is alleged by Plaintiffs, and such constitutes a complete defense to all claims for breach of express warranty.

FOR A TWELFTH AFFIRMATIVE DEFENSE

(Failure to Comply with Condition Precedent - Express Warranty)

20. That Plaintiffs have failed to comply with the terms and conditions of the express warranty, such terms and conditions constituting a condition precedent to liability upon such warranty, and therefore the failure to satisfy the conditions precedent constitutes a complete defense to all claims for breach of express warranty.

FOR A THIRTEENTH AFFIRMATIVE DEFENSE

(Warranty of Limited Duration)

21. That the express warranty contained in the agreement between the parties is limited in duration to a period of one year from the date of completion and acceptance of the project by the owner as will more fully appear by reference to the terms of the agreement. That Plaintiffs failed to give notice of any alleged deficiency within the required time frame, and such constitutes a complete defense to all claims for breach of warranty.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE

(Final Completion and Acceptance)

22. That the work undertaken by AAA Plumbing on the project was fully and finally completed and such work was previously accepted by the owner as fully and finally complete and in full compliance with the contract documents putting an end to all further obligations pursuant to the contract and such completion and acceptance constitutes a complete defense to all claims for breach of warranty.

FOR A FIFTEENTH AFFIRMATIVE DEFENSE

(No Warranty Given)

23. That AAA Plumbing never owned the land which is the subject of this action and no transaction of sale occurred to which it was a party and therefore the warranty of habitability has no application, and such constitutes a complete defense to all claims for breach of warranty of habitability.

FOR A SIXTEENTH AFFIRMATIVE DEFENSE

(Notice and Opportunity to Correct Workmanship)

24. That even if AAA Plumbing impliedly warranted the habitability and fitness of the structure (which is expressly denied); and even if AAA Plumbing breached such implied warranty (which is also expressly denied), Plaintiffs failed to give any reasonable and meaningful notice as to the existence of the alleged breach and failed to give a reasonable opportunity to correct such alleged defects, and such failure to give notice constitutes a complete defense to the claims for breach of warranty of habitability.

FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

(Notice and Opportunity to Correct Workmanship)

25. That Plaintiffs failed to give any reasonable and meaningful notice as to the existence of the alleged breach and failed to give a reasonable opportunity to correct such

alleged defects, (the existence of which is denied) and such failure to give notice constitutes a complete defense to all claims for breach of warranty of workmanship.

FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

(Economic Loss Rule)

26. That the damages suffered by Plaintiffs, if any, were limited solely to the product itself and/or to diminution in value thereof, and therefore there exists no right of action in tort, and such constitutes a complete defense to all claims other than those sounding in contract.

FOR A NINETEENTH AFFIRMATIVE DEFENSE

(Completion and Acceptance Bars Third Party Claims)

27. That the work undertaken by AAA Plumbing on the project was fully and finally completed and such work was previously accepted by the owner as fully and finally complete and in full compliance with the contract documents, putting an end to all further obligations pursuant to the contract and such completion and acceptance constitutes a complete defense to all claims for negligence.

FOR A TWENTIETH AFFIRMATIVE DEFENSE

(Sole Negligence)

28. That the injury or damage sustained by Plaintiffs, if any, was due to, caused by and was the direct and proximate result of the sole negligence, recklessness, willfulness and wantonness of Plaintiffs or of others over whom AAA Plumbing had no control in the following particulars, to wit:

a. In failing to maintain the property against normal wear, tear and deterioration due to age and the elements;

b. In failing to take prompt and reasonable action under the circumstances to mitigate damages;

c. In the particulars alleged in the Plaintiffs' Complaint as to other parties;

d. In the particulars alleged in the Plaintiffs' Amended Complaint as to other parties;

e. In otherwise failing to act with due and reasonable care, caution and prudence under the circumstances then and there prevailing in such further particulars as shall be determined through discovery;

and such constitutes a complete defense to any claims for negligence.

FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

(Comparative Negligence)

29. That the injury or damage suffered by Plaintiffs, if any, was due to, caused by and was the direct and proximate result of the negligence, carelessness, recklessness, willfulness and wantonness of Plaintiffs, and recovery should be barred or reduced in proportion to such negligence as provided by law. That Plaintiffs were comparatively negligent in one or more of the particulars set forth in paragraph 36 above.

FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE

(No Duty Under Trade Usage and Standard Industry Practice)

30. That the duties and obligations alleged to exist were not obligations imposed upon AAA Plumbing within the usage of the trade at the time of construction and were not imposed upon it under the usual and customary practices of the industry at the time of construction, and such constitutes a complete defense to all claims for negligence.

FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE

(Duties Alleged Beyond Scope of Services)

31. That the duties and obligations alleged are not within the scope of services which were provided by AAA Plumbing, and such duties and obligations lie beyond the scope of services provided and such constitutes a complete defense to all claims for negligence.

FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Intervening & Superseding Cause)

32. That the injury or damage suffered by Plaintiffs, if any, was due to and caused by and was the direct and proximate result of the intervening and superseding negligence, willfulness, wantonness and recklessness of Plaintiffs or of others over whom AAA Plumbing had no control, resulting directly and proximately in the damage of which Plaintiffs complain and such constitutes a complete defense to all claims for negligence.

FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Punitive Damages Unconstitutional - Substantive Due Process)

33. That to the extent that Plaintiffs seek punitive or exemplary damages, such claims violate the right of AAA Plumbing to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of South Carolina.

FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Punitive Damages Unconstitutional - Procedural Due Process)

34. That to the extent that Plaintiffs seek punitive or exemplary damages, such claims violate the right of AAA Plumbing to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South

Carolina.

FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Punitive Damages Unconstitutional - Additional Grounds)

35. Punitive damages, as currently awarded in South Carolina, are violative of the United States Constitution and South Carolina Constitution, as well as the holding of *State Farm Mutual Automobile Insurance Company v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003), and the cases upon which it is based.

FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Punitive Damages Unconstitutional - Additional Grounds)

36. Pursuant to *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 522 U.S. 424, 121 S.Ct. 1678 (2001), if punitive damages are recoverable, which is denied, the amount of punitive damages "[are] not really a fact tried by the jury" therefore Plaintiffs' request for punitive damages "to be determined by the jury" violates the United States Constitution.

FOR A TWENTY-NINTH AFFIRMATIVE DEFENSE

(Punitive Damages Unconstitutional - Additional Grounds)

37. The U.S. Constitution's Due Process Clause "forbids a State to use a punitive damages award to punish a defendant for injury that it inflicts upon nonparties or those whom they directly [do not] represent," *Phillip Morris USA v. Williams*, 127 S.Ct. 1057, 1063 (U.S. 2007), and, therefore, to the extent that Plaintiffs seek an award of punitive damages for potential or speculative harm to non-parties to the present action, such prayer for relief is unconstitutional and must be struck from the pleadings and is otherwise inadmissible at trial.

FOR A THIRTIETH AFFIRMATIVE DEFENSE

(Punitive Damages Unconstitutional - Additional Grounds)

38. Notwithstanding AAA Plumbing' prior defenses incorporating *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 522 U.S. 424 (2001) and *State Farm Automobile Insurance Company v. Campbell*, 538 U.S. 408 (2003), and the cases upon which they are based, in the event the trial court permits the jury to return a punitive damages award in the instant case, such damages are to be limited to an amount that is no greater than the jury's award of actual damages, as explicated within *Exxon Shipping Company v. Baker*, 128 S.Ct. 2605 (2008).

FOR A THIRTY-FIRST AFFIRMATIVE DEFENSE

(Reservation and Non-Waiver)

39. AAA Plumbing reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

CLAWSON AND STAUBES, LLC

Jeffrey A. Ross
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
(843) 577-2026

Attorney for the Defendant AAA Plumbing, LLC

Charleston, South Carolina

August 17 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	
Peter T. Phillips and Summar C. Phillips,	)	C/A No. 12-CP-10-3870
	)	
Plaintiffs,	)	**DEFENDANT OMEGA FLEX, INC.'S ANSWER TO COMPLAINT (Jury Trial Requested)**
Versus	)	
Omega Flex, Inc., John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc., Charleston LEC, Inc.,	)	
Defendants.	)	

FILED
2012 AUG 17 AM 11:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY

COMES NOW, the Defendant, Omega Flex, Inc. (hereinafter "this Defendant"), with its Answer to the allegations of the Plaintiffs' Complaint and bringing Cross-Claims against Defendants John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc., Charleston LEC, Inc., as follows:

1. This Defendant denies each and every allegation of the Plaintiffs' Complaint which is not specifically admitted without qualification in this Answer.

2. This Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the averments of Paragraph 1 of the Plaintiffs' Complaint, and they are therefore denied.

3. Paragraph 2 of the Plaintiffs' Complaint is ADMITTED in part and DENIED in part. This Defendant admits that it is a corporation registered in the Commonwealth of Pennsylvania that does business in South Carolina. This Defendant admits that it manufactures corrugated stainless steel tubing. This Defendant admits that it sells and distributes corrugated stainless steel tubing in

South Carolina. Subject to the foregoing, Paragraph 2 of the Plaintiffs' Complaint is DENIED.

4. This Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the averments of Paragraphs 3, 4 and 5 of the Plaintiffs' Complaint, and they are therefore denied.

5. The averments of Paragraph 6 of the Plaintiffs' Complaint state a conclusion of law to which no response is required. To the extent a response is required, this Defendant denies the allegations of Paragraph 6 of the Plaintiffs' Complaint.

6. This Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the averments of Paragraph 7 of the Plaintiffs' Complaint, and they are therefore denied.

7. Paragraph 8 of the Plaintiffs' Complaint is ADMITTED in part and DENIED in part. This Defendant admits, upon information and belief, that a CSST line was located on the third floor of the Plaintiffs' home and supplied gas to the gas water heater and heat exchanger. Subject to the foregoing, Paragraph 8 of the Plaintiffs' Complaint is DENIED.

8. This Defendant admits, upon information and belief, the averments of Paragraph 9 of the Plaintiffs' Complaint.

9. Paragraph 10 of the Plaintiffs' Complaint is ADMITTED in part and DENIED in part. This Defendant admits, upon information and belief, that lightning struck the Plaintiffs' home on June 25, 2009 and that a fire started soon thereafter in the Plaintiffs' home. This Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the remaining

averments of Paragraph 10 of the Plaintiffs' Complaint, and they are therefore DENIED.

10. This Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the remaining averments of Paragraph 11 of the Plaintiffs' Complaint, and they are therefore DENIED.

FOR A FIRST CAUSE OF ACTION
(Alleged Negligence)
(As to this Defendant)

11. In response to Paragraph 12 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 10.

12. The averments of Paragraph 13 of the Plaintiffs' Complaint state a conclusion of law to which no response is required. To the extent a response is required, this Defendant denies the allegations of Paragraph 13 of the Plaintiffs' Complaint.

13. This Defendant expressly denies the averments of Paragraph 14 of the Plaintiffs' Complaint, including Subparagraphs (a)-(j) and demands strict proof thereof at the time of trial.

14. This Defendant expressly denies the averments of Paragraph 15 of the Plaintiffs' Complaint and demands strict proof thereof at the time of trial.

FOR A SECOND CAUSE OF ACTION
(Alleged Breach of Express Warranty)
(As to this Defendant)

15. In response to Paragraph 16 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 14.

16. This Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the averments of Paragraph 17 of the Plaintiffs' Complaint, and they are therefore denied.

17. This Defendant expressly denies the averments of Paragraphs 18 and 19 of the Plaintiffs' Complaint and demands strict proof thereof at the time of trial.

FOR A THIRD CAUSE OF ACTION
(Alleged Breach of Implied Warranty of Merchantability)
(As to this Defendant)

18. In response to Paragraph 20 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 17.

19. This Defendant expressly denies the averments of Paragraphs 21, 22 and 23 of the Plaintiffs' Complaint and demands strict proof thereof at the time of trial.

FOR A FOURTH CAUSE OF ACTION
(Alleged Breach of Implied Warranty of Fitness for Particular Purpose)
(As to this Defendant)

20. In response to Paragraph 24 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 19.

21. This Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the averments of Paragraph 25 of the Plaintiffs' Complaint, and they are therefore denied.

22. This Defendant expressly denies the averments of Paragraphs 26 and 27 of the Plaintiffs' Complaint and demands strict proof thereof at the time of trial.

FOR A FIFTH CAUSE OF ACTION
(Alleged Strict Liability)
(As to this Defendant)

23. In response to Paragraph 28 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through

24. ADMITTED in part, DENIED in part. This Defendant admits that it is engaged in the business of designing, manufacturing, supplying and/or selling CSST. Subject to the foregoing, this Defendant denies the averments of Paragraph 29 of the Plaintiffs' Complaint and demands strict proof thereof at the time of trial.

25. This Defendant expressly denies the averments of Paragraph 30 of the Plaintiffs' Complaint and demands strict proof thereof at the time of trial.

26. This Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the averments of Paragraph 31 of the Plaintiffs' Complaint, and they are therefore denied.

27. This Defendant expressly denies the averments of Paragraph 32 of the Plaintiffs' Complaint and demands strict proof thereof at the time of trial.

FOR A SIXTH CAUSE OF ACTION
(Alleged Negligence)
(As to Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc.)

28. In response to Paragraph 33 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 27.

29. The averments contained in Paragraphs 34 (including Subparagraphs (a)-(m)) and 35 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR A SEVENTH CAUSE OF ACTION
(Alleged Breach of Contract)
(As to Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc.)

30. In response to Paragraph 36 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 29.

31. The averments contained in Paragraphs 37, 38, 39 and 40 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR AN EIGHTH CAUSE OF ACTION
(Alleged Breach of Implied Warranty of Workmanlike Service)
(As to Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc.)

32. In response to Paragraph 41 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 31.

33. The averments contained in Paragraphs 42, 43, 44 and 45 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR A NINTH CAUSE OF ACTION
(Alleged Breach of Implied Warranty of Habitability)
(As to Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc.)

34. In response to Paragraph 46 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 33.

35. The averments contained in Paragraphs 47, 48 and 49 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR A TENTH CAUSE OF ACTION
(Alleged Negligence)
(As to Defendant Fogel Services, Inc.)

36. In response to Paragraph 50 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 35.

37. The averments contained in Paragraphs 51 (including Subparagraphs (a)-(m)) and 52 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR A ELEVENTH CAUSE OF ACTION
(Alleged Breach of Contract)
(As to Defendant Fogel Services, Inc.)

38. In response to Paragraph 53 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 37.

39. The averments contained in Paragraphs 54, 55, 56 and 57 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR A TWELFTH CAUSE OF ACTION
(Alleged Breach of Implied Warranty of Workmanlike Service)
(As to Defendant Fogel Services, Inc.)

40. In response to Paragraph 58 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 39.

41. The averments contained in Paragraphs 59, 60, 61 and 62 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR A THIRTEENTH CAUSE OF ACTION
(Alleged Negligence)
(As to Defendant AAA Plumbing, LLC)

42. In response to Paragraph 63 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 41.

43. The averments contained in Paragraphs 64 (including Subparagraphs (a)-(l)) and 65 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR A FOURTEENTH CAUSE OF ACTION
(Alleged Breach of Contract)
(As to Defendant AAA Plumbing, LLC)

44. In response to Paragraph 66 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 43.

45. The averments contained in Paragraphs 67, 68, 69 and 70 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR A FIFTEENTH CAUSE OF ACTION
(Alleged Breach of Implied Warranty of Workmanlike Service)
(As to Defendant AAA Plumbing, LLC)

46. In response to Paragraph 71 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 45.

47. The averments contained in Paragraphs 72, 73, 74 and 75 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR A SIXTEENTH CAUSE OF ACTION
(Alleged Negligence)
(As to Defendant Charleston LEC, Inc.)

48. In response to Paragraph 76 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 47.

49. The averments contained in Paragraphs 77 (including Subparagraphs (a)-(n)) and 78 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR A SEVENTEENTH CAUSE OF ACTION
(Alleged Breach of Contract)
(As to Defendant Charleston LEC, Inc.)

50. In response to Paragraph 79 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 49.

51. The averments contained in Paragraphs 80, 81, 82 and 83 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR AN EIGHTEENTH CAUSE OF ACTION
(Alleged Breach of Implied Warranty of Workmanlike Service)
(As to Defendant Charleston LEC, Inc.)

52. In response to Paragraph 84 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 51.

53. The averments contained in Paragraphs 85, 86, 87 and 88 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

54. This Defendant denies the Plaintiffs' request for relief contained in the WHEREFORE paragraph directly after Paragraph 88 of the Plaintiffs' Complaint, those being the remaining allegations contained in the Plaintiffs' Complaint.

FURTHER ANSWERING AND AS A FIRST AFFIRMATIVE DEFENSE:

The corrugated stainless steel tubing used for gas distribution at the subject residence was installed in violation of applicable building codes, industry standards and this Defendant's installation instructions.

FURTHER ANSWERING AND AS A SECOND AFFIRMATIVE DEFENSE:

The corrugated stainless steel tubing manufactured by this Defendant and installed at the subject residence, if any, was not defective in design or manufacture.

FURTHER ANSWERING AND AS A THIRD AFFIRMATIVE DEFENSE:

The negligence allegedly attributable to this Defendant was not the proximate cause of Plaintiffs' damages.

FURTHER ANSWERING AND AS A FOURTH AFFIRMATIVE DEFENSE:

Plaintiffs' losses and/or damages, if any, were the result of acts or omissions of third-parties over whom this Defendant had no control or right of control.

FURTHER ANSWERING AND AS A FIFTH AFFIRMATIVE DEFENSE:

Plaintiffs have failed to mitigate or otherwise act to lessen or reduce the damages alleged.

FURTHER ANSWERING AND AS A SIXTH AFFIRMATIVE DEFENSE:

Plaintiffs' losses and damages, if any, were the result of an Act of God.

FURTHER ANSWERING AND AS A SEVENTH AFFIRMATIVE DEFENSE:

Plaintiffs' claims are barred because the methods, standards and techniques utilized by this Defendant in designing, manufacturing and/or assembling its products conformed with the generally recognized, reasonably available and reliable state of knowledge at the time of manufacture.

FURTHER ANSWERING AND AS AN EIGHTH AFFIRMATIVE DEFENSE:

The losses complained of are the result of superseding and/or intervening causes over which this Defendant exercised no control.

FURTHER ANSWERING AND AS A NINTH AFFIRMATIVE DEFENSE:

To the extent Plaintiffs' claims involve any product manufactured, assembled or sold by this Defendant, such claims may be barred, in whole or in part, because the alleged damages, if any, were caused, in whole or in part, by misuse or modification of the product after its initial sale, and such misuse could not have been reasonably expected by this Defendant.

FURTHER ANSWERING AND AS A TENTH AFFIRMATIVE DEFENSE:

To the extent Plaintiffs may have settled their claims for alleged damages with certain parties, this Defendant is entitled to credit in the amount of any such settlement heretofore or hereafter made between Plaintiffs and any such party.

FURTHER ANSWERING AND AS AN ELEVENTH AFFIRMATIVE DEFENSE:

This Defendant is entitled to the benefit of any collateral sources to which Plaintiffs are, or may be, entitled in connection with the alleged losses for which recovery is sought in this action.

FURTHER ANSWERING AND AS A TWELFTH AFFIRMATIVE DEFENSE:

Plaintiffs' claims are barred, in whole or in part, because the utility of the product at issue outweighs its risks.

FURTHER ANSWERING AND AS A THIRTEENTH AFFIRMATIVE DEFENSE:

Plaintiffs' claims are barred or must be reduced by the alleged negligence of another party.

FURTHER ANSWERING AND AS A FOURTEENTH AFFIRMATIVE DEFENSE:

Plaintiffs' claims may be barred by the doctrine of spoliation.

FURTHER ANSWERING AND AS A FIFTEENTH AFFIRMATIVE DEFENSE:

Plaintiffs' insureds failed to avail themselves of the benefit of the CSST class action remedy and, as such, their claims are barred by the doctrine of assumption of the risk.

FURTHER ANSWERING AND AS A SIXTEENTH AFFIRMATIVE DEFENSE:

Plaintiffs' Complaint fails to state a justifiable basis for punitive damages.

FURTHER ANSWERING AND AS A SEVENTEENTH AFFIRMATIVE DEFENSE:

The allegations contained in Plaintiffs' Complaint fail in their entirety to state a claim upon which relief may be granted against this Defendant, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS AN EIGHTEENTH AFFIRMATIVE DEFENSE:

The Plaintiffs' action against this Defendant is barred by the applicable statute of limitations provided by S.C. Code §15-3-530.

FURTHER ANSWERING AND AS A NINETEENTH AFFIRMATIVE DEFENSE:

No warranties, either express or implied, were breached by this Defendant at any time, thereby barring any recovery against this Defendant.

FURTHER ANSWERING AND AS A TWENTIETH AFFIRMATIVE DEFENSE:

If this Defendant made any warranties to Plaintiffs, Plaintiffs' claims for breach of warranties are barred because Plaintiffs did not rely on any warranties allegedly made by this Defendant.

FURTHER ANSWERING AND AS A TWENTY-FIRST AFFIRMATIVE DEFENSE:

Any award or assessment of punitive damages as prayed for by the Plaintiffs would violate this Defendant's constitutional rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and comparable provisions of the South Carolina Constitution.

FURTHER ANSWERING AND AS A TWENTY-SECOND AFFIRMATIVE DEFENSE:

This Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus, reserves the right to amend its Answer to assert such defenses and does not waive any other defenses that may become available.

FURTHER ANSWERING THE PLAINTIFFS' COMPLAINT AND AS CROSS-CLAIMS AGAINST DEFENDANTS JOHN WIELAND HOMES AND NEIGHBORHOODS OF THE CAROLINAS, INC., AAA PLUMBING, LLC, FOGEL SERVICES, INC. AND CHARLESTON LEC, INC.:

1. Omega Flex, Inc. ("this Defendant") is a foreign corporation doing business in South Carolina.

2. Upon information and belief, the Defendants, John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc. and Charleston LEC, Inc. conduct business enterprises in South Carolina.

3. The parties and subject matter are within the jurisdiction of this Court.

4. The Plaintiffs, Peter T. Phillips and Summar C. Phillips ("Plaintiffs"), have alleged that the house at issue in this case was defectively constructed related to the work or materials of John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc., Charleston LEC, Inc. and this Defendant and that property damage has resulted as a consequence thereof.

5. The allegations of the Plaintiffs' Complaint concerning property damage are incorporated into these Cross-Claims against Defendants John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc. and Charleston LEC, Inc.

6. If the facts as alleged by the Plaintiffs in their Complaint are true, which this Defendant specifically denies, then this Defendant is entitled to be indemnified by the Defendants John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc. and Charleston LEC, Inc. for any and all liability imposed upon this Defendant by virtue of the sole acts and/or omissions of the Defendants John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc. and Charleston LEC, Inc. in which this Defendant was not at fault and did not join, such indemnification to include the costs and attorney's fees associated with defending this action.

WHEREFORE, having fully set forth its Answer to the Plaintiffs' Complaint with Cross-Claims, the Defendant, Omega Flex, Inc., demands judgment in its favor as follows:

1. That the Plaintiffs' Complaint be dismissed with prejudice against Omega Flex, Inc. and that Omega Flex, Inc. be awarded costs against the Plaintiffs; or, in the alternative,

2. For a trial by jury of all issues joined herein so triable;

3. For judgment against Co-Defendants John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc. and Charleston LEC, Inc. for indemnity to the full extent of any liability imposed upon Omega Flex, Inc. to include all costs, expenses and attorney's fees associated with the defense of this action; and

4. For such other and further appropriate relief as this Honorable Court shall deem just and equitable.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com

Robert H. Hood (SC #2599)
Robert H. Hood, Jr. (SC #13491)
A. Walker Barnes (SC # 78485)

Attorneys for Defendant
Omega Flex, Inc.

8-16, 2012
Charleston, South Carolina
J:\docs\3.217\Answer.docx

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ mailing, ☐ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 17 day of August, 2012.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Peter T. Phillips and Summar C. Phillips, Plaintiffs, v. Omega Flex, Inc., John Wieland Homes, and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc., Charleston LEC. Inc., Defendants.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT C/A NUMBER: 12-CP-10-3870 **ANSWER ON BEHALF OF DEFENDANT JOHN WIELAND HOMES' AND NEIGHBORHOODS OF THE CAROLINAS, INC. and CROSS-CLAIMS AGAINST DEFENDANTS**

FILED
2012 OCT 30 PM 4:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: McDONALD McKENZIE RUBIN MILLER & LYBRAND, LLP, ATTORNEYS FOR PLAINTIFFS; HOOD LAW FIRM, LLC, ATTORNEYS FOR DEFENDANT OMEGA FLEX, INC.; CLAWSON & STAUBES, ATTORNEYS FOR DEFENDANT AAA PLUMBING, LLC; SWEENY WINGATE & BARROW, PA, ATTORNEYS FOR DEFENDANT FOGEL SERVICES, INC.; and ROBERTSON HOLLINGSWORTH & FLYNN, ATTORNEYS FOR DEFENDANT CHARLESTON, LEC, INC.;

Expressing reserving and not waiving its right to arbitration, Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc. (JWH) answers Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. JWH denies each and every allegation not specifically admitted, qualified, modified, or explained.

2. JWH is without sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 1 and therefore denies the allegations and demands strict proof thereof.

3. JWH is without sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 2 and therefore denies the allegations and demands strict proof thereof.

4. With respect to Paragraph 3, JWH admits that it is a Georgia corporation authorized to transact business in South Carolina and that it does business in Charleston County, South Carolina. Except as specifically admitted herein, JWH denies each and every allegation contained in Paragraph 4.

5. JWH is without sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 4 and therefore denies the allegations and demands strict proof thereof.

6. JWH is without sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 5 and therefore denies the allegations and demands strict proof thereof.

7. Paragraph 6 alleges a conclusion of law to which no response is required; however, JWH denies such allegations and demands strict proof thereof.

8. JWH denies the allegations of Paragraph 7 and demands strict proof thereof.

9. JWH is without sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 8 and therefore denies the allegations and demands strict proof thereof.

10. JWH is without sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 9 and therefore denies the allegations and demands strict proof thereof.

11. JWH is without sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 10 and therefore denies the allegations and demands strict proof thereof.

12. JWH is without sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 11 and therefore denies the allegations and demands strict proof thereof.

13. The allegations contained in Paragraph 12 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

14. The allegations contained in Paragraph 13 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

15. The allegations contained in Paragraph 14 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

16. The allegations contained in Paragraph 15 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

17. The allegations contained in Paragraph 16 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

18. The allegations contained in Paragraph 17 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

19. The allegations contained in Paragraph 18 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

20. The allegations contained in Paragraph 19 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

21. The allegations contained in Paragraph 20 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

22. The allegations contained in Paragraph 21 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

23. The allegations contained in Paragraph 22 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

24. The allegations contained in Paragraph 23 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

25. The allegations contained in Paragraph 24 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

26. The allegations contained in Paragraph 25 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

27. The allegations contained in Paragraph 26 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

28. The allegations contained in Paragraph 27 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

29. The allegations contained in Paragraph 28 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

30. The allegations contained in Paragraph 29 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

31. The allegations contained in Paragraph 30 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

32. The allegations contained in Paragraph 31 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

33. The allegations contained in Paragraph 32 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

34. With respect to the allegations in Paragraph 33, JWH re-alleges and incorporates by reference its responses to the allegations contained in Paragraphs 1 through 32 of the Complaint.

35. The allegations of Paragraph 34 express conclusions of law which JWH is not required to admit or deny. Notwithstanding, JWH denies the allegations contained in Paragraph 34 and all of its subparts.

36. The allegations of Paragraph 35 express a conclusion of law which JWH is not required to admit or deny. Notwithstanding, JWH denies the allegations contained in Paragraph 35.

37. With respect to the allegations in Paragraph 36, JWH re-alleges and incorporates by reference its responses to the allegations contained in Paragraphs 1 through 35 of the Complaint.

38. The allegations of Paragraph 37 express a conclusion of law which JWH is not required to admit or deny. Notwithstanding, JWH denies the allegations contained in Paragraph 37 and demands strict proof thereof.

39. The allegations of Paragraph 38 express a conclusion of law which JWH is not required to admit or deny. Notwithstanding, JWH denies the allegations contained in Paragraph 38 and demands strict proof thereof.

40. JWH denies the allegations contained in Paragraph 39.

41. The allegations of Paragraph 40 express a conclusion of law which JWH is not required to admit or deny. Notwithstanding, JWH denies the allegations contained in Paragraph 40.

42. With respect to the allegations in Paragraph 41, JWH re-alleges and incorporates by reference its responses to the allegations contained in Paragraphs 1 through 40 of the Complaint.

43. The allegations of Paragraph 42 express a conclusion of law which JWH is not required to admit or deny. Notwithstanding, JWH denies the allegations contained in Paragraph 42 and demands strict proof thereof.

44. The allegations of Paragraph 43 express a conclusion of law which JWH is not required to admit or deny. Notwithstanding, JWH denies the allegations contained in Paragraph 43 and demands strict proof thereof

45. JWH denies the allegations contained in Paragraph 44.

46. The allegations of Paragraph 45 express a conclusion of law which JWH is not required to admit or deny. Notwithstanding, JWH denies the allegations contained in Paragraph 45 and demands strict proof thereof.

47. With respect to the allegations in Paragraph 46, JWH re-alleges and incorporates by reference its responses to the allegations contained in Paragraphs 1 through 45 of the Complaint.

48. The allegations of Paragraph 47 express a conclusion of law which JWH is not required to admit or deny. Notwithstanding, JWH denies the allegations contained in Paragraph 47 and demands strict proof thereof.

49. The allegations of Paragraph 48 express a conclusion of law which JWH is not required to admit or deny. Notwithstanding, JWH denies the allegations contained in Paragraph 48 and demands strict proof thereof.

50. The allegations of Paragraph 49 express a conclusion of law which JWH is not required to admit or deny. Notwithstanding, JWH denies the allegations contained in Paragraph 49 and demands strict proof thereof.

51. The allegations contained in Paragraph 50 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

52. The allegations contained in Paragraph 51 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

53. The allegations contained in Paragraph 52 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

54. The allegations contained in Paragraph 53 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

55. The allegations contained in Paragraph 54 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

56. The allegations contained in Paragraph 55 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

57. The allegations contained in Paragraph 56 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

58. The allegations contained in Paragraph 57 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

59. The allegations contained in Paragraph 58 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

60. The allegations contained in Paragraph 59 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

61. The allegations contained in Paragraph 60 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

62. The allegations contained in Paragraph 61 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

63. The allegations contained in Paragraph 62 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

64. The allegations contained in Paragraph 63 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

65. The allegations contained in Paragraph 64 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

66. The allegations contained in Paragraph 65 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

67. The allegations contained in Paragraph 66 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

68. The allegations contained in Paragraph 67 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

69. The allegations contained in Paragraph 68 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

70. The allegations contained in Paragraph 69 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

71. The allegations contained in Paragraph 70 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

72. The allegations contained in Paragraph 71 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

73. The allegations contained in Paragraph 72 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

74. The allegations contained in Paragraph 73 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

75. The allegations contained in Paragraph 74 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

76. The allegations contained in Paragraph 75 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

77. The allegations contained in Paragraph 76 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

78. The allegations contained in Paragraph 77 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

79. The allegations contained in Paragraph 78 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

80. The allegations contained in Paragraph 79 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

81. The allegations contained in Paragraph 80 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

82. The allegations contained in Paragraph 81 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

83. The allegations contained in Paragraph 82 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

84. The allegations contained in Paragraph 83 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

85. The allegations contained in Paragraph 84 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

86. The allegations contained in Paragraph 85 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

87. The allegations contained in Paragraph 86 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

88. The allegations contained in Paragraph 87 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

89. The allegations contained in Paragraph 88 are not directed to JWH and, therefore, no response is required; to the extent any response is required, JWH denies the allegations and demands strict proof thereof.

FOR A SECOND DEFENSE
(Failure to State a Cause of Action)

90. Each and every allegation set forth in the preceding paragraphs are realleged and reiterated as if fully set forth herein.

91. JWH would show that the allegations of the Phillips' Complaint fail to state facts sufficient to constitute a cause of action and/or causes of action against it.

FOR A THIRD DEFENSE
(All Claims Subject to Binding Arbitration)

92. Each and every allegation set forth in the preceding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

93. JWH would show that the Phillips' claims are barred and this lawsuit is barred because the Phillips agreed to submit all claims to binding arbitration in Paragraph 22 of the Purchase Agreement which contains a mandatory arbitration provision, agreed to by Plaintiffs. *See* Ex. A. Purchase Agreement, ¶ 22.

94. Additionally, the Phillips' claims are barred and this lawsuit is barred because the Phillips further agreed as part of the John Wieland 5-20 Warranty ("the Warranty"), incorporated by reference into the Purchase Agreement, *see* Ex. A. Purchase Agreement, ¶ 22, to submit all claims to binding arbitration:

> **O. Mandatory Binding Arbitration.**
>
> * * *
>
> WIELAND AND HOMEBUYER(S) HEREBY ACKNOWLEDGE AND AGREE THAT THE ARBITRATION PROCEDURE SET FORTH HEREIN SHALL BE THE SOLE AND EXCLUSNE REMEDY FOR THE RESOLUTION OF ANY AND ALL DISPUTES ARISING AFTER THE INITIAL CLOSING OF THE PURCHASE OF THE HOME BY THE INITIAL HOMEBUYER(S). WIELAND AND HOMEBUYER(S) HEREBY WAIVE ANY AND ALL OTHER RIGHTS AND REMEDIES AT LAW, IN EQUITY OR OTHERWISE

WHICH MIGHT OTHERWISE HAVE BEEN AVAILABLE TO THEM IN CONNECTION WITH ANY SUCH DISPUTES.

Any dispute involving Wieland's directors, officers, shareholders, employees, agents, predecessors, affiliates or related companies shall be resolved through the foregoing mediation and arbitration process and not in a court of law. The waiver of invalidity of any portion of this Section shall not affect the validity or enforceability of the remaining portions of this Section; specifically, if it is validly determined that a particular claim or type of claim is not subject to arbitration hereunder, such determination shall not affect or invalidate the applicability of arbitration or mediation hereunder to any other claim or type of claim.

Ex. B, John Wieland 5-20 Warranty, Part V. General Provisions, Section O.

FOR A FOURTH DEFENSE
(Act of God)

95. Each and every allegation set forth in the preceding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

96. JWH would show that Phillips' claims are barred because an act of God was the sole cause and sole proximate cause of the alleged damage.

FOR A FIFTH DEFENSE
(Statute of Limitations)

97. Each and every allegation set forth in the preceding paragraphs are realleged and reiterated as if fully set forth herein.

98. JWH would show that the Phillips' claims are barred by the applicable statute of limitations.

FOR A SIXTH DEFENSE
(Intervening/superseding Cause)

99. Each and every allegation set forth in the preceding paragraphs are realleged and reiterated as if fully set forth herein.

100. The damages alleged, if any, were proximately caused by unforeseeable independent, intervening, and/or superseding acts of third parties beyond the control and unrelated to any actions or conduct of JWH, which therefore bars any recovery from JWH.

FOR A SEVENTH DEFENSE
(Limitation/Disclaimer/Exclusion/Expiration of Warranties)

104. Each and every allegation set forth in the preceding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

101. JWH would show that the Phillips' claims are barred in whole or part because the express and implied warranties they allege have been effectively limited, disclaimed, excluded, or have expired.

105. JWH would show that the Phillips' claims are barred in whole or part because the Warranty, incorporated by reference into the Purchase Agreement, *see* Ex. A. Purchase Agreement, ¶ 22, specifically excludes "[l]oss or damage externally caused [by] . . . acts of God . . . fire; explosion; smoke; . . . lightning; . . .radon or other natural or introduced gases; . . .conditions or occurrences beyond Wieland's control; or by any other external cause . . . ." Ex. B, John Wieland 5-20 Warranty, Part IV. Exclusions, Section K.

106. JWH would show that the Phillips' claims are barred to the extent they seek damages for incidental expenses because the Warranty, incorporated by reference into the Purchase Agreement, *see* Ex. A. Purchase Agreement, ¶ 22, specifically excludes the "[c]osts of shelter, transportation, food, moving, storage, or other incidental expenses related to relocation during repair, or any other costs due to loss of use, inconvenience or annoyance. . ." Ex. B, John Wieland 5-20 Warranty, Part IV. Exclusions, Section P.

107. JWH would show that the Phillips' claims are barred to the extent they seek consequential damages because the Warranty, incorporated by reference into the Purchase Agreement, *see* Ex. A. Purchase Agreement, ¶ 22, specifically excludes "ALL CONSEQUENTIAL DAMAGE OF ANY KIND." Ex. B, John Wieland 5-20 Warranty, Part IV. Exclusions, Section GG.

108. JWH would show that the Phillips' claims are barred to the extent they seek any damages beyond the original final sales price of the home because the Warranty, incorporated by reference into the Purchase Agreement, *see* Ex. A. Purchase Agreement, ¶ 22, specifically provides that "[t]he maximum amount payable under this warranty by Wieland for all claims submitted is the original final sales price of the Home shown on the warranty certificate applicable to the Home, which includes the parcel of land on which the Home was constructed." Ex. B, John Wieland 5-20 Warranty, Part V. General Provisions, Section E.

FOR AN EIGHTH DEFENSE
(Limitation of Remedies)

109. Each and every allegation set forth in the preceding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

110. JWH would show that the Phillips' claims for negligence, breach of contract, breach of implied warranty of workman like service, and beach of implied warranty of habitability are barred because the Warranty, incorporated by reference into the Purchase Agreement, *see* Ex. A. Purchase Agreement, ¶ 22, specifically provides the following:

> THERE ARE AND WILL BE NO OTHER OR FURTHER WARRANTIES OR REPRESENTATIONS ON THE HOME AND/OR PROPERTY ON WHICH IT IS CONSTRUCTED (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, WORKMANLIKE QUALITY, HABITABILITY, SUITABILITY FOR RESIDENTIAL PURPOSES, OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE), EITHER EXPRESS OR IMPLIED, WRITTEN, ORAL OR STATUTORY, MADE BY WIELAND

OTHER THAN AS EXPRESSED IN THIS WARRANTY, AND ALL "SUCH OTHER WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED BY WIELAND. THIS WARRANTY IS ALSO GIVEN BY WIELAND AND ACCEPTED BY HOMEBUYER(S) IN LIEU OF ALL OTHER RIGHTS OR REMEDIES THAT HOMEBUYER(S) HAVE OR MAY HAVE AT LAW ORIN EQUITY AGAINST WIELAND RELATING TO THE HOME AND/OR PROPERTY ON WHICH IT IS CONSTRUCTED, CONSTRUCTION OF THE HOME, AND THE CONDITIONS OR CIRCUMSTANCES EXISTING IN THE HOME AND/OR ON THE PROPERTY ON WHICH IT IS CONSTRUCTED, INCLUDING, BUT NOT LIMITED TO, ANY RIGHTS OR REMEDIES BASED ON NEGLIGENT CONSTRUCTION, MISREPRESENTATION, ANY TORT, VIOLATION OF ANY CODE, STATUTE OR RULE, BREACH OF CONTRACT (EXPRESS OR IMPLIED), OR BREACH OF WARRANTY (OTHER THAN BASED ON THE TERMS OF THIS WARRANTY), AND ALL SUCH OTHER RIGHTS OR REMEDIES ARE HEREBY EXPRESSLY WAIVED BY HOMEBDYER(S).

Ex. B, John Wieland 5-20 Warranty, Part V. General Provisions, Section P.

FOR A NINTH DEFENSE
(Sole Negligence of Third Parties)

111. Each and every allegation set forth in the preceding paragraphs are realleged and reiterated as if fully set forth herein.

112. JWH would show that the injuries and/or damages alleged by the Phillips, which injuries and/or damages are hereby specifically denied, were due to and were the proximate result of the sole negligence and/or recklessness of third persons or parties, for whose conduct JWH is not liable.

FOR A TENTH DEFENSE
(Equitable Defenses)

113. Each and every allegation set forth in the preceding paragraphs are realleged and reiterated as if fully set forth herein.

114. JWH would show that the claims at issue in this lawsuit are barred by the equitable doctrines of laches, estoppel, unclean hands, and/or waiver.

FOR AN ELEVENTH DEFENSE
(Statute of Frauds)

115. Each and every allegation set forth in the preceding paragraphs are realleged and reiterated as if fully set forth herein.

116. JWH would show that the claims of the Phillips are barred by the Statute of Frauds.

FOR A TWELFTH DEFENSE
(Economic Loss Rule)

117. Each and every allegation set forth in the preceding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

118. The claims against JWH are barred, in whole or in part, by the Economic Loss Rule.

FOR A THIRTEENTH DEFENSE
(Punitive Damages are Unconstitutional)

119. Each and every allegation set forth in the preceding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

120. JWH denies that it is liable for any punitive and/or exemplary damages. JWH avers that any award of punitive damages against it would violate the constitutional safeguards provided under the Constitution of the United States of America, and the Constitution of South Carolina, in that punitive damages violate due process and equal protection guarantees, place an undue burden on interstate commerce, violate the right to assembly and petition the government and violate the proscription against excessive fines.

FOR A FOURTEENTH DEFENSE
(Credit for Settlement Proceeds Paid)

121. Each and every allegation set forth in the preceding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

122. If the Phillips have heretofore settled or should hereafter settle for any of their alleged injuries and damages with any parties, then JWH is entitled to a credit in the amount of said settlement.

FOR A FIFTEENTH DEFENSE
(Reservation of Right to Amend Answer)

123. Each and every allegation set forth in the preceding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

124. JWH reserves the right to amend this Answer and their affirmative defenses after investigation, discovery and further information is disclosed, including any and all defenses supported by the evidence proffered at trial of this matter.

FOR A SIXTEENTH DEFENSE
(Incorporation and Adoption of Affirmative Defenses of Other Parties)

125. Each and every allegation set forth in the preceding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

126. JWH reserves the right to rely upon the affirmative defenses raised in the pleadings of any other party to this action, and each and every such alleged affirmative defense set forth in those pleadings is hereby realleged and reiterated as fully as if set forth and incorporated herein.

FOR A SEVENTEENTH DEFENSE
(Reservation of Right to Raise Indemnity/Contribution Claims)

127. Each and every allegation set forth in the preceding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

128. JWH reserves and does not waive its right to raise claims for indemnity and/or contribution as to any Co-Defendants and/or third parties pursuant to S.C. Code Ann. section 15-38-10, et seq.

AS AN ADDITIONAL AFFIRMATIVE DEFENSE AND BY WAY OF CROSS-CLAIMS AGAINST AAA PLUMBING, LLC, FOGEL SERVICES, INC., AND CHARLESTON LEC, INC. (COLLECTIVELY "SUBCONTRACTOR CO-DEFENDANTS")

129. JWH restates and realleges the previous paragraphs as if repeated verbatim herein.

130. JWH has denied the material allegations asserted against it in the Plaintiffs' Complaint and has asserted numerous affirmative defenses against Plaintiffs' lawsuit.

131. JWH is a Georgia corporation authorized to transact business in South Carolina and was at all times relevant to this action conducting business in Charleston County, South Carolina.

132. Fogel Services, Inc. ("Fogel Services") is a domestic corporation, incorporated under the laws of the State of South Carolina and was at all times relevant to this action conducting business in Charleston, South Carolina.

133. Charleston LEC, Inc. ("Charleston LEC"), is a foreign corporation, incorporated under the laws of the State of Texas and was at all times relevant to this action conducting business in Charleston County, South Carolina.

134. AAA Plumbing, LLC (AAA Plumbing) is a domestic corporation, incorporated under the laws of the State of South Carolina and was at all times relevant to this action conducting business in Charleston, South Carolina.

135. Upon information and belief, Fogel Services acted as a subcontractor of JWH, and of its own free will and/or by the instruction of other parties beyond JWH, installed, tested, and certified the CSST used in construction of the Plaintiffs house located on Daniel Island, South Carolina ("the Subject Property").

136. Upon information and belief, Charleston LEC acted as a subcontractor of JWH, and of its own free will and/or by the instruction of other parties beyond JWH, installed, tested, and certified the CSST used in construction of the Subject Property.

137. Upon information and belief, AAA Plumbing acted as a subcontractor of JWH, and of its own free will and/or by the instruction of other parties beyond JWH, installed, tested, and certified the CSST used in construction of the Subject Property.

138. The Co-Defendants named in Paragraphs 132 through 134 above are referred to herein as "Subcontractor Co-Defendants."

139. This dispute arises from claims involving construction work performed and materials provided by the Subcontractor Co-Defendants in the construction of the Subject Property.

FOR A FIRST CROSS-CLAIM
(Negligence as to the Subcontractor Co-Defendants)

140. JWH restates and realleges the previous paragraphs as if repeated verbatim herein.

141. JWH entered into contracts whereby the Subcontractor Co-Defendants agreed to furnish labor, materials and all other resources and facilities necessary to perform the work at the Subject Property, and the Subcontractor Co-Defendants did participate in the construction of the Subject Property.

142. The Subcontractor Co-Defendants had a duty to properly, adequately and completely perform the work at the Subject Property and supply all materials and components in

compliance with the plans and specifications and in compliance with the applicable industry standards, manufacturer's specifications, and building codes, among other alleged duties, as alleged in the Plaintiffs' Complaint.

143. If the allegations within the Plaintiffs' Complaint are proven true, the Subcontractor Co-Defendants breached this duty and were negligent, grossly negligent, wanton, reckless and willful in failing to construct the work at the Subject Property and supply and install the materials and components according to the plans and specifications and in compliance with the applicable industry standards, manufacturer's specifications and building codes, among other alleged deficiencies, as alleged in the Plaintiffs' Complaint.

144. The alleged damages, if any, to the Subject Property are the direct and proximate result of the Subcontractor Co-Defendants' negligence, which has caused and/or will cause JWH to suffer substantial damages in defending this action and to their professional reputation. The consequential damages alleged by Plaintiffs are to property other than the work product of the Co-Defendants.

145. If JWH is found liable to Plaintiffs in any respect, which is denied, then such liability arose from the Subcontractor Co-Defendants' negligence, and the Co-Defendants should indemnify JWH, in whole or in part, for any liability that may be adjudged against it in favor of Plaintiffs.

FOR A SECOND CROSS-CLAIM
(Breach of Contract as to the Subcontractor Co-Defendants)

146. JWH restates and realleges the previous paragraphs as if repeated verbatim herein.

147. JWH and the Subcontractor Co-Defendants entered into contracts whereby the Subcontractor Co-Defendants agreed to furnish labor, materials and all other resources and

facilities necessary to construct their scope of work at the Subject Property in accordance with applicable building codes, industry standards, and manufacturer's specifications.

148. If the allegations within the Plaintiffs' Complaint are proven true, the Subcontractor Co-Defendants breached their contract in that they failed to properly perform the work at the Subject Property as complained of in the Plaintiffs' Complaint.

149. The alleged damages, if any, to the Subject Property alleged in the Plaintiffs' Complaint are the direct and proximate result of the Subcontractor Co-Defendants' breach of contract, which has caused and/or will cause JWH to suffer substantial damages in defending this action and to its professional reputation. The consequential damages alleged by Plaintiffs are to property other than the work product of the Subcontractor Co-Defendants.

150. If JWH is found liable to Plaintiffs in any respect, which is denied, then such liability arose from the Subcontractor Co-Defendants' breaches of contract, and the Subcontractor Co-Defendants should indemnify JWH, in whole or in part, for any liability that may be adjudged against it in favor of the Plaintiffs.

FOR A THIRD CROSS-CLAIM
(Breach of Express and Implied Warranties as to the Subcontractor Co-Defendants)

151. JWH restates and realleges the previous paragraphs as if repeated verbatim herein.

152. The Subcontractor Co-Defendants made express and implied warranties that they would perform their work according to the plans and specifications, industry standards, the applicable building codes, manufacturer specifications, and that their work or product would be fit for its intended purpose, would be merchantable, and would be free of defects.

153. If the allegations within the Plaintiffs' Complaint are proven true, the Subcontractor Co-Defendants breached these warranties as complained of in the Plaintiffs'

Complaint, resulting in consequential damage. The consequential damages alleged by Plaintiff are to property other than the work product of the Subcontractor Co-Defendants.

154. If JWH is found liable to Plaintiffs in any respect, which is denied, then such liability arose from the Subcontractor Co-Defendants' breach of their expressed and implied warranties, and the Subcontractor Co-Defendants should indemnify JWH, in whole or in part, for any liability that may be adjudged against it in favor of Plaintiffs.

FOR A FOURTH CROSS-CLAIM
(Indemnity as to the Subcontractor Co-Defendants)

155. JWH restates and realleges the previous paragraphs as if repeated verbatim herein.

156. The Subcontractor Co-Defendants owed special duties to properly perform their particular scope of services and work at the Subject Property, and to supply fit and conforming materials.

157. JWH did not perform the work or furnish materials to the Subcontractor Co-Defendants at the Subject Property, while, upon information and belief, Subcontractor Co-Defendants assumed an active role in installation of the particular scope of work and the furnishing of materials, as alleged in Plaintiffs' Complaint.

158. To the extent, if any, that JWH is held liable to Plaintiffs in this action, such liability would be a direct and proximate result of the wrongful acts, omissions, breaches and/or negligence of the Subcontractor Co-Defendants in this action; said wrongful acts, omissions, breaches and/or negligence of the Subcontractor Co-Defendants have damaged JWH, as they have been subjected to liability and incurred consequential damages in having to expend attorneys' fees and costs in investigating and defending this action.

159. JWH is entitled to full equitable indemnification from Subcontractor Co-Defendants for any liability, if any, they are found to have to the Plaintiffs in this action, and

JWH would be entitled to damages for the Subcontractor Co-Defendants' negligence as aforedescribed and for Subcontractor Co-Defendants' breach of their implied and express duties and/or warranties, entitling JWH to recover from Subcontractor Co-Defendants their attorneys' fees, costs and other expenses incurred in investigating and defending this action and entitling JWH to recover from said Subcontractor Co-Defendants any sums for which it may be held liable to the Plaintiffs.

AS AN ADDITIONAL AFFIRMATIVE DEFENSE AND BY WAY OF CROSS-CLAIMS AGAINST OMEGA FLEX, INC.

160. JWH restates and realleges the previous paragraphs as if repeated verbatim herein.

161. Omega Flex, Inc. ("Omega"), upon information and belief is a corporation registered in the state of Pennsylvania that does business in Charleston County, South Carolina. At all relevant times, Omega was the manufacturer, seller, and/or distributor of corrugated stainless steel tubing ("CSST"), including the CSST installed in the Subject Property.

FOR A FIFTH CROSS-CLAIM
(Negligence as to Omega)

162. JWH restates and realleges the previous paragraphs as if repeated verbatim herein.

163. Omega had a duty to properly, adequately and completely design, manufacture, and test the CSST installed in the Subject Property, among other alleged duties, as alleged in the Plaintiffs' Complaint.

164. If the allegations within the Plaintiffs' Complaint are proven true, Omega breached this duty and was negligent, grossly negligent, wanton, reckless and willful in failing to properly, adequately and completely design, manufacture, and test the CSST installed in the Subject Property, among other alleged deficiencies.

165. The alleged damages, if any, to the Subject Property are the direct and proximate result of Omega's negligence, which has caused and/or will cause JWH to suffer substantial damages in defending this action and to their professional reputation. The consequential damages alleged by Plaintiffs are to property other than the work product of Omega.

166. If JWH is found liable to Plaintiffs in any respect, which is denied, then such liability arose from Omega's negligence, and Omega should indemnify JWH, in whole or in part, for any liability that may be adjudged against it in favor of Plaintiffs.

FOR A SIXTH CROSS-CLAIM
(Breach of Express and Implied Warranties as to Omega)

167. JWH restates and realleges the previous paragraphs as if repeated verbatim herein.

168. Omega made express and implied warranties that the CSST that it designed, manufactured, tested, and supplied for installation in the Subject Property would be free of defects.

169. If the allegations within the Plaintiffs' Complaint are proven true, Omega breached these warranties as complained of in the Plaintiffs' Complaint, resulting in consequential damage. The consequential damages alleged by Plaintiff are to the property other than the work product of Omega.

170. If JWH is found liable to Plaintiff in any respect, which is denied, then such liability arose from Omega's breach of its expressed and implied warranties, and Omega should indemnify JWH, in whole or in part, for any liability that may be adjudged against it in favor of Plaintiff.

FOR A SEVENTH CROSS-CLAIM
(Strict liability as to Omega)

171. JWH restates and realleges the previous paragraphs as if repeated verbatim herein.

172. Omega engaged in the business of designing, manufacturing, supplying, and/or selling CSST, including the CSST installed at the Subject Property.

173. If the allegations within the Plaintiffs' Complaint are proven true, the CSST designed, manufactured, supplied and/or sold by Omega was defective when it left Omega's control in that it was not reasonably safe for foreseeable uses, among other alleged deficiencies.

174. If the allegations within the Plaintiffs' Complaint are proven true, the CSST designed, manufactured, supplied and/or sold by Omega reached the Plaintiffs without substantial change in the condition in which it was sold.

175. The alleged damages, if any, to the Subject Property are the direct and proximate result of Omega's defective design, manufacture, and construction of the CSST, which has caused and/or will cause JWH to suffer substantial damages in defending this action and to their professional reputation. The consequential damages alleged by Plaintiffs are to property other than the work product of Omega.

176. If JWH is found liable to Plaintiffs in any respect, which is denied, then such liability arose from Omega's defective design, construction and manufacturing of the CSST installed in the Subject Property and Omega should indemnify JWH, in whole or in part, for any liability that may be adjudged against it in favor of Plaintiffs because Omega is subject to strict liability as alleged in Plaintiffs' Complaint.

WHEREFORE, having answered the Plaintiffs' Complaint and asserted its Cross-Claims, Defendant JWH respectfully prays for the dismissal of the Plaintiffs' Complaint with prejudice pursuant to the defenses set forth above; prays for a trial by jury on all triable issues; prays for judgment to be entered against the Subcontractor Co-Defendants and Omega pursuant to JWH's Cross-Claims; that the costs of this action be taxed to a party other than JWH; and for all such other relief as the Court deems equitable, just, and proper.

PRATT-THOMAS WALKER, P.A.

By: _____
G. Trenholm Walker
John P. Linton, Jr.
Post Office Drawer 22247
Charleston, SC 29413-2247
T: (843) 727-2200
F: (843) 727-2231
gtw@p-tw.com
jlp@p-tw.com

Attorneys for Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc.

October 29, 2012
Charleston, South Carolina

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand, or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this 29 day of Oct, 2012, in Charleston, South Carolina.

_____

JOHN WIELAND HOMES
AND NEIGHBORHOODS

EXHIBIT
A

ADDENDUM

Attached to that certain contract dated 06/16/2008 between Peter Phillips and Summer Phillips Purchaser(s) and John Wieland Homes and Neighborhoods, Inc., Seller, for property known as Lot 3 of Block M of Smythe Park at Daniel Island Neighborhood: Being more commonly known as 1417 Hooper Street, Charleston SC 29492

Add #	Date	Code	Option Description	Per	City	Plan	Elev	Status	Total ($)
			General						
C8	8/28/2008	CUSTOM	Convert sod to St. Augustine	1 Each	Cash	N		Approved	660.00
			SUB TOTAL of Options Page 1						660.00
			Option Total						660.00
			Total Sales Price (approved items only)						667,013.00
			Total Sales Price (open and approved items)						667,013.00

* From existing contingent buyer

Seller-John Wieland Homes and Neighborhoods, Inc. — Date Executed 9/8/08

Wieland Realty Associates, Inc. - Daniel Island Sales — Date Executed

Purchaser Peter Phillips — Date Executed 9/2/08

Purchaser Summer Phillips — Date Executed 9/2/08

Selling Broker Lexa Owens - Keller Williams Realty — Date Executed

Seller's initials _____ Purchaser's initials _____ Broker's initials _____ Selling Broker's initials _____

Addendum Page 1 of 1

JOHN WIELAND HOMES
AND NEIGHBORHOODS

ADDENDUM #6

Attached to that certain contract dated 06/16/2008 between Peter Phillips and Summer Phillips Purchaser(s) and John Wieland Homes and Neighborhoods, Inc., Seller, for property known as Lot 3 of Block M of Smythe Park at Daniel Island Neighborhood: Being more commonly known as 1417 Hooper Street, Charleston SC 29492.

1. The following shall be added to the above mentioned contract:

   Custom Paint Colors to be added to two (2) rooms **$700.00**
   Customer to pay for above addition outside of closing with certified funds.

2. Sales price shall remain the same $667,013.00.

4. Commission to be paid on original contract price of $633,900.00.

I/We hereby agree to accept the foregoing stipulations as Addendum # 6 dated September 5, 2008.

9/5/08 — Purchaser — Date

9/8/08 — Seller — Date

9/5/08 — Purchaser — Date

Date: 8/18/2008
Time: 10:13:45 AM

JOHN WIELAND HOMES
AND NEIGHBORHOODS

ADDENDUM

Attached to that certain contract dated 06/16/2008 between Peter Phillips and Summer Phillips Purchaser(s) and John Wieland Homes and Neighborhoods, Inc., Seller, for property known as Lot 3 of Block M of Smythe Park at Daniel Island Neighborhood: Being more commonly known as 1417 Hooper Street , Charleston SC 29492

A Non-refundable deposit in the amount of Two Thousand One Hundred dollars ($2,100.00), due $2,100.00, Payment Method Check. The balance is $2,100.00.

Add #	Date	Code	Option Description	Qty	Type	Built	Status	Total ($)
			General					
C6	8/18/2008	CUSTOM	47 ft. of additional 6 ft. fence with 2 gates, & upgrading 83 ft. of fence to 6 ft. along easement	1 Each	Cash	N	Approved	4,200.00
			SUB TOTAL of Options Page 1					4,200.00
			Option Total					4,200.00
			Total Sales Price (approved items only)					666,353.00
			Total Sales Price (open and approved items)					666,353.00

* From existing contingent buyer

Seller-John Wieland Homes and Neighborhoods, Inc. — Date Executed 9/4/08

Purchaser Peter Phillips — Date Executed 8/18/08

Wieland Realty Associates, Inc. - Daniel Island Sales — Date Executed

Purchaser Summer Phillips — Date Executed 8/15/08

Selling Broker Lexa Owens - Keller Williams Realty — Date Executed

Seller's initials _____ Purchaser's initials PTP _____ Broker's initials _____ Selling Broker's initials _____

Addendum Page 1 of 1

Date: 8/15/2008
Time: 9:53:19 AM

JOHN WIELAND HOMES
AND NEIGHBORHOODS

ADDENDUM

Attached to that certain contract dated 06/16/2008 between Peter Phillips and Summer Phillips Purchaser(s) and John Wieland Homes and Neighborhoods, Inc., Seller, for property known as Lot 3 of Block M of Smythe Park at Daniel Island Neighborhood: Being more commonly known as 1417 Hooper Street, Charleston SC 29492

A Non-refundable deposit in the amount of Three Thousand Six Hundred Sixty-Three dollars ($3,663.00), due $3,663.00, Payment Method Check. The balance is $3,663.00.

Add #	Date	Code	Option Description	Qty	Type	Built	Status	Total ($)
			General					
C5	8/15/2008	CUSTOM	50 sf of deck on screened porch	1 Each	Cash	N	Approved	1,250.00
C5	8/15/2008	CUSTOM	6 inch crown through upstairs (to include bed 2 & 3, hall, laundry & hall bath)	1 Each	Cash	N	Approved	980.00
C5	8/15/2008	CUSTOM	Add additional parking pad to the drive	1 Each	Cash	N	Approved	600.00
C5	8/15/2008	CUSTOM	Add additional patio 18 x 16 feet	1 Each	Cash	N	Approved	1,152.00
C5	8/15/2008	CUSTOM	Add surround prewire to 3rd Floor	1 Each	Cash	N	Approved	150.00
C5	8/15/2008	CUSTOM	Add two 54 x 72 inch bookshelves in 3rd floor	2 Each	Cash	N	Approved	1,220.00
C5	8/15/2008	CUSTOM	Convert entire house to 7 1/4 inch baseboards	1 Each	Cash	N	Approved	350.00
C5	8/15/2008	CUSTOM	Convert Owners Shower Pan to Tile	1 Each	Cash	N	Approved	1,100.00
C5	8/15/2008	CUSTOM	Convert patio and front walkway to oyster shell	1 Each	Cash	N	Approved	525.00
			SUB TOTAL of Options Page 1					7,327.00
			Option Total					7,327.00
			Total Sales Price (approved items only)					662,153.00
			Total Sales Price (open and approved items)					662,153.00

* From existing contingent buyer

Seller-John Wieland Homes and Neighborhoods, Inc. — Date Executed 9/4/08

Purchaser Peter Phillips — Date Executed 8/18/08

Wieland Realty Associates, Inc - Daniel Island Sales — Date Executed

Purchaser Summer Phillips — Date Executed 8/18/08

Selling Broker Lexa Owens - Keller Williams Realty — Date Executed

Seller's initials _____ Purchaser's initials PTP SMP Broker's initials _____ Selling Broker's initials _____

Addendum Page 1 of 1

Date: 8/12/2008
Time: 9:54:20 AM

JOHN WIELAND HOMES
AND NEIGHBORHOODS

ADDENDUM

Attached to that certain contract dated 06/16/2008 between Peter Phillips and Summer Phillips Purchaser(s) and John Wieland Homes and Neighborhoods, Inc., Seller, for property known as Lot 3 of Block M of Smythe Park at Daniel Island Neighborhood: Being more commonly known as 1417 Hooper Street , Charleston SC 29492

A Non-refundable deposit in the amount of Nine Thousand dollars ($9,000.00), due $9,000.00. Payment Method Check: The balance is $9,000.00.

Add #	Date	Code	Option Description	Qty	Type	Built	Status	Total ($)
			** Custom					
C3	7/3/2008	Design1,	Extra Ticket #1	1 Each	Cash	N	Approved	14,233.00
C3	7/3/2008	Design2	Extra Ticket #2	1 Each	Cash	N	Approved	1,720.00
			Electrical / Lighting Fixtures					
C4	7/29/2008	II-overage	Lighting Overage	1 Each	Cash	N	Approved	2,048.00
			SUB TOTAL of Options Page 1					18,001.00
			Option Total					18,001.00
			Total Sales Price (approved items only)					654,826.00
			Total Sales Price (open and approved items)					654,826.00

* From existing contingent buyer

Seller-John Wieland Homes and Neighborhoods, Inc. — Date Executed 9/1/08

Wieland Realty Associates, Inc. - Daniel Island Sales — Date Executed

Purchaser Peter Phillips — Date Executed 8/18/08

Purchaser Summer Phillips — Date Executed 8/18/08

Selling Broker Lexa Owens - Keller Williams Realty — Date Executed

Seller's initials _____ Purchaser's initials _____ Broker's initials _____ Selling Broker's initials _____

Addendum Page 1 of 1

SATISFACTION/WAIVER OF CONDITIONS ADDENDUM TO AGREEMENT TO BUY AND SELL REAL ESTATE

SATISFACTION/WAIVER OF CONDITIONS: In reference to Agreement to Buy and Sell Real Estate, dated June 9, 2008, between Peter + Summar Phillips, the Buyer and John Wieland Homes, the Seller, covering the real property commonly known as:

Lot 03 Block M Section 2 Subdivision Daniel Island

Address 1417 Hooper Street

Tax Map 278-01-01-026 City Charleston Zip 29492

County of Berkeley, State of South Carolina, the undersigned Buyer hereby acknowledges satisfaction of/or waives the following condition(s) set forth in the above referenced Agreement:

Buyer closed on the sale of their home effectively removing the contingency.

Seller		Date 7/16/08	Time 3:30
Witness	Kimberly McAlhaney	Date 7/16/08	Time 3:30
Seller		Date	Time
Witness		Date	Time
Buyer	Summar C. Phillips	Date 7/15/08	Time 06:30 AM
Witness		Date	Time
Buyer		Date 7/15/08	Time 9:00 AM
Witness		Date	Time

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SATISFACTION/WAIVER OF CONDITIONS ADDENDUM TO AGREEMENT TO BUY AND SELL REAL ESTATE

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Lot 03 Block M Section 2 Subdivision Daniel Island

Address 1417 Hooper Street

Tax Map 278-01-01-026 City Charleston Zip 29492

County of Berkeley, State of South Carolina, the undersigned Buyer hereby acknowledges satisfaction of/or waives the following condition(s) set forth in the above referenced Agreement:

Buyer closed on the sale of their home effectively removing the contingency.

Seller		Date 7/15/08	Time
Witness		Date	Time
Seller		Date	Time
Witness		Date	Time
Buyer		Date 7/15/08	Time 0630 AM
Witness		Date	Time
Buyer		Date 7/15/08	Time 9:00 AM
Witness		Date	Time

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Date: 6/20/2008
Time: 3:21:06 PM

JOHN WIELAND HOMES
AND NEIGHBORHOODS

ADDENDUM

Attached to that certain contract dated 06/16/2008 between Peter Phillips and Sumner Phillips Purchaser(s) and John Wieland Homes and Neighborhoods, Inc., Seller, for property known as Lot 3 of Block M of Smythe Park at Daniel Island Neighborhood; Being more commonly known as 1417 Hooper Street , Charleston SC 29492

A Non-refundable deposit in the amount of Two Thousand Nine Hundred Twenty-Five dollars ($2,925.00) due $2,925.00, Payment Method Check. The balance is $2,925.00.

Amt #	Date	Code	Option Description	Qty	Type	Built	Status	Total ($)
			General					
C2	6/20/2008	CUSTOM	Add additional phone/cable to bonus room over garage	1 Each	Cash	N	Approved	95.00
C2	6/20/2008	CUSTOM	Add dedicated receptacle for wine cooler in butlers pantry area	1 Each	Cash	N	Approved	115.00
C2	6/20/2008	CUSTOM	add gast stubs out at front porch (does not include lantern)	2 Each	Cash	N	Approved	850.00
C2	6/20/2008	CUSTOM	Add sound prewire (2 speaker drops) to screened porch	1 Each	Cash	N	Approved	115.00
C2	6/20/2008	CUSTOM	Add stub out for laundry sink (will include standard sink)	1 Each	Cash	N	Approved	450.00
C2	6/20/2008	CUSTOM	Add surround sound prewire to both family room and bonus room over garage	2 Each	Cash	N	Approved	300.00
C2	6/20/2008	CUSTOM	Reframe stairs to accommodate hardwood treads on 1st flight of stairs to 2nd floor Framing labor only	1 Each	Cash	N	Approved	1,000.00
			SUB TOTAL of Options Page 1					2,925.00
			Option Total					2,925.00
			Total Sales Price (approved items only)					636,825.00
			Total Sales Price (open and approved items)					636,825.00

* From existing contingent buyer

Seller-John Wieland Homes and Neighborhoods, Inc. — Date Executed 7/3/08

Purchaser Peter Phillips — Date Executed 6/21/08

Wieland Realty Associates, Inc. - Daniel Island Sales — Date Executed

Purchaser Summer Phillips — Date Executed 6/23/08

Selling Broker Lexa Owens - Keller Williams Realty — Date Executed

Seller's initials _____ Purchaser's initials _____ Broker's initials _____ Selling Broker's initials _____

DANIEL ISLAND REAL ESTATE CO. LLC
ESCROW MGMT. ACCO[redacted]
230 SEVEN FARMS DRIVE
SUITE 201
CHARLESTON, SC 29492

BAN[redacted] AMERICA
02502 SC
67-448-539

1Ub:

TEN THOUSAND DOLLARS & 00 CENTS

001069

DATE	AMOUNT
Jun 26/08	$10,000.00

PAY TO THE ORDER OF: John Wieland Homes & Neighborhoods of the Carolinas, Inc.
3015 Dunes West Blvd, Ste 502
Mt. Pleasant, SC 29466

MP

DANIEL ISLAND REAL ESTATE CO. LLC
ESCROW MGMT. ACCOUNT

WIELJ John Wieland Homes & NeighborhoodsJun 26/08 001069 1069

Invoice No	Inv.Date	PO Number	Reference	Audit No	Gross Amt	Disct/RT	Net Amt
ZM03-REF	Jun 23/08	N/A	1417Hooper	PJ2145	10,000.00	0.00	10,000.00
					10,000.00	0.00	10,000.00

DISP BM

First Federal

P.O. Box 13068
N. Charleston, South Carolina 29423-3068

57-7194
2532

298353

06/12/2008

PAY TO THE ORDER OF DANIELS ISLAND REAL ESTATE

$20,000.00

Twenty Thousand and 00/100

Remitter: PETER AND SUMMER PHILLIPS
2194

FIRST FEDERAL OF CHARLESTON
CHARLESTON S.C.

Jeannette Wyatt
AUTHORIZED SIGNATURE

DIRE ~~Co~~ Cut a Check to us for $10,000 for our portion of the deposit.

John Wieland Homes and Neighborhoods of the Carolinas, Inc.
Purchase Agreement

6/5/08
(Contract Acceptance Date)

The Parties and Essential Terms:

1. Agreement to Buy and Sell Property. The undersigned Purchaser agrees to buy and the undersigned Seller agrees to sell, all that tract or parcel of land lying and being in the City of Charlotte, Mecklenburg County, North Carolina, being Lot 7 of Block 2, Parcel M of Steele Creek Neighborhood, Shaded Maple, being more commonly known as 1017 Hooper Street, Charlotte, NC 28273 (street address, city, state, zip); As recorded in Book(s) _____ Page _____ (the foregoing land and the improvements constructed or to be constructed thereon by Seller are referred to herein as the "Property.") Purchaser acknowledges that the model home and/or other exhibits may not convey any options, and Purchaser agrees to accept any such changes.

2. Purchase Price and Deposits. The Purchase Price of the Property shall be Six Hundred Thirty-Three Thousand Nine Hundred Dollars ($633,900.00) to be paid by Seller in immediately available funds at closing. Purchaser has delivered to David Weekley Real Estate Company, LLC as Broker's listing broker (the "Broker") as escrow agent a deposit ("Earnest Money Deposit") of Ten Thousand Dollars ($10,000.00) to be held by Broker until Closing, or to be disbursed as set forth in this Agreement. The parties acknowledge and agree that Broker will place the Earnest Money Deposit in a federally insured financial institution. Purchaser acknowledges and agrees that any interest earned with regard to the Earnest Money Deposit shall be distributed to the benefit of the David Weekley Charitable Fund, Inc., a nonprofit community service organization.

3. Additional Deposits: $10,000.00. shall be paid to Seller (not to Broker, or escrow agent) as a non-refundable additional deposit when the Feasibility Period expires, with such amount to be credited to Purchaser at closing. Such foregoing deposits shall become non-refundable unless Seller is unable or unwilling to close, and Purchaser hereby acknowledges that such deposits are intended to be Seller's sole remedies and may include, without limitation, increased financing, skylights, additional floor joists, custom tile or marble, relocating walls and structural framing and foundation modifications. These additional deposits may be required by the above numbered paragraphs of Purchaser's contract down payment requirements but shall be credited to Purchaser at closing. Such deposits shall be non-refundable unless Seller is unable or unwilling to close, and Purchaser hereby acknowledges that such deposits are a pre-agreed amount and a part of Seller's liquidated damages upon Purchaser's default. Purchaser's Initials: PTP

4. Brokers. Broker has entered into a client relationship with Seller and has acted as agent for the Seller in this transaction. Lisa A. Duncan (Selling Broker) has entered into a client relationship with Purchaser and has acted as agent for the Purchaser in this transaction. Any Agency Disclosure Form executed herein to create a past hereof. Purchaser acknowledges that Broker's representation of Seller has been disclosed to Purchaser in a timely manner and that there is no brokerage or agency relationship between Broker and Purchaser, even though Broker may perform ministerial acts for the benefit of Purchaser. Purchaser acknowledges and Purchaser has not relied upon the advice of the agents, if any, of Seller or Broker, or their respective representatives, relative to the purchase and ownership of the Property and any matters related thereto. Purchaser acknowledges that if such matters are of importance to Purchaser, Purchaser has sought and obtained independent professional advice. Except as set forth in this agreement, Purchaser and Seller represent and warrant that they have not dealt with and have not been and are not represented by any other agent, broker, or other person or entity, in connection with the sale of the Property, and they agree to indemnify and hold each other harmless from any and all claims, losses, damages, costs and expenses, including, without limitation, attorneys' fees and court costs, incurred or suffered by one of them because of any claim by any fee or commission with respect to this transaction made by the other or by its agent or broker, or other person or entity, relating to or against the other. Broker and Seller/Broker have performed valuable services in negotiating this agreement and are made parties hereunder to enforce their respective rights. Payment of commission as a broker shall not establish agency or subagency relationship between Selling Broker and other Seller or Broker. If this transaction closes in accordance with the terms hereof, Seller agrees to pay Broker a commission (which commission has already been negotiated in a separate agreement) of 5% of the above Purchase Price. If this sale is made in connection with a Selling Broker, Broker shall receive 3.5% of the total real estate commission paid hereunder, said commission and the Selling Broker shall receive 1.5% additional real estate commission paid hereunder. If this transaction does not close in accordance with the terms hereof (for any reason whatsoever), Seller shall not be obligated to pay any real estate commission or charge fee to any person or entity. From time to time, Seller may make additional monetary or non-monetary offers to brokers and agents in connection with this and other transactions. Purchaser shall have no obligations regarding any such offers. Seller will, upon request by Purchaser, provide Purchaser with additional information regarding any awards to any brokers or agents involved in this transaction and which relate to this transaction. Real estate commission rates or fees are not fixed by law or custom and are set voluntarily, negotiated or mandated by the Charlotte Trident Board of Realtors, Inc. or the Charlotte Trident Multiple Listing Service, Inc. Compensation for services rendered is solely a matter of negotiation between the brokers and the client. No broker to this transaction shall owe any duty to Purchaser or Seller except as set forth under South Carolina law. Seller and Purchaser acknowledge that if they have signed form a client relationship with a broker, that broker has disclosed to a prior basis (a) the types of brokerage relationships available by

Broker's Initials: PTP Purchaser's Initials: PTP Broker's Initials: RH Seller's Initials: JSD

$633,900 MFS 6/4/08 PTP 6/10/08

$10,000 PTP 6/12/08

PTP 6/10/08 SAP

MFS 6/4/08

SAP

MFS 6/5/08

John Wieland Homes and Neighborhoods of the Carolinas, Inc.
Purchase Agreement

6/5/08
(Date of Purchaser's Offer)

The Property and Financial Terms

1. Agreement to Buy and Sell; Property. The undersigned Purchaser agrees to buy, and the undersigned Seller agrees to sell, all that tract or parcel of land lying and being in the City of Charleston, Berkeley County, South Carolina; Being Lot 3 of Block Z Parcel M of Smythe Park Neighborhood, Daniel Island; Being more commonly known as 1417 Hooper Street, Charleston, SC 29492 (street address, city, state, zip); Being recorded in Berkeley County Records, Plat Book _____, Page _____. (The foregoing land and the improvements constructed or to be constructed thereon by Seller are referred to herein as the "Property.") Purchaser acknowledges that the neighborhood/subdivision name and/or street names may change, and Purchaser agrees to accept any such changes.
2. Purchase Price and Deposit. The Purchase Price of the Property shall be Six Hundred Fourteen thousand nine hundred Dollars, ($ 614,900.00) to be paid to Seller in immediately available funds at closing. Purchaser has delivered to Daniel Island Real Estate Company, LLC as Builder's listing broker (the "Broker), an earnest money deposit ("Earnest Money Deposit") of Fifteen Thousand Dollars, ($ 15,000.00) to be held by Broker until Closing, or to be disbursed as set fort in this Agreement. The parties acknowledge and agree that Broker will place the Earnest Money Deposit in a federally insured financial institution. Purchaser acknowledges and agrees that any interest earned with regard to the Earnest Money Deposit shall be designated to the benefit of the Daniel Island Community Fund, Inc., a nonprofit community service organization.
3. Additional Deposits. $10,000.00 shall be paid to Seller (not to Broker as earnest money) as a non-refundable foundation deposit when the foundation is started, with such amount to be credited to Purchaser at closing. Such foundation deposit shall be non-refundable unless Seller is unable or unwilling to close, and Purchaser hereby acknowledges that such deposit and any interest thereon is a part of Seller's liquidated damages upon Purchaser's default. Purchaser acknowledges that Seller reserves the right to require additional non-refundable deposits for the installation of extras not included as a standard feature for the neighborhood in the amount of at least fifty percent (50%) of the total charge for such item(s) (Seller may require larger deposits in its discretion). Such non-standard items are determined in Seller's sole discretion and may include, without limitation, basement finishing, skylights, additional fireplaces, custom tile or marble, retaining walls and structural framing and foundation modifications. These additional deposits may be required in the above instances regardless of Purchaser's mortgage down payment requirements but shall be credited to Purchaser at closing. Such deposits shall be non-refundable unless Seller is unable or unwilling to close, and Purchaser hereby acknowledges that such deposits and any interest thereon are a part of Seller's liquidated damages upon Purchaser's default. **Purchaser's Initials** _____.
4. Brokers. Broker has entered into a client relationship with Seller and has acted as agent for the Seller in this transaction Lexa Owens - ("Selling Broker") has entered into a client relationship with Purchaser and has acted as agent for the Purchaser in this transaction. Any Agency Disclosure form attached hereto is made a part hereof. Purchaser acknowledges that Broker's representation of Seller has been disclosed to Purchaser in a timely manner and that there is no brokerage or agency relationship between Broker and Purchaser, even though Broker may perform ministerial acts for the benefit of Purchaser. Purchaser acknowledges that Purchaser has not relied upon the advice or representations, if any, of Seller or Broker, or their respective representatives, relative to the purchase and ownership of the Property and any matters related thereto. Purchaser acknowledges that if such matters are or have been of concern to Purchaser, Purchaser has sought and obtained independent advice relative thereto. Except as set forth in this agreement, Purchaser and Seller represent and warrant that they have not dealt with, and have not been and are not represented by, any other agent or broker, or other person or entity, in connection with the sale of the Property, and they agree to indemnify and hold each other harmless from any and all claims, losses, damages, costs and expenses, including, without limitation, attorneys' fees and court costs, incurred or suffered by one of them because of any claim for any fee or commission with respect to this transaction made by the other or by an agent or broker, or other person or entity, claiming to represent the other. Broker and Selling Broker have performed valuable services in negotiating this agreement and are made parties hereunder to enforce their commission rights. Payment of commission to a broker shall not create an agency or subagency relationship between Selling Broker and either Seller or Broker. If this transaction closes in accordance with the terms hereof, Seller agrees to pay Broker at closing a commission (which commission has already been negotiated in a separate agreement) of 6 % of the above Purchase Price. If this sale is made in cooperation with a Selling Broker, Broker shall receive 3 % of the total real estate commission paid hereunder and the Selling Broker shall receive 3 % of the total real estate commission paid hereunder. If this transaction does not close in accordance with the terms hereof (for any reason whatsoever), Seller shall not be obligated to pay any real estate commission or similar fee to any person or entity. From time to time, Seller may make additional monetary or merchandise awards to brokers and agents in connection with this and other transactions. Purchaser shall have no obligations regarding any such awards. Seller will, upon request by Purchaser, provide Purchaser with additional information regarding any awards to any broker or agent involved in this transaction and which relate to this transaction. Real estate commission rates or fees are not fixed by law or custom and are not controlled, suggested, recommended or maintained by the Charleston Trident Board of Realtors, Inc. or the Charleston Trident Multiple Listing Service, Inc. Compensation for services rendered is solely a matter of negotiation between the broker/agent and the client. No broker to this transaction shall owe any duty to Purchaser or Seller greater than is set forth under South Carolina law. Seller and Purchaser acknowledge that if they have entered into a client relationship with a broker, that broker has disclosed on a prior basis (a) the types of brokerage relationships offered by

legible PAGE (BEFORE changes)

the broker, (b) any other brokerage relationship which would conflict with the client's interest, and (c) the compensation of broker and whether commissions will be shared with other brokers. In this agreement, the term "broker" shall mean a licensed South Carolina real estate broker and the broker's affiliated licensees.

1. Title. Seller shall convey good and marketable title to the Property to Purchaser by general warranty deed subject only to (a) zoning ordinances affecting the Property, (b) general utility and right-of-way easements serving the Property, (c) subdivision restrictions of record and items reflected on the recorded plat as of the closing date, and (d) other restrictions and encumbrances herein specified (see Stipulation # ___). Purchaser shall have a reasonable time after the effective date of this agreement in which to examine title and in which to furnish Seller with a written statement of objections (other than the foregoing) which materially and adversely affect the marketability of title. Purchaser and Seller agree that marketable title shall mean title which a reputable title insurance company, licensed to do business in the State in which the Property is located, will insure at its regular rates. Seller shall have until closing to satisfy all valid objections and if Seller fails to satisfy such valid objections, then Purchaser may terminate this agreement by written notice to Seller, the builder deposit and other deposits made hereunder shall be returned to Purchaser, and the parties shall have no further rights or obligations hereunder.

6. Covenants. Purchaser acknowledges that the Property is or will be subject to recorded protective covenants, that Purchaser has received a copy of such covenants or substantially similar covenants, and that Purchaser and the Property shall be bound by the recorded covenants. Purchaser acknowledges that only the neighborhood association having jurisdiction over the Property is authorized to approve architectural alterations and that approval or assistance of any type provided by any sales agent, builder representative or other person or entity shall not be sufficient to authorize any architectural alteration and shall not prejudice the rights of such association to enforce the architectural control provisions of the covenants. The covenants obligate Purchaser to submit plans for all exterior alterations to home and site for prior approval. Purchaser acknowledges that the neighborhood association having jurisdiction over the Property is mandatory and Purchaser shall be a member. Purchaser shall pay dues levied by such association, including dues to be paid at closing based on the date of closing and the schedule provided by such association. If the Property is not shown on a recorded plat as of the effective date of this agreement, Purchaser acknowledges that the boundaries of the Property as finally platted may vary slightly from preliminary boundaries. Purchaser also acknowledges that the final boundaries of the Property shall be as per latest recorded plat thereof as of date of closing (and not as per any lot survey or other document provided at closing or otherwise). Boundaries are not established by hedges, trees, fencing, Purchaser assumptions or other action, or anything other than the latest recorded plat as of the date of closing, and Seller shall have no obligation, responsibility or liability whatsoever for issues arising out of the foregoing. Purchaser's Initials ___

7. Loan. A written loan application shall be made by Purchaser within 10 days after the date of Purchaser's offer (as noted in the upper right-hand corner of the first page of this agreement). Within 30 days after the effective date of this agreement, Purchaser shall obtain a lender commitment letter with all conditions fully disclosed and acceptable to Seller and provide a copy of such letter to Seller. If Purchaser fails to obtain and provide a copy of such letter within such 30 day period, Seller may at any time thereafter terminate this agreement and retain the builder deposit and all other deposits hereunder as liquidated damages. In addition, if Purchaser fails to make timely written loan application, or fails at any time to supply the necessary information on a timely basis to allow for loan processing, or fails at any time to diligently pursue loan approval in good faith, all as determined in Seller's reasonable discretion, Seller may at any time terminate this agreement and retain the builder deposit and all other deposits hereunder as liquidated damages. Upon termination of this agreement and payment of monies pursuant to this paragraph, the parties shall have no further rights or obligations hereunder. Purchaser's Initials ___

Wieland Financial Services is familiar with the building practices of Seller and the unique attributes, including the protective covenants, applicable to the Property. As a result, Seller requests, but does not require, the use of Wieland Financial Services for loan application and processing to benefit both Purchaser and Seller. Purchaser's Initials ___

Construction Matters

1. Materials. If items or materials are not available when needed, Seller may substitute items or materials of equal or better grade, in Seller's reasonable discretion. Seller may also make substitutions of equal or better grade where such substitution would be consistent with Seller's general practice. Purchaser acknowledges that the color and grade of certain materials used in the home may vary from the selections made by Purchaser due to factors beyond the control of Seller. Purchaser agrees that industry standards, as determined in the reasonable exercise of Seller's discretion, shall govern the acceptability of any particular variance. For example, the colors of exterior siding and interior stain and the color and size of brick and stone may be slightly different than that selected by Purchaser. If Seller reasonably determines that any such variation is within industry standards, Purchaser shall be bound by such determination. Purchaser further acknowledges that Seller shall not be required to obtain Purchaser's consent for changes, deviations or omissions to the home during construction which do not adversely affect the value of the home and which are necessitated by: action of governmental authorities; lenders, FHA or VA requirements; or particular job-site conditions.

9. Selections. Purchaser shall select, within stated allowances, if not already installed:
(a) Level II carpet installed with pad.
(b) Level I vinyl.
(c) Lighting fixtures and ceiling fans @ $ 3,000.00 total.
If Purchaser's selections exceed stated allowances, Purchaser shall pay Seller the difference in cash at the time of selection. An additional deposit of 50% of all design options exceeding the stated allowances will be

Seller's Initials ___ Purchaser's Initials PTP ___ Broker's Initials ___ Selling Broker's Initials ___

06/01/2004 12:22 8843162288 KELLER WILLIAMS PAGE 18/38

collected with the written addendum to add them. All such amounts to be credited to Purchaser at closing. The foregoing deposits shall be non-refundable unless Seller is unable or unwilling to close, and Purchaser hereby acknowledges that such deposits and any interest thereon are a part of Seller's liquidated damages upon Purchaser's default. IF PURCHASER REFUSES TO SCHEDULE AN APPOINTMENT TO MAKE DECORATING SELECTIONS FOR THE PROPERTY WITHIN 14 DAYS OF THE DATE OF PURCHASER'S OFFER (AS NOTED IN THE UPPER RIGHT-HAND CORNER OF THE FIRST PAGE OF THIS AGREEMENT), PURCHASER SHALL BE IN DEFAULT. ANY DELAY BY PURCHASER IN MAKING DECORATING SELECTIONS WILL DELAY THE CLOSING DATE. Purchaser acknowledges that all items to be selected by Purchaser have been made, are installed, and are acceptable except as noted in Stipulation # N/A.

10. Alarm System/Other. The alarm system, if standard for this neighborhood, shall include all first floor operable windows (lower windows only) and doors, including basement level windows (lower windows only) and doors. Seller neither provides nor installs toilet paper holders or towel racks.
11. Insulation. Insulation will be installed in the exterior walls and upper-level ceilings as follows:
    - [ ] (a) Exterior walls of first and second floor heated living areas will be insulated with fiberglass insulation to a thickness of 5-1/2 inches, which thickness, according to the manufacturer, will yield an R value of 13.
    - [X] (b) Upper-level ceilings above all heated living areas with sufficient head room to allow for blown insulation will be insulated with blown fiberglass insulation yielding an R value of 30 and a thickness as required by the manufacturer to achieve the R value designated, which thickness shall be posted in the attic, or
    - [ ] (b) Upper-level ceilings above all heated living areas that do not allow for blown insulation will be insulated with fiberglass batt insulation having a thickness of n/a inches, which thickness, according to the manufacturer, will yield an R value of 19.
    - [X] (d) Floor over crawl spaces will be insulated with fiberglass batt insulation having a thickness of 6 inches, which thickness, according to the manufacturer, will yield an R value of 19.

    Purchaser acknowledges that the above R value information is based solely upon information supplied by the manufacturer or installer and Seller does not warrant the accuracy of this information. Purchaser further acknowledges that R value may vary based upon normal construction variances in insulation thickness and openings in walls.
12. Seller's Approval of Certain Matters. Seller reserves the right to approve the lot, house placement, driveway location, number of desk steps included in Purchase Price and all exterior colors. No structural or mechanical changes will be made to the Property once framing is complete, unless otherwise provided in this agreement.
13. Sewer and Water Service. Seller warrants that the improvements on the Property are served by [X] public sanitary sewer, [ ] septic tank. Seller warrants that the improvements on the Property are served by [X] public water, [ ] well system, [ ] other. Purchaser's Initials: [illegible]
14. Non-Interference by Purchaser. Neither Purchaser nor Purchaser's agents may do any work on the Property or enter the Property prior to closing without prior written permission of Seller, which permission may be withheld for any reason. Purchaser may visit the Property prior to closing, but shall not interrupt or interfere with sales or construction in the neighborhood. Purchaser shall direct questions to the sales agent or community coordinator for the neighborhood.

Pre-Closing Issues

15. Inspection. Purchaser, at Purchaser's expense, may have the Property and all improvements inspected prior to closing by a mutually agreeable independent property inspector. If such an inspection is made, the inspector shall diligently and comprehensively evaluate all aspects of the Property and all improvements. However, the inspector may not attend the New Home Orientation meeting between Purchaser and Seller. If the inspection report discloses items which do not comply with applicable building or health codes, Seller shall immediately proceed to correct such items and diligently pursue correction to completion. Items other than such code violations shall be resolved in accordance with Seller's standard pre-closing and post-closing warranty work procedures. Prior to commencement of the inspection, Purchaser and Seller shall agree upon the inspector in writing. Any written report prepared by the inspector shall be delivered to Seller not later than fifteen (15) days prior to closing and prior to New Home Orientation. FAILURE TO FOLLOW THE AFOREMENTIONED PROCEDURE WILL NECESSITATE THE POSTPONEMENT OF ANY AGREED UPON CLOSING DATE. Purchaser's Initials: [illegible] Seller's Initials: [illegible]
16. Pre-Closing Occupancy. Seller recommends that Purchaser allow two (2) full days between scheduled closing date and furniture move-in to accommodate unforeseen delays in actual closing. Seller's policy is not to allow occupancy prior to closing. However, Seller, at its sole option, may permit the Purchaser to occupy the Property prior to closing. Purchaser acknowledges, however, that Seller is under no obligation to allow Purchaser to occupy the Property prior to closing, and that refusal of Seller to grant permission to Purchaser to so occupy in no way affects any other part of this agreement. If permission is granted, a mutually agreeable occupancy agreement shall be executed prior to occupancy.

Closing

17. Closing. The sale shall be closed not later than 7 days after completion of the home (New Home Orientation walk-through items excepted). Notwithstanding anything to the contrary herein, Seller shall complete construction of the home on the Property within two (2) years after the effective date of this agreement. Possession of the Property shall be granted by Seller to Purchaser no later than closing.

Seller's Initials: [illegible] Purchaser's Initials: [illegible] Broker's Initials: [illegible] Selling Broker's Initials: [illegible]

18. Closing Costs. Seller shall pay the recording fee, which is calculated based on the value of the Property. Purchaser shall pay prepaid items including any prepaid interest and provide a paid-up insurance policy at closing. Purchaser shall pay closing costs, loan costs and discount points (see Stipulation # N/A). Purchaser shall pay mortgage insurance down payment, if any, as required by Purchaser's lender. Purchaser shall reimburse Seller at closing $ 350.00 for the cost of the survey (THE SURVEY WILL BE ORDERED BY SELLER AND WILL BE DONE BY A SURVEYOR OF SELLER'S CHOICE). Taxes shall be estimated and prorated at closing based on the best available tax information. If the closing is held after a tax bill has been issued for the year of closing, prorations at closing shall be final, if closing is held before actual taxes for the year of closing are known, Seller and Purchaser agree to adjust the estimate of taxes promptly upon request of the other based on actual taxes for the year of closing when those taxes are billed. Agree to make refund payments to each other as appropriate based on the adjusted estimate (and such payments shall incur a late fee of 10% of the amount due, if not paid within 30 days after demand for payment is made, and shall bear interest at 12% per annum from 30 days after demand for payment is made until paid). Seller may suspend warranty work until Purchaser makes any reparation payment requested by Seller. The parties acknowledge that taxes may increase significantly if the Property is located in a county that undergoes property tax reassessment. If the county in which the Property is located has passed a 15% tax cap ordinance as allowed by SC Code Section 12-37-227A(A), the parties acknowledge that there may be an additional, substantial increase in property taxes for the tax year following closing.

19. Closing Attorney and Documents. Seller reserves the right to select the closing attorney so long as costs are equal to or less than those available to Purchaser from alternate sources. Any closing costs incurred at the request or for the special benefit of Purchaser, including, but not limited to, courier, express mail or unusual copying requirements, shall be the expense of Purchaser. Both parties shall execute and deliver all documents necessary to close.

20. Termites. Seller shall deliver to Purchaser at closing a certificate stating that the Property has been treated against termite infestation by a termite control agency.

21. Utilities and Appraisal. All charges for extras added by Purchaser not already paid and rent not already paid, if any, shall be payable in certified funds acceptable to Seller at closing. If the Property does not appraise at an amount at least equal to the Purchase Price, Purchaser shall pay any additional amount needed to close in certified funds acceptable to Seller.

22. Warranty and Arbitration. Purchaser and Seller hereby agree that, in connection with the sale contemplated by this agreement, Purchaser will be enrolled in the John Wieland Homes and Neighborhoods 5-10 Extended Warranty program (JWH Warranty), the JWH Warranty being incorporated herein by reference. THERE ARE AND WILL BE NO OTHER OR FURTHER WARRANTIES OR REPRESENTATIONS ON THE PROPERTY AND IMPROVEMENTS (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, WORKMANLIKE QUALITY, HABITABILITY, SUITABILITY FOR RESIDENTIAL PURPOSES, OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE), EITHER EXPRESS OR IMPLIED, WRITTEN, ORAL OR STATUTORY, MADE BY SELLER OTHER THAN AS EXPRESSED IN THE JWH WARRANTY, AND ALL SUCH OTHER WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED BY SELLER. THE JWH WARRANTY IS ALSO GIVEN BY SELLER AND ACCEPTED BY PURCHASER IN LIEU OF ALL OTHER RIGHTS OR REMEDIES THAT PURCHASER HAS OR MAY HAVE AT LAW OR IN EQUITY AGAINST SELLER RELATING TO THE PROPERTY, CONSTRUCTION ON THE PROPERTY, AND THE CONDITIONS OR CIRCUMSTANCES EXISTING ON THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY RIGHTS OR REMEDIES BASED ON NEGLIGENT CONSTRUCTION, MISREPRESENTATION, ANY TORT, VIOLATION OF ANY CODE, STATUTE OR RULE, BREACH OF CONTRACT (EXPRESS OR IMPLIED), OR BREACH OF WARRANTY (OTHER THAN BASED ON THE TERMS OF THE JWH WARRANTY), AND ALL SUCH OTHER RIGHTS OR REMEDIES ARE HEREBY EXPRESSLY WAIVED BY PURCHASER. PURCHASER ACKNOWLEDGES THAT PURCHASER HAS RECEIVED AND READ A COPY OF THE CURRENT JWH WARRANTY AND CONSENTS TO THE TERMS THEREOF, INCLUDING, WITHOUT LIMITATION, THE MANDATORY BINDING ARBITRATION PROVISIONS CONTAINED THEREIN. Certain appliances and other consumer products sold as part of the improvements are covered by manufacturers' warranties. Purchaser is entitled to obtaining those warranties upon request to the Seller.
Purchaser's Initials GMK Seller's Initials MM.

Post-Closing Matters

23. Trees. Seller shall have no obligation, responsibility or liability whatsoever for: (1) trees and/or shrubbery that Seller would have removed, or had planned to remove, during construction but which Purchaser specifically requested not be removed, (2) natural areas left undisturbed by Seller, including, without limitation, dredging in such areas, (3) site drainage other than as stated in the JWH Warranty, and (4) trees of any kind whatsoever.

24. Heating and Cooling Systems. Purchaser acknowledges that different people have different expectations and operating practices regarding the heating and cooling systems for a home and that the performance of such systems can be affected by the orientation of a room or home in relation to the sun. The heating and cooling systems for the Property have been sized and designed in accordance with industry standards for the type and size of home to be constructed. If the heating and cooling systems operate in accordance with industry standards, Purchaser shall not make any claim against Seller with respect thereto.

25. CHANGES IN DEVELOPMENT PLANS AND AMENITIES. PURCHASER ACKNOWLEDGES THAT CURRENT DEVELOPMENT PLANS FOR THIS NEIGHBORHOOD ARE SUBJECT TO CHANGE WITHOUT NOTICE AND NO GUARANTEES ARE MADE THAT ANY OF THE COMPONENTS

PRESENTLY PROPOSED WILL BE A PART OF THE NEIGHBORHOOD, OR THAT ADDITIONAL COMPONENTS WILL NOT BE ADDED TO THE NEIGHBORHOOD. IF SOME OR ALL OF SUCH COMPONENTS ARE PROVIDED, NO GUARANTEES ARE MADE AS TO THE DATE OF AVAILABILITY FOR USE OR THAT CURRENT PLANS WILL ACCURATELY REFLECT ACTUAL CONSTRUCTION OR LOCATION OF SUCH COMPONENTS.

26. Construction Easement. Purchaser grants to Seller a grading and construction easement, 5 feet in width from adjacent property, onto the Property for temporary access for construction on other property which lies adjacent to the Property; provided, such easement shall not interfere with Purchaser's use of the Property, and any damage to the Property shall be repaired by Seller. Such easement shall exist only during the period of construction upon adjacent property. Purchaser shall keep unobstructed all drainage structures and easements as shown on the recorded plat and the survey which will be provided at closing.
27. Photography of Property. Purchaser grants Seller the right to obtain and use photography of the Property for publication and advertising purposes.

General

28. Default Prior to Closing. If Purchaser defaults under this agreement prior to closing, Seller may elect to receive the builder deposit and all other deposits as agreed-upon liquidated damages, in which event this agreement shall terminate and Purchaser and Seller shall have no further rights or obligations hereunder. Alternatively, Seller may elect to seek enforcement of this agreement by specific performance. Upon default by Purchaser prior to closing, Purchaser shall, notwithstanding anything to the contrary herein, also immediately pay the full amount of the real estate commissions due hereunder. Broker and Selling Broker may jointly or independently pursue Purchaser for that portion of the commission which they would have otherwise received had this transaction closed. If Seller defaults under this agreement prior to closing and such default is the sole cause of this transaction not closing, Purchaser may elect to receive a refund of all deposits, in which event this agreement shall terminate and Purchaser and Seller shall have no further rights or obligations hereunder. Alternatively, Purchaser may elect to seek enforcement of this agreement by specific performance. In no event shall any party have the right to seek damages from another party upon default prior to closing, except the recovery of liquidated damages pursuant to this agreement.
29. Termination Prior to Closing. If, prior to closing, a dispute arises between Purchaser and Seller concerning construction, boundaries, consideration or any other matter relating to this transaction and such dispute cannot be resolved within 10 days after the dispute has arisen by both parties acting reasonably and in good faith, Seller shall have the right to terminate this agreement upon written notice (by certified mail, return receipt requested, or personal delivery) to Purchaser. Upon termination, Seller shall pay to Purchaser the sum of $100.00 and shall, in addition, return all monies paid by Purchaser pursuant to this agreement, together with simple interest on such monies at the rate of 6 percent per annum from the date of deposit of Purchaser's payment. Upon termination, the parties shall have no further rights or obligations hereunder and such termination shall not be a default by any party. For the purposes of this provision, a tender of the monies by Seller to Purchaser will be sufficient, whether or not accepted by the Purchaser.
30. Force Majeure. Notwithstanding anything to the contrary contained herein, Seller shall be excused for the period of delay occasioned by circumstances beyond the control of Seller, including, without limitation, delay caused by the Purchaser, any labor strike or matter affecting performance of work hereunder, failure of Seller's suppliers of materials to deliver required materials, delay and/or failure due to computer viruses, "bugs" or other computer-related disruptions, riots, and acts of God, including, but not limited to, fire, windstorm, flood, tornadoes, earthquakes, lightning or other casualty. Seller shall not be liable for any inconvenience or expense to Purchaser caused by events beyond Seller's control.
31. Entire Agreement and Disclosure. This agreement constitutes the sole and entire agreement between the parties hereto and no modification of this agreement shall be binding unless attached hereto and signed by, at a minimum, Purchaser and Seller (any parties other than Purchaser and Seller not being necessary parties to the execution of any modifications to this agreement unless such modifications adversely affect the commission to be paid hereunder). NO REPRESENTATION, PROMISE, OR INDUCEMENT NOT INCLUDED (WHETHER MADE BY AN AGENT OR REPRESENTATIVE OF SELLER OR OTHERWISE) IN THIS AGREEMENT SHALL BE BINDING UPON ANY PARTY HERETO, INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS REGARDING PROPERTY BOUNDARIES, ADJACENT PROPERTY, OR AMENITIES.

Purchaser acknowledges the following:

(a) any association budget that may be provided to Purchaser (Seller being under no obligation to provide any such budget) is based on estimated expenses only, and assessments may increase or decrease significantly when the actual expenses of the association become known;
(b) the Property is located adjacent to or in the vicinity of thoroughfares which could be improved or widened in the future;
(c) the views from the Property can change over time due to, among other things, additional development and the removal or addition of landscaping;
(d) no representations are made regarding zoning of adjacent property, and the zoning category to which adjacent property is subject may change;
(e) no representations are being made regarding which schools may now or in the future serve the Property;
(f) since in every neighborhood there are conditions which different persons may find objectionable, Purchaser acknowledges that there may be conditions outside of the Property which Purchaser finds objectionable and that it shall be the sole responsibility of Purchaser to become acquainted with neighborhood conditions which could affect the Property; and

Seller's Initials _____ Purchaser's Initials _____ Broker's Initials RH Selling Broker's Initials _____

(g) no representations are made that the Property and/or home/unit thereon is or will be soundproof or that sound may not be transmitted from one property and/or home/unit to another.

32. Time of Essence. Time is of the essence of this agreement.

33. Liquidated Damages. In all cases where a party is entitled to receive liquidated damages hereunder, the parties acknowledge that such damages cannot be determined with certainty, the amount to be paid represents the parties' best estimate of such damages, and such payment shall not constitute a penalty.

34. Miscellaneous. Each provision of this agreement is severable from every other provision and if any provision is determined to be unenforceable, the parties shall be bound by the remaining provisions. No provision of this agreement shall be construed more strictly against a party because that party or its agent prepared or is deemed to have prepared such provision. The failure of any party to exercise any right hereunder at any particular time shall not be deemed a waiver of such party's rights. Titles or captions of sections contained in this agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this agreement or the intent of any provisions hereof. References to the singular shall mean, where applicable, the plural. This agreement shall not be binding until both Purchaser and an authorized representative of Seller have both executed the same copy of this agreement. However, same time periods hereunder begin to run from the date of Purchaser's offer (as noted in the upper right-hand corner of the first page of this agreement). A signature transmitted by facsimile machine shall be treated as an original signature.

35. Survival. The terms and conditions contained herein shall not survive closing or termination of this agreement and shall merge upon delivery of the warranty deed, except for the provisions of the last sentence of Section 1 and Sections 2, 3, 4, 6, 7, 8, 11, 18, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35, which shall survive closing or termination of this agreement and shall not merge upon delivery of the warranty deed.

THE EFFECTIVE DATE FOR THIS AGREEMENT SHALL BE THE DATE THAT IT IS LAST EXECUTED BY PURCHASER OR SELLER.

6/9/08 — 6/7/08

6/9/08 — 6/7/08

Broker-in-Charge Date

Keller Williams

6/7/08

See Addendum "1" which is part of this contract.

Seller's Initials _____ Purchaser's Initials STP SMC Broker's Initials RH Selling Broker's Initials JSO

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FROM :LEXA'S FAX NO. :8432329363 Jun. 11 2008 04:55PM P1

FROM :LEXA'S FAX NO. :8432329363 Jun. 11 2008 02:07PM P1

FROM :LEXA'S FAX NO. :8432329363 Jun. 09 2008 03:18PM P2

ADDENDUM ONE

Addendum One to contract between John Wieland Homes (seller) and Peter T. Phillips and Summer C. Phillips (buyers) dated June 5, 2008 for purchase of property located at 1417 Hooper Street, Pacific Island.

This addendum by reference below becomes part of the above referenced contract.

1. ~~John Wieland Homes agrees to complete the right front inside bay window, including~~ ~~as part of the contract price. Selections to be made by purchaser in a timely~~ ~~manner.~~

2. John Wieland Homes verifies by signature below that the property is not in a flood zone. Wieland further agrees to provide buyer with "flood zone" property is located in within ten days.

1. John Wieland Homes agrees to allow buyers ten (10) days to meet with design center and make pricing for option selections. If pricing is not satisfactory buyer has the option to void this contract without penalty.

Buyer is granted 5% concession which will be applied towards the total purchase price of 1417 Hooper and final purchase price adjusted by same. Seller will provide letter acknowledging this if required.

Buyer 6/7/08 Date

Buyer 6/7/08 Date

Seller 6/9/08 Date

John Wieland Homes agrees to complete right front bay window, third floor heated and cooled room, bath, closets as part of contract price. selections to be made by purchaser in a timely manner.

~~I.C selections made by designer during the contingency period are not satisfactory to buyer, buyer may release contract by written notice and receive earnest money refund.~~ 6/11/08 PTP 6/11/08

Legible Copy
(Before changes)

ADDENDUM ONE

Addendum One to contract between John Wieland Homes (seller) and Peter T. Phillips and Summar C. Phillips (buyers) dated June 5, 2008 for purchase of property located at 1417 Hooper Street, Daniel Island.

This addendum by signature below becomes part of the above referenced contract.

1. John Wieland Homes agrees to complete the third floor heated and cooled room, bath, closet as part of the contract price. Selections to be made by purchaser in a timely manner.

2. John Wieland Homes verifies by signature below that the property is not in a "V" flood zone. Wieland further agrees to provide buyer with "flood zone" property is located in within ten days.

3. John Wieland Homes agrees to allow buyer ten (10) days to meet with design center and obtain pricing on option selections. If pricing is not satisfactory buyer has the option to void this contract without penalty.

4. Buyer's agent 3% commission will be applied towards the total purchase price of 1417 Hooper and final purchase price reduced by same. Broker will provide letter acknowledging this if required.

6/7/08

Buyer Date

Buyer Date 6/7/08

Seller Date

REAL ESTATE CONTRACT ADDENDUM A

This is an Addendum to that certain Real Estate Contract dated June 5, 2008 between Purchaser(s) Peter J Summar Phillip and John Wieland Homes of South Carolina, Inc. Seller, for property located at Parcel M, Block Z, Lot 3 also known as 1417 Hooper Street, Charleston SC 29492.

SALE OF PRESENT HOME CONTINGENCY (RIGHT OF FIRST REFUSAL)
This agreement is contingent upon Purchaser's ability to sell and close the following Property, 619 Palmetto Dr. Mt Pleasant SC 29464 (address, City, state, zip), on or before July 15, 2008. Purchaser agrees to use Purchaser's best efforts in good faith to sell and close such property (which shall include listing such property on or before 10 days after the effective date of this agreement). Within 14 days after the effective date of this agreement, Purchaser shall provide to Seller a comparable market analysis report (CMA) and a copy of the listing agreement from the above referenced Property. If, however, such property has not closed within the specified time, Purchaser, at Purchaser's option, shall perform this agreement, if qualified (as determined by Seller), or shall elect to terminate it, in which latter event all deposits shall be refunded to Purchaser. Seller's determination that Purchaser is not qualified shall be treated as an election by Purchaser to terminate. For so long as this contingency exists, Seller shall have the right to continue to offer the Property for sale (which may include, without limitation, listing the Property with listing services, listing the Property on Seller's neighborhood availability and price sheet, and placing a "For Sale" sign on the Property). If Seller shall obtain an offer for the Property that is satisfactory to Seller, Seller shall notify Purchaser or Purchaser's agent by phone or in writing and Purchaser shall have Forty Eight (24) hours from the phone conversation or from midnight on the date of mailing of written notice within which to notify Seller that (i) Purchaser elects to perform this agreement, remove this contingency, and proceed with the sale, and (ii) Purchaser's property described above has closed (or if it has not closed, Purchaser's notice shall include proof satisfactory to Seller of loan qualification covering ownership of the above-described property and the Property; this satisfactory proof is defined as a letter from Wieland Financial Services that states the Purchaser is qualified without selling current home; this does not obligate Purchaser to use Wieland Financial Services).
If Purchaser does not so notify Seller within Forty Eight (24) hours, this agreement shall terminate and all deposits hereunder shall be refunded to Purchaser. Any acts or omissions by Purchaser relating to the Property, such as, without limitation, locking a loan for the Property, are at Purchaser's own and sole risk. Seller shall have no responsibility or liability whatsoever (i) for any such acts or omissions of Purchaser, including, without limitation, refunding any loan lock fees paid by Purchaser, or (ii) to complete the home on the Property other than by the time specified in, or determined by Seller pursuant to, this agreement.

Purchasers Initials PTP SJS, Sellers Initials

CONTINGENCY / INSTALLING SELECTIONS DURING

Purchaser and Seller have entered into a "Sale of Present Home" contingency agreement as part of this agreement. Purchaser acknowledges that while this "Sale of Present Home" contingency is in effect, Seller will not install the Purchaser's selections under Section 9 of this agreement. Seller will, instead, install selections of Seller's choosing as these items are needed during the course of construction. Should Purchaser remove the contingency in the "Sale of Present Home" agreement, Seller will install the Purchaser's selections for items that have not already been installed or ordered. This provision shall survive closing or termination of this agreement.

I/We hereby agree to accept the foregoing stipulations as Addendum A dated the 9th day of June, 2008.

6/10/08
Purchaser Date

6/11/08
Seller Date

6/10/08
Purchaser Date

Selling Broker Date 6/11/08

REAL ESTATE CONTRACT ADDENDUM

This is an Addendum to that certain Real Estate Contract dated 6/5/08 between Purchaser(s) Peter & Summer Phillips and John Wieland Homes and Neighborhoods of the Carolina's, Inc., Seller, for property located on Daniel Island at 1417 Hooper Street, Charleston, SC 29492 also known as Lot 5, Block Z, Parcel M, Smythe Park Neighborhood.

The following shall be added to the above mentioned Agreement:

1. DANIEL ISLAND DEVELOPMENT. Purchaser acknowledges that the Property is part of the planned community located in the City of Charleston, Berkeley County, South Carolina known as "Daniel Island" ("Development"). The nature and extent of the rights and obligations of the Purchaser in acquiring and owning property in the Development shall be controlled by and subject to the approved Master Plan for Daniel Island and the Development Agreement among Henry F. Guggenheim Foundation, Daniel Island Development Company, Inc., and City of Charleston, Daniel Island, Berkeley County, South Carolina.

2. DANIEL ISLAND COMMUNITY ASSOCIATION, INC.
   (a) Governing Documents. Purchaser acknowledges that the Property is a portion of real property and improvements which have been made subject to that certain Declaration of Covenants, Conditions and Restrictions for Daniel Island Residential Zone recorded in the Register of Mesne Conveyance Office for Berkeley County, South Carolina, as it may be amended from time to time, and all exhibits thereto ("Declaration"). The nature and extent of the rights and obligations of the Purchaser in acquiring and owning the Property are controlled by and subject to the Declaration, as well as the Daniel Island Design Guidelines, and the Articles of Incorporation, the By-Laws, and the rules and regulations of the Daniel Island Community Association, Inc. ("Association"), as they may be amended (collectively, the "Governing Documents"). Purchaser acknowledges receipt of the foregoing documents and agrees to comply with all of the terms, conditions and obligations set forth therein. Purchaser further acknowledges that the plans for the construction of the home and landscaping on the Property, and any changes thereto, must be approved by the Architectural Review Board ("ARB"), as established pursuant to the Declaration.
   (b) Membership in Association. Upon conveyance of the Property to Purchaser, Purchaser shall automatically become a member of the Association and shall be subject to all assessment obligations, ARB procedures, and other provisions of the Governing Documents.
   (c) Expansion. Purchaser further acknowledges that the Development may be expanded to include additional lots in accordance with the terms of the Declaration. Purchaser also acknowledges that no obligation exists on the part of any person or entity to expand the Development to include lots other than those presently subject to the Declaration.
   (d) Amendments to the Declaration. The Declarant under the Declaration may make certain changes in or amendments to the Declaration which do not materially affect the rights of Purchaser and such changes or amendments may be made without the approval of Purchaser. In addition, the Declarant may make any amendment necessary to comply with the guidelines established by, or the requirements of, any governmental authority, title insurers, or institutional lender. Such changes or amendments shall not affect the rights and liabilities of the parties under the Agreement, or be a cause or reason for termination or revision of the Agreement.
   (e) Common Expense Assessments. The annual assessments, if any, levied by the Association against the Property as provided in the Declaration shall be prorated between Seller and Purchaser as set forth in the Agreement.
   (f) Contribution to Working Capital. At closing, Purchaser shall pay a one-time contribution to the working capital of the Association in the amount of one-sixth (1/6) of the annual assessment for the year of closing, which amount shall be in addition to, and not in lieu of, assessments thereafter coming due.

3. AMENITIES. Purchaser acknowledges that the proposed features and amenities described on the master plan and/or other Daniel Island sales or marketing brochures, announcements or other materials are based on current development plans, which are subject to change without notice. No guarantee is made that the proposed features or amenities, if constructed, will consist of the number, type, size and location as depicted on the master plan or otherwise.

4. NO JOINT VENTURE. Purchaser acknowledges and agrees that no partnership, joint venture, or principal and agent relationship exists between Seller and Daniel Island Company, Inc., and Daniel Island Associates L.L.C.

We hereby agree to accept the foregoing as an Addendum to the aforementioned Agreement, as of this 5th day of June, 2008.

Summer C Phillips
Purchaser

Purchaser

John Wieland Homes and Neighborhoods of the Carolina's, Inc. (Seller)

Seller's Initials _____ Purchaser's Initials SCP PTP Broker's Initials RH Selling Broker's Initials _____

SPECIAL STIPULATIONS

Attached to that certain agreement dated between Peter & Summer Phillips Purchaser, and John Wieland Homes and Neighborhoods of the Carolina's, Inc., Seller, for property known as Lot # 3M of Block # Z of Daniel Island Smythe Park Neighborhood; being more commonly known as 1417 Hooper Street, Charleston, SC 29492.

1. PLAN SELECTION

The home to be constructed is to be a Calhoun plan built to The Smythe Park standards. The front elevation is double stacked front porch with an attached 2 Car rear entry garage with a finished room above built on a crawl space with stucco and batten and Hardiplank siding.

2. ORIENTATION/CLOSING DATE.

Orientation and Closing dates will be set upon completion of Bath Vanity tops.

3. ORIENTATION/FINAL WALK THROUGH

All Purchasers must attend Orientation and Final Walk Through.

4. THIS CONTRACT IS NOT ASSIGNABLE.

5. PROPERTY FOR PERSONAL USE

Purchaser represents that Purchaser is buying the property for personal use as a residence for Purchaser and/or Purchaser's family, and not for investment purposes or for immediate resale. Seller reserves the right, in its sole discretion, to require Purchaser to sign a recordable agreement, to be attached to the deed at closing, which grants Seller the option to repurchase the Property for the same purchase price paid by Purchaser at closing, if Purchaser conveys the Property within one (1) year after the date of closing. Any such agreement and any additional related provisions Seller may desire in such agreement, shall be prepared by Seller, and the form and substance of any such agreement shall be satisfactory to Seller in its sole discretion. Purchaser acknowledges and agrees that Seller's requirement of such agreement in no way affects any other part of this agreement and shall not constitute a default of noncompliance with this agreement by Seller. Purchaser further acknowledges and agrees that Purchaser's refusal to sign such agreement upon request shall constitute a default by Purchaser under this agreement.

6. WIELAND FINANCIAL SERVICES

If Purchaser procures and closes a loan with Wieland Financial Services, Seller will credit Purchaser $2,500.00 towards closing costs.

Seller: John Wieland Homes & Neighborhoods of the Carolina's, Inc.

6/9/08
Date

Purchaser Date

Purchaser Date

Seller's initials Purchaser's initials PTP SLP Broker's initials Page 9 of 10 Selling Broker's initials

Wieland Financial Services, Inc.
Affiliated Business Arrangement Disclosure Statement

NOTICE

To: Peter & Summar Phillips Property: 1417 Hooper Street

From: John Wieland Homes and Neighborhoods, Inc. Date: 6/5/08

This is to give you notice that John Wieland Homes and Neighborhoods, Inc. ("Wieland") has a business relationship with Wieland Financial Services, Inc. ("Wieland Financial"). Wieland and Wieland Financial are owned by the same shareholders and share some common directors and officers. Because of this relationship, this referral may provide Wieland with a financial benefit.

Wieland Financial is a residential mortgage lender. Below is the range of charges for residential mortgage services by Wieland Financial:

[provider and settlement service]	[charge or range of charges]
Wieland Financial – loan processing and making loan	1.5% - 2.0% of loan amount

You are NOT required to use Wieland Financial as a condition for settlement of your loan on, or the purchase of, the subject property.

THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

ACKNOWLEDGEMENT

I/We have read this disclosure form, an understand that Wieland is referring me/us to purchase the above-described settlement service(s) from Wieland Financial, and that Wieland may receive a financial or other benefit as the result of this referral.

[Signature] 6/6/08 [Date]

Seller's Initials MJS Purchaser's Initials PTP SP Broker's Initials RH Selling Broker's Initials SBD

Design Selection Checklist

Lot #: 32 Plan: Colburn Buyer: Peter + Summar Phillips

Selections available are determined by the date purchaser is able to make final decisions at the John Wieland Homes Design Center
(JW Design hours: M-F 8:00-5:00)

Purchaser has made all selections within the chosen group at JW Design. Purchaser understands that they must finalize selections at the selected design appointment(s). If selections are not finalized at the designated appointment(s) overtime hours will be incurred.

****At contract, agent to call building team to confirm available selections - Richard Jackson 843-297-1424.**

SELECTIONS DATE RANGE:

1st (3 hour) Appointment:
~~Shingle Color~~
Brick (If applicable)
Exterior Paint
Fireplace Treatment
~~Cabinetry~~
Countertops
Appliances
Stair Treatment

2nd (3 hour) Appointment:
Plumbing Fixtures
Hardwood
Interior Paint
Vanity Tops
Vinyl
Tile
Carpet

3rd (3 hour) Appointment:
Lighting

SELECTIONS DATE RANGE:

1st (3 hour) Appointment:
Exterior Paint (limited)
Fireplace Treatment (Mark)
Cabinetry
Countertops
Appliances
Plumbing Fixtures (limited)

2nd Appointment:
Hardwood (limited)
Interior Paint
Vanity Tops
Vinyl
Tile
Carpet

3rd Appointment:
Lighting

SELECTIONS DATE RANGE:

1st (3 hour) Appointment:
Fireplace Treatment (Mark)
Appliances-color
Hardwood (limited)
Plumbing Fixtures (limited)
Vanity Tops
Interior Paint
Vinyl
In-stock Tile
Carpet

3rd (3 hour) Appointment:
In-stock Lighting

SELECTIONS DATE RANGE:

1st Appointment:
Appliances-color
Hardwood (limited)
Vanity Tops
Vinyl
Carpet

SELECTIONS DATE RANGE:

1st Appointment:
Carpet

Purchaser's Signature: _____ Date: 6/7/08
Purchaser's Signature: _____ Date: 6/7/08
Neighborhood Sales Manager: _____ Date: _____
Builder's Signature: _____ Date: _____

Seller's Initials _____ Purchaser's Initials PTP _____ Broker's Initials _____ Selling Broker's Initials _____

EXHIBIT
tabbies
3

John Wieland

5-20

WARRANTY

John Wieland
JOHN WIELAND HOMES
AND NEIGHBORHOODS

JOHN WIELAND HOMES
AND NEIGHBORHOODS

THE WIELAND 5-20 EXTENDED WARRANTY

THE WIELAND 5-20 EXTENDED WARRANTY

IN GEORGIA:
Customer Service Department, 1950 Sullivan Road, P. O. Box 87363, Atlanta, GA 30337
Phone: (770) 907-3400 Fax: (770) 907-3440
Website: www.jwcustomercare.com

IN TENNESSEE:
Customer Service Department, 300 Seaboard Lane, Suite 3, Franklin, TN 37067
Phone: (615) 790-3090 Fax: (615) 790-0075
Website: www.jwcustomercare.com

IN CHARLOTTE, NORTH CAROLINA:
Customer Service Department, 8325-D Arrowridge Boulevard, Charlotte, NC 28273
Phone: (704) 522-9200 Fax: (704) 522-9040
Email: customerservice.charlotte@jwhomes.com
Website: www.jwcustomercare.com

IN RALEIGH, NORTH CAROLINA:
Customer Service Department, 107-A Quail Fields Court, Morrisville, NC 27560
Phone: (919) 481-3309 Fax: (919) 481-9157
Website: www.jwcustomercare.com

IN CHARLESTON, SOUTH CAROLINA:
Customer Service Department, 496 LaMesa Drive, Mt. Pleasant, SC 29464
Phone: (843) 849-8787 Fax: (843) 849-8877
Website: www.jwcustomercare.com

IN KENTUCKY:
Website: www.jwcustomercare.com

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LIMITED WARRANTY

I. What is Covered

A. Workmanship. During the first year of this warranty, which commences on the day that title first transfers from Wieland or that occupancy by anyone first occurs (whichever occurs first), Wieland warrants that the Home will be free from defects in materials or workmanship, as defined in the Construction Quality Standards, except as they apply to defects in fixtures and equipment which are covered in accordance with the manufacturer's warranty.

B. Systems. During the first two (2) years of this warranty, which commences on the day that title first transfers from Wieland or that occupancy by anyone first occurs (whichever occurs first), Wieland warrants that the Home will be free from defects in the electrical, plumbing and mechanical systems, as defined in Sections X, XI and XII of the Construction Quality Standards, to include the wiring, piping and ductwork portions of the systems. This coverage applies to the HVAC system only if Homebuyer(s) document that the HVAC system has been professionally maintained (i.e., by a company or individual who is licensed as necessary and who is currently in the business of providing such residential maintenance service) per manufacturer's standards/instructions at least once per year. Defects in any of the systems resulting from failures in a fixture or piece of equipment which are covered by a manufacturer's warranty are not covered by this warranty.

C. Extended Items. During the first five (5) years of this warranty, which commences on the day that title first transfers from Wieland or that occupancy by anyone first occurs (whichever occurs first), Wieland warrants that the Home will be free from the following, as defined in the Construction Quality Standards:

1. Verified leaks, due to defects in materials or workmanship, at roof penetrations made in the course of construction.

2. Verified active flow of exterior surface water into the basement or so as to create standing water in the crawl space for at least forty-eight (48) consecutive hours, so long as the active flow is due solely to acts or omissions of Wieland. Wieland must receive written notice of any covered claim within ten (10) days of the date of discovery by Homebuyer(s). Wieland will not be responsible for anything caused by (a) breaks, leaks or bursting of water mains or pipes; (b) any grading done by or on behalf of Homebuyer(s) which causes water to flow toward the outside foundation wall; (c) failure to maintain the grade initially established by Wieland for the Home; (d) prolonged direction of water against the outside foundation wall from water spigots, sprinklers, hoses, or broken or clogged gutters; (e) bent, broken, or clogged downspouts; (f) landscaping improperly installed by or on

behalf of Homebuyer(s); and (g) an irrigation system that was not installed by Wieland.

3. Verified plumbing leaks in the exterior water service line, plumbing pipes and fittings, tubs, sinks, faucets, and toilets. Tarnishing and pitting of faucets is excluded.

4. Defects in materials or workmanship in only the following appliances selected from the Wieland selections: Oven, Range, Range Hood, Dishwasher, Garbage Disposal, Built-In Microwave, and Water Heater. After expiration of any manufacturer's warranty, Wieland will cover materials and labor as would be covered by the manufacturer's warranty.

5. Verified interior gas line piping leaks.

6. Defects in materials or workmanship in the electrical main breaker panel, electrical service disconnect, interior wiring, switches, and outlets.

7. Failure of the HVAC compressor pump and condenser coil, heat exchanger, and thermostats installed by Wieland. After expiration of any manufacturer's warranty on the above components, Wieland will replace the above components as would be covered by the manufacturer's warranty. This coverage applies only if Homebuyer(s) document that the above components have been professionally maintained (i.e., by a company or individual who is licensed as necessary and who is currently in the business of providing such residential maintenance service) per manufacturer's standards/instructions at least once per year.

8. Breaks in the hermetic seal of insulated windows, and defects in materials and workmanship in sash tracks and sash locks, as defined in the manufacturer's warranty. After expiration of any manufacturer's warranty, Wieland will cover materials as would be covered by the manufacturer's warranty.

9. Verified sewer service line leaks due to defects in materials or workmanship.

D. Structural. During the first twenty (20) years of this warranty, which commences on the day that title first transfers from Wieland or that occupancy by anyone first occurs (whichever occurs first), Wieland warrants that the Home will be free from "Structural Defects."

A "Structural Defect" is (i) actual physical damage (ii) to only the following designated load-bearing elements of the Home (iii) caused by failure of such load-bearing elements which affect their load-bearing function (iv) to the extent that the

Home becomes unsafe or unsanitary. The following elements, if load-bearing, constitute the designated elements: **1.** foundation systems and footings; **2.** beams; **3.** girders; **4.** lintels; **5.** columns; **6.** walls and partitions; **7.** floor systems; and **8.** roof framing systems. All four (4) parts of the definition must be satisfied in order for a condition to qualify as a Structural Defect. This is designed to be coverage only for catastrophic failure of load-bearing elements of the Home.

Examples of elements not covered by this warranty which are deemed not to have Structural Defect potential are: **1.** nonload-bearing partitions and walls; **2.** wall tile, wall paper, etc.; **3.** plaster, laths, or drywall; **4.** flooring and subflooring material; **5.** stucco, synthetic stucco, brick or stone veneer; **6.** any type of exterior siding; **7.** roof shingles, sheathing and felt paper; **8.** heating, cooling, ventilating, plumbing, electrical and mechanical systems; **9.** appliances, fixtures or items of equipment; **10.** doors, trim, cabinets, hardware, insulation, paint and stains; **11.** basement slabs and other interior floating, ground-supported concrete floor slabs; and **12.** water intrusion, including, without limitation, leaks in walls, roofs, plumbing, basements and crawl spaces.

II. What Wieland Will Do

A. Notwithstanding any language herein to the contrary, if a defect occurs in a warranted item during the applicable period of this warranty, Wieland will repair, replace or pay the Homebuyer(s) the reasonable cost of repairing or replacing the defective item. The choice to repair, replace, pay or combination thereof is solely that of Wieland. Wieland will also repair (or pay for the repair of) any item needing to be damaged or destroyed in order to make the warranted repair, except for improvements added after the completion of Wieland's original construction, which are the responsibility of Homebuyer(s) to remove or repair.

B. With regard to Structural Defects, Wieland will repair and/or replace the Structural Defects or make arrangements for such repairs and/or replacement. Wieland shall have complete discretion as to the methods and manners for repairing and/or replacing Structural Defects. The repair of a Structural Defect is limited to: **1.** the repair of damage to the load-bearing portions only as necessary to restore the load-bearing ability of such load-bearing portions; and **2.** the repair of those items of the Home damaged by the Structural Defect which make the Home unsafe or unsanitary.

C. Notwithstanding anything herein to the contrary, where Wieland shall become responsible to pay the reasonable costs of repair or replacement for Structural Defects arising at any time during the applicable period of this warranty and amounting to $2,500 or more, payment shall be made to or on behalf of the Homebuyer(s) and the mortgagee or successor mortgagees who have notified Wieland in writing of their security interest in the Home on or prior to the date of payment of the claim, as their respective interests may appear.

D. Before Wieland repairs or pays for the repair of a claim, there must be an assignment to Wieland of any rights that may exist against any other person or entity with respect to the claim. No repairs, replacements or payments made under the terms and conditions of this warranty shall act to extend this warranty or any time periods hereunder.

E. Notwithstanding anything herein to the contrary, if an item is on or in the common elements of a condominium or is otherwise under the ownership or maintenance control of a homeowners, neighborhood or condominium association, and such association refuses to allow Wieland to perform work on the item, Wieland shall be relieved of any obligation to perform work on the item, and the item shall be deemed excluded from this warranty.

III. What the Homebuyer(s) Must Do

If the Homebuyer(s) should have a complaint on any item covered by this warranty during the applicable period of this warranty, the Homebuyer(s) must send a clear and specific written complaint to Wieland (dating the defect occurrence). This written notice must be received no later than 30 days after the expiration of the applicable coverage period for such item under this warranty (except where a shorter time period is specified). The written notice must be sent to the Wieland Customer Service Department at the address listed on the Table of Contents page of this warranty. In case of an emergency problem, the Homebuyer(s) must notify Wieland immediately in order that further damages can be mitigated. The Homebuyer(s) should take reasonably immediate action if circumstances dictate the need.

However, Wieland is entitled to assess claimed defects and decide on an appropriate repair plan. Wieland is also entitled to choose to repair or replace, or to pay the fair value of the repair or replacement of, a covered defect. If Homebuyer(s) repair (or cause the repair of) the claimed defect before Wieland has an opportunity to inspect the claimed defect, it is impossible for Wieland to assess whether the defect was covered by this warranty, whether the repair made was cost-effective, necessary, and effective, and whether Wieland would have been able to solve the problem in another way. For these reasons, Wieland will not accept, nor will arbitrators be able to award to Homebuyer(s), any claimed defect which Homebuyer(s) have had replaced or repaired, except for an emergency repair which was authorized by Wieland. If Wieland is unavailable for emergency authorization, Homebuyer(s) must make minimal repairs so that further damages can be mitigated and report the emergency to Wieland as promptly as possible. Repairs will not be reimbursed unless, at a minimum, the above procedures have been followed.

IV. Exclusions

This warranty does not apply to:

A. Defects in outbuildings, including, without limitation, detached garages and detached carports (except finished space over garages and outbuildings that contain or are served by the plumbing, electrical, heating, cooling or ventilation systems serving the Home); built-in refrigerators; home theatres/entertainment components; other non-standard "extras" in the Home; swimming pools and other recreational facilities; driveways, walkways, decks and porches; patios (attached or detached), stoops and steps (except as specifically stated herein); boundary walls, retaining walls and bulkheads (except where boundary walls, retaining walls and bulkheads are necessary for the structural stability of a covered building); fences; landscaping of any kind (except as specifically stated herein); irrigation and fire suppression sprinkler systems; or any other improvements not a part of the Home; and in addition:

Any and all aspects of any "tankless" water heating system and the installation thereof, and anything else related thereto, are excluded. The foregoing specifically excludes, without limitation, (a) repair, replacement and any other aspect of such water heating system, and (b) any damage or problems with any other aspect of the Home resulting from such water heating system, including, without limitation, structural damage or matters;

B. Damage to real property that is not part of the Home;

C. Damage to or defects in concrete floors of attached or detached garages or attached or detached patio slabs that are built separate from foundation walls or other structural elements of the Home;

D. Bodily or personal injury of any kind (including physical or mental pain and suffering and emotional distress); medical, hospital, rehabilitation or other incidental or consequential expenses; attorneys' fees, court costs, experts' fees and other such expenses; or damage to any property of others;

E. Any loss or damage which the Homebuyer(s) has not taken appropriate action to minimize as soon as practicable;

F. Any defect in, or caused by, alterations made by or on behalf of Homebuyer(s), or material or work supplied by anyone other than Wieland or Wieland's employees, agents or subcontractors;

G. Loss of use, loss of opportunity, loss of market value, loss of rental value or any and all consequential loss or damages;

H. Defects in any property not included in the original Home delivered for the original final sales price;

I. Any damage to the extent it is caused or made worse by:

1. Negligence, improper maintenance, lack of maintenance or improper use or operation by anyone other than Wieland or Wieland's employees, agents or subcontractors;

2. Failure by the Homebuyer(s) to give prompt and proper notice to Wieland of any defects;

3. Changes of the grading of the ground that do not comply with accepted grading practices, including changes in, and failure to maintain, grades, swales, drainage structures, stabilized soil, and sodded, seeded and landscaped areas;

4. Changes in the level of underground water table which were not reasonably foreseeable at the time of construction of the Home;

5. Subsidence or soil movement which was not reasonably predictable through reasonable soil testing or other geological investigation at the time of construction of the Home (this does not apply to any Home with an original FHA loan still in effect);

6. Dampness, condensation, mold/mildew or any other condition arising due to the failure to maintain adequate ventilation and/or adequately low humidity levels; or

7. Failure by the Homebuyer(s) or by anyone other than Wieland or Wieland's employees, agents or subcontractors to comply with the warranty requirements of manufacturers of appliances, equipment or fixtures;

J. Loss or damage not caused by a defect or deficiency in the design or construction of the Home by Wieland or Wieland's employees, agents or subcontractors;

K. Loss or damage externally caused, including, but not limited to: acts of God; riot or civil commotion; hurricane, tornado or other windstorm; fire; explosion; smoke; water; mold/mildew; hail; lightning; falling trees or other objects; aircraft; vehicles; flood; mud slides; earthquakes; volcanic eruption; radon or other natural or introduced gases; abuse or use of the Home, or any part thereof, beyond the reasonable capacity of such part for such use; conditions or occurrences beyond Wieland's control; or by any other external cause (including, without limitation, criminal acts);

L. Any loss, damage, defect, cost or expense which is caused, in whole or in part, by any peril or occurrence for which compensation is provided in whole or in part by legislation, by class action or other lawsuit settlement, or which is covered by other insurance or public funds;

M. Rotting of any kind; mold/mildew; the presence of mold/mildew anywhere in the Home, including, without limitation, in any crawl space, unfinished basement or other unfinished or finished space (all aspects of mold/mildew, including cleaning or otherwise addressing, are the responsibility of the Homebuyer(s) as part of maintenance of the Home); the presence of radon or other natural or introduced gases; insect damage; and damage due to vermin, radiation, pollution or toxic substances of any kind;

N. Any loss or damage which arises while the Home or any portion thereof is being used for nonresidential purposes;

O. Any condition which does not result in actual physical damage to the Home;

P. Costs of shelter, transportation, food, moving, storage, or other incidental expenses related to relocation during repair, or any other costs due to loss of use, inconvenience or annoyance;

Q. Any complaint or claim on an item reported to Wieland after an unreasonable delay or later than 30 days after the expiration of the applicable coverage period for such item under this warranty (or later than any shorter time period herein specified); or loss or damage resulting from failure to comply with manufacturers' warranty requirements;

R. Normal wear and deterioration;

S. Failure of Wieland to complete construction;

T. Glass breakage and exterior hardware;

U. Failure of Wieland to perform any washing, cleaning or clean-up of any kind;

V. Structural slab foundation systems that have experienced some movement but are within the foundation's design performance criteria; separation, settlement or movement of concrete slabs within the structure at control joints (joint material maintenance is not the responsibility of Wieland);

W. Violations of local, state or national building codes, ordinances or standards;

X. Pre-existing conditions the Homebuyer(s) were aware of before closing on the Home

and knowingly accepted (waived), such as "punch list" or "orientation" items, whether or not appearing on a punch list or orientation checklist;

Y. Outside hosebibs and other hose connections;

Z. Loss or damage resulting from any failure to comply with federal, state, local or other elevation requirements, including, but not limited to: 1. failure of the lowest floor elevation of the Home to meet or exceed the base flood elevation established by the Federal Emergency Management Agency and applicable community floodplain management ordinances; and 2. errors in connection with the collection and certification of elevation information, whether committed by Wieland, an agent of Wieland or by any person authorized by state or local law or ordinance to provide floodplain management information, or by any other person;

AA. Damage due to weather conditions which exceed the specifications for any covered item;

BB. Damage to any personal property;

CC. Damage caused by any alteration to a covered item;

DD. Any aspect whatsoever related to light fixtures and fans, except as noted in Section 12.2 of the Construction Quality Standards;

EE. Performance of any covered item; operation only is covered by this warranty;

FF. Persistent failure of any covered item in many homes such that the item is considered defective as made or manufactured, as reasonably determined by Wieland; and

GG. ALL CONSEQUENTIAL DAMAGE OF ANY KIND.

V. General Provisions

A. Time is of the essence. The time limits contained in this warranty are a material condition of this warranty.

B. **Homebuyer(s)** means any and all record owners of the Home (stated in the warranty certificate applicable to the Home, if the initial Homebuyer(s)) and **Home** means the dwelling described in the warranty certificate applicable to the Home. **Builder** or **Wieland** means John Wieland Homes and Neighborhoods, Inc., in Georgia, Tennessee and Kentucky, and means John Wieland Homes and Neighborhoods of the Carolinas, Inc., in North Carolina and South Carolina.

C. A warranted defect must first occur during the applicable designated portion of the warranty for that warranted defect in order to be covered as provided in this warranty. Therefore, per Section IV.X of this warranty, any pre-existing conditions the Homebuyer(s) knew about before closing on the Home and knowingly accepted (waived), such as "punch list" or "orientation" items, are not covered.

D. No one is authorized to change, alter or add to this warranty without the express written consent of Wieland.

E. The maximum amount payable under this warranty by Wieland for all claims submitted is the original final sales price of the Home shown on the warranty certificate applicable to the Home, which includes the parcel of land on which the Home was constructed.

F. This warranty is independent of any contractual arrangement between the Homebuyer(s) and Wieland for the construction of the Home and/or its sale, if any. Nothing contained in any such contract or any other contract between Wieland and the Homebuyer(s) can restrict or override the provisions of this warranty. The contractual arrangement includes, but is not limited to, Builder substitutions or changes in plans, specifications or materials.

G. If Wieland's performance of any of its obligations is delayed by any event not resulting from Wieland's own conduct, Wieland will be excused from performing until the effects of that event are remedied. Examples of such events are acts of God or the common enemy, labor strikes, shortages of materials, war, riot, civil commotion, sovereign conduct, or acts of persons who are not parties to this warranty.

H. Wieland and Wieland's employees, agents, contractors and subcontractors must be allowed access to the Home and areas around or attached to the Home during normal business hours when claim servicing is required and to inspect, repair and conduct tests as, in Wieland's judgment, may be required. It is Homebuyer(s) responsibility to ensure this access. This warranty shall be void if this access is not permitted.

I. Anything requiring repair or replacement which cannot be repaired or replaced with items readily available in the standard marketplace will be repaired or replaced with items of similar kind and quality which are so available.

J. This warranty does not apply to appliances, consumer products, or other pieces of equipment, except as noted in Section I of this warranty.

K. Any legal action resulting from disputes between the Homebuyer(s) and Wieland that are not the direct result of provisions contained in this warranty are not the responsibility of Wieland.

L. Each successor in title to the Home, including any mortgagee in possession, in no way affects the coverage under this warranty for its unexpired term. Each such successor is also bound by the provisions of this warranty and the Construction Quality Standards. There is no limit to the number of such successions during the unexpired terms, nor any cost incurred because of such successions.

M. If, at the time of a claimed loss, there is any valid and collectible insurance, whether primary, excess or contingent, that applies to the losses, defects or claims covered by this warranty, then Wieland shall not be liable for any of said losses, defects or claims.

N. When repairing or replacing, Wieland will attempt to match and replace with the original choice of colors and materials, except where the item was custom-ordered. Due to manufacturing variances, discontinued items, natural fading, weathering, etc., Wieland cannot and does not guarantee color matches. In addition, Wieland is not accountable for discontinued items, changes in dye lots, colors or patterns, or items ordered outside of the original construction of the Home.

O. <u>Mandatory Binding Arbitration</u>. Wieland and Homebuyer(s) will cooperate with one another in avoiding and informally resolving disputes between them. Wieland and Homebuyer(s) shall first mediate formally any disputes between them, with the mediation commencing, and the mediator being selected, in the same manner as set forth below for the commencement of arbitration and the selection of an arbitrator (if the parties cannot mutually agree otherwise).

Any and all unresolved claims or disputes of any kind or nature between Wieland and Homebuyer(s) arising out of or relating in any manner to any purchase agreement with Wieland (if any), this warranty, the Home and/or property on which it is constructed, or otherwise, shall be resolved by final and binding arbitration conducted in accordance with this provision, and such resolution shall be final. This applies only to claims or disputes that arise after the later of: (a) the issuance of the final certificate of occupancy for the Home, or (b) the initial closing of the purchase

of the Home by the initial Homebuyer(s). This specifically includes, without limitation, claims related to any representations, promises or warranties alleged to have been made by Wieland or its representatives; rescission of any contract or agreement; any tort; any implied warranties; any personal injury; and any property damage.

The terms and procedures of this warranty shall first apply to any claims or disputes that are within the coverage of this warranty. In order to be able to arbitrate or mediate any warranty claims, Homebuyer(s) must first have complied with all procedures set forth in this warranty within the time limits set forth herein. Failure of Homebuyer(s) to comply with such procedures in a timely manner shall bar any such claims against Wieland.

In order to initiate arbitration for disputes, Wieland or Homebuyer(s) must provide clear and specific written notice (if to Homebuyer(s), at the Home address; if to Wieland, to Wieland's Customer Service Department at the address set forth in this warranty) to the other that such party desires to arbitrate matters in dispute, together with a description of the claim or dispute and of the damages or relief being sought. Arbitrations will be conducted by an independent, neutral, third-party arbitrator, located in the general metropolitan area where the Home is located, selected by Construction Arbitration Associates, Inc., Atlanta, Georgia (CAA) (CAA is not precluded from selecting itself); if CAA is unable or legally precluded from selecting an arbitrator, then the American Arbitration Association (AAA) shall do so (AAA is not precluded from selecting itself). As the purchase agreement with Wieland and this warranty are transactions involving interstate commerce, arbitrations shall be governed by the U.S. Arbitration Act, 9 U.S.C. Sections 1-16, to the exclusion of any provisions of state law.

Arbitrations will be conducted in accordance with rules provided or determined by the person or entity selecting the arbitrator as provided above; provided, however, if any procedural matters are not covered in those rules, the arbitrator shall decide such matters. The arbitrator will hold a hearing on the claim(s) or dispute(s) and render a decision or award, and such decision or award shall be final and binding on the parties.

If Wieland so chooses, Wieland may have its supplier(s) and contractor(s) whose work or supplies are involved in the dispute included as parties to the arbitration. Questions of whether issues are arbitrable and the actual interpretation of terms needing definition in order to arbitrate an issue shall be determined by the arbitrator.

Judgment upon an award rendered by an arbitrator may be entered in any court having jurisdiction thereof upon the application of Wieland or Homebuyer(s). Wieland shall pay all up front filing fees relating to arbitration or mediation. Each party shall bear its own costs and expenses and an equal share of the arbitrator's fees, the administrative fees of arbitration, and/or fees of mediation.

WIELAND AND HOMEBUYER(S) HEREBY ACKNOWLEDGE AND AGREE THAT THE ARBITRATION PROCEDURE SET FORTH HEREIN SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR THE RESOLUTION OF ANY AND ALL DISPUTES ARISING AFTER THE INITIAL CLOSING OF THE PURCHASE OF THE HOME BY THE INITIAL HOMEBUYER(S). WIELAND AND HOMEBUYER(S) HEREBY WAIVE ANY AND ALL OTHER RIGHTS AND REMEDIES AT LAW, IN EQUITY OR OTHERWISE WHICH MIGHT OTHERWISE HAVE BEEN AVAILABLE TO THEM IN CONNECTION WITH ANY SUCH DISPUTES.

Any dispute involving Wieland's directors, officers, shareholders, employees, agents, predecessors, affiliates or related companies shall be resolved through the foregoing mediation and arbitration process and not in a court of law. The waiver or invalidity of any portion of this Section shall not affect the validity or enforceability of the remaining portions of this Section; specifically, if it is validly determined that a particular claim or type of claim is not subject to arbitration hereunder, such determination shall not affect or invalidate the applicability of arbitration or mediation hereunder to any other claim or type of claim.

P. THERE ARE AND WILL BE NO OTHER OR FURTHER WARRANTIES OR REPRESENTATIONS ON THE HOME AND/OR PROPERTY ON WHICH IT IS CONSTRUCTED (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, WORKMANLIKE QUALITY, HABITABILITY, SUITABILITY FOR RESIDENTIAL PURPOSES, OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE), EITHER EXPRESS OR IMPLIED, WRITTEN, ORAL OR STATUTORY, MADE BY WIELAND OTHER THAN AS EXPRESSED IN THIS WARRANTY, AND ALL SUCH OTHER WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED BY WIELAND. THIS WARRANTY IS ALSO GIVEN BY WIELAND AND ACCEPTED BY HOMEBUYER(S) IN LIEU OF ALL OTHER RIGHTS OR REMEDIES THAT HOMEBUYER(S) HAVE OR MAY HAVE AT LAW OR IN EQUITY AGAINST WIELAND RELATING TO THE HOME AND/OR PROPERTY ON WHICH IT IS CONSTRUCTED, CONSTRUCTION OF THE HOME, AND THE CONDITIONS OR CIRCUMSTANCES EXISTING IN THE HOME AND/OR ON THE PROPERTY ON WHICH IT IS CONSTRUCTED, INCLUDING, BUT NOT LIMITED TO, ANY RIGHTS OR REMEDIES BASED ON NEGLIGENT CONSTRUCTION, MISREPRESENTATION, ANY TORT, VIOLATION OF ANY CODE, STATUTE OR RULE, BREACH OF CONTRACT (EXPRESS OR IMPLIED), OR BREACH OF WARRANTY (OTHER THAN BASED ON THE TERMS OF THIS WARRANTY), AND ALL SUCH OTHER RIGHTS OR REMEDIES ARE HEREBY EXPRESSLY WAIVED BY HOMEBUYER(S).

LEGAL NOTICES

For Georgia only:
GEORGIA LAW CONTAINS IMPORTANT REQUIREMENTS THAT YOU (HOMEBUYER(S)) MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO CONSTRUCTED, IMPROVED OR REPAIRED YOUR HOME. IF APPLICABLE, NINETY (90) DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS, OR BOTH. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

For Kentucky only:
SECTIONS 411.250 TO 411.266 OF THE KENTUCKY REVISED STATUTES CONTAIN IMPORTANT REQUIREMENTS THAT YOU (HOMEBUYER(S)) MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE BUILDER OF YOUR HOME. IF APPLICABLE, YOU MUST DELIVER TO THE BUILDER A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE THE BUILDER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE BUILDER. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT.

CONSTRUCTION QUALITY STANDARDS

The following Construction Quality Standards are based on standards that have been developed and accepted by the residential construction industry in general. While it is virtually impossible to develop a construction standard for each possible deficiency, Wieland has attempted to isolate the most common deficiencies that occur and in so doing list the extent of Builder and Homebuyer(s) responsibility. Where a specific deficiency has not been identified, the standard practice of the residential construction industry at the time of construction of the Home will apply.

Homebuyer(s) should be aware that all new homes go through a period of expansion and contraction. During this period, a home may experience some minor material shrinkage, cracking and other events that are unavoidable and considered normal, such as, without limitation, temporary expansion of pipes that then make contact with wall studs or other material, floor squeaks, and other noises and sounds that are part of the settlement of the home. Homebuyer(s) should also be aware that Homebuyer(s) are responsible for proper home maintenance. Damage caused by negligence, lack of maintenance, improper maintenance or changes, alterations or additions by or on behalf of Homebuyer(s), is excluded from the warranty.

The following Construction Quality Standards are expressed in terms of required standards that Wieland's construction must meet. Non-compliance with these standards calls for corrective action. Unless otherwise noted below, all following items identified are One Year (Workmanship) warranted items.

I. SITE WORK

1.1 GROUND SETTLING

•DEFICIENCY: Excessive ground settling around the foundation, utility trenches or other areas on the lot that have been excavated and backfilled affecting drainage away from the Home.
CONSTRUCTION STANDARD: Ground settling should not exceed 6 inches from the final landscaping grade established by the Builder and should not impede water drainage away from the Home.
BUILDER CORRECTION: If the Builder provided final landscaping grade, the Builder shall recompact and backfill excessively settled areas affecting drainage away from the Home one time, but only during the first year of the warranty. Any landscaping affected by the repair is not the responsibility of Builder.

1.2 LANDSCAPING

•Builder shall have no obligation, responsibility or liability whatsoever for (1) trees and/or shrubbery that Builder would have removed, or had planned to remove, during construction but which Homebuyer(s) (or predecessor) specifically requested not be removed, (2) natural areas left undisturbed by Builder, including, without limitation, drainage in such areas, (3) site drainage and/or standing or ponding water of any kind or nature whatsoever, and (4) trees of any kind whatsoever, except as specifically stated herein.
•Builder will provide a replacement shrub one time only for any shrub that dies during the first 30 days of the warranty. No labor or other materials will be provided.
•Builder guarantees the survival of at least two-thirds (2/3) of the total number of nursery-grown "B&B" transplanted trees during the first six months of the warranty, so long as they are properly cared for as determined by Builder. *Proper care includes: 1) watering: during the spring, summer and early fall, water trees at least once per week, soaking the root ball heavily; 2) fertilizing: in March, May and July, fertilize each tree with 1/3 cup of 10-10-10 fertilizer per inch of trunk diameter; and 3) mulch: maintain pinestraw mulch around the base of the tree to a depth of 3" to 4".* Any

replacement trees that may be required to meet the minimum two-thirds (2/3) total number will be replanted one time only. Dead trees will be cut flush to the ground where possible. Stumps will be ground only if the tree was in a grassed area of the front yard.
•During the first year of the warranty, Builder warrants that lawns of Bermuda and Zoysia sod that are laid when dormant will come out of dormancy. Areas of 25 contiguous square feet or less are excluded as these will grow over naturally. Areas greater than 25 contiguous square feet will be repaired one time only in the Spring.
•Fescue lawns (seed and sod) are not covered by the warranty.

II. CAST-IN-PLACE CONCRETE

•DEFICIENCY: Excessive basement or foundation wall cracks.
CONSTRUCTION STANDARD: Non-structural cracks are not unusual in concrete foundation walls. Cracks greater than 1/8 inch are considered excessive.
BUILDER CORRECTION: The Builder shall repair non-structural cracks in excess of 1/8 inch by surface patching. If needed, any such work should be done toward the end of the first year of the warranty.
•DEFICIENCY: Excessive cracking of basement floor, attached garage slab or attached patio slab, other than as excluded by Section IV.A and IV.C of the warranty.
CONSTRUCTION STANDARD: Minor cracks are common. Cracks exceeding 1/4 inch in width or 1/4 inch in vertical displacement are considered excessive.
BUILDER CORRECTION: The Builder shall repair cracks exceeding the maximum tolerances by surface patching or other methods, as required.
•DEFICIENCY: Cracks in concrete slab on grade finished floors.
CONSTRUCTION STANDARD: Cracks which significantly impair the appearance or performance of the finish flooring material are not acceptable.
BUILDER CORRECTION: The Builder shall repair cracks as necessary so as not to be apparent when the finish flooring material is in place. Repair or replace finish flooring.
•DEFICIENCY: Uneven concrete floors.
CONSTRUCTION STANDARD: Concrete floors in rooms designed and finished by Builder or habitation should not have pits, depressions or areas of unevenness exceeding 1/4 inch in 32 inches or slope in excess of 1/240 of room width or length. Not applicable to floors designed for specific drainage purposes or to slabs that have experienced some movement but are within design performance criteria.
BUILDER CORRECTION: Builder to repair or replace to meet the above standard. Surface patching shall be acceptable. Repair or replace finish flooring installed by Builder, if any.
•DEFICIENCY: Pitting, scaling or spalling of non-excluded concrete.
CONSTRUCTION STANDARD: Such concrete surfaces should not disintegrate to the extent that the aggregate is exposed and loosened under normal conditions of weathering and use. Not applicable to deterioration caused by salt, chemicals, mechanical implements, normal activities involved in the construction of the Home, and other factors beyond the Builder's control.
BUILDER CORRECTION: Builder to repair or replace to meet the above standard.
•DEFICIENCY: Excessive separation of brick or masonry edging from concrete slab and step.
CONSTRUCTION STANDARD: Cracks or separation is common, but cracks in excess of 1/4 inch are excessive.
BUILDER CORRECTION: The Builder shall grout the crack.
•DEFICIENCY: Cracking, settling, heaving or separating of structurally attached stoops or steps.
CONSTRUCTION STANDARD: Stoops or steps should not settle, heave or separate in excess of 1 inch in relation to the house structure. No cracks except hairline cracks (less than 1/4 inch) are acceptable in structurally attached concrete stoops.
BUILDER CORRECTION: Builder to take corrective action to meet standard. Surface patching shall be acceptable.

III. MASONRY

3.1 BRICK, BLOCK AND STONE

•DEFICIENCY: Excessive cracking in masonry walls.
CONSTRUCTION STANDARD: Small cracks in masonry and mortar due to shrinkage are not unusual. Cracks greater than 1/8 inch in width are considered excessive.
BUILDER CORRECTION: Repair cracks in excess of 1/8 inch by pointing or patching. It is recommended that this be done toward the end of the first year of the warranty. Horizontal cracks greater than 3/16 inch should be investigated to determine the cause. Horizontal cracks greater than 3/16 inch should be repaired by pointing, patching, reinforcement or replacement of defective area. Color matching is not guaranteed.
•DEFICIENCY: Excessive cracking in masonry walls or veneer above grade.
CONSTRUCTION STANDARD: Small cracks due to shrinkage are not unusual. Cracks greater than 1/8 inch in width are considered excessive.
BUILDER CORRECTION: Repair cracks in excess of 1/8 inch by pointing. It is recommended that this be done toward the end of the first year of the warranty. Color matching is not guaranteed.

3.2 STUCCO

•DEFICIENCY: Excessive cracking or spalling of finish surface.
CONSTRUCTION STANDARD: Hairline cracks are common. Cracks greater than 1/8 inch in width are considered excessive.
BUILDER CORRECTION: Clean out area by scraping and fill with stucco. Color, finish and texture matching are not guaranteed.

3.3 HARDCOAT STUCCO

•DEFICIENCY: Excessive cracking in hardcoat stucco wall surfaces.
CONSTRUCTION STANDARD: Hairline cracks are normal in hardcoat stucco wall surfaces. Cracks greater than 1/8 inch in width are considered excessive.
BUILDER CORRECTION: Builder to repair cracks by filling with a latex filler. Existing color and finish to be matched as closely as possible by using tinted filler or painting the repaired area. Exact matching of the color, finish and texture is not guaranteed.

IV. CARPENTRY

4.1 ROUGH CARPENTRY

•DEFICIENCY: Floor squeak.
CONSTRUCTION STANDARD: Floor areas should not have squeaks that are loud and reasonably objectionable, and the subflooring should be secure to the joists. However, there is no guarantee that floors will not squeak, so isolated floor squeaks are not defects.
BUILDER CORRECTION: Builder should locate and make every reasonable effort to repair, if caused by improper installation.
•DEFICIENCY: Uneven wood framed floors.
CONSTRUCTION STANDARD: Floors should be level within 1/4 inch in 32 inches, measured parallel to floor joists. The overall floor slope should not be in excess of L/240 of room width or length.
BUILDER CORRECTION: Builder to correct or repair to meet the above standards.

•DEFICIENCY: Bowed stud walls and/or ceilings.
CONSTRUCTION STANDARD: All interior and exterior walls and ceilings have slight variances on

their finished surfaces. Bowing should not be so visible as to detract from the finished surface. Walls and ceilings bowed in excess of L/240 of any horizontal or vertical measurement is considered excessive.
BUILDER CORRECTION: Builder to correct or repair to meet the above standards.
•DEFICIENCY: Out of plumb wood framed walls.
CONSTRUCTION STANDARD: Walls should be plumb within 1 inch in 8 feet.
BUILDER CORRECTION: Builder to correct or repair to meet the above standards.
•DEFICIENCY: Delaminating subflooring.
CONSTRUCTION STANDARD: Subflooring that delaminates on the "finish" side is a defect.
BUILDER CORRECTION: Builder to repair or replace the subflooring and replace the finish materials as needed to match the existing finish as closely as possible. Color, finish and texture matching are not guaranteed.

4.2 FINISH CARPENTRY — INTERIOR

•DEFICIENCY: Quality of finished interior trim workmanship.
CONSTRUCTION STANDARD: Joints between moldings and adjacent surfaces should not exceed 1/8 inch.
BUILDER CORRECTION: Repair joints and touch up the finish as needed to match existing as close as possible. Caulking is acceptable.

4.3 FINISH CARPENTRY—EXTERIOR

•DEFICIENCY: Quality of finished exterior trim workmanship.
CONSTRUCTION STANDARD: Joints between exterior trim elements should not exceed 3/8 inch. In all cases the exterior trim at masonry and siding shall be capable of performing its function to exclude the elements.
BUILDER CORRECTION: Repair joints and touch up the finish as needed to match existing as close as possible. Caulking is acceptable.

4.4 NAIL HOLES

•DEFICIENCY: Exposed nail heads in wood.
CONSTRUCTION STANDARD: Nail holes which have not been filled on finished painted wood are deficiencies. However, material used to fill nail holes may shrink and/or dry up over time, but this is not a deficiency. In addition, some nail holes may not be filled where, because of the product, the surface finish is not conducive or designed to have nail holes filled, and this is not a deficiency.
BUILDER CORRECTION: Fill nail holes as required to meet standard and touch up finish as necessary to match as closely as possible. Color and finish matching are not guaranteed.

V. THERMAL AND MOISTURE PROTECTION

5.1 BASEMENTS AND CRAWL SPACES

•DEFICIENCY: Active water flow into basement or so as to create standing water in the crawl space for at least forty-eight (48) consecutive hours.
CONSTRUCTION STANDARD: Leaks resulting in active flow of water through the basement walls or through the basement floor are unacceptable. Leaks resulting in active flow of water that creates standing water in the crawl space for at least forty-eight (48) consecutive hours are unacceptable. Leaks caused by landscaping improperly installed by or on behalf of Homebuyer(s) or by failure to maintain the grades established by Builder are not deficiencies. Dampness in walls and floors may occur in new construction and is not considered a deficiency.
BUILDER CORRECTION: During the first five years of the warranty, the Builder shall take such

action as necessary to correct basement and crawl space leaks as described above, except where the cause is determined to result from an act or action by Homebuyer(s) or someone acting on behalf of Homebuyer(s). Any mold/mildew and/or the presence thereof anywhere in the Home, including, without limitation, in any crawl space, unfinished basement or other unfinished or finished space, is not covered. All aspects of mold/mildew, including cleaning or otherwise addressing, are the responsibility of the Homebuyer(s) as part of maintenance of the Home.

5.2 EXTERIOR SIDING

•DEFICIENCY: Loose siding; delamination, splitting or deterioration of siding.
CONSTRUCTION STANDARD: Siding should be securely fastened to the Home. It should not delaminate, split or deteriorate.
BUILDER CORRECTION: Builder to re-secure or reinstall loose siding. Builder will repair or replace delaminated, split or deteriorated siding matching the existing texture and finish as closely as possible.
NOTE: Any item related in any way to exterior siding (including, without limitation, water intrusion) is covered for one year from the commencement of the warranty.

5.3 SYNTHETIC STUCCO (EIFS)

•DEFICIENCY: Cracks in synthetic stucco wall surfaces.
CONSTRUCTION STANDARD: Cracks are normal in synthetic stucco wall surfaces. Cracks greater than 1/8 inch in width are considered excessive.
BUILDER CORRECTION: Builder to clean out area by scraping and fill with synthetic stucco to repair cracks as required and touch up the finish to match the existing finish as closely as possible. Color, finish and texture matching are not guaranteed.
NOTE: Any item related in any way to synthetic stucco (including, without limitation, water intrusion) is covered for one year from the commencement of the warranty.

5.4 ROOFING

•DEFICIENCY: Leaks at roof penetrations made in the course of construction.
CONSTRUCTION STANDARD: Roof penetrations made in the course of construction should not leak under normal weather conditions. Leaks resulting from severe weather conditions, such as ice and snow build-up, high winds and driven snow or rains, are not deficiencies. In addition, maintenance/replacement of boots and caulking are Homebuyer(s) maintenance items.
BUILDER CORRECTION: During the first five years of the warranty, Builder shall correct or repair any verified leaks at roof penetrations made in the course of construction.
•DEFICIENCY: Lifted, curled or torn shingles.
CONSTRUCTION STANDARD: Shingles should not lift, curl or tear under normal weather conditions. Accidental loss or damage from, for example, natural causes, fire, aircraft or vehicles is not a deficiency.
BUILDER CORRECTION: Builder to repair and/or replace defective shingles to match the existing shingles as closely as possible.

5.5 SEALANTS

•DEFICIENCY: Leaks in exterior walls due to inadequate caulking.
CONSTRUCTION STANDARD: Joints and cracks in exterior wall surfaces and around openings should be properly caulked to exclude the entry of water and excessive drafts. Properly installed caulking will shrink and must be maintained by Homebuyer(s) during the life of the Home; this is not a deficiency.
BUILDER CORRECTION: If requested by Homebuyer(s), Builder shall repair and/or caulk joints or

cracks in exterior wall surfaces as required to correct the deficiency. It is Homebuyer(s) responsibility to maintain the caulking.

5.6 GUTTERS AND DOWNSPOUTS

•DEFICIENCY: Gutters and/or downspouts leak or have standing water.
CONSTRUCTION STANDARD: Gutters and downspouts should not leak. Gutters should be pitched properly to drain water. Standing water in the gutter that does not exceed 1 inch in depth is acceptable. However, it is the Homebuyer(s) responsibility to keep gutters and downspouts clean so as to assure proper drainage and prevent leaks, overflow or standing water.
BUILDER CORRECTION: Repair leaks and pitch to drain properly.

VI. DOORS AND WINDOWS

6.1 INTERIOR AND EXTERIOR DOORS

•DEFICIENCY: Warping of interior and exterior doors.
CONSTRUCTION STANDARD: Exterior doors may warp to some degree due to the temperature and moisture differential between the inside and outside faces. Doors that warp so as to prevent normal closing are defective. Warping of 1/4 inch or less, measured from top to bottom, is acceptable.
BUILDER CORRECTION: Repair or replace the doors as needed and finish to match the existing doors as closely as possible.
•DEFICIENCY: Door binds against the frame. Door will not lock.
CONSTRUCTION STANDARD: Doors should operate freely without binding against the frame. The lock should operate smoothly and fit to the keeper.
BUILDER CORRECTION: Builder to adjust the door and keeper to operate freely.
•DEFICIENCY: Door panels shrink showing bare wood.
CONSTRUCTION STANDARD: Panels will shrink and expand, showing raw wood edges, with temperature and humidity changes. This is not a deficiency.
BUILDER CORRECTION: None.
•DEFICIENCY: Split door panel.
CONSTRUCTION STANDARD: Splits that allow visible light penetration through the door are defects.
BUILDER CORRECTION: Repair or replace as needed one time during the first year of the warranty. Finish to match the existing doors as closely as possible.
•DEFICIENCY: Door rubs on the carpet.
CONSTRUCTION STANDARD: The door should not rub the carpet.
BUILDER CORRECTION: Builder to trim the bottom of the door and re-seal the bottom edge.

6.2 GARAGE DOOR(S) ON ATTACHED GARAGE

•DEFICIENCY: Garage door(s) fail to operate properly.
CONSTRUCTION STANDARD: Garage door(s) should operate properly and fit the opening closely. Under heavy weather conditions, there may be some penetration by the elements.
BUILDER CORRECTION: Builder to adjust or replace garage doors as required to operate under normal weather conditions.

6.3 WOOD, METAL AND PLASTIC WINDOWS

•DEFICIENCY: Malfunction of windows.
CONSTRUCTION STANDARD: Windows should operate with reasonable ease. Double hung window sashes are permitted to move within a 2 inch tolerance when in the open position.

BUILDER CORRECTION: Builder to adjust, repair or replace as required. During the first five years of the warranty, Builder to adjust or replace wood double hung window sash tracks if necessary to correct the deficiency.

•DEFICIENCY: Condensation and/or frost on windows.

CONSTRUCTION STANDARD: Condensation on interior surfaces is caused by temperature and humidity differences. In cold weather, this will turn to frost. This is not a deficiency.

BUILDER CORRECTION: None.

6.4 SASH LOCK

•DEFICIENCY: Sash lock will not operate properly.

CONSTRUCTION STANDARD: The sash lock should be firmly attached to the window frame and close properly so as to lock the window.

BUILDER CORRECTION: During the first five years of the warranty, Builder to adjust, repair or replace the sash lock. Builder to adjust the window if the sashes do not align properly to permit the sash lock to operate.

6.5 STORM DOORS, WINDOWS AND SCREENS

•DEFICIENCY: Improper operation of storm doors, windows and screens installed by Builder.

CONSTRUCTION STANDARD: Storm doors, windows and screens should operate and fit so as to provide the protection they are intended to provide.

BUILDER CORRECTION: Builder to adjust or replace as needed.

6.6 WEATHERSTRIPPING AND SEALS

•DEFICIENCY: Air or water infiltration around doors and windows.

CONSTRUCTION STANDARD: Air infiltration is generally normal and necessary for proper ventilation of the Home, even in colder or warmer weather. Air infiltration will be noticeable around doors and windows, especially during high winds. There could be some water infiltration during high winds as well.

BUILDER CORRECTION: None. This is not a defect.

6.7 INSULATED WINDOW SEALS

•DEFICIENCY: Clouding or condensation between the panes of insulated glass.

CONSTRUCTION STANDARD: The windows should be free of clouding and condensation between the panes of glass.

BUILDER CORRECTION: During the first five years of the warranty, Builder to repair breaks in the hermetic seal of insulated windows to correct the deficiency, as defined in the manufacturer's warranty. After expiration of any manufacturer's warranty, Builder will cover materials as would be covered by the manufacturer's warranty.

VII. FINISHES

7.1 LATH AND PLASTER

•DEFICIENCY: Excessive cracks in surfaces.
CONSTRUCTION STANDARD: Hairline cracks are common. Cracks larger than 1/8 inch in width are considered excessive.
BUILDER CORRECTION: Builder to repair cracks and touch up the paint to match as closely as possible, one time only during the first year of the warranty.

7.2 DRYWALL

•DEFICIENCY: Defects caused by poor workmanship such as blisters in tape, excess compound in joints, exposed corner beads, or trowel marks.
CONSTRUCTION STANDARD: Imperfections such as occasional nail pops that do not crack the finish, seam lines and hairline cracks are common to drywall and are not defects. Depressions or slight mounds at nail heads are not defects. Blisters in tape, excess compound in joints, exposed corner beads, trowel marks, excessive nail pops and nail pops that cause cracking of the finish are defects.
BUILDER CORRECTION: Builder to correct defects to acceptable tolerance and touch up the finish to match the existing finish as closely as possible, one time only during the first year of the warranty. Significant repairs may require the entire area to be repainted. An exact color match is not guaranteed.

7.3 HARD SURFACE FINISHES (CERAMIC TILE, MARBLE, FLAGSTONE, QUARRY TILE)

•DEFICIENCY: Finish material (not the mortar or grout joints) cracks and/or becomes loose.
CONSTRUCTION STANDARD: Finish material that cracks or becomes loose is a defect.
BUILDER CORRECTION: Builder to replace any cracked materials and resecure any loose materials. Slight color and pattern variations are normal. Builder is not responsible for discontinued materials by the manufacturer. Unless the defective area is greater than 25% of the finished area, the Builder will not be required to replace the entire area.
•DEFICIENCY: Cracks in mortar or grout joints or at junctions with other material, such as a bathtub.
CONSTRUCTION STANDARD: Cracks are common under normal conditions.
BUILDER CORRECTION: Builder will repair mortar or grout as necessary, one time only in the first year of the warranty. Builder is not responsible for color variations or discontinued color grout.

7.4 HARDWOOD FLOORING

•DEFICIENCY: Cracks between the planks, squeaks and uneven floors.
CONSTRUCTION STANDARD: There are no industry standards for determining an acceptable or excessive crack. Builder will repair cracks that exceed 1/16 inch. But Homebuyer(s) must prevent excessive moisture from getting on the floor and maintain a stable temperature and humidity level in the Home year-round. Floors should be level within 1/4 inch in 32 inches.
BUILDER CORRECTION: Builder will repair cracks that exceed 1/16 inch. Cracks between planks of 1/16 inch to 1/8 inch will be repaired by filling with a color coordinated wood filling compound to match as closely as possible. Cracks that exceed 1/8 inch will be repaired by replacing the planks. Squeaks caused by defective installation will be repaired. Uneven flooring resulting from buckling, swelling, or warping that exceeds 1/4 inch in 32 inches as measured perpendicular to the planks will be repaired if caused by defective workmanship.

7.5 RESILIENT FLOORING

•DEFICIENCY: Nail pops appear on the surface of flooring.
CONSTRUCTION STANDARD: Readily apparent nail pops are a deficiency.
BUILDER CORRECTION: The Builder shall correct nail pops which have broken the surface and repair or replace the floor covering in the affected area only (not the entire floor). Builder is not responsible for discontinued patterns or color variations in tile floor covering.
•DEFICIENCY: Depressions or ridges appear in the flooring due to subfloor irregularities.
CONSTRUCTION STANDARD: Readily apparent depressions or ridges exceeding 1/8 inch should be repaired. The ridge or depression measurement is taken at the gap created at one end of a 6 inch straight edge placed over the depression or ridge with three inches on one side of the depression or ridge held tightly to the floor.
BUILDER CORRECTION: The Builder shall take corrective action as necessary to bring the defect within acceptable tolerances so that it is not readily visible. Builder is not responsible for discontinued patterns or color variations in floor covering.
•DEFICIENCY: Seams or shrinkage gaps show.
CONSTRUCTION STANDARD: Gaps shall not exceed 1/8 inch in width. Where dissimilar materials abut, the gap shall not exceed 3/16 inch.
BUILDER CORRECTION: Builder to correct. If replacement is necessary, the Builder is not responsible for discontinued patterns or color variations in the floor covering.

7.6 CARPETING

•DEFICIENCY: Carpet seams separate, carpet becomes loose or excessive stretching occurs.
CONSTRUCTION STANDARD: Seams that separate due to improper installation are a deficiency. Carpet should not come loose. Carpet should not have excessive stretching. The carpeting material itself is not covered, but is covered solely by the manufacturer's warranty.
BUILDER CORRECTION: Builder to repair seams. Builder to resecure or restretch carpeting as needed one time only during the first year of the warranty.

7.7 PAINTING

•DEFICIENCY: Mildew or fungus on painted surfaces.
CONSTRUCTION STANDARD: Mildew or fungus is a maintenance item. It is not a deficiency.
BUILDER CORRECTION: None.
•DEFICIENCY: Exterior paint or stain peels or deteriorates.
CONSTRUCTION STANDARD: Exterior paints or stains should not fail during the first year of the warranty. Fading is normal and subject to sun and weather exposure. Fading is not a deficiency. Peeling or other deterioration of exterior paint which occurs after the end of the first year of the warranty is not covered, even though some peeling or deterioration of some part of the exterior paint may have occurred during such first year.
BUILDER CORRECTION: Builder shall properly prepare and refinish affected areas only, matching the existing color as closely as possible. Color matching of paint is not guaranteed.
•DEFICIENCY: Painting required as corollary repair because of other work.
CONSTRUCTION STANDARD: Necessary repair of a painted surface under warranty will be refinished to match surrounding areas as closely as possible.
BUILDER CORRECTION: Refinish repaired areas as indicated. Color matching of paint is not guaranteed.

•DEFICIENCY: Deterioration of varnish or lacquer finishes.
CONSTRUCTION STANDARD: Natural finishes on interior woodwork that deteriorate during the first year of the warranty are a deficiency. Exterior varnish-type finishes deteriorate rapidly and are not covered.

BUILDER CORRECTION: Refinish the affected area only, matching the color as closely as possible.
•DEFICIENCY: Interior paint application and coverage.
CONSTRUCTION STANDARD: Interior paint shall sufficiently cover wall, ceiling and trim surfaces.
BUILDER CORRECTION: Builder shall repaint affected surfaces only where inadequate paint has been applied. The color shall be matched as closely as possible.
•DEFICIENCY: Paint splatters and smears on finish surfaces.
CONSTRUCTION STANDARD: Excessive splatters and smears that detract from the finish, and which can not be removed by normal cleaning methods, are a deficiency. Minor paint splatters that are not readily noticeable are not a deficiency.
BUILDER CORRECTION: Builder to clean/remove paint and restore the surface finish, matching colors as closely as possible.

7.8 WALL COVERING

•DEFICIENCY: Peeling of wallpaper.
CONSTRUCTION STANDARD: Peeling of wallpaper, not due to abuse or negligence, is a deficiency. Wallcovering installed by anyone other than Builder is not covered.
BUILDER CORRECTION: Builder to repair or replace defective wallpaper. Builder is not responsible for discontinued patterns or variations in color.
•DEFICIENCY: Mismatching in wallcovering pattern originally installed by Builder.
CONSTRUCTION STANDARD: Mismatching pattern due to workmanship over a large area that severely detracts from the appearance is a deficiency. Wallcovering installed by anyone other than Builder is not covered.
BUILDER CORRECTION: Builder to replace mismatched wallcovering. Builder is not responsible for discontinued patterns or variations in color.

VIII. FIREPLACES

8.1 FIREPLACE OPERATION

•DEFICIENCY: Fireplace or chimney does not draw properly causing smoke to enter the Home.
CONSTRUCTION STANDARD: The fireplace and chimney should function as intended. High winds can cause temporary negative draft situations. Similar negative draft situations can also be caused by obstructions such as large branches of trees too close to the chimney. In some cases, it may be necessary to open a window slightly to create an effective draft. Builder is not responsible for malfunctions due to natural causes and/or causes beyond Builder's control.
BUILDER CORRECTION: Builder to correct malfunctions caused by improper construction.

8.2 CHIMNEY

•DEFICIENCY: Chimney separating from structure to which it is attached.
CONSTRUCTION STANDARD: Newly built fireplaces will often incur slight amounts of separation from the main structure. Separation greater than ½ inch from the main structure in any 10 foot vertical measurement is a deficiency.
BUILDER CORRECTION: Builder to correct as required. Grouting or caulking is acceptable for separations up to ½ inch.

IX. CABINETRY

9.1 KITCHEN AND VANITY CABINETS

•DEFICIENCY: Cabinet doors and drawers malfunction.
CONSTRUCTION STANDARD: Cabinet doors, drawers and other operating parts should function as designed.
BUILDER CORRECTION: Builder to repair or replace.
•DEFICIENCY: Warping of cabinet doors and drawer fronts.
CONSTRUCTION STANDARD: Warpage that exceeds 1/4 inch (exclusive of any gap created by spacers), measured from the face of the cabinet frame with the door or drawer in the closed position, is a deficiency.
BUILDER CORRECTION: Builder to correct or replace as required.
•DEFICIENCY: Gaps between cabinets and the ceiling or walls.
CONSTRUCTION STANDARD: Gaps should not exceed 1/4 inch.
BUILDER CORRECTION: Adjust cabinets and countertops, or close with suitable moulding to match the finish as closely as possible. Caulking is acceptable.

9.2 COUNTERTOPS

•DEFICIENCY: Surface cracks, delaminations and chips in high pressure laminated vanity and kitchen countertops.
CONSTRUCTION STANDARD: Countertops fabricated with high pressure laminate coverings should not delaminate or have chips or surface cracks. Gaps between joints should not exceed 1/16 inch. Moisture and water build-up in seams will occur if such areas are not properly maintained by Homebuyer(s) so, unless caused by Builder, moisture and water build-up in seams is not a deficiency.
BUILDER CORRECTION: Builder to repair or replace to meet the standard.

X. PLUMBING SYSTEMS

10.1 SEPTIC TANK SYSTEM

•DEFICIENCY: Septic system fails to operate properly.
CONSTRUCTION STANDARD: Septic system should properly handle normal flow of household effluent. It is possible that an overflow can occur due to freezing, soil saturation, changes in the ground water table or excessive use of plumbing or appliances. Periodic pumping of the septic tank is considered a Homebuyer(s) maintenance responsibility and a normal need for pumping is not a deficiency.
BUILDER CORRECTION: During the first two years of the warranty, Builder to repair system to correct malfunction due to improper design or installation. Builder shall not be responsible for malfunctions which occur through negligence or abuse or natural causes (such as freezing or changes in ground water table) and/or conditions that are beyond the Builder's control. The following are considered negligence or abuse:

A. Excessive use of water, such as overuse of the washing machine and the dishwasher, including their simultaneous use.
B. Connection of sump pump, roof drains or backwash from water conditioner to the system.
C. Placing of non-biodegradable items in the system.
D. Addition of any harsh chemicals, greases or cleaning agents, and excessive amounts of bleaches or drain cleaners.
E. Use of a food waste disposer not supplied by Builder.
F. Placement of impervious surfaces over the disposal area.
G. Allowing vehicles to drive or park over the disposal area.

H. Failure to periodically pump out the septic tank when required.

10.2 PLUMBING

•DEFICIENCY: Water service line breaks or leaks or fails to deliver water.
CONSTRUCTION STANDARD: Service connections are the Builder's responsibility. The water service line should function as intended. Damage or failure resulting from neglect or abuse or landscaping activities, or from conditions beyond the Builder's control (such as, for example, without limitation, disruption or elimination of sources of water supply), is not covered.
BUILDER CORRECTION: During the first five years of the warranty, Builder to repair verified leaks in the line or restore service, if leak or failure is due to defective workmanship or materials, and restore the landscaping in the affected area. The Builder's responsibility for water service lines extends only from the Home to the water meter connection on the property on which the Home is situated.
NOTE: Should a water service line break or leak occur, Homebuyer(s) should immediately shut off the water service at the meter and call the appropriate public utility service.
•DEFICIENCY: Leakage in pipes or fittings. Leakage from pipes freezing and bursting.
CONSTRUCTION STANDARD: No leaks should exist in any plumbing pipes or fittings. Condensation on piping does not constitute leakage. Exterior hose bibs and other hose connections are not covered. Leaks occurring because of neglect or failure to maintain suitable temperatures in the Home to prevent pipes from freezing and bursting are not covered.
BUILDER CORRECTION: During the first five years of the warranty, Builder shall repair any leakage from pipes or fittings installed by Builder, except for leakage caused by freezing. During the first two years of the warranty, Builder shall repair any leakage from pipes or fittings installed by Builder caused by freezing.
NOTE: Should a water pipe leak occur, Homebuyer(s) should immediately shut off the water service and call the appropriate public utility service.
•DEFICIENCY: Stopped up sewers, fixtures and drains.
CONSTRUCTION STANDARD: Sewer fixtures and drains should operate properly. Damage, insufficient operation or clogging due to neglect, abuse, improper operation or landscaping activities, or from conditions beyond Builder's control, is not covered.
BUILDER CORRECTION: During the first five years of the warranty, where defective construction is shown to be the cause of the deficiency, the Builder will make the necessary repairs. The Builder's responsibility for sewer lines extends only to the boundary line of the property on which the Home is situated.
•DEFICIENCY: Leakage in a faucet, valve, tub, sink or toilet.
CONSTRUCTION STANDARD: No faucet, valve, tub, sink or toilet should leak due to defects in material or workmanship. Replacement and maintenance of washers and seals are the responsibility of the Homebuyer(s). Leakage due to worn washers or seals is not covered.
BUILDER CORRECTION: During the first five years of the warranty, Builder shall repair or replace the leaking faucet, valve, tub, sink or toilet.
•DEFICIENCY: Defective plumbing fixtures or trim fittings.
CONSTRUCTION STANDARD: Fixtures or fittings should operate or perform their intended function properly. Tarnishing and pitting of faucets are not covered, but are covered solely by the manufacturer's warranty. High iron content in the water will cause staining of fixtures. It is the Homebuyer(s) responsibility to treat the water, if necessary. No Builder correction is required.
BUILDER CORRECTION: During the first five years of the warranty, the Builder shall repair or replace any fixture or fitting which is outside of acceptable standards of operation or performance.

10.3 GAS LINE

•DEFICIENCY: Leakage in the interior gas line piping.
CONSTRUCTION STANDARD: No leaks should exist in any gas pipes or fittings. Damage resulting from neglect or abuse, or from conditions beyond the Builder's control (such as, for example, without limitation, disruption or elimination of sources of gas supply), is not covered.
BUILDER CORRECTION: During the first five years of the warranty, Builder to repair verified leaks in piping as necessary, if leak is due to defective workmanship or materials.
NOTE: Should a gas pipe leak occur outside the Home, Homebuyer(s) should call the appropriate public utility service immediately. If the leak occurs inside the Home, Homebuyer(s) should shut off the gas service immediately, ventilate the Home, and call the appropriate public utility service immediately.

XI. HEATING AND AIR CONDITIONING SYSTEM

11.1 HEATING

•DEFICIENCY: Inadequate heating.
CONSTRUCTION STANDARD: The heating system shall be capable of producing an inside temperature of 68 degrees Fahrenheit as measured in the center of each room at a height of 3 feet above the floor under local outdoor winter design conditions as specified in the ASHRAE handbook. There may be times when the outdoor temperature falls below the design temperature. When this occurs, the temperature in the Home may be lower than 68 degrees. Rooms located over garages and sunporches will experience a temperature differential due to their exposure, and this is not a deficiency.
BUILDER CORRECTION: Correct the heating system to meet the standard. Builder to balance dampers, registers and make other minor adjustments one time only during the first year of the warranty.

11.2 AIR CONDITIONING

•DEFICIENCY: Inadequate cooling.
CONSTRUCTION STANDARD: If air conditioning is provided, the cooling system shall be capable of maintaining an inside temperature of 78 degrees Fahrenheit as measured in the center of each room at a height of 5 feet above the floor under local outdoor summer design conditions as specified in the ASHRAE handbook. There may be times when the outdoor temperature rises above the design temperature. When this occurs, the temperature in the Home may be higher than 78 degrees. When the outdoor temperature exceeds 95 degrees, a differential of 17 degrees will be accepted as meeting the standard. Rooms located over garages and sunporches will experience a temperature differential due to their exposure, and this is not a deficiency.
BUILDER CORRECTION: Correct the cooling system to meet the standard. Builder to balance dampers, registers and make other minor adjustments one time only during the first year of the warranty. Changing and/or adding refrigerant, which should be done on at least an annual basis, is the responsibility of the Homebuyer(s).
•DEFICIENCY: Refrigerant line leak or clog.
CONSTRUCTION STANDARD: Refrigerant lines should not develop leaks during normal operation. However, condensation lines will clog under normal use. This is the maintenance responsibility of the Homebuyer(s) and requires no correction by the Builder.
BUILDER CORRECTION: During the first two years of the warranty, repair leaking refrigerant lines and recharge the unit.

•DEFICIENCY: Ductwork separates or becomes unattached.
CONSTRUCTION STANDARD: Ductwork should remain intact and securely fastened.

BUILDER CORRECTION: During the first two years of the warranty, reattach and resecure as necessary.

XII. ELECTRICAL SYSTEM

12.1 ELECTRICAL CONDUCTORS

•DEFICIENCY: Failure of wiring to carry its designated circuit load to the electrical box.
CONSTRUCTION STANDARD: Wiring shall carry the designed load for normal residential use.
BUILDER CORRECTION: During the first five years of the warranty, correct the wiring as necessary to meet the standard.

12.2 SWITCHES AND RECEPTACLES

•DEFICIENCY: Fuses blow or circuit breakers kick out.
CONSTRUCTION STANDARD: Fuses and circuit breakers should not activate under normal usage.
BUILDER CORRECTION: During the first two years of the warranty, correct the fuse wiring or breakers as necessary.
•DEFICIENCY: Malfunction of electrical outlets and switches.
CONSTRUCTION STANDARD: All outlets and switches should operate as intended.
BUILDER CORRECTION: During the first five years of the warranty, repair or replace defective switches and outlets. Light fixtures are covered solely by the manufacturer's warranty.

12.3 SERVICE AND DISTRIBUTION

•DEFICIENCY: Ground fault interrupter trips frequently.
CONSTRUCTION STANDARD: Ground fault interrupters are sensitive safety devices that protect against electrical shock and can be tripped very easily. A ground fault interrupter that does not operate as intended is a deficiency.
BUILDER CORRECTION: Builder to replace defective ground fault interrupter.

JOHN WIELAND HOMES
AND NEIGHBORHOODS

Rev.4/06

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A NUMBER: 12-CP-10-3870
	)	
	)	
Peter T. Phillips and Summar C. Phillips,	)	
	)	**Affidavit of Dennis A. Black**
Plaintiffs,	)	
v.	)	
	)	
Omega Flex, Inc., John Wieland Homes, and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc., Charleston LEC. Inc.,	)	
	)	
Defendants.	)	

FILED
2012 OCT 30 PM 4:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY

APPEARING BEFORE ME AND BEING DULY SWORN, Dennis A. Black states the following:

1. I am a resident of South Carolina, am over eighteen years of age, and competent to testify about the matters stated herein based on my own personal knowledge.
2. I currently serve as Division Quality Manager for John Wieland Homes and Neighborhoods of the Carolinas, Inc. ("JWH").
3. I am informed and believe that in June 2008, Peter T. Phillips and Summar C. Phillips ("the Phillips") entered a purchase agreement with JWH to buy a home in the located at 1417 Hooper Street, Charleston, SC 29492.
4. Because JWH's development of the Smythe Park subdivision and construction of homes within it, including the Phillips' property, implicates interstate commerce, JWH has included (and still includes) a mandatory binding arbitration provision in its Purchase Agreement and in its Warranty that provides for the arbitration of all disputes concerning any property JWH sells in the subdivision in accordance with the Federal Arbitration Act, 9 U.S .C. §§ 1-16.

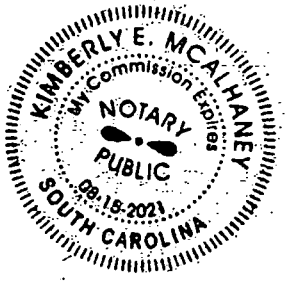
5. Attached hereto is a true and authentic copy of the Purchase Agreement (Exhibit A) and the JWH Warranty (Exhibit B).

FURTHER AFFIANT SAYETH NOT.

By: DENNIS A BLACK

SWORN BEFORE ME
This 29 day of October 2012

Notary Public for the State of South Carolina
My Commission Expires:



JOHN WIELAND HOMES
AND NEIGHBORHOODS

EXHIBIT
tabbies
A

ADDENDUM

Attached to that certain contract dated 06/16/2008 between Peter Phillips and Summer Phillips Purchaser(s) and John Wieland Homes and Neighborhoods, Inc., Seller, for property known as Lot 3 of Block M of Smythe Park at Daniel Island Neighborhood: Being more commonly known as 1417 Hooper Street, Charleston SC 29492

Add #	Date	Code	Option Description	Qty	Type	Comm	Status	Total ($)
			General					
C8	8/28/2008	CUSTOM	Convert sod to St. Augustine	1 Each	Cash	N	Approved	660.00
			SUB TOTAL of Options Page 1					660.00
			Option Total					660.00
			Total Sales Price (approved items only)					667,013.00
			Total Sales Price (open and approved items)					667,013.00

* From existing contingent buyer

Seller-John Wieland Homes and Neighborhoods, Inc. — Date Executed 9/8/08

Purchaser Peter Phillips — Date Executed 9/2/08

Wieland Realty Associates, Inc. - Daniel Island Sales — Date Executed

Purchaser Summer Phillips — Date Executed 9/2/08

Selling Broker Lexa Owens - Keller Williams Realty — Date Executed

Seller's initials _____ Purchaser's initials _____ Broker's initials _____ Selling Broker's initials _____

Addendum Page 1 of 1

JOHN WIELAND HOMES
AND NEIGHBORHOODS

ADDENDUM #6

Attached to that certain contract dated 06/16/2008 between Peter Phillips and Summer Phillips Purchaser(s) and John Wieland Homes and Neighborhoods, Inc., Seller, for property known as Lot 3 of Block M of Smythe Park at Daniel Island Neighborhood: Being more commonly known as 1417 Hooper Street, Charleston SC 29492.

1. The following shall be added to the above mentioned contract:

   Custom Paint Colors to be added to two (2) rooms **$700.00**
   Customer to pay for above addition outside of closing with certified funds.

2. Sales price shall remain the same $667,013.00.

4. Commission to be paid on original contract price of $633,900.00.

I/We hereby agree to accept the foregoing stipulations as Addendum # 6 dated September 5, 2008.

Purchaser 9/5/08 Date

Seller 9/8/08 Date

Purchaser 9/5/08 Date

Date: 8/18/2008
Time: 10:13:45 AM

JOHN WIELAND HOMES
AND NEIGHBORHOODS

ADDENDUM

Attached to that certain contract dated 06/16/2008 between Peter Phillips and Summer Phillips Purchaser(s) and John Wieland Homes and Neighborhoods, Inc., Seller, for property known as Lot 3 of Block M of Smythe Park at Daniel Island Neighborhood: Being more commonly known as 1417 Hooper Street , Charleston SC 29492

A Non-refundable deposit in the amount of Two Thousand One Hundred dollars ($2,100.00), due $2,100.00, Payment Method Check. The balance is $2,100.00.

Add #	Date	Code	Option Description	Qty	Type	Built	Status	Total ($)
			General					
C6	8/18/2008	CUSTOM	47 ft. of additional 6 ft. fence with 2 gates, & upgrading 83 ft. of fence to 6 ft. along easement	1 Each	Cash	N	Approved	4,200.00
			SUB TOTAL of Options Page 1					4,200.00
			Option Total					4,200.00
			Total Sales Price (approved items only)					666,353.00
			Total Sales Price (open and approved items)					666,353.00

* From existing contingent buyer

Seller-John Wieland Homes and Neighborhoods, Inc. — Date Executed 9/1/08

Wieland Realty Associates, Inc. - Daniel Island Sales — Date Executed

Purchaser Peter Phillips — Date Executed 8/18/08

Purchaser Summer Phillips — Date Executed 8/15/08

Selling Broker Lexa Owens - Keller Williams Realty — Date Executed

Seller's initials _____ Purchaser's initials _____ Broker's initials _____ Selling Broker's initials _____

Addendum Page 1 of 1

Date: 8/15/2008
Time: 9:53:19 AM

JOHN WIELAND HOMES
AND NEIGHBORHOODS

ADDENDUM

Attached to that certain contract dated 06/16/2008 between Peter Phillips and Summer Phillips Purchaser(s) and John Wieland Homes and Neighborhoods, Inc., Seller, for property known as Lot 3 of Block M of Smythe Park at Daniel Island Neighborhood: Being more commonly known as 1417 Hooper Street , Charleston SC 29492

A Non-refundable deposit in the amount of Three Thousand Six Hundred Sixty-Three dollars ($3,663.00), due $3,663.00, Payment Method Check. The balance is $3,663.00.

Add #	Date	Code	Option Description	Qty	Type	Built	Status	Total ($)
			General					
C5	8/15/2008	CUSTOM	50 sf of deck on screened porch	1 Each	Cash	N	Approved	1,250.00
C5	8/15/2008	CUSTOM	6 Inch crown through upstairs (to include bed 2 & 3, hall, laundry & hall bath)	1 Each	Cash	N	Approved	980.00
C5	8/15/2008	CUSTOM	Add additional parking pad to the drive	1 Each	Cash	N	Approved	600.00
C5	8/15/2008	CUSTOM	Add additional patio 18 x 16 feet	1 Each	Cash	N	Approved	1,152.00
C5	8/15/2008	CUSTOM	Add surround prewire to 3rd Floor	1 Each	Cash	N	Approved	150.00
C5	8/15/2008	CUSTOM	Add two 54 x 72 inch bookshelves in 3rd floor	2 Each	Cash	N	Approved	1,220.00
C5	8/15/2008	CUSTOM	Convert entire house to 7 1/4 inch baseboards	1 Each	Cash	N	Approved	350.00
C5	8/15/2008	CUSTOM	Convert Owners Shower Pan to Tile	1 Each	Cash	N	Approved	1,100.00
C5	8/15/2008	CUSTOM	Convert patio and front walkway to oyster shell	1 Each	Cash	N	Approved	525.00

SUB TOTAL of Options Page 1	7,327.00
Option Total	7,327.00
Total Sales Price (approved items only)	662,153.00
Total Sales Price (open and approved items)	662,153.00

* From existing contingent buyer

Seller-John Wieland Homes and Neighborhoods, Inc. — Date Executed 9/1/08

Purchaser Peter Phillips — Date Executed 8/18/08

Wieland Realty Associates, Inc. - Daniel Island Sales — Date Executed

Purchaser Summer Phillips — Date Executed 8/18/8

Selling Broker Lexa Owens - Keller Williams Realty — Date Executed

Seller's initials _____ Purchaser's initials PTP _____ Broker's initials _____ Selling Broker's initials _____

Addendum Page 1 of 1

Date: 8/12/2008
Time: 9:54:20 AM

JOHN WIELAND HOMES
AND NEIGHBORHOODS

ADDENDUM

Attached to that certain contract dated 06/16/2008 between Peter Phillips and Summer Phillips Purchaser(s) and John Wieland Homes and Neighborhoods, Inc., Seller, for property known as Lot 3 of Block M of Smythe Park at Daniel Island Neighborhood: Being more commonly known as 1417 Hooper Street , Charleston SC 29492

A Non-refundable deposit in the amount of Nine Thousand dollars ($9,000.00). due $9,000.00, Payment Method Check. The balance is $9,000.00.

Add #	Date	Code	Option Description	Qty	Type	Built	Status	Total ($)
			** Custom					
C3	7/3/2008	Design1	Extra Ticket #1	1 Each	Cash	N	Approved	14,233.00
C3	7/3/2008	Design2	Extra Ticket #2	1 Each	Cash	N	Approved	1,720.00
			Electrical / Lighting Fixtures					
C4	7/29/2008	ll-overage	Lighting Overage	1 Each	Cash	N	Approved	2,048.00

SUB TOTAL of Options Page 1	18,001.00
Option Total	18,001.00
Total Sales Price (approved items only)	654,826.00
Total Sales Price (open and approved items)	654,826.00

* From existing contingent buyer

Seller-John Wieland Homes and Neighborhoods, Inc. — Date Executed 9/1/08

Purchaser Peter Phillips — Date Executed 8/18/08

Wieland Realty Associates, Inc. - Daniel Island Sales — Date Executed

Purchaser Summer Phillips — Date Executed 8/10/08

Selling Broker Lexu Owens - Keller Williams Realty — Date Executed

Seller's initials _____. Purchaser's initials PTP SMP. Broker's initials _____. Selling Broker's initials _____.

Addendum Page 1 of 1

SATISFACTION/WAIVER OF CONDITIONS ADDENDUM TO AGREEMENT TO BUY AND SELL REAL ESTATE

SATISFACTION/WAIVER OF CONDITIONS: In reference to Agreement to Buy and Sell Real Estate, dated June 9, 2008, between Peter + Summar Phillips the Buyer and John Wieland Homes the Seller, covering the real property commonly known as:

Lot 03 Block M Section 2 Subdivision Daniel Island

Address 1417 Hooper Street

Tax Map 278-01-01-026 City Charleston Zip 29492

County of Berkeley, State of South Carolina, the undersigned Buyer hereby acknowledges satisfaction of/or waives the following condition(s) set forth in the above referenced Agreement:

Buyer closed on the sale of their home effectively removing the contingency.

Seller		Date 7/16/08	Time 3:30
Witness	Kimberly McAlhaney	Date 7/16/08	Time 3:30
Seller		Date	Time
Witness		Date	Time
Buyer		Date 7/15/08	Time 0630 AM
Witness		Date	Time
Buyer		Date 7/15/08	Time 9:00 AM
Witness		Date	Time

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SATISFACTION/WAIVER OF CONDITIONS ADDENDUM TO AGREEMENT TO BUY AND SELL REAL ESTATE

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Lot 03 Block M Section 2 Subdivision Daniel Island

Address 1417 Hooper Street

Tax Map 278-01-01-026 City Charleston Zip 29492

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Buyer closed on the sale of their home effectively removing the contingency.

Seller		Date 7/15/08	Time
Witness		Date	Time
Seller		Date	Time
Witness		Date	Time
Buyer		Date 7/15/08	Time 0630 AM
Witness		Date	Time
Buyer		Date 7/15/08	Time 9:00 AM
Witness		Date	Time

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Date: 6/20/2008
Time: 3:21:06 PM

JOHN WIELAND HOMES
AND NEIGHBORHOODS

ADDENDUM

Attached to that certain contract dated 06/16/2008 between Peter Phillips and Summer Phillips Purchaser(s) and John Wieland Homes and Neighborhoods, Inc., Seller, for property known as Lot 3 of Block M of Smythe Park at Daniel Island Neighborhood: Being more commonly known as 1417 Hooper Street, Charleston SC 29492

A Non-refundable deposit in the amount of Two Thousand Nine Hundred Twenty-Five dollars ($2,925.00) due $2,925.00, Payment Method Check. The balance is $2,925.00.

App #	Date	Code	Option Description	Qty	Type	Built	Status	Total ($)
			General					
C2	6/20/2008	CUSTOM	Add additional phone/cable to bonus room over garage	1 Each	Cash	N	Approved	95.00
C2	6/20/2008	CUSTOM	Add dedicated receptacle for wine cooler in butlers pantry area	1 Each	Cash	N	Approved	115.00
C2	6/20/2008	CUSTOM	add gast stubs out at front porch (does not include lantern)	2 Each	Cash	N	Approved	850.00
C2	6/20/2008	CUSTOM	Add sound prewire (2 speaker drops) to screened porch	1 Each	Cash	N	Approved	115.00
C2	6/20/2008	CUSTOM	Add stub out for laundry sink (will include standard sink)	1 Each	Cash	N	Approved	450.00
C2	6/20/2008	CUSTOM	Add surround sound prewire to both family room and bonus room over garage	2 Each	Cash	N	Approved	300.00
C2	6/20/2008	CUSTOM	Reframe stairs to accommodate hardwood treads on 1st flight of stairs to 2nd floor *Framing labor only*	1 Each	Cash	N	Approved	1,000.00

SUB TOTAL of Options Page 1	2,925.00
Option Total	2,925.00
Total Sales Price (approved items only)	636,825.00
Total Sales Price (open and approved items)	636,825.00

* From existing contingent buyer

Seller-John Wieland Homes and Neighborhoods, Inc. — Date Executed 7/2/08

Purchaser Peter Phillips — Date Executed 6/21/08

Wieland Realty Associates, Inc. - Daniel Island Sales — Date Executed

Purchaser Summer Phillips — Date Executed 6/23/08

Selling Broker Lexa Owens - Keller Williams Realty — Date Executed

Seller's initials _____ Purchaser's initials _____ Broker's initials _____ Selling Broker's initials _____

Addendum Page 1 of 1

DANIEL ISLAND REAL ESTATE CO. LLC
ESCROW MGMT. ACCO[redacted]
230 SEVEN FARMS DRIVE
SUITE 201
CHARLESTON, SC 29492

BAN[redacted] AMERICA
02[redacted]2 SC
67-448-539

1065

001069

TEN THOUSAND DOLLARS & 00 CENTS

DATE	AMOUNT
Jun 26/08	$10,000.00

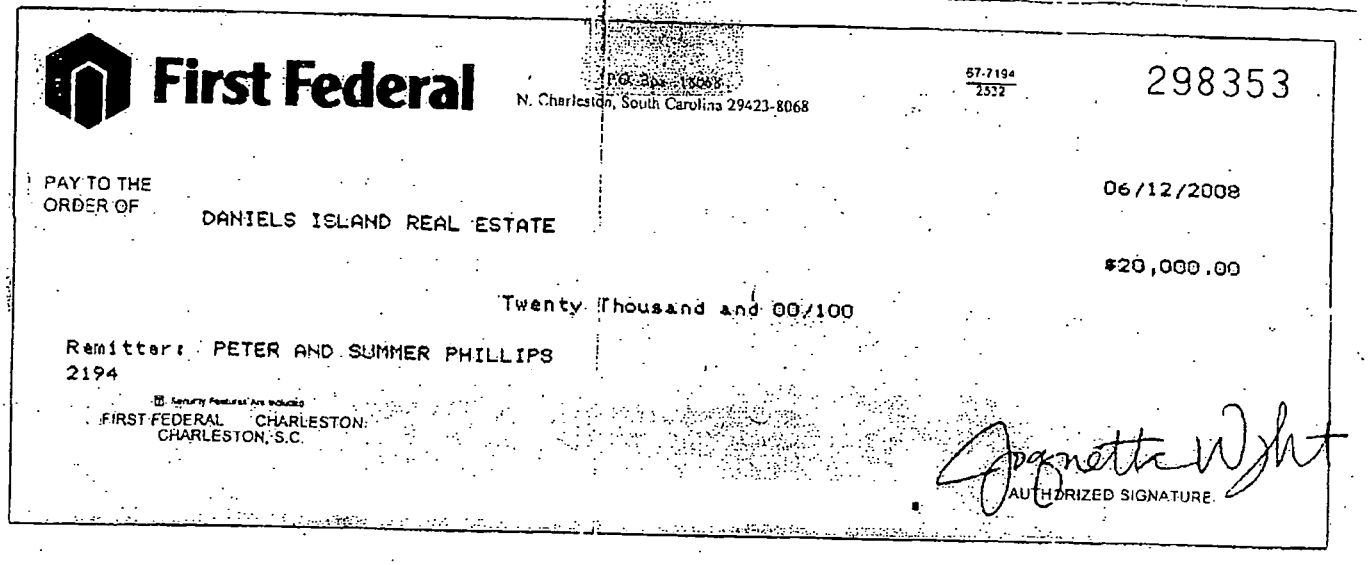
PAY TO THE ORDER OF: John Wieland Homes & Neighborhoods
of the Carolinas, Inc.
3015 Dunes West Blvd, Ste 502
Mt. Pleasant, SC 29466

DANIEL ISLAND REAL ESTATE CO. LLC
ESCROW MGMT. ACCOUNT

WIELJ John Wieland Homes & NeighborhoodsJun 26/08 001069 1065

Invoice No	Inv.Date	PO Number	Reference	Audit No	Gross Amt	Disct/RT	Net Amt
ZM03-REF	Jun 23/08	N/A	1417Hooper	PJ2145	10,000.00	0.00	10,000.00
					10,000.00	0.00	10,000.00

DISP 3M



First Federal

P.O. Box 1068
N. Charleston, South Carolina 29423-8068

57-7194
2522

298353

PAY TO THE ORDER OF DANIELS ISLAND REAL ESTATE

06/12/2008

$20,000.00

Twenty Thousand and 00/100

Remitter: PETER AND SUMMER PHILLIPS
2194

FIRST FEDERAL CHARLESTON
CHARLESTON, S.C.

Jeannette Wyht
AUTHORIZED SIGNATURE

DIRE ~~to~~ Cut a Check to us for $10,000 for our portion of the deposit.

John Wieland Homes and Neighborhoods of the Carolinas, Inc. 6/5/08
Purchase Agreement (Date/Version)

The Parties and Essential Terms

1. Agreement to Buy and Sell Property. The undersigned Purchaser agrees to buy and the undersigned Seller agrees to sell, all that tract or parcel of land lying and being in the City of Charleston, Berkeley County, South Carolina, being Lot Y of Block E, Parcel M of Smythe Park Neighborhood, Daniel Island; being more commonly known as 1617 Hooper Street, Charleston, SC 29492 (street address, city, state, zip); being recorded in Berkeley County Records, Plat Book _____, Page _____. (The foregoing land and the improvements constructed or to be constructed thereon by Seller are referred to herein as the "Property.") Purchaser acknowledges that the neighborhood subdivision name and/or street names may change, and Purchaser agrees to acceptany such changes.

2. Purchase Price and Deposit. The Purchase Price of the Property shall be Six Hundred Thirty-three thousand nine hundred Dollars ($ 633,900.00) to be paid by Purchaser to Seller at closing. Purchaser has delivered to Daniel Island Real Estate Company, LLC as Builder's Selling Broker (the "Broker"), as escrow agent, a deposit ("Earnest Money Deposit") of Twenty-Three Thousand Dollars ($ 23,000.00) to be held by Broker until Closing, or to be disbursed as set forth in this Agreement. The parties acknowledge and agree that Broker will place the Earnest Money Deposit in a federally insured financial institution. Purchaser acknowledges and agrees that any interest earned with regard to the Earnest Money Deposit shall be designated to the benefit of the Daniel Island Community Fund, Inc., a nonprofit community service organization.

3. Additional Deposits. $10,000.00 shall be paid to Seller (not to Broker as earnest money) as a non-refundable Foundation deposit when the Foundation is started, with such amount to be credited to Purchaser at closing. Such foundation deposit shall be non-refundable unless Seller is unable or unwilling to close, and Purchaser agrees that such deposit and any interest thereon are a part of Seller's liquidated damages upon Purchaser's default. Purchaser's Initials PTP

4. Brokers. Broker has entered into a client relationship with Seller and has acted as agent for the Seller in this transaction. Lesesne Owens _____ ("Selling Broker") has entered into a client relationship with Purchaser and has acted as agent for the Purchaser in this transaction. Any Agency Disclosure form executed herein is made a part hereof. Purchaser acknowledges that Broker's representation of Seller has been disclosed to Purchaser in a timely manner and that there is no brokerage or agency relationship between Broker and Purchaser, even though Broker may perform ministerial acts for the benefit of Purchaser. Purchaser acknowledges that Purchaser has not relied upon the advice or representations, if any, of Seller or Broker, or their respective representatives, relative to the purchase and ownership of the Property and any matters relating thereto. Purchaser acknowledges that if such matters are of any concern to Purchaser, Purchaser has retained and obtained independent professional advice in such matters. Except as set forth in this Agreement, Purchaser and Seller represent and warrant that they have not dealt with, and have not been and are not represented by, any salesperson, or broker, or other person or entity, in connection with the sale of the Property, and they agree to indemnify and hold each other harmless from any and all claims, losses, damages, costs and expenses, including, without limitation, attorneys' fees and court costs, incurred or suffered by one of them because of any claim for any fee or commission paid with respect to this transaction made by the other or by any agent or broker, or other person or entity, claiming to represent the other. Broker and Selling Broker have performed valuable services in negotiating this agreement and are made parties hereunder to enforce their respective rights. Payment of commissions as a broker shall not relate to agency or subagency relationships between Selling Broker and either Seller or Broker. If this transaction closes in accordance with the terms hereof, Seller agrees to pay Broker or Selling Broker (which compensation has already been negotiated in a separate agreement) one (1) % of the above Purchase Price. If this sale is made by representation both to Selling Broker, Broker shall receive 3 ½ of the total real estate commission paid hereunder and the Selling Broker shall receive 2 ½ of the total real estate commission paid hereunder. If this transaction does not close in accordance with the terms hereof (for any reason whatsoever), Seller shall not be obligated to pay any real estate commission or similar fee to any person or entity. From time to time, Seller may make additional monetary or merchandise awards to brokers and agents in connection with this and other transactions. Purchaser shall have no obligation regarding any such awards. Seller will, upon request by Purchaser, provide Purchaser with additional information regarding any awards to any broker or agent involved in this transaction and which relate to this transaction. Real estate commission rates are not set or fixed by law or custom and are subject to negotiation between the brokerage and the client. No broker in this transaction shall owe any duty to Purchaser or Seller greater than is set forth under South Carolina law. Seller and Purchaser acknowledge that if they have entered into a client relationship with a broker, that broker has disclosed on a prior basis (a) the types of brokerage relationships offered by

Broker's Initials MS Purchaser's Initials PTP Seller's Initials RH Selling Broker's Initials JSD

PTP 6/10/08

John Wieland Homes and Neighborhoods of the Carolinas, Inc.
Purchase Agreement 6/5/08
(Date of Purchaser's Offer)

The Property and Financial Terms

1. Agreement to Buy and Sell; Property. The undersigned Purchaser agrees to buy, and the undersigned Seller agrees to sell, all that tract or parcel of land lying and being in the City of Charleston, Berkeley County, South Carolina; Being Lot 3 of Block Z Parcel M of Smythe Park Neighborhood, Daniel Island; Being more commonly known as 1417 Hooper Street, Charleston, SC 29492 (street address, city, state, zip); Being recorded in Berkeley County Records, Plat Book _____, Page _____. (The foregoing land and the improvements constructed or to be constructed thereon by Seller are referred to herein as the "Property.") Purchaser acknowledges that the neighborhood/subdivision name and/or street names may change, and Purchaser agrees to accept any such changes.
2. Purchase Price and Deposit. The Purchase Price of the Property shall be Six Hundered Fourteen thousand nine hundred Dollars, ($ 614,900.00) to be paid to Seller in immediately available funds at closing. Purchaser has delivered to Daniel Island Real Estate Company, LLC as Builder's listing broker (the "Broker), an earnest money deposit ("Earnest Money Deposit") of Fifteen Thousand Dollars, ($ 15,000.00) to be held by Broker until Closing, or to be disbursed as set fort in this Agreement. The parties acknowledge and agree that Broker will place the Earnest Money Deposit in a federally insured financial institution. Purchaser acknowledges and agrees that any interest earned with regard to the Earnest Money Deposit shall be designated to the benefit of the Daniel Island Community Fund, Inc., a nonprofit community service organization.
3. Additional Deposits. $10,000.00 shall be paid to Seller (not to Broker as earnest money) as a non-refundable foundation deposit when the foundation is started, with such amount to be credited to Purchaser at closing. Such foundation deposit shall be non-refundable unless Seller is unable or unwilling to close, and Purchaser hereby acknowledges that such deposit and any interest thereon is a part of Seller's liquidated damages upon Purchaser's default. Purchaser acknowledges that Seller reserves the right to require additional non-refundable deposits for the installation of extras not included as a standard feature for the neighborhood in the amount of at least fifty percent (50%) of the total charge for such item(s) (Seller may require larger deposits in its discretion). Such non-standard items are determined in Seller's sole discretion and may include, without limitation, basement finishing, skylights, additional fireplaces, custom tile or marble, retaining walls and structural framing and foundation modifications. These additional deposits may be required in the above instances regardless of Purchaser's mortgage down payment requirements but shall be credited to Purchaser at closing. Such deposits shall be non-refundable unless Seller is unable or unwilling to close, and Purchaser hereby acknowledges that such deposits and any interest thereon are a part of Seller's liquidated damages upon Purchaser's default. **Purchaser's initials** _____.
4. Brokers. Broker has entered into a client relationship with Seller and has acted as agent for the Seller in this transaction Lexa Owens - ("Selling Broker") has entered into a client relationship with Purchaser and has acted as agent for the Purchaser in this transaction. Any Agency Disclosure form attached hereto is made a part hereof. Purchaser acknowledges that Broker's representation of Seller has been disclosed to Purchaser in a timely manner and that there is no brokerage or agency relationship between Broker and Purchaser, even though Broker may perform ministerial acts for the benefit of Purchaser. Purchaser acknowledges that Purchaser has not relied upon the advice or representations, if any, of Seller or Broker, or their respective representatives, relative to the purchase and ownership of the Property and any matters related thereto. Purchaser acknowledges that if such matters are or have been of concern to Purchaser, Purchaser has sought and obtained independent advice relative thereto. Except as set forth in this agreement, Purchaser and Seller represent and warrant that they have not dealt with, and have not been and are not represented by, any other agent or broker, or other person or entity, in connection with the sale of the Property, and they agree to indemnify and hold each other harmless from any and all claims, losses, damages, costs and expenses, including, without limitation, attorneys' fees and court costs, incurred or suffered by one of them because of any claim for any fee or commission with respect to this transaction made by the other or by an agent or broker, or other person or entity, claiming to represent the other. Broker and Selling Broker have performed valuable services in negotiating this agreement and are made parties hereunder to enforce their commission rights. Payment of commission to a broker shall not create an agency or subagency relationship between Selling Broker and either Seller or Broker. If this transaction closes in accordance with the terms hereof, Seller agrees to pay Broker at closing a commission (which commission has already been negotiated in a separate agreement) of 6 % of the above Purchase Price. If this sale is made in cooperation with a Selling Broker, Broker shall receive 3 % of the total real estate commission paid hereunder and the Selling Broker shall receive 3 % of the total real estate commission paid hereunder. If this transaction does not close in accordance with the terms hereof (for any reason whatsoever), Seller shall not be obligated to pay any real estate commission or similar fee to any person or entity. From time to time, Seller may make additional monetary or merchandise awards to brokers and agents in connection with this and other transactions. Purchaser shall have no obligations regarding any such awards. Seller will, upon request by Purchaser, provide Purchaser with additional information regarding any awards to any broker or agent involved in this transaction and which relate to this transaction. Real estate commission rates or fees are not fixed by law or custom and are not controlled, suggested, recommended or maintained by the Charleston Trident Board of Realtors, Inc. or the Charleston Trident Multiple Listing Service, Inc. Compensation for services rendered is solely a matter of negotiation between the broker/agent and the client. No broker to this transaction shall owe any duty to Purchaser or Seller greater than is set forth under South Carolina law. Seller and Purchaser acknowledge that if they have entered into a client relationship with a broker, that broker has disclosed on a prior basis (a) the types of brokerage relationships offered by

Legible PAGE (Before changes)

the broker, (h) any other brokerage relationship which would conflict with the client's interest, and (c) the compensation of broker and whether commissions will be shared with other brokers. In this agreement, the term "broker" shall mean a licensed South Carolina real estate broker and the broker's affiliated licensees.

5. Title. Seller shall convey good and marketable title to the Property to Purchaser by general warranty deed subject only to (a) zoning ordinances affecting the Property, (b) general utility and right-of-way easements serving the Property, (c) subdivision restrictions of record and items reflected on the recorded plat as of the closing date, and (d) other restrictions and encumbrances herein specified (see Stipulation # N/A). Purchaser shall have a reasonable time after the effective date of this agreement in which to examine title and in which to furnish Seller with a written statement of objections (other than the foregoing) which materially and adversely affect the marketability of title. Purchaser and Seller agree that marketable title shall mean title which a reputable title insurance company, licensed to do business in the State in which the Property is located, will insure at its regular rates. Seller shall have until closing to satisfy all valid objections and if Seller fails to satisfy such valid objections, then Purchaser may terminate this agreement by written notice to Seller, the builder deposit and other deposits made hereunder shall be returned to Purchaser, and the parties shall have no further rights or obligations hereunder.

6. Covenants. Purchaser acknowledges that the Property is or will be subject to recorded protective covenants, that Purchaser has received a copy of such covenants or substantially similar covenants, and that Purchaser and the Property shall be bound by the recorded covenants. Purchaser acknowledges that only the neighborhood association having jurisdiction over the Property is authorized to approve architectural alterations and that approval or assistance of any type provided by any sales agent, builder representative or other person or entity shall not be sufficient to authorize any architectural alteration and shall not prejudice the rights of such association to enforce the architectural control provisions of the covenants. The covenants obligate Purchaser to submit plans for all exterior alterations to home and site for prior approval. Purchaser acknowledges that the neighborhood association having jurisdiction over the Property is mandatory and Purchaser shall be a member. Purchaser shall pay dues levied by such association, including dues to be paid at closing based on the date of closing and the schedule provided by such association. If the Property is not shown on a recorded plat as of the effective date of this agreement, Purchaser acknowledges that the boundaries of the Property as finally platted may vary slightly from preliminary boundaries. Purchaser also acknowledges that the final boundaries of the Property shall be as per latest recorded plat thereof as of date of closing (and not as on any lot survey or other document provided at closing or otherwise). Boundaries are not established by landscaping, trees, fencing, Purchaser assumptions or other action, or anything other than the latest recorded plat as of the date of closing, and Seller shall have no obligation, responsibility or liability whatsoever for issues arising out of the foregoing. Purchaser's Initials PTP

7. Loan. A written loan application shall be made by Purchaser within 10 days after the date of Purchaser's offer (as noted in the upper right-hand corner of the first page of this agreement). Within 30 days after the effective date of this agreement, Purchaser shall obtain a lender commitment letter with all conditions fully disclosed and acceptable to Seller and provide a copy of such letter to Seller. If Purchaser fails to obtain and provide a copy of such letter within such 30 day period, Seller may at any time thereafter terminate this agreement and retain the builder deposit and all other deposits hereunder as liquidated damages. In addition, if Purchaser fails to make timely written loan application, or fails at any time to supply the necessary information on a timely basis to allow for loan processing, or fails at any time to diligently pursue loan approval in good faith, all as determined in Seller's reasonable discretion, Seller may at any time terminate this agreement and retain the builder deposit and all other deposits hereunder as liquidated damages. Upon termination of this agreement and payment of monies pursuant to this paragraph, the parties shall have no further rights or obligations hereunder. Purchaser's Initials PTP

Wieland Financial Services is familiar with the building practices of Seller and the unique attributes, including the protective covenants, applicable to the Property. As a result, Seller requires, but does not require, the use of Wieland Financial Services for loan application and processing to benefit both Purchaser and Seller. Purchaser's Initials PTP

Construction Matters

8. Materials. If items or materials are not available when needed, Seller may substitute items or materials of equal or better grade, in Seller's reasonable discretion. Seller may also make substitutions of equal or better grade where such substitutions would be consistent with Seller's general practice. Purchaser acknowledges that the color and grade of certain materials used in the home may vary from the selections made by Purchaser due to factors beyond the control of Seller. Purchaser agrees that industry standards, as determined in the reasonable exercise of Seller's discretion, shall govern the acceptability of any particular variance. For example, the colors of exterior siding and interior stain and the color and size of brick and stone may be slightly different than that selected by Purchaser. If Seller reasonably determines that any such variation is within industry standards, Purchaser shall be bound by such determination. Purchaser further acknowledges that Seller shall not be required to obtain Purchaser's consent for changes, deviations or omissions to the home during construction which do not adversely affect the value of the home and which are necessitated by: action of governmental authorities; lender, FHA or VA requirements; or particular Job-site conditions.

9. Selections. Purchaser shall select, within stated allowances, if not already installed:
(a) Level II carpet installed with pad.
(b) Level I vinyl.
(c) Lighting fixtures and ceiling fans @ $ 3,000.00 total.
If Purchaser's selections exceed stated allowances, Purchaser shall pay Seller the difference in cash at the time of selection. An additional deposit of 50% of all design options exceeding the stated allowances will be

KELLER WILLIAMS 09/01/2009 12:22 8043425228 PAGE 18/38

collected with the written addendum to add them. All such amounts to be credited to Purchaser at closing. The foregoing deposits shall be non-refundable unless Seller is unable or unwilling to close, and Purchaser hereby acknowledges that such deposits and any interest thereon are a part of Seller's liquidated damages upon Purchaser's default. IF PURCHASER REFUSES TO SCHEDULE AN APPOINTMENT TO MAKE DECORATING SELECTIONS FOR THE PROPERTY WITHIN 14 DAYS OF THE DATE OF PURCHASER'S OFFER (AS NOTED IN THE UPPER RIGHT-HAND CORNER OF THE FIRST PAGE OF THIS AGREEMENT), PURCHASER SHALL BE IN DEFAULT. ANY DELAY BY PURCHASER IN MAKING DECORATING SELECTIONS WILL DELAY THE CLOSING DATE. Purchaser acknowledges that all items to be selected by Purchaser have been made, are installed, and are acceptable except as noted in Stipulation # N/A.

10. Alarm System/Other. The alarm system, if standard for this neighborhood, shall include all first floor operable windows (lower windows only) and doors, including basement level windows (lower windows only) and doors. Seller neither provides nor installs toilet paper holders or towel racks.
11. Insulation. Insulation will be installed in the exterior walls and upper-level ceilings as follows:
    - [ ] (a) Exterior walls of first and second floor heated living areas will be insulated with fiberglass insulation to a thickness of 5-1/2 inches, which thickness, according to the manufacturer, will yield an R value of 13.
    - [ ] (b) Upper-level ceilings above all heated living areas with sufficient head room to allow for blown insulation will be insulated with blown fiberglass insulation yielding an R value of 30 and a thickness as required by the manufacturer to achieve the R value designated, which thickness shall be posted in the attic, or
    - [ ] (c) Upper-level ceilings above all heated living areas that do not allow for blown insulation will be insulated with fiberglass batt insulation having a thickness of six inches, which thickness, according to the manufacturer, will yield an R value of 19.
    - [ ] (d) Floors over crawl spaces will be insulated with fiberglass batt insulation having a thickness of 6 inches, which thickness, according to the manufacturer, will yield an R value of 19.

    Purchaser acknowledges that the above R value information is based solely upon information supplied by the manufacturer or installer and Seller does not warrant the accuracy of this information. Purchaser further acknowledges that R value may vary based upon normal construction variances in insulation thickness and openings in walls.
12. Seller's Approval of Certain Matters. Seller reserves the right to approve the lot, house placement, driveway location, number of deck steps included in Purchase Price and all exterior colors. No structural or mechanical changes will be made to the Property once framing is complete, unless otherwise provided in this agreement.
13. Sewer and Water Service. Seller warrants that the improvements on the Property are served by [X] public sanitary sewer, [ ] septic tank. Seller warrants that the improvements on the Property are served by [X] public water, [ ] well system, [ ] other. Purchaser's Initials PTP
14. Non-Interference by Purchaser. Neither Purchaser nor Purchaser's agents may do any work on the Property or enter the Property prior to closing without prior written permission of Seller, which permission may be withheld for any reason. Purchaser may visit the Property prior to closing, but shall not interrupt or interfere with sales or construction in the neighborhood. Purchaser shall direct questions to the sales agent or community coordinator for the neighborhood.

Pre-Closing Issues

15. Inspection. Purchaser, at Purchaser's expense, may have the Property and all improvements inspected prior to closing by a mutually agreeable independent property inspector. If such an inspection is made, the inspector shall diligently and comprehensively evaluate all aspects of the Property and all improvements. However, the inspector may not attend the New Home Orientation meeting between Purchaser and Seller. If the inspection report discloses items which do not comply with applicable building or health codes, Seller shall immediately proceed to correct such items and diligently pursue correction to completion. Items other than such code violations shall be resolved in accordance with Seller's standard pre-closing and post-closing warranty work procedures. Prior to commencement of the inspection, Purchaser and Seller shall agree upon the inspector in writing. Any written report prepared by the inspector shall be delivered to Seller not later than fifteen (15) days prior to closing and prior to New Home Orientation. FAILURE TO FOLLOW THE AFOREMENTIONED PROCEDURE WILL NECESSITATE THE POSTPONEMENT OF ANY AGREED UPON CLOSING DATE. Purchaser's Initials PTP, Seller's Initials
16. Pre-Closing Occupancy. Seller recommends that Purchaser allow two (2) full days between scheduled closing date and furniture move-in to accommodate unforeseen delays in actual closing. Seller's policy is not to allow occupancy prior to closing. However, Seller, at its sole option, may permit the Purchaser to occupy the Property prior to closing. Purchaser acknowledges, however, that Seller is under no obligation to allow Purchaser to occupy the Property prior to closing, and that refusal of Seller to grant permission to Purchaser to so occupy in no way affects any other part of this agreement. If permission is granted, a mutually agreeable occupancy agreement shall be executed prior to occupancy.

Closing

17. Closing. The sale shall be closed not later than 7 days after completion of the home (New Home Orientation walk-through items excepted). Notwithstanding anything to the contrary herein, Seller shall complete construction of the home on the Property within two (2) years after the effective date of this agreement. Possession of the Property shall be granted by Seller to Purchaser no later than closing.

Seller's Initials MH Purchaser's Initials PTP Broker's Initials RH Selling Broker's Initials

18. Closing Costs. Seller shall pay the recording fee, which is calculated based on the value of the Property. Purchaser shall pay prepaid items including any prepaid interest and provide a paid-up insurance policy at closing. Purchaser shall pay closing costs, loan costs and discount points (see Stipulation # N/A). Purchaser shall pay mortgage insurance down payment, if any, as required by Purchaser's lender. Purchaser shall reimburse Seller at closing $ 350.00 for the cost of the survey (THE SURVEY WILL BE ORDERED BY SELLER AND WILL BE DONE BY A SURVEYOR OF SELLER'S CHOICE). Taxes shall be estimated and prorated at closing based on the best available tax information. If the closing is held after a tax bill has been issued for the year of closing, prorations at closing shall be final. If closing is held before actual taxes for the year of closing are known, Seller and Purchaser agree to adjust the estimate of taxes promptly upon request of the other based on actual taxes for the year of closing when those taxes are billed agree to make refund payments to each other as appropriate based on the adjusted estimate (and such payments shall incur a late fee of 10% of the amount due, if not paid within 30 days after demand for payment is made, and shall bear interest at 12% per annum from 30 days after demand for payment is made until paid). Seller may suspend warranty work until Purchaser makes any reproration payment requested by Seller. The parties acknowledge that taxes may increase significantly if the Property is located in a county that undergoes property tax reassessment. If the county in which the Property is located has passed a 15% tax cap ordinance as allowed by SC Code Section 12-37-223A(A), the parties acknowledge that there may be an additional, substantial increase in property taxes for the tax year following closing.

19. Closing Attorney and Documents. Seller reserves the right to select the closing attorney as long as costs are equal to or less than those available to Purchaser from alternate sources. Any closing costs incurred at the request of or for the special benefit of Purchaser, including, but not limited to, courier, express mail or unusual copying requirements, shall be the expense of Purchaser. Both parties shall execute and deliver all documents necessary to close.

20. Termites. Seller shall deliver to Purchaser at closing a certificate stating that the Property has been treated against termite infestation by a termite control agency.

21. Rents and Appraisal. All charges for extras added by Purchaser not already paid and rent not already paid, if any, shall be payable in certified funds acceptable to Seller at closing. If the Property does not appraise at an amount at least equal to the Purchase Price, Purchaser shall pay any additional amount needed to close in certified funds acceptable to Seller.

22. Warranty and Arbitration. Purchaser and Seller hereby agree that, in connection with the sale contemplated by this agreement, Purchaser will be enrolled in the John Wieland Homes and Neighborhoods 5-20 Extended Warranty program (JWH Warranty), the JWH Warranty being incorporated herein by reference. THERE ARE AND WILL BE NO OTHER OR FURTHER WARRANTIES OR REPRESENTATIONS ON THE PROPERTY AND IMPROVEMENTS (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, WORKMANLIKE QUALITY, HABITABILITY, SUITABILITY FOR RESIDENTIAL PURPOSES, OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE), EITHER EXPRESS OR IMPLIED, WRITTEN, ORAL OR STATUTORY, MADE BY SELLER OTHER THAN AS EXPRESSED IN THE JWH WARRANTY, AND ALL SUCH OTHER WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED BY SELLER. THE JWH WARRANTY IS ALSO GIVEN BY SELLER AND ACCEPTED BY PURCHASER IN LIEU OF ALL OTHER RIGHTS OR REMEDIES THAT PURCHASER HAS OR MAY HAVE AT LAW OR IN EQUITY AGAINST SELLER RELATING TO THE PROPERTY, CONSTRUCTION ON THE PROPERTY, AND THE CONDITIONS OR CIRCUMSTANCES EXISTING ON THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY RIGHTS OR REMEDIES BASED ON NEGLIGENT CONSTRUCTION, MISREPRESENTATION, ANY TORT, VIOLATION OF ANY CODE, STATUTE OR RULE, BREACH OF CONTRACT (EXPRESS OR IMPLIED), OR BREACH OF WARRANTY (OTHER THAN BASED ON THE TERMS OF THE JWH WARRANTY), AND ALL SUCH OTHER RIGHTS OR REMEDIES ARE HEREBY EXPRESSLY WAIVED BY PURCHASER. PURCHASER ACKNOWLEDGES THAT PURCHASER HAS RECEIVED AND READ A COPY OF THE CURRENT JWH WARRANTY AND CONSENTS TO THE TERMS THEREOF, INCLUDING, WITHOUT LIMITATION, THE MANDATORY BINDING ARBITRATION PROVISIONS CONTAINED THEREIN. Certain appliances and other consumer products sold as part of the improvements are covered by manufacturers' warranties. Purchaser is entitled to examine those warranties upon request to the Seller.
Purchaser's Initials _____ Seller's Initials _____.

Post-Closing Matters

23. Trees. Seller shall have no obligation, responsibility or liability whatsoever for (1) trees and/or shrubbery that Seller would have removed, or had planned to remove, during construction but which Purchaser specifically requested not be removed, (2) natural areas left undisturbed by Seller, including, without limitation, drainage in such areas, (3) site drainage other than as stated in the JWH Warranty, and (4) trees of any kind whatsoever.

24. Heating and Cooling Systems. Purchaser acknowledges that different people have different expectations and operating practices regarding the heating and cooling systems for a home and that the performance of such systems can be affected by the orientation of a room or home in relation to the sun. The heating and cooling systems for the Property have been sized and designed in accordance with industry standards for the type and size of home to be constructed. If the heating and cooling systems operate in accordance with industry standards, Purchaser shall not make any claim against Seller with respect thereto.

25. CHANGES IN DEVELOPMENT PLANS AND AMENITIES. PURCHASER ACKNOWLEDGES THAT CURRENT DEVELOPMENT PLANS FOR THIS NEIGHBORHOOD ARE SUBJECT TO CHANGE WITHOUT NOTICE AND NO GUARANTEES ARE MADE THAT ANY OF THE COMPONENTS

Seller's Initials _____ Purchaser's Initials _____ Broker's Initials _____ Selling Broker's Initials _____
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PRESENTLY PROPOSED WILL BE A PART OF THE NEIGHBORHOOD, OR THAT ADDITIONAL COMPONENTS WILL NOT BE ADDED TO THE NEIGHBORHOOD. IF SOME OR ALL OF SUCH COMPONENTS ARE PROVIDED, NO GUARANTEES ARE MADE AS TO THE DATE OF AVAILABILITY FOR USE OR THAT CURRENT PLANS WILL ACCURATELY REFLECT ACTUAL CONSTRUCTION OR LOCATION OF SUCH COMPONENTS.

26. Construction Easement. Purchaser grants to Seller a grading and construction easement 5 feet in width from adjacent property, onto the Property for temporary access for construction on other property which lies adjacent to the Property; provided, such easement shall not interfere with Purchaser's use of the Property, and any damage to the Property shall be repaired by Seller. Such easement shall exist only during the period of construction upon adjacent property. Purchaser shall keep unobstructed all drainage structures and easements as shown on the recorded plat and the survey which will be provided at closing.
27. Photography of Property. Purchaser grants Seller the right to obtain and use photography of the Property for publication and advertising purposes.

General

28. Default Prior to Closing. If Purchaser defaults under this agreement prior to closing, Seller may elect to receive the builder deposit and all other deposits as agreed-upon liquidated damages, in which event this agreement shall terminate and Purchaser and Seller shall have no further rights or obligations hereunder. Alternatively, Seller may elect to seek enforcement of this agreement by specific performance. Upon default by Purchaser prior to closing, Purchaser shall, notwithstanding anything to the contrary herein, also immediately pay the full amount of the real estate commissions due hereunder. Broker and Selling Broker may jointly or independently pursue Purchaser for that portion of the commission which they would have otherwise received had this transaction closed. If Seller defaults under this agreement prior to closing and such default is the sole cause of this transaction not closing, Purchaser may elect to receive a refund of all deposits, in which event this agreement shall terminate and Purchaser and Seller shall have no further rights or obligations hereunder. Alternatively, Purchaser may elect to seek enforcement of this agreement by specific performance. In no event shall any party have the right to seek damages from another party upon default prior to closing, except the recovery of liquidated damages pursuant to this agreement.
29. Termination Prior to Closing. If, prior to closing, a dispute arises between Purchaser and Seller concerning construction, boundaries, consideration or any other matter relating to this transaction and such dispute cannot be resolved within 10 days after the dispute has arisen by both parties acting reasonably and in good faith, Seller shall have the right to terminate this agreement upon written notice (by certified mail, return receipt requested, or personal delivery) to Purchaser. Upon termination, Seller shall pay to Purchaser the sum of $100.00 and shall, in addition, return all monies paid by Purchaser pursuant to this agreement, together with simple interest on such monies at the rate of 6 percent per annum from the date of deposit of Purchaser's payments. Upon termination, the parties shall have no further rights or obligations hereunder and such termination shall not be a default by any party. For the purposes of this provision, a tender of the monies by Seller to Purchaser will be sufficient, whether or not accepted by the Purchaser.
30. Force Majeure. Notwithstanding anything to the contrary contained herein, Seller shall be excused for the period of delay occasioned by circumstances beyond the control of Seller, including, without limitation, delay caused by the Purchaser, any labor strike or unrest affecting performance of work hereunder, failure of Seller's suppliers of materials to deliver requested materials, delay and/or failure due to computer viruses, "bugs" or other computer-related disruptions, riots, and acts of God, including, but not limited to, fire, windstorm, flood, tornadoes, earthquakes, lightning or other casualty. Seller shall not be liable for any inconvenience or expense to Purchaser caused by events beyond Seller's control.
31. Entire Agreement and Disclosures. This agreement constitutes the sole and entire agreement between the parties hereto and no modification of this agreement shall be binding unless attached hereto and signed by, at a minimum, Purchaser and Seller (any parties other than Purchaser and Seller not being necessary parties to the execution of any modifications to this agreement unless such modifications adversely affect the commission to be paid hereunder). NO REPRESENTATION, PROMISE, OR INDUCEMENT NOT INCLUDED (WHETHER MADE BY AN AGENT OR REPRESENTATIVE OF SELLER OR OTHERWISE) IN THIS AGREEMENT SHALL BE BINDING UPON ANY PARTY HERETO, INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS REGARDING PROPERTY BOUNDARIES, ADJACENT PROPERTY, OR AMENITIES.

Purchaser acknowledges the following:

(a) any association budget that may be provided to Purchaser (Seller being under no obligation to provide any such budget) is based on estimated expenses only, and assessments may increase or decrease significantly when the actual expenses of the association become known;
(b) the Property is located adjacent to or in the vicinity of thoroughfares which could be improved or widened in the future;
(c) the views from the Property can change over time due to, among other things, additional development and the removal or addition of landscaping;
(d) no representations are made regarding zoning of adjacent property, and the zoning category to which adjacent property is subject may change;
(e) no representations are being made regarding which schools may now or in the future serve the Property;
(f) since in every neighborhood there are conditions which different persons may find objectionable, Purchaser acknowledges that there may be conditions outside of the Property which Purchaser finds objectionable and that it shall be the sole responsibility of Purchaser to become acquainted with neighborhood conditions which could affect the Property; and

Seller's Initials _____ Purchaser's Initials PTP Broker's Initials RH Selling Broker's Initials _____

(g) no representations are made that the Property and/or home/unit thereon is or will be soundproof or that sound may not be transmitted from one property and/or home/unit to another.

32. Time of Essence. Time is of the essence of this agreement.

33. Liquidated Damages. In all cases where a party is entitled to receive liquidated damages hereunder, the parties acknowledge that such damages cannot be determined with certainty, the amount to be paid represents the parties' best estimate of such damages, and such payment shall not constitute a penalty.

34. Miscellaneous. Each provision of this agreement is severable from every other provision and if any provision is determined to be unenforceable, the parties shall be bound by the remaining provisions. No provision of this agreement shall be construed more strictly against a party because that party or its agent prepared or is deemed to have prepared such provision. The failure of any party to exercise any right hereunder at any particular time shall not be deemed a waiver of such party's rights. Titles or captions of sections contained in this agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this agreement or the intent of any provisions hereof. References to the singular shall mean, where applicable, the plural. This agreement shall not be binding until both Purchaser and an authorized representative of Seller have both executed the same copy of this agreement. However, some time periods hereunder begin to run from the date of Purchaser's offer (as noted in the upper right-hand corner of the first page of this agreement). A signature transmitted by facsimile machine shall be treated as an original signature.

35. Survival. The terms and conditions contained herein shall not survive closing or termination of this agreement and shall merge upon delivery of the warranty deed, except for the provisions of the last sentence of Section 1 and Sections 2, 3, 4, 6, 7, 9, 11, 18, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35, which shall survive closing or termination of this agreement and shall not merge upon delivery of the warranty deed.

THE EFFECTIVE DATE FOR THIS AGREEMENT SHALL BE THE DATE THAT IT IS LAST EXECUTED BY PURCHASER OR SELLER.

6/9/08 Date Executed

6/7/08 Date Executed

6/9/08 Date Executed

6/7/08 Date Executed

Selling Broker: Keller Williams

Broker-in-Charge Date

By: [signature] Date Executed 6/7/08

DFRE

See Addendum "1" which is part of this contract.

Seller's Initials _____ Purchaser's Initials BTP BH Broker's Initials RH Selling Broker's Initials JJS

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ADDENDUM ONE

Addendum One to contract between John Wieland Homes (seller) and Peter T. Phillips and Summer C. Phillips (buyers) dated June 5, 2008 for purchase of property located at 1417 Hooper Street, Pacific Beach.

This addendum by this reference below becomes part of the above referenced contract.

~~2. John Wieland Homes agrees to complete the third floor heated and cooled room, bath, closets as part of the contract price. Selections to be made by purchaser in a timely manner.~~

1. John Wieland Homes warrants by signature below that the property is not in a flood zone. Wieland further agrees to provide buyer with "flood zone" property is located in within ten days.

3. John Wieland Homes agrees to allow buyer ten (10) days to meet with its interior and exterior painting for option selections. If parking is not sold then any buyer has the option to void this contract without penalty.

4. Buyer's deposit & cancellation will be applied towards the total purchase price of 1417 Hooper and final purchase price reached by buyer. Escrow will provide buyer written verification that it received.

Buyer 6/7/08 Date

Buyer Date

Seller 6/9/08 Date

John Wieland Homes agrees to complete third floor heated and cooled room, bath, closets as part of contract price. Selections to be made by purchaser in a timely manner.

~~T.C selections made by designer during the contingency period are not satisfactory to buyer, buyer may release Contract by written notice and receive earnest money refund.~~

Legible Copy
(Before changes)

ADDENDUM ONE

Addendum One to contract between John Wieland Homes (seller) and Peter T. Phillips and Summar C. Phillips (buyers) dated June 5, 2008 for purchase of property located at 1417 Hooper Street, Daniel Island.

This addendum by signature below becomes part of the above referenced contract.

1. John Wieland Homes agrees to complete the third floor heated and cooled room, bath, closet as part of the contract price. Selections to be made by purchaser in a timely manner.

2. John Wieland Homes verifies by signature below that the property is not in a "V" flood zone. Wieland further agrees to provide buyer with "flood zone" property is located in within ten days.

3. John Wieland Homes agrees to allow buyer ten (10) days to meet with design center and obtain pricing on option selections. If pricing is not satisfactory buyer has the option to void this contract without penalty.

4. Buyer's agent 3% commission will be applied towards the total purchase price of 1417 Hooper and final purchase price reduced by same. Broker will provide letter acknowledging this if required.

Buyer	Date 6/7/08
Buyer	Date 6/7/08
Seller	Date

REAL ESTATE CONTRACT ADDENDUM A

This is an Addendum to that certain Real Estate Contract dated June 5, 2008 between Purchaser(s) Peter J Summar Phillip and John Wieland Homes of South Carolina, Inc. Seller, for property located at Parcel M, Block Z, Lot 3 also known as 1417 Hooper Street, Charleston SC 29492.

SALE OF PRESENT HOME CONTINGENCY (RIGHT OF FIRST REFUSAL)
This agreement is contingent upon Purchaser's ability to sell and close the following Property, 619 Palmetto Dr, Mt Pleasant, SC 29464 (address, City, state, zip), on or before July 15, 2008. Purchaser agrees to use Purchaser's best efforts in good faith to sell and close such property (which shall include listing such property on or before 10 days after the effective date of this agreement). Within 14 days after the effective date of this agreement, Purchaser shall provide to Seller a comparable market analysis report (CMA) and a copy of the listing agreement from the above referenced Property. If, however, such property has not closed within the specified time, Purchaser, at Purchaser's option, shall perform this agreement, if qualified (as determined by Seller), or shall elect to terminate it, in which latter event all deposits shall be refunded to Purchaser. Seller's determination that Purchaser is not qualified shall be treated as an election by Purchaser to terminate. For so long as this contingency exists, Seller shall have the right to continue to offer the Property for sale (which may include, without limitation, listing the Property with listing services, listing the Property on Seller's neighborhood availability and price sheet, and placing a "For Sale" sign on the Property). If Seller shall obtain an offer for the Property that is satisfactory to Seller, Seller shall notify Purchaser or Purchaser's agent by phone or in writing and Purchaser shall have Forty Eight (24) hours from the phone conversation or from midnight on the date of mailing of written notice within which to notify Seller that (i) Purchaser elects to perform this agreement, remove this contingency, and proceed with the sale, and (ii) Purchaser's property described above has closed (or if it has not closed, Purchaser's notice shall include proof satisfactory to Seller of loan qualification covering ownership of the above-described property and the Property; this satisfactory proof is defined as a letter from Wieland Financial Services that states the Purchaser is qualified without selling current home; this does not obligate Purchaser to use Wieland Financial Services).
If Purchaser does not so notify Seller within Forty Eight (24) hours, this agreement shall terminate and all deposits hereunder shall be refunded to Purchaser. Any acts or omissions by Purchaser relating to the Property, such as, without limitation, locking a loan for the Property, are at Purchaser's own and sole risk. Seller shall have no responsibility or liability whatsoever (i) for any such acts or omissions of Purchaser, including, without limitation, refunding any loan lock fees paid by Purchaser, or (ii) to complete the home on the Property other than by the time specified in, or determined by Seller pursuant to, this agreement.

Purchasers Initials PTP PJS Sellers Initials

1

CONTINGENCY / INSTALLING SELECTIONS DURING

Purchaser and Seller have entered into a "Sale of Present Home" contingency agreement as part of this agreement. Purchaser acknowledges that while this "Sale of Present Home" contingency is in effect, Seller will not install the Purchaser's selections under Section 9 of this agreement. Seller will, instead, install selections of Seller's choosing as these items are needed during the course of construction. Should Purchaser remove the contingency in the "Sale of Present Home" agreement, Seller will install the Purchaser's selections for items that have not already been installed or ordered. This provision shall survive closing or termination of this agreement.

I/We hereby agree to accept the foregoing stipulations as Addendum A dated the 9th day of June, 2008.

Purchaser	6/10/08 Date	Seller	6/11/08 Date
Purchaser	6/10/08 Date	Selling Broker	Date 6/12/08

REAL ESTATE CONTRACT ADDENDUM

This is an Addendum to that certain Real Estate Contract dated 6/5/08 between Purchaser(s) Peter & Summer Phillips and John Wieland Homes and Neighborhoods of the Carolina's, Inc., Seller, for property located on Daniel Island at 1417 Hooper Street, Charleston, SC 29492 also known as Lot 3, Block Z, Parcel M, Smythe Park Neighborhood.

The following shall be added to the above mentioned Agreement:

1. DANIEL ISLAND DEVELOPMENT. Purchaser acknowledges that the Property is part of the planned community located in the City of Charleston, Berkeley County, South Carolina, known as "Daniel Island" ("Development"). The nature and extent of the rights and obligations of the Purchaser in acquiring and owning property in the Development shall be controlled by and subject to the approved Master Plan for Daniel Island and the Development Agreement among Henry F. Guggenheim Foundation, Daniel Island Development Company, Inc., and City of Charleston, Daniel Island, Berkeley County, South Carolina.

2. DANIEL ISLAND COMMUNITY ASSOCIATION, INC.
   (a) Governing Documents. Purchaser acknowledges that the Property is a portion of real property and improvements which have been made subject to that certain Declaration of Covenants, Conditions and Restrictions for Daniel Island Residential Zone recorded in the Register of Mesne Conveyance Office for Berkeley County, South Carolina, as it may be amended from time to time, and all exhibits thereto ("Declaration"). The nature and extent of the rights and obligations of the Purchaser in acquiring and owning the Property are controlled by and subject to the Declaration, as well as the Daniel Island Design Guidelines, and the Articles of Incorporation, the By-Laws, and the rules and regulations of the Daniel Island Community Association, Inc. ("Association"), as they may be amended (collectively, the "Governing Documents"). Purchaser acknowledges receipt of the foregoing documents and agrees to comply with all of the terms, conditions and obligations set forth therein. Purchaser further acknowledges that the plans for the construction of the home and landscaping on the Property, and any changes thereto, must be approved by the Architectural Review Board ("ARB"), as established pursuant to the Declaration.
   (b) Membership in Association. Upon conveyance of the Property to Purchaser, Purchaser shall automatically become a member of the Association and shall be subject to all assessment obligations, ARB procedures, and other provisions of the Governing Documents.
   (c) Expansion. Purchaser further acknowledges that the Development may be expanded to include additional lots in accordance with the terms of the Declaration. Purchaser also acknowledges that no obligation exists on the part of any person or entity to expand the Development to include lots other than those presently subject to the Declaration.
   (d) Amendments to the Declaration. The Declarant under the Declaration may make certain changes in or amendments to the Declaration which do not materially affect the rights of Purchaser and such changes or amendments may be made without the approval of Purchaser. In addition, the Declarant may make any amendment necessary to comply with the guidelines established by, or the requirements of, any governmental authority, title insurer, or institutional lender. Such changes or amendments shall not affect the rights and liabilities of the parties under the Agreement, or be a cause or reason for termination or revision of the Agreement.
   (e) Common Expense Assessments. The annual assessments, if any, levied by the Association against the Property as provided in the Declaration shall be prorated between Seller and Purchaser as set forth in the Agreement.
   (f) Contribution to Working Capital. At closing, Purchaser shall pay a one-time contribution to the working capital of the Association in the amount of one-sixth (1/6) of the annual assessment for the year of closing, which amount shall be in addition to, and not in lieu of, assessments thereafter coming due.

3. AMENITIES. Purchaser acknowledges that the proposed features and amenities described on the master plan and/or other Daniel Island sales or marketing brochures, announcements or other materials are based on current development plans, which are subject to change without notice. No guarantee is made that the proposed features or amenities, if constructed, will consist of the number, type, size and location as depicted on the master plan or otherwise.

4. NO JOINT VENTURE. Purchaser acknowledges and agrees that no partnership, joint venture, or principal and agent relationship exists between Seller and Daniel Island Company, Inc., and Daniel Island Associates L.L.C.

We hereby agree to accept the foregoing as an Addendum to the aforementioned Agreement, as of this 5th day of June, 2008.

Purchaser

Purchaser

John Wieland Homes and Neighborhoods of the Carolina's, Inc. (Seller)

Seller's Initials MJS Purchaser's Initials SP PTP Broker's Initials RH Selling Broker's Initials JP

SPECIAL STIPULATIONS

Attached to that certain agreement dated between Peter + Summer Phillips Purchaser, and John Wieland Homes and Neighborhoods of the Carolina's, Inc, Seller, for property known as Lot #3M of Block 8 Z of Daniel Island Smythe Park Neighborhood; being more commonly known as 1417 Hooper Street, Charleston, SC 29492.

1. PLAN SELECTION

The home to be constructed is to be a Calhoun plan built to The Smythe Park standards. The front elevation is double stacked front porch with an attached 2 Car rear entry garage with a finished room above built on a crawl space with stucco and lattice, and Hardiplank siding.

2. ORIENTATION/CLOSING DATE.

Orientation and Closing dates will be set upon completion of Bath Vanity tops.

3. ORIENTATION/FINAL WALK THROUGH

All Purchasers must attend Orientation and Final Walk Through.

4. THIS CONTRACT IS NOT ASSIGNABLE.

5. PROPERTY FOR PERSONAL USE

Purchaser represents that Purchaser is buying the property for personal use as a residence for Purchaser and/or Purchaser's family, and not for investment purposes or for immediate resale. Seller reserves the right, in its sole discretion, to require Purchaser to sign a recordable agreement, to be attached to the deed at closing, which grants Seller the option to repurchase the Property for the same purchase price paid by Purchaser at closing, if Purchaser conveys the Property within one (1) year after the date of closing. Any such agreement and any additional related provisions Seller may desire in such agreement shall be prepared by Seller and the form and substance of any such agreement shall be satisfactory to Seller in its sole discretion. Purchaser acknowledges and agrees that Seller's requirement of such agreement in no way affects any other part of this agreement and shall not constitute a default of noncompliance with this agreement by Seller. Purchaser further acknowledges and agrees that Purchaser's refusal to sign such agreement upon request shall constitute a default by Purchaser under this agreement.

6. WIEL AND FINANCIAL SERVICES

If Purchaser procures and closes a loan with Wieland Financial Services, Seller will credit Purchaser $2,500.00 towards closing costs.

Seller: John Wieland Homes & Neighborhoods of the Carolina's, Inc.

6/7/08
Date

Purchaser Date

Purchaser Date

Seller's initials _____ Purchaser's initials PTT SP Broker's initials RH Selling Broker's initials JAO

Wieland Financial Services, Inc.
Affiliated Business Arrangement Disclosure Statement

NOTICE

To: Peter + Summar Phillips Property: 1417 Hagner Street

From: John Wieland Homes and Neighborhoods, Inc. Date: 6/5/08

This is to give you notice that John Wieland Homes and Neighborhoods, Inc. ("Wieland") has a business relationship with Wieland Financial Services, Inc. ("Wieland Financial"). Wieland and Wieland Financial are owned by the same shareholders and share some common directors and officers. Because of this relationship, this referral may provide Wieland with a financial benefit.

Wieland Financial is a residential mortgage lender. Below is the range of charges for residential mortgage services by Wieland Financial:

(provider and settlement service)	(charge or range of charges)
Wieland Financial – loan processing and making loan	1.5% - 1.0% of loan amount

You are NOT required to use Wieland Financial as a condition for settlement of your loan on, or the purchase of, the subject property.

THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

ACKNOWLEDGEMENT

I/We have read this disclosure form, an understand that Wieland is referring me/us to purchase the above-described settlement service(s) from Wieland Financial, and that Wieland may receive a financial or other benefit as the result of this referral.

(Signature) (Date) 6/7/08

Seller's Initials MJ Purchaser's Initials PTP SP Broker's Initials RH Selling Broker's Initials JSO

Design Selection Checklist

Lot #: 3m Plan: Colburn Buyer: Peter + Summar Phillips

Selections available are determined by the date purchaser is able to make final decisions at the John Wieland Homes Design Center
(JW Design hours: M-F 8:00-5:00)

Purchaser is to make all selections within the allotted times at JW Design. Purchaser understands that they must finalize selections at the selection appointment(s). If selections are not finalized at the designated appointment(s), standard/base selections will be used.

****At contract, agent to call building team to confirm available selections - Richard Jackson 843-297-1424.**

SELECTIONS DATE RANGE:	SELECTIONS DATE RANGE:	SELECTIONS DATE RANGE:
1st (3 hour) Appointment: ~~Shingle Color~~ Brick (if applicable) Exterior Paint Fireplace Treatment ~~Cabinetry~~ Countertops Appliances Stair Treatment 2nd (3 hour) Appointment: Plumbing Fixtures Hardwood Interior Paint Vanity Tops Vinyl Tile Carpet 3rd (3 hour) Appointment: Lighting	1st (3 hour) Appointment: Exterior Paint (limited) Fireplace Treatment (Tech) Cabinetry Countertops Appliances Plumbing Fixtures (limited) 2nd Appointment: Hardwood (limited) Interior Paint Vanity Tops Vinyl Tile Carpet 3rd Appointment: Lighting	1st (3 hour) Appointment: Fireplace Treatment (Tech) Appliance color Hardwood (limited) Plumbing Fixtures (limited) Vanity Tops Interior Paint Vinyl In-stock Tile Carpet 2nd (3 hour) Appointment: In-stock Lighting

SELECTIONS DATE RANGE:	SELECTIONS DATE RANGE:
1st Appointment: Appliance color Hardwood (limited) Vanity Tops Vinyl Carpet	1st Appointment: Carpet

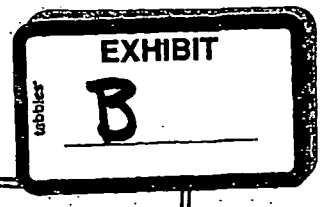
Purchaser's Signature: _____ Date: 6/7/08

Purchaser's Signature: _____ Date: 6/7/08

Neighborhood Sales Manager: _____ Date: _____

Builder's Signature: _____ Date: _____

Seller's Initials _____ Purchaser's Initials PTP _____ Broker's Initials _____ Selling Broker's Initials _____



John Wieland

5-20

WARRANTY

John Wieland
JOHN WIELAND HOMES
AND NEIGHBORHOODS

JOHN WIELAND HOMES
AND NEIGHBORHOODS

THE WIELAND 5-20 EXTENDED WARRANTY

THE WIELAND 5-20 EXTENDED WARRANTY

IN GEORGIA:
Customer Service Department, 1950 Sullivan Road, P. O. Box 87363, Atlanta, GA 30337
Phone: (770) 907-3400 Fax: (770) 907-3440
Website: www.jwcustomercare.com

IN TENNESSEE:
Customer Service Department, 300 Seaboard Lane, Suite 3, Franklin, TN 37067
Phone: (615) 790-3090 Fax: (615) 790-0075
Website: www.jwcustomercare.com

IN CHARLOTTE, NORTH CAROLINA:
Customer Service Department, 8325-D Arrowridge Boulevard, Charlotte, NC 28273
Phone: (704) 522-9200 Fax: (704) 522-9040
Email: customerservice.charlotte@jwhomes.com
Website: www.jwcustomercare.com

IN RALEIGH, NORTH CAROLINA:
Customer Service Department, 107-A Quail Fields Court, Morrisville, NC 27560
Phone: (919) 481-3309 Fax: (919) 481-9157
Website: www.jwcustomercare.com

IN CHARLESTON, SOUTH CAROLINA:
Customer Service Department, 496 LaMesa Drive, Mt. Pleasant, SC 29464
Phone: (843) 849-8787 Fax: (843) 849-8877
Website: www.jwcustomercare.com

IN KENTUCKY:
Website: www.jwcustomercare.com

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LIMITED WARRANTY

I. What is Covered

A. Workmanship. During the first year of this warranty, which commences on the day that title first transfers from Wieland or that occupancy by anyone first occurs (whichever occurs first), Wieland warrants that the Home will be free from defects in materials or workmanship, as defined in the Construction Quality Standards, except as they apply to defects in fixtures and equipment which are covered in accordance with the manufacturer's warranty.

B. Systems. During the first two (2) years of this warranty, which commences on the day that title first transfers from Wieland or that occupancy by anyone first occurs (whichever occurs first), Wieland warrants that the Home will be free from defects in the electrical, plumbing and mechanical systems, as defined in Sections X, XI and XII of the Construction Quality Standards, to include the wiring, piping and ductwork portions of the systems. This coverage applies to the HVAC system only if Homebuyer(s) document that the HVAC system has been professionally maintained (i.e., by a company or individual who is licensed as necessary and who is currently in the business of providing such residential maintenance service) per manufacturer's standards/instructions at least once per year. Defects in any of the systems resulting from failures in a fixture or piece of equipment which are covered by a manufacturer's warranty are not covered by this warranty.

C. Extended Items. During the first five (5) years of this warranty, which commences on the day that title first transfers from Wieland or that occupancy by anyone first occurs (whichever occurs first), Wieland warrants that the Home will be free from the following, as defined in the Construction Quality Standards:

1. Verified leaks, due to defects in materials or workmanship, at roof penetrations made in the course of construction.

2. Verified active flow of exterior surface water into the basement or so as to create standing water in the crawl space for at least forty-eight (48) consecutive hours, so long as the active flow is due solely to acts or omissions of Wieland. Wieland must receive written notice of any covered claim within ten (10) days of the date of discovery by Homebuyer(s). Wieland will not be responsible for anything caused by (a) breaks, leaks or bursting of water mains or pipes; (b) any grading done by or on behalf of Homebuyer(s) which causes water to flow toward the outside foundation wall; (c) failure to maintain the grade initially established by Wieland for the Home; (d) prolonged direction of water against the outside foundation wall from water spigots, sprinklers, hoses, or broken or clogged gutters; (e) bent, broken, or clogged downspouts; (f) landscaping improperly installed by or on

behalf of Homebuyer(s); and (g) an irrigation system that was not installed by Wieland.

3. Verified plumbing leaks in the exterior water service line, plumbing pipes and fittings, tubs, sinks, faucets, and toilets. Tarnishing and pitting of faucets is excluded.

4. Defects in materials or workmanship in only the following appliances selected from the Wieland selections: Oven, Range, Range Hood, Dishwasher, Garbage Disposal, Built-In Microwave, and Water Heater. After expiration of any manufacturer's warranty, Wieland will cover materials and labor as would be covered by the manufacturer's warranty.

5. Verified interior gas line piping leaks.

6. Defects in materials or workmanship in the electrical main breaker panel, electrical service disconnect, interior wiring, switches, and outlets.

7. Failure of the HVAC compressor pump and condenser coil, heat exchanger, and thermostats installed by Wieland. After expiration of any manufacturer's warranty on the above components, Wieland will replace the above components as would be covered by the manufacturer's warranty. This coverage applies only if Homebuyer(s) document that the above components have been professionally maintained (i.e., by a company or individual who is licensed as necessary and who is currently in the business of providing such residential maintenance service) per manufacturer's standards/instructions at least once per year.

8. Breaks in the hermetic seal of insulated windows, and defects in materials and workmanship in sash tracks and sash locks, as defined in the manufacturer's warranty. After expiration of any manufacturer's warranty, Wieland will cover materials as would be covered by the manufacturer's warranty.

9. Verified sewer service line leaks due to defects in materials or workmanship.

D. Structural. During the first twenty (20) years of this warranty, which commences on the day that title first transfers from Wieland or that occupancy by anyone first occurs (whichever occurs first), Wieland warrants that the Home will be free from "Structural Defects."

A "Structural Defect" is (i) actual physical damage (ii) to only the following designated load-bearing elements of the Home (iii) caused by failure of such load-bearing elements which affect their load-bearing function (iv) to the extent that the

Home becomes unsafe or unsanitary. The following elements, if load-bearing, constitute the designated elements: 1. foundation systems and footings; 2. beams; 3. girders; 4. lintels; 5. columns; 6. walls and partitions; 7. floor systems; and 8. roof framing systems. All four (4) parts of the definition must be satisfied in order for a condition to qualify as a Structural Defect. This is designed to be coverage only for catastrophic failure of load-bearing elements of the Home.

Examples of elements not covered by this warranty which are deemed not to have Structural Defect potential are: 1. nonload-bearing partitions and walls; 2. wall tile, wall paper, etc.; 3. plaster, laths, or drywall; 4. flooring and subflooring material; 5. stucco, synthetic stucco, brick or stone veneer; 6. any type of exterior siding; 7. roof shingles, sheathing and felt paper; 8. heating, cooling, ventilating, plumbing, electrical and mechanical systems; 9. appliances, fixtures or items of equipment; 10. doors, trim, cabinets, hardware, insulation, paint and stains; 11. basement slabs and other interior floating, ground-supported concrete floor slabs; and 12. water intrusion, including, without limitation, leaks in walls, roofs, plumbing, basements and crawl spaces.

II. What Wieland Will Do

A. Notwithstanding any language herein to the contrary, if a defect occurs in a warranted item during the applicable period of this warranty, Wieland will repair, replace or pay the Homebuyer(s) the reasonable cost of repairing or replacing the defective item. The choice to repair, replace, pay or combination thereof is solely that of Wieland. Wieland will also repair (or pay for the repair of) any item needing to be damaged or destroyed in order to make the warranted repair, except for improvements added after the completion of Wieland's original construction, which are the responsibility of Homebuyer(s) to remove or repair.

B. With regard to Structural Defects, Wieland will repair and/or replace the Structural Defects or make arrangements for such repairs and/or replacement. Wieland shall have complete discretion as to the methods and manners for repairing and/or replacing Structural Defects. The repair of a Structural Defect is limited to: 1. the repair of damage to the load-bearing portions only as necessary to restore the load-bearing ability of such load-bearing portions; and 2. the repair of those items of the Home damaged by the Structural Defect which make the Home unsafe or unsanitary.

C. Notwithstanding anything herein to the contrary, where Wieland shall become responsible to pay the reasonable costs of repair or replacement for Structural Defects arising at any time during the applicable period of this warranty and amounting to $2,500 or more, payment shall be made to or on behalf of the Homebuyer(s) and the mortgagee or successor mortgagees who have notified Wieland in writing of their security interest in the Home on or prior to the date of payment of the claim, as their respective interests may appear.

D. Before Wieland repairs or pays for the repair of a claim, there must be an assignment to Wieland of any rights that may exist against any other person or entity with respect to the claim. No repairs, replacements or payments made under the terms and conditions of this warranty shall act to extend this warranty or any time periods hereunder.

E. Notwithstanding anything herein to the contrary, if an item is on or in the common elements of a condominium or is otherwise under the ownership or maintenance control of a homeowners, neighborhood or condominium association, and such association refuses to allow Wieland to perform work on the item, Wieland shall be relieved of any obligation to perform work on the item, and the item shall be deemed excluded from this warranty.

III. What the Homebuyer(s) Must Do

If the Homebuyer(s) should have a complaint on any item covered by this warranty during the applicable period of this warranty, the Homebuyer(s) must send a clear and specific written complaint to Wieland (dating the defect occurrence). This written notice must be received no later than 30 days after the expiration of the applicable coverage period for such item under this warranty (except where a shorter time period is specified). The written notice must be sent to the Wieland Customer Service Department at the address listed on the Table of Contents page of this warranty. In case of an emergency problem, the Homebuyer(s) must notify Wieland immediately in order that further damages can be mitigated. The Homebuyer(s) should take reasonably immediate action if circumstances dictate the need.

However, Wieland is entitled to assess claimed defects and decide on an appropriate repair plan. Wieland is also entitled to choose to repair or replace, or to pay the fair value of the repair or replacement of, a covered defect. If Homebuyer(s) repair (or cause the repair of) the claimed defect before Wieland has an opportunity to inspect the claimed defect, it is impossible for Wieland to assess whether the defect was covered by this warranty, whether the repair made was cost-effective, necessary, and effective, and whether Wieland would have been able to solve the problem in another way. For these reasons, Wieland will not accept, nor will arbitrators be able to award to Homebuyer(s), any claimed defect which Homebuyer(s) have had replaced or repaired, except for an emergency repair which was authorized by Wieland. If Wieland is unavailable for emergency authorization, Homebuyer(s) must make minimal repairs so that further damages can be mitigated and report the emergency to Wieland as promptly as possible. Repairs will not be reimbursed unless, at a minimum, the above procedures have been followed.

IV. Exclusions

This warranty does not apply to:

A. Defects in outbuildings, including, without limitation, detached garages and detached carports (except finished space over garages and outbuildings that contain or are served by the plumbing, electrical, heating, cooling or ventilation systems serving the Home); built-in refrigerators; home theatres/entertainment components; other non-standard "extras" in the Home; swimming pools and other recreational facilities; driveways, walkways, decks and porches; patios (attached or detached), stoops and steps (except as specifically stated herein); boundary walls, retaining walls and bulkheads (except where boundary walls, retaining walls and bulkheads are necessary for the structural stability of a covered building); fences; landscaping of any kind (except as specifically stated herein); irrigation and fire suppression sprinkler systems; or any other improvements not a part of the Home; and in addition:

Any and all aspects of any "tankless" water heating system and the installation thereof, and anything else related thereto, are excluded. The foregoing specifically excludes, without limitation, (a) repair, replacement and any other aspect of such water heating system, and (b) any damage or problems with any other aspect of the Home resulting from such water heating system, including, without limitation, structural damage or matters;

B. Damage to real property that is not part of the Home;

C. Damage to or defects in concrete floors of attached or detached garages or attached or detached patio slabs that are built separate from foundation walls or other structural elements of the Home;

D. Bodily or personal injury of any kind (including physical or mental pain and suffering and emotional distress); medical, hospital, rehabilitation or other incidental or consequential expenses; attorneys' fees, court costs, experts' fees and other such expenses; or damage to any property of others;

E. Any loss or damage which the Homebuyer(s) has not taken appropriate action to minimize as soon as practicable;

F. Any defect in, or caused by, alterations made by or on behalf of Homebuyer(s), or material or work supplied by anyone other than Wieland or Wieland's employees, agents or subcontractors;

G. Loss of use, loss of opportunity, loss of market value, loss of rental value or any and all consequential loss or damages;

H. Defects in any property not included in the original Home delivered for the original final sales price;

I. Any damage to the extent it is caused or made worse by:

1. Negligence, improper maintenance, lack of maintenance or improper use or operation by anyone other than Wieland or Wieland's employees, agents or subcontractors;

2. Failure by the Homebuyer(s) to give prompt and proper notice to Wieland of any defects;

3. Changes of the grading of the ground that do not comply with accepted grading practices, including changes in, and failure to maintain, grades, swales, drainage structures, stabilized soil, and sodded, seeded and landscaped areas;

4. Changes in the level of underground water table which were not reasonably foreseeable at the time of construction of the Home;

5. Subsidence or soil movement which was not reasonably predictable through reasonable soil testing or other geological investigation at the time of construction of the Home (this does not apply to any Home with an original FHA loan still in effect);

6. Dampness, condensation, mold/mildew or any other condition arising due to the failure to maintain adequate ventilation and/or adequately low humidity levels; or

7. Failure by the Homebuyer(s) or by anyone other than Wieland or Wieland's employees, agents or subcontractors to comply with the warranty requirements of manufacturers of appliances, equipment or fixtures;

J. Loss or damage not caused by a defect or deficiency in the design or construction of the Home by Wieland or Wieland's employees, agents or subcontractors;

K. Loss or damage externally caused, including, but not limited to: acts of God; riot or civil commotion; hurricane, tornado or other windstorm; fire; explosion; smoke; water; mold/mildew; hail; lightning; falling trees or other objects; aircraft; vehicles; flood; mud slides; earthquakes; volcanic eruption; radon or other natural or introduced gases; abuse or use of the Home, or any part thereof, beyond the reasonable capacity of such part for such use; conditions or occurrences beyond Wieland's control; or by any other external cause (including, without limitation, criminal acts);

L. Any loss, damage, defect, cost or expense which is caused, in whole or in part, by any peril or occurrence for which compensation is provided in whole or in part by legislation, by class action or other lawsuit settlement, or which is covered by other insurance or public funds;

M. Rotting of any kind; mold/mildew; the presence of mold/mildew anywhere in the Home, including, without limitation, in any crawl space, unfinished basement or other unfinished or finished space (all aspects of mold/mildew, including cleaning or otherwise addressing, are the responsibility of the Homebuyer(s) as part of maintenance of the Home); the presence of radon or other natural or introduced gases; insect damage; and damage due to vermin, radiation, pollution or toxic substances of any kind;

N. Any loss or damage which arises while the Home or any portion thereof is being used for nonresidential purposes;

O. Any condition which does not result in actual physical damage to the Home;

P. Costs of shelter, transportation, food, moving, storage, or other incidental expenses related to relocation during repair, or any other costs due to loss of use, inconvenience or annoyance;

Q. Any complaint or claim on an item reported to Wieland after an unreasonable delay or later than 30 days after the expiration of the applicable coverage period for such item under this warranty (or later than any shorter time period herein specified); or loss or damage resulting from failure to comply with manufacturers' warranty requirements;

R. Normal wear and deterioration;

S. Failure of Wieland to complete construction;

T. Glass breakage and exterior hardware;

U. Failure of Wieland to perform any washing, cleaning or clean-up of any kind;

V. Structural slab foundation systems that have experienced some movement but are within the foundation's design performance criteria; separation, settlement or movement of concrete slabs within the structure at control joints (joint material maintenance is not the responsibility of Wieland);

W. Violations of local, state or national building codes, ordinances or standards;

X. Pre-existing conditions the Homebuyer(s) were aware of before closing on the Home

and knowingly accepted (waived), such as "punch list" or "orientation" items, whether or not appearing on a punch list or orientation checklist;

Y. Outside hosebibs and other hose connections;

Z. Loss or damage resulting from any failure to comply with federal, state, local or other elevation requirements, including, but not limited to: 1. failure of the lowest floor elevation of the Home to meet or exceed the base flood elevation established by the Federal Emergency Management Agency and applicable community floodplain management ordinances; and 2. errors in connection with the collection and certification of elevation information, whether committed by Wieland, an agent of Wieland or by any person authorized by state or local law or ordinance to provide floodplain management information, or by any other person;

AA. Damage due to weather conditions which exceed the specifications for any covered item;

BB. Damage to any personal property;

CC. Damage caused by any alteration to a covered item;

DD. Any aspect whatsoever related to light fixtures and fans, except as noted in Section 12.2 of the Construction Quality Standards;

EE. Performance of any covered item; operation only is covered by this warranty;

FF. Persistent failure of any covered item in many homes such that the item is considered defective as made or manufactured, as reasonably determined by Wieland; and

GG. ALL CONSEQUENTIAL DAMAGE OF ANY KIND.

V. General Provisions

A. Time is of the essence. The time limits contained in this warranty are a material condition of this warranty.

B. **Homebuyer(s)** means any and all record owners of the Home (stated in the warranty certificate applicable to the Home, if the initial Homebuyer(s)) and **Home** means the dwelling described in the warranty certificate applicable to the Home. **Builder** or **Wieland** means John Wieland Homes and Neighborhoods, Inc., in Georgia, Tennessee and Kentucky, and means John Wieland Homes and Neighborhoods of the Carolinas, Inc., in North Carolina and South Carolina.

C. A warranted defect must first occur during the applicable designated portion of the warranty for that warranted defect in order to be covered as provided in this warranty. Therefore, per Section IV.X of this warranty, any pre-existing conditions the Homebuyer(s) knew about before closing on the Home and knowingly accepted (waived), such as "punch list" or "orientation" items, are not covered.

D. No one is authorized to change, alter or add to this warranty without the express written consent of Wieland.

E. The maximum amount payable under this warranty by Wieland for all claims submitted is the original final sales price of the Home shown on the warranty certificate applicable to the Home, which includes the parcel of land on which the Home was constructed.

F. This warranty is independent of any contractual arrangement between the Homebuyer(s) and Wieland for the construction of the Home and/or its sale, if any. Nothing contained in any such contract or any other contract between Wieland and the Homebuyer(s) can restrict or override the provisions of this warranty. The contractual arrangement includes, but is not limited to, Builder substitutions or changes in plans, specifications or materials.

G. If Wieland's performance of any of its obligations is delayed by any event not resulting from Wieland's own conduct, Wieland will be excused from performing until the effects of that event are remedied. Examples of such events are acts of God or the common enemy, labor strikes, shortages of materials, war, riot, civil commotion, sovereign conduct, or acts of persons who are not parties to this warranty.

H. Wieland and Wieland's employees, agents, contractors and subcontractors must be allowed access to the Home and areas around or attached to the Home during normal business hours when claim servicing is required and to inspect, repair and conduct tests as, in Wieland's judgment, may be required. It is Homebuyer(s) responsibility to ensure this access. This warranty shall be void if this access is not permitted.

I. Anything requiring repair or replacement which cannot be repaired or replaced with items readily available in the standard marketplace will be repaired or replaced with items of similar kind and quality which are so available.

J. This warranty does not apply to appliances, consumer products, or other pieces of equipment, except as noted in Section I of this warranty.

K. Any legal action resulting from disputes between the Homebuyer(s) and Wieland that are not the direct result of provisions contained in this warranty are not the responsibility of Wieland.

L. Each successor in title to the Home, including any mortgagee in possession, in no way affects the coverage under this warranty for its unexpired term. Each such successor is also bound by the provisions of this warranty and the Construction Quality Standards. There is no limit to the number of such successions during the unexpired terms, nor any cost incurred because of such successions.

M. If, at the time of a claimed loss, there is any valid and collectible insurance, whether primary, excess or contingent, that applies to the losses, defects or claims covered by this warranty, then Wieland shall not be liable for any of said losses, defects or claims.

N. When repairing or replacing, Wieland will attempt to match and replace with the original choice of colors and materials, except where the item was custom-ordered. Due to manufacturing variances, discontinued items, natural fading, weathering, etc., Wieland cannot and does not guarantee color matches. In addition, Wieland is not accountable for discontinued items, changes in dye lots, colors or patterns, or items ordered outside of the original construction of the Home.

O. <u>Mandatory Binding Arbitration</u>. Wieland and Homebuyer(s) will cooperate with one another in avoiding and informally resolving disputes between them. Wieland and Homebuyer(s) shall first mediate formally any disputes between them, with the mediation commencing, and the mediator being selected, in the same manner as set forth below for the commencement of arbitration and the selection of an arbitrator (if the parties cannot mutually agree otherwise).

Any and all unresolved claims or disputes of any kind or nature between Wieland and Homebuyer(s) arising out of or relating in any manner to any purchase agreement with Wieland (if any), this warranty, the Home and/or property on which it is constructed, or otherwise, shall be resolved by final and binding arbitration conducted in accordance with this provision, and such resolution shall be final. This applies only to claims or disputes that arise after the later of: (a) the issuance of the final certificate of occupancy for the Home, or (b) the initial closing of the purchase

of the Home by the initial Homebuyer(s). This specifically includes, without limitation, claims related to any representations, promises or warranties alleged to have been made by Wieland or its representatives; rescission of any contract or agreement; any tort; any implied warranties; any personal injury; and any property damage.

The terms and procedures of this warranty shall first apply to any claims or disputes that are within the coverage of this warranty. In order to be able to arbitrate or mediate any warranty claims, Homebuyer(s) must first have complied with all procedures set forth in this warranty within the time limits set forth herein. Failure of Homebuyer(s) to comply with such procedures in a timely manner shall bar any such claims against Wieland.

In order to initiate arbitration for disputes, Wieland or Homebuyer(s) must provide clear and specific written notice (if to Homebuyer(s), at the Home address; if to Wieland, to Wieland's Customer Service Department at the address set forth in this warranty) to the other that such party desires to arbitrate matters in dispute, together with a description of the claim or dispute and of the damages or relief being sought. Arbitrations will be conducted by an independent, neutral, third-party arbitrator, located in the general metropolitan area where the Home is located, selected by Construction Arbitration Associates, Inc., Atlanta, Georgia (CAA) (CAA is not precluded from selecting itself); if CAA is unable or legally precluded from selecting an arbitrator, then the American Arbitration Association (AAA) shall do so (AAA is not precluded from selecting itself). As the purchase agreement with Wieland and this warranty are transactions involving interstate commerce, arbitrations shall be governed by the U.S. Arbitration Act, 9 U.S.C. Sections 1-16, to the exclusion of any provisions of state law.

Arbitrations will be conducted in accordance with rules provided or determined by the person or entity selecting the arbitrator as provided above; provided, however, if any procedural matters are not covered in those rules, the arbitrator shall decide such matters. The arbitrator will hold a hearing on the claim(s) or dispute(s) and render a decision or award, and such decision or award shall be final and binding on the parties.

If Wieland so chooses, Wieland may have its supplier(s) and contractor(s) whose work or supplies are involved in the dispute included as parties to the arbitration. Questions of whether issues are arbitrable and the actual interpretation of terms needing definition in order to arbitrate an issue shall be determined by the arbitrator.

Judgment upon an award rendered by an arbitrator may be entered in any court having jurisdiction thereof upon the application of Wieland or Homebuyer(s). Wieland shall pay all up front filing fees relating to arbitration or mediation. Each party shall bear its own costs and expenses and an equal share of the arbitrator's fees, the administrative fees of arbitration, and/or fees of mediation.

WIELAND AND HOMEBUYER(S) HEREBY ACKNOWLEDGE AND AGREE THAT THE ARBITRATION PROCEDURE SET FORTH HEREIN SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR THE RESOLUTION OF ANY AND ALL DISPUTES ARISING AFTER THE INITIAL CLOSING OF THE PURCHASE OF THE HOME BY THE INITIAL HOMEBUYER(S). WIELAND AND HOMEBUYER(S) HEREBY WAIVE ANY AND ALL OTHER RIGHTS AND REMEDIES AT LAW, IN EQUITY OR OTHERWISE WHICH MIGHT OTHERWISE HAVE BEEN AVAILABLE TO THEM IN CONNECTION WITH ANY SUCH DISPUTES.

Any dispute involving Wieland's directors, officers, shareholders, employees, agents, predecessors, affiliates or related companies shall be resolved through the foregoing mediation and arbitration process and not in a court of law. The waiver or invalidity of any portion of this Section shall not affect the validity or enforceability of the remaining portions of this Section; specifically, if it is validly determined that a particular claim or type of claim is not subject to arbitration hereunder, such determination shall not affect or invalidate the applicability of arbitration or mediation hereunder to any other claim or type of claim.

P. THERE ARE AND WILL BE NO OTHER OR FURTHER WARRANTIES OR REPRESENTATIONS ON THE HOME AND/OR PROPERTY ON WHICH IT IS CONSTRUCTED (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, WORKMANLIKE QUALITY, HABITABILITY, SUITABILITY FOR RESIDENTIAL PURPOSES, OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE), EITHER EXPRESS OR IMPLIED, WRITTEN, ORAL OR STATUTORY, MADE BY WIELAND OTHER THAN AS EXPRESSED IN THIS WARRANTY, AND ALL SUCH OTHER WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED BY WIELAND. THIS WARRANTY IS ALSO GIVEN BY WIELAND AND ACCEPTED BY HOMEBUYER(S) IN LIEU OF ALL OTHER RIGHTS OR REMEDIES THAT HOMEBUYER(S) HAVE OR MAY HAVE AT LAW OR IN EQUITY AGAINST WIELAND RELATING TO THE HOME AND/OR PROPERTY ON WHICH IT IS CONSTRUCTED, CONSTRUCTION OF THE HOME, AND THE CONDITIONS OR CIRCUMSTANCES EXISTING IN THE HOME AND/OR ON THE PROPERTY ON WHICH IT IS CONSTRUCTED, INCLUDING, BUT NOT LIMITED TO, ANY RIGHTS OR REMEDIES BASED ON NEGLIGENT CONSTRUCTION, MISREPRESENTATION, ANY TORT, VIOLATION OF ANY CODE, STATUTE OR RULE, BREACH OF CONTRACT (EXPRESS OR IMPLIED), OR BREACH OF WARRANTY (OTHER THAN BASED ON THE TERMS OF THIS WARRANTY), AND ALL SUCH OTHER RIGHTS OR REMEDIES ARE HEREBY EXPRESSLY WAIVED BY HOMEBUYER(S).

LEGAL NOTICES

For Georgia only:
GEORGIA LAW CONTAINS IMPORTANT REQUIREMENTS THAT YOU (HOMEBUYER(S)) MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO CONSTRUCTED, IMPROVED OR REPAIRED YOUR HOME. IF APPLICABLE, NINETY (90) DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS, OR BOTH. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

For Kentucky only:
SECTIONS 411.250 TO 411.266 OF THE KENTUCKY REVISED STATUTES CONTAIN IMPORTANT REQUIREMENTS THAT YOU (HOMEBUYER(S)) MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE BUILDER OF YOUR HOME. IF APPLICABLE, YOU MUST DELIVER TO THE BUILDER A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE THE BUILDER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE BUILDER. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT.

CONSTRUCTION QUALITY STANDARDS

The following Construction Quality Standards are based on standards that have been developed and accepted by the residential construction industry in general. While it is virtually impossible to develop a construction standard for each possible deficiency, Wieland has attempted to isolate the most common deficiencies that occur and in so doing list the extent of Builder and Homebuyer(s) responsibility. Where a specific deficiency has not been identified, the standard practice of the residential construction industry at the time of construction of the Home will apply.

Homebuyer(s) should be aware that all new homes go through a period of expansion and contraction. During this period, a home may experience some minor material shrinkage, cracking and other events that are unavoidable and considered normal, such as, without limitation, temporary expansion of pipes that then make contact with wall studs or other material, floor squeaks, and other noises and sounds that are part of the settlement of the home. Homebuyer(s) should also be aware that Homebuyer(s) are responsible for proper home maintenance. Damage caused by negligence, lack of maintenance, improper maintenance or changes, alterations or additions by or on behalf of Homebuyer(s), is excluded from the warranty.

The following Construction Quality Standards are expressed in terms of required standards that Wieland's construction must meet. Non-compliance with these standards calls for corrective action. Unless otherwise noted below, all following items identified are One Year (Workmanship) warranted items.

I. SITE WORK

1.1 GROUND SETTLING

•DEFICIENCY: Excessive ground settling around the foundation, utility trenches or other areas on the lot that have been excavated and backfilled affecting drainage away from the Home.
CONSTRUCTION STANDARD: Ground settling should not exceed 6 inches from the final landscaping grade established by the Builder and should not impede water drainage away from the Home.
BUILDER CORRECTION: If the Builder provided final landscaping grade, the Builder shall recompact and backfill excessively settled areas affecting drainage away from the Home one time, but only during the first year of the warranty. Any landscaping affected by the repair is not the responsibility of Builder.

1.2 LANDSCAPING

•Builder shall have no obligation, responsibility or liability whatsoever for (1) trees and/or shrubbery that Builder would have removed, or had planned to remove, during construction but which Homebuyer(s) (or predecessor) specifically requested not be removed, (2) natural areas left undisturbed by Builder, including, without limitation, drainage in such areas, (3) site drainage and/or standing or ponding water of any kind or nature whatsoever, and (4) trees of any kind whatsoever, except as specifically stated herein.
•Builder will provide a replacement shrub one time only for any shrub that dies during the first 30 days of the warranty. No labor or other materials will be provided.
•Builder guarantees the survival of at least two-thirds (2/3) of the total number of nursery-grown "B&B" transplanted trees during the first six months of the warranty, so long as they are properly cared for as determined by Builder. *Proper care includes: 1) watering: during the spring, summer and early fall, water trees at least once per week, soaking the root ball heavily; 2) fertilizing: in March, May and July, fertilize each tree with 1/3 cup of 10-10-10 fertilizer per inch of trunk diameter; and 3) mulch: maintain pinestraw mulch around the base of the tree to a depth of 3" to 4".* Any

replacement trees that may be required to meet the minimum two-thirds (2/3) total number will be replanted one time only. Dead trees will be cut flush to the ground where possible. Stumps will be ground only if the tree was in a grassed area of the front yard.

•During the first year of the warranty, Builder warrants that lawns of Bermuda and Zoysia sod that are laid when dormant will come out of dormancy. Areas of 25 contiguous square feet or less are excluded as these will grow over naturally. Areas greater than 25 contiguous square feet will be repaired one time only in the Spring.

•Fescue lawns (seed and sod) are not covered by the warranty.

II. CAST-IN-PLACE CONCRETE

•DEFICIENCY: Excessive basement or foundation wall cracks.

CONSTRUCTION STANDARD: Non-structural cracks are not unusual in concrete foundation walls. Cracks greater than 1/8 inch are considered excessive.

BUILDER CORRECTION: The Builder shall repair non-structural cracks in excess of 1/8 inch by surface patching. If needed, any such work should be done toward the end of the first year of the warranty.

•DEFICIENCY: Excessive cracking of basement floor, attached garage slab or attached patio slab, other than as excluded by Section IV.A and IV.C of the warranty.

CONSTRUCTION STANDARD: Minor cracks are common. Cracks exceeding 1/4 inch in width or 1/4 inch in vertical displacement are considered excessive.

BUILDER CORRECTION: The Builder shall repair cracks exceeding the maximum tolerances by surface patching or other methods, as required.

•DEFICIENCY: Cracks in concrete slab on grade finished floors.

CONSTRUCTION STANDARD: Cracks which significantly impair the appearance or performance of the finish flooring material are not acceptable.

BUILDER CORRECTION: The Builder shall repair cracks as necessary so as not to be apparent when the finish flooring material is in place. Repair or replace finish flooring.

•DEFICIENCY: Uneven concrete floors.

CONSTRUCTION STANDARD: Concrete floors in rooms designed and finished by Builder or habitation should not have pits, depressions or areas of unevenness exceeding 1/4 inch in 32 inches or slope in excess of 1/240 of room width or length. Not applicable to floors designed for specific drainage purposes or to slabs that have experienced some movement but are within design performance criteria.

BUILDER CORRECTION: Builder to repair or replace to meet the above standard. Surface patching shall be acceptable. Repair or replace finish flooring installed by Builder, if any.

•DEFICIENCY: Pitting, scaling or spalling of non-excluded concrete.

CONSTRUCTION STANDARD: Such concrete surfaces should not disintegrate to the extent that the aggregate is exposed and loosened under normal conditions of weathering and use. Not applicable to deterioration caused by salt, chemicals, mechanical implements, normal activities involved in the construction of the Home, and other factors beyond the Builder's control.

BUILDER CORRECTION: Builder to repair or replace to meet the above standard.

•DEFICIENCY: Excessive separation of brick or masonry edging from concrete slab and step.

CONSTRUCTION STANDARD: Cracks or separation is common, but cracks in excess of 1/4 inch are excessive.

BUILDER CORRECTION: The Builder shall grout the crack.

•DEFICIENCY: Cracking, settling, heaving or separating of structurally attached stoops or steps.

CONSTRUCTION STANDARD: Stoops or steps should not settle, heave or separate in excess of 1 inch in relation to the house structure. No cracks except hairline cracks (less than 1/4 inch) are acceptable in structurally attached concrete stoops.

BUILDER CORRECTION: Builder to take corrective action to meet standard. Surface patching shall be acceptable.

III. MASONRY

3.1 BRICK, BLOCK AND STONE

•DEFICIENCY: Excessive cracking in masonry walls.
CONSTRUCTION STANDARD: Small cracks in masonry and mortar due to shrinkage are not unusual. Cracks greater than 1/8 inch in width are considered excessive.
BUILDER CORRECTION: Repair cracks in excess of 1/8 inch by pointing or patching. It is recommended that this be done toward the end of the first year of the warranty. Horizontal cracks greater than 3/16 inch should be investigated to determine the cause. Horizontal cracks greater than 3/16 inch should be repaired by pointing, patching, reinforcement or replacement of defective area. Color matching is not guaranteed.
•DEFICIENCY: Excessive cracking in masonry walls or veneer above grade.
CONSTRUCTION STANDARD: Small cracks due to shrinkage are not unusual. Cracks greater than 1/8 inch in width are considered excessive.
BUILDER CORRECTION: Repair cracks in excess of 1/8 inch by pointing. It is recommended that this be done toward the end of the first year of the warranty. Color matching is not guaranteed.

3.2 STUCCO

•DEFICIENCY: Excessive cracking or spalling of finish surface.
CONSTRUCTION STANDARD: Hairline cracks are common. Cracks greater than 1/8 inch in width are considered excessive.
BUILDER CORRECTION: Clean out area by scraping and fill with stucco. Color, finish and texture matching are not guaranteed.

3.3 HARDCOAT STUCCO

•DEFICIENCY: Excessive cracking in hardcoat stucco wall surfaces.
CONSTRUCTION STANDARD: Hairline cracks are normal in hardcoat stucco wall surfaces. Cracks greater than 1/8 inch in width are considered excessive.
BUILDER CORRECTION: Builder to repair cracks by filling with a latex filler. Existing color and finish to be matched as closely as possible by using tinted filler or painting the repaired area. Exact matching of the color, finish and texture is not guaranteed.

IV. CARPENTRY

4.1 ROUGH CARPENTRY

•DEFICIENCY: Floor squeak.
CONSTRUCTION STANDARD: Floor areas should not have squeaks that are loud and reasonably objectionable, and the subflooring should be secure to the joists. However, there is no guarantee that floors will not squeak, so isolated floor squeaks are not defects.
BUILDER CORRECTION: Builder should locate and make every reasonable effort to repair, if caused by improper installation.
•DEFICIENCY: Uneven wood framed floors.
CONSTRUCTION STANDARD: Floors should be level within 1/4 inch in 32 inches, measured parallel to floor joists. The overall floor slope should not be in excess of L/240 of room width or length.
BUILDER CORRECTION: Builder to correct or repair to meet the above standards.

•DEFICIENCY: Bowed stud walls and/or ceilings.
CONSTRUCTION STANDARD: All interior and exterior walls and ceilings have slight variances on

their finished surfaces. Bowing should not be so visible as to detract from the finished surface. Walls and ceilings bowed in excess of L/240 of any horizontal or vertical measurement is considered excessive.
BUILDER CORRECTION: Builder to correct or repair to meet the above standards.
•DEFICIENCY: Out of plumb wood framed walls.
CONSTRUCTION STANDARD: Walls should be plumb within 1 inch in 8 feet.
BUILDER CORRECTION: Builder to correct or repair to meet the above standards.
•DEFICIENCY: Delaminating subflooring.
CONSTRUCTION STANDARD: Subflooring that delaminates on the "finish" side is a defect.
BUILDER CORRECTION: Builder to repair or replace the subflooring and replace the finish materials as needed to match the existing finish as closely as possible. Color, finish and texture matching are not guaranteed.

4.2 FINISH CARPENTRY — INTERIOR

•DEFICIENCY: Quality of finished interior trim workmanship.
CONSTRUCTION STANDARD: Joints between moldings and adjacent surfaces should not exceed 1/8 inch.
BUILDER CORRECTION: Repair joints and touch up the finish as needed to match existing as close as possible. Caulking is acceptable.

4.3 FINISH CARPENTRY—EXTERIOR

•DEFICIENCY: Quality of finished exterior trim workmanship.
CONSTRUCTION STANDARD: Joints between exterior trim elements should not exceed 3/8 inch. In all cases the exterior trim at masonry and siding shall be capable of performing its function to exclude the elements.
BUILDER CORRECTION: Repair joints and touch up the finish as needed to match existing as close as possible. Caulking is acceptable.

4.4 NAIL HOLES

•DEFICIENCY: Exposed nail heads in wood.
CONSTRUCTION STANDARD: Nail holes which have not been filled on finished painted wood are deficiencies. However, material used to fill nail holes may shrink and/or dry up over time, but this is not a deficiency. In addition, some nail holes may not be filled where, because of the product, the surface finish is not conducive or designed to have nail holes filled, and this is not a deficiency.
BUILDER CORRECTION: Fill nail holes as required to meet standard and touch up finish as necessary to match as closely as possible. Color and finish matching are not guaranteed.

V. THERMAL AND MOISTURE PROTECTION

5.1 BASEMENTS AND CRAWL SPACES

•DEFICIENCY: Active water flow into basement or so as to create standing water in the crawl space for at least forty-eight (48) consecutive hours.
CONSTRUCTION STANDARD: Leaks resulting in active flow of water through the basement walls or through the basement floor are unacceptable. Leaks resulting in active flow of water that creates standing water in the crawl space for at least forty-eight (48) consecutive hours are unacceptable. Leaks caused by landscaping improperly installed by or on behalf of Homebuyer(s) or by failure to maintain the grades established by Builder are not deficiencies. Dampness in walls and floors may occur in new construction and is not considered a deficiency.
BUILDER CORRECTION: During the first five years of the warranty, the Builder shall take such

action as necessary to correct basement and crawl space leaks as described above, except where the cause is determined to result from act or action by Homebuyer(s) or someone acting on behalf of Homebuyer(s). Any mold/mildew and/or the presence thereof anywhere in the Home, including, without limitation, in any crawl space, unfinished basement or other unfinished or finished space, is not covered. All aspects of mold/mildew, including cleaning or otherwise addressing, are the responsibility of the Homebuyer(s) as part of maintenance of the Home.

5.2 EXTERIOR SIDING

•DEFICIENCY: Loose siding; delamination, splitting or deterioration of siding.
CONSTRUCTION STANDARD: Siding should be securely fastened to the Home: It should not delaminate, split or deteriorate.
BUILDER CORRECTION: Builder to re-secure or reinstall loose siding. Builder will repair or replace delaminated, split or deteriorated siding matching the existing texture and finish as closely as possible.
NOTE: Any item related in any way to exterior siding (including, without limitation, water intrusion) is covered for one year from the commencement of the warranty.

5.3 SYNTHETIC STUCCO (EIFS)

•DEFICIENCY: Cracks in synthetic stucco wall surfaces.
CONSTRUCTION STANDARD: Cracks are normal in synthetic stucco wall surfaces. Cracks greater than 1/8 inch in width are considered excessive.
BUILDER CORRECTION: Builder to clean out area by scraping and fill with synthetic stucco to repair cracks as required and touch up the finish to match the existing finish as closely as possible. Color, finish and texture matching are not guaranteed.
NOTE: Any item related in any way to synthetic stucco (including, without limitation, water intrusion) is covered for one year from the commencement of the warranty.

5.4 ROOFING

•DEFICIENCY: Leaks at roof penetrations made in the course of construction.
CONSTRUCTION STANDARD: Roof penetrations made in the course of construction should not leak under normal weather conditions. Leaks resulting from severe weather conditions, such as ice and snow build-up, high winds and driven snow or rains, are not deficiencies. In addition, maintenance/replacement of boots and caulking are Homebuyer(s) maintenance items.
BUILDER CORRECTION: During the first five years of the warranty, Builder shall correct or repair any verified leaks at roof penetrations made in the course of construction.
•DEFICIENCY: Lifted, curled or torn shingles.
CONSTRUCTION STANDARD: Shingles should not lift, curl or tear under normal weather conditions. Accidental loss or damage from, for example, natural causes, fire, aircraft or vehicles is not a deficiency.
BUILDER CORRECTION: Builder to repair and/or replace defective shingles to match the existing shingles as closely as possible.

5.5 SEALANTS

•DEFICIENCY: Leaks in exterior walls due to inadequate caulking.
CONSTRUCTION STANDARD: Joints and cracks in exterior wall surfaces and around openings should be properly caulked to exclude the entry of water and excessive drafts. Properly installed caulking will shrink and must be maintained by Homebuyer(s) during the life of the Home; this is not a deficiency.
BUILDER CORRECTION: If requested by Homebuyer(s), Builder shall repair and/or caulk joints or

cracks in exterior wall surfaces as required to correct the deficiency. It is Homebuyer(s) responsibility to maintain the caulking.

5.6 GUTTERS AND DOWNSPOUTS

•DEFICIENCY: Gutters and/or downspouts leak or have standing water.
CONSTRUCTION STANDARD: Gutters and downspouts should not leak. Gutters should be pitched properly to drain water. Standing water in the gutter that does not exceed 1 inch in depth is acceptable. However, it is the Homebuyer(s) responsibility to keep gutters and downspouts clean so as to assure proper drainage and prevent leaks, overflow or standing water.
BUILDER CORRECTION: Repair leaks and pitch to drain properly.

VI. DOORS AND WINDOWS

6.1 INTERIOR AND EXTERIOR DOORS

•DEFICIENCY: Warping of interior and exterior doors.
CONSTRUCTION STANDARD: Exterior doors may warp to some degree due to the temperature and moisture differential between the inside and outside faces. Doors that warp so as to prevent normal closing are defective. Warping of 1/4 inch or less, measured from top to bottom, is acceptable.
BUILDER CORRECTION: Repair or replace the doors as needed and finish to match the existing doors as closely as possible.
•DEFICIENCY: Door binds against the frame. Door will not lock.
CONSTRUCTION STANDARD: Doors should operate freely without binding against the frame. The lock should operate smoothly and fit to the keeper.
BUILDER CORRECTION: Builder to adjust the door and keeper to operate freely.
•DEFICIENCY: Door panels shrink showing bare wood.
CONSTRUCTION STANDARD: Panels will shrink and expand, showing raw wood edges, with temperature and humidity changes. This is not a deficiency.
BUILDER CORRECTION: None.
•DEFICIENCY: Split door panel.
CONSTRUCTION STANDARD: Splits that allow visible light penetration through the door are defects.
BUILDER CORRECTION: Repair or replace as needed one time during the first year of the warranty. Finish to match the existing doors as closely as possible.
•DEFICIENCY: Door rubs on the carpet.
CONSTRUCTION STANDARD: The door should not rub the carpet.
BUILDER CORRECTION: Builder to trim the bottom of the door and re-seal the bottom edge.

6.2 GARAGE DOOR(S) ON ATTACHED GARAGE

•DEFICIENCY: Garage door(s) fail to operate properly.
CONSTRUCTION STANDARD: Garage door(s) should operate properly and fit the opening closely. Under heavy weather conditions, there may be some penetration by the elements.
BUILDER CORRECTION: Builder to adjust or replace garage doors as required to operate under normal weather conditions.

6.3 WOOD, METAL AND PLASTIC WINDOWS

•DEFICIENCY: Malfunction of windows.
CONSTRUCTION STANDARD: Windows should operate with reasonable ease. Double hung window sashes are permitted to move within a 2 inch tolerance when in the open position.

BUILDER CORRECTION: Builder to adjust, repair or replace as required. During the first five years of the warranty, Builder to adjust or replace wood double hung window sash tracks if necessary to correct the deficiency.

•DEFICIENCY: Condensation and/or frost on windows.

CONSTRUCTION STANDARD: Condensation on interior surfaces is caused by temperature and humidity differences. In cold weather, this will turn to frost. This is not a deficiency.

BUILDER CORRECTION: None.

6.4 SASH LOCK

•DEFICIENCY: Sash lock will not operate properly.

CONSTRUCTION STANDARD: The sash lock should be firmly attached to the window frame and close properly so as to lock the window.

BUILDER CORRECTION: During the first five years of the warranty, Builder to adjust, repair or replace the sash lock. Builder to adjust the window if the sashes do not align properly to permit the sash lock to operate.

6.5 STORM DOORS, WINDOWS AND SCREENS

•DEFICIENCY: Improper operation of storm doors, windows and screens installed by Builder.

CONSTRUCTION STANDARD: Storm doors, windows and screens should operate and fit so as to provide the protection they are intended to provide.

BUILDER CORRECTION: Builder to adjust or replace as needed.

6.6 WEATHERSTRIPPING AND SEALS

•DEFICIENCY: Air or water infiltration around doors and windows.

CONSTRUCTION STANDARD: Air infiltration is generally normal and necessary for proper ventilation of the Home, even in colder or warmer weather. Air infiltration will be noticeable around doors and windows, especially during high winds. There could be some water infiltration during high winds as well.

BUILDER CORRECTION: None. This is not a defect.

6.7 INSULATED WINDOW SEALS

•DEFICIENCY: Clouding or condensation between the panes of insulated glass.

CONSTRUCTION STANDARD: The windows should be free of clouding and condensation between the panes of glass.

BUILDER CORRECTION: During the first five years of the warranty, Builder to repair breaks in the hermetic seal of insulated windows to correct the deficiency, as defined in the manufacturer's warranty. After expiration of any manufacturer's warranty, Builder will cover materials as would be covered by the manufacturer's warranty.

VII. FINISHES

7.1 LATH AND PLASTER

•DEFICIENCY: Excessive cracks in surfaces.
CONSTRUCTION STANDARD: Hairline cracks are common. Cracks larger than 1/8 inch in width are considered excessive.
BUILDER CORRECTION: Builder to repair cracks and touch up the paint to match as closely as possible, one time only during the first year of the warranty.

7.2 DRYWALL

•DEFICIENCY: Defects caused by poor workmanship such as blisters in tape, excess compound in joints, exposed corner beads, or trowel marks.
CONSTRUCTION STANDARD: Imperfections such as occasional nail pops that do not crack the finish, seam lines and hairline cracks are common to drywall and are not defects. Depressions or slight mounds at nail heads are not defects. Blisters in tape, excess compound in joints, exposed corner beads, trowel marks, excessive nail pops and nail pops that cause cracking of the finish are defects.
BUILDER CORRECTION: Builder to correct defects to acceptable tolerance and touch up the finish to match the existing finish as closely as possible, one time only during the first year of the warranty. Significant repairs may require the entire area to be repainted. An exact color match is not guaranteed.

7.3 HARD SURFACE FINISHES (CERAMIC TILE, MARBLE, FLAGSTONE, QUARRY TILE)

•DEFICIENCY: Finish material (not the mortar or grout joints) cracks and/or becomes loose.
CONSTRUCTION STANDARD: Finish material that cracks or becomes loose is a defect.
BUILDER CORRECTION: Builder to replace any cracked materials and resecure any loose materials. Slight color and pattern variations are normal. Builder is not responsible for discontinued materials by the manufacturer. Unless the defective area is greater than 25% of the finished area, the Builder will not be required to replace the entire area.
•DEFICIENCY: Cracks in mortar or grout joints or at junctions with other material, such as a bathtub.
CONSTRUCTION STANDARD: Cracks are common under normal conditions.
BUILDER CORRECTION: Builder will repair mortar or grout as necessary, one time only in the first year of the warranty. Builder is not responsible for color variations or discontinued color grout.

7.4 HARDWOOD FLOORING

•DEFICIENCY: Cracks between the planks, squeaks and uneven floors.
CONSTRUCTION STANDARD: There are no industry standards for determining an acceptable or excessive crack. Builder will repair cracks that exceed 1/16 inch. But Homebuyer(s) must prevent excessive moisture from getting on the floor and maintain a stable temperature and humidity level in the Home year-round. Floors should be level within 1/4 inch in 32 inches.
BUILDER CORRECTION: Builder will repair cracks that exceed 1/16 inch. Cracks between planks of 1/16 inch to 1/8 inch will be repaired by filling with a color coordinated wood filling compound to match as closely as possible. Cracks that exceed 1/8 inch will be repaired by replacing the planks. Squeaks caused by defective installation will be repaired. Uneven flooring resulting from buckling, swelling, or warping that exceeds 1/4 inch in 32 inches as measured perpendicular to the planks will be repaired if caused by defective workmanship.

7.5 RESILIENT FLOORING

•DEFICIENCY: Nail pops appear on the surface of flooring.
CONSTRUCTION STANDARD: Readily apparent nail pops are a deficiency.
BUILDER CORRECTION: The Builder shall correct nail pops which have broken the surface and repair or replace the floor covering in the affected area only (not the entire floor). Builder is not responsible for discontinued patterns or color variations in tile floor covering.
•DEFICIENCY: Depressions or ridges appear in the flooring due to subfloor irregularities.
CONSTRUCTION STANDARD: Readily apparent depressions or ridges exceeding 1/8 inch should be repaired. The ridge or depression measurement is taken at the gap created at one end of a 6 inch straight edge placed over the depression or ridge with three inches on one side of the depression or ridge held tightly to the floor.
BUILDER CORRECTION: The Builder shall take corrective action as necessary to bring the defect within acceptable tolerances so that it is not readily visible. Builder is not responsible for discontinued patterns or color variations in floor covering.
•DEFICIENCY: Seams or shrinkage gaps show.
CONSTRUCTION STANDARD: Gaps shall not exceed 1/8 inch in width. Where dissimilar materials abut, the gap shall not exceed 3/16 inch.
BUILDER CORRECTION: Builder to correct. If replacement is necessary, the Builder is not responsible for discontinued patterns or color variations in the floor covering.

7.6 CARPETING

•DEFICIENCY: Carpet seams separate, carpet becomes loose or excessive stretching occurs.
CONSTRUCTION STANDARD: Seams that separate due to improper installation are a deficiency. Carpet should not come loose. Carpet should not have excessive stretching. The carpeting material itself is not covered, but is covered solely by the manufacturer's warranty.
BUILDER CORRECTION: Builder to repair seams. Builder to resecure or restretch carpeting as needed one time only during the first year of the warranty.

7.7 PAINTING

•DEFICIENCY: Mildew or fungus on painted surfaces.
CONSTRUCTION STANDARD: Mildew or fungus is a maintenance item. It is not a deficiency.
BUILDER CORRECTION: None.
•DEFICIENCY: Exterior paint or stain peels or deteriorates.
CONSTRUCTION STANDARD: Exterior paints or stains should not fail during the first year of the warranty. Fading is normal and subject to sun and weather exposure. Fading is not a deficiency. Peeling or other deterioration of exterior paint which occurs after the end of the first year of the warranty is not covered, even though some peeling or deterioration of some part of the exterior paint may have occurred during such first year.
BUILDER CORRECTION: Builder shall properly prepare and refinish affected areas only, matching the existing color as closely as possible. Color matching of paint is not guaranteed.
•DEFICIENCY: Painting required as corollary repair because of other work.
CONSTRUCTION STANDARD: Necessary repair of a painted surface under warranty will be refinished to match surrounding areas as closely as possible.
BUILDER CORRECTION: Refinish repaired areas as indicated. Color matching of paint is not guaranteed.

•DEFICIENCY: Deterioration of varnish or lacquer finishes.
CONSTRUCTION STANDARD: Natural finishes on interior woodwork that deteriorate during the first year of the warranty are a deficiency. Exterior varnish-type finishes deteriorate rapidly and are not covered.

BUILDER CORRECTION: Refinish the affected area only, matching the color as closely as possible.
•DEFICIENCY: Interior paint application and coverage.
CONSTRUCTION STANDARD: Interior paint shall sufficiently cover wall, ceiling and trim surfaces.
BUILDER CORRECTION: Builder shall repaint affected surfaces only where inadequate paint has been applied. The color shall be matched as closely as possible.
•DEFICIENCY: Paint splatters and smears on finish surfaces.
CONSTRUCTION STANDARD: Excessive splatters and smears that detract from the finish, and which can not be removed by normal cleaning methods, are a deficiency. Minor paint splatters that are not readily noticeable are not a deficiency.
BUILDER CORRECTION: Builder to clean/remove paint and restore the surface finish, matching colors as closely as possible.

7.8 WALL COVERING

•DEFICIENCY: Peeling of wallpaper.
CONSTRUCTION STANDARD: Peeling of wallpaper, not due to abuse or negligence, is a deficiency. Wallcovering installed by anyone other than Builder is not covered.
BUILDER CORRECTION: Builder to repair or replace defective wallpaper. Builder is not responsible for discontinued patterns or variations in color.
•DEFICIENCY: Mismatching in wallcovering pattern originally installed by Builder.
CONSTRUCTION STANDARD: Mismatching pattern due to workmanship over a large area that severely detracts from the appearance is a deficiency. Wallcovering installed by anyone other than Builder is not covered.
BUILDER CORRECTION: Builder to replace mismatched wallcovering. Builder is not responsible for discontinued patterns or variations in color.

VIII. FIREPLACES

8.1 FIREPLACE OPERATION

•DEFICIENCY: Fireplace or chimney does not draw properly causing smoke to enter the Home.
CONSTRUCTION STANDARD: The fireplace and chimney should function as intended. High winds can cause temporary negative draft situations. Similar negative draft situations can also be caused by obstructions such as large branches of trees too close to the chimney. In some cases, it may be necessary to open a window slightly to create an effective draft. Builder is not responsible for malfunctions due to natural causes and/or causes beyond Builder's control.
BUILDER CORRECTION: Builder to correct malfunctions caused by improper construction.

8.2 CHIMNEY

•DEFICIENCY: Chimney separating from structure to which it is attached.
CONSTRUCTION STANDARD: Newly built fireplaces will often incur slight amounts of separation from the main structure. Separation greater than ½ inch from the main structure in any 10 foot vertical measurement is a deficiency.
BUILDER CORRECTION: Builder to correct as required. Grouting or caulking is acceptable for separations up to ½ inch.

IX. CABINETRY

9.1 KITCHEN AND VANITY CABINETS

•DEFICIENCY: Cabinet doors and drawers malfunction.
CONSTRUCTION STANDARD: Cabinet doors, drawers and other operating parts should function as designed.
BUILDER CORRECTION: Builder to repair or replace.
•DEFICIENCY: Warping of cabinet doors and drawer fronts.
CONSTRUCTION STANDARD: Warpage that exceeds 1/4 inch (exclusive of any gap created by spacers), measured from the face of the cabinet frame with the door or drawer in the closed position, is a deficiency.
BUILDER CORRECTION: Builder to correct or replace as required.
•DEFICIENCY: Gaps between cabinets and the ceiling or walls.
CONSTRUCTION STANDARD: Gaps should not exceed 1/4 inch.
BUILDER CORRECTION: Adjust cabinets and countertops, or close with suitable moulding to match the finish as closely as possible. Caulking is acceptable.

9.2 COUNTERTOPS

•DEFICIENCY: Surface cracks, delaminations and chips in high pressure laminated vanity and kitchen countertops.
CONSTRUCTION STANDARD: Countertops fabricated with high pressure laminate coverings should not delaminate or have chips or surface cracks. Gaps between joints should not exceed 1/16 inch. Moisture and water build-up in seams will occur if such areas are not properly maintained by Homebuyer(s) so, unless caused by Builder, moisture and water build-up in seams is not a deficiency.
BUILDER CORRECTION: Builder to repair or replace to meet the standard.

X. PLUMBING SYSTEMS

10.1 SEPTIC TANK SYSTEM

•DEFICIENCY: Septic system fails to operate properly.
CONSTRUCTION STANDARD: Septic system should properly handle normal flow of household effluent. It is possible that an overflow can occur due to freezing, soil saturation, changes in the ground water table or excessive use of plumbing or appliances. Periodic pumping of the septic tank is considered a Homebuyer(s) maintenance responsibility and a normal need for pumping is not a deficiency.
BUILDER CORRECTION: During the first two years of the warranty, Builder to repair system to correct malfunction due to improper design or installation. Builder shall not be responsible for malfunctions which occur through negligence or abuse or natural causes (such as freezing or changes in ground water table) and/or conditions that are beyond the Builder's control. The following are considered negligence or abuse:

A. Excessive use of water, such as overuse of the washing machine and the dishwasher, including their simultaneous use.
B. Connection of sump pump, roof drains or backwash from water conditioner to the system.
C. Placing of non-biodegradable items in the system.
D. Addition of any harsh chemicals, greases or cleaning agents, and excessive amounts of bleaches or drain cleaners.
E. Use of a food waste disposer not supplied by Builder.
F. Placement of impervious surfaces over the disposal area.
G. Allowing vehicles to drive or park over the disposal area.

H. Failure to periodically pump out the septic tank when required.

10.2 PLUMBING

•DEFICIENCY: Water service line breaks or leaks or fails to deliver water.
CONSTRUCTION STANDARD: Service connections are the Builder's responsibility. The water service line should function as intended. Damage or failure resulting from neglect or abuse or landscaping activities, or from conditions beyond the Builder's control (such as, for example, without limitation, disruption or elimination of sources of water supply), is not covered.
BUILDER CORRECTION: During the first five years of the warranty, Builder to repair verified leaks in the line or restore service, if leak or failure is due to defective workmanship or materials, and restore the landscaping in the affected area. The Builder's responsibility for water service lines extends only from the Home to the water meter connection on the property on which the Home is situated.
NOTE: Should a water service line break or leak occur, Homebuyer(s) should immediately shut off the water service at the meter and call the appropriate public utility service.
•DEFICIENCY: Leakage in pipes or fittings. Leakage from pipes freezing and bursting.
CONSTRUCTION STANDARD: No leaks should exist in any plumbing pipes or fittings. Condensation on piping does not constitute leakage. Exterior hose bibs and other hose connections are not covered. Leaks occurring because of neglect or failure to maintain suitable temperatures in the Home to prevent pipes from freezing and bursting are not covered.
BUILDER CORRECTION: During the first five years of the warranty, Builder shall repair any leakage from pipes or fittings installed by Builder, except for leakage caused by freezing. During the first two years of the warranty, Builder shall repair any leakage from pipes or fittings installed by Builder caused by freezing.
NOTE: Should a water pipe leak occur, Homebuyer(s) should immediately shut off the water service and call the appropriate public utility service.
•DEFICIENCY: Stopped up sewers, fixtures and drains.
CONSTRUCTION STANDARD: Sewer fixtures and drains should operate properly. Damage, insufficient operation or clogging due to neglect, abuse, improper operation or landscaping activities, or from conditions beyond Builder's control, is not covered.
BUILDER CORRECTION: During the first five years of the warranty, where defective construction is shown to be the cause of the deficiency, the Builder will make the necessary repairs. The Builder's responsibility for sewer lines extends only to the boundary line of the property on which the Home is situated.
•DEFICIENCY: Leakage in a faucet, valve, tub, sink or toilet.
CONSTRUCTION STANDARD: No faucet, valve, tub, sink or toilet should leak due to defects in material or workmanship. Replacement and maintenance of washers and seals are the responsibility of the Homebuyer(s). Leakage due to worn washers or seals is not covered.
BUILDER CORRECTION: During the first five years of the warranty, Builder shall repair or replace the leaking faucet, valve, tub, sink or toilet.
•DEFICIENCY: Defective plumbing fixtures or trim fittings.
CONSTRUCTION STANDARD: Fixtures or fittings should operate or perform their intended function properly. Tarnishing and pitting of faucets are not covered, but are covered solely by the manufacturer's warranty. High iron content in the water will cause staining of fixtures. It is the Homebuyer(s) responsibility to treat the water, if necessary. No Builder correction is required.
BUILDER CORRECTION: During the first five years of the warranty, the Builder shall repair or replace any fixture or fitting which is outside of acceptable standards of operation or performance.

10.3 GAS LINE

•DEFICIENCY: Leakage in the interior gas line piping.
CONSTRUCTION STANDARD: No leaks should exist in any gas pipes or fittings. Damage resulting from neglect or abuse, or from conditions beyond the Builder's control (such as, for example, without limitation, disruption or elimination of sources of gas supply), is not covered.
BUILDER CORRECTION: During the first five years of the warranty, Builder to repair verified leaks in piping as necessary, if leak is due to defective workmanship or materials.
NOTE: Should a gas pipe leak occur outside the Home, Homebuyer(s) should call the appropriate public utility service immediately. If the leak occurs inside the Home, Homebuyer(s) should shut off the gas service immediately, ventilate the Home, and call the appropriate public utility service immediately.

XI. HEATING AND AIR CONDITIONING SYSTEM

11.1 HEATING

•DEFICIENCY: Inadequate heating.
CONSTRUCTION STANDARD: The heating system shall be capable of producing an inside temperature of 68 degrees Fahrenheit as measured in the center of each room at a height of 3 feet above the floor under local outdoor winter design conditions as specified in the ASHRAE handbook. There may be times when the outdoor temperature falls below the design temperature. When this occurs, the temperature in the Home may be lower than 68 degrees. Rooms located over garages and sunporches will experience a temperature differential due to their exposure, and this is not a deficiency.
BUILDER CORRECTION: Correct the heating system to meet the standard. Builder to balance dampers, registers and make other minor adjustments one time only during the first year of the warranty.

11.2 AIR CONDITIONING

•DEFICIENCY: Inadequate cooling.
CONSTRUCTION STANDARD: If air conditioning is provided, the cooling system shall be capable of maintaining an inside temperature of 78 degrees Fahrenheit as measured in the center of each room at a height of 5 feet above the floor under local outdoor summer design conditions as specified in the ASHRAE handbook. There may be times when the outdoor temperature rises above the design temperature. When this occurs, the temperature in the Home may be higher than 78 degrees. When the outdoor temperature exceeds 95 degrees, a differential of 17 degrees will be accepted as meeting the standard. Rooms located over garages and sunporches will experience a temperature differential due to their exposure, and this is not a deficiency.
BUILDER CORRECTION: Correct the cooling system to meet the standard. Builder to balance dampers, registers and make other minor adjustments one time only during the first year of the warranty. Changing and/or adding refrigerant, which should be done on at least an annual basis, is the responsibility of the Homebuyer(s).
•DEFICIENCY: Refrigerant line leak or clog.
CONSTRUCTION STANDARD: Refrigerant lines should not develop leaks during normal operation. However, condensation lines will clog under normal use. This is the maintenance responsibility of the Homebuyer(s) and requires no correction by the Builder.
BUILDER CORRECTION: During the first two years of the warranty, repair leaking refrigerant lines and recharge the unit.

•DEFICIENCY: Ductwork separates or becomes unattached.
CONSTRUCTION STANDARD: Ductwork should remain intact and securely fastened.

BUILDER CORRECTION: During the first two years of the warranty, reattach and resecure as necessary.

XII. ELECTRICAL SYSTEM

12.1 ELECTRICAL CONDUCTORS

•DEFICIENCY: Failure of wiring to carry its designated circuit load to the electrical box.
CONSTRUCTION STANDARD: Wiring shall carry the designed load for normal residential use.
BUILDER CORRECTION: During the first five years of the warranty, correct the wiring as necessary to meet the standard.

12.2 SWITCHES AND RECEPTACLES

•DEFICIENCY: Fuses blow or circuit breakers kick out.
CONSTRUCTION STANDARD: Fuses and circuit breakers should not activate under normal usage.
BUILDER CORRECTION: During the first two years of the warranty, correct the fuse wiring or breakers as necessary.
•DEFICIENCY: Malfunction of electrical outlets and switches.
CONSTRUCTION STANDARD: All outlets and switches should operate as intended.
BUILDER CORRECTION: During the first five years of the warranty, repair or replace defective switches and outlets. Light fixtures are covered solely by the manufacturer's warranty.

12.3 SERVICE AND DISTRIBUTION

•DEFICIENCY: Ground fault interrupter trips frequently.
CONSTRUCTION STANDARD: Ground fault interrupters are sensitive safety devices that protect against electrical shock and can be tripped very easily. A ground fault interrupter that does not operate as intended is a deficiency.
BUILDER CORRECTION: Builder to replace defective ground fault interrupter.

JOHN WIELAND HOMES
AND NEIGHBORHOODS

Rev 4/06

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Peter T. Phillips and Summar C. Phillips, Plaintiffs, v. Omega Flex, Inc., John Wieland Homes, and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc., Charleston LEC. Inc., Defendants.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT C/A NUMBER: 12-CP-10-3870 **Affidavit of Andrew R. McBride**

FILED
2012 DEC 18 AM 11:27
JULIE J. ARMSTRONG
CLERK OF COURT
BY

APPEARING BEFORE ME AND BEING DULY SWORN, Andrew R. McBride states the following:

1. I am a resident of Georgia, am over eighteen years of age, and competent to testify about the matters stated herein based on my own personal knowledge.
2. I am counsel for John Wieland Homes and Neighborhoods of the Carolinas, Inc. ("JWHNC") and as such I am familiar with the business records of JWHNC including the documents attached hereto.
3. I am informed and believe that JWHNC contracted with Defendants AAA Plumbing, LLC ("AAA"), Fogel Services, Inc. ("Fogel"), and Charleston LEC., Inc. ("Charleston LEC") to perform work as Trade Contractors on the home located at 1417 Hooper Street, Charleston, SC 29492.
4. Attached hereto is a true and authentic copy of the Trade Contractor Application and Agreements entered into between JWHNC and AAA (Exhibit A), Fogel (Exhibit B), and Charleston LEC d/b/a Charleston Lanehart Electric (Exhibit C).

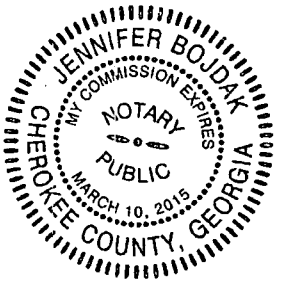
5. Each of these Trade Contractor Application and Agreements provides that the Trade Contractor "shall cooperate and participate in, as may be reasonably directed by Wieland, any arbitration proceedings arising out of the home warranty coverage provided by Wieland or otherwise related to or arising out of the construction of the homes by Wieland."

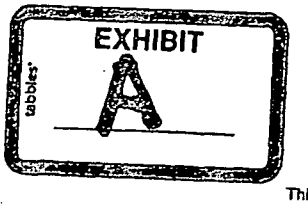
FURTHER AFFIANT SAYETH NOT.

ANDREW MCBRIDE

SWORN BEFORE ME
This 13 day of December 2012

Notary Public for the State of Georgia
My Commission Expires:





"aaaplus 6.67

JOHN WIELAND HOMES AND NEIGHBORHOODS, INC.
AND AFFILIATED COMPANIES
TRADE CONTRACTOR APPLICATION & AGREEMENT FORM

Pasted

This Trade Contractor Agreement ("Agreement") is made and entered into as of the 26 day of June, 99 by and between John Wieland Homes and Neighborhoods, Inc. ("Wieland") and AAA Plumbing ("Trade Contractor").

This form MUST be returned to the Accounting Department PRIOR TO or WITH YOUR FIRST DRAW REQUEST. Failure to return this form COMPLETED IN ITS ENTIRETY will result in a delayed payment. A complete W-9 form MUST be turned in with this application BEFORE the Trade Contractor can begin work.

NAME Robert E Veronee Jr TRADE Plumbing
COMPANY NAME AAA Plumbing NEIGHBORHOOD Legend Oaks
MAILING ADDRESS 142 Gardner In.
CITY Ridgeville STATE SC ZIP 29472
BUSINESS PHONE (843) 851-6188 SOCIAL SECURITY — — —
HOME PHONE (843) 851-3404 or FEDERAL I.D. = = : . . =

If you answer YES to either of the questions below, the Vice President of Human Resources must be notified.

YES____ NO✓ 1. HAVE YOU EVER BEEN EMPLOYED BY JOHN WIELAND HOMES AND NEIGHBORHOODS OR ITS AFFILIATED COMPANIES?
YES____ NO✓ 2. ARE YOU RELATED TO ANYONE EMPLOYED BY JOHN WIELAND HOMES AND NEIGHBORHOODS OR ITS AFFILIATED COMPANIES?
IF YES, PLEASE PROVIDE NAME:_____

If you answer YES to either of the questions below, a copy of your insurance certificate MUST be sent prior to or with your first draw. Trade Contractors who do not provide an insurance certificate will be automatically placed in Wieland's Worker's Compensation Program and the insurance premium will be deducted from payments.

YES✓ NO____ 1. DO YOU HAVE WORKERS' COMPENSATION INSURANCE COVERAGE?
YES✓ NO____ 2. DO YOU HAVE LIABILITY INSURANCE? # OF EMP. 6

EMERGENCY CONTACT Robert E Veronee Jr PHONE (843) 219-9840
ADDRESS 142 Gardner In.
CITY Ridgeville STATE SC ZIP 29472

Background Statement

Wieland and Trade Contractor desire to set forth the terms and conditions governing any and all work performed by Trade Contractor for Wieland.

Statement of Agreement

For and in consideration of the mutual covenants and benefits contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Wieland and Trade Contractor hereby agree as follows:

1. Documents and Governing Law. The documents which form the entire agreement between Wieland and Trade Contractor consist of this Agreement, Trade Contractor's W-9 tax form, the Scope of Work applicable to the work Trade Contractor is or will be performing for Wieland, the Wieland Safety Booklet, applicable Bid Sheets, the Trade Contractor Payment Policy, all material and information referenced in any of the foregoing, and all documents produced or issued pursuant to or in furtherance of any of the foregoing. For convenience, this Agreement has been translated into Spanish but the English version shall be the only valid and enforceable version. This Agreement and the entire agreement between Wieland and Trade Contractor shall be governed by, and construed and interpreted under, the laws of the State of Georgia.

2. Trade Contractor Obligations. Trade Contractor shall (a) submit to Wieland completed Bid Sheets for work to be performed for Wieland and a completed W-9 tax form, (b) perform work and all other obligations of the Trade Contractor as described in, and in accordance with, the Scope of Work provided by Wieland and according to Wieland quality standards, (c) be paid only for 100% complete work according to the defined payment structure approved by Wieland, (d) represent Wieland in a professional manner and refer customer questions or issues to Wieland, (e) furnish own tools, (f) pay all bills incurred by Trade Contractor, and (g) carry a proper business license and pay all applicable federal, state, and local taxes.

In addition, Trade Contractor and all persons performing work for or on behalf of Trade Contractor shall not damage any improvements, including, without limitation, any house, yard, driveway, walkway, material, utility service/main, road, and work of other trades, already in place. Trade Contractor shall give notices and shall comply with all federal, state, county, city and other public authority laws, ordinances, rules, regulations and orders, including, without limitation, all building codes, Occupational Safety and Health Administration ("OSHA") regulations and environmental protection laws and regulations. Trade Contractor shall also follow all the requirements and procedures set forth in the Wieland Safety Booklet.

If Trade Contractor or any person performing work for or on behalf of Trade Contractor damages any improvements already in place or performs any work which is contrary to any of the laws, ordinances, rules, regulations, orders, requirements, and procedures set forth in the immediately preceding paragraph, Trade Contractor shall be given a reasonable amount of time to correct or repair such damage or work at its sole cost and expense. If Trade Contractor does not so correct or repair such damage or work within a reasonable period of time, as determined by Wieland, Wieland shall have the right to perform such correction or repair, and Trade Contractor shall be responsible for the costs of such correction or repair and shall be subject to and responsible for paying a backcharge for such costs. Trade Contractor also shall be responsible for the payment of any fines resulting from the failure of Trade Contractor or any person performing work for or on behalf of Trade Contractor to comply with OSHA regulations, any other government regulations or the requirements and procedures set forth in the Wieland Safety Booklet, and Trade Contractor shall be subject to and responsible for paying a backcharge for such fines.

3. Insurance. Trade Contractor shall obtain and maintain in full force and effect while performing work for Wieland commercial general liability insurance (for bodily injury and property damage), worker's compensation insurance, contractual liability insurance (for bodily injury and property damage) and business auto liability insurance, if applicable. Trade Contractor's commercial general liability insurance coverage must be a minimum of $100,000.00 per occurrence and $300,000.00 annual aggregate. Trade Contractor's worker's compensation insurance coverage must be at least equal to the minimum statutory requirements with employer's liability coverage of at least $500,000.00. If Trade Contractor does not provide proof of worker's compensation insurance or such insurance does not meet the requirements set forth in the immediately preceding sentence, Trade Contractor will automatically be placed in Wieland's worker's compensation insurance program, and the premium therefor will be deducted from applicable amounts payable to Trade Contractor for work performed for Wieland.

Policies for such insurance shall contain a provision to the effect that coverage afforded under such policies may not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Wieland. Wieland shall be named as an additional insured on all such policies. Upon request by Wieland, certificates of insurance showing such insurance to be in effect shall be filed with Wieland.

4. Pricing and Payment. The pricing structure and schedule of payment for Trade Contractor's work to be performed for Wieland shall be as defined in applicable Bid Sheets submitted by Trade Contractor (subject to approval by Wieland) and in the Trade Contractor Payment Policy. All requests for compensation and payment of variance purchase orders (VPOs), purchase orders (POs) and other invoices must be complete and signed by Wieland and Trade Contractor and must comply with Wieland's compensation policy. Wieland shall inspect work promptly upon completion, and, if Wieland determines that such work is satisfactory and in accordance with the applicable building codes, industry standards and Scope of Work, Wieland shall submit and process approved VPOs, POs and other invoices for prompt payment to Trade Contractor.

Wieland reserves the right to cancel an order for work or materials if not delivered within the time period specified by Wieland or for any other reason. Wieland shall have no obligation whatsoever to pay for canceled work or materials. If Trade Contractor's work is faulty or incomplete, Trade Contractor shall be given a reasonable amount of time to correct or repair such work. If Trade Contractor does not correct or repair such work within a reasonable period of time, as determined by Wieland, Wieland shall have the right to perform such correction or repair, and Trade Contractor shall be responsible for the costs of such correction or repair and shall be subject to and responsible for paying a backcharge for such costs.

5. Acknowledgments of Trade Contractor. Trade Contractor acknowledges that Trade Contractor (a) has received and read a copy of the current Trade Contractor Payment Policy and Scope of Work applicable to the work Trade Contractor is or will be performing for Wieland and (b) is aware of Wieland's safety program and requirements and has received and read a copy of the current Wieland Safety Booklet, and Trade Contractor consents to, and agrees to be bound by and comply with, the terms of all of the foregoing. Trade Contractor also acknowledges that Trade Contractor and all persons performing work for or on behalf of Trade Contractor are subject to post-accident drug testing in accordance with Wieland policies.

6. Release and Indemnification. Trade Contractor shall be responsible to Wieland for the acts and omissions of Trade Contractor's employees, of sub-subcontractors and their agents and employees, and of other persons performing portions of any of Trade Contractor's work for Wieland. To the fullest extent permitted by law, Trade Contractor hereby releases, covenants not to sue, and indemnifies and holds harmless Wieland and its affiliates, related companies and predecessors, and their respective directors, officers, shareholders, partners, agents and employees, from, against and/or due to any and all claims, charges (including, without limitation, liens), damages, losses and expenses of every kind and nature, including, but not limited to, court costs and attorney's fees, asserted by any person or persons, including Trade Contractor and Trade Contractor's employees, arising out of, resulting from, or relating directly or indirectly to the performance of any of Trade Contractor's work for Wieland, regardless of whether or not such claims, charges, damages, losses or expenses are caused in part by a party indemnified or released hereunder. This obligation shall not be construed to negate, abridge or otherwise reduce other rights or obligations of release and indemnity which would otherwise exist as to a party or person described in this Section. In addition, this obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable or available under any statutory provisions.

7. Cooperation in Arbitration. Upon request by Wieland and at no cost or expense to Wieland, Trade Contractor shall cooperate and participate in, as may be reasonably directed by Wieland, any arbitration proceedings arising out of the home warranty coverage provided by Wieland or otherwise related to or arising out of the construction of homes by Wieland.

8. Independent Contractor. Trade Contractor, in performance of any work for Wieland, is an independent contractor and, subject to Wieland's general supervision and direction, shall have sole discretion in the performance of any such work.

9. Assignment. Trade Contractor shall not assign this Agreement or any work to be performed for Wieland, nor shall Trade Contractor subcontract the whole or any portion of this Agreement or work to be performed for Wieland, without the prior written consent of Wieland.

10. Time. Time is of the essence for this Agreement and for any work performed by Trade Contractor for Wieland.

11. Term. The terms and conditions set forth in this Agreement shall apply to and govern any and all work wherever and whenever performed by Trade Contractor for Wieland. Wieland reserves the absolute right to terminate this Agreement, with or without cause, upon ten (10) days' prior written notice to Trade Contractor. Trade Contractor reserves the absolute right to terminate this Agreement, with or without cause, upon thirty (30) days' prior written notice to Wieland. However, Trade Contractor's obligations under Sections 6 and 7 of this Agreement shall continue in effect despite any termination of this Agreement.

IN WITNESS WHEREOF, the undersigned have set their hands and seals hereto as of the date first above written.

JOHN WIELAND HOMES AND NEIGHBORHOODS, INC.

By: _____

Print Name: _____

Title: _____

TRADE CONTRACTOR: AAA Plumbing

By: Robt E Veronee Jr

Print Name: Robert E. Veronee JR.

Title: Owner

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S1341

EXHIBIT 8

JOHN WIELAND HOMES AND NEIGHBORHOODS, INC.
AND AFFILIATED COMPANIES
TRADE CONTRACTOR APPLICATION & AGREEMENT FORM

This Trade Contractor Agreement ("Agreement") is made and entered into as of the 11 day of Jun, by and between John Wieland Homes and Neighborhoods, Inc. ("Wieland") and Foyel SERVICES, INC. ("Trade Contractor").

This form MUST be returned to the Accounting Department PRIOR TO or WITH YOUR FIRST DRAW REQUEST. Failure to return this form COMPLETED IN ITS ENTIRETY will result in a delayed payment. A complete W-9 form MUST be turned in with this application BEFORE the Trade Contractor can begin work.

NAME Randall Foyel TRADE HVAC
COMPANY NAME Foyel SERVICES, INC. NEIGHBORHOOD Mamlin
MAILING ADDRESS 1010 W. Broadway St. Suite A
CITY Summerville STATE SC ZIP 29485
BUSINESS PHONE (843) 832-8176 SOCIAL SECURITY #
HOME PHONE (843) 200-3250 or FEDERAL I.D. # ____

If you answer YES to either of the questions below, the Vice President of Human Resources must be notified.

YES ____ NO ✓ 1. HAVE YOU EVER BEEN EMPLOYED BY JOHN WIELAND HOMES AND NEIGHBORHOODS OR ITS AFFILIATED COMPANIES?
YES ____ NO ✓ 2. ARE YOU RELATED TO ANYONE EMPLOYED BY JOHN WIELAND HOMES AND NEIGHBORHOODS OR ITS AFFILIATED COMPANIES?
IF YES, PLEASE PROVIDE NAME: ____

If you answer YES to either of the questions below, a copy of your insurance certificate MUST be sent prior to or with your first draw. Trade Contractors who do not provide an insurance certificate will be automatically placed in Wieland's Worker's Compensation Program and the insurance premium will be deducted from payments.

YES ✓ NO ____ 1. DO YOU HAVE WORKERS' COMPENSATION INSURANCE COVERAGE?
YES ✓ NO ____ 2. DO YOU HAVE LIABILITY INSURANCE? # OF EMP. 15

EMERGENCY CONTACT Randall Foyel PHONE (843) 200-3250
ADDRESS 1010 W. Broadway St. Suite A
CITY Summerville STATE SC ZIP 29485

Background Statement

Wieland and Trade Contractor desire to set forth the terms and conditions governing any and all work performed by Trade Contractor for Wieland.

Statement of Agreement

For and in consideration of the mutual covenants and benefits contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Wieland and Trade Contractor hereby agree as follows:

1. Documents and Governing Law. The documents which form the entire agreement between Wieland and Trade Contractor consist of this Agreement, Trade Contractor's W-9 tax form, the Scope of Work applicable to the work Trade Contractor is or will be performing for Wieland, the Wieland Safety Booklet, applicable Bid Sheets, the Trade Contractor Payment Policy, all material and information referenced in any of the foregoing, and all documents produced or issued pursuant to or in furtherance of any of the foregoing. For convenience, this Agreement has been translated into Spanish but the English version shall be the only valid and enforceable version. This Agreement and the entire agreement between Wieland and Trade Contractor shall be governed by, and construed and interpreted under, the laws of the State of Georgia.

2. Trade Contractor Obligations. Trade Contractor shall (a) submit to Wieland completed Bid Sheets for work to be performed for Wieland and a completed W-9 tax form, (b) perform work and all other obligations of the Trade Contractor as described in, and in accordance with, the Scope of Work provided by Wieland and according to Wieland quality standards, (c) be paid only for 100% complete work according to the defined payment structure approved by Wieland, (d) represent Wieland in a professional manner and refer customer questions or issues to Wieland, (e) furnish own tools, (f) pay all bills incurred by Trade Contractor, and (g) carry a proper business license and pay all applicable federal, state, and local taxes.

In addition, Trade Contractor and all persons performing work for or on behalf of Trade Contractor shall not damage any improvements, including, without limitation, any house, yard, driveway, walkway, material, utility servicemain, road, and work of other trades, already in place. Trade Contractor shall give notices and shall comply with all federal, state, county, city and other public authority laws, ordinances, rules, regulations and orders, including, without limitation, all building codes, Occupational Safety and Health Administration ("OSHA") regulations and environmental protection laws and regulations. Trade Contractor shall also follow all the requirements and procedures set forth in the Wieland Safety Booklet.

If Trade Contractor or any person performing work for or on behalf of Trade Contractor damages any improvements already in place or performs any work which is contrary to any of the laws, ordinances, rules, regulations, orders, requirements, and procedures set forth in the immediately preceding paragraph, Trade Contractor shall be given a reasonable amount of time to correct or repair such damage or work at its sole cost and expense. If Trade Contractor does not so correct or repair such damage or work within a reasonable period of time, as determined by Wieland, Wieland shall have the right to perform such correction or repair, and Trade Contractor shall be responsible for the costs of such correction or repair and shall be subject to and responsible for paying a backcharge for such costs. Trade Contractor also shall be responsible for the payment of any fines resulting from the failure of Trade Contractor or any person performing work for or on behalf of Trade Contractor to comply with OSHA regulations, any other government regulations or the requirements and procedures set forth in the Wieland Safety Booklet, and Trade Contractor shall be subject to and responsible for paying a backcharge for such fines.

3. Insurance. Trade Contractor shall obtain and maintain in full force and effect while performing work for Wieland commercial general liability insurance (for bodily injury and property damage), worker's compensation insurance, contractual liability insurance (for bodily injury and property damage) and business auto liability insurance, if applicable. Trade Contractor's commercial general liability insurance coverage must be a minimum of $300,000.00 per occurrence and $300,000.00 annual aggregate. Trade Contractor's worker's compensation insurance coverage must be at least equal to the minimum statutory requirements with employer's liability coverage of at least $500,000.00. If Trade Contractor does not provide proof of worker's compensation insurance or such insurance does not meet the requirements set forth in the immediately preceding sentence, Trade Contractor will automatically be placed in Wieland's worker's compensation insurance program, and the premium therefor will be deducted from applicable amounts payable to Trade Contractor for work performed for Wieland.

Policies for such insurance shall contain a provision to the effect that coverage afforded under such policies may not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Wieland. Wieland shall be named as an additional insured on all such policies. Upon request by Wieland, certificates of insurance showing such insurance to be in effect shall be filed with Wieland.

4. Pricing and Payment. The pricing structure and schedule of payment for Trade Contractor's work to be performed for Wieland shall be as defined in applicable Bid Sheets submitted by Trade Contractor (subject to approval by Wieland) and in the Trade Contractor Payment Policy. All requests for compensation and payment of variance purchase orders (VPOs), purchase orders (POs) and other invoices must be complete and signed by Wieland and Trade Contractor and must comply with Wieland's compensation policy. Wieland shall inspect work promptly upon completion, and, if Wieland determines that such work is satisfactory and in accordance with the applicable building codes, industry standards and Scope of Work, Wieland shall submit and process approved VPOs, POs and other invoices for prompt payment to Trade Contractor.

Wieland reserves the right to cancel an order for work or materials if not delivered within the time period specified by Wieland or for any other reason. Wieland shall have no obligation whatsoever to pay for canceled work or materials. If Trade Contractor's work is faulty or incomplete, Trade Contractor shall be given a reasonable amount of time to correct or repair such work. If Trade Contractor does not correct or repair such work within a reasonable period of time, as determined by Wieland, Wieland shall have the right to perform such correction or repair, and Trade Contractor shall be responsible for the costs of such correction or repair and shall be subject to and responsible for paying a backcharge for such costs.

5. Acknowledgments of Trade Contractor. Trade Contractor acknowledges that Trade Contractor (a) has received and read a copy of the current Trade Contractor Payment Policy and Scope of Work applicable to the work Trade Contractor is or will be performing for Wieland and (b) is aware of Wieland's safety program and requirements and has received and read a copy of the current Wieland Safety Booklet, and Trade Contractor consents to, and agrees to be bound by and comply with, the terms of all of the foregoing. Trade Contractor also acknowledges that Trade Contractor and all persons performing work for or on behalf of Trade Contractor are subject to post-accident drug testing in accordance with Wieland policies.

6. Release and Indemnification. Trade Contractor shall be responsible to Wieland for the acts and omissions of Trade Contractor's employees, of sub-subcontractors and their agents and employees, and of other persons performing portions of any of Trade Contractor's work for Wieland. To the fullest extent permitted by law, Trade Contractor hereby releases, covenants not to sue, and indemnifies and holds harmless Wieland and its affiliates, related companies and predecessors, and their respective directors, officers, shareholders, partners, agents and employees, from, against and/or due to any and all claims, charges (including, without limitation, liens), damages, losses and expenses of every kind and nature, including, but not limited to, court costs and attorney's fees, asserted by any person or persons, including Trade Contractor and Trade Contractor's employees, arising out of, resulting from, or relating directly or indirectly to the performance of any of Trade Contractor's work for Wieland, regardless of whether or not such claims, charges, damages, losses or expenses are caused in part by a party indemnified or released hereunder. This obligation shall not be construed to negate, abridge or otherwise reduce other rights or obligations of release and indemnity which would otherwise exist as to a party or person described in this Section. In addition, this obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable or available under any statutory provisions.

7. Cooperation in Arbitration. Upon request by Wieland and at no cost or expense to Wieland, Trade Contractor shall cooperate and participate in, as may be reasonably directed by Wieland, any arbitration proceedings arising out of the home warranty coverage provided by Wieland or otherwise related to or arising out of the construction of homes by Wieland.

8. Independent Contractor. Trade Contractor, in performance of any work for Wieland, is an independent contractor and, subject to Wieland's general supervision and direction, shall have sole discretion in the performance of any such work.

9. Assignment. Trade Contractor shall not assign this Agreement or any work to be performed for Wieland, nor shall Trade Contractor subcontract the whole or any portion of this Agreement or work to be performed for Wieland, without the prior written consent of Wieland.

10. Time. Time is of the essence for this Agreement and for any work performed by Trade Contractor for Wieland.

11. Term. The terms and conditions set forth in this Agreement shall apply to and govern any and all work wherever and whenever performed by Trade Contractor for Wieland. Wieland reserves the absolute right to terminate this Agreement, with or without cause, upon ten (10) days' prior written notice to Trade Contractor. Trade Contractor reserves the absolute right to terminate this Agreement, with or without cause, upon thirty (30) days' prior written notice to Wieland. However, Trade Contractor's obligations under Sections 6 and 7 of this Agreement shall continue in effect despite any termination of this Agreement.

IN WITNESS WHEREOF, the undersigned have set their hands and seals hereto as of the date first above written.

JOHN WIELAND HOMES AND NEIGHBORHOODS, INC.

By: _____

Print Name: _____

Title _____

TRADE CONTRACTOR: Fogel SERVICES Inc.

By: Randall Fogel

Print Name: RANDALL Fogel

Title: President

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EXHIBIT C

S1607

JOHN WIELAND HOMES AND NEIGHBORHOODS, INC. AND AFFILIATED COMPANIES
TRADE CONTRACTOR APPLICATION & AGREEMENT FORM

This Trade Contractor Agreement ("Agreement") is made and entered into as of the ____ day of _____ by and between John Wieland Homes and Neighborhoods, Inc. ("Wieland") and _____ ("Trade Contractor").

This form MUST be returned to the Accounting Department PRIOR TO or WITH YOUR FIRST DRAW REQUEST. Failure to return this form COMPLETED IN ITS ENTIRETY will result in a delayed payment. A complete W-9 form MUST be turned in with this application BEFORE the Trade Contractor can begin work.

NAME TRAVIS WILLIS TRADE ELECTRICAL
COMPANY NAME CHARLESTON LANEHART ELEC. II NEIGHBORHOOD ALL
MAILING ADDRESS 1607 RR 620 NORTH, SUITE 209
CITY AUSTIN STATE TX ZIP 78734
BUSINESS PHONE (843) 554 - 5773 SOCIAL SECURITY #
HOME PHONE ( ) or FEDERAL I.D. #

If you answer YES to either of the questions below, the Vice President of Human Resources must be notified.

YES ___ NO X 1. HAVE YOU EVER BEEN EMPLOYED BY JOHN WIELAND HOMES AND NEIGHBORHOODS OR ITS AFFILIATED COMPANIES?
YES ___ NO X 2. ARE YOU RELATED TO ANYONE EMPLOYED BY JOHN WIELAND HOMES AND NEIGHBORHOODS OR ITS AFFILIATED COMPANIES?
IF YES, PLEASE PROVIDE NAME: _____

If you answer YES to either of the questions below, a copy of your insurance certificate MUST be sent prior to or with your first draw. Those contractors who do not provide an insurance certificate will be automatically placed in Wieland's Worker's Compensation Program and the insurance premium will be deducted from payments.

YES X NO ___ 1. DO YOU HAVE WORKERS' COMPENSATION INSURANCE COVERAGE?
YES X NO ___ 2. DO YOU HAVE LIABILITY INSURANCE? # OF EMP. 12

EMERGENCY CONTACT TRAVIS WILLIS PHONE (843) 554 - 5773
ADDRESS 2801 ELLEHOLE ST.
CITY N. CHARLESTON STATE SC ZIP 29405

Background Statement

Wieland and Trade Contractor desire to set forth the terms and conditions governing any and all work performed by Trade Contractor for Wieland.

Statement of Agreement

For and in consideration of the mutual covenants and benefits contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Wieland and Trade Contractor hereby agree as follows:

1. Documents and Governing Law. The documents which form the entire agreement between Wieland and Trade Contractor consist of this Agreement, Trade Contractor's W-9 tax form, the Scope of Work applicable to the work Trade Contractor is or will be performing for Wieland, the Wieland Safety Booklet, applicable Bid Sheets, the Trade Contractor Payment Policy, all material and information referenced in any of the foregoing, and all documents executed or issued pursuant to or in furtherance of any of the foregoing. For convenience, this Agreement has been translated into Spanish but the English version shall be the only valid and enforceable version. This Agreement and the entire agreement between Wieland and Trade Contractor shall be governed by, and construed and interpreted under, the laws of the State of Georgia.

2. Trade Contractor Obligations. Trade Contractor shall (a) submit to Wieland completed Bid Sheets for work to be performed for Wieland and a completed W-9 tax form, (b) perform work and all other obligations of the Trade Contractor as described in, and in accordance with, the Scope of Work provided by Wieland and according to Wieland quality standards, (c) be paid only for 100% complete work according to the defined payment structure approved by Wieland, (d) represent Wieland to a professional manner and refer customer questions or issues to Wieland, (e) furnish own tools, (f) pay all bills incurred by Trade Contractor, and (g) carry a proper business license and pay all applicable federal, state, and local taxes.

In addition, Trade Contractor and all persons performing work for or on behalf of Trade Contractor shall not damage any improvements, including, without limitation, any house, yard, driveway, walkway, material, utility connection, road, tree, sign or other object, already in place. Trade Contractor shall give notices and shall comply with all federal, state, county, city and other public authority laws, ordinances, rules, regulations and orders, including, without limitation, all building codes, Occupational Safety and Health Administration ("OSHA") regulations and environmental protection laws and regulations. Trade Contractor shall also follow all the requirements and procedures set forth in the Wieland Safety Booklet.

If Trade Contractor or any person performing work for or on behalf of Trade Contractor damages any improvements already in place or performs any work which is contrary to any of the laws, ordinances, rules, regulations, orders, requirements, and procedures set forth in the immediately preceding paragraph, Trade Contractor shall be given a reasonable amount of time to correct or repair such damage or work at its sole cost and expense. If Trade Contractor does not so correct or repair such damage or work within a reasonable period of time, as determined by Wieland, Wieland shall have the right to perform such correction or repair, and Trade Contractor shall be responsible for the costs of such correction or repair and shall be subject to and responsible for paying a backcharge for such costs. Trade Contractor also shall be responsible for the payment of any fines resulting from the failure of Trade Contractor or any person performing work for or on behalf of Trade Contractor to comply with OSHA regulations, any other governmental regulations or the requirements and procedures set forth in the Wieland Safety Booklet, and Trade Contractor shall be subject to and responsible for paying a backcharge for such fines.

3. Insurance. Trade Contractor shall obtain and maintain in full force and effect while performing work for Wieland commercial general liability insurance (for bodily injury and property damage), workers' compensation insurance, contractual liability insurance (for bodily injury and property damage) and auto/truck liability insurance. If applicable, Trade Contractor's commercial general liability insurance coverage must be a minimum of $100,000.00 per occurrence and $300,000.00 annual aggregate. Trade Contractor's workers' compensation insurance coverage must be at least equal to the minimum statutory requirements with employer's liability coverage of at least $500,000.00. If Trade Contractor does not provide proof of worker's compensation insurance or such insurance does not meet the requirements set forth in the immediately preceding sentence, Trade Contractor will automatically be placed in Wieland's worker's compensation insurance program, and the premium therefor will be deducted from applicable amounts payable to Trade Contractor for work performed for Wieland.

Policies for such insurance shall contain a provision to the effect that coverage afforded under such policies may not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to Wieland. Wieland shall be named as an additional insured on all such policies. Upon request by Wieland, certificates of insurance showing such insurance to be in effect shall be filed with Wieland.

4. Pricing and Payment. The pricing structure and schedule of payments for Trade Contractor's work to be performed for Wieland shall be as defined in applicable Bid Sheets submitted by Trade Contractor (subject to approval by Wieland) and in the Trade Contractor Payment Policy. All requests for compensation and payment of variance purchase orders (VPOs), purchase orders (POs) and other invoices must be complete and signed by Wieland and Trade Contractor and must comply with Wieland's compensation policy. Wieland shall inspect work promptly upon completion and, if Wieland determines that such work is satisfactory and in accordance with the applicable building codes, industry standards and Scope of Work, Wieland shall submit and process approved VPOs, POs and other invoices for prompt payment to Trade Contractor.

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5. Acknowledgments of Trade Contractor. Trade Contractor acknowledges that Trade Contractor (a) has received and read a copy of the current Trade Contractor Payment Policy and Scope of Work applicable to the work Trade Contractor is or will be performing for Wieland and (b) is aware of Wieland's safety program and requirements and has received and read a copy of the current Wieland Safety Booklet, and Trade Contractor consents to, and agrees to be bound by and comply with, the terms of all of the foregoing. Trade Contractor also acknowledges that Trade Contractor and all persons performing work for or on behalf of Trade Contractor are subject to post-accident drug testing in accordance with Wieland policies.

6. Release and Indemnification. Trade Contractor shall be responsible to Wieland for the acts and omissions of Trade Contractor's employees, all sub-subcontractors and their agents and employees, and all other persons performing portions of any of Trade Contractor's work for Wieland. To the fullest extent permitted by law, Trade Contractor hereby releases, covenants not to sue, and indemnifies and holds harmless Wieland and its affiliates, related companies and predecessors, and their respective directors, officers, shareholders, partners, agents and employees, from, against and/or due to any and all claims, charges (including, without limitation, liens), damages, losses and expenses of every kind and nature, including, but not limited to, court costs and attorney's fees, asserted by any person or persons, including Trade Contractor and Trade Contractor's employees, arising out of, resulting from or relating directly or indirectly to the performance of any of Trade Contractor's work for Wieland, regardless of whether or not such claims, charges, damages, losses or expenses are caused in part by a party indemnified or released hereunder. This obligation shall not be construed to negate, abridge or otherwise reduce other rights or obligations of release and indemnity which would otherwise exist as to a party or person described in this Section. In addition, this obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable or available under any statutory provisions.

7. Cooperation in Arbitration. Upon request by Wieland and at no cost or expense to Wieland, Trade Contractor shall cooperate and participate in, as may be reasonably directed by Wieland, any arbitration proceedings arising out of the home warranty coverage provided by Wieland or otherwise related to or arising out of the construction of homes by Wieland.

8. Independent Contractor. Trade Contractor, in performance of any work for Wieland, is an independent contractor and, subject to Wieland's general supervision and direction, shall have sole discretion in the performance of any such work.

9. Assignment. Trade Contractor shall not assign this Agreement or any work to be performed for Wieland, nor shall Trade Contractor subcontract the whole or any portion of this Agreement or work to be performed for Wieland, without the prior written consent of Wieland.

10. Time. Time is of the essence for this Agreement and for any work performed by Trade Contractor for Wieland.

11. Term. The terms and conditions set forth in this Agreement shall apply to and govern any and all work whatever and whenever performed by Trade Contractor for Wieland. Wieland reserves the absolute right to terminate this Agreement, with or without cause, upon ten (10) days' prior written notice to Trade Contractor. Trade Contractor reserves the absolute right to terminate this agreement, with or without cause, upon thirty (30) days' prior written notice to Wieland. However, Trade Contractor's obligations under Sections 6 and 7 of this Agreement shall continue in effect despite any termination of this Agreement.

IN WITNESS WHEREOF, the undersigned have set their hands and seals hereto as of the date first above written.

JOHN WIELAND HOMES AND NEIGHBORHOODS, INC.

By: _____

Print Name: _____

Title: _____

TRADE CONTRACTOR: CHARLESTON LANEHART ELECTRIC

By: _____

Print Name: TRAVIS WILLIS

Title: VP

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	
Peter T. Phillips and Summar C. Phillips,	)	C/A No. 12-CP-10-3870
Plaintiffs,	)	
Versus	)	**DEFENDANT OMEGA FLEX, INC.'S AMENDED ANSWER TO PLAINTIFFS' COMPLAINT WITH CROSS-CLAIMS (Jury Trial Demanded)**
Omega Flex, Inc., John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc., Charleston LEC, Inc.,	)	
Defendants.	)	

FILED
2012 DEC 19 PM 4:14
JULIE J. ARMSTRONG
CLERK OF COURT

The Defendant, Omega Flex, Inc. (hereinafter "this Defendant"), by and through its undersigned attorneys and with the express consent of all parties and approval from this Court pursuant to a Consent Order signed by Judge Jefferson on December 13, 2012 and filed with the Clerk of Court on December 18, 2012, hereby amends its Answer to the Plaintiffs' Complaint with Cross-Claims against Defendants John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc. and Charleston LEC, Inc., as follows:

1. This Defendant denies each and every allegation of the Plaintiffs' Complaint which is not specifically admitted without qualification in this Answer.

2. This Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the averments of Paragraph 1 of the Plaintiffs' Complaint, and they are therefore denied.

3. Paragraph 2 of the Plaintiffs' Complaint is ADMITTED in part and DENIED in part. This Defendant admits that it is a corporation registered in the Commonwealth of Pennsylvania that does business in South Carolina. This Defendant admits that it manufactures corrugated stainless steel tubing. This

Defendant admits that it sells and distributes corrugated stainless steel tubing in South Carolina. Subject to the foregoing, Paragraph 2 of the Plaintiffs' Complaint is DENIED.

4. This Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the averments of Paragraphs 3, 4 and 5 of the Plaintiffs' Complaint, and they are therefore denied.

5. The averments of Paragraph 6 of the Plaintiffs' Complaint state a conclusion of law to which no response is required. To the extent a response is required, this Defendant denies the allegations of Paragraph 6 of the Plaintiffs' Complaint.

6. This Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the averments of Paragraph 7 of the Plaintiffs' Complaint, and they are therefore denied.

7. Paragraph 8 of the Plaintiffs' Complaint is ADMITTED in part and DENIED in part. This Defendant admits, upon information and belief, that a CSST line was located on the third floor of the Plaintiffs' home and supplied gas to the gas water heater and heat exchanger. Subject to the foregoing, Paragraph 8 of the Plaintiffs' Complaint is DENIED.

8. This Defendant admits, upon information and belief, the averments of Paragraph 9 of the Plaintiffs' Complaint.

9. Paragraph 10 of the Plaintiffs' Complaint is ADMITTED in part and DENIED in part. This Defendant admits, upon information and belief, that lightning struck the Plaintiffs' home on June 25, 2009 and that a fire started soon thereafter in the Plaintiffs' home. This Defendant is without knowledge or

information sufficient to form a belief as to the truthfulness of the remaining averments of Paragraph 10 of the Plaintiffs' Complaint, and they are therefore DENIED.

10. This Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the remaining averments of Paragraph 11 of the Plaintiffs' Complaint, and they are therefore DENIED.

FOR A FIRST CAUSE OF ACTION
(Alleged Negligence)
(As to this Defendant)

11. In response to Paragraph 12 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 10.

12. The averments of Paragraph 13 of the Plaintiffs' Complaint state a conclusion of law to which no response is required. To the extent a response is required, this Defendant denies the allegations of Paragraph 13 of the Plaintiffs' Complaint.

13. This Defendant expressly denies the averments of Paragraph 14 of the Plaintiffs' Complaint, including Subparagraphs (a)-(j) and demands strict proof thereof at the time of trial.

14. This Defendant expressly denies the averments of Paragraph 15 of the Plaintiffs' Complaint and demands strict proof thereof at the time of trial.

FOR A SECOND CAUSE OF ACTION
(Alleged Breach of Express Warranty)
(As to this Defendant)

15. In response to Paragraph 16 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 14.

16. This Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the averments of Paragraph 17 of the Plaintiffs' Complaint, and they are therefore denied.

17. This Defendant expressly denies the averments of Paragraphs 18 and 19 of the Plaintiffs' Complaint and demands strict proof thereof at the time of trial.

FOR A THIRD CAUSE OF ACTION
(Alleged Breach of Implied Warranty of Merchantability)
(As to this Defendant)

18. In response to Paragraph 20 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 17.

19. This Defendant expressly denies the averments of Paragraphs 21, 22 and 23 of the Plaintiffs' Complaint and demands strict proof thereof at the time of trial.

FOR A FOURTH CAUSE OF ACTION
(Alleged Breach of Implied Warranty of Fitness for Particular Purpose)
(As to this Defendant)

20. In response to Paragraph 24 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 19.

21. This Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the averments of Paragraph 25 of the Plaintiffs' Complaint, and they are therefore denied.

22. This Defendant expressly denies the averments of Paragraphs 26 and 27 of the Plaintiffs' Complaint and demands strict proof thereof at the time of trial.

FOR A FIFTH CAUSE OF ACTION
(Alleged Strict Liability)
(As to this Defendant)

23. In response to Paragraph 28 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through

24. ADMITTED in part, DENIED in part. This Defendant admits that it is engaged in the business of designing, manufacturing, supplying and/or selling CSST. Subject to the foregoing, this Defendant denies the averments of Paragraph 29 of the Plaintiffs' Complaint and demands strict proof thereof at the time of trial.

25. This Defendant expressly denies the averments of Paragraph 30 of the Plaintiffs' Complaint and demands strict proof thereof at the time of trial.

26. This Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the averments of Paragraph 31 of the Plaintiffs' Complaint, and they are therefore denied.

27. This Defendant expressly denies the averments of Paragraph 32 of the Plaintiffs' Complaint and demands strict proof thereof at the time of trial.

FOR A SIXTH CAUSE OF ACTION
(Alleged Negligence)
(As to Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc.)

28. In response to Paragraph 33 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 27.

29. The averments contained in Paragraphs 34 (including Subparagraphs (a)-(m)) and 35 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR A SEVENTH CAUSE OF ACTION
(Alleged Breach of Contract)
(As to Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc.)

30. In response to Paragraph 36 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 29.

31. The averments contained in Paragraphs 37, 38, 39 and 40 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR AN EIGHTH CAUSE OF ACTION
(Alleged Breach of Implied Warranty of Workmanlike Service)
(As to Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc.)

32. In response to Paragraph 41 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 31.

33. The averments contained in Paragraphs 42, 43, 44 and 45 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR A NINTH CAUSE OF ACTION
(Alleged Breach of Implied Warranty of Habitability)
(As to Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc.)

34. In response to Paragraph 46 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 33.

35. The averments contained in Paragraphs 47, 48 and 49 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR A TENTH CAUSE OF ACTION
(Alleged Negligence)
(As to Defendant Fogel Services, Inc.)

36. In response to Paragraph 50 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the

admissions, denials and further answers contained in the foregoing Paragraphs 1 through 35.

37. The averments contained in Paragraphs 51 (including Subparagraphs (a)-(m)) and 52 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR A ELEVENTH CAUSE OF ACTION
(Alleged Breach of Contract)
(As to Defendant Fogel Services, Inc.)

38. In response to Paragraph 53 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 37.

39. The averments contained in Paragraphs 54, 55, 56 and 57 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR A TWELFTH CAUSE OF ACTION
(Alleged Breach of Implied Warranty of Workmanlike Service)
(As to Defendant Fogel Services, Inc.)

40. In response to Paragraph 58 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 39.

41. The averments contained in Paragraphs 59, 60, 61 and 62 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR A THIRTEENTH CAUSE OF ACTION
(Alleged Negligence)
(As to Defendant AAA Plumbing, LLC)

42. In response to Paragraph 63 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 41.

43. The averments contained in Paragraphs 64 (including Subparagraphs (a)-(l)) and 65 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR A FOURTEENTH CAUSE OF ACTION
(Alleged Breach of Contract)
(As to Defendant AAA Plumbing, LLC)

44. In response to Paragraph 66 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 43.

45. The averments contained in Paragraphs 67, 68, 69 and 70 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR A FIFTEENTH CAUSE OF ACTION
(Alleged Breach of Implied Warranty of Workmanlike Service)
(As to Defendant AAA Plumbing, LLC)

46. In response to Paragraph 71 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 45.

47. The averments contained in Paragraphs 72, 73, 74 and 75 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR A SIXTEENTH CAUSE OF ACTION
(Alleged Negligence)
(As to Defendant Charleston LEC, Inc.)

48. In response to Paragraph 76 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 47.

49. The averments contained in Paragraphs 77 (including Subparagraphs (a)-(n)) and 78 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR A SEVENTEENTH CAUSE OF ACTION
(Alleged Breach of Contract)
(As to Defendant Charleston LEC, Inc.)

50. In response to Paragraph 79 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 49.

51. The averments contained in Paragraphs 80, 81, 82 and 83 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

FOR AN EIGHTEENTH CAUSE OF ACTION
(Alleged Breach of Implied Warranty of Workmanlike Service)
(As to Defendant Charleston LEC, Inc.)

52. In response to Paragraph 84 of the Plaintiffs' Complaint, this Defendant incorporates by reference as if fully rewritten herein, all of the admissions, denials and further answers contained in the foregoing Paragraphs 1 through 51.

53. The averments contained in Paragraphs 85, 86, 87 and 88 of the Plaintiffs' Complaint refer to parties other than this Defendant and therefore, no response is required.

54. This Defendant denies the Plaintiffs' request for relief contained in the WHEREFORE paragraph directly after Paragraph 88 of the Plaintiffs' Complaint, those being the remaining allegations contained in the Plaintiffs' Complaint.

FURTHER ANSWERING AND AS A FIRST AFFIRMATIVE DEFENSE:

The corrugated stainless steel tubing used for gas distribution at the subject residence was installed in violation of applicable building codes, industry standards and this Defendant's installation instructions.

FURTHER ANSWERING AND AS A SECOND AFFIRMATIVE DEFENSE:

The corrugated stainless steel tubing manufactured by this Defendant and installed at the subject residence, if any, was not defective in design or manufacture.

FURTHER ANSWERING AND AS A THIRD AFFIRMATIVE DEFENSE:

The negligence allegedly attributable to this Defendant was not the proximate cause of Plaintiffs' damages.

FURTHER ANSWERING AND AS A FOURTH AFFIRMATIVE DEFENSE:

Plaintiffs' losses and/or damages, if any, were the result of acts or omissions of third-parties over whom this Defendant had no control or right of control.

FURTHER ANSWERING AND AS A FIFTH AFFIRMATIVE DEFENSE:

Plaintiffs have failed to mitigate or otherwise act to lessen or reduce the damages alleged.

FURTHER ANSWERING AND AS A SIXTH AFFIRMATIVE DEFENSE:

Plaintiffs' losses and damages, if any, were the result of an Act of God.

FURTHER ANSWERING AND AS A SEVENTH AFFIRMATIVE DEFENSE:

Plaintiffs' claims are barred because the methods, standards and techniques utilized by this Defendant in designing, manufacturing and/or assembling its products conformed with the generally recognized, reasonably available and reliable state of knowledge at the time of manufacture.

FURTHER ANSWERING AND AS AN EIGHTH AFFIRMATIVE DEFENSE:

The losses complained of are the result of superseding and/or intervening causes over which this Defendant exercised no control.

FURTHER ANSWERING AND AS A NINTH AFFIRMATIVE DEFENSE:

To the extent Plaintiffs' claims involve any product manufactured, assembled or sold by this Defendant, such claims may be barred, in whole or in part, because the alleged damages, if any, were caused, in whole or in part, by misuse or modification of the product after its initial sale, and such misuse could not have been reasonably expected by this Defendant.

FURTHER ANSWERING AND AS A TENTH AFFIRMATIVE DEFENSE:

To the extent Plaintiffs may have settled their claims for alleged damages with certain parties, this Defendant is entitled to credit in the amount of any such settlement heretofore or hereafter made between Plaintiffs and any such party.

FURTHER ANSWERING AND AS AN ELEVENTH AFFIRMATIVE DEFENSE:

This Defendant is entitled to the benefit of any collateral sources to which Plaintiffs are, or may be, entitled in connection with the alleged losses for which recovery is sought in this action.

FURTHER ANSWERING AND AS A TWELFTH AFFIRMATIVE DEFENSE:

Plaintiffs' claims are barred, in whole or in part, because the utility of the product at issue outweighs its risks.

FURTHER ANSWERING AND AS A THIRTEENTH AFFIRMATIVE DEFENSE:

Plaintiffs' claims are barred or must be reduced by the alleged negligence of another party.

FURTHER ANSWERING AND AS A FOURTEENTH AFFIRMATIVE DEFENSE:

Plaintiffs' claims may be barred by the doctrine of spoliation.

FURTHER ANSWERING AND AS A FIFTEENTH AFFIRMATIVE DEFENSE:

Plaintiffs' insureds failed to avail themselves of the benefit of the CSST class action remedy and, as such, their claims are barred by the doctrine of assumption of the risk.

FURTHER ANSWERING AND AS A SIXTEENTH AFFIRMATIVE DEFENSE:

Plaintiffs' Complaint fails to state a justifiable basis for punitive damages.

FURTHER ANSWERING AND AS A SEVENTEENTH AFFIRMATIVE DEFENSE:

The allegations contained in Plaintiffs' Complaint fail in their entirety to state a claim upon which relief may be granted against this Defendant, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS AN EIGHTEENTH AFFIRMATIVE DEFENSE:

The Plaintiffs' action against this Defendant is barred by the applicable statute of limitations provided by S.C. Code §15-3-530.

FURTHER ANSWERING AND AS A NINETEENTH AFFIRMATIVE DEFENSE:

No warranties, either express or implied, were breached by this Defendant at any time, thereby barring any recovery against this Defendant.

FURTHER ANSWERING AND AS A TWENTIETH AFFIRMATIVE DEFENSE:

If this Defendant made any warranties to Plaintiffs, Plaintiffs' claims for breach of warranties are barred because Plaintiffs did not rely on any warranties allegedly made by this Defendant.

FURTHER ANSWERING AND AS A TWENTY-FIRST AFFIRMATIVE DEFENSE:

Any award or assessment of punitive damages as prayed for by the Plaintiffs would violate this Defendant's constitutional rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and comparable provisions of the South Carolina Constitution.

FURTHER ANSWERING AND AS A TWENTY-SECOND AFFIRMATIVE DEFENSE:

This Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus, reserves the right to amend its Answer to assert such defenses and does not waive any other defenses that may become available.

FURTHER ANSWERING THE PLAINTIFFS' COMPLAINT AND AS CROSS-CLAIMS AGAINST DEFENDANTS JOHN WIELAND HOMES AND NEIGHBORHOODS OF THE CAROLINAS, INC., AAA PLUMBING, LLC, FOGEL SERVICES, INC. AND CHARLESTON LEC, INC.:

1. Omega Flex, Inc. ("this Defendant") is a foreign corporation doing business in South Carolina.

2. Upon information and belief, the Defendants, John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc. and Charleston LEC, Inc. (hereinafter "Construction Defendants") conduct business enterprises in South Carolina.

3. The parties and subject matter are within the jurisdiction of this Court.

4. The Plaintiffs, Peter T. Phillips and Summar C. Phillips ("Plaintiffs"), have alleged that the house at issue in this case was defectively constructed related to the work or materials of the Construction Defendants and this Defendant and that property damage has resulted as a consequence thereof.

5. The allegations of the Plaintiffs' Complaint concerning property damage are incorporated into these Cross-Claims against the Construction Defendants.

6. The Construction Defendants held themselves out as being qualified and possessing the requisite knowledge, skill, training and experience to provide

suitable and adequate labor, materials, products and/or services to be used in the construction of the Plaintiffs' home at issue in this case.

7. This Defendant had a special relationship with the Construction Defendants such that, in law and/or in equity, there is an obligation on the Construction Defendants to indemnify this Defendant if the facts as alleged by the Plaintiffs in their Complaint are true, which this Defendant specifically denies.

8. If the facts as alleged by the Plaintiffs in their Complaint are true, which this Defendant specifically denies, this Defendant is entitled to be indemnified by the Construction Defendants for any and all liability imposed upon this Defendant by virtue of the sole acts and/or omissions of the Construction Defendants in which this Defendant was not at fault and did not join, such indemnification to include the costs and attorney's fees associated with defending this action.

9. If this Defendant is liable to the Plaintiffs in any respect, which is denied, then such liability arose from the negligence, breach of express and/or implied warranties, and breach of contract of the Construction Defendants, and this Defendant is entitled to equitable indemnity from the Construction Defendants, in whole or in part, for any liability that may be adjudged against them in Plaintiffs' favor.

WHEREFORE, having fully set forth its Answer to the Plaintiffs' Complaint with Cross-Claims, the Defendant, Omega Flex, Inc., demands judgment in its favor as follows:

1. That the Plaintiffs' Complaint be dismissed with prejudice against Omega Flex, Inc. and that Omega Flex, Inc. be awarded costs against the Plaintiffs; or, in the alternative,

2. For a trial by jury of all issues joined herein so triable;

3. For judgment against Defendants John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc. and Charleston LEC, Inc. for indemnity to the full extent of any liability imposed upon Omega Flex, Inc. to include all costs, expenses and attorney's fees associated with the defense of this action; and

4. For such other and further appropriate relief as this Honorable Court shall deem just and equitable.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com

Robert H. Hood (SC #2599)
Robert H. Hood, Jr. (SC #13491)
A. Walker Barnes (SC # 78485)

Attorneys for Defendant
Omega Flex, Inc.

December 19, 2012
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ mailing, ☒ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 19th day of December, 2012.

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Case No.: 2012-CP-10-3870

John Wieland Homes and Neighborhoods of the Carolinas, Inc., ... Appellant,

v.

Peter T. Phillips and Summar C. Phillips, Omega Flex, Inc., AAA Plumbing, LLC, Fogel Services, Inc., and Charleston LEC, Inc. ..... Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on all Respondents by depositing a copy of it in the United States Mail, postage prepaid, on June 25, 2013, addressed to their attorney of record as follows:

John F. McKenzie, Esq.
Robert A. McKenzie, Esq.
McDonald, McKenzie, Rubin, Miller & Lybrand, LLP
Post Office Box 58
Columbia, South Carolina 29202
Attorneys for Respondents Peter T. Phillips and Summar C. Phillips

R. Patrick Flynn, Esq.
Christopher M. Ramsey, Esq.
Robertson Hollingsworth & Flynn
Wells Fargo Center
177 Meeting Street, Suite 300
Charleston, SC 29401
Attorneys for Respondent Charleston LEC, Inc.

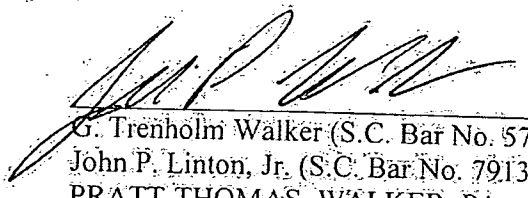
Jeffrey A. Ross, Esq.
Clawson & Staubes
126 Seven Farms Drive, Suite 200
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RECEIVED
JUN 28 2013
SC Court of Appeals

Attorneys for Respondent AAA Plumbing, LLC

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G. Trenholm Walker (S.C. Bar No. 5777)
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T: 843.727.2250

Attorneys for Appellant

June 25, 2013

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Case No.: 2012-CP-10-3870

John Wieland Homes and Neighborhoods of the Carolinas, Inc., ...Appellant,

v.

Peter T. Phillips and Summar C. Phillips, Omega Flex, Inc., AAA Plumbing, LLC, Fogel Services, Inc., and Charleston LEC, Inc. .....Respondents.

NOTICE OF APPEAL

Appellant John Wieland Homes and Neighborhoods of the Carolinas, Inc. ("Appellant") appeals the orders of the Honorable J. C. Nicholson, Jr. dated April 25, 2013 and May 30, 2013. On May 6, 2013, Appellant received written notice of entry of the order filed on April 25, 2013. On May 6, 2013, Appellant timely served and filed a motion to alter, amend, or reconsider this order. On June 10, 2013, Appellant received written notice of entry of the order filed on May 30, 2013.

June 25, 2013

G. Trenholm Walker (S.C. Bar No. 5777)
John P. Linton, Jr. (S.C. Bar No. 79130)
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Attorneys for Appellant

Other Counsel of Record:

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RECEIVED
JUN 28 2013
SC Court of Appeals

Columbia, South Carolina 29202
Attorneys for Respondents Peter T. Phillips and Summar C. Phillips

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Attorneys for Respondent Fogel Services, Inc.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-10-3870

Peter T. Phillips and Summar C. Phillips
PLAINTIFF(S)

Omega Flex, Inc., John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc.
DEFENDANT(S)

Submitted by: _____

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

FILED
2013 APR 25 AM 9:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

☐ **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 JUDGMENT 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: _____

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

4/29/13
Date

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	CASE NUMBER: 2012-CP-10-8870
Peter T. Phillips and Summar C. Phillips, Plaintiffs, Omega Flex, Inc., John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., Defendants.	ORDER

FILED
2013 APR 25 AM 9:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter came to be heard before me on December 18, 2012. Counsel representing all of the parties were in attendance.

The matter was before the court upon the motion of the Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc. (Hereafter John Wieland Homes), to compel arbitration in this matter. The court has received memoranda both supporting and against the motion. The court also entertained arguments of counsel and all present were allowed to speak. After consideration of the matter, the court concludes that the motion to compel arbitration should be denied.

In determining the issues before it, the court had the pleadings of the parties, the contract between the Plaintiffs and John Wieland Homes and the affidavit of Dennis Black, with exhibits, and the affidavit of Andrew R. McBride. The McBride affidavit concerned John Wieland Homes' attempt to require the other Defendants to arbitrate with the Plaintiffs and John Wieland Homes.

As an initial matter, there seems to be no issue that the contract between the Plaintiffs and John Wieland Homes did not comply with the provisions of South Carolina's Uniform Arbitration Act, §15-48-10(a), S.C. Code Ann. (2005). The language of the contract requiring mandatory arbitration appears on page four (4) of the document and in order for the provisions of South Carolina's Uniform Arbitration Act to apply, the language concerning mandatory arbitration was required to be on the front page of the document in emboldened letters and underlined. §15-48-10(a) supra. Without such designation, according to the statute, "the contract shall not be subject to arbitration." id. As a consequence, the viability of the contract's mandatory arbitration provision depends upon the application of the Federal Arbitration Act (hereafter FAA), 9 U.S.C.A. §§1-16 (2009 and supp. 2012). I have concluded that under recent South Carolina jurisprudence, the determination of this dispute depends on whether the contract between the Plaintiffs and John Wieland Homes was for the construction of a dwelling or for the sale of a home. Bradley v. Brentwood Homes, Inc., et al. 398 S.C. 447, 730 S.E. 2d 312 (2012). If the former, the FAA would apply; but if the latter, the FAA would not apply and under established South Carolina law, mandatory arbitration would not take place. As the court views all of the material submitted in connection with this matter by all parties, it has concluded the transaction between the parties as contained in the agreement was a contract for the sale of a home and not for the construction of a house.

The Bradley case was decided by the South Carolina Supreme Court and filed on July 11, 2012. In connection with its motion to compel arbitration, John Wieland

Homes submitted the affidavit of Dennis A. Black, Division Quality Manager for John Wieland Homes. The affidavit was dated October 29, 2012, some three months after the decision in Bradley. In that affidavit, Mr. Black averred his belief on behalf of the Defendant John Wieland Homes that the parties "entered a purchase agreement...to buy a home located at 1417 Hooper Street, Charleston, SC 29492." In view of the law as established by Bradley, his choice of words is significant. Nowhere in his affidavit does he indicate the contract involved the construction of a home. The agreement itself negates the idea that this was a contract for the construction of a home in the traditional sense. Under this contract, the seller, John Wieland Homes, had a right to build as it deemed fit. It had ultimate discretion on materials. The provision of the agreement allowing the Plaintiffs to make certain selections was marked as not applicable. John Wieland Homes reserved the right to decide home placement, driveway location, number of deck steps and all exterior colors. The seller was not required to gain the purchaser's permission prior to making any of these decisions. The agreement further provided that no structural or mechanical changes could be made once framing was complete. Importantly, under the contract the Plaintiffs did not even have the right to enter the property without the written permission of the seller until the walk through prior to closing. If the Plaintiffs had questions concerning the home, they were required under the contract to direct them to the sales agent or community coordinator for the neighborhood and not the seller, John Wieland Homes.

The purchase agreement entered into by the parties was a contract for the sale of a completed home. Only incidental choices could be made by the Plaintiffs and these

would not have affected the "essential character of the agreement" which "was strictly for the purchase of a completed residential dwelling and not [its] construction." Bradley, supra. Since this was a purchase agreement for a completed home, South Carolina law for an intrastate transaction applies and the provision for mandatory arbitration fails since it is not subject to the FAA.

Defendant John Wieland Homes' motion is, therefore, denied.

J. C. NICHOLSON, JR.
JUDGE, NINTH JUDICIAL CIRCUIT

Charleston, South Carolina
April 23 2013.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-10-3870

Phillips
PLAINTIFF(S)

Omega Flex
DEFENDANT(S)

FILED
2013 MAY 30 PM 4:44
JULIE J. ARMSTRONG
CLERK OF COURT

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

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

☐ **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: John Wieland Homes' Motion to Reconsider is **Denied.**

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT 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)
		$
		$
		$

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

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

5/28/13
Date

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
PETER T. PHILLIPS, ET AL.,	)	TRANSCRIPT OF RECORD
PLAINTIFFS,	)	2012-CP-10-03870
VS.	)	
OMEGA FLEX, INC., ET AL.,	)	
DEFENDANTS.	)	

DECEMBER 18, 2012

CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. C. NICHOLSON, JR., JUDGE

SHARON L. VIZER

CIRCUIT COURT REPORTER

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

ROBERT A. MCKENZIE, ESQUIRE

ATTORNEY FOR THE PLAINTIFF

A. WALTER BARNES, ESQUIRE

ATTORNEY FOR OMEGA FLEX

J. ERIC CAVANAUGH, ESQUIRE

ATTORNEY FOR FOGEL SERVICES

JOHN P. LINTON, ESQUIRE

ATTORNEY FOR JOHN WIELAND HOMES

MICHAEL WRIGHT, ESQUIRE

ATTORNEY FOR CHARLESTON LEC

JEFFREY A. ROSS, ESQUIRE

ATTORNEY FOR AAA PLUMBING

SHARON L. VIZER

CIRCUIT COURT REPORTER

I N D E X

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CERTIFICATE OF REPORTER.....46

NO EXHIBITS WERE INTRODUCED

Tuesday, December 18, 2012

THE CLERK: Your Honor, we have several motions to compel in 2012-3870, Phillips vs. Omega Flex. It begins at number nine.

THE COURT: We've got four of them?

THE CLERK: I believe we have three. One, I believe, is resolved.

THE COURT: Which one is resolved? Oh, that last one. Okay. So we got three?

THE CLERK: Yes, Your Honor.

THE COURT: Robert Hood filed one, and Kendall, and Linton filed one; is that correct?

MR. BARNES: Yes, sir.

THE COURT: Which one you all want to do first?

MR. BARNES: Your Honor, Walter Barnes on behalf of Omega Flex. I can withdraw the one against the plaintiffs.

THE COURT: All right. Which one?

MR. BARNES: I believe it was the first one. It's a motion to compel directed at the plaintiffs.

THE COURT: Okay. You are going to withdraw that?

MR. BARNES: Yes, sir.

THE COURT: All right. What about the one filed by, I guess Kendall, on behalf of the --

MR. CAVANAUGH: Your Honor, Eric Cavanaugh on

behalf of Fogel Services. Those are Mr. Kendall's -- Mr. Kendall is from my office. Those are our motions. The motions with regards to Charleston LEC, I just talked to Mr. Wright regarding that motion and his discovery, he represented to me that that discovery should be at my office today or tomorrow. So I have not received it but pending that I would just ask the Court to issue an order that, you know, if I don't have it in five days we'd be awarded costs. I mean, he tells me --

THE COURT: He doesn't have a copy of it he can show you?

MR. CAVANAUGH: He does not have a copy. He represents to me that it is being provided today but I don't have it as yet.

THE COURT: You don't have a copy you can show him?

MR. WRIGHT: Your Honor, the primary attorney in this case is unavailable today. He's in mediation. I received an e-mail at one o'clock to cover him this morning. I went to our office this morning and his secretary is out sick, so I was not able to get a copy to bring to court with me today but I know that there was a -- the document is drafted on our server and there is a letter showing that it went out yesterday. I just did not have a signed copy to bring with me, but he has assured me that it went out yesterday.

THE COURT: But you don't know what it says or whether it's sufficient or not?

MR. WRIGHT: I could have brought an unsigned copy with me here --

THE COURT: Pardon?

MR. WRIGHT: I could have brought an unsigned copy and just printed off a copy --

THE COURT: Well, my concern is whether it's going to be sufficient for what he wants. The only thing I know to do is continue it and take a look at it. If it's not sufficient, reschedule it.

MR. CAVANAUGH: That's fine with me, Your Honor.

THE COURT: Okay.

MR. WRIGHT: That's fine, Your Honor.

THE COURT: And if it's not sufficient and you all can't work it out then just reschedule the motion.

MR. CAVANAUGH: That's fine, Your Honor. Thank you for that.

THE COURT: Okay.

MR. CAVANAUGH: Then I have another motion pending against -- a motion to compel against Omega Flex. The character of it has changed and it may take a few minutes to --

THE COURT: Omega Flex?

MR. CAVANAUGH: Yes, Your Honor.

THE COURT: Who represents Omega Flex?

MR. BARNES: Walter Barnes.

THE COURT: Mr. Barnes.

All right. What do you want?

MR. CAVANAUGH: Your Honor, our discovery requests were initially served in September -- on or about September the 14th. After an extension -- I won't go through the whole history, Mr. Barnes' office -- client, did not provide me with discovery responses timely. I, after consulting with him, filed a motion to compel on November 28, which we are here about.

On December the 6th, I actually received discovery responses from Mr. Barnes and his client, Omega Flex. I reviewed those that day. They were filled with objections that, Your Honor, in my opinion, are not meritorious.

THE COURT: Well, just tell me what you want.

MR. CAVANAUGH: Well, the objections, Your Honor, were such that they made objections to -- I only sent the standard interrogatories.

THE COURT: Back up a minute. Tell me what you want and then I'll listen to what the objections are.

MR. CAVANAUGH: Yes, sir. They have not provided witnesses, they have not listed documents. They have, in my opinion, played word games with the rule itself saying

they do not understand what claims or defenses mean within the rules.

They did subsequently provide a thousand documents on this but did not indicate what they were responsive to. They've made claims of privileges but not provided a privilege log other than just saying we don't have any documents that are not subject to privilege.

THE COURT: You want to take them one at time or you want to take them as a group?

MR. CAVANAUGH: I can take them one at a time, Your Honor.

THE COURT: All right. Let's take them one at a time.

MR. CAVANAUGH: In his supplemental responses, which were received by my office on the 14th, they have lodged general objection and conditions which I do not believe to apply with the rules. I don't think the rules allow conditions to be placed on responses.

THE COURT: What did you ask for?

MR. CAVANAUGH: I asked for the names and addresses of persons known to the parties to be witnesses. They have objected. In the first --

THE COURT: Tell me very briefly, what's the lawsuit about?

MR. CAVANAUGH: The lawsuit involves a fire that

occurred at the plaintiff's home and involves a type of pipe called corrugated stainless steel tubing, tube or wiring. It is believed that that tubing or wiring has some cause for the fire.

THE COURT: And Omega Flex makes the tubing?

MR. CAVANAUGH: Omega Flex is believed to be the manufacturer of the tube. Yes, Your Honor. My client is alleged to have performed subcontracting work there installing and maintaining the tubing, as well as two other co-defendants.

THE COURT: All right. And you're asking for a list of witnesses?

MR. CAVANAUGH: Just the names of witnesses. Their response was they don't have it. They object such that I'm asking them to provide any information that's not within their knowledge.

In addition, they say that the plaintiffs -- The plaintiff's representatives of the named defendants, and fire fighters other than state officials who responded to the fire have knowledge regarding the facts, and other than the documents produced --

THE COURT: I think part of his -- I assume part of his objection is witnesses about what?

MR. BARNES: Our client had nothing to do with the construction of the house. It's a construction case and

a products liability case. The only witnesses we know of are the named defendants, the plaintiff, and fire fighters and state officials.

THE COURT: Well, have you given them those names?

MR. BARNES: We don't know the names of -- I mean --

THE COURT: You don't have anybody in your company that's going to testify on your behalf?

MR. BARNES: This case is very early on. No depositions have been taken, no discovery has been produced.

THE COURT: I'll just ask you the question again. Do you have any witnesses that you plan on using on your behalf at trial?

MR. BARNES: We would do a 30(b)(6) witness, Your Honor, yes. We can give him the name of that.

THE COURT: Well, give him some names of the witnesses you plan on using.

MR. BARNES: Okay.

THE COURT: You got to know that. Now, you may develop more during the course of discovery but you've got to have some names. You've got a client. Other than a corporation, somebody's name that's going to offer testimony for Omega, aren't they?

MR. BARNES: Yes, Your Honor.

THE COURT: Then why don't you give him that name?

MR. BARNES: I will.

THE COURT: What other names can you give him?

What else are you looking for as far as names are concerned --

MR. CAVANAUGH: Well, Your Honor --

THE COURT: -- of witnesses?

MR. CAVANAUGH: -- they gave us no names whatsoever. So other than a 30(b)(6) --

THE COURT: Who are you going to give him for Omega?

MR. BARNES: I don't know who that is right now. At this point in time we have asked -- I've had several phone calls, several e-mails, several letters have been exchanged with us. He has not specified any deficiency other than one, two, three are deficient. He has refused to tell me why they are deficient until today, Your Honor. I mean, I can't respond to lack of specificity.

THE COURT: I understand the dilemma. Do you know what type of witnesses you want from them?

MR. CAVANAUGH: Well, Your Honor, it's my belief that Omega Flex was aware of this fire, has some knowledge regarding who is going to testify. They provided us no witnesses whatsoever.

THE COURT: Well, I understand. I'm trying to find

out what witnesses you think you need. I'm going to make him produce the names if you'll be more specific for him and me.

MR. CAVANAUGH: I mean, anyone -- basically, I'm looking with anyone with knowledge of the allegations in this lawsuit. I mean, it's been alleged that they -- this is a products liability lawsuit as to them, Your Honor, and they have provided no witnesses. We don't know who to depose.

THE COURT: All right. On your products issue, you are saying it's defective, defective design of the manufacturing of the home or what?

MR. CAVANAUGH: I believe those complaints by the plaintiff are both, Your Honor.

THE COURT: Are both?

MR. CAVANAUGH: Yes, sir.

THE COURT: All right. Who are you going to offer saying it was not defective or not a defective design?

MR. BARNES: I mean, we're going to offer expert witnesses on those matters and he's not asking for fact witnesses --

THE COURT: Who are you going to offer out of your corporation?

MR. BARNES: A 30(b)(6) representative. I can't give you a name right now.

THE COURT: When are you going to get the name?

MR. BARNES: I can give you one within today.

THE COURT: You're not going to give it to me. You're going to give it to him.

MR. BARNES: I'll give it to him today.

THE COURT: I don't want it.

MR. BARNES: Okay.

THE COURT: Okay? You going to get it for him today?

MR. BARNES: Yes.

THE COURT: All right. What other witnesses do you need, do you think you need at this point in time?

MR. CAVANAUGH: Your Honor, I think that will be sufficient and we can start with them, and I expect that he will allow other witnesses -- divulge other witnesses as the case evolves, but as of now I have none and I'll take him at his word that he'll provide me with what I need this afternoon.

THE COURT: Okay. All right. What else you need?

MR. CAVANAUGH: Well, in interrogatory number two I asked him the standard interrogatory, Set forth a list of photographs. He lodged an objection as it being overbroad. He also said by way of further answer, It is unclear what is meant by, quote, the claim or defense.

THE COURT: What photographs are you talking about?

MR. CAVANAUGH: Well, this just says set forth --

THE COURT: Photographs of what?

MR. CAVANAUGH: Set forth a list of photographs, plats, sketches or other documents in their possession, in possession of the party that relates to the claim or defense in the case. It's just the standard interrogatory, Your Honor.

THE COURT: I understand. But, I mean, photographs of what; the building that burned or what?

MR. CAVANAUGH: Well, photographs that relate to the -- I mean, they may have photographs of the plaintiff's home, they may have other documents that relate to the claim or defense in the case.

THE COURT: All right. Do you have any photographs?

MR. BARNES: Your Honor, we have circulated a protective order. We've told him we have no nonconfidential, nonproprietary photographs. Once we get a protective order in place and we produce some photographs that probably relate to the claim or defenses --

THE COURT: Well, you didn't need to have a protective order. My question to you is what photographs do you have?

MR. BARNES: We do not have any.

THE COURT: You have zero?

MR. BARNES: Yes.

THE COURT: Then why do you want a protective order?

MR. BARNES: Because we have some pictures of our product. In all these requests for production and interrogatories he fails to mention our product at all, and that's our only involvement in this case and that's why our responses are somewhat generic in nature, because there's no specificity.

THE COURT: All right. What pictures do you need protected?

MR. BARNES: Presumably I have not looked at proprietary and confidential documents yet. I do not have them in my possession but...

THE COURT: Well, when are you going to have them in your possession?

MR. BARNES: Once we have the protective order in place which I've --

THE COURT: I just said I'm going to give you one just as fast as you can type it up and I can sign it. So when are you going to have it in your possession?

MR. BARNES: I can have them within -- I can produce proprietary and confidential documents within two weeks of the protective order.

MR. CAVANAUGH: Your Honor, just for the Court's information. I made these discovery requests September 14th. Mr. Barnes and I were trying to work through these issues around the middle of --

THE COURT: Well, is it Mr. Barnes' fault or his client's fault?

MR. CAVANAUGH: Your Honor, it's probably his client's fault. He represented to me on or about November the 16th that his client had the responses, were working on them and he was waiting on them to come back. I get back nothing but objections and no documents.

THE COURT: I have no problem with your protective order, okay?

MR. BARNES: Okay.

THE COURT: As fast as you can prepare it I'll sign it.

MR. BARNES: Okay.

THE COURT: Now, what else do you need?

MR. CAVANAUGH: Well, Your Honor --

THE COURT: What else do you want?

MR. CAVANAUGH: I mean, I want to know what documents he is relying on that relate to the claimed defense in the case that -- Omega Flex has litigated many of these cases throughout the United States involving this particular corrugated stainless steel tubing.

THE COURT: All right.

MR. CAVANAUGH: They know what documents that relate to the claim or defense in this case. The complaints in all these litigations are the same. This is nothing but a stall tactic from them, Your Honor --

THE COURT: Well, I'm getting ready to stop the stalling, okay, if I can find out specifically what you want.

MR. CAVANAUGH: Your Honor, I mean, I don't know what they have because they haven't provided me with anything.

THE COURT: All right. Mr. Barnes?

MR. BARNES: I don't know what he's talk about, Your Honor. He's making assumptions that other lawsuits are similar in nature than this. There probably are a lot of similarities in other lawsuits. I'm just talking about this lawsuit, their interrogatories and requests for production in front of us. And without any more specificity from him I can't help him out, and that's our general position, that we've produced everything that we think is responsive to these requests for production.

THE COURT: Do you have any idea what you want?

MR. CAVANAUGH: Your Honor --

THE COURT: I mean, it's hard for me to order to produce something unless I know what I'm ordering to

produce.

MR. CAVANAUGH: I understand, Your Honor.

THE COURT: Or answer.

MR. CAVANAUGH: I understand, Your Honor. I mean, at this point I want any documents that would relate to the defenses they would make to the plaintiff's -- that have been allegations that have been made against them in the plaintiff's complaint.

THE COURT: All right. What documents do you have or do you think you will have that would go to the defense of the design and/or the --

MR. BARNES: We've produced a thousand --

THE COURT: -- product is not defective?

MR. BARNES: We've produced a thousand pages of documents to date with scientific literature supporting our claims, lightening data. I mean, we've already done that. I don't know what else he wants right now.

MR. CAVANAUGH: Again, Your Honor, they've made claims, none that are privileged --

THE COURT: All right. Let's go about it this way. Produce for them within 30 days the number of lawsuits that have been filed against this company on this same particular product. You can go to the plaintiff's attorney and defense counsel in those lawsuits and try to get what you want, if they are not going to produce them,

okay?

MR. CAVANAUGH: Yes, Your Honor.

THE COURT: I don't know anything -- yes, sir?

MR. MCKENZIE: I hate to interject myself into this, Your Honor. I'm Robert McKenzie and I represent the plaintiff in this case.

THE COURT: Yes, sir.

MR. MCKENZIE: We have not agreed to a protective order either. Simply we have -- this is not the first Omega Flex case we've been in. They produced a number of documents. We were ordered with a protective order in a case out of Beaufort County, and they produced a number of documents that were marked privilege, confidential, privilege attorney eyes only and everything and --

THE COURT: Well, we are going to get to some type of list that he's going to produce for the Court he thinks should be protected and/or privileged, okay, a privilege log. We haven't gotten to that stage yet.

MR. MCKENZIE: But what I want to point out, when you order a protective order, which I think is a good thing in this case, we went on the internet and found a bunch of the documents that he produced confidential.

There's been a trial with Omega Flex Tincher vs. Omega Flex out of Pennsylvania where a number of these things that they marked confidential, attorneys' eyes

only were put into evidence in a public trial. So if you order a protective order in this case here today we would like for the plaintiff -- I mean, for Omega Flex to certify that they have not published them on the internet or to some public entity.

They have some responsibility, we contend, to produce things marked confidential that are in fact confidential. So if we could have a certification that they haven't produced them, published them, put them on the internet, introduced them in a trial then we are happy to have protective order.

THE COURT: Okay. Fine.

MR. BARNES: Your Honor, I would just say that he's talking about another lawsuit in which we had a dispute about the nature of our bate stamp when stamping documents as confidential, attorneys' eyes only. I propose the appropriate remedy is to file a motion to say that we improperly bates labeled.

I'm fine with the assertion that we shouldn't produce documents that are on the internet. What plaintiff's counsel has -- in this case has told me about, concerns he has with a protective order, also documents that we have not produced without a protective order in prior cases and that would be -- that's --

THE COURT: All right. Let's do this, okay. You

give me a list of what you think should be protected and on that list I want to know if it has been produced in any other lawsuit. You understand? And I want it very specific on what documents you are taking about.

Don't give me some disk with a thousand pages on it. I want to know specific what you want protected. I want you to prepare a protection log, and I want to know has that been placed on the internet, has it been introduced at another public trial; you understand?

MR. BARNES: I understand --

THE COURT: If it's been introduced in a public trial I'm not going to protect it, okay?

MR. BARNES: That's not what I'm talking about. I'm not talking about in a public trial, Your Honor. I agree with that. What I'm talking about is the language that he wants in a protective order that we've discussed privately about producing documents that have not been produced without a protective order in prior cases. There's been hundreds of these cases.

THE COURT: I understand. I said I'll give you a protective order. I will. But I want the privilege log first, what you want protected and why you want it protected; you understand?

MR. BARNES: Yes, Your Honor.

THE COURT: And then we'll get a protective order

on the documents that need to be protected.

MR. BARNES: Okay.

THE COURT: I'm not going to let you sit there, your client sit there and use this as a stall tactic to delay discovery and delay the process of this lawsuit. If they want to do that then please tell them it's going to cost them a bundle of money.

MR. BARNES: I understand that, Your Honor.

THE COURT: You understand?

MR. BARNES: That's why I circulated a protective order a month ago if not two months ago. We're trying to get this moving on. No way are we stalling anything. I mean --

THE COURT: All right. How long is it going to take you to get the privilege log to the Court?

MR. BARNES: Could I ask for 45 days?

THE COURT: No, sir. It's not going to be 45 days. How long has the motion been filed?

MR. CAVANAUGH: I filed this motion November 28th but they've had our discovery since September the 14th, Your Honor, requests since September 14th.

THE COURT: I mean, October. It's been two months, over two months.

MR. BARNES: We're not just talking about his motion, Your Honor. We're talking about a protective

order for all the discovery in this case and --

THE COURT: Why is it going to take you 45 days?

MR. BARNES: Okay. Can we do it in 30 days?

THE COURT: Yeah.

MR. CAVANAUGH: And, Your Honor, I appreciate the Court's indulgence on all this. I also just want to bring to the Court's attention, for the record, due the difficulty in getting Mr. Barnes' client to produce documents and the objections which again I do not believe are meritorious, but that's the Court's decision, we've requested attorneys fees pursuant to Rule 37 and I also have --

THE COURT: Well, I'll take that under advisement.

Mr. Barnes, let me make myself clear, okay. You've got 30 days to produce a protective order. Everything that you want protected in this lawsuit I want on that --

MR. BARNES: You mean the privilege log or protective order?

THE COURT: Well, I'm sorry, privilege log.

MR. BARNES: Okay.

THE COURT: And I want to know has it been produced and where has it been produced previously, if it has been produced; you understand?

MR. BARNES: Okay.

THE COURT: And also whether it was previously on a

protective order. Can you get that done in 30 days?

MR. BARNES: I'll do my best, Your Honor, and I hope so.

THE COURT: Because if it's not done in 30 days your attorney [sic] is going to pay $5,000 a day until it is done; do you understand?

MR. BARNES: Yes.

THE COURT: Now, can you get it done in 30 days?

MR. BARNES: I certainly have the financial incentive to do so.

THE COURT: Please tell your client it will cost them $5,000 a day until that protective -- excuse me, that privilege log is submitted to the Court with everything that they plan on submitting, anything about this product, period; do you understand, that they want protected?

MR. BARNES: Your Honor?

THE COURT: And if you need more time I'll give you more time.

MR. BARNES: Okay. Are expecting us to produce every single document that we're producing pursuant to the protective order? We have to list every single lawsuit --

THE COURT: Yes, sir.

MR. BARNES: -- that we've ever produced it in?

THE COURT: Yes, sir.

MR. BARNES: Over a hundred lawsuits?

THE COURT: Yes, sir.

MR. BARNES: We have to list every single lawsuit?

THE COURT: Yes, sir. We're going to get to the nuts of it.

MR. BARNES: Okay.

THE COURT: Now, how much time do you need?

MR. BARNES: I think I need 60 days.

THE COURT: I'll give you 60 days. Now, if you have a legitimate reason to go past the 60 days file a motion and I will listen to you but I want your company to know they are going to produce it. They are not going to deny it, your requests or anyone else's requests. If they do it's going to cost them some money.

MR. BARNES: Your Honor, I just don't understand why this case is being painted as we are delaying it in any way, shape or form. All we are delaying is until the protective order is in place.

THE COURT: Then comply with my request and there won't be any delays, okay?

MR. BARNES: Okay.

THE COURT: I want to give you some incentive to not delay it. Let's put it that way.

MR. CAVANAUGH: Thank you, Your Honor. I believe

Your Honor has addressed it all.

THE COURT: Is there anything else?

MR. CAVANAUGH: That's it, Your Honor. Thank you.

THE COURT: Anything else to try to get this case moving towards a proper discovery? It's called discovery not hide and seek.

MR. MCKENZIE: Not with us, Your Honor.

THE COURT: Pardon?

MR. MCKENZIE: Not with us. We are satisfied with it.

THE COURT: Okay. Now, out of that I'll give you a protective order, okay?

MR. BARNES: Okay. Do you want me to file the protective order --

THE COURT: With the privilege.

MR. BARNES: Okay.

THE COURT: Just leave blank what's going to be protected. I'm not trying to insinuate that you personally are delaying anything. Okay, Mr. Barnes?

MR. BARNES: I understand that. I just --

THE COURT: I'm not insinuating that at all, okay?

MR. BARNES: The implication that my client has in any way stalled, I don't understand where that's coming from. I think it's unfair, especially when there's been no specificity as to why these are deficient.

THE COURT: I understand. I'm trying to get some specificity so we can eliminate these arguments in the future; you understand?

MR. BARNES: Yes, Your Honor.

THE COURT: And if you're not delaying you got 60 days to show the Court you are not delaying it.

MR. BARNES: Okay.

THE COURT: I've given you -- if you need some more time I'll be happy to talk with you because it's probably going to be a pretty steep task for you to get all this together.

MR. BARNES: Yes, Your Honor.

THE COURT: Okay. All right. Anything else?

MR. CAVANAUGH: Thank you, Your Honor. That motion you've handled. Thank you, Your Honor.

THE COURT: Anything else?

MR. LINTON: We have our motion.

THE COURT: All right. What's your motion?

MR. LINTON: Our motion is a motion to compel arbitration on several of the claims.

THE COURT: Okay. Against the plaintiff?

MR. LINTON: Against the plaintiff as to us and against the plaintiff as to our subcontractors as well.

THE COURT: Okay.

MR. MCKENZIE: May I hand up something for the

Court?

THE COURT: Yes, sir.

MR. LINTON: Your Honor, do you have a copy of our memorandum as well?

THE COURT: If you filed it it should be in the file.

MR. LINTON: Okay. We filed it.

THE COURT: You got a copy of it?

MR. LINTON: I've got a copy of it.

THE COURT: If you'll hand it up I appreciate it and I can leave the other one in the file.

MR. LINTON: I also have a case behind it from the Court of Appeals.

THE COURT: Okay. Thank you very much.

All right. Which subs do you think should go to arbitration?

MR. LINTON: All three, Your Honor.

THE COURT: You're talking about AAA Plumbing, Fogel Services, and Charleston LEC?

MR. LINTON: Yes, sir.

THE COURT: Just those three?

MR. LINTON: Yes, sir.

THE COURT: Okay. All right, Mr. Linton. I'll be glad to hear you.

MR. LINTON: Your Honor, at the outset the decision

is whether the Federal Arbitration Act applies or whether state law applies. The case law is clear that when the contract involves interstate commerce the Federal Arbitration Act pre-empts state law on the issue. In this case, the facts alleged in the complaint, as well as the facts as they happened, show that this did involve interstate commerce and a contract to purchase the construction of a home.

Additionally, the contract itself that the Phillipses signed and initialled, the warranty that they initialled, they read when they signed the contract which says, As the purchase agreement with Wieland in this warranty are transactions involving interstate commerce. Arbitrations shall be governed by the United States Arbitration Act, and then it cited the code section.

And so at the outset, our argument is that the Arbitration Act applies to all claims involving this contract and that the Phillipses would be estopped from arguing to the contrary since they've alleged in their complaint several different causes of action based on the existence of this contract.

So with that, the Arbitration Act applying, we move on to their claims against us are specifically covered by the language of the arbitration agreement, which provides that any claims or disputes that arise out of this

contract, including torts, warranty claims and all property damage claims, which as Your Honor is aware the house burned down, so obviously this whole case is a property damage claim, will be covered by the arbitration agreement.

So the first part of our motion is that they are bound by that contract and they should be ordered and compelled to arbitrate those claims against us.

The second part is the issue with the subcontractors. In that recent case, Hilton Head -- or Pearson vs. Hilton Head Hospital involved a similar situation. Here our subcontractors have an agreement with us which required them to participate and cooperate in any arbitration and then we have our agreement which we just discussed with the Phillipses which has the arbitration agreement in it. There is no contract between the Phillipses and our subcontractors directly.

However, they've alleged that their contract with us, and in some way our contract with our subs by virtue of those contracts, they have claims against our subs, and since they've alleged that the same way they alleged it against us and affirmed the existence of the arbitration agreement we argue they be bound by that as well as to the subs. And since the subs' contract with us requires them to participate and cooperate in any

arbitration they should be compelled to do the same thing.

The Hilton Head Hospital case the Court said that because the plaintiff was affirming the contract and relying on the contract as part of their claims against the non-signatory to the contract, which here would be our subs, that the plaintiff was required to honer the arbitration agreement with them and required to submit the claims to arbitration.

The only party here that we have not included in our motion is Omega and that's simply because they are not a party to any contract and there would be no case law or contracts that would allow us ability to compel them to arbitration if they didn't want to.

So for those reasons, and particularly the contractual provisions including one other, is that the Phillipses in their contract with us agreed that that warranty that they initialed, that they read that involves the arbitration agreement mentions that we may include our subcontractors as parties in an arbitration, so they've already acquiesced to that as well.

And for all those reasons we ask that you compel the Phillipses to arbitrate their claims against John Weiland Homes and their claims against those three subcontractors.

THE COURT: Okay. Thank you, Mr. Linder.

MR. LINDER: Yes, sir.

THE COURT: Mr. McKenzie?

MR. MCKENZIE: May it please Your Honor. We believe that the case we handed up to the Court, Bradley vs. Brentwood Homes which was determined after this motion was filed, about a month after this motion was filed, is directly on point. And Mr. Linton is trying to make this into a construction contract but it is simply a contract for the purchase of a home.

The plaintiffs entered into this contact contract and interestingly if you look at the affidavit he filed with his motion, which is the only supporting document that's supposed to be factual, the gentleman speaking on behalf says that, you know, these people agreed to purchase a home and they characterize it as the purchase of a home. The contract itself --

THE COURT: Does the contract for sale compel arbitration?

MR. MCKENZIE: The contract of sale has the provision in there compelling arbitration. It does not appear on the front page stamped in compliance with the Uniform Arbitration Act of South Carolina --

THE COURT: It doesn't stand out, prominent?

MR. MCKENZIE: Not on the first page as required by

South Carolina law. So the question is does the Federal Arbitration Act apply in this instance, and if this is simply the sale of a home that case specifically says that real estate law is something that's intrastate and not interstate, and there's nothing in here that really says that the home is being constructed or is constructed, or anything else.

They have failed in their burden of proof to show what this is other than the sale of a home. And if that's what it is then the FAA does not apply and we are entitled to go forward with our lawsuit against them.

With regard to their subs, if they want to bring them in for indemnity purposes, you know, that's something that's contractual between them, but we have -- and I'm going forward to touch on that. We've got a right to continue our lawsuit against those subs. And we believe that Federal Arbitration Act doesn't apply because of that case and that it is simply a matter of a sale and our lawsuit should go forward as it is.

THE COURT: Okay. Thank you so very much.

Mr. Linton? Anything you want to say in reply concerning the contract for sale?

MR. LINTON: Yes, sir. It's not required to say anything on the face of the contract at the top because it's not governed by South Carolina law. And just for

the Court's information one of the plaintiffs in this case is an attorney so any idea that he would need that to sort of draw it out to the protect him I don't think really applies here.

But beyond that, it's governed by the Federal Arbitration Act which does not require that in pre-empt South Carolina law when interstate commerce is involved.

And he's argued that the Brentwood Homes case says that a purchase agreement is not a -- a transaction with interstate commerce; however, that case involved a simple purchase agreement and the Court didn't find any evidence of any other -- that any way showed that interstate commerce was involved. Here the agreement that they initialled, they read, which is the warranty, says this contract will be governed by the United States Arbitration Act because it involves interstate commerce.

Additionally, if you flip to the beginning of that affidavit the purchase agreement was amended several times and those amendments are part of the exhibits to the affidavit where they say things like adding 37 feet of fence, for example, it might not be 37 feet, or adding this.

And so it's clear in the Court's -- in analyzing an arbitration agreement look to the agreement, the facts as alleged in the complaint and the surrounding facts, and

those addendums are surrounding facts that would show this was the construction of a home; otherwise, you wouldn't have addendums that were changing that.

And even if the contract refers to it as purchase agreement the simple facts are the Phillipses were constructing a home through this purchase agreement shown by those addendums. And the fact that they agreed that it involved interstate commerce means that they can't argue now that it didn't.

And as to the subs, I think we've covered that I think the Hilton Head Hospital case applies. It shows that if somebody is going to try to enforce one contract against someone else, which is what they are trying to do here, then they are bound by the terms of that contract.

And, Your Honor, while the plaintiffs do have a right to control their lawsuit and they want to bring their claims against the subs we have a right to have our contract interpreted in one forum.

So it wouldn't make much sense for us to have an arbitration involving the scope of our contract or any property damage arising out of our contract and then have to come back here and for the plaintiffs to litigate the same issue against our subcontractors because we should have our contract interpreted in one forum as the plaintiffs have already agreed.

THE COURT: I'm looking at your affidavit and your attachments, specifically the warranty. Where is the --

MR. MCKENZIE: Paragraph three.

THE COURT: -- arbitration in that? Paragraph three?

MR. MCKENZIE: Paragraph three is the one I was referring to where he did not --

THE COURT: Where is it written in here, Mr. Linton?

MR. LINTON: The contract arbitration agreement is paragraph 22 in the contract.

THE COURT: Paragraph three or paragraph 22?

MR. LINTON: Twenty-two is in the contract and then paragraph O of the warranty is an extensive arbitration agreement which goes for about two pages.

THE COURT: This copy you gave me I can't read.

MR. LINTON: I've got it in the memorandum, Your Honor, that we filed. We've got it highlighted, you know, and typed but can be read.

THE COURT: Anybody got a magnifying glass?

All right. It's in the contract. Is that what you are telling me?

MR. LINTON: Yes, sir. In the contract it states, The purchaser and seller agree that in connection with the sale contemplated by the agreement purchaser will be

enrolled in the warranty program as incorporated herein by reference. Purchaser acknowledges that purchaser has received and read a copy of the current --

THE COURT: All right. I'm looking at the agreement to buy and sell.

MR. LINTON: Yes, sir.

THE COURT: Rita Phillips is buying it and John Weiland Homes is the buyer [sic], and then it looks like it's signed. Then on the second page there's some conditions, and we've got some addendums. Tell me where you are finding all this?

MR. LINTON: Do you have -- may I approach, Your Honor?

THE COURT: Yes, sir.

MR. MCKENZIE: I've enlarged that contract a little bit and attached it to mine.

THE COURT: You did? I can read yours?

MR. MCKENZIE: I think you can read it if you take a look at it.

THE COURT: Okay.

MR. MCKENZIE: And I also highlighted that paragraph so you could find it.

THE COURT: Mr. Linton, all these judges with gray hair, why do you give this stuff you can't read? Why don't you give us something we can read?

MR. LINTON: I'm sorry, Your Honor.

THE COURT: I got these glasses but I still can't see. I need a magnifying glass.

MR. LINTON: I've got it in the memorandum in a type that I can read because I couldn't read it either.

THE COURT: Okay. All right. What else are you referring to? I got you on paragraph 22. What else are you referring to?

MR. LINTON: And then if you continue into the warranty, Your Honor, on page 10 of the warranty.

THE COURT: Page 10?

MR. LINTON: Yes, sir.

THE COURT: Okay. I'm with you.

MR. LINTON: Paragraph O.

THE COURT: O?

MR. LINTON: Which it says mandatory binding arbitration.

THE COURT: Okay.

MR. LINTON: Which this is the paragraph that on that 22 we were talking about both of the plaintiffs initialled that they had read and agreed to, and the balance of the provisions we've discussed are in paragraph O, which is on 10, 11 and 12.

THE COURT: Okay.

MR. LINTON: On page 11, the last sentence of that

largest paragraph in the middle you'll see the sentence regarding the plaintiff's agreement that the United States Arbitration Act applies to their claims.

THE COURT: Okay. And where else do you want me to look on the warranty?

MR. LINTON: I think on the warranty that is about it, Your Honor.

THE COURT: Okay. All right. Anything else you want to tell me?

MR. LINTON: No, sir.

THE COURT: Okay. Thank you very much.

MR. CAVANAUGH: Your Honor, on behalf of Fogel, who is a subcontractor, we would join with the plaintiffs in opposing this motion to compel arbitration for a few reasons. Number one, we agree with the plaintiffs that the Bradley and Brentwood case specifically removes this case from the Federal Arbitration Act, as this is not for the construction of a home.

And reviewing the exhibits attached to the contract of sale itself it's clear that the home was already in construction and pretty much finished when the plaintiffs purchased the home and added things like grass and electrical outlets, additional electrical outlets. So we do believe the Court is abundantly clear in its opinion that this is for the sale of real estate and it is not

subject to the Federal Arbitration Act.

Number two, the trade agreement with the subs we do not believe that we, regardless, should be brought into arbitration because number one, the agreement, the trade contractor agreement, which specifically with Fogel is attached as exhibit B to Mr. Linton's motion, is a two-page agreement in which the cooperation in arbitration clause is on page two at almost the end of the document and absolutely does not comply with the Uniform Arbitration Act in the South Carolina code. It is not on the first page, it is not underlined, it is not bold. It does not stand out.

THE COURT: Well, the federal law doesn't require that, does it?

MR. CAVANAUGH: That we...

THE COURT: Being bolded.

MR. CAVANAUGH: The Federal Arbitration Act is not specific to that.

THE COURT: Okay.

MR. CAVANAUGH: But we do not believe that it actually complies with that, and the plaintiff -- and on top of that the plaintiff had brought direct claims against my client and the other subcontracts in addition to Omega Flex. There is no arbitration agreement between my client and the plaintiff.

The plaintiff likely will still have those direct claims against us even if the plaintiff and the general contractor go to arbitration. There will -- additionally, there will be a lawsuit that continues with Omega Flex who is not compelled to go to arbitration.

Omega Flex has already filed a cross-claim against all of the other subs, and I believe the general contractor. I've allowed Walker to amend it because it was not pled properly but Omega Flex is going to file an amended cross-claim unless he's clanged his position; therefore, for judicial economy and my client's costs it does not make sense for my client to have to litigate this claim in both arbitration and in Circuit Court, Your Honor. So for those reasons we oppose arbitration.

THE COURT: Yes, sir.

MR. BARNES: Your Honor, arguably, Omega Flex doesn't have a dog in the fight but for the reasons Mr. Cavanaugh and Mr. McKenzie have stated we join with the plaintiffs in their opposition. In addition to --

THE COURT: You want to try it all in Circuit Court?

MR. BARNES: Yes, sir.

THE COURT: You don't want to arbitrate?

MR. BARNES: In addition to the judicial economy argument the potential for inconsistent verdicts from

arbitration in Circuit Court, so we oppose the motion.

THE COURT: Okay. Thank you very much. I appreciate the argument.

MR. ROSS: Your Honor, Jeff Ross for AAA Plumbing. An initial matter, I think I agree with the other gentlemen, and for judicial economy I'd like to have it tried in one matter.

However, to add to Mr. McKenzie's argument; to the extent the Court finds that this is a contract for the sale and not the contract for construction so then are the claims by Weiland against the subcontractors because his claims would be essentially indemnity claims against the subcontractors arising out of a sale on the claims brought by Mr. McKenzie.

But ultimately, we'd like it in one forum, Your Honor. Frankly, I don't care which one it is. We just want it in a single one.

THE COURT: Okay.

MR. WRIGHT: Your Honor, Michael Wright for Charleston LEC. We concur with Mr. Cavanaugh and the plaintiff's arguments as well and believe they've covered everything we could possibly want to say.

THE COURT: Okay. Mr. McKenzie?

MR. MCKENZIE: May it please the Court.

THE COURT: Was this a spec house?

MR. MCKENZIE: As far as I know it was.

THE COURT: Okay. I mean, it was a spec house. It wasn't a custom house being built?

MR. MCKENZIE: No, sir. No planned specifications. And actually if you look at that agreement my clients were forbidden to go on the property until closing unless they had written consent from Mr. Linton's client that could then allow them, they could visit the property.

I guess they could drive by it but they couldn't engage either the workers or other people in the neighborhood, and if they had any questions they had to go to the sales agent. That's all in that contract.

THE COURT: Okay.

MR. MCKENZIE: But the important thing I think in Mr. Linton's argument on page 11 of his warranty, and in the Bradley case.

THE COURT: On page 11 --

MR. MCKENZIE: Yes, sir.

THE COURT: -- of the warranty? Let me find it while you are referring to it.

All right. Page 11. I'm with you.

MR. MCKENZIE: Yes, sir. The Bradley case, and that would be the second full paragraph. The last sentence on which he's relying says, As the purchase agreement with Weiland and this warranty are transactions

involving interstate commerce.

This warranty covers homes in Georgia, South Carolina, three or four states, and the South Carolina law was not firmly established until July of this year when they said the sale of a home does not involve interstate commerce. It's an intrastate action. So this law on which he bases his assumption that it's enact, it's in an interstate commerce is not the law in South Carolina. So he's got a premise on which he bases his argument that's fallacious, in any judgment.

THE COURT: Okay. Thank you so much.

Mr. Linton, they are all jumping on you. Anything you want to add before we quit?

MR. LINTON: I know. I must be doing something right if none of them want to do it.

THE COURT: Well, you got them all against you now.

MR. LINTON: One thing I would say is that the Bradley case that he relies on said that in that case that the purchase of a home didn't involve interstate commerce. It didn't say that a party couldn't agree that it did, which they've done in this case. It also didn't say that a seller couldn't show that it did, which I think we've done in this case and I would think they've alleged.

THE COURT: So you think it was by agreement by the

plaintiff?

MR. LINTON: That's one way, Your Honor. The other would be by the facts and the circumstances.

THE COURT: You're not giving up the other way, huh?

MR. LINTON: Not yet.

THE COURT: Okay. All right. Thank you so very much. I appreciate it.

Give me a chance to read this. Obviously, I haven't read it, and I'll have to take it under advisement and read all the documents, read the cases and give you a decision as soon as possible. And thank you all very much.

Mr. Barnes, I'm not fussing at you personally. I just want to make sure your client understands that we are going to move forward, okay?

MR. BARNES: Yes, Your Honor.

THE COURT: Okay.

(WHEREUPON, the hearing was concluded.)

C E R T I F I C A T E

I, Sharon L. Vizer, Official 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 all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 18th day of December 2012.

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

September 25, 2013

SHARON L. VIZER

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	2012-CP-10-3870
Peter T. Phillips, et al,	)	
	)	
PLAINTIFFS,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	April 16, 2013
	)	
Omega Flex Inc., et al,	)	Charleston, South Carolina
	)	
DEFENDANTS.	)	
	)	

B E F O R E:

THE HONORABLE J.C. NICHOLSON, JR., Judge

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

JOHN F. MCKENZIE, Esquire
Attorney for Plaintiff Peter T. Phillips

A. WALKER BARNES, Esquire
Attorney for Defendant Omega Flex Inc.

EVERETT A. KENDALL, II, Esquire
Attorney for the Defendant Fogel Services, Inc.

MISSY BROWN
Court Reporter

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
MOTION	4			
CERTIFICATE OF REPORTER	23			

E X H I B I T S

NO.	DECRIPTION	ID	EV
	No exhibits presented at hearing.		

P R O C E E D I N G S

APRIL 16, 2013

(Whereupon, Court convened when the following matters were had:)

THE COURT: Phillips versus Omega Flex. Who's moving for the protective order?

MR. BARNES: Your Honor, I am. Walker Barnes.

THE COURT: All right. Which Defendant do you represent, Mr. Barnes?

MR. BARNES: Omega Flex.

THE COURT: Omega Flex. All right. Why do you want a protective order?

MR. BARNES: I'm sorry, Your Honor. I didn't hear.

THE COURT: What do you want? I guess I should say why do you want it.

MR. BARNES: I want to protect trade secrets and other proprietary information.

THE COURT: Y'all can't agree on an order?

MR. BARNES: I have consent from all of the defendants except for Defendant Fogel.

THE COURT: Except for Defendant, which one?

MR. BARNES: Fogel Services.

THE COURT: Fogel Services.

MR. BARNES: Yes, Your Honor. Fogel Services

requested that we use a federal form. I think our order is perfectly reasonable. I -- I've tried ---

THE COURT: That's all he wants, the federal form?

MR. KENDALL: Yes, Your Honor. Everett Kendall on behalf of Defendant Fogel Services. And we're happy to enter into a consent order, protective order, confidentiality order by the Court. I just -- we had a litany of issues with the way that Omega Flex's protective order reads.

THE COURT: I haven't read it. Do you want to point me to where the problems are?

MR. KENDALL: Well, yes, sir. Number one, there is no requirement in Omega Flex's order that the attorney review the documents that they indicate as confidential prior to disclosure and certify that they contain information justifying the designation as opposed to the federal order which requires the attorney ---

THE COURT: Let me write down your objection. What's your first objection?

MR. KENDALL: My first objection is there is no Rule 11 certification in Omega Flex's order.

THE COURT: No what?

MR. KENDALL: No Rule 11 certification requirement in Omega Flex's order.

THE COURT: Okay.

MR. KENDALL: The second is in paragraph six of Omega Flex's proposed order.

THE COURT: Paragraph six?

MR. KENDALL: Yes, sir. Yes, Your Honor. And basically their protective order essentially shifts the burden of determining whether the designation is appropriate and requires the party that challenges the designation to basically jump through hoops to challenge it as opposed to paragraph eight of the federal order which would outline a particular specific process for resolution of the dispute prior to submitting it to the Court and only if we cannot resolve it does it require the party -- the designated party, as opposed to the challenging party, to seek confirmation of the designation.

And this is particularly important in this case as we've had some issues as Your Honor may remember. We were before you back in December on a couple of motions, a motion for -- to compel that my client filed against Omega Flex and which Your Honor granted and signed recently. And then co -- co-defendant John Wieland Homes filed a motion for -- to compel arbitration of which the Court has not yet ruled.

But we had some particular issues with regard to discovery and I think the Plaintiff, Mr. McKenzie, may be

able to shed some light on some particular issues they've had with Omega Flex in the past. It's just sort of a continuing process that we ---

THE COURT: Those are your two objections, no Rule 11 certification and paragraph six?

MR. KENDALL: Yes, Your Honor. And basically paragraph four, B through , essentially paragraph four ---

THE COURT: B through what?

MR. KENDALL: B through D. Essentially requires us to get the approval of Omega -- the challenging party to get the approval of Omega Flex before we provide any documents to consultants or experts. They're allowing Omega Flex basically access to any info that they may not be entitled to at the time under the rules.

In fact they have recently sent me a letter that I just received via mail yesterday challenging a subpoena that I sent to one of their consultants that they identified in some disclosures to us. And that's not before the Court, but basically what they're asking us to do, before we even provide documents we have to tell them who we're providing it for and get their approval and we just don't feel like that's required.

Also, Your Honor, they want the -- they want the -- their agreement requires us, even leaves it open to where they can stamp confidential on the first page of any series

of documents that they produce.

THE COURT: Well why -- why don't we do this, okay?

MR. KENDALL: Yes, sir.

THE COURT: Why don't you send me a proposed order making your objections?

MR. KENDALL: Okay.

THE COURT: And I'll look at it. I want to hear from you about your order. But I'll take a look at it and I'll decide which order I'm going to issue. I may consolidate the two. I don't know.

MR. KENDALL: Your Honor, I have ---

THE COURT: Let me hear from Mr. McKenzie and then I'll hear from the other side about your order, okay?

MR. KENDALL: Thank you, Your Honor.

THE COURT: I'm going let him send me a proposed order correcting the faults as he sees them, okay?

MR. BARNES: Okay.

THE COURT: I'm not saying I'm going to sign it, but I want him to at least put it in writing.

Yes, sir, Mr. McKenzie?

MR. MCKENZIE: May it please the Court?

THE COURT: Yes, sir. And I'm sorry. I do not remember the hearing in December. I remember Mr. McKenzie being here on some hearings. Whether it's the same one or

not, I don't remember.

MR. KENDALL: Yes, Your Honor. Thank you.

MR. MCKENZIE: It's the same case. This is a corrugated stainless steel tubing case with a claim that an indirect lightning strike compromised the product.

THE COURT: Is this one of the propane claims?

MR. MCKENZIE: Yes, sir.

THE COURT: Propane lines?

MR. MCKENZIE: That's correct.

THE COURT: The yellow line versus the black line?

MR. MCKENZIE: That is -- that is part of it, yes, sir.

THE COURT: Okay. All right. Am I trying to simplify it?

MR. MCKENZIE: Well I don't know.

We have been involved in prior litigation with Omega Flex, a case in Beaufort County. In that case they produced a number of things that they marked either confidential or confidential attorney eyes only pursuant to the order. We had argued in Beaufort that they should certify that they were in fact confidential so we wouldn't have to go around chasing things because that order provides some sanctions ---

THE COURT: Which party do you think should move

before the Court to get it confidential?

MR. MCKENZIE: If we get into a dispute, I think either party could do that.

THE COURT: All right.

MR. MCKENZIE: But the thing about it is, I suspect -- and I'm not speaking from any particular knowledge -- because South Carolina counsel did not mark those documents as either confidential or confidential attorney eyes only. We went on the Internet and found a goodly number of them that they had marked that way that should never have been sent to us marked in that fashion.

The other thing is they tried at least one of these cases and some of the documents that they had marked confidential or confidential attorney eyes only had been put into evidence in a public trial.

THE COURT: Were they later sealed after the trial?

MR. MCKENZIE: To my knowledge they were not.

MR. BARNES: I don't know the answer to that.

THE COURT: Okay.

MR. MCKENZIE: But the thing about it is, if they're going to mark it, I don't think -- I think the Court ought to have some way to give sanction to someone who marks something that makes us spend a lot of time chasing around.

THE COURT: Why can't -- on your attorney/client privilege where they give you a privilege log, I mean why can't you get a confidential log and present it to the Court if you have a question about what they're marking? Get a confidential log and let the Court review it and listen to arguments on what should be confidential and what's not to avoid a lot of running around. Well I'm just comparing it to your confidential log on your attorney/client privilege.

MR. MCKENZIE: But Omega Flex has their own attorneys, not necessarily local attorneys ---

THE COURT: Right.

MR. MCKENZIE: --- who oversee all of the litigation so they should know in fact what has been put into the public domain and what has not been put into the public domain. If the federal order says that if you mark something an attorney has to see it and an attorney has to certify that it is in fact confidential, in the event that it is not confidential ---

THE COURT: That sounds like something Ross Anderson would put in an order.

MR. MCKENZIE: --- if it is not confidential, then they ought to be required to explain why it was so marked.

THE COURT: How are you going to arrive at that

point of requiring them to say it's not marked confidential or it shouldn't have been? How are you proposing it to arrive at that? Because you don't know what it -- I mean ---

MR. MCKENZIE: At some point in time ---

THE COURT: --- once you receive it then you could challenge it then? How do you envision challenging it to impose the sanctions I guess is my question.

MR. MCKENZIE: Well I spent a number of hours going through that stuff before and we're talking about a lot of documents. And the ones that I found on the Internet, I wrote Mr. Barnes about and suggested that they should consider not having them marked confidential. Before he had a chance to resolve it, we had a mediation and the case got settled.

THE COURT: Okay.

MR. MCKENZIE: But the burden ought to --- if they're going to say this is a confidential document with trade secrets, they ought to be able to certify ---

THE COURT: Are you talking about these attorneys in here or the corporate attorney?

MR. MCKENZIE: The corporate attorney can certify that it is ---

THE COURT: Well I don't have any jurisdiction over the corporate attorney.

MR. MCKENZIE: You do.

THE COURT: I do these.

MR. MCKENZIE: You do if you sign -- you do if you sign the federal court order because it provides that by the certification they then submit themselves to the jurisdiction of the Court and the order clearly says that somebody has to certify it.

THE COURT: I -- I'll -- on the pro hac vice I use, I know Judge Anderson's pro hac vice order, which I put in there that the local attorneys are responsible for appearing at hearings and being prepared to participate in litigation before they're even admitted. And I -- some of his other orders on the discovery issues, where they say it's not available, same thing. He requires the court -- court officials to certify under oath that it's not available and if it does show up, then you submit yourself to the jurisdiction subject to sanctions. Same type of thing that y'all have got here.

MR. MCKENZIE: That's correct.

THE COURT: That's just a different scenario. I don't have any problem with what Mr. McKenzie's saying.

MR. BARNES: I don't either. And if you look at paragraph ---

THE COURT: And I'm almost -- from my perspective, rather than saying the corporate counsel's

eyes only, his eyes plus your eyes.

MR. BARNES: Yes and ---

THE COURT: I can get you in here. I can't get some corporate counsel from wherever in here.

MR. BARNES: I understand that.

Your Honor, to one issue that Mr. McKenzie brought up and he brought it up in the prior suit. Public information, if you look at paragraph 12 of the order in front of you, it clearly says nothing herein shall -- shall be construed as preventing any party from using without restrictions hereby any information as obtained from sources available to the public.

I have specifically addressed that issue in the prior case with my general counsel and national counsel and the issue is moot. The documents have been produced as non-confidential in this case.

And regardless, Your Honor, if I can bring up to you, the prior case that we did have Judge Dukes signed the virtually verbatim protective order that I'm proposing and Mr. McKenzie objected to and various co-defendants had some problems and Judge Dukes basically gave us what we asked for. I think it's a perfectly reasonable protective order. Three of the -- four of the five co-defendants have reviewed it and have no problems with it. I think the federal format is perfectly reasonable too. But I don't

know why we -- we should impose the federal format on this state court case if our format is perfectly reasonable.

THE COURT: Well I'm going to look at both formats and see which one I like.

MR. BARNES: Okay.

THE COURT: I may add to it or take away or combine the two, okay?

MR. BARNES: And I think it's a minor point for all the parties, but ---

THE COURT: And my point being I want to get an order that alleviates from y'all doing a lot of running around, a lot of discovery to try to determine what you need to do.

But what -- I'm sorry. I didn't mean to interrupt. What did you want to say?

MR. BARNES: As far as the attorney's eyes only confidential, we do have documents that come from national counsel that have been marked both -- or they've been marked either confidential attorney's eyes only or confidential. For purposes of this litigation, I agree ---

THE COURT: What does attorney's eyes only do? That doesn't do anything ---

MR. BARNES: Oh, I agree.

THE COURT: --- but share it with his experts.

MR. BARNES: I agree.

THE COURT: That doesn't accomplish anything.

MR. BARNES: I agree. It's just -- it would impose on us -- I think -- I've been told that technically it's hard to take it out of all documents that we have. I mean we could -- it would just be -- involve like thousands of pages.

THE COURT: The problem I have with the whole process is allowing the Defendant to just arbitrarily stamp something confidential on it. That's sort of like putting the fox in the hen house to guard the chickens.

MR. BARNES: Your Honor, we've already produced over 4,000 pages of non-confidential documents. The documents we're producing are confidential.

THE COURT: I'm not talking about the conf -- according to you it's confidential. It may or may not be. Mr. McKenzie's said he's found some of them on the Internet.

MR. BARNES: Not -- not in this case, Your Honor. That's not in this case. That's a different case.

THE COURT: All right.

MR. KENDALL: Your Honor, just for clarification ---

THE COURT: Were they marked confidential in the prior case?

MR. BARNES: That's what the argument was. We

never -- he never filed a motion. We never got to have a hearing.

THE COURT: You never got to that point?

MR. BARNES: Yes, Your Honor.

THE COURT: Yes, sir?

MR. KENDALL: Just for clarification on what you want us to do so I understand.

THE COURT: I want you to present an order that suits you.

MR. KENDALL: Okay, Your Honor. I have one.

THE COURT: Incorporating what your objections are to this order.

MR. KENDALL: Yes, Your Honor. And just -- and just to clarify something Mr. Barnes said. We're not asking the Court to accept and impose the federal form order. All we're doing is ---

THE COURT: I don't take it that way. Okay?

MR. KENDALL: Right. Yes, Your Honor.

THE COURT: I'm not -- I know you're not trying to impose some federal order on this Court. I don't take it that way. I have no problem looking at federal court orders. Some of them are good. Some of them I like; some of them I don't. Okay? I just told you two instances that I'm familiar with in federal court that I have adopted that I use, the pro hac vice and the failure to produce

documents. I've adopted them and when I do an order I put Judge Anderson's language in those orders.

MR. KENDALL: Okay, Your Honor.

THE COURT: Especially the pro hac vice because you get some attorney in Chicago and he never comes. I can get a lawyer in South Carolina here.

MR. KENDALL: Okay, Your Honor. I'll do exactly as the Court wishes.

THE COURT: I don't -- I did not take it that way, okay? Because I think there's parts of it I like, some of it I do. Quite frankly most I've ever seen I do like. Okay? So I don't have any problem with that. Okay?

MR. KENDALL: Thank you, Your Honor.

THE COURT: Mr. McKenzie, do you want to have any input as to that order?

MR. MCKENZIE: I have seen both orders and the one I'm assuming that counsel is going to submit -- both of the orders have been circulated. For the Plaintiff I would say that I would prefer the marked up federal order because it puts less burden on everybody than does Mr. Barnes' order which actually tells us what we can do with experts or whether they're testifying or whether they're ---

THE COURT: But, you know, for your eyes only doesn't do anything. That's -- as you have agreed, right?

MR. MCKENZIE: And the federal order is much

shorter. Mr. Barnes' order is a formal order that -- that's come up over the years and if you read it you will see there's a portion in there a couple of times that says, This is not pertinent to this -- this particular litigation. So they're both form orders. The federal order works in South Carolina. People are used to dealing with it. And he has fixed it so that it is a South Carolina Rules of Civil Procedure order and I think the Court would look at that.

THE COURT: Anything you feel is appropriate you can put it in. Put it in and I'll review it and I may consolidate two of them. I don't know. Let me look at it and I'll decide.

MR. MCKENZIE: The main thing is I think they should be careful, the Plaintiff, when the Plaintiff marks something as confidential there should be some onus on the Plaintiff because they are the only people who know whether they put it out there or not.

THE COURT: You're talking about the defendants, not the Plaintiff.

MR. MCKENZIE: I mean, excuse me, I said Plaintiff.

THE COURT: You're talking about the defendants.

MR. MCKENZIE: Yes, sir, that's correct.

THE COURT: In particular Defendant Omega Flex.

MR. MCKENZIE: That's correct.

The other -- the order applies to every defendant and every plaintiff.

THE COURT: Okay.

Have you seen the order?

MR. BARNES: Yes, I have. It's basically the federal form order. I think it's perfectly reasonable for you to use both of them and come up with whatever you like best.

THE COURT: That's what I'm going to do. Okay. Thank y'all so very much.

MR. KENDALL: Your Honor, just so I can bring it to the Court's attention. This case will be a year old in June and we may -- the parties are going to have to get together on a scheduling date due to no discovery being done. And I would just submit to the Court -- we need to submit a scheduling order at some point to the Court as we're not very far from litigation.

MR. MCKENZIE: I think that the Court will recollect the Court had indicated at the last hearing in December that it was going to issue a scheduling order.

THE COURT: I did that or who?

MR. MCKENZIE: I think you did.

MR. BARNES: I don't recall that.

THE COURT: Because normally the scheduling order

would go before the administrative judge. I think last year it was Deidre Jefferson. I think this six months it's Judge Young. Have y'all submitted one to Judge Young? Do you want to?

MR. BARNES: I think we will eventually, Judge.

MR. MCKENZIE: I think it'd be prudent at this point.

THE COURT: How long is it going to take to try this case?

MR. MCKENZIE: If it's tried I would say it would take most of a week, if not a little bit into the second.

MR. BARNES: Two weeks.

THE COURT: A couple of weeks? Well why don't you just submit an order, mail me an order and I'll run it by Judge Young and see if he likes it because I think that's in his purview of making a decision.

When do you think it will be ready for trial?

MR. BARNES: Well we still have our motion to compel arbitration pending. And so before we get to a scheduling order, discovery ---

THE COURT: You're talking about compelling all the defendants for arbitration or just some of them?

MR. BARNES: It's a motion by John Wieland Homes to compel the Plaintiff to arbitrate its claims.

THE COURT: John Wieland Homes and Neighborhood?

MR. BARNES: Yes, sir.

THE COURT: Just on you?

MR. BARNES: Against us and the three subcontractors.

THE COURT: But as far as Omega and ---

MR. KENDALL: Everybody but Omega.

THE COURT: Everybody but Omega; is that correct?

MR. KENDALL: Yes, sir.

THE COURT: Didn't the Supreme Court just uphold an order -- off the record, Missy.

(Whereupon, an off-the-record conference was held between the Court and counsel.)

END OF REQUESTED TRANSCRIPT OF RECORD

CERTIFICATE OF REPORTER

I, the undersigned Missy Brown, Official 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 all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Charleston County, South Carolina, on the 16th day of April 2013.

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

August 18, 2013

Missy Brown

Court Reporter

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)
)
Peter T. Phillips & Summar C. Phillips,) CASE NO.
☐ Plaintiff) 2012-CP-10-3870
)
v.) MOTION AND ORDER INFORMATION
) FORM AND COVER SHEET
Omega Flex, Inc., et al.,)
☒ Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
John F. Mckenzie, Bar No. Address: PO Box 58 Columbia, SC 29202 phone: (803) 223-6705 fax: (803) 252-6705 e-mail: jackm@mmrml.com other:	John P. Linton, Jr., Bar No. 5777 Address: PO Drawer 22247 Charleston, SC 29413-2247 phone: 727.7752 fax: 727.2231 e-mail: jpl@p-tw.com other: 79130

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Compel Arbitration
Estimated Time Needed:30 mins Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ _____
Signature of Attorney for ☐Plaintiff / ☐Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

_____
JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A NUMBER: 12-CP-10-3870
	)	
	)	
Peter T. Phillips and Summar C. Phillips,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	**DEFENDANT JOHN WIELAND HOMES AND NEIGHBORHOODS OF THE CAROLINAS, INC.'S MOTION TO COMPEL ARBITRATION**
Omega Flex, Inc., John Wieland Homes, and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc., Charleston LEC. Inc.,	)	
	)	
Defendants.	)	
	)	

FILED
2012 OCT 30 PM 4:00
JULIE J. ARMSTRONG
CLERK OF COURT

Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc. ("JWH") hereby moves, before this Honorable Court, for an Order compelling arbitration of all claims asserted against JWH, AAA Plumbing, LLC ("AAA Plumbing"), Fogel Services, Inc. ("Fogel Service"), and Charleston LEC Inc. ("Charleston LEC"), and dismissing or, in the alternative, staying all proceedings on the claims asserted against JWH, AAA Plumbing, Fogel Service, and Charleston LEC in Plaintiffs Peter T. Phillips and Summar C. Phillips' ("Plaintiffs" or "Phillips") Complaint.

The allegations of the Complaint all arise out of the purchase of a home sold by JWH to the Plaintiffs. Paragraph 22 of the Purchase Agreement (attached hereto as Exhibit A to Affidavit of Dennis Black) contains a mandatory arbitration provision, agreed to by Plaintiffs. Paragraph 22 references the JWH Warranty (attached hereto as Exhibit B to Affidavit of Dennis Black) and further provides that the parties consent to the terms of the Warranty including, without limitation, the mandatory binding arbitration provision contained therein.

The arbitration provision encompasses all disputes arising out of or relating to the Purchase Agreement and the property at issue. The factual allegations Plaintiffs offer in support of each of the causes of action further demonstrate that the claims arise out of or relate to the purchase of the home and contract arising out of said purchase. Consequently, all claims in this case are within the scope of the arbitration provision as expressed in the Purchase Agreement and JWH's Warranty information, particularly given the well-established judicial mandate that all doubts be resolved in favor of arbitration. Despite the clear agreement between the parties to have arbitration serve as the mechanism for any and all disputes arising out of the property at issue, the Phillips, in complete disregard for said strict arbitration provision, filed the above-entitled matter in Circuit Court. This Court must therefore compel Plaintiffs to arbitrate these claims. Because Plaintiffs' claims are arbitrable, these claims should be dismissed with prejudice. *See Alford v. Dean Witter Reynolds, Inc.*, 975 F.2d 1161 (5th Cir. 1992) ("The weight of authority clearly supports dismissal of the case when all of the issues raised in the District Court and must be submitted to arbitration") (citations omitted).

Additionally, this Court should compel Plaintiffs to arbitrate their claims against AAA Plumbing, Fogel Service, and Charleston LEC. Although non-signatories to the contract, the Complaint alleges these parties performed work as subcontractors pursuant to subcontracts with JWH, entered into by virtue of the contract between JWH and Plaintiffs. Plaintiff allege that bilateral contracts were created between Plaintiffs and these subcontractors and that these subcontractors breached those contracts. Because Plaintiffs' breach of contract claims against these subcontractors are predicated upon the existence of multiple contracts, including the Phillips contract with JWH, all of the claims Plaintiffs assert against these subcontractors are

subject to the arbitration provision of the contract between the Phillips and JWH. This Court must therefore compel Plaintiffs to arbitrate these claims.

CONCLUSION

Based on the foregoing, Defendant JWH respectfully requests this Court enter an Order compelling Plaintiffs to arbitrate these claims and dismissing Plaintiffs' claims with prejudice, or, in the alternative, staying all proceedings on the claims asserted against JWH, AAA Plumbing, Fogel Service, and Charleston LEC in Plaintiffs Complaint.

Respectfully submitted,

PRATT-THOMAS WALKER, P.A.

By: _____

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October 29, 2012
Charleston, South Carolina

Attorneys for Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc.

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand, or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this 29 day of Oct, 2012, in Charleston, South Carolina.

_____

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Peter T. Phillips and Summar C. Phillips, Plaintiffs, v. Omega Flex, Inc., John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc., Charleston LEC. Inc., Defendants.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT C/A NUMBER: 12-CP-10-3870 **MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT JOHN WIELAND HOMES AND NEIGHBORHOODS OF THE CAROLINAS, INC. MOTION TO COMPEL ARBITRATION**

FILED
2012 DEC 18 AM 11:28
JULIE J. ARMSTRONG
CLERK OF COURT

Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc. ("Defendant" or "JWH") submits this Memorandum of Law in support of its Motion to Compel Arbitration and Dismiss Plaintiffs' Complaint in the above-referenced lawsuit.

BACKGROUND

Peter T. Phillips and Summar C. Phillips ("Plaintiffs" or the "Phillips") filed the instant suit against Omega Flex, Inc. ("Omega"), JWH, AAA Plumbing, LLC ("AAA"), Fogel Services, Inc. ("Fogel Services"), and Charleston LEC. Inc. ("Charleston LEC"), seeking damages arising from a fire on June 25, 2009 at 1417 Hooper Street on Daniel Island. Compl. ¶¶ 7-9. The fire was allegedly caused by a lightning strike which created a hole in a CSST gas pipe, which allegedly caused the natural gas to ignite at the hole in the CSST, which then purportedly escaped the hole in the CSST, creating an extensive fire." *See* Compl. ¶ 10.

The Purchase Agreement entered into between JWH and Plaintiffs, and the Warranty, the terms of which were specifically agreed to by the Plaintiffs, both include mandatory arbitration provisions. Additionally, JWH's agreements with its Trade Contractors (AAA, Fogel Services,

and Charleston LEC) all include a provision requiring their participation and cooperation in any arbitration.

THE AGREEMENTS

I. The Phillips Agreements with JWH

In the Purchase Agreement, Plaintiffs expressly agreed to resolve any disputes in mandatory arbitration. Paragraph 22 of the Purchase Agreement, entitled "Warranty and Arbitration," provides in pertinent part:

> Warranty and Arbitration, Purchaser and Seller hereby agree that, in connection with the sale contemplated by this agreement, Purchaser will be enrolled in the John Wieland Homes and Neighborhoods 5-20 Extended Warranty program (JWH Warranty), the JWH Warranty being incorporated herein by reference.
>
> * * *
>
> **PURCHASER ACKNOWLEDGES THAT PURCHASER HAS RECEIVED AND READ A COPY OF THE CURRENT JWH WARRANTY AND CONSENTS TO THE TERMS THEREOF, INCLUDING, WITHOUT LIMITATION, THE MANDATORY BINDING ARBITRATION PROVISIONS CONTAINED THEREIN . . .**

Aff. Of Dennis A. Black, Ex. A, Purchase Agreement, ¶ 22 (emphasis added). The Plaintiffs agreed to Paragraph 22 and initialed it separately acknowledging that they read and received the JWH Warranty. See id. In so doing, per the terms of the JWH Warranty, which is incorporated into Paragraph 22 of the Agreement by reference, they expressly agreed as follows:

> Any and all unresolved claims or disputes of any kind or nature between Wieland and Homebuyer(s) arising out of or relating in any manner to any purchase agreement with Wieland (if any), this warranty, the Home and/or property on which it is constructed, or otherwise, shall be resolved by final and binding arbitration conducted in accordance with this provision, and such resolution shall be final. . . . **This specifically includes, without limitation, claims related to any representations, promises or warranties alleged to have been made by Wieland or its representatives; rescission of any contract or agreement; any tort; any implied warranties; any personal injury; and any property damage.**

Aff. Of Dennis A. Black, Ex. B, JWH Warranty, §V., ¶ O (emphasis added).

The Agreement further mandates that its arbitration procedure:

> SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR THE RESOLUTION OF ANY AND ALL DISPUTES ARISING AFTER THE INITIAL CLOSING OF THE PURCHASE OF THE HOME BY THE INITIAL HOMEBUYER(S). WIELAND AND HOMEBUYER(S) HEREBY WAIVE ANY AND ALL OTHER RIGHTS AND REMEDIES AT LAW, IN EQUITY OR OTHERWISE WHICH MIGHT OTHERWISE HAVE BEEN AVAILABLE TO THEM IN CONNECTION WITH ANY SUCH DISPUTES.

Aff. Of Dennis A. Black, Ex. B, JWH Warranty, §V, ¶ O (emphasis in original).

Finally, the arbitration provision incorporated into the Purchase Agreement permits JWH to include its suppliers and subcontractors as parties to the arbitration:

> If Wieland so chooses, Wieland may have its supplier(s) and contractor(s) whose work or supplies are involved in the dispute included as parties to the arbitration. Questions of whether issues are arbitrable and the actual interpretation of terms needing definition in order to arbitrate an issue shall be determined by the arbitrator.

Id.

II. The Trade Contractors' Agreements with JWH

Plaintiffs have alleged that AAA, Fogel Services, and Charleston LEC performed work on the house and that those parties are directly liable to the Plaintiffs; however, any work those parties performed was performed pursuant to a Trade Contractor Application and Agreement entered into between the Trade Contractor and JWH. See Aff. of McBride, Ex. A ¶7, Ex. B ¶7, & Ex. C ¶7 for the Trade Contractor Agreements. Each of the agreements provides that the Trade Contractors will participate in and cooperate with any arbitration:

> Cooperation in Arbitration. Upon request and at no expense to Wieland, Trade Contractor *shall cooperate and participate in*, as may be reasonably directed by Wieland, *any arbitration proceedings arising out of the home warranty coverage provided by Wieland or otherwise related to or arising out of the construction of the homes by Wieland.*

Aff. of McBride, Ex. A ¶7, Ex. B ¶7, & Ex. C ¶7 (emphasis added).

ARGUMENT

I. The Court should compel Plaintiffs to arbitrate their claims against JWH.

The Purchase Agreement and JWH Warranty's arbitration provisions, which must be construed in favor of arbitration under the Federal Arbitration Act ("FAA"), unambiguously compel the arbitration of the Plaintiffs' claims against JWH.

"The policy of the United States and South Carolina is to favor arbitration of disputes." Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). "To decide whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim." Id. at 597, 553 S.E.2d at 118.

A. The Purchase Agreement and Warranty are subject to the FAA.

"The federal policy favoring arbitration, as expressed in the FAA, is now binding even in state courts and supersedes inconsistent state law and statutes which invalidate arbitration agreements." Id. at 590, 553 S.E.2d at 115. "The basic purpose of the FAA is to overcome state courts' refusal to enforce arbitration agreements." Id. at 590-91, 553 S.E.2d at 115; see also Allied-Bruce Terminix Companies, Inc. v. Dobson, 513 U.S. 265, 270 (1995) (same). "While the parties may agree to enforce arbitration agreements under state rules rather than FAA rules, the FAA will preempt any state law that completely invalidates the parties' agreement to arbitrate." Zabinski, 346 S.C. at 592, 553 S.E.2d at 116.

In this case, the FAA applies and preempts state law because the transaction—a contract to construct and sell a home—involved interstate commerce. See Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 458, 730 S.E.2d 312, 318 (2012) ("We emphasize that had the Agreement actually encompassed the construction of the residence, it would have been subject to the FAA as

our appellate courts have consistently recognized that contracts for construction are governed by the FAA."); Episcopal Hous. Corp. v. Fed. Ins. Co., 269 S.C. 631, 639, 239 S.E.2d 647, 651 (1977) (holding that the contract for the construction of an elderly housing project was interstate where materials, equipment, and supplies were produced and manufactured out-of-state); Circle S. Enterprises, Inc. v. Stanley Smith & Sons, 288 S.C. 428, 431-32, 343 S.E.2d 45, 47 (S.C. Ct. App. 1986) (finding a construction contract involved interstate commerce where the equipment, materials, and subcontractors at issue were furnished from out-of-state).

Additionally, the arbitration provision incorporated by reference and specifically referred to in the Agreement provides that the transaction involved interstate commerce: "As the purchase agreement with Wieland and this warranty are transactions involving interstate commerce, arbitrations shall be governed by the U.S. Arbitration Act, 9 U.S.C. Sections 1-16, to the exclusion of any provisions of state law." Aff. Of Dennis A. Black, Ex. B, JWH Warranty, §V, ¶ O; see Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 539, 542 S.E.2d 360, 363-64 (2001) ("[T]he arbitration agreement, which applies to this contract and the relationships which result from this contract, provides it shall be governed by the FAA. Arbitration agreements, like other contracts, are enforceable in accordance with their terms." (internal quotation marks omitted)).

Therefore, it is clear that the transaction involved interstate commerce and that the Phillips' and JWH specifically agreed that the FAA would apply.

B. The Purchase Agreement and JWH Warranty expressly and unambiguously compel arbitration.

"An arbitration clause is a contractual term, and general rules of contract interpretation must be applied to determine a clause's applicability to a particular dispute." Towles v. United HealthCare Corp., 338 S.C. 29, 41, 524 S.E.2d 839, 846 (S.C. Ct. App. 1999) (citation omitted).

"In construing a contract, it is axiomatic that the main concern of the court is to ascertain and give effect to the intention of the parties." D.A. Davis Const. Co., Inc. v. Palmetto Props., Inc., 281 S.C. 415, 418, 315 S.E.2d 370, 372 (1984). "If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003).

"The Arbitration Act establishes that, as a matter of federal law, 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." Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp., 460 U.S. 1, 24-25 (1983); see also Carolina Care Plan, Inc. v. United HealthCare Servs., Inc., 361 S.C. 544, 550, 606 S.E.2d 752, 755 (2004) (same). Underlying this policy is Congress' view that arbitration constitutes a more efficient dispute resolution process than litigation. Hightower v. GMRJ, Inc., 272 F.3d 239, 241 (4th Cir.2001). Accordingly, "due regard must be given to the federal policy favoring arbitration, and ambiguities as to the scope of the arbitration clause itself resolved in favor of arbitration." Adkins v. Labor Ready, Inc., 303 F.3d 496, 500 (4th Cir. 2002) (citation omitted).

"Furthermore, unless the court can say with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the dispute, arbitration should be ordered." S.C. Pub. Serv. Auth. v. Great W. Coal (Kentucky), Inc., 312 S.C. 559, 564, 437 S.E.2d 22, 25 (1993). "Motions to compel arbitration should not be denied unless the arbitration clause is not susceptible of any interpretation that would cover the asserted dispute." Towles v. United HealthCare Corp., 338 S.C. 29, 41-42, 524 S.E.2d 839, 846 (Ct. App. 1999).

Arbitration clauses which subject to arbitration all claims "arising out of or relating to" a contract or transaction are characterized as "broad arbitration clauses capable of an expansive reach." Am. Recovery Corp. v. Computerized Thermal Imaging, Inc., 96 F.3d 88, 93 (4th Cir. 1996). Such language "embraces every dispute between the parties having a significant relationship to the contract regardless of the label attached to the dispute." J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A., 863 F.2d 315, 321 (4th Cir. 1988).

The Purchase Agreement and the JWH Warranty both unambiguously provide that any dispute relating to any warranties, tort, or property damage (among other things) between the Phillips and JWH is subject to arbitration:

> Any and all unresolved claims or disputes of any kind or nature between Wieland and Homebuyer(s) arising out of or relating in any manner to any purchase agreement with Wieland (if any), this warranty, the Home and/or property on which it is constructed, or otherwise, shall be resolved by final and binding arbitration conducted in accordance with this provision, and such resolution shall be final. . . . This specifically includes, without limitation, claims related to any representations, promises or warranties alleged to have been made by Wieland or its representatives; rescission of any contract or agreement; any tort; any implied warranties; any personal injury; and any property damage.

Ex. B, p.11 ¶ O.

The scope of the arbitration provision in the Agreement encompasses every claim raised by Plaintiffs in their lawsuit—Plaintiffs have asserted causes of action in negligence, contract and implied warranty all seeking damages for property damage, *see* Compl. ¶¶ 33-49, such claims are within the scope of the arbitration agreement as quoted above. See Long v. Silver, 248 F.3d 309, 318 (4th Cir. 2001) ("Because this breach of contract claim arises directly under the 1972 Agreement, it is clearly arbitrable."); Palmetto Homes, Inc. v. Bradley, 357 S.C. 485, 492-93, 593 S.E.2d 480, 484 (S.C. Ct. App. 2004) ("Contractor's causes of action for breach of contract accompanied by a fraudulent act and negligence essentially allege Subcontractor

defectively installed the masonry work on a residential homebuilding projects [which are] matters concerning the agreement or the work performed [and] within the scope of the arbitration agreement."); Pierson v. Dean, Witter, Reynolds, Inc., 742 F.2d 334, 338 (7th Cir. 1984) ("Claims of fraud under a contract, breach of fiduciary duty, negligence, and gross negligence are not immune from arbitration under a broadly-worded valid arbitration clause.").

Because these claims are within the scope of the Agreement, they are subject to mandatory, binding arbitration. For the foregoing reasons, this Court should enforce the parties' agreed-upon arbitration clause by compelling Plaintiffs to submit to the binding arbitration.

II. The Court should also compel Plaintiffs to arbitrate their claims against JWH's Trade Contractors.

In addition to compelling Plaintiffs to arbitrate their claims against JWH, this Court should compel Plaintiffs to arbitrate their claims against AAA, Fogel, and Charleston LEC. Both the Purchase Agreement incorporating the JWH Warranty between Plaintiffs and JWH and the subcontracts with the Trade Contractors expressly and unambiguously permit JWH to add the subcontractors as parties to any arbitration between JWH and the Plaintiffs.

The arbitration provision incorporated into the Purchase Agreement provides, in pertinent part:

> If Wieland so chooses, Wieland may have its supplier(s) and contractor(s) whose work or supplies are involved in the dispute included as parties to the arbitration. Questions of whether issues are arbitrable and the actual interpretation of terms needing definition in order to arbitrate an issue shall be determined by the arbitrator.

Aff. Of Dennis A. Black, Ex. B, JWH Warranty, §V, ¶ O (emphasis in original).

Moreover, the subcontracts each provide:

> Cooperation in Arbitration. Upon request and at no expense to Wieland, Trade Contractor *shall cooperate and participate in*, as may be reasonably directed by

> Wieland, *any arbitration proceedings arising out of the home warranty coverage provided by Wieland or otherwise related to or arising out of the construction of the homes by Wieland.*

Aff. of McBride, Ex. A ¶7, Ex. B ¶7, & Ex. C ¶7 (emphasis added).

Because the Phillips' claims against the Trade Contractors are based in whole or in part on their contract with JWH, the FAA applies to Plaintiffs' claims against the JWH Trade Contractors for the same reasons discussed above relating to their claims against JWH. Therefore, the same legal standard favoring arbitration is applicable to these claims. See e.g. Moses H Cone Mem'l Hosp., at 24 (stating that the FAA reflects "a liberal federal policy favoring arbitration agreements.").

Although non-signatories to the contract, the Complaint alleges the Trade Contractors performed work as subcontractors pursuant to subcontracts with JWH, entered into by virtue of the contract between JWH and Plaintiffs. See Compl. ¶¶ 53-62; 66-75; & 79-88. Plaintiffs allege that bilateral contracts were created between Plaintiffs and these subcontractors and that these subcontractors breached those contracts. See id. Because Plaintiffs' breach of contract claims against these subcontractors are predicated upon the existence of multiple contracts, including the Phillips' contract with JWH, all of the claims Plaintiffs assert against these subcontractors are subject to the arbitration provision of the contract between the Phillips and JWH.

The South Carolina Court of Appeals recently decided a case involving similar facts. See Pearson v. Hilton Head Hosp., 733 S.E.2d 597, 605 (S.C. Ct. App. 2012) (reversing the circuit court's denial of a defendant's motion to compel arbitration). In Pearson, the plaintiff, Dr. Pearson, an anesthesiologist, entered into a contract with LocumTenens.com ("Locum"), an online medical professional placement corporation, to place him in Hilton Head Hospital ("the Hospital") for 40 days in 2007. Id. at 599. The Hospital had a contract with Locum, but not with

Pearson. See id. Pearson was fired and sued both Locum and the Hospital. See id. Both the Hospital's contract with Locum and Locum's contract with Pearson provided for mandatory arbitration of all claims arising out of the contract or relationship of the parties. See id. Both defendants moved to compel arbitration. See id. The Circuit Court granted Locum's motion since he had a contract with Pearson, but denied the Hospital's motion. See id. The Hospital argued on appeal "Dr. Pearson [was] bound by the arbitration clause both as a nonsignatory to the Hospital and Locum's agreement and as a signatory to his and Locum's agreement." Id. at 605. The Court of Appeals ultimately sided with Hospital. The court offered several rationales for its decision, some of which are relevant and compelling in this case. For example, the court found it significant that Pearson's causes of action relied on the existence of Locum's contract with the Hospital as a prerequisite to his claim:

> . . . looking at the Hospital as a nonsignatory in the contract between Dr. Pearson and Locum, Dr. Pearson has to rely on his contract or the Hospital's to have a breach of contract action against the Hospital. Because both of those contracts have arbitration clauses, **he should not be allowed to hold the Hospital to one of the contracts to allege a breach but not be subject to the arbitration provisions** . . .

Id. (emphasis added).

Like in Pearson, the Phillips suit against each of the Trade Contractors involves two contracts—the Phillips contract with JWH and JWH contract with the Trade Contractor. Just as in Pearson, the Phillips are signatories to one of the contracts and non-signatories to the other. The Phillips' causes of action against the Trade Contractors rely on the existence and validity of the contract between themselves and JWH. *See* Compl. ¶ 54 (Alleging that "[t]he Plaintiffs, by virtue of their contract with Defendant John Wieland Homes, entered into a subcontract with Defendant Fogel Services by which Defendant Fogel Services would install or oversee the installation of plumbing and gas lines in the Plaintiffs' home in a workmanlike manner"); ¶55

("This agreement entered into by Defendant John Wieland Homes, on behalf and for the benefit of the Plaintiffs constituted a contract between the Plaintiffs and Defendant Fogel Services"); and 56-62 (alleging breach of this contract and breach of implied warranty of work manlike service as to Defendant Fogel Services). *See also* Compl. ¶¶ 66-75 and 79-88 (alleging similar contract formation, breach, and breach of implied warranties as to AAA Plumbing and Charleston LEC).

The arbitration agreement in this case that the Plaintiffs' are signatories to is at least as strong if not stronger than the same agreement in Pearson—the arbitration agreement found in the Phillips' contract with JWH provides for binding, mandatory arbitration. The contracts with the Trade Contractors require those parties to participate in and cooperate with any arbitration. Therefore, because Plaintiffs' causes of action against the Trade Contractors are all dependent upon the Phillips' agreement with JWH, the court should compel the Phillips submit those claims to binding arbitration consistent with their unambiguous agreement to arbitrate.

CONCLUSION

Based on the foregoing, Defendant JWH respectfully requests this Court enter an Order compelling Plaintiffs to arbitrate these claims and dismissing Plaintiffs' claims with prejudice, or, in the alternative, staying all proceedings during the pendency of the arbitration.

Respectfully submitted,

PRATT-THOMAS WALKER, P.A.

By: _____

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December 14, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Peter T. Phillips and Summar C. Phillips, Plaintiffs, Omega Flex, Inc., John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., Defendants.	)	IN THE COURT OF COMMON PLEAS CASE NUMBER: 2012-CP-10-3870 MEMORANDUM OF LAW

The Plaintiffs respectfully submit this Memorandum of Law in opposition to the Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc.'s Motion to Compel Arbitration.

The Plaintiffs respectfully submit that there is no significant factual difference between the instant case and the case of Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 730 S.E. 2d 312 (2012) and the application of the law developed by that case compels that the Defendant's Motion to Compel Arbitration be denied. In Bradley, the Agreement between the builder and the Plaintiff home purchaser provided for mandatory binding arbitration. As in the Purchase Agreement in this case, the contract did not comply with South Carolina's version of the Uniform Arbitration Act because it did not comply with §15-48-10(a) S.C. Code Ann. (2005). There was no statement stamped or typed in capital letters and underlined on the first page of the document that the mandatory arbitration provision was pursuant to the act as required by the act. There is no such stamp or underlined capital letters on the contract at issue and as a consequence the mandatory

arbitration language must fail unless the document is subject to the Federal Arbitration Act (FAA), as is claimed by the Defendant.

In Bradley, the court concluded,

> [b]ecause the essential character of the Agreement was strictly for the purchase of a completed residential dwelling and not the construction, we find the FAA does not apply as these types of transactions have historically been deemed to involve intrastate commerce.

Counsel for John Weiland Homes is trying to transform a contract for the purchase of a residence into "a contract to construct and sell a home." JWH Memorandum, p. 4. As pointed out in Defendant's Memorandum, the Bradley case specifically holds that a contract to construct a residence comes under the FAA. But a contract to purchase does not. A review of the documents in this case reveal that this is simply a contract to purchase a residence.

We have attached hereto the case of Brentwood Homes, Inc., et al, and a copy of the Purchase Agreement. Counsel has taken the liberty of enlarging the Purchase Agreement to the point that it may be read and has included highlights of the applicable provisions which clearly show this is simply a contract for the purchase of a residence. Paragraph I. is designated "Agreement to Buy and Sell Property." The property is described and then there appears in paragraph I. the following: "(The foregoing land and the improvements constructed or to be constructed thereon by seller are referred to herein as the 'Property.')"

Paragraphs eight (8) through fourteen (14) appear under a heading of "Construction Matters." Interestingly, the highlighted language of paragraph eight (8) acknowledges that the seller did not have to obtain the purchaser's consent for changes or omissions to the

home during construction which do not adversely affect it. Paragraph nine (9) concerning selections is indicated as not being applicable. Paragraphs ten (10), eleven (11) and thirteen (13) are simply information. Interestingly, paragraph twelve (12) leaves to the seller decisions which normally would be the purchaser's in a construction contract and paragraph fourteen (14) therein specifically provides:

> Neither purchaser nor purchaser's agents may do any work on the property or enter the property prior to closing without prior written permission of seller, which permission may be withheld for any reason. Purchaser may visit the property prior to closing, but shall not interrupt or interfere with sales or construction in the neighborhood. Purchaser shall direct questions to the sales agent or community coordinator for the neighborhood.

It is submitted that the contract is for the sale of a completed home with only incidental choices being made by the purchaser which does not affect the "essential character of the agreement" which "was strictly for the purchase of a completed residential dwelling and not the construction" as stated in the Bradley case.

More telling, perhaps, is the affidavit of Dennis A. Black which was submitted by the Defendant John Weiland Homes in support of its motion. Paragraph three (3) of the Affidavit states:

> "I am informed and believe that in June 2008, Peter T. Phillips and Summar C. Phillips ("the Phillips") entered a purchase agreement with JWH to buy a home in the located at 1417 Hooper Street, Charleston, SC 29492." emphasis added.

This is the Defendant's own characterization of the contract and mentions nothing of construction.

Another thing shown by the Black Affidavit is that it contains no facts which would allow the finding that interstate commerce is involved here. Paragraph four (4) contains only a bald conclusion to the effect that development of the subdivision and construction of homes implicates interstate commerce, but it does nothing to show that the residence in question and its sale to these Plaintiffs is anything other than a sale of a residence.

It is respectfully submitted that based upon the record in this case the court should deny the Defendant's motion.

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Columbia, South Carolina

December 17, 2012

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

Peter T. Phillips & Summar C. Phillips,) CASE NO.
☐ Plaintiff) 2012-CP-10-3870

v.) MOTION AND ORDER INFORMATION
) FORM AND COVER SHEET
Omega Flex, Inc., Et Al.,)
☒ Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
John F. Mckenzie, Bar No. Address: PO Box 58 Columbia, SC 29202 phone: (803) 223-6705 fax: (803) 252-6705 e-mail: jackm@mmrml.com other:	John P. Linton, Jr., Bar No. 5777 Address: PO Drawer 22247 Charleston, SC 29413-2247 phone: 727.7752 fax: 727.2231 e-mail: jpl@p-tw.com other: 79130

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider Alter or Demand
Estimated Time Needed:30 mins Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

[signature] 5-6-13
Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

_____
JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A NUMBER: 12-CP-10-3870
	)	
	)	
Peter T. Phillips and Summar C. Phillips,	)	
	)	**NOTICE OF MOTION, MOTION, AND MEMORANDUM OF LAW IN SUPPORT OF MOTION TO RECONSIDER ALTER OR AMEND**
Plaintiffs,	)	
v.	)	
	)	
Omega Flex, Inc., John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, LLC, Fogel Services, Inc., Charleston LEC Inc.,	)	
	)	
	)	
Defendants.	)	

FILED
2013 MAY -8 PM 1:30
JULIE J. ARMSTRONG
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc. ("Defendant" or "JWH"), through its undersigned attorneys, hereby move pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure for an order altering or amending the Order issued April 25, 2013 (the "Order") denying JWH's Motion to Compel Arbitration. Specifically, Defendant respectfully request that the Court amend the Order and grant JWH's Motion to Compel Arbitration in its entirety because the contract and warranty at issue involve interstate commerce; the arbitration agreement compels arbitration of the claims between Peter T. Phillips and Summar C. Phillips (the "Phillips" or "Plaintiffs"); and the contract, warranty, and trade contracts require Plaintiffs to arbitrate their claims against JWH's Trade Contractors(AAA Plumbing, LLC, Fogel Services, Inc., and Charleston LEC, Inc).

PROCEDURAL HISTORY

Defendant filed its Motion to Compel Arbitration with its Answer. The Court heard arguments on the Motion on December 18, 2012 and denied the Motion by Order dated April 23, 2013 on the sole basis that the contract was for the purchase of a home and therefore did not involve interstate commerce as required by the Federal Arbitration Act ("FAA"). Defendant has filed this Motion to Reconsider, Alter, or Amend the Order.

STANDARD OF REVIEW

In South Carolina, "[a] party *may* wish to file such a motion [to alter or amend] when [the party] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." Elam v. S. Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphases in original).

FACTUAL BACKGROUND

Peter T. Phillips and Summar C. Phillips ("Plaintiffs" or the "Phillips") filed the instant suit against Omega Flex, Inc. ("Omega"), JWH, AAA Plumbing, LLC ("AAA"), Fogel Services, Inc. ("Fogel Services"), and Charleston LEC. Inc. ("Charleston LEC"), seeking damages arising from a fire on June 25, 2009 at 1417 Hooper Street on Daniel Island. Compl. ¶¶ 7-9. The fire was allegedly caused by a lightning strike which created a hole in a CSST gas pipe, which allegedly caused the natural gas to ignite at the hole in the CSST, which then purportedly escaped the hole in the CSST, creating an extensive fire. *See* Compl. ¶ 10.

The Purchase Agreement entered into between JWH and Plaintiffs, and the Warranty, the terms of which were specifically agreed to by the Plaintiffs, both include mandatory arbitration

provisions. Additionally, JWH's agreements with its Trade Contractors all include a provision requiring their participation and cooperation in any arbitration.

THE AGREEMENTS

I. The Phillips Agreements with JWH

In the Purchase Agreement, Plaintiffs expressly agreed to resolve any disputes in mandatory arbitration. Paragraph 22 of the Purchase Agreement, entitled "Warranty and Arbitration," provides in pertinent part:

> Warranty and Arbitration, Purchaser and Seller hereby agree that, in connection with the sale contemplated by this agreement, Purchaser will be enrolled in the John Wieland Homes and Neighborhoods 5-20 Extended Warranty program (JWH Warranty), the JWH Warranty being incorporated herein by reference.
>
> * * *
>
> **PURCHASER ACKNOWLEDGES THAT PURCHASER HAS RECEIVED AND READ A COPY OF THE CURRENT JWH WARRANTY AND CONSENTS TO THE TERMS THEREOF, INCLUDING, WITHOUT LIMITATION, THE MANDATORY BINDING ARBITRATION PROVISIONS CONTAINED THEREIN . . .**

Aff. Of Dennis A. Black, Ex. A, Purchase Agreement, ¶ 22 (emphasis added). The Plaintiffs agreed to Paragraph 22 and initialed it separately acknowledging that they read and received the JWH Warranty. See id. In so doing, per the terms of the JWH Warranty, which is incorporated into Paragraph 22 of the Agreement by reference, they expressly agreed as follows:

> Any and all unresolved claims or disputes of any kind or nature between Wieland and Homebuyer(s) arising out of or relating in any manner to any purchase agreement with Wieland (if any), this warranty, the Home and/or property on which it is constructed, or otherwise, shall be resolved by final and binding arbitration conducted in accordance with this provision, and such resolution shall be final. . . . **This specifically includes, without limitation, claims related to any representations, promises or warranties alleged to have been made by Wieland or its representatives; rescission of any contract or agreement; any tort; any implied warranties; any personal injury; and any property damage.**

Aff. Of Dennis A. Black, Ex. B, JWH Warranty, §V., ¶ O (emphasis added).

The Agreement further mandates that its arbitration procedure:

> SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR THE RESOLUTION OF ANY AND ALL DISPUTES ARISING AFTER THE INITIAL CLOSING OF THE PURCHASE OF THE HOME BY THE INITIAL HOMEBUYER(S). WIELAND AND HOMEBUYER(S) HEREBY WAIVE ANY AND ALL OTHER RIGHTS AND REMEDIES AT LAW, IN EQUITY OR OTHERWISE WHICH MIGHT OTHERWISE HAVE BEEN AVAILABLE TO THEM IN CONNECTION WITH ANY SUCH DISPUTES.

Aff. Of Dennis A. Black, Ex. B, JWH Warranty, §V, ¶ O (emphasis in original).

Finally, the arbitration provision incorporated into the Purchase Agreement permits JWH to include its suppliers and subcontractors as parties to the arbitration:

> If Wieland so chooses, Wieland may have its supplier(s) and contractor(s) whose work or supplies are involved in the dispute included as parties to the arbitration. Questions of whether issues are arbitrable and the actual interpretation of terms needing definition in order to arbitrate an issue shall be determined by the arbitrator.

Id.

II. The Trade Contractors' Agreements with JWH

Plaintiffs have alleged that AAA, Fogel Services, and Charleston LEC performed work on the house and that those parties are directly liable to the Plaintiffs; however, any work those parties performed was performed pursuant to a Trade Contractor Application and Agreement entered into between the Trade Contractor and JWH. See Aff. of McBride, Ex. A ¶7, Ex. B ¶7, & Ex. C ¶7 for the Trade Contractor Agreements. Each of the agreements provides that the Trade Contractors will participate in and cooperate with any arbitration:

> Cooperation in Arbitration. Upon request and at no expense to Wieland, Trade Contractor *shall cooperate and participate in*, as may be reasonably directed by Wieland, *any arbitration proceedings arising out of the home warranty coverage provided by Wieland or otherwise related to or arising out of the construction of the homes by Wieland.*
>
> Aff. of McBride, Ex. A ¶7, Ex. B ¶7, & Ex. C ¶7 (emphasis added).

DISCUSSION

I. JWH contract with the Phillips is subject to the FAA because the purchase agreement and warranty involved interstate commerce:

The FAA provides: "A written provision in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C.A. § 2. "The United States Supreme Court has held that the phrase 'involving commerce' is the same as 'affecting commerce,' which has been broadly interpreted to mean Congress intended to utilize its powers to regulate interstate commerce to its full extent." Blanton v. Stathos, 351 S.C. 534, 540 570 S.E.2d 565, 568 (S.C. Ct. App. 2002) (citing Allied–Bruce Terminix Cos. v. Dobson, 513 U.S. 265, 115 S.Ct. 834 (1995)).

"The federal policy favoring arbitration, as expressed in the FAA, is now binding even in state courts and supersedes inconsistent state law and statutes which invalidate arbitration agreements." Zabinskiv v. Bright Acres Association, 346 S.C. 580, 590, 553 S.E.2d 110, 115 (2001). "The basic purpose of the FAA is to overcome state courts' refusal to enforce arbitration agreements." Id. at 590-91, 553 S.E.2d at 115; see also Allied-Bruce Terminix Companies, 513 U.S. at 270. "While the parties may agree to enforce arbitration agreements under state rules rather than FAA rules, the FAA will preempt any state law that completely invalidates the parties' agreement to arbitrate." Zabinski, 346 S.C. at 592, 553 S.E.2d at 116.

In this case, the FAA applies and preempts state law because the transaction—a contract to customize the construction of a home and for the purchase of that home—involved interstate commerce. See Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 458, 730 S.E.2d 312, 318 (2012) ("We emphasize that had the Agreement actually encompassed the construction of the

residence, it would have been subject to the FAA as our appellate courts have consistently recognized that contracts for construction are governed by the FAA."); Episcopal Hous. Corp. v. Fed. Ins. Co., 269 S.C. 631, 639, 239 S.E.2d 647, 651 (1977) (holding that the contract for the construction of an elderly housing project was interstate where materials, equipment, and supplies were produced and manufactured out-of-state); Circle S. Enterprises, Inc. v. Stanley Smith & Sons, 288 S.C. 428, 431-32, 343 S.E.2d 45, 47 (S.C. Ct. App. 1986) (finding a construction contract involved interstate commerce where the equipment, materials, and subcontractors at issue were furnished from out-of-state).

In the Order, the Court ruled that the contract was not governed by the FAA because it was the contract was for the purchase and sale of a completed home as in Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 458, 730 S.E.2d 312, 318 (2012). However, there are two major distinctions between this case and Bradley. Both of these major differences involve interstate commerce:

a. Plaintiffs agreed as part of their contract with JWH that the purchase agreement with JWH and the warranty were transactions involving interstate commerce.

The Agreement provides that the transaction involved interstate commerce: "As the purchase agreement with Wieland and this warranty are transactions involving interstate commerce, arbitrations shall be governed by the U.S. Arbitration Act, 9 U.S.C. Sections 1-16, to the exclusion of any provisions of state law." Aff. Of Dennis A. Black, Ex. B, JWH Warranty, §V, ¶ O. The South Carolina Supreme Court has held that an agreement that a contract shall be subject to the FAA is binding and enforceable. Specifically, in Munoz v. Green Tree Fin. Corp., the Court held that "the arbitration agreement, which applies to this contract and the relationships which result from this contract, provides it shall be governed by the FAA . . . [and] . . . Arbitration agreements, like other contracts, are enforceable in accordance with their terms." 343

S.C. 531, 539, 542 S.E.2d 360, 363-64 (2001) (internal quotation marks omitted) (citing Volt Info. Sciences, Inc. v. Bd. of Trustees of Leland Stanford Jr. Univ., 489 U.S. 468, 478, 109 S.Ct. 1248 (1989)).

b. The Purchase and Sale Agreement in this case was amended several times by addenda, changing materials and otherwise customizing the home.

Plaintiff's and JWH agreed to several Addenda to the Purchase Agreement. The customizing of the house through these Addenda demonstrates that the contract was more than a simple purchase of a home in Bradley. In fact, each of the items included in the Addenda, which are part of the Purchase Agreement clearly involve interstate commerce the same way any construction or renovation contract would. By way of example and not by limitation, the Phillips and JWH agreed to the following items in various Addenda to the Purchase Agreement: adding phone/cable to the bonus room over garage; adding a dedicated receptacle for a wine cooler in butler's pantry area, reframing of the stairs to accommodate hardwood treads on first flight of stairs to second floor, constructing an additional parking pad to the drive, adding additional patio space, conversing the entire house to 7 ¼ inch baseboards, and several modifications related to wiring or prewiring for surround sound. See Aff. Of Dennis A. Black, Ex. A, Purchase Agreement, Addenda.

Therefore, because the agreement in the case, with the addenda, was not for the mere sale of a completed residence as in Bradley, but actually encompassed the customization of the construction of the residence, the Court should amend the Order and rule that the arbitration agreement in the contract and warranty are governed by the FAA. See Bradley, at 458, 730 S.E.2d at 318 ("We emphasize that had the Agreement *actually encompassed the construction of the residence*, it would have been subject to the FAA as our appellate courts have consistently recognized that contracts for construction are governed by the FAA." (emphasis added)).

In this case, the Court should enforce the terms of the contract that the parties agreed to (which provided that the contract was subject to the FAA) and amend the Order to hold that the FAA governs.

II. In addition to being controlled by the FAA, the Purchase Agreement and JWH Warranty expressly and unambiguously compel arbitration of all claims between Plaintiffs and JWH in this case.

"An arbitration clause is a contractual term, and general rules of contract interpretation must be applied to determine a clause's applicability to a particular dispute." Towles v. United HealthCare Corp., 338 S.C. 29, 41, 524 S.E.2d 839, 846 (S.C. Ct. App. 1999) (citation omitted). "In construing a contract, it is axiomatic that the main concern of the court is to ascertain and give effect to the intention of the parties." D.A. Davis Const. Co., Inc. v. Palmetto Props., Inc., 281 S.C. 415, 418, 315 S.E.2d 370, 372 (1984). "If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003).

"The Arbitration Act establishes that, as a matter of federal law, 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." Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp., 460 U.S. 1, 24-25 (1983); see also Carolina Care Plan, Inc. v. United HealthCare Servs., Inc., 361 S.C. 544, 550, 606 S.E.2d 752, 755 (2004) (same). Underlying this policy is Congress' view that arbitration constitutes a more efficient dispute resolution process than litigation. Hightower v. GMRJ, Inc., 272 F.3d 239, 241 (4th Cir. 2001). Accordingly, "due regard must be given to the federal policy favoring arbitration, and ambiguities as to the scope of the arbitration clause itself resolved in

favor of arbitration." Adkins v. Labor Ready, Inc., 303 F.3d 496, 500 (4th Cir. 2002) (citation omitted).

"Furthermore, unless the court can say with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the dispute, arbitration should be ordered." S.C. Pub. Serv. Auth. v. Great W. Coal (Kentucky), Inc., 312 S.C. 559, 564, 437 S.E.2d 22, 25 (1993). "Motions to compel arbitration should not be denied unless the arbitration clause is not susceptible of any interpretation that would cover the asserted dispute." Towles v. United HealthCare Corp., 338 S.C. 29, 41-42, 524 S.E.2d 839, 846 (S.C. Ct. App. 1999).

Arbitration clauses which subject to arbitration all claims "arising out of or relating to" a contract or transaction are characterized as "broad arbitration clauses capable of an expansive reach." Am. Recovery Corp. v. Computerized Thermal Imaging, Inc., 96 F.3d 88, 93 (4th Cir. 1996). Such language "embraces every dispute between the parties having a significant relationship to the contract regardless of the label attached to the dispute." J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A., 863 F.2d 315, 321 (4th Cir. 1988).

The Purchase Agreement and the JWH Warranty both unambiguously provide that any dispute relating to any warranties, tort, or property damage (among other things) between the Phillips and JWH is subject to arbitration:

> Any and all unresolved claims or disputes of any kind or nature between Wieland and Homebuyer(s) arising out of or relating in any manner to any purchase agreement with Wieland (if any), this warranty, the Home and/or property on which it is constructed, or otherwise, shall be resolved by final and binding arbitration conducted in accordance with this provision, and such resolution shall be final. . . This specifically includes, without limitation, claims related to any representations, promises or warranties alleged to have been made by Wieland or its representatives; rescission of any contract or agreement; any tort; any implied warranties; any personal injury; and any property damage.

Ex. B, p.11 ¶ O.

The scope of the arbitration provision in the Agreement encompasses every claim raised by Plaintiffs in their lawsuit—Plaintiffs have asserted causes of action in negligence, contract and implied warranty all seeking damages for property damage, *see* Compl. ¶¶ 33-49, such claims are within the scope of the arbitration agreement as quoted above. See Long v. Silver, 248 F.3d 309, 318 (4th Cir. 2001) ("Because this breach of contract claim arises directly under the 1972 Agreement, it is clearly arbitrable."); Palmetto Homes, Inc. v. Bradley, 357 S.C. 485, 492-93, 593 S.E.2d 480, 484 (S.C. Ct. App. 2004) ("Contractor's causes of action for breach of contract accompanied by a fraudulent act and negligence essentially allege Subcontractor defectively installed the masonry work on a residential homebuilding projects [which are] matters concerning the agreement or the work performed [and] within the scope of the arbitration agreement."); Pierson v. Dean, Witter, Reynolds, Inc., 742 F.2d 334, 338 (7th Cir. 1984) ("Claims of fraud under a contract, breach of fiduciary duty, negligence, and gross negligence are not immune from arbitration under a broadly-worded valid arbitration clause.").

Because these claims are within the scope of the Agreement, they are subject to mandatory, binding arbitration. For the foregoing reasons, this Court should enforce the parties' agreed-upon arbitration clause by compelling Plaintiffs to submit to the binding arbitration.

III. The Court should also compel Plaintiffs to arbitrate their claims against JWH's Trade Contractors.

In addition to compelling Plaintiffs to arbitrate their claims against JWH, this Court should compel Plaintiffs to arbitrate their claims against AAA, Fogel, and Charleston LEC. Both the Purchase Agreement incorporating the JWH Warranty between Plaintiffs and JWH and the subcontracts with the Trade Contractors expressly and unambiguously permit JWH to add the subcontractors as parties to any arbitration between JWH and the Plaintiffs.

The arbitration provision incorporated into the Purchase Agreement provides, in pertinent part:

> If Wieland so chooses, Wieland may have its supplier(s) and contractor(s) whose work or supplies are involved in the dispute included as parties to the arbitration. Questions of whether issues are arbitrable and the actual interpretation of terms needing definition in order to arbitrate an issue shall be determined by the arbitrator.

Aff. Of Dennis A. Black, Ex. B, JWH Warranty, §V, ¶ O (emphasis in original).

Moreover, the subcontracts each provide:

> Cooperation in Arbitration. Upon request and at no expense to Wieland, Trade Contractor *shall cooperate and participate in*, as may be reasonably directed by Wieland, *any arbitration proceedings arising out of the home warranty coverage provided by Wieland or otherwise related to or arising out of the construction of the homes by Wieland.*

Aff. of McBride, Ex. A ¶7, Ex. B ¶7, & Ex. C ¶7 (emphasis added).

Because the Phillips' claims against the Trade Contractors are based in whole or in part on their contract with JWH, the FAA applies to Plaintiffs' claims against the JWH Trade Contractors for the same reasons discussed above relating to their claims against JWH. Therefore, the same legal standard favoring arbitration is applicable to these claims. See e.g. Moses H Cone Mem'l Hosp., at 24 (stating that the FAA reflects "a liberal federal policy favoring arbitration agreements.").

Although non-signatories to the contract, the Complaint alleges the Trade Contractors performed work as subcontractors pursuant to subcontracts with JWH, entered into by virtue of the contract between JWH and Plaintiffs. See Compl. ¶¶ 53-62; 66-75; & 79-88. Plaintiffs allege that bilateral contracts were created between Plaintiffs and these subcontractors and that these subcontractors breached those contracts. See id. Because Plaintiffs' breach of contract claims against these subcontractors are predicated upon the existence of multiple contracts, including

the Phillips' contract with JWH, all of the claims Plaintiffs assert against these subcontractors are subject to the arbitration provision of the contract between the Phillips and JWH.

The South Carolina Court of Appeals recently decided a case involving similar facts. See Pearson v. Hilton Head Hosp., 733 S.E.2d 597, 605 (S.C. Ct. App. 2012) (reversing the circuit court's denial of a defendant's motion to compel arbitration). In Pearson, the plaintiff, Dr. Pearson, an anesthesiologist, entered into a contract with LocumTenens.com ("Locum"), an online medical professional placement corporation, to place him in Hilton Head Hospital ("the Hospital") for 40 days in 2007. Id. at 599. The Hospital had a contract with Locum, but not with Pearson. See id. Pearson was fired and sued both Locum and the Hospital. See id. Both the Hospital's contract with Locum and Locum's contract with Pearson provided for mandatory arbitration of all claims arising out of the contract or relationship of the parties. See id. Both defendants moved to compel arbitration. See id. The Circuit Court granted Locum's motion since he had a contract with Pearson, but denied the Hospital's motion. See id. The Hospital argued on appeal "Dr. Pearson [was] bound by the arbitration clause both as a nonsignatory to the Hospital and Locum's agreement and as a signatory to his and Locum's agreement." Id. at 605. The Court of Appeals ultimately sided with Hospital. The Court offered several rationales for its decision, some of which are relevant and compelling in this case. For example, the Court found it significant that Pearson's causes of action relied on the existence of Locum's contract with the Hospital as a prerequisite to his claim:

> . . . looking at the Hospital as a nonsignatory in the contract between Dr. Pearson and Locum, Dr. Pearson has to rely on his contract or the Hospital's to have a breach of contract action against the Hospital. Because both of those contracts have arbitration clauses, **he should not be allowed to hold the Hospital to one of the contracts to allege a breach but not be subject to the arbitration provisions** . . .

Id. (emphasis added).

Like in Pearson, the Phillips' suit against each of the Trade Contractors involves two contracts—the Phillips contract with JWH and JWH contract with the Trade Contractor. Just as in Pearson, the Phillips are signatories to one of the contracts and non-signatories to the other. The Phillips' causes of action against the Trade Contractors rely on the existence and validity of the contract between themselves and JWH. *See* Compl. ¶ 54 (Alleging that "[t]he Plaintiffs, by virtue of their contract with Defendant John Wieland Homes, entered into a subcontract with Defendant Fogel Services by which Defendant Fogel Services would install or oversee the installation of plumbing and gas lines in the Plaintiffs' home in a workmanlike manner"); ¶55 ("This agreement entered into by Defendant John Wieland Homes, on behalf and for the benefit of the Plaintiffs constituted a contract between the Plaintiffs and Defendant Fogel Services"); and 56-62 (alleging breach of this contract and breach of implied warranty of work manlike service as to Defendant Fogel Services). *See also* Compl. ¶¶ 66-75 and 79-88 (alleging similar contract formation, breach, and breach of implied warranties as to AAA Plumbing and Charleston LEC).

The arbitration agreement in this case that the Plaintiffs' are signatories to is at least as strong if not stronger than the same agreement in Pearson—the arbitration agreement found in the Phillips' contract with JWH provides for binding, mandatory arbitration. The contracts with the Trade Contractors require those parties to participate in and cooperate with any arbitration. Therefore, because Plaintiffs' causes of action against the Trade Contractors are all dependent upon the Phillips' agreement with JWH, the court should compel the Phillips submit those claims to binding arbitration consistent with their unambiguous agreement to arbitrate.

CONCLUSION

Based on the foregoing, Defendant JWH respectfully requests this Court amend the Order and enter an Order compelling Plaintiffs to arbitrate all claims against JWH and its subcontractors and dismissing Plaintiffs' action against those Defendants with prejudice, or, in the alternative, staying all proceedings during the pendency of the arbitration.

Respectfully submitted,

PRATT-THOMAS WALKER, P.A.

By: _____

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May 6, 2013
Charleston, South Carolina

John Wieland Homes and Neighborhoods of the Carolinas, Inc.
Purchase Agreement 6/5/08
(Date of Purchaser's Offer)

The Property and Financial Terms

1. Agreement to Buy and Sell; Property. The undersigned Purchaser agrees to buy, and the undersigned Seller agrees to sell, all that tract or parcel of land lying and being in the City of Charleston, Berkeley County, South Carolina; Being Lot 3 of Block Z Parcel M of Smythe Park Neighborhood, Daniel Island; Being more commonly known as 1417 Hooper Street, Charleston, SC 29492 (street address, city, state, zip); Being recorded in Berkeley County Records, Plat Book _____, Page _____. (The foregoing land and the improvements constructed or to be constructed thereon by Seller are referred to herein as the "Property.") Purchaser acknowledges that the neighborhood/subdivision name and/or street names may change, and Purchaser agrees to accept any such changes.

Legible PAGE (Before changes)

2. Purchase Price and Deposit. The Purchase Price of the Property shall be Six Hundred Fourteen thousand nine hundred Dollars, ($ 614,900.00) to be paid to Seller in immediately available funds at closing. Purchaser has delivered to Daniel Island Real Estate Company, LLC as Builder's listing broker (the "Broker), an earnest money deposit ("Earnest Money Deposit") of Fifteen Thousand Dollars, ($ 15,000.00) to be held by Broker until Closing, or to be disbursed as set fort in this Agreement. The parties acknowledge and agree that Broker will place the Earnest Money Deposit in a federally insured financial institution. Purchaser acknowledges and agrees that any interest earned with regard to the Earnest Money Deposit shall be designated to the benefit of the Daniel Island Community Fund, Inc., a nonprofit community service organization.

3. Additional Deposits. $10,000.00 shall be paid to Seller (not to Broker as earnest money) as a non-refundable foundation deposit when the foundation is started, with such amount to be credited to Purchaser at closing. Such foundation deposit shall be non-refundable unless Seller is unable or unwilling to close, and Purchaser hereby acknowledges that such deposit and any interest thereon is a part of Seller's liquidated damages upon Purchaser's default. Purchaser acknowledges that Seller reserves the right to require additional non-refundable deposits for the installation of extras not included as a standard feature for the neighborhood in the amount of at least fifty percent (50%) of the total charge for such item(s) (Seller may require larger deposits in its discretion). Such non-standard items are determined in Seller's sole discretion and may include, without limitation, basement finishing, skylights, additional fireplaces, custom tile or marble, retaining walls and structural framing and foundation modifications. These additional deposits may be required in the above instances regardless of Purchaser's mortgage down payment requirements but shall be credited to Purchaser at closing. Such deposits shall be non-refundable unless Seller is unable or unwilling to close, and Purchaser hereby acknowledges that such deposits and any interest thereon are a part of Seller's liquidated damages upon Purchaser's default. **Purchaser's Initials** _____.

4. Brokers. Broker has entered into a client relationship with Seller and has acted as agent for the Seller in this transaction Lexa Owens ("Selling Broker") has entered into a client relationship with Purchaser and has acted as agent for the Purchaser in this transaction. Any Agency Disclosure form attached hereto is made a part hereof. Purchaser acknowledges that Broker's representation of Seller has been disclosed to Purchaser in a timely manner and that there is no brokerage or agency relationship between Broker and Purchaser, even though Broker may perform ministerial acts for the benefit of Purchaser. Purchaser acknowledges that Purchaser has not relied upon the advice or representations, if any, of Seller or Broker, or their respective representatives, relative to the purchase and ownership of the Property and any matters related thereto. Purchaser acknowledges that if such matters are or have been of concern to Purchaser, Purchaser has sought and obtained independent advice relative thereto. Except as set forth in this agreement, Purchaser and Seller represent and warrant that they have not dealt with, and have not been and are not represented by, any other agent or broker, or other person or entity, in connection with the sale of the Property, and they agree to indemnify and hold each other harmless from any and all claims, losses, damages, costs and expenses, including, without limitation, attorneys' fees and court costs, incurred or suffered by one of them because of any claim for any fee or commission with respect to this transaction made by the other or by an agent or broker, or other person or entity, claiming to represent the other. Broker and Selling Broker have performed valuable services in negotiating this agreement and are made parties hereunder to enforce their commission rights. Payment of commission to a broker shall not create an agency or subagency relationship between Selling Broker and either Seller or Broker. If this transaction closes in accordance with the terms hereof, Seller agrees to pay Broker at closing a commission (which commission has already been negotiated in a separate agreement) of 6 % of the above Purchase Price. If this sale is made in cooperation with a Selling Broker, Broker shall receive 3 % of the total real estate commission paid hereunder and the Selling Broker shall receive 3 % of the total real estate commission paid hereunder. If this transaction does not close in accordance with the terms hereof (for any reason whatsoever), Seller shall not be obligated to pay any real estate commission or similar fee to any person or entity. From time to time, Seller may make additional monetary or merchandise awards to brokers and agents in connection with this and other transactions. Purchaser shall have no obligations regarding any such awards. Seller will, upon request by Purchaser, provide Purchaser with additional information regarding any awards to any broker or agent involved in this transaction and which relate to this transaction. Real estate commission rates or fees are not fixed by law or custom and are not controlled, suggested, recommended or maintained by the Charleston Trident Board of Realtors, Inc. or the Charleston Trident Multiple Listing Service, Inc. Compensation for services rendered is solely a matter of negotiation between the broker/agent and the client. No broker to this transaction shall owe any duty to Purchaser or Seller greater than is set forth under South Carolina law. Seller and Purchaser acknowledge that if they have entered into a client relationship with a broker, that broker has disclosed on a prior basis (a) the types of brokerage relationships offered by

the broker, (b) any other brokerage relationship which would conflict with the client's interest, and (c) the compensation of broker and whether commissions will be shared with other brokers. In this agreement, the term "broker" shall mean a licensed South Carolina real estate broker and the broker's affiliated licensees.

5. Title. Seller shall convey good and marketable title to the Property to Purchaser by general warranty deed subject only to (a) zoning ordinances affecting the Property, (b) general utility and right-of-way easements serving the Property, (c) subdivision restrictions of record and items reflected on the recorded plat as of the closing date, and (d) other restrictions and encumbrances herein specified (see Stipulation # ___). Purchaser shall have a reasonable time after the effective date of this agreement in which to examine title and in which to furnish Seller with a written statement of objections (other than the foregoing) which materially and adversely affect the marketability of title. Purchaser and Seller agree that marketable title shall mean title which a reputable title insurance company, licensed to do business in the State in which the Property is located, will insure at its regular rates. Seller shall have until closing to satisfy all valid objections and if Seller fails to satisfy such valid objections, then Purchaser may terminate this agreement by written notice to Seller, the builder deposit and other deposits made hereunder shall be returned to Purchaser, and the parties shall have no further rights or obligations hereunder.

6. Covenants. Purchaser acknowledges that the Property is or will be subject to recorded protective covenants, that Purchaser has received a copy of such covenants or substantially similar covenants, and that Purchaser and the Property shall be bound by the recorded covenants. Purchaser acknowledges that only the neighborhood association having jurisdiction over the Property is authorized to approve architectural alterations and that approval or assistance of any type provided by any sales agent, builder representative or other person or entity shall not be sufficient to authorize any architectural alteration and shall not prejudice the rights of such association to enforce the architectural control provisions of the covenants. The covenants obligate Purchaser to submit plans for all exterior alterations to home and site for prior approval. Purchaser acknowledges that the neighborhood association having jurisdiction over the Property is mandatory and Purchaser shall be a member. Purchaser shall pay dues levied by such association, including dues to be paid at closing based on the date of closing and the schedule provided by such association. If the Property is not shown on a recorded plat as of the effective date of this agreement, Purchaser acknowledges that the boundaries of the Property as finally platted may vary slightly from preliminary boundaries. Purchaser also acknowledges that the final boundaries of the Property shall be as per latest recorded plat thereof as of date of closing (and not as on any lot survey or other document provided at closing or otherwise). Boundaries are not established by landscaping, trees, fencing, Purchaser assumptions or other action, or anything other than the latest recorded plat as of the date of closing, and Seller shall have no obligation, responsibility or liability whatsoever for issues arising out of the foregoing. Purchaser's Initials ___

7. Loan. A written loan application shall be made by Purchaser within 10 days after the date of Purchaser's offer (as noted in the upper right-hand corner of the first page of this agreement). Within 30 days of the effective date of this agreement, Purchaser shall obtain a lender commitment letter with all conditions fully disclosed and acceptable to Seller and provide a copy of such letter to Seller. If Purchaser fails to obtain and provide a copy of such letter within such 30 day period, Seller may at any time thereafter terminate this agreement and retain the builder deposit and all other deposits hereunder as liquidated damages. In addition, if Purchaser fails to make timely written loan application, or fails at any time to supply the necessary information on a timely basis to allow for loan processing, or fails at any time to diligently pursue loan approval in good faith, all as determined in Seller's reasonable discretion, Seller may at any time terminate this agreement and retain the builder deposit and all other deposits hereunder as liquidated damages. Upon termination of this agreement and payment of monies pursuant to this paragraph, the parties shall have no further rights or obligations hereunder. Purchaser's Initials ___

Wieland Financial Services is familiar with the building practices of Seller and the unique attributes, including the protective covenants, applicable to the Property. As a result, Seller requests, but does not require, the use of Wieland Financial Services for loan application and processing to benefit both Purchaser and Seller. Purchaser's Initials ___

Construction Matters

1. Materials. If items or materials are not available when needed, Seller may substitute items or materials of equal or better grade, in Seller's reasonable discretion. Seller may also make substitutions of equal or better grade where such substitutions would be consistent with Seller's general practice. Purchaser acknowledges that the color and grade of certain materials used in the home may vary from the selections made by Purchaser due to factors beyond the control of Seller. Purchaser agrees that industry standards, as determined in the reasonable exercise of Seller's discretion, shall govern the acceptability of any particular variances. For example, the colors of exterior siding and interior stain and the color and size of brick and stone may be slightly different than that selected by Purchaser. If Seller reasonably determines that any such variation is within industry standards, Purchaser shall be bound by such determination. Purchaser further acknowledges that Seller shall not be required to obtain Purchaser's consent for changes, deviations or omissions to the home during construction which do not adversely affect the value of the home and which are necessitated by: action of governmental authorities, lender, FHA or VA requirements, or particular job-site conditions.

9. Selections. Purchaser shall select, within stated allowances, if not already installed:
(a) Level II carpet installed with pad.
(b) Level I vinyl.
(c) Lighting fixtures and ceiling fans @ $3,000.00 total.

If Purchaser's selections exceed stated allowances, Purchaser shall pay Seller the difference in cash at the time of selection. An additional deposit of 50% of all design options exceeding the stated allowances will be

collected with the written addendum to add them. All such accounts to be credited to Purchaser at closing. The foregoing deposits shall be non-refundable unless Seller is unable or unwilling to close, and Purchaser hereby acknowledges that such deposits and any interest thereon are a part of Seller's liquidated damages upon Purchaser's default. IF PURCHASER REFUSES TO SCHEDULE AN APPOINTMENT TO MAKE DECORATING SELECTIONS FOR THE PROPERTY WITHIN 14 DAYS OF THE DATE OF PURCHASER'S OFFER (AS NOTED IN THE UPPER RIGHT-HAND CORNER OF THE FIRST PAGE OF THIS AGREEMENT), PURCHASER SHALL BE IN DEFAULT. ANY DELAY BY PURCHASER IN MAKING DECORATING SELECTIONS WILL DELAY THE CLOSING DATE. Purchaser acknowledges that all items to be selected by Purchaser have been made, are installed, and are acceptable except as noted in Stipulation # N/A.

10. Alarm System/Other. The alarm system, if standard for this neighborhood, shall include all first floor operable windows (lower windows only) and doors, including basement level windows (lower windows only) and doors. Seller neither provides nor installs toilet paper holders or towel racks.

11. Insulation. Insulation will be installed in the exterior walls and upper-level ceilings as follows:

[ ] (a) Exterior walls of first and second floor heated living areas will be insulated with fiberglass insulation to a thickness of 3-1/2 inches, which thickness, according to the manufacturer, will yield an R value of 13.

[ ] (b) Upper-level ceilings above all heated living areas with sufficient head room to allow for blown insulation will be insulated with blown fiberglass insulation yielding an R value of 30 and a thickness as required by the manufacturer to achieve the R value designated, which thickness shall be posted in the attic, or

[ ] (c) Upper-level ceilings above all heated living areas that do not allow for blown insulation will be insulated with fiberglass batt insulation having a thickness of six inches, which thickness, according to the manufacturer, will yield an R value of 19.

[ ] (d) Floors over crawl spaces will be insulated with fiberglass batt insulation having a thickness of 5 inches, which thickness, according to the manufacturer, will yield an R value of 19.

Purchaser acknowledges that the above R value information is based solely upon information supplied by the manufacturer or installer and Seller does not warrant the accuracy of this information. Purchaser further acknowledges that R value may vary based upon normal construction variances in insulation thickness and openings in walls.

12. Seller's Approval of Certain Matters. Seller reserves the right to approve the lot, house placement, driveway location, number of deck steps included in Purchase Price and all exterior colors. No structural or mechanical changes will be made to the Property once framing is complete, unless otherwise provided in this agreement.

13. Sewer and Water Service. Seller warrants that the Improvements on the Property are served by [X] public sanitary sewer, [ ] septic tank. Seller warrants that the Improvements on the Property are served by [X] public water, [ ] well system, [ ] other. Purchaser's Initials

14. Non-Interference by Purchaser. Neither Purchaser nor Purchaser's agents may do any work on the Property or enter the Property prior to closing without prior written permission of Seller, which permission may be withheld for any reason. Purchaser may visit the Property prior to closing, but shall not interrupt or interfere with sales or construction in the neighborhood. Purchaser shall direct questions to the sales agent or community coordinator for the neighborhood.

Pre-Closing Issues

15. Inspection. Purchaser, at Purchaser's expense, may have the Property and all improvements inspected prior to closing by a mutually agreeable independent property inspector. If such an inspection is made, the inspector shall diligently and comprehensively evaluate all aspects of the Property and all improvements. However, the inspector may not attend the New Home Orientation meeting between Purchaser and Seller. If the inspection report discloses items which do not comply with applicable building or health codes, Seller shall immediately proceed to correct such items and diligently pursue correction to completion. Items other than such code violations shall be resolved in accordance with Seller's standard pre-closing and post-closing warranty work procedures. Prior to commencement of the inspection, Purchaser and Seller shall agree upon the inspector in writing. Any written report prepared by the inspector shall be delivered to Seller not later than fifteen (15) days prior to closing and prior to New Home Orientation. FAILURE TO FOLLOW THE AFOREMENTIONED PROCEDURE WILL NECESSITATE THE POSTPONEMENT OF ANY AGREED UPON CLOSING DATE. Purchaser's Initials , Seller's Initials

16. Pre-Closing Occupancy. Seller recommends that Purchaser allow two (2) full days between scheduled closing date and furniture move-in to accommodate unforeseen delays in actual closing. Seller's policy is not to allow occupancy prior to closing. However, Seller, at its sole option, may permit the Purchaser to occupy the Property prior to closing. Purchaser acknowledges, however, that Seller is under no obligation to allow Purchaser to occupy the Property prior to closing, and that refusal of Seller to grant permission to Purchaser to occupy in no way affects any other part of this agreement. If permission is granted, a mutually agreeable occupancy agreement shall be executed prior to occupancy.

Closing

17. Closing. The sale shall be closed not later than 7 days after completion of the home (New Home Orientation walk-through items excepted). Notwithstanding anything to the contrary herein, Seller shall complete construction of the home on the Property within two (2) years after the effective date of this agreement. Possession of the Property shall be granted by Seller to Purchaser no later than closing.

18. Closing Costs. Seller shall pay the recording fee, which is calculated based on the value of the Property. Purchaser shall pay prepaid items including any prepaid interest and provide a paid-up insurance policy at closing. Purchaser shall pay closing costs, loan costs and discount points (see Stipulation #: N/A). Purchaser shall pay mortgage insurance down payment, if any, as required by Purchaser's lender. Purchaser shall reimburse Seller at closing $ 350.00 for the cost of the survey (THE SURVEY WILL BE ORDERED BY SELLER AND WILL BE DONE BY A SURVEYOR OF SELLER'S CHOICE). Taxes shall be estimated and prorated at closing based on the best available tax information. If the closing is held after a tax bill has been issued for the year of closing, prorations at closing shall be final. If closing is held before actual taxes for the year of closing are known, Seller and Purchaser agree to adjust the estimate of taxes promptly upon request of the other based on actual taxes for the year of closing when those taxes are billed. agree to make refund payments to each other as appropriate based on the adjusted estimate (and such payments shall bear a late fee of 10% of the amount due, if not paid within 30 days after demand for payment is made, and shall bear interest at 12% per annum from 30 days after demand for payment is made until paid). Seller may suspend warranty work until Purchaser makes any reprorations payment requested by Seller. The parties acknowledge that taxes may increase significantly if the Property is located in a county that undergoes property tax reassessment. If the county in which the Property is located has passed a 15% tax cap ordinance as allowed by SC Code Section 12-37-3721(A), the parties acknowledge that there may be an additional, substantial increase in property taxes for the tax year following closing.

19. Closing Attorney and Documents. Seller reserves the right to select the closing attorney as long as costs are equal to or less than those available to Purchaser from alternate sources. Any closing costs incurred at the request of or for the special benefit of Purchaser, including, but not limited to, courier, express mail or unusual copying requirements, shall be the expense of Purchaser. Both parties shall execute and deliver all documents necessary to close.

20. Termites. Seller shall deliver to Purchaser at closing a certificate stating that the Property has been treated against termite infestation by a termite control agency.

21. Items and Appraisal. All charges for extras added by Purchaser not already paid and rent not already paid, if any, shall be payable in certified funds acceptable to Seller at closing. If the Property does not appraise at an amount at least equal to the Purchase Price, Purchaser shall pay any additional amount needed to close in certified funds acceptable to Seller.

22. Warranty and Arbitration. Purchaser and Seller hereby agree that, in connection with the sale contemplated by this agreement, Purchaser will be enrolled in the John Wieland Homes and Neighborhoods 5-20 Extended Warranty program (JWH Warranty), the JWH Warranty being incorporated herein by reference. THERE ARE AND WILL BE NO OTHER OR FURTHER WARRANTIES OR REPRESENTATIONS ON THE PROPERTY AND IMPROVEMENTS (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, WORKMANLIKE QUALITY, HABITABILITY, SUITABILITY FOR RESIDENTIAL PURPOSES, OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE), EITHER EXPRESS OR IMPLIED, WRITTEN, ORAL OR STATUTORY, MADE BY SELLER OTHER THAN AS EXPRESSED IN THE JWH WARRANTY, AND ALL SUCH OTHER WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED BY SELLER. THE JWH WARRANTY IS ALSO GIVEN BY SELLER AND ACCEPTED BY PURCHASER IN LIEU OF ALL OTHER RIGHTS OR REMEDIES THAT PURCHASER HAS OR MAY HAVE AT LAW OR IN EQUITY AGAINST SELLER RELATING TO THE PROPERTY, CONSTRUCTION ON THE PROPERTY, AND THE CONDITIONS OR CIRCUMSTANCES EXISTING ON THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY RIGHTS OR REMEDIES BASED ON NEGLIGENT CONSTRUCTION, MISREPRESENTATION, ANY TORT, VIOLATION OF ANY CODE, STATUTE OR RULE, BREACH OF CONTRACT (EXPRESS OR IMPLIED), OR BREACH OF WARRANTY (OTHER THAN BASED ON THE TERMS OF THE JWH WARRANTY), AND ALL SUCH OTHER RIGHTS OR REMEDIES ARE HEREBY EXPRESSLY WAIVED BY PURCHASER. PURCHASER ACKNOWLEDGES THAT PURCHASER HAS RECEIVED AND READ A COPY OF THE CURRENT JWH WARRANTY AND CONSENTS TO THE TERMS THEREOF, INCLUDING, WITHOUT LIMITATION, THE MANDATORY BINDING ARBITRATION PROVISIONS CONTAINED THEREIN. Certain appliances and other consumer products sold as part of the improvements are covered by manufacturers' warranties. Purchaser is entitled to receive those warranties upon request to the Seller.

Purchaser's Initials BBR Seller's Initials MG

Post-Closing Matters

23. Trees. Seller shall have no obligation, responsibility or liability whatsoever for (1) trees and/or shrubbery that Seller would have removed, or had planned to remove, during construction but which Purchaser specifically requested not be removed, (2) natural areas left undisturbed by Seller, including, without limitation, drainage in such areas, (3) site drainage other than as stated in the JWH Warranty, and (4) trees of any kind whatsoever.

24. Heating and Cooling Systems. Purchaser acknowledges that different people have different expectations and operating practices regarding the heating and cooling systems for a home and that the performance of such systems can be affected by the orientation of a room or home in relation to the sun. The heating and cooling systems for the Property have been sized and designed in accordance with industry standards for the type and size of home to be constructed. If the heating and cooling systems operate in accordance with industry standards, Purchaser shall not make any claim against Seller with respect thereto.

25. CHANGES IN DEVELOPMENT PLANS AND AMENITIES. PURCHASER ACKNOWLEDGES THAT CURRENT DEVELOPMENT PLANS FOR THIS NEIGHBORHOOD ARE SUBJECT TO CHANGE WITHOUT NOTICE AND NO GUARANTEES ARE MADE THAT ANY OF THE COMPONENTS

PRESENTLY PROPOSED WILL BE A PART OF THE NEIGHBORHOOD, OR THAT ADDITIONAL COMPONENTS WILL NOT BE ADDED TO THE NEIGHBORHOOD. IF SOME OR ALL OF SUCH COMPONENTS ARE PROVIDED, NO GUARANTEES ARE MADE AS TO THE DATE OF AVAILABILITY FOR USE OR THAT CURRENT PLANS WILL ACCURATELY REFLECT ACTUAL CONSTRUCTION OR LOCATION OF SUCH COMPONENTS.

26. Construction Easement. Purchaser grants to Seller a grading and construction easement, 5 feet in width from adjacent property, onto the Property for temporary access for construction on other property which lies adjacent to the Property; provided, such easement shall not interfere with Purchaser's use of the Property, and any damage to the Property shall be repaired by Seller. Such easement shall exist only during the period of construction upon adjacent property. Purchaser shall keep unobstructed all drainage structures and easements as shown on the recorded plat and the survey which will be provided at closing.
27. Photography of Property. Purchaser grants Seller the right to obtain and use photography of the Property for publication and advertising purposes.

General

28. Default Prior to Closing. If Purchaser defaults under this agreement prior to closing, Seller may elect to receive the builder deposit and all other deposits as agreed upon liquidated damages, in which event this agreement shall terminate and Purchaser and Seller shall have no further rights or obligations hereunder. Alternatively, Seller may elect to seek enforcement of this agreement by specific performance. Upon default by Purchaser prior to closing, Purchaser shall, notwithstanding anything to the contrary herein, also immediately pay the full amount of the real estate commissions due hereunder. Broker and Selling Broker may jointly or independently pursue Purchaser for that portion of the commission which they would have otherwise received had this transaction closed. If Seller defaults under this agreement prior to closing and such default is the sole cause of this transaction not closing, Purchaser may elect to receive a refund of all deposits, in which event this agreement shall terminate and Purchaser and Seller shall have no further rights or obligations hereunder. Alternatively, Purchaser may elect to seek enforcement of this agreement by specific performance. In no event shall any party have the right to seek damages from another party upon default prior to closing, except the recovery of liquidated damages pursuant to this agreement.
29. Termination Prior to Closing. If, prior to closing, a dispute arises between Purchaser and Seller concerning construction, boundaries, consideration or any other matter relating to this transaction and such dispute cannot be resolved within 10 days after the dispute has arisen by both parties acting reasonably and in good faith, Seller shall have the right to terminate this agreement upon written notice (by certified mail, return receipt requested, or personal delivery) to Purchaser. Upon termination, Seller shall pay to Purchaser the sum of $100.00 and shall, in addition, return all monies paid by Purchaser pursuant to this agreement, together with simple interest on such monies at the rate of 5 percent per annum from the date of deposit of Purchaser's payments. Upon termination, the parties shall have no further rights or obligations hereunder and such termination shall not be a default by any party. For the purposes of this provision, a tender of the monies by Seller to Purchaser will be sufficient, whether or not accepted by the Purchaser.
30. Force Majeure. Notwithstanding anything to the contrary contained herein, Seller shall be excused for the period of delay occasioned by circumstances beyond the control of Seller, including, without limitation, delay caused by the Purchaser, any labor strike or unrest affecting performance of work hereunder, failure of Seller's suppliers of materials to deliver requested materials, delay and/or failure due to computer viruses, "bugs" or other computer-related disruptions, riots, and acts of God, including, but not limited to, fire, windstorm, flood, tornadoes, earthquakes, lightning or other casualty. Seller shall not be liable for any inconvenience or expense to Purchaser caused by events beyond Seller's control.
31. Entire Agreement and Disclaimer. This agreement constitutes the sole and entire agreement between the parties hereto and no modification of this agreement shall be binding unless attached hereto and signed by, at a minimum, Purchaser and Seller (any parties other than Purchaser and Seller not being necessary parties to the execution of any modifications to this agreement unless such modifications adversely affect the commission to be paid hereunder). NO REPRESENTATION, PROMISE, OR INDUCEMENT NOT INCLUDED (WHETHER MADE BY AN AGENT OR REPRESENTATIVE OF SELLER OR OTHERWISE) IN THIS AGREEMENT SHALL BE BINDING UPON ANY PARTY HERETO, INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS REGARDING PROPERTY BOUNDARIES, ADJACENT PROPERTY, OR AMENITIES.

Purchaser acknowledges the following:

(a) any association budget that may be provided to Purchaser (Seller being under no obligation to provide any such budget) is based on estimated expenses only, and assessments may increase or decrease significantly when the actual expenses of the association become known;
(b) the Property is located adjacent to or in the vicinity of thoroughfares which could be improved or widened in the future;
(c) the views from the Property can change over time due to, among other things, additional development and the removal or addition of landscaping;
(d) no representations are made regarding zoning of adjacent property, and the zoning category to which adjacent property is subject may change;
(e) no representations are being made regarding which schools may now or in the future serve the Property;
(f) since in every neighborhood there are conditions which different persons may find objectionable, Purchaser acknowledges that there may be conditions outside of the Property which Purchaser finds objectionable and that it shall be the sole responsibility of Purchaser to become acquainted with neighborhood conditions which could affect the Property; and

Seller's Initials _____ Purchaser's Initials _____ Broker's Initials _____ Selling Broker's Initials _____

(g) no representations are made that the Property and/or home/unit thereon is or will be soundproof or that sound may not be transmitted from one property and/or home/unit to another.

32. Time of Essence. Time is of the essence of this agreement.

33. Liquidated Damages. In all cases where a party is entitled to receive liquidated damages hereunder, the parties acknowledge that such damages cannot be determined with certainty, the amount to be paid represents the parties best estimate of such damages, and such payment shall not constitute a penalty.

34. Miscellaneous. Each provision of this agreement is severable from every other provision and if any provision is determined to be unenforceable, the parties shall be bound by the remaining provisions. No provision of this agreement shall be construed more strictly against a party because that party or its agent prepared or is deemed to have prepared such provision. The failure of any party to exercise any right hereunder at any particular time shall not be deemed a waiver of such party's rights. Titles or captions of sections contained in this agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this agreement or the intent of any provisions hereof. References to the singular shall mean, where applicable, the plural. This agreement shall not be binding until both Purchaser and an authorized representative of Seller have both executed the same copy of this agreement. However, some time periods hereunder begin to run from the date of Purchaser's offer (as noted in the upper right-hand corner of the first page of this agreement). A signature transmitted by facsimile machine shall be treated as an original signature.

35. Survival. The terms and conditions contained herein shall not survive closing or termination of this agreement and shall merge upon delivery of the warranty deed, except for the provisions of the last sentence of Section 1 and Sections 2, 3, 4, 6, 7, 8, 11, 13, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35, which shall survive closing or termination of this agreement and shall not merge upon delivery of the warranty deed.

THE EFFECTIVE DATE FOR THIS AGREEMENT SHALL BE THE DATE THAT IT IS LAST EXECUTED BY PURCHASER OR SELLER.

6/9/08 — Date Executed

6/9/08 — Date Executed

Purchaser — 6/7/08 — Date Executed

Purchaser — 6/7/08 — Date Executed

Selling Broker: Keller Williams

By: [signature] — Date Executed 6/7/08

Broker-in-Charge Date

Seller's Initials ____ Purchaser's Initials [initials] Broker's Initials [initials] Selling Broker's Initials [initials]

Page 6 of 10

See Addendum "1" which is part of this contract.

REAL ESTATE CONTRACT ADDENDUM

This is an Addendum to that certain Real Estate Contract dated 6/5/08 between Purchaser(s) Peter + Summer Phillips and John Wieland Homes and Neighborhoods of the Carolina's, Inc., Seller, for property located on Daniel Island at 1417 Fincher Street, Charleston, SC 29492 also known as Lot 3, Block Z, Parcel M, Smythe Park Neighborhood.

The following shall be added to the above mentioned Agreement:

1. DANIEL ISLAND DEVELOPMENT. Purchaser acknowledges that the Property is part of the planned community located in the City of Charleston, Berkeley County, South Carolina, known as "Daniel Island" ("Development"). The nature and extent of the rights and obligations of the Purchaser in acquiring and owning property in the Development shall be controlled by and subject to the approved Master Plan for Daniel Island and the Development Agreement among Harry F. Guggenheim Foundation, Daniel Island Development Company, Inc., and City of Charleston, Daniel Island, Berkeley County, South Carolina.

2. DANIEL ISLAND COMMUNITY ASSOCIATION, INC.
   (a) Governing Documents. Purchaser acknowledges that the Property is a portion of real property and improvements which have been made subject to that certain Declaration of Covenants, Conditions and Restrictions for Daniel Island Residential Zone recorded in the Register of Mesne Conveyance Office for Berkeley County, South Carolina, as it may be amended from time to time, and all exhibits thereto ("Declaration"). The nature and extent of the rights and obligations of the Purchaser in acquiring and owning the Property are controlled by and subject to the Declaration, as well as the Daniel Island Design Guidelines, and the Articles of Incorporation, the By-Laws, and the rules and regulations of the Daniel Island Community Association, Inc. ("Association"), as they may be amended (collectively, the "Governing Documents"). Purchaser acknowledges receipt of the foregoing documents and agrees to comply with all of the terms, conditions and obligations set forth therein. Purchaser further acknowledges that the plans for the construction of the home and landscaping on the Property, and any changes thereto, must be approved by the Architectural Review Board ("ARB"), as established pursuant to the Declaration.
   (b) Membership in Association. Upon conveyance of the Property to Purchaser, Purchaser shall automatically become a member of the Association and shall be subject to all assessment obligations, ARB procedures, and other provisions of the Governing Documents.
   (c) Expansion. Purchaser further acknowledges that the Development may be expanded to include additional lots in accordance with the terms of the Declaration. Purchaser also acknowledges that no obligation exists on the part of any person or entity to expand the Development to include lots other than those presently subject to the Declaration.
   (d) Amendments to the Declaration. The Declarant under the Declaration may make certain changes in or amendments to the Declaration which do not materially affect the rights of Purchaser and such changes or amendments may be made without the approval of Purchaser. In addition, the Declarant may make any amendment necessary to comply with the guidelines established by, or the requirements of, any governmental authority, title insurer, or institutional lender. Such changes or amendments shall not affect the rights and liabilities of the parties under the Agreement, or be a cause or reason for termination or revision of the Agreement.
   (e) Common Expense Assessments. The annual assessments, if any, levied by the Association against the Property as provided in the Declaration shall be prorated between Seller and Purchaser as set forth in the Agreement.
   (f) Contribution to Working Capital. At closing, Purchaser shall pay a one-time contribution to the working capital of the Association in the amount of one-sixth (1/6) of the annual assessment for the year of closing, which amount shall be in addition to, and not in lieu of, assessments thereafter coming due.

3. AMENITIES. Purchaser acknowledges that the proposed features and amenities described on the master plan and/or other Daniel Island sales or marketing brochures, announcements or other materials are based on current development plans, which are subject to change without notice. No guarantee is made that the proposed features or amenities, if constructed, will consist of the number, type, size and location as depicted on the master plan or otherwise.

4. NO JOINT VENTURE. Purchaser acknowledges and agrees that no partnership, joint venture, or principal and agent relationship exists between Seller and Daniel Island Company, Inc., and Daniel Island Associates L.L.C.

We hereby agree to accept the foregoing as an Addendum to the aforementioned Agreement, as of this 5th day of June, 2008.

Summer C Phillips
Purchaser

Peter T Phillips
Purchaser

John Wieland Homes and Neighborhoods of the Carolina's, Inc. (Seller)

Seller's Initials _____ Purchaser's Initials SL PTP Broker's Initials RH Seller's Broker's Initials _____

SPECIAL STIPULATIONS

Attached to that certain agreement dated between Peter L Sumner Phillips Purchaser, and John Wieland Homes and Neighborhoods of the Carolina's, Inc., Seller, for property known as Lot #338 of Block # Z of Daniel Island Smythe Park Neighborhood; being more commonly known as 1417 Hooper Street, Charleston, SC 29492.

1. PLAN SELECTION

The home to be constructed is to be a Calhoun plan built to The Smythe Park standards. The front elevation is double stacked front porch with an attached 2 Car rear entry garage with a finished room above built on a crawl space with stucco and lattice and Hardiplank siding.

2. ORIENTATION/CLOSING DATE.

Orientation and Closing dates will be set upon completion of Bath Vanity tops.

3. ORIENTATION/FINAL WALK THROUGH

All Purchasers must attend Orientation and Final Walk Through.

4. THIS CONTRACT IS NOT ASSIGNABLE.

5. PROPERTY FOR PERSONAL USE

Purchaser represents that Purchaser is buying the property for personal use as a residence for Purchaser and/or Purchaser's family, and not for investment purposes or for immediate resale. Seller reserves the right, in its sole discretion, to require Purchaser to sign a recordable agreement, to be attached to the deed at closing, which grants Seller the option to repurchase the Property for the same purchase price paid by Purchaser at closing, if Purchaser conveys the Property within one (1) year after the date of closing. Any such agreement and any additional related provisions Seller may desire in such agreement, shall be prepared by Seller, and the form and substance of any such agreement shall be satisfactory to Seller in its sole discretion. Purchaser acknowledges and agrees that Seller's requirement of such agreement in no way affects any other part of this agreement and shall not constitute a default of noncompliance with this agreement by Seller. Purchaser further acknowledges and agrees that Purchaser's refusal to sign such agreement upon request shall constitute a default by Purchaser under this agreement.

6. WIELAND FINANCIAL SERVICES

If Purchaser procures and closes a loan with Wieland Financial Services, Seller will credit Purchaser $2,500.00 towards closing costs.

Seller: John Wieland Homes & Neighborhoods of the Carolina's, Inc.
6/9/08
Date

Purchaser Date

Purchaser Date

Seller's Initials Purchaser's Initials PLS SLP Broker's Initials Selling Broker's Initials

REAL ESTATE CONTRACT ADDENDUM

This is an Addendum to that certain Real Estate Contract dated 6/5/08 between Purchaser(s) Peter & Summer Phillips and John Wieland Homes and Neighborhoods of the Carolina's, Inc., Seller, for property located on Daniel Island at 1417 Sinclair Street, Charleston, SC 29492 also known as Lot 3, Block Z, Parcel M, Smythe Park Neighborhood.

The following shall be added to the above mentioned Agreement:

1. DANIEL ISLAND DEVELOPMENT. Purchaser acknowledges that the Property is part of the planned community located in the City of Charleston, Berkeley County, South Carolina, known as "Daniel Island" ("Development"). The nature and extent of the rights and obligations of the Purchaser in acquiring and owning property in the Development shall be controlled by and subject to the approved Master Plan for Daniel Island and the Development Agreement among Harry F. Guggenheim Foundation, Daniel Island Development Company, Inc., and City of Charleston, Daniel Island, Berkeley County, South Carolina.

2. DANIEL ISLAND COMMUNITY ASSOCIATION, INC.
   (a) Governing Documents. Purchaser acknowledges that the Property is a portion of real property and improvements which have been made subject to that certain Declaration of Covenants, Conditions and Restrictions for Daniel Island Residential Zone recorded in the Register of Mesne Conveyance Office for Berkeley County, South Carolina, as it may be amended from time to time, and all exhibits thereto ("Declaration"). The nature and extent of the rights and obligations of the Purchaser in acquiring and owning the Property are controlled by and subject to the Declaration, as well as the Daniel Island Design Guidelines, and the Articles of Incorporation, the By-Laws, and the rules and regulations of the Daniel Island Community Association, Inc. ("Association"), as they may be amended (collectively, the "Governing Documents"). Purchaser acknowledges receipt of the foregoing documents and agrees to comply with all of the terms, conditions and obligations set forth therein. Purchaser further acknowledges that the plans for the construction of the home and landscaping on the Property, and any changes thereto, must be approved by the Architectural Review Board ("ARB"), as established pursuant to the Declaration.
   (b) Membership in Association. Upon conveyance of the Property to Purchaser, Purchaser shall automatically become a member of the Association and shall be subject to all assessment obligations, ARB procedures, and other provisions of the Governing Documents.
   (c) Expansion. Purchaser further acknowledges that the Development may be expanded to include additional lots in accordance with the terms of the Declaration. Purchaser also acknowledges that no obligation exists on the part of any person or entity to expand the Development to include lots other than those presently subject to the Declaration.
   (d) Amendments to the Declaration. The Declarant under the Declaration may make certain changes in or amendments to the Declaration which do not materially affect the rights of Purchaser and such changes or amendments may be made without the approval of Purchaser. In addition, the Declarant may make any amendment necessary to comply with the guidelines established by, or the requirements of, any governmental authority, title insurer, or institutional lender. Such changes or amendments shall not affect the rights and liabilities of the parties under the Agreement, or be a cause or reason for termination or revision of the Agreement.
   (e) Common Expense Assessments. The annual assessments, if any, levied by the Association against the Property as provided in the Declaration shall be prorated between Seller and Purchaser as set forth in the Agreement.
   (f) Contribution to Working Capital. At closing, Purchaser shall pay a one-time contribution to the working capital of the Association in the amount of one-sixth (1/6) of the annual assessment for the year of closing, which amount shall be in addition to, and not in lieu of, assessments thereafter coming due.

3. AMENITIES. Purchaser acknowledges that the proposed features and amenities described on the master plan and/or other Daniel Island sales or marketing brochures, announcements or other materials are based on current development plans, which are subject to change without notice. No guarantee is made that the proposed features or amenities, if constructed, will consist of the number, type, size and location as depicted on the master plan or otherwise.

4. NO JOINT VENTURE. Purchaser acknowledges and agrees that no partnership, joint venture, or principal and agent relationship exists between Seller and Daniel Island Company, Inc., and Daniel Island Associates L.L.C.

We hereby agree to accept the foregoing as an Addendum to the aforementioned Agreement, as of this 5th day of June, 2008

Purchaser

Purchaser

John Wieland Homes and Neighborhoods of the Carolina's, Inc. (Seller)

Seller's Initials _____ Purchaser's Initials SAL PTP Broker's Initials RH Selling Broker's Initials _____

ADDENDUM ONE

Addendum One to contract between John Wieland Homes (seller) and Peter T. Phillips and Summer C. Phillips (buyers) dated June 5, 2008 for purchase of property located at 1417 Hooper Street, Dauphin Island.

This addendum by reference below becomes part of the above referenced contract.

1. John Wieland Homes agrees to complete and finish the third floor heated and cooled room, bath, and closets as part of the contract price. Selections to be made by purchaser in a timely manner.

1. John Wieland Homes agrees to allow buyer a ten (10) days to re-visit kitchen cabinet and granite pricing for options selections. If pricing is not satisfactory buyer has the option to void this contract without penalty.

2. Buyer's agent's 3% commission will be applied towards the total purchase price of 1417 Hooper and final purchase price reduced by same. Broker will provide letter as needed going title if required.

Buyer 6/7/08 Date
Buyer 6/7/08 Date
Seller 6/9/08 Date

6/9/08 PTP 6/10/08

John Wieland Homes agrees to complete third floor heated and cooled room, bath, closets as part of contract price. Selections to be made by purchaser in a timely manner.

~~T.C selections made by designer during the contingency period are not satisfactory to buyer, buyer may release Contract by written notice and receive earnest money refund.~~

Design Selection Checklist

Lot # 3m Plan: Calhoun Buyer: Peter + Summar Phillips

Selections available are determined by the date purchaser is able to make final decisions at the John Wieland Homes Design Center
(JW Design hours: M-F 8:00-5:00)

Purchaser is to make all selections within the chosen group at JW Design. Purchaser understands that they must finalize selections in the selected design appointment(s). If selections are not finalized at the designated appointments, builder's standard selections will be used.

**** At contract, agent to call building team to confirm available selections - Richard Jackson 843-297-1424.**

SELECTIONS DATE RANGE:	SELECTIONS DATE RANGE:	SELECTIONS DATE RANGE:
1st (3 hour) Appointment: ~~Shingle Color~~ Brick (if applicable) Exterior Paint Fireplace Treatment ~~Cabinetry~~ Countertops Appliances Stair Treatment 2nd (3 hour) Appointment: Plumbing Fixtures Hardwood Interior Paint Vanity Tops Vinyl Tile Carpet 3rd (3 hour) Appointment: Lighting	1st (3 hour) Appointment: Exterior Paint (limited) Fireplace Treatment (Tile) Cabinetry Countertops Appliances Plumbing Fixtures (limited) 2nd Appointment: Hardwood (limited) Interior Paint Vanity Tops Vinyl Tile Carpet 3rd Appointment: Lighting	1st (3 hour) Appointment: Fireplace Treatment (Tile) Appliances color Hardwood (limited) Plumbing Fixtures (limited) Vanity Tops Interior Paint Vinyl In-stock Tile Carpet 2nd (3 hour) Appointment: In-stock Lighting

SELECTIONS DATE RANGE:	SELECTIONS DATE RANGE:
1st Appointment: Appliances color Hardwood (limited) Vanity Tops Vinyl Carpet	1st Appointment: Carpet

Purchaser's Signature: _____ Date: 6/7/08

Purchaser's Signature: _____ Date: 6/7/08

Neighborhood Sales Manager: _____ Date: _____

Builder's Signature: _____ Date: _____

Seller's Initials _____ Purchaser's Initials PTP _____ Broker's Initials _____ Selling Broker's Initials _____



WARRANTY

John Wieland
JOHN WIELAND HOMES
AND NEIGHBORHOODS

JOHN WIELAND HOMES
AND NEIGHBORHOODS

THE WIELAND 5-20 EXTENDED WARRANTY

THE WIELAND 5-20 EXTENDED WARRANTY

IN GEORGIA:
Customer Service Department, 1950 Sullivan Road, P. O. Box 87363, Atlanta, GA 30337
Phone: (770) 907-3400 Fax: (770) 907-3440
Website: www.jwcustomercare.com

IN TENNESSEE:
Customer Service Department, 300 Seaboard Lane, Suite 3, Franklin, TN 37067
Phone: (615) 790-3090 Fax: (615) 790-0075
Website: www.jwcustomercare.com

IN CHARLOTTE, NORTH CAROLINA:
Customer Service Department, 8325-D Arrowridge Boulevard, Charlotte, NC 28273
Phone: (704) 522-9200 Fax: (704) 522-9040
Email: customerservice.charlotte@jwhomes.com
Website: www.jwcustomercare.com

IN RALEIGH, NORTH CAROLINA:
Customer Service Department, 107-A Quail Fields Court, Morrisville, NC 27560
Phone: (919) 481-3309 Fax: (919) 481-9157
Website: www.jwcustomercare.com

IN CHARLESTON, SOUTH CAROLINA:
Customer Service Department, 496 LaMesa Drive, Mt. Pleasant, SC 29464
Phone: (843) 849-8787 Fax: (843) 849-8877
Website: www.jwcustomercare.com

IN KENTUCKY:
Website: www.jwcustomercare.com

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LIMITED WARRANTY

I. What is Covered

A. Workmanship. During the first year of this warranty, which commences on the day that title first transfers from Wieland or that occupancy by anyone first occurs (whichever occurs first), Wieland warrants that the Home will be free from defects in materials or workmanship, as defined in the Construction Quality Standards, except as they apply to defects in fixtures and equipment which are covered in accordance with the manufacturer's warranty.

B. Systems. During the first two (2) years of this warranty, which commences on the day that title first transfers from Wieland or that occupancy by anyone first occurs (whichever occurs first), Wieland warrants that the Home will be free from defects in the electrical, plumbing and mechanical systems, as defined in Sections X, XI and XII of the Construction Quality Standards, to include the wiring, piping and ductwork portions of the systems. This coverage applies to the HVAC system only if Homebuyer(s) document that the HVAC system has been professionally maintained (i.e., by a company or individual who is licensed as necessary and who is currently in the business of providing such residential maintenance service) per manufacturer's standards/instructions at least once per year. Defects in any of the systems resulting from failures in a fixture or piece of equipment which are covered by a manufacturer's warranty are not covered by this warranty.

C. Extended Items. During the first five (5) years of this warranty, which commences on the day that title first transfers from Wieland or that occupancy by anyone first occurs (whichever occurs first), Wieland warrants that the Home will be free from the following, as defined in the Construction Quality Standards:

1. Verified leaks, due to defects in materials or workmanship, at roof penetrations made in the course of construction.

2. Verified active flow of exterior surface water into the basement or so as to create standing water in the crawl space for at least forty-eight (48) consecutive hours, so long as the active flow is due solely to acts or omissions of Wieland. Wieland must receive written notice of any covered claim within ten (10) days of the date of discovery by Homebuyer(s). Wieland will not be responsible for anything caused by (a) breaks, leaks or bursting of water mains or pipes; (b) any grading done by or on behalf of Homebuyer(s) which causes water to flow toward the outside foundation wall; (c) failure to maintain the grade initially established by Wieland for the Home; (d) prolonged direction of water against the outside foundation wall from water spigots, sprinklers, hoses, or broken or clogged gutters; (e) bent, broken, or clogged downspouts; (f) landscaping improperly installed by or on

behalf of Homebuyer(s); and (g) an irrigation system that was not installed by Wieland.

3. Verified plumbing leaks in the exterior water service line, plumbing pipes and fittings, tubs, sinks, faucets, and toilets. Tarnishing and pitting of faucets is excluded.

4. Defects in materials or workmanship in only the following appliances selected from the Wieland selections: Oven, Range, Range Hood, Dishwasher, Garbage Disposal, Built-In Microwave, and Water Heater. After expiration of any manufacturer's warranty, Wieland will cover materials and labor as would be covered by the manufacturer's warranty.

5. Verified interior gas line piping leaks.

6. Defects in materials or workmanship in the electrical main breaker panel, electrical service disconnect, interior wiring, switches, and outlets.

7. Failure of the HVAC compressor pump and condenser coil, heat exchanger, and thermostats installed by Wieland. After expiration of any manufacturer's warranty on the above components, Wieland will replace the above components as would be covered by the manufacturer's warranty. This coverage applies only if Homebuyer(s) document that the above components have been professionally maintained (i.e., by a company or individual who is licensed as necessary and who is currently in the business of providing such residential maintenance service) per manufacturer's standards/instructions at least once per year.

8. Breaks in the hermetic seal of insulated windows, and defects in materials and workmanship in sash tracks and sash locks, as defined in the manufacturer's warranty. After expiration of any manufacturer's warranty, Wieland will cover materials as would be covered by the manufacturer's warranty.

9. Verified sewer service line leaks due to defects in materials or workmanship.

D. Structural. During the first twenty (20) years of this warranty, which commences on the day that title first transfers from Wieland or that occupancy by anyone first occurs (whichever occurs first), Wieland warrants that the Home will be free from "Structural Defects."

A "Structural Defect" is (i) actual physical damage (ii) to only the following designated load-bearing elements of the Home (iii) caused by failure of such load-bearing elements which affect their load-bearing function (iv) to the extent that the

Home becomes unsafe or unsanitary. The following elements, if load-bearing, constitute the designated elements: 1. foundation systems and footings; 2. beams; 3. girders; 4. lintels; 5. columns; 6. walls and partitions; 7. floor systems; and 8. roof framing systems. All four (4) parts of the definition must be satisfied in order for a condition to qualify as a Structural Defect. This is designed to be coverage only for catastrophic failure of load-bearing elements of the Home.

Examples of elements not covered by this warranty which are deemed not to have Structural Defect potential are: 1. nonload-bearing partitions and walls; 2. wall tile, wall paper, etc.; 3. plaster, laths, or drywall; 4. flooring and subflooring material; 5. stucco, synthetic stucco, brick or stone veneer; 6. any type of exterior siding; 7. roof shingles, sheathing and felt paper; 8. heating, cooling, ventilating, plumbing, electrical and mechanical systems; 9. appliances, fixtures or items of equipment; 10. doors, trim, cabinets, hardware, insulation, paint and stains; 11. basement slabs and other interior floating, ground-supported concrete floor slabs; and 12. water intrusion, including, without limitation, leaks in walls, roofs, plumbing, basements and crawl spaces.

II. What Wieland Will Do

A. Notwithstanding any language herein to the contrary, if a defect occurs in a warranted item during the applicable period of this warranty, Wieland will repair, replace or pay the Homebuyer(s) the reasonable cost of repairing or replacing the defective item. The choice to repair, replace, pay or combination thereof is solely that of Wieland. Wieland will also repair (or pay for the repair of) any item needing to be damaged or destroyed in order to make the warranted repair, except for improvements added after the completion of Wieland's original construction, which are the responsibility of Homebuyer(s) to remove or repair.

B. With regard to Structural Defects, Wieland will repair and/or replace the Structural Defects or make arrangements for such repairs and/or replacement. Wieland shall have complete discretion as to the methods and manners for repairing and/or replacing Structural Defects. The repair of a Structural Defect is limited to: 1. the repair of damage to the load-bearing portions only as necessary to restore the load-bearing ability of such load-bearing portions; and 2. the repair of those items of the Home damaged by the Structural Defect which make the Home unsafe or unsanitary.

C. Notwithstanding anything herein to the contrary, where Wieland shall become responsible to pay the reasonable costs of repair or replacement for Structural Defects arising at any time during the applicable period of this warranty and amounting to $2,500 or more, payment shall be made to or on behalf of the Homebuyer(s) and the mortgagee or successor mortgagees who have notified Wieland in writing of their security interest in the Home on or prior to the date of payment of the claim, as their respective interests may appear.

D. Before Wieland repairs or pays for the repair of a claim, there must be an assignment to Wieland of any rights that may exist against any other person or entity with respect to the claim. No repairs, replacements or payments made under the terms and conditions of this warranty shall act to extend this warranty or any time periods hereunder.

E. Notwithstanding anything herein to the contrary, if an item is on or in the common elements of a condominium or is otherwise under the ownership or maintenance control of a homeowners, neighborhood or condominium association, and such association refuses to allow Wieland to perform work on the item, Wieland shall be relieved of any obligation to perform work on the item, and the item shall be deemed excluded from this warranty.

III. What the Homebuyer(s) Must Do

If the Homebuyer(s) should have a complaint on any item covered by this warranty during the applicable period of this warranty, the Homebuyer(s) must send a clear and specific written complaint to Wieland (dating the defect occurrence). This written notice must be received no later than 30 days after the expiration of the applicable coverage period for such item under this warranty (except where a shorter time period is specified). The written notice must be sent to the Wieland Customer Service Department at the address listed on the Table of Contents page of this warranty. In case of an emergency problem, the Homebuyer(s) must notify Wieland immediately in order that further damages can be mitigated. The Homebuyer(s) should take reasonably immediate action if circumstances dictate the need.

However, Wieland is entitled to assess claimed defects and decide on an appropriate repair plan. Wieland is also entitled to choose to repair or replace, or to pay the fair value of the repair or replacement of, a covered defect. If Homebuyer(s) repair (or cause the repair of) the claimed defect before Wieland has an opportunity to inspect the claimed defect, it is impossible for Wieland to assess whether the defect was covered by this warranty, whether the repair made was cost-effective, necessary, and effective, and whether Wieland would have been able to solve the problem in another way. For these reasons, Wieland will not accept, nor will arbitrators be able to award to Homebuyer(s), any claimed defect which Homebuyer(s) have had replaced or repaired, except for an emergency repair which was authorized by Wieland. If Wieland is unavailable for emergency authorization, Homebuyer(s) must make minimal repairs so that further damages can be mitigated and report the emergency to Wieland as promptly as possible. Repairs will not be reimbursed unless, at a minimum, the above procedures have been followed.

IV. Exclusions

This warranty does not apply to:

A. Defects in outbuildings, including, without limitation, detached garages and detached carports (except finished space over garages and outbuildings that contain or are served by the plumbing, electrical, heating, cooling or ventilation systems serving the Home); built-in refrigerators; home theatres/entertainment components; other non-standard "extras" in the Home; swimming pools and other recreational facilities; driveways, walkways, decks and porches; patios (attached or detached), stoops and steps (except as specifically stated herein); boundary walls, retaining walls and bulkheads (except where boundary walls, retaining walls and bulkheads are necessary for the structural stability of a covered building); fences; landscaping of any kind (except as specifically stated herein); irrigation and fire suppression sprinkler systems; or any other improvements not a part of the Home; and in addition:

Any and all aspects of any "tankless" water heating system and the installation thereof, and anything else related thereto, are excluded. The foregoing specifically excludes, without limitation, (a) repair, replacement and any other aspect of such water heating system, and (b) any damage or problems with any other aspect of the Home resulting from such water heating system, including, without limitation, structural damage or matters;

B. Damage to real property that is not part of the Home;

C. Damage to or defects in concrete floors of attached or detached garages or attached or detached patio slabs that are built separate from foundation walls or other structural elements of the Home;

D. Bodily or personal injury of any kind (including physical or mental pain and suffering and emotional distress); medical, hospital, rehabilitation or other incidental or consequential expenses; attorneys' fees, court costs, experts' fees and other such expenses; or damage to any property of others;

E. Any loss or damage which the Homebuyer(s) has not taken appropriate action to minimize as soon as practicable;

F. Any defect in, or caused by, alterations made by or on behalf of Homebuyer(s), or material or work supplied by anyone other than Wieland or Wieland's employees, agents or subcontractors;

G. Loss of use, loss of opportunity, loss of market value, loss of rental value or any and all consequential loss or damages;

H. Defects in any property not included in the original Home delivered for the original final sales price;

I. Any damage to the extent it is caused or made worse by:

1. Negligence, improper maintenance, lack of maintenance or improper use or operation by anyone other than Wieland or Wieland's employees, agents or subcontractors;

2. Failure by the Homebuyer(s) to give prompt and proper notice to Wieland of any defects;

3. Changes of the grading of the ground that do not comply with accepted grading practices, including changes in, and failure to maintain, grades, swales, drainage structures, stabilized soil, and sodded, seeded and landscaped areas;

4. Changes in the level of underground water table which were not reasonably foreseeable at the time of construction of the Home;

5. Subsidence or soil movement which was not reasonably predictable through reasonable soil testing or other geological investigation at the time of construction of the Home (this does not apply to any Home with an original FHA loan still in effect);

6. Dampness, condensation, mold/mildew or any other condition arising due to the failure to maintain adequate ventilation and/or adequately low humidity levels; or

7. Failure by the Homebuyer(s) or by anyone other than Wieland or Wieland's employees, agents or subcontractors to comply with the warranty requirements of manufacturers of appliances, equipment or fixtures;

J. Loss or damage not caused by a defect or deficiency in the design or construction of the Home by Wieland or Wieland's employees, agents or subcontractors;

K. Loss or damage externally caused, including, but not limited to: acts of God; riot or civil commotion; hurricane, tornado or other windstorm; fire; explosion; smoke; water; mold/mildew; hail; lightning; falling trees or other objects; aircraft; vehicles; flood; mud slides; earthquakes; volcanic eruption; radon or other natural or introduced gases; abuse or use of the Home, or any part thereof, beyond the reasonable capacity of such part for such use; conditions or occurrences beyond Wieland's control; or by any other external cause (including, without limitation, criminal acts);

L. Any loss, damage, defect, cost or expense which is caused, in whole or in part, by any peril or occurrence for which compensation is provided in whole or in part by legislation, by class action or other lawsuit settlement, or which is covered by other insurance or public funds;

M. Rotting of any kind; mold/mildew; the presence of mold/mildew anywhere in the Home, including, without limitation, in any crawl space, unfinished basement or other unfinished or finished space (all aspects of mold/mildew, including cleaning or otherwise addressing, are the responsibility of the Homebuyer(s) as part of maintenance of the Home); the presence of radon or other natural or introduced gases; insect damage; and damage due to vermin, radiation, pollution or toxic substances of any kind;

N. Any loss or damage which arises while the Home or any portion thereof is being used for nonresidential purposes;

O. Any condition which does not result in actual physical damage to the Home;

P. Costs of shelter, transportation, food, moving, storage, or other incidental expenses related to relocation during repair, or any other costs due to loss of use, inconvenience or annoyance;

Q. Any complaint or claim on an item reported to Wieland after an unreasonable delay or later than 30 days after the expiration of the applicable coverage period for such item under this warranty (or later than any shorter time period herein specified); or loss or damage resulting from failure to comply with manufacturers' warranty requirements;

R. Normal wear and deterioration;

S. Failure of Wieland to complete construction;

T. Glass breakage and exterior hardware;

U. Failure of Wieland to perform any washing, cleaning or clean-up of any kind;

V. Structural slab foundation systems that have experienced some movement but are within the foundation's design performance criteria; separation, settlement or movement of concrete slabs within the structure at control joints (joint material maintenance is not the responsibility of Wieland);

W. Violations of local, state or national building codes, ordinances or standards;

X. Pre-existing conditions the Homebuyer(s) were aware of before closing on the Home

and knowingly accepted (waived), such as "punch list" or "orientation" items, whether or not appearing on a punch list or orientation checklist;

Y. Outside hosebibs and other hose connections;

Z. Loss or damage resulting from any failure to comply with federal, state, local or other elevation requirements, including, but not limited to: **1.** failure of the lowest floor elevation of the Home to meet or exceed the base flood elevation established by the Federal Emergency Management Agency and applicable community floodplain management ordinances; and **2.** errors in connection with the collection and certification of elevation information, whether committed by Wieland, an agent of Wieland or by any person authorized by state or local law or ordinance to provide floodplain management information, or by any other person;

AA. Damage due to weather conditions which exceed the specifications for any covered item;

BB. Damage to any personal property;

CC. Damage caused by any alteration to a covered item;

DD. Any aspect whatsoever related to light fixtures and fans, except as noted in Section 12.2 of the Construction Quality Standards;

EE. Performance of any covered item; operation only is covered by this warranty;

FF. Persistent failure of any covered item in many homes such that the item is considered defective as made or manufactured, as reasonably determined by Wieland; and

GG. ALL CONSEQUENTIAL DAMAGE OF ANY KIND.

V. General Provisions

A. Time is of the essence. The time limits contained in this warranty are a material condition of this warranty.

B. **Homebuyer(s)** means any and all record owners of the Home (stated in the warranty certificate applicable to the Home, if the initial Homebuyer(s)) and **Home** means the dwelling described in the warranty certificate applicable to the Home. **Builder** or **Wieland** means John Wieland Homes and Neighborhoods, Inc., in Georgia, Tennessee and Kentucky, and means John Wieland Homes and Neighborhoods of the Carolinas, Inc., in North Carolina and South Carolina.

C. A warranted defect must first occur during the applicable designated portion of the warranty for that warranted defect in order to be covered as provided in this warranty. Therefore, per Section IV.X of this warranty, any pre-existing conditions the Homebuyer(s) knew about before closing on the Home and knowingly accepted (waived), such as "punch list" or "orientation" items, are not covered.

D. No one is authorized to change, alter or add to this warranty without the express written consent of Wieland.

E. The maximum amount payable under this warranty by Wieland for all claims submitted is the original final sales price of the Home shown on the warranty certificate applicable to the Home, which includes the parcel of land on which the Home was constructed.

F. This warranty is independent of any contractual arrangement between the Homebuyer(s) and Wieland for the construction of the Home and/or its sale, if any. Nothing contained in any such contract or any other contract between Wieland and the Homebuyer(s) can restrict or override the provisions of this warranty. The contractual arrangement includes, but is not limited to, Builder substitutions or changes in plans, specifications or materials.

G. If Wieland's performance of any of its obligations is delayed by any event not resulting from Wieland's own conduct, Wieland will be excused from performing until the effects of that event are remedied. Examples of such events are acts of God or the common enemy, labor strikes, shortages of materials, war, riot, civil commotion, sovereign conduct, or acts of persons who are not parties to this warranty.

H. Wieland and Wieland's employees, agents, contractors and subcontractors must be allowed access to the Home and areas around or attached to the Home during normal business hours when claim servicing is required and to inspect, repair and conduct tests as, in Wieland's judgment, may be required. It is Homebuyer(s) responsibility to ensure this access. This warranty shall be void if this access is not permitted.

I. Anything requiring repair or replacement which cannot be repaired or replaced with items readily available in the standard marketplace will be repaired or replaced with items of similar kind and quality which are so available.

J. This warranty does not apply to appliances, consumer products, or other pieces of equipment, except as noted in Section I of this warranty.

K. Any legal action resulting from disputes between the Homebuyer(s) and Wieland that are not the direct result of provisions contained in this warranty are not the responsibility of Wieland.

L. Each successor in title to the Home, including any mortgagee in possession, in no way affects the coverage under this warranty for its unexpired term. Each such successor is also bound by the provisions of this warranty and the Construction Quality Standards. There is no limit to the number of such successions during the unexpired terms, nor any cost incurred because of such successions.

M. If, at the time of a claimed loss, there is any valid and collectible insurance, whether primary, excess or contingent, that applies to the losses, defects or claims covered by this warranty, then Wieland shall not be liable for any of said losses, defects or claims.

N. When repairing or replacing, Wieland will attempt to match and replace with the original choice of colors and materials, except where the item was custom-ordered. Due to manufacturing variances, discontinued items, natural fading, weathering, etc., Wieland cannot and does not guarantee color matches. In addition, Wieland is not accountable for discontinued items, changes in dye lots, colors or patterns, or items ordered outside of the original construction of the Home.

O. **Mandatory Binding Arbitration**. Wieland and Homebuyer(s) will cooperate with one another in avoiding and informally resolving disputes between them. Wieland and Homebuyer(s) shall first mediate formally any disputes between them, with the mediation commencing, and the mediator being selected, in the same manner as set forth below for the commencement of arbitration and the selection of an arbitrator (if the parties cannot mutually agree otherwise).

Any and all unresolved claims or disputes of any kind or nature between Wieland and Homebuyer(s) arising out of or relating in any manner to any purchase agreement with Wieland (if any), this warranty, the Home and/or property on which it is constructed, or otherwise, shall be resolved by final and binding arbitration conducted in accordance with this provision, and such resolution shall be final. This applies only to claims or disputes that arise after the later of: (a) the issuance of the final certificate of occupancy for the Home, or (b) the initial closing of the purchase

of the Home by the initial Homebuyer(s). This specifically includes, without limitation, claims related to any representations, promises or warranties alleged to have been made by Wieland or its representatives; rescission of any contract or agreement; any tort; any implied warranties; any personal injury; and any property damage.

The terms and procedures of this warranty shall first apply to any claims or disputes that are within the coverage of this warranty. In order to be able to arbitrate or mediate any warranty claims, Homebuyer(s) must first have complied with all procedures set forth in this warranty within the time limits set forth herein. Failure of Homebuyer(s) to comply with such procedures in a timely manner shall bar any such claims against Wieland.

In order to initiate arbitration for disputes, Wieland or Homebuyer(s) must provide clear and specific written notice (if to Homebuyer(s), at the Home address; if to Wieland, to Wieland's Customer Service Department at the address set forth in this warranty) to the other that such party desires to arbitrate matters in dispute, together with a description of the claim or dispute and of the damages or relief being sought. Arbitrations will be conducted by an independent, neutral, third-party arbitrator, located in the general metropolitan area where the Home is located, selected by Construction Arbitration Associates, Inc., Atlanta, Georgia (CAA) (CAA is not precluded from selecting itself); if CAA is unable or legally precluded from selecting an arbitrator, then the American Arbitration Association (AAA) shall do so (AAA is not precluded from selecting itself). As the purchase agreement with Wieland and this warranty are transactions involving interstate commerce, arbitrations shall be governed by the U.S. Arbitration Act, 9 U.S.C. Sections 1-16, to the exclusion of any provisions of state law.

Arbitrations will be conducted in accordance with rules provided or determined by the person or entity selecting the arbitrator as provided above; provided, however, if any procedural matters are not covered in those rules, the arbitrator shall decide such matters. The arbitrator will hold a hearing on the claim(s) or dispute(s) and render a decision or award, and such decision or award shall be final and binding on the parties.

If Wieland so chooses, Wieland may have its supplier(s) and contractor(s) whose work or supplies are involved in the dispute included as parties to the arbitration. Questions of whether issues are arbitrable and the actual interpretation of terms needing definition in order to arbitrate an issue shall be determined by the arbitrator.

Judgment upon an award rendered by an arbitrator may be entered in any court having jurisdiction thereof upon the application of Wieland or Homebuyer(s). Wieland shall pay all up front filing fees relating to arbitration or mediation. Each party shall bear its own costs and expenses and an equal share of the arbitrator's fees, the administrative fees of arbitration, and/or fees of mediation.

WIELAND AND HOMEBUYER(S) HEREBY ACKNOWLEDGE AND AGREE THAT THE ARBITRATION PROCEDURE SET FORTH HEREIN SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR THE RESOLUTION OF ANY AND ALL DISPUTES ARISING AFTER THE INITIAL CLOSING OF THE PURCHASE OF THE HOME BY THE INITIAL HOMEBUYER(S). WIELAND AND HOMEBUYER(S) HEREBY WAIVE ANY AND ALL OTHER RIGHTS AND REMEDIES AT LAW, IN EQUITY OR OTHERWISE WHICH MIGHT OTHERWISE HAVE BEEN AVAILABLE TO THEM IN CONNECTION WITH ANY SUCH DISPUTES.

Any dispute involving Wieland's directors, officers, shareholders, employees, agents, predecessors, affiliates or related companies shall be resolved through the foregoing mediation and arbitration process and not in a court of law. The waiver or invalidity of any portion of this Section shall not affect the validity or enforceability of the remaining portions of this Section; specifically, if it is validly determined that a particular claim or type of claim is not subject to arbitration hereunder, such determination shall not affect or invalidate the applicability of arbitration or mediation hereunder to any other claim or type of claim.

P. THERE ARE AND WILL BE NO OTHER OR FURTHER WARRANTIES OR REPRESENTATIONS ON THE HOME AND/OR PROPERTY ON WHICH IT IS CONSTRUCTED (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, WORKMANLIKE QUALITY, HABITABILITY, SUITABILITY FOR RESIDENTIAL PURPOSES, OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE), EITHER EXPRESS OR IMPLIED, WRITTEN, ORAL OR STATUTORY, MADE BY WIELAND OTHER THAN AS EXPRESSED IN THIS WARRANTY, AND ALL SUCH OTHER WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED BY WIELAND. THIS WARRANTY IS ALSO GIVEN BY WIELAND AND ACCEPTED BY HOMEBUYER(S) IN LIEU OF ALL OTHER RIGHTS OR REMEDIES THAT HOMEBUYER(S) HAVE OR MAY HAVE AT LAW OR IN EQUITY AGAINST WIELAND RELATING TO THE HOME AND/OR PROPERTY ON WHICH IT IS CONSTRUCTED, CONSTRUCTION OF THE HOME, AND THE CONDITIONS OR CIRCUMSTANCES EXISTING IN THE HOME AND/OR ON THE PROPERTY ON WHICH IT IS CONSTRUCTED, INCLUDING, BUT NOT LIMITED TO, ANY RIGHTS OR REMEDIES BASED ON NEGLIGENT CONSTRUCTION, MISREPRESENTATION, ANY TORT, VIOLATION OF ANY CODE, STATUTE OR RULE, BREACH OF CONTRACT (EXPRESS OR IMPLIED), OR BREACH OF WARRANTY (OTHER THAN BASED ON THE TERMS OF THIS WARRANTY), AND ALL SUCH OTHER RIGHTS OR REMEDIES ARE HEREBY EXPRESSLY WAIVED BY HOMEBUYER(S).

LEGAL NOTICES

For Georgia only:
GEORGIA LAW CONTAINS IMPORTANT REQUIREMENTS THAT YOU (HOMEBUYER(S)) MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO CONSTRUCTED, IMPROVED OR REPAIRED YOUR HOME. IF APPLICABLE, NINETY (90) DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS, OR BOTH. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

For Kentucky only:
SECTIONS 411.250 TO 411.266 OF THE KENTUCKY REVISED STATUTES CONTAIN IMPORTANT REQUIREMENTS THAT YOU (HOMEBUYER(S)) MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE BUILDER OF YOUR HOME. IF APPLICABLE, YOU MUST DELIVER TO THE BUILDER A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE THE BUILDER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE BUILDER. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT.

CONSTRUCTION QUALITY STANDARDS

The following Construction Quality Standards are based on standards that have been developed and accepted by the residential construction industry in general. While it is virtually impossible to develop a construction standard for each possible deficiency, Wieland has attempted to isolate the most common deficiencies that occur and in so doing list the extent of Builder and Homebuyer(s) responsibility. Where a specific deficiency has not been identified, the standard practice of the residential construction industry at the time of construction of the Home will apply.

Homebuyer(s) should be aware that all new homes go through a period of expansion and contraction. During this period, a home may experience some minor material shrinkage, cracking and other events that are unavoidable and considered normal, such as, without limitation, temporary expansion of pipes that then make contact with wall studs or other material, floor squeaks, and other noises and sounds that are part of the settlement of the home. Homebuyer(s) should also be aware that Homebuyer(s) are responsible for proper home maintenance. Damage caused by negligence, lack of maintenance, improper maintenance or changes, alterations or additions by or on behalf of Homebuyer(s), is excluded from the warranty.

The following Construction Quality Standards are expressed in terms of required standards that Wieland's construction must meet. Non-compliance with these standards calls for corrective action. Unless otherwise noted below, all following items identified are One Year (Workmanship) warranted items.

I. SITE WORK

1.1 GROUND SETTLING

•DEFICIENCY: Excessive ground settling around the foundation, utility trenches or other areas on the lot that have been excavated and backfilled affecting drainage away from the Home.
CONSTRUCTION STANDARD: Ground settling should not exceed 6 inches from the final landscaping grade established by the Builder and should not impede water drainage away from the Home.
BUILDER CORRECTION: If the Builder provided final landscaping grade, the Builder shall recompact and backfill excessively settled areas affecting drainage away from the Home one time, but only during the first year of the warranty. Any landscaping affected by the repair is not the responsibility of Builder.

1.2 LANDSCAPING

•Builder shall have no obligation, responsibility or liability whatsoever for (1) trees and/or shrubbery that Builder would have removed, or had planned to remove, during construction but which Homebuyer(s) (or predecessor) specifically requested not be removed, (2) natural areas left undisturbed by Builder, including, without limitation, drainage in such areas, (3) site drainage and/or standing or ponding water of any kind or nature whatsoever, and (4) trees of any kind whatsoever, except as specifically stated herein.
•Builder will provide a replacement shrub one time only for any shrub that dies during the first 30 days of the warranty. No labor or other materials will be provided.
•Builder guarantees the survival of at least two-thirds (2/3) of the total number of nursery-grown "B&B" transplanted trees during the first six months of the warranty, so long as they are properly cared for as determined by Builder. *Proper care includes: 1) watering: during the spring, summer and early fall, water trees at least once per week, soaking the root ball heavily; 2) fertilizing: in March, May and July, fertilize each tree with 1/3 cup of 10-10-10 fertilizer per inch of trunk diameter; and 3) mulch: maintain pinestraw mulch around the base of the tree to a depth of 3" to 4".* Any

replacement trees that may be required to meet the minimum two-thirds (2/3) total number will be replanted one time only. Dead trees will be cut flush to the ground where possible. Stumps will be ground only if the tree was in a grassed area of the front yard.
•During the first year of the warranty, Builder warrants that lawns of Bermuda and Zoysia sod that are laid when dormant will come out of dormancy. Areas of 25 contiguous square feet or less are excluded as these will grow over naturally. Areas greater than 25 contiguous square feet will be repaired one time only in the Spring.
•Fescue lawns (seed and sod) are not covered by the warranty.

II. CAST-IN-PLACE CONCRETE

•DEFICIENCY: Excessive basement or foundation wall cracks.
CONSTRUCTION STANDARD: Non-structural cracks are not unusual in concrete foundation walls. Cracks greater than 1/8 inch are considered excessive.
BUILDER CORRECTION: The Builder shall repair non-structural cracks in excess of 1/8 inch by surface patching. If needed, any such work should be done toward the end of the first year of the warranty.
•DEFICIENCY: Excessive cracking of basement floor, attached garage slab or attached patio slab, other than as excluded by Section IV.A and IV.C of the warranty.
CONSTRUCTION STANDARD: Minor cracks are common. Cracks exceeding 1/4 inch in width or 1/4 inch in vertical displacement are considered excessive.
BUILDER CORRECTION: The Builder shall repair cracks exceeding the maximum tolerances by surface patching or other methods, as required.
•DEFICIENCY: Cracks in concrete slab on grade finished floors.
CONSTRUCTION STANDARD: Cracks which significantly impair the appearance or performance of the finish flooring material are not acceptable.
BUILDER CORRECTION: The Builder shall repair cracks as necessary so as not to be apparent when the finish flooring material is in place. Repair or replace finish flooring.
•DEFICIENCY: Uneven concrete floors.
CONSTRUCTION STANDARD: Concrete floors in rooms designed and finished by Builder or habitation should not have pits, depressions or areas of unevenness exceeding 1/4 inch in 32 inches or slope in excess of 1/240 of room width or length. Not applicable to floors designed for specific drainage purposes or to slabs that have experienced some movement but are within design performance criteria.
BUILDER CORRECTION: Builder to repair or replace to meet the above standard. Surface patching shall be acceptable. Repair or replace finish flooring installed by Builder, if any.
•DEFICIENCY: Pitting, scaling or spalling of non-excluded concrete.
CONSTRUCTION STANDARD: Such concrete surfaces should not disintegrate to the extent that the aggregate is exposed and loosened under normal conditions of weathering and use. Not applicable to deterioration caused by salt, chemicals, mechanical implements, normal activities involved in the construction of the Home, and other factors beyond the Builder's control.
BUILDER CORRECTION: Builder to repair or replace to meet the above standard.
•DEFICIENCY: Excessive separation of brick or masonry edging from concrete slab and step.
CONSTRUCTION STANDARD: Cracks or separation is common, but cracks in excess of 1/4 inch are excessive.
BUILDER CORRECTION: The Builder shall grout the crack.
•DEFICIENCY: Cracking, settling, heaving or separating of structurally attached stoops or steps.
CONSTRUCTION STANDARD: Stoops or steps should not settle, heave or separate in excess of 1 inch in relation to the house structure. No cracks except hairline cracks (less than 1/4 inch) are acceptable in structurally attached concrete stoops.
BUILDER CORRECTION: Builder to take corrective action to meet standard. Surface patching shall be acceptable.

III. MASONRY

3.1 BRICK, BLOCK AND STONE

•DEFICIENCY: Excessive cracking in masonry walls.
CONSTRUCTION STANDARD: Small cracks in masonry and mortar due to shrinkage are not unusual. Cracks greater than 1/8 inch in width are considered excessive.
BUILDER CORRECTION: Repair cracks in excess of 1/8 inch by pointing or patching. It is recommended that this be done toward the end of the first year of the warranty. Horizontal cracks greater than 3/16 inch should be investigated to determine the cause. Horizontal cracks greater than 3/16 inch should be repaired by pointing, patching, reinforcement or replacement of defective area. Color matching is not guaranteed.
•DEFICIENCY: Excessive cracking in masonry walls or veneer above grade.
CONSTRUCTION STANDARD: Small cracks due to shrinkage are not unusual. Cracks greater than 1/8 inch in width are considered excessive.
BUILDER CORRECTION: Repair cracks in excess of 1/8 inch by pointing. It is recommended that this be done toward the end of the first year of the warranty. Color matching is not guaranteed.

3.2 STUCCO

•DEFICIENCY: Excessive cracking or spalling of finish surface.
CONSTRUCTION STANDARD: Hairline cracks are common. Cracks greater than 1/8 inch in width are considered excessive.
BUILDER CORRECTION: Clean out area by scraping and fill with stucco. Color, finish and texture matching are not guaranteed.

3.3 HARDCOAT STUCCO

•DEFICIENCY: Excessive cracking in hardcoat stucco wall surfaces.
CONSTRUCTION STANDARD: Hairline cracks are normal in hardcoat stucco wall surfaces. Cracks greater than 1/8 inch in width are considered excessive.
BUILDER CORRECTION: Builder to repair cracks by filling with a latex filler. Existing color and finish to be matched as closely as possible by using tinted filler or painting the repaired area. Exact matching of the color, finish and texture is not guaranteed.

IV. CARPENTRY

4.1 ROUGH CARPENTRY

•DEFICIENCY: Floor squeak.
CONSTRUCTION STANDARD: Floor areas should not have squeaks that are loud and reasonably objectionable, and the subflooring should be secure to the joists. However, there is no guarantee that floors will not squeak, so isolated floor squeaks are not defects.
BUILDER CORRECTION: Builder should locate and make every reasonable effort to repair, if caused by improper installation.
•DEFICIENCY: Uneven wood framed floors.
CONSTRUCTION STANDARD: Floors should be level within 1/4 inch in 32 inches, measured parallel to floor joists. The overall floor slope should not be in excess of L/240 of room width or length.
BUILDER CORRECTION: Builder to correct or repair to meet the above standards.

•DEFICIENCY: Bowed stud walls and/or ceilings.
CONSTRUCTION STANDARD: All interior and exterior walls and ceilings have slight variances on

their finished surfaces. Bowing should not be so visible as to detract from the finished surface. Walls and ceilings bowed in excess of L/240 of any horizontal or vertical measurement is considered excessive.
BUILDER CORRECTION: Builder to correct or repair to meet the above standards.
•DEFICIENCY: Out of plumb wood framed walls.
CONSTRUCTION STANDARD: Walls should be plumb within 1 inch in 8 feet.
BUILDER CORRECTION: Builder to correct or repair to meet the above standards.
•DEFICIENCY: Delaminating subflooring.
CONSTRUCTION STANDARD: Subflooring that delaminates on the "finish" side is a defect.
BUILDER CORRECTION: Builder to repair or replace the subflooring and replace the finish materials as needed to match the existing finish as closely as possible. Color, finish and texture matching are not guaranteed.

4.2 FINISH CARPENTRY — INTERIOR

•DEFICIENCY: Quality of finished interior trim workmanship.
CONSTRUCTION STANDARD: Joints between moldings and adjacent surfaces should not exceed 1/8 inch.
BUILDER CORRECTION: Repair joints and touch up the finish as needed to match existing as close as possible. Caulking is acceptable.

4.3 FINISH CARPENTRY—EXTERIOR

•DEFICIENCY: Quality of finished exterior trim workmanship.
CONSTRUCTION STANDARD: Joints between exterior trim elements should not exceed 3/8 inch. In all cases the exterior trim at masonry and siding shall be capable of performing its function to exclude the elements.
BUILDER CORRECTION: Repair joints and touch up the finish as needed to match existing as close as possible. Caulking is acceptable.

4.4 NAIL HOLES

•DEFICIENCY: Exposed nail heads in wood.
CONSTRUCTION STANDARD: Nail holes which have not been filled on finished painted wood are deficiencies. However, material used to fill nail holes may shrink and/or dry up over time, but this is not a deficiency. In addition, some nail holes may not be filled where, because of the product, the surface finish is not conducive or designed to have nail holes filled, and this is not a deficiency.
BUILDER CORRECTION: Fill nail holes as required to meet standard and touch up finish as necessary to match as closely as possible. Color and finish matching are not guaranteed.

V. THERMAL AND MOISTURE PROTECTION

5.1 BASEMENTS AND CRAWL SPACES

•DEFICIENCY: Active water flow into basement or so as to create standing water in the crawl space for at least forty-eight (48) consecutive hours.
CONSTRUCTION STANDARD: Leaks resulting in active flow of water through the basement walls or through the basement floor are unacceptable. Leaks resulting in active flow of water that creates standing water in the crawl space for at least forty-eight (48) consecutive hours are unacceptable. Leaks caused by landscaping improperly installed by or on behalf of Homebuyer(s) or by failure to maintain the grades established by Builder are not deficiencies. Dampness in walls and floors may occur in new construction and is not considered a deficiency.
BUILDER CORRECTION: During the first five years of the warranty, the Builder shall take such

action as necessary to correct basement and crawl space leaks as described above, except where the cause is determined to result from an act or action by Homebuyer(s) or someone acting on behalf of Homebuyer(s). Any mold/mildew and/or the presence thereof anywhere in the Home, including, without limitation, in any crawl space, unfinished basement or other unfinished or finished space, is not covered. All aspects of mold/mildew, including cleaning or otherwise addressing, are the responsibility of the Homebuyer(s) as part of maintenance of the Home.

5.2 EXTERIOR SIDING

•DEFICIENCY: Loose siding; delamination, splitting or deterioration of siding.
CONSTRUCTION STANDARD: Siding should be securely fastened to the Home. It should not delaminate, split or deteriorate.
BUILDER CORRECTION: Builder to re-secure or reinstall loose siding. Builder will repair or replace delaminated, split or deteriorated siding matching the existing texture and finish as closely as possible.
NOTE: Any item related in any way to exterior siding (including, without limitation, water intrusion) is covered for one year from the commencement of the warranty.

5.3 SYNTHETIC STUCCO (EIFS)

•DEFICIENCY: Cracks in synthetic stucco wall surfaces.
CONSTRUCTION STANDARD: Cracks are normal in synthetic stucco wall surfaces. Cracks greater than 1/8 inch in width are considered excessive.
BUILDER CORRECTION: Builder to clean out area by scraping and fill with synthetic stucco to repair cracks as required and touch up the finish to match the existing finish as closely as possible. Color, finish and texture matching are not guaranteed.
NOTE: Any item related in any way to synthetic stucco (including, without limitation, water intrusion) is covered for one year from the commencement of the warranty.

5.4 ROOFING

•DEFICIENCY: Leaks at roof penetrations made in the course of construction.
CONSTRUCTION STANDARD: Roof penetrations made in the course of construction should not leak under normal weather conditions. Leaks resulting from severe weather conditions, such as ice and snow build-up, high winds and driven snow or rains, are not deficiencies. In addition, maintenance/replacement of boots and caulking are Homebuyer(s) maintenance items.
BUILDER CORRECTION: During the first five years of the warranty, Builder shall correct or repair any verified leaks at roof penetrations made in the course of construction.
•DEFICIENCY: Lifted, curled or torn shingles.
CONSTRUCTION STANDARD: Shingles should not lift, curl or tear under normal weather conditions. Accidental loss or damage from, for example, natural causes, fire, aircraft or vehicles is not a deficiency.
BUILDER CORRECTION: Builder to repair and/or replace defective shingles to match the existing shingles as closely as possible.

5.5 SEALANTS

•DEFICIENCY: Leaks in exterior walls due to inadequate caulking.
CONSTRUCTION STANDARD: Joints and cracks in exterior wall surfaces and around openings should be properly caulked to exclude the entry of water and excessive drafts. Properly installed caulking will shrink and must be maintained by Homebuyer(s) during the life of the Home; this is not a deficiency.
BUILDER CORRECTION: If requested by Homebuyer(s), Builder shall repair and/or caulk joints or

cracks in exterior wall surfaces as required to correct the deficiency. It is Homebuyer(s) responsibility to maintain the caulking.

5.6 GUTTERS AND DOWNSPOUTS

•DEFICIENCY: Gutters and/or downspouts leak or have standing water.
CONSTRUCTION STANDARD: Gutters and downspouts should not leak. Gutters should be pitched properly to drain water. Standing water in the gutter that does not exceed 1 inch in depth is acceptable. However, it is the Homebuyer(s) responsibility to keep gutters and downspouts clean so as to assure proper drainage and prevent leaks, overflow or standing water.
BUILDER CORRECTION: Repair leaks and pitch to drain properly.

VI. DOORS AND WINDOWS

6.1 INTERIOR AND EXTERIOR DOORS

•DEFICIENCY: Warping of interior and exterior doors.
CONSTRUCTION STANDARD: Exterior doors may warp to some degree due to the temperature and moisture differential between the inside and outside faces. Doors that warp so as to prevent normal closing are defective. Warping of 1/4 inch or less, measured from top to bottom, is acceptable.
BUILDER CORRECTION: Repair or replace the doors as needed and finish to match the existing doors as closely as possible.
•DEFICIENCY: Door binds against the frame. Door will not lock.
CONSTRUCTION STANDARD: Doors should operate freely without binding against the frame. The lock should operate smoothly and fit to the keeper.
BUILDER CORRECTION: Builder to adjust the door and keeper to operate freely.
•DEFICIENCY: Door panels shrink showing bare wood.
CONSTRUCTION STANDARD: Panels will shrink and expand, showing raw wood edges, with temperature and humidity changes. This is not a deficiency.
BUILDER CORRECTION: None.
•DEFICIENCY: Split door panel.
CONSTRUCTION STANDARD: Splits that allow visible light penetration through the door are defects.
BUILDER CORRECTION: Repair or replace as needed one time during the first year of the warranty. Finish to match the existing doors as closely as possible.
•DEFICIENCY: Door rubs on the carpet.
CONSTRUCTION STANDARD: The door should not rub the carpet.
BUILDER CORRECTION: Builder to trim the bottom of the door and re-seal the bottom edge.

6.2 GARAGE DOOR(S) ON ATTACHED GARAGE

•DEFICIENCY: Garage door(s) fail to operate properly.
CONSTRUCTION STANDARD: Garage door(s) should operate properly and fit the opening closely. Under heavy weather conditions, there may be some penetration by the elements.
BUILDER CORRECTION: Builder to adjust or replace garage doors as required to operate under normal weather conditions.

6.3 WOOD, METAL AND PLASTIC WINDOWS

•DEFICIENCY: Malfunction of windows.
CONSTRUCTION STANDARD: Windows should operate with reasonable ease. Double hung window sashes are permitted to move within a 2 inch tolerance when in the open position.

BUILDER CORRECTION: Builder to adjust, repair or replace as required. During the first five years of the warranty, Builder to adjust or replace wood double hung window sash tracks if necessary to correct the deficiency.
•DEFICIENCY: Condensation and/or frost on windows.
CONSTRUCTION STANDARD: Condensation on interior surfaces is caused by temperature and humidity differences. In cold weather, this will turn to frost. This is not a deficiency.
BUILDER CORRECTION: None.

6.4 SASH LOCK

•DEFICIENCY: Sash lock will not operate properly.
CONSTRUCTION STANDARD: The sash lock should be firmly attached to the window frame and close properly so as to lock the window.
BUILDER CORRECTION: During the first five years of the warranty, Builder to adjust, repair or replace the sash lock. Builder to adjust the window if the sashes do not align properly to permit the sash lock to operate.

6.5 STORM DOORS, WINDOWS AND SCREENS

•DEFICIENCY: Improper operation of storm doors, windows and screens installed by Builder.
CONSTRUCTION STANDARD: Storm doors, windows and screens should operate and fit so as to provide the protection they are intended to provide.
BUILDER CORRECTION: Builder to adjust or replace as needed.

6.6 WEATHERSTRIPPING AND SEALS

•DEFICIENCY: Air or water infiltration around doors and windows.
CONSTRUCTION STANDARD: Air infiltration is generally normal and necessary for proper ventilation of the Home, even in colder or warmer weather. Air infiltration will be noticeable around doors and windows, especially during high winds. There could be some water infiltration during high winds as well.
BUILDER CORRECTION: None. This is not a defect.

6.7 INSULATED WINDOW SEALS

•DEFICIENCY: Clouding or condensation between the panes of insulated glass.
CONSTRUCTION STANDARD: The windows should be free of clouding and condensation between the panes of glass.
BUILDER CORRECTION: During the first five years of the warranty, Builder to repair breaks in the hermetic seal of insulated windows to correct the deficiency, as defined in the manufacturer's warranty. After expiration of any manufacturer's warranty, Builder will cover materials as would be covered by the manufacturer's warranty.

VII. FINISHES

7.1 LATH AND PLASTER

•DEFICIENCY: Excessive cracks in surfaces.
CONSTRUCTION STANDARD: Hairline cracks are common. Cracks larger than 1/8 inch in width are considered excessive.
BUILDER CORRECTION: Builder to repair cracks and touch up the paint to match as closely as possible, one time only during the first year of the warranty.

7.2 DRYWALL

•DEFICIENCY: Defects caused by poor workmanship such as blisters in tape, excess compound in joints, exposed corner beads, or trowel marks.
CONSTRUCTION STANDARD: Imperfections such as occasional nail pops that do not crack the finish, seam lines and hairline cracks are common to drywall and are not defects. Depressions or slight mounds at nail heads are not defects. Blisters in tape, excess compound in joints, exposed corner beads, trowel marks, excessive nail pops and nail pops that cause cracking of the finish are defects.
BUILDER CORRECTION: Builder to correct defects to acceptable tolerance and touch up the finish to match the existing finish as closely as possible, one time only during the first year of the warranty. Significant repairs may require the entire area to be repainted. An exact color match is not guaranteed.

7.3 HARD SURFACE FINISHES (CERAMIC TILE, MARBLE, FLAGSTONE, QUARRY TILE)

•DEFICIENCY: Finish material (not the mortar or grout joints) cracks and/or becomes loose.
CONSTRUCTION STANDARD: Finish material that cracks or becomes loose is a defect.
BUILDER CORRECTION: Builder to replace any cracked materials and resecure any loose materials. Slight color and pattern variations are normal. Builder is not responsible for discontinued materials by the manufacturer. Unless the defective area is greater than 25% of the finished area, the Builder will not be required to replace the entire area.
•DEFICIENCY: Cracks in mortar or grout joints or at junctions with other material, such as a bathtub.
CONSTRUCTION STANDARD: Cracks are common under normal conditions.
BUILDER CORRECTION: Builder will repair mortar or grout as necessary, one time only in the first year of the warranty. Builder is not responsible for color variations or discontinued color grout.

7.4 HARDWOOD FLOORING

•DEFICIENCY: Cracks between the planks, squeaks and uneven floors.
CONSTRUCTION STANDARD: There are no industry standards for determining an acceptable or excessive crack. Builder will repair cracks that exceed 1/16 inch. But Homebuyer(s) must prevent excessive moisture from getting on the floor and maintain a stable temperature and humidity level in the Home year-round. Floors should be level within 1/4 inch in 32 inches.
BUILDER CORRECTION: Builder will repair cracks that exceed 1/16 inch. Cracks between planks of 1/16 inch to 1/8 inch will be repaired by filling with a color coordinated wood filling compound to match as closely as possible. Cracks that exceed 1/8 inch will be repaired by replacing the planks. Squeaks caused by defective installation will be repaired. Uneven flooring resulting from buckling, swelling, or warping that exceeds 1/4 inch in 32 inches as measured perpendicular to the planks will be repaired if caused by defective workmanship.

7.5 RESILIENT FLOORING

•DEFICIENCY: Nail pops appear on the surface of flooring.
CONSTRUCTION STANDARD: Readily apparent nail pops are a deficiency.
BUILDER CORRECTION: The Builder shall correct nail pops which have broken the surface and repair or replace the floor covering in the affected area only (not the entire floor). Builder is not responsible for discontinued patterns or color variations in tile floor covering.
•DEFICIENCY: Depressions or ridges appear in the flooring due to subfloor irregularities.
CONSTRUCTION STANDARD: Readily apparent depressions or ridges exceeding 1/8 inch should be repaired. The ridge or depression measurement is taken at the gap created at one end of a 6 inch straight edge placed over the depression or ridge with three inches on one side of the depression or ridge held tightly to the floor.
BUILDER CORRECTION: The Builder shall take corrective action as necessary to bring the defect within acceptable tolerances so that it is not readily visible. Builder is not responsible for discontinued patterns or color variations in floor covering.
•DEFICIENCY: Seams or shrinkage gaps show.
CONSTRUCTION STANDARD: Gaps shall not exceed 1/8 inch in width. Where dissimilar materials abut, the gap shall not exceed 3/16 inch.
BUILDER CORRECTION: Builder to correct. If replacement is necessary, the Builder is not responsible for discontinued patterns or color variations in the floor covering.

7.6 CARPETING

•DEFICIENCY: Carpet seams separate, carpet becomes loose or excessive stretching occurs.
CONSTRUCTION STANDARD: Seams that separate due to improper installation are a deficiency. Carpet should not come loose. Carpet should not have excessive stretching. The carpeting material itself is not covered, but is covered solely by the manufacturer's warranty.
BUILDER CORRECTION: Builder to repair seams. Builder to resecure or restretch carpeting as needed one time only during the first year of the warranty.

7.7 PAINTING

•DEFICIENCY: Mildew or fungus on painted surfaces.
CONSTRUCTION STANDARD: Mildew or fungus is a maintenance item. It is not a deficiency.
BUILDER CORRECTION: None.
•DEFICIENCY: Exterior paint or stain peels or deteriorates.
CONSTRUCTION STANDARD: Exterior paints or stains should not fail during the first year of the warranty. Fading is normal and subject to sun and weather exposure. Fading is not a deficiency. Peeling or other deterioration of exterior paint which occurs after the end of the first year of the warranty is not covered, even though some peeling or deterioration of some part of the exterior paint may have occurred during such first year.
BUILDER CORRECTION: Builder shall properly prepare and refinish affected areas only, matching the existing color as closely as possible. Color matching of paint is not guaranteed.
•DEFICIENCY: Painting required as corollary repair because of other work.
CONSTRUCTION STANDARD: Necessary repair of a painted surface under warranty will be refinished to match surrounding areas as closely as possible.
BUILDER CORRECTION: Refinish repaired areas as indicated. Color matching of paint is not guaranteed.

•DEFICIENCY: Deterioration of varnish or lacquer finishes.
CONSTRUCTION STANDARD: Natural finishes on interior woodwork that deteriorate during the first year of the warranty are a deficiency. Exterior varnish-type finishes deteriorate rapidly and are not covered.

BUILDER CORRECTION: Refinish the affected area only, matching the color as closely as possible.
•DEFICIENCY: Interior paint application and coverage.
CONSTRUCTION STANDARD: Interior paint shall sufficiently cover wall, ceiling and trim surfaces.
BUILDER CORRECTION: Builder shall repaint affected surfaces only where inadequate paint has been applied. The color shall be matched as closely as possible.
•DEFICIENCY: Paint splatters and smears on finish surfaces.
CONSTRUCTION STANDARD: Excessive splatters and smears that detract from the finish, and which can not be removed by normal cleaning methods, are a deficiency. Minor paint splatters that are not readily noticeable are not a deficiency.
BUILDER CORRECTION: Builder to clean/remove paint and restore the surface finish, matching colors as closely as possible.

7.8 WALL COVERING

•DEFICIENCY: Peeling of wallpaper.
CONSTRUCTION STANDARD: Peeling of wallpaper, not due to abuse or negligence, is a deficiency. Wallcovering installed by anyone other than Builder is not covered.
BUILDER CORRECTION: Builder to repair or replace defective wallpaper. Builder is not responsible for discontinued patterns or variations in color.
•DEFICIENCY: Mismatching in wallcovering pattern originally installed by Builder.
CONSTRUCTION STANDARD: Mismatching pattern due to workmanship over a large area that severely detracts from the appearance is a deficiency. Wallcovering installed by anyone other than Builder is not covered.
BUILDER CORRECTION: Builder to replace mismatched wallcovering. Builder is not responsible for discontinued patterns or variations in color.

VIII. FIREPLACES

8.1 FIREPLACE OPERATION

•DEFICIENCY: Fireplace or chimney does not draw properly causing smoke to enter the Home.
CONSTRUCTION STANDARD: The fireplace and chimney should function as intended. High winds can cause temporary negative draft situations. Similar negative draft situations can also be caused by obstructions such as large branches of trees too close to the chimney. In some cases, it may be necessary to open a window slightly to create an effective draft. Builder is not responsible for malfunctions due to natural causes and/or causes beyond Builder's control.
BUILDER CORRECTION: Builder to correct malfunctions caused by improper construction.

8.2 CHIMNEY

•DEFICIENCY: Chimney separating from structure to which it is attached.
CONSTRUCTION STANDARD: Newly built fireplaces will often incur slight amounts of separation from the main structure. Separation greater than ½ inch from the main structure in any 10 foot vertical measurement is a deficiency.
BUILDER CORRECTION: Builder to correct as required. Grouting or caulking is acceptable for separations up to ½ inch.

IX. CABINETRY

9.1 KITCHEN AND VANITY CABINETS

•DEFICIENCY: Cabinet doors and drawers malfunction.
CONSTRUCTION STANDARD: Cabinet doors, drawers and other operating parts should function as designed.
BUILDER CORRECTION: Builder to repair or replace.
•DEFICIENCY: Warping of cabinet doors and drawer fronts.
CONSTRUCTION STANDARD: Warpage that exceeds 1/4 inch (exclusive of any gap created by spacers), measured from the face of the cabinet frame with the door or drawer in the closed position, is a deficiency.
BUILDER CORRECTION: Builder to correct or replace as required.
•DEFICIENCY: Gaps between cabinets and the ceiling or walls.
CONSTRUCTION STANDARD: Gaps should not exceed 1/4 inch.
BUILDER CORRECTION: Adjust cabinets and countertops, or close with suitable moulding to match the finish as closely as possible. Caulking is acceptable.

9.2 COUNTERTOPS

•DEFICIENCY: Surface cracks, delaminations and chips in high pressure laminated vanity and kitchen countertops.
CONSTRUCTION STANDARD: Countertops fabricated with high pressure laminate coverings should not delaminate or have chips or surface cracks. Gaps between joints should not exceed 1/16 inch. Moisture and water build-up in seams will occur if such areas are not properly maintained by Homebuyer(s) so, unless caused by Builder, moisture and water build-up in seams is not a deficiency.
BUILDER CORRECTION: Builder to repair or replace to meet the standard.

X. PLUMBING SYSTEMS

10.1 SEPTIC TANK SYSTEM

•DEFICIENCY: Septic system fails to operate properly.
CONSTRUCTION STANDARD: Septic system should properly handle normal flow of household effluent. It is possible that an overflow can occur due to freezing, soil saturation, changes in the ground water table or excessive use of plumbing or appliances. Periodic pumping of the septic tank is considered a Homebuyer(s) maintenance responsibility and a normal need for pumping is not a deficiency.
BUILDER CORRECTION: During the first two years of the warranty, Builder to repair system to correct malfunction due to improper design or installation. Builder shall not be responsible for malfunctions which occur through negligence or abuse or natural causes (such as freezing or changes in ground water table) and/or conditions that are beyond the Builder's control. The following are considered negligence or abuse:

A. Excessive use of water, such as overuse of the washing machine and the dishwasher, including their simultaneous use.
B. Connection of sump pump, roof drains or backwash from water conditioner to the system.
C. Placing of non-biodegradable items in the system.
D. Addition of any harsh chemicals, greases or cleaning agents, and excessive amounts of bleaches or drain cleaners.
E. Use of a food waste disposer not supplied by Builder.
F. Placement of impervious surfaces over the disposal area.
G. Allowing vehicles to drive or park over the disposal area.

H. Failure to periodically pump out the septic tank when required.

10.2 PLUMBING

•DEFICIENCY: Water service line breaks or leaks or fails to deliver water.
CONSTRUCTION STANDARD: Service connections are the Builder's responsibility. The water service line should function as intended. Damage or failure resulting from neglect or abuse or landscaping activities, or from conditions beyond the Builder's control (such as, for example, without limitation, disruption or elimination of sources of water supply), is not covered.
BUILDER CORRECTION: During the first five years of the warranty, Builder to repair verified leaks in the line or restore service, if leak or failure is due to defective workmanship or materials, and restore the landscaping in the affected area. The Builder's responsibility for water service lines extends only from the Home to the water meter connection on the property on which the Home is situated.
NOTE: Should a water service line break or leak occur, Homebuyer(s) should immediately shut off the water service at the meter and call the appropriate public utility service.
•DEFICIENCY: Leakage in pipes or fittings. Leakage from pipes freezing and bursting.
CONSTRUCTION STANDARD: No leaks should exist in any plumbing pipes or fittings. Condensation on piping does not constitute leakage. Exterior hose bibs and other hose connections are not covered. Leaks occurring because of neglect or failure to maintain suitable temperatures in the Home to prevent pipes from freezing and bursting are not covered.
BUILDER CORRECTION: During the first five years of the warranty, Builder shall repair any leakage from pipes or fittings installed by Builder, except for leakage caused by freezing. During the first two years of the warranty, Builder shall repair any leakage from pipes or fittings installed by Builder caused by freezing.
NOTE: Should a water pipe leak occur, Homebuyer(s) should immediately shut off the water service and call the appropriate public utility service.
•DEFICIENCY: Stopped up sewers, fixtures and drains.
CONSTRUCTION STANDARD: Sewer fixtures and drains should operate properly. Damage, insufficient operation or clogging due to neglect, abuse, improper operation or landscaping activities, or from conditions beyond Builder's control, is not covered.
BUILDER CORRECTION: During the first five years of the warranty, where defective construction is shown to be the cause of the deficiency, the Builder will make the necessary repairs. The Builder's responsibility for sewer lines extends only to the boundary line of the property on which the Home is situated.
•DEFICIENCY: Leakage in a faucet, valve, tub, sink or toilet.
CONSTRUCTION STANDARD: No faucet, valve, tub, sink or toilet should leak due to defects in material or workmanship. Replacement and maintenance of washers and seals are the responsibility of the Homebuyer(s). Leakage due to worn washers or seals is not covered.
BUILDER CORRECTION: During the first five years of the warranty, Builder shall repair or replace the leaking faucet, valve, tub, sink or toilet.
•DEFICIENCY: Defective plumbing fixtures or trim fittings.
CONSTRUCTION STANDARD: Fixtures or fittings should operate or perform their intended function properly. Tarnishing and pitting of faucets are not covered, but are covered solely by the manufacturer's warranty. High iron content in the water will cause staining of fixtures. It is the Homebuyer(s) responsibility to treat the water, if necessary. No Builder correction is required.
BUILDER CORRECTION: During the first five years of the warranty, the Builder shall repair or replace any fixture or fitting which is outside of acceptable standards of operation or performance.

10.3 GAS LINE

•DEFICIENCY: Leakage in the interior gas line piping.
CONSTRUCTION STANDARD: No leaks should exist in any gas pipes or fittings. Damage resulting from neglect or abuse, or from conditions beyond the Builder's control (such as, for example, without limitation, disruption or elimination of sources of gas supply), is not covered.
BUILDER CORRECTION: During the first five years of the warranty, Builder to repair verified leaks in piping as necessary, if leak is due to defective workmanship or materials.
NOTE: Should a gas pipe leak occur outside the Home, Homebuyer(s) should call the appropriate public utility service immediately. If the leak occurs inside the Home, Homebuyer(s) should shut off the gas service immediately, ventilate the Home, and call the appropriate public utility service immediately.

XI. HEATING AND AIR CONDITIONING SYSTEM

11.1 HEATING

•DEFICIENCY: Inadequate heating.
CONSTRUCTION STANDARD: The heating system shall be capable of producing an inside temperature of 68 degrees Fahrenheit as measured in the center of each room at a height of 3 feet above the floor under local outdoor winter design conditions as specified in the ASHRAE handbook. There may be times when the outdoor temperature falls below the design temperature. When this occurs, the temperature in the Home may be lower than 68 degrees. Rooms located over garages and sunporches will experience a temperature differential due to their exposure, and this is not a deficiency.
BUILDER CORRECTION: Correct the heating system to meet the standard. Builder to balance dampers, registers and make other minor adjustments one time only during the first year of the warranty.

11.2 AIR CONDITIONING

•DEFICIENCY: Inadequate cooling.
CONSTRUCTION STANDARD: If air conditioning is provided, the cooling system shall be capable of maintaining an inside temperature of 78 degrees Fahrenheit as measured in the center of each room at a height of 5 feet above the floor under local outdoor summer design conditions as specified in the ASHRAE handbook. There may be times when the outdoor temperature rises above the design temperature. When this occurs, the temperature in the Home may be higher than 78 degrees. When the outdoor temperature exceeds 95 degrees, a differential of 17 degrees will be accepted as meeting the standard. Rooms located over garages and sunporches will experience a temperature differential due to their exposure, and this is not a deficiency.
BUILDER CORRECTION: Correct the cooling system to meet the standard. Builder to balance dampers, registers and make other minor adjustments one time only during the first year of the warranty. Changing and/or adding refrigerant, which should be done on at least an annual basis, is the responsibility of the Homebuyer(s).
•DEFICIENCY: Refrigerant line leak or clog.
CONSTRUCTION STANDARD: Refrigerant lines should not develop leaks during normal operation. However, condensation lines will clog under normal use. This is the maintenance responsibility of the Homebuyer(s) and requires no correction by the Builder.
BUILDER CORRECTION: During the first two years of the warranty, repair leaking refrigerant lines and recharge the unit.

•DEFICIENCY: Ductwork separates or becomes unattached.
CONSTRUCTION STANDARD: Ductwork should remain intact and securely fastened.

BUILDER CORRECTION: During the first two years of the warranty, reattach and resecure as necessary.

XII. ELECTRICAL SYSTEM

12.1 ELECTRICAL CONDUCTORS

•DEFICIENCY: Failure of wiring to carry its designated circuit load to the electrical box.
CONSTRUCTION STANDARD: Wiring shall carry the designed load for normal residential use.
BUILDER CORRECTION: During the first five years of the warranty, correct the wiring as necessary to meet the standard.

12.2 SWITCHES AND RECEPTACLES

•DEFICIENCY: Fuses blow or circuit breakers kick out.
CONSTRUCTION STANDARD: Fuses and circuit breakers should not activate under normal usage.
BUILDER CORRECTION: During the first two years of the warranty, correct the fuse wiring or breakers as necessary.
•DEFICIENCY: Malfunction of electrical outlets and switches.
CONSTRUCTION STANDARD: All outlets and switches should operate as intended.
BUILDER CORRECTION: During the first five years of the warranty, repair or replace defective switches and outlets. Light fixtures are covered solely by the manufacturer's warranty.

12.3 SERVICE AND DISTRIBUTION

•DEFICIENCY: Ground fault interrupter trips frequently.
CONSTRUCTION STANDARD: Ground fault interrupters are sensitive safety devices that protect against electrical shock and can be tripped very easily. A ground fault interrupter that does not operate as intended is a deficiency.
BUILDER CORRECTION: Builder to replace defective ground fault interrupter.

NOTES

NOTES

JOHN WIELAND HOMES
AND NEIGHBORHOODS

Rev 4/06

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2012-CP-10-03870

Peter T. Phillips and Summar C. Phillips ..... Respondents,

v.

Omega Flex, Inc., John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., ... Defendants,

Of Whom John Wieland Homes and Neighborhoods of the Carolinas, Inc. is the ..... Appellant,

And Omega Flex, Inc, AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., are ..... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal contains all material proposed to be included by the parties herein and not any other material, pursuant to Rule 210(g), SCACR.

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April 9, 2014
Charleston, South Carolina.

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

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Of Whom John Wieland Homes and Neighborhoods of the Carolinas, Inc. is the .....Appellant,

And Omega Flex, Inc, AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., are.....Respondents.

PROOF OF SERVICE

I hereby certify that a true and correct copy of the Record on Appeal was served on this 9th day of April, 2014 via U.S. mail, postage prepaid, upon the following counsel of record:

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IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Civil Action No. 2012-CP-10-03870
Appellate Case No. 2013-001449

Peter T. Phillips and Summar C. Phillips ..... Respondents,

v.

Omega Flex, Inc., John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., ... Defendants,

Of Whom John Wieland Homes and Neighborhoods of the Carolinas, Inc. is the .....Appellant,

And Omega Flex, Inc, AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., are..... Respondents.

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STATEMENT OF THE ISSUES ON APPEAL

I. Did the Circuit Court commit an error of law in finding that the Agreement was not governed by the Federal Arbitration Act when the Agreement specifically provided that the Agreement involved transactions involving interstate commerce and that it would be governed by the Federal Arbitration Act?

II. Did the Circuit Court commit an error of law in finding that the Agreement was not governed by the Federal Arbitration Act when it did not consider the Addenda to the Agreement which included specific customization of the construction of the Phillips' house?

III. Did the Circuit Court commit an error of law in failing to find that the Agreement expressly and unambiguously compels arbitration of all claims between the Phillips and John Wieland Homes when the Agreement specifically compels arbitration of any and all claims between John Wieland Homes and the Phillips arising out of or relating in any manner to the Phillips' home?

IV. Did the Circuit Court commit an error of law in failing to compel the Phillips to arbitrate their claims against the Trade Contractors when their claims against the Trade Contractors are all dependent upon the Phillips' Agreement with John Wieland Homes, which requires arbitration?

STATEMENT OF THE CASE

On June 14, 2012, Respondents Peter T. Phillips and Summar C. Phillips (the "Phillips") filed a complaint against Respondent Omega Flex, Inc. ("Omega Flex"), Appellant John Wieland Homes and Neighborhoods of the Carolinas, Inc. ("John Wieland Homes"), Respondent AAA Plumbing ("AAA Plumbing"), Respondent Fogel Services, Inc. ("Fogel Servies"), and Respondent Charleston LEC, Inc. ("Charleston LEC"), alleging causes of action for negligence, breach of express warranty, breach of implied warranty of merchantability, breach of implied warranty of fitness for a particular purpose, strict liability, breach of contract, breach of implied warranty of workmanlike service, and breach of implied warranty of habitability. **(R.pp. 13-28).**

The Phillips' Complaint seeks damages arising from a fire on June 25, 2009 at 1417 Hooper Street on Daniel Island. **(R.p.14, ¶¶ 7-9).** The fire was allegedly caused by a lightning

strike that created a hole in a CSST gas pipe, which allegedly caused the natural gas to ignite at the hole in the CSST, which then purportedly escaped the hole in the CSST. **(R.p.14, ¶ 10).**

On October 29, 2012, John Wieland Homes moved to compel arbitration of the Phillips' claims against John Wieland Homes pursuant to an arbitration clause incorporated into the Purchase Agreement entered into between John Wieland Homes and the Phillips. **(R.pp.324-27).** Additionally, John Wieland Homes moved to compel arbitration of the Phillips' claims against AAA Plumbing, Fogel Service, and Charleston LEC (collectively, the "Trade Contractors"). **(R.pp.324-27).** John Wieland Homes argued that these claims were subject to arbitration under the Federal Arbitration Act. **(R.pp.324-27).**[1]

On December 18, 2012, the Circuit Court held a hearing on the Motion to Compel Arbitration. **(R.pp.1-7).** By Order filed on April 25, 2013, the Circuit Court ruled that the Purchase Agreement entered into between the Phillips and John Wieland Homes did not involve interstate commerce and was not subject to the Federal Arbitration Act. **(R.pp.1-7).**

On May 6, 2013, John Wieland Homes received written notice of entry of the order filed on April 25, 2013. **(R.pp.245-46).** On May 6, 2013, John Wieland Homes timely served and filed a Motion to Reconsider, Alter, or Amend the Order. **(R.pp.245-46; R.pp.344-58).** The Circuit Court denied the Motion to Reconsider, Alter or Amend by Order filed on May 30, 2013. **(R.pp.245-46).** On June 25, 2013, John Wieland Homes served notice of its intent to appeal the Circuit Court's Orders. **(R.pp.245-46).**

FACTS

The Phillips' Complaint alleges that John Wieland Homes is a corporation organized and existing in the State of Georgia that develops and sells real property, including real property

[1] The parties did not dispute that the arbitration agreement at issue in this case does not meet the technical requirements of South Carolina Code section 15–48–10(a). **(R.p.4).**

located in South Carolina and that John Wieland Homes was the building contractor and seller of the Phillips' home. **R.p.13, ¶ 3.**

The Phillips and John Wieland Homes entered into a Purchase and Sale Agreement ("the Purchase Agreement") which incorporated the terms of the John Wieland Homes and Neighborhoods 5-20 Extended Warranty program ("the Warranty") (collectively, the "Agreement"). **(R.pp.159-217).** The terms of the Agreement were specifically agreed to by the Phillips; and both the Purchase Agreement and Warranty include mandatory arbitration provisions. **(R.p.175, ¶ 22 and R.pp.199-201, ¶ O).** In the Purchase Agreement, the Phillips expressly agreed to resolve any disputes in mandatory arbitration. **(R.p.175, ¶ 22).** Paragraph 22 of the Purchase Agreement, entitled "Warranty and Arbitration," provides, in pertinent part:

> Warranty and Arbitration, Purchaser and Seller hereby agree that, in connection with the sale contemplated by this agreement, Purchaser will be enrolled in the John Wieland Homes and Neighborhoods 5-20 Extended Warranty program (JWH Warranty), the JWH Warranty being incorporated herein by reference.
>
> * * *
>
> PURCHASER ACKNOWLEDGES THAT PURCHASER HAS RECEIVED AND READ A COPY OF THE CURRENT JWH WARRANTY AND CONSENTS TO THE TERMS THEREOF, INCLUDING, WITHOUT LIMITATION, THE MANDATORY BINDING ARBITRATION PROVISIONS CONTAINED THEREIN . . .

(R.p.175, ¶ 22). The Phillips agreed to Paragraph 22 and initialed it separately, acknowledging that they read and received the Warranty. **(R.p.175, ¶ 22).** In so doing, per the terms of the John Wieland Homes Warranty, which is incorporated into Paragraph 22 of the Purchase Agreement by reference, the Phillips expressly agreed as follows:

> Any and all unresolved claims or disputes of any kind or nature between Wieland and Homebuyer(s) arising out of or relating in any manner to any purchase agreement with Wieland (if any), this warranty, the Home and/or property on which it is constructed, or otherwise, shall be resolved by final and binding arbitration conducted in accordance with this provision, and such resolution shall

be final. . . . This specifically includes, without limitation, claims related to any representations, promises or warranties alleged to have been made by Wieland or its representatives; rescission of any contract or agreement; any tort; any implied warranties; any personal injury; and any property damage.

(R.pp.199-200, §V, ¶ O). The Agreement mandates that its arbitration procedure:

> SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR THE RESOLUTION OF ANY AND ALL DISPUTES ARISING AFTER THE INITIAL CLOSING OF THE PURCHASE OF THE HOME BY THE INITIAL HOMEBUYER(S). WIELAND AND HOMEBUYER(S) HEREBY WAIVE ANY AND ALL OTHER RIGHTS AND REMEDIES AT LAW, IN EQUITY OR OTHERWISE WHICH MIGHT OTHERWISE HAVE BEEN AVAILABLE TO THEM IN CONNECTION WITH ANY SUCH DISPUTES.

(R.p.201, §V, ¶ O).

The Agreement specifically provides that the transaction involved interstate commerce: "As the purchase agreement with Wieland and this warranty are transactions involving interstate commerce, arbitrations shall be governed by the U.S. Arbitration Act, 9 U.S.C. Sections 1-16, to the exclusion of any provisions of state law." **(R.p.200, ¶ O).**

In addition to covering disputes between the Phillips and John Wieland Homes, the arbitration provision of the Agreement permits John Wieland Homes to include its suppliers and other contractors as parties to the arbitration:

> If Wieland so chooses, Wieland may have its supplier(s) and contractor(s) whose work or supplies are involved in the dispute included as parties to the arbitration. Questions of whether issues are arbitrable and the actual interpretation of terms needing definition in order to arbitrate an issue shall be determined by the arbitrator.

(R.p.200, §V, ¶ O). The Phillips have alleged that the Trade Contractors performed work on the house and that those parties are directly liable to the Phillips; however, any work those parties performed was performed pursuant to a Trade Contractor Application and Agreement entered into between the Trade Contractor and John Wieland Homes. **(R.p.221, ¶7, R.p.23, ¶7, &**

R.p.225, ¶7). Each of the agreements provides that the Trade Contractors will participate in and cooperate with any arbitration:

> Cooperation in Arbitration. Upon request and at no expense to Wieland, Trade Contractor shall cooperate and participate in, as may be reasonably directed by Wieland, any arbitration proceedings arising out of the home warranty coverage provided by Wieland or otherwise related to or arising out of the construction of the homes by Wieland.

(R.p.221, ¶7, R.p.223, ¶7, & R.p.225, ¶7).

STANDARD OF REVIEW

"Unless the parties otherwise provide, the question of the arbitrability of a claim is an issue for judicial determination." New Hope Missionary Baptist Church v. Paragon Bldrs., 379 S.C. 620, 625, 667 S.E.2d 1, 3 (Ct. App. 2008) (citing Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001)). "However, in deciding whether the parties have agreed to submit a particular grievance to arbitration, a court is not to rule on the potential merits of the underlying claims." Zabinski, at 596, 553 S.E.2d at 118 (citation omitted). "Appeal from the denial of a motion to compel arbitration is subject to de novo review." New Hope, 379 S.C. at 625, 667 S.E.2d at 3.

ARGUMENT

I. The Circuit Court committed an error of law in finding that the Agreement was not governed by the Federal Arbitration Act when the Agreement specifically provided that the Agreement involved transactions involving interstate commerce and that it would be governed by the Federal Arbitration Act.

The Federal Arbitration Act provides: "A written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C.A. § 2. Here, the Circuit Court committed an error of law in finding that the Agreement did not involve interstate commerce

when the Agreement specifically provided that the Agreement included transactions involving interstate commerce and that it would be governed by the Federal Arbitration Act

By its plain language, the Agreement provides that the transactions involved interstate commerce and that it is governed by the Federal Arbitration Act: "As the purchase agreement with Wieland and this warranty are transactions involving interstate commerce, arbitrations shall be governed by the U.S. Arbitration Act, 9 U.S.C. Sections 1-16, to the exclusion of any provisions of state law." **(R.p.200, ¶ O).**

The South Carolina Supreme Court has held that an agreement that a contract shall be subject to the Federal Arbitration Act is binding and enforceable. Specifically, in Munoz v. Green Tree Fin. Corp., the Court held that "the arbitration agreement, which applies to 'this contract and the relationships which result from this contract', provides it shall be governed by the FAA . . . [and] . . . [a]rbitration agreements, like other contracts, are enforceable in accordance with their terms." 343 S.C. 531, 539, 542 S.E.2d 360, 363-64 (2001) (internal quotation marks omitted) (citing Volt Info. Sciences, Inc. v. Bd. of Trustees of Leland Stanford Jr. Univ., 489 U.S. 468, 478 (1989)). The Supreme Court has recently reaffirmed this ruling. See Cape Romain Contractors, Inc. v. Wando E., LLC, 405 S.C. 115, 126, 747 S.E.2d 461, 466 (2013) (citing Munoz, 343 S.C. at 538, 542 S.E.2d at 363–64, and stating in a parenthetical as follows: "holding an agreement that provides it shall be governed by the FAA is enforceable in accordance with its terms").

The Circuit Court committed an error of law by refusing to enforce the plain language of the Agreement entered into between John Wieland Homes and the Phillips. The Circuit Court did not address or distinguish Munoz, but rather ruled that the Agreement was not governed by the Federal Arbitration Act because it was a contract for the purchase and sale of a completed

home as in Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 458, 730 S.E.2d 312, 318 (2012). Assuming *arguendo* that the Agreement in this case did involve the purchase of a fully completed house, Brentwood Homes, which did not address the issue of whether parties to a purchase agreement can agree that the sale involved interstate commerce and would be governed by the Federal Arbitration Act, is not controlling as to whether the Phillips and John Wieland Homes agreement that the contract involved interstate commerce and was governed by the Federal Arbitration Act is enforceable. Munoz, however, is controlling. Accordingly, the Circuit Court should be reversed.

II. The Circuit Court committed an error of law in finding that the Agreement was not governed by the Federal Arbitration Act when it did not consider the Addenda to the Agreement which included specific customization of the construction of the Phillips' house.

Not only did the Phillips and John Wieland Homes contract for the Agreement to be governed by Federal Arbitration Act, the Agreement indeed involved interstate commerce. As such, the Federal Arbitration Act applies and preempts state law because the transaction—a contract to customize the construction of a home and for the purchase of that home—involved interstate commerce.

The FAA provides: "A written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C.A. § 2. "The United States Supreme Court has held that the phrase 'involving commerce' is the same as 'affecting commerce,' which has been broadly interpreted to mean Congress intended to utilize its powers to regulate interstate commerce to its full extent." Blanton v. Stathos, 351 S.C. 534, 540, 570 S.E.2d 565, 568 (Ct. App. 2002) (citing Allied–Bruce Terminix Cos. v. Dobson, 513 U.S. 265 (1995)).

"The federal policy favoring arbitration, as expressed in the FAA, is now binding even in state courts and supersedes inconsistent state law and statutes which invalidate arbitration agreements." Zabinski v. Bright Acres Assoc., 346 S.C. 580, 590, 553 S.E.2d 110, 115 (2001). "The basic purpose of the FAA is to overcome state courts' refusal to enforce arbitration agreements." Id. at 590-91, 553 S.E.2d at 115 (citation omitted); see also Allied-Bruce Terminix Companies, 513 U.S. at 270. "While the parties may agree to enforce arbitration agreements under state rules rather than FAA rules, the FAA will preempt any state law that completely invalidates the parties' agreement to arbitrate." Zabinski, 346 S.C. at 592, 553 S.E.2d at 116 (citation omitted).

South Carolina Courts have consistently held that a contract that involves the construction of a residence, by its very nature, involves interstate commerce. See Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 458, 730 S.E.2d 312, 318, n. 8 (2012) ("We emphasize that had the Agreement actually encompassed the construction of the residence, it would have been subject to the FAA as our appellate courts have consistently recognized that contracts for construction are governed by the FAA.") (citations omitted); Episcopal Hous. Corp. v. Fed. Ins. Co., 269 S.C. 631, 639, 239 S.E.2d 647, 651 (1977) (holding that the contract for the construction of an elderly housing project was interstate where materials, equipment, and supplies were produced and manufactured out-of-state); Circle S. Enterprises, Inc. v. Stanley Smith & Sons, 288 S.C. 428, 431-32, 343 S.E.2d 45, 47 (Ct. App. 1986) (finding a construction contract involved interstate commerce where the equipment, materials, and subcontractors at issue were furnished from out-of-state).

The Circuit Court in this case found that the Agreement did not involve interstate commerce because the Agreement was solely for purchase of a completed residence. **(R.p.6)**

(citing Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 458, 730 S.E.2d 312, 318 (2012)). In Brentwood Homes, the Court held that the sale and purchase of residential real estate was a purely intrastate activity. Brentwood Homes, at 458, 730 S.E.2d at 317 ("[W]e conclude that Brentwood Homes failed to offer sufficient evidence that the transaction involved interstate commerce to subject the Agreement to the FAA."). The Court specifically noted that the contract in that case did not include customizations of the home: "Notably, the provisions of the Agreement providing for . . . 'Options,' and 'Color Selection,' are eliminated as 'N/A' and were not signed by Bradley." Id.

In this case, the Circuit Court erred in finding that the Agreement reflected a similar relationship between developer and purchaser as in Brentwood Homes and ruled—without considering the entire Agreement—that "the essential character of the agreement" was for the purchase of a completed residence. **(R.p.6)** (citing Brentwood Homes)). Unlike the contract in Brentwood Homes, the Agreement in this case includes several specific options or customizations of the residence—the Phillips and John Wieland Homes agreed to the following items in various Addenda to the Purchase Agreement: adding custom paint colors; converting the patio and front walkway to oyster shell; adding phone/cable to the bonus room over garage; adding a dedicated receptacle for a wine cooler in butler's pantry area; reframing of the stairs to accommodate hardwood treads on first flight of stairs to second floor; constructing an additional parking pad to the drive; adding additional patio space; converting the entire house to 7 ¼ inch baseboards; and several modifications related to wiring or prewiring for surround sound. **(R.pp.161-68).**

The Circuit Court did not address the Addenda, and its discussion of the terms of the Agreement show that the Circuit Court did not consider the Addenda at all:

> Under this contract, the seller, John Wieland Homes, had a right to build as it deemed fit. It had ultimate discretion on materials. The provision of the agreement allowing the Plaintiffs to make certain selections was marked as not applicable. John Wieland Homes reserved the right to decide home placement, driveway location, number of deck steps and all exterior colors. The seller was not required to gain the purchaser's permission prior to making any of these decisions. The agreement further provided that no structural or mechanical changes could be made once framing was complete.

(R.p.5). This characterization of the Agreement makes clear the Circuit Court did not consider the Addenda which included, among other things, customizing paint colors, reframing of the stairs to accommodate hardwood treads on first flight of stairs to second floor, construction an additional parking pad to the drive, and adding additional patio space. The Circuit Court erred by only considering the original Agreement and failing to consider the Addenda to that Agreement which included the type of options and customizations that the Brentwood Homes Court explained would involve interstate commerce. See e.g., Brentwood Homes, at 455, 730 S.E.2d at 316 ("To ascertain whether a transaction involves commerce within the meaning of the FAA, the *court must examine* the agreement, the complaint, and the surrounding facts." (quoting Zabinski, at 594, 553 S.E.2d at 116) (emphasis added)). This was reversible error.

Furthermore, the Circuit Court erred in not finding that the Agreement involved interstate commerce based upon these Addenda. Each of the items included in the Addenda, which are part of the Agreement, involve interstate commerce. In fact, Dennis A. Black, the one-time Division Quality Manager for John Wieland Homes, specifically stated in his affidavit that the construction of the Phillips' home "implicates interstate commerce." **(R.p.159, ¶¶ 1, 4).** The terms of the Addenda to the Agreement and Black's affidavit that the construction of the Phillips' house involved interstate commerce unequivocally demonstrate that the Agreement involved interstate commerce. See e.g., New Hope Missionary Baptist Church v. Paragon Builders, 379 S.C. 620, 626–27, 667 S.E.2d 1, 4 (Ct. App. 2008) ("we find the trial court

properly determined the Federal Arbitration Act . . . applies to the arbitration agreement in this matter since the parties did not contract to the contrary and the arbitration agreement pertains to a transaction involving interstate commerce due to the nature of the construction project . . . [the builder's] affidavit swearing the project will involve businesses and supplies from outside South Carolina.").

Therefore, because the Agreement in the case was not for the sale of a completed residence as in Brentwood Homes, but actually encompassed the customization of the construction of the residence, the Circuit Court should be reversed. See Brentwood Homes, at 458, 730 S.E.2d at 318, n. 8 ("We emphasize that had the Agreement *actually encompassed the construction of the residence*, it would have been subject to the FAA as our appellate courts have consistently recognized that contracts for construction are governed by the FAA." (emphasis added)).

III. The Circuit Court committed an error of law in failing to find that the Agreement expressly and unambiguously compels arbitration of all claims between the Phillips and John Wieland Homes when the Agreement specifically compels arbitration of any and all claims between John Wieland Homes and the Phillips arising out of or relating in any manner to the Phillips' home.

As explained above, the Agreement is subject to the Federal Arbitration Act. Additionally, as explained below, the scope of the arbitration provision in the Agreement encompasses every claim raised by the Phillips in their lawsuit.

"An arbitration clause is a contractual term, and general rules of contract interpretation must be applied to determine a clause's applicability to a particular dispute." Towles v. United HealthCare Corp., 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999) (citation omitted). "In construing a contract, it is axiomatic that the main concern of the court is to ascertain and give effect to the intention of the parties." D.A. Davis Const. Co., Inc. v. Palmetto Props., Inc., 281

S.C. 415, 418, 315 S.E.2d 370, 372 (1984). "If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003).

"The Arbitration Act establishes that, as a matter of federal law, 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." Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp., 460 U.S. 1, 24-25 (1983); see also Carolina Care Plan, Inc. v. United HealthCare Servs., Inc., 361 S.C. 544, 550, 606 S.E.2d 752, 755 (2004) (same). Underlying this policy is Congress' view that arbitration constitutes a more efficient dispute resolution process than litigation. Hightower v. GMRJ, Inc., 272 F.3d 239, 241 (4th Cir. 2001). Accordingly, "due regard must be given to the federal policy favoring arbitration, and ambiguities as to the scope of the arbitration clause itself resolved in favor of arbitration." Adkins v. Labor Ready, Inc., 303 F.3d 496, 500 (4th Cir. 2002) (citation omitted).

"Furthermore, unless the court can say with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the dispute, arbitration should be ordered." S.C. Pub. Serv. Auth. v. Great W. Coal (Kentucky), Inc., 312 S.C. 559, 564, 437 S.E.2d 22, 25 (1993). "Motions to compel arbitration should not be denied unless the arbitration clause is not susceptible of any interpretation that would cover the asserted dispute." Towles, at 41-42, 524 S.E.2d at 846.

Arbitration clauses which subject to arbitration all claims "arising out of or relating to" a contract or transaction are characterized as "broad arbitration clauses capable of an expansive reach." Am. Recovery Corp. v. Computerized Thermal Imaging, Inc., 96 F.3d 88, 93 (4th Cir.

1996). Such language "embraces every dispute between the parties having a significant relationship to the contract regardless of the label attached to the dispute." J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A., 863 F.2d 315, 321 (4th Cir. 1988).

In this case, the Agreement unambiguously provides that any dispute relating to any warranties, tort, or property damage (among other things) between the Phillips and John Wieland Homes is subject to arbitration:

> Any and all unresolved claims or disputes of any kind or nature between Wieland and Homebuyer(s) arising out of or relating in any manner to any purchase agreement with Wieland (if any), this warranty, the Home and/or property on which it is constructed, or otherwise, shall be resolved by final and binding arbitration conducted in accordance with this provision, and such resolution shall be final. . . This specifically includes, without limitation, claims related to any representations, promises or warranties alleged to have been made by Wieland or its representatives; rescission of any contract or agreement; any tort; any implied warranties; any personal injury; and any property damage.

(R.pp.199-200, ¶ O).

The scope of the arbitration provision in the Agreement encompasses every claim raised by the Phillips in their lawsuit—the Phillips have asserted causes of action in negligence, contract and implied warranty all seeking recovery for property damage, **(R.pp.18-20, ¶¶ 33-49).** Such claims are within the scope of the arbitration agreement as quoted above. See Long v. Silver, 248 F.3d 309, 318 (4th Cir. 2001) ("Because this breach of contract claim arises directly under the 1972 Agreement, it is clearly arbitrable."); Palmetto Homes, Inc. v. Bradley, 357 S.C. 485, 492-93, 593 S.E.2d 480, 484 (Ct. App. 2004) ("Contractor's causes of action for breach of contract accompanied by a fraudulent act and negligence essentially allege Subcontractor defectively installed the masonry work on a residential homebuilding projects [which are] matters concerning the agreement or the work performed [and] within the scope of the arbitration agreement."); Pierson v. Dean, Witter, Reynolds, Inc., 742 F.2d 334, 338 (7th Cir. 1984)

("Claims of fraud under a contract, breach of fiduciary duty, negligence, and gross negligence are not immune from arbitration under a broadly-worded valid arbitration clause.").

Because these claims are within the scope of the Agreement, they are subject to mandatory, binding arbitration. Accordingly, the Circuit Court erred in failing to find the Phillips claims against John Wieland Homes were subject to arbitration. For the foregoing reasons, the Circuit Court should be reversed and this Court should enforce the parties' agreed-upon arbitration clause by compelling the Phillips to submit their claims against John Wieland Homes to binding arbitration.

IV. The Circuit Court committed an error of law in failing to compel the Phillips to arbitrate their claims against the Trade Contractors when their claims against the Trade Contractors are all dependent upon the Phillips' Agreement with John Wieland Homes, which requires arbitration.

In addition to erring in failing to compel the Phillips to arbitrate their claims against John Wieland Homes, the Circuit Court erred in failing to compel the Phillips to arbitrate their claims against the Trade Contractors. Both the Agreement between the Phillips and John Wieland Homes and the agreements between John Wieland Homes and the Trade Contractors expressly and unambiguously permit John Wieland Homes to add the Trade Contractors as parties to any arbitration between John Wieland Homes and the Phillips, and the Phillips' claims are all dependent upon their contract with John Wieland Homes, which expressly requires arbitration.

The arbitration provision in the Agreement between the Phillips and John Wieland Homes provides, in pertinent part:

> If Wieland so chooses, Wieland may have its supplier(s) and contractor(s) whose work or supplies are involved in the dispute included as parties to the arbitration. Questions of whether issues are arbitrable and the actual interpretation of terms needing definition in order to arbitrate an issue shall be determined by the arbitrator.

(R.p.200, §V, ¶ O). Moreover, John Wieland Homes' contracts with each of the Trade Contractors provides as follows:

> Cooperation in Arbitration. Upon request and at no expense to Wieland, Trade Contractor *shall cooperate and participate in*, as may be reasonably directed by Wieland, *any arbitration proceedings arising out of the home warranty coverage provided by Wieland or otherwise related to or arising out of the construction of the homes by Wieland.*

(R.p.221, ¶7, R.p.223, ¶7, & R.p.225, ¶7 (emphasis added)).

Because the Phillips' claims against the Trade Contractors are based in whole or in part on their Agreement with John Wieland Homes, the Federal Arbitration Act applies to the Phillips' claims against the Trade Contractors for the same reasons discussed above relating to their claims against John Wieland Homes. Therefore, the same legal standard favoring arbitration is applicable to these claims. See e.g. Moses H Cone Mem'l Hosp., 460 U.S. at 24 (stating that the Federal Arbitration Act reflects "a liberal federal policy favoring arbitration agreements.").

Although the Trade Contractors are non-signatories to the Agreement between the Phillips and John Wieland Homes, the Complaint alleges the Trade Contractors performed work as subcontractors pursuant to subcontracts with John Wieland Homes, entered into by virtue of the contract between John Wieland Homes and the Phillips. **(R.pp.23-231, ¶¶ 53-62; R.pp.24-25, ¶¶66-75; & R.pp.26-28, ¶¶79-88).** The Phillips allege that bilateral contracts were created between themselves and the Trade Contractors and that the Trade Contractors breached those contracts. **(R.pp.22-23, ¶¶ 53-62; R.pp.24-25, ¶¶66-75; & R.pp.26-28, ¶¶79-88).** Because the Phillips' breach of contract claims against the Trade Contractors are predicated upon the existence of multiple contracts, including the Phillips' contract with John Wieland Homes, all of

the claims the Phillips assert against the Trade Contractors are subject to the arbitration provision of the contract between the Phillips and John Wieland Homes.

This Court recently decided a case involving similar facts. See Pearson v. Hilton Head Hosp., 400 S.C. 281, 297, 733 S.E.2d 597, 605 (Ct. App. 2012) (reversing the circuit court's denial of a defendant's motion to compel arbitration). In Pearson, the plaintiff, Dr. Pearson, an anesthesiologist, entered into a contract with LocumTenens.com ("Locum"), an online medical professional placement corporation, to place him in Hilton Head Hospital ("the Hospital") for 40 days in 2007. Id. at 285-86, 733 S.E.2d at 599. The Hospital had a contract with Locum, but not with Pearson. See id. at 286, 733 S.E.2d at 599. Pearson was fired and sued both Locum and the Hospital. See id. Both the Hospital's contract with Locum and Locum's contract with Pearson provided for mandatory arbitration of all claims arising out of the contract or relationship of the parties. See id. Both defendants moved to compel arbitration. See id. The circuit court granted Locum's motion since he had a contract with Pearson, but denied the Hospital's motion. See id. The Hospital argued on appeal that "Dr. Pearson [was] bound by the arbitration clause both as a nonsignatory to the Hospital and Locum's agreement and as a signatory to his and Locum's agreement." Id. at 296, 733 S.E.2d at 605. This Court ultimately sided with Hospital and offered several rationales for its decision, some of which are relevant and compelling in this case. For example, this Court found it significant that Pearson's causes of action relied on the existence of Locum's contract with the Hospital as a prerequisite to his claim:

> . . . looking at the Hospital as a nonsignatory in the contract between Dr. Pearson and Locum, Dr. Pearson has to rely on his contract or the Hospital's to have a breach of contract action against the Hospital. Because both of those contracts have arbitration clauses, **he should not be allowed to hold the Hospital to one of the contracts to allege a breach but not be subject to the arbitration provisions** . . .

Id. at 297, 733 S.E.2d at 605 (emphasis added).

Like in Pearson, the Phillips' suit against each of the Trade Contractors involves two contracts—the Phillips' Agreement with John Wieland Homes and John Wieland Homes' contract with each Trade Contractor. Just as in Pearson, the Phillips are signatories to one of the contracts and non-signatories to the other. Notably, the Phillips' causes of action against the Trade Contractors rely on the existence and validity of the contract between themselves and John Wieland Homes. **(R.p.22, ¶ 54)** (alleging that "[t]he Plaintiffs, by virtue of their contract with Defendant John Wieland Homes, entered into a subcontract with Defendant Fogel Services by which Defendant Fogel Services would install or oversee the installation of plumbing and gas lines in the Plaintiffs' home in a workmanlike manner"); **(R.p.22, ¶55)** ("This agreement entered into by Defendant John Wieland Homes, on behalf and for the benefit of the Plaintiffs constituted a contract between the Plaintiffs and Defendant Fogel Services"); **(R.pp.22-23, ¶¶ 53-62)** (alleging breach of this contract and breach of implied warranty of work manlike service as to Defendant Fogel Services); and **(R.pp.24-25, ¶¶ 66-75 and R.pp.26-28, ¶¶ 79-88)** (alleging similar contract formation, breach, and breach of implied warranties as to AAA Plumbing and Charleston LEC)).

Because the arbitration provision of the Agreement in this case provides for binding, mandatory arbitration and John Wieland Homes' contracts with the Trade Contractors require those parties to participate in and cooperate with any arbitration, the Phillips are required to arbitrate their claims against John Wieland Homes and the Trade Contractors.

Therefore, for the reasons discussed above, the Circuit Court erred in failing to compel the Phillips to arbitrate their claims against the Trade Contractors and should be reversed, and this Court should enforce the parties' agreed-upon arbitration clause by compelling the Phillips to submit their claims against the Trade Contractors to binding arbitration.

CONCLUSION

In determining whether the Phillips' Agreement with John Wieland Homes was subject to the Federal Arbitration Act, the Circuit Court incorrectly ignored that the Phillips and John Wieland Homes specifically agreed that the Agreement involved interstate commerce and that it would be governed by the Federal Arbitration Act. The Circuit Court further erred by not considering the Addenda to the Agreement and Dennis Black's affidavit, which unequivocally demonstrate that the Agreement did in fact involve interstate commerce. Finally, the Circuit Court also committed an error of law in failing to enforce the terms of the arbitration agreement, which clearly and unambiguously encompasses all of the Phillips' claims against John Wieland Homes and the Trade Contractors.

For the foregoing reasons, the Circuit Court's Order Denying the Motion to Compel Arbitration filed by John Wieland Homes and the Order Denying John Wieland Homes' Motion to Reconsider Alter or Amend the Order Denying the Motion to Compel Arbitration should be **REVERSED,** and the Phillips should be compelled to arbitrate their claims against John Wieland Homes and the Trade Contractors.

Respectfully Submitted,

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April 29, 2014
Charleston, South Carolina

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Civil Action No. 2012-CP-10-03870
Appellate Case No. 2013-001449

Peter T. Phillips and Summar C. Phillips ..... Respondents,

v.

Omega Flex, Inc., John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., ... Defendants,

Of Whom John Wieland Homes and Neighborhoods of the Carolinas, Inc. is the .....Appellant,

And Omega Flex, Inc, AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., are.....Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of Appellant John Wieland Homes and Neighborhoods of the Carolinas, Inc. enclosed herewith, comply with Rule 211(b), SCACR.

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Of Whom John Wieland Homes and Neighborhoods of the Carolinas, Inc. is the .....Appellant,

And Omega Flex, Inc, AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., are..... Respondents.

PROOF OF SERVICE

I hereby certify that true and correct copies of Final Brief of Appellant John Wieland Homes and Neighborhoods of the Carolinas, Inc.; Final Reply Brief of Appellant John Wieland Homes and Neighborhoods of the Carolinas, Inc. in Reply to Respondent Omega Flex, Inc.; and Final Reply Brief of Appellant John Wieland Homes and Neighborhoods of the Carolinas, Inc. in Reply Respondents Peter T. Phillips and Summar C. Phillips were served on this 29th day of September, 2014 via U.S. mail, postage prepaid, upon the following counsel of record:

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Of whom John Wieland Homes and Neighborhoods of the Carolinas, Inc., is the ...Appellant,

And Omega Flex, Inc., AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., are.....Respondents.

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STATEMENT OF ISSUES ON APPEAL

1. Did the Circuit Court correctly find that the Purchase Agreement was not governed by the Federal Arbitration Act when the Purchase Agreement did not involve transactions involving interstate commerce?

2. Did the Circuit Court correctly find that the Purchase Agreement was not governed by the Federal Arbitration Act in view of the fact that the Addenda to the Agreement included only inconsequential choices that the Phillipses could make on the home in question?

3. Did the Circuit Court correctly find that the arbitration clause should not be enforced?

4. Did the Circuit Court correctly find that the Phillipses should not be compelled to arbitrate their claims against the Trade Contractors?

STATEMENT OF THE CASE

A. Procedural History of the Case

Peter T. Phillips and Summar C. Phillips ("the Phillipses"), the Respondents, filed a complaint in the Charleston County Court of Common Pleas on June 14, 2012, against Respondent Omega Flex, Inc. ("Omega Flex"), Appellant John Wieland Homes and Neighborhoods of the Carolinas, Inc. ("John Wieland Homes"), Respondent AAA Plumbing ("AAA Plumbing"), Respondent Fogel Services, Inc. ("Fogel Services"), and Respondent Charleston, LEC, Inc. ("Charleston LEC"). (R. pp. 9-28). The Phillipses pled the following causes of action: negligence, breach of express warranty, breach of implied warranty of merchantability, breach of the implied warranty of fitness for a particular purpose, strict liability, breach of contract, breach of implied warranty of workmanlike service, and breach of implied warranty of habitability. (R. pp. 9-28).

The Phillips Complaint arises out of a home fire on June 25, 2009, at the Phillipses' home located at 1417 Hooper Street in Daniel Island, South Carolina. (R. p. 4). The Phillipses purchased the home from John Wieland Homes approximately one (1) year prior to the fire. (R. p. 14). The Phillipses pled that the fire resulted from a lightning strike which created a hole in the corrugated stainless steel tubing ("CSST"), and caused the natural gas to ignite at the hole in the CSST. (R. p. 14). The ignited gas which escaped the hole in the CSST ignited surrounding materials and spread, creating an extensive fire. (R. p. 14). As a result, the Phillipses home and its contents were severely damaged, and they were unable to live in their home for a period of time. (R. p. 14).

At the time of the purchase, the Phillipses and John Wieland Homes executed a Purchase Agreement containing an arbitration clause, prompting the Appellant, John Wieland Homes, on

October 29, 2012, to move to compel arbitration between the Phillipses and the other Defendants in the original action. (R. pp. 324-27). The Appellant argued in its motion to compel arbitration that the Phillipses claims were subject to arbitration under the Federal Arbitration Act. (R. pp. 324-27). In turn, the Phillipses filed a Memorandum in Opposition to John Wieland Homes' motion to compel arbitration, arguing that the Agreement was not subject to the Federal Arbitration Act because the contract was for the sale of a home rather than the construction of a home, meaning interstate commerce was not involved in the transaction. (R. pp. 340-43). The Honorable J.C. Nicholson, Jr. heard the motion on December 18, 2012, and issued an order which held that, in accordance with the Phillipses Memorandum in Opposition to Motion to Compel Arbitration, the Agreement did not involve interstate commerce, and therefore, was not subject to the Federal Arbitration Act. (R. pp. 3-7).

The Appellant filed a Motion to Reconsider, Alter, or Amend that Order on May 6, 2013, which was denied, and Appellant filed a notice of its intent to appeal on June 25, 2013. (R. pp. 345-58).

B. Facts

The Phillipses and John Wieland Homes entered into a Purchase and Sale Agreement ("Purchase Agreement") on June 7, 2008, which purported to include a mandatory arbitration provision. (R. pp. 359-64). The parties have agreed that the arbitration section does not conform to the South Carolina Uniform Arbitration Act requirements. (R. p. 4). The Purchase Agreement states that the contract is for the sale of property. (R. p. 359). Additionally, the Purchase Agreement incorporated the John Wieland Homes and Neighborhoods 5-20 Extended Warranty, along with the Addendum to the Purchase Agreement. (R. p. 362). (R. p. 365). (R. p. 368).

STANDARD OF REVIEW

"'Arbitrability determinations are subject to *de novo* review.'" *Bradley vs. Brentwood Homes, Inc.*, 398 S.C. 447, 453, 730 S.E.2d 312, 315 (Ct. App. 2012) (citing *Simpson vs. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 22, 644 S.E.2d 663, 667 (2007). However, an appellate court will not reverse a circuit court's factual findings "if any evidence reasonably supports the findings." *Id.*

ARGUMENT

I. The trial court did not err when it found that the purchase agreement was not governed by the Federal Arbitration Act because the agreement was for the sale of a home and not the construction of a home.

According to the Federal Arbitration Act, "[a] written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C.A. § 2 (West). The Federal Arbitration Act defines commerce under the Act as "among the several States." 9. U.S.C.A. § 1 (West). In the instant case, the Court did not commit an error of law when it found that the Purchase Agreement did not involve interstate commerce because the Purchase Agreement was for the sale of a home rather than for the construction of a home.

The contract between Appellant and the Phillipses provided for mandatory binding arbitration in the original Purchase Agreement. (R. p. 362). Even though all parties agree that the arbitration provision is invalid and unenforceable under South Carolina law, the Appellant asserts that the Federal Arbitration Act preempts state law if state law invalidates a valid arbitration agreement involving interstate commerce. *Bradley*, 398 S.C. at 454-55, 730 S.E.2d at 315. The trial court was correct in determining that the Federal Arbitration Act does not govern this transaction because this was a contract for the sale of a home as distinguished from the

construction of a home. "The development of land within South Carolina borders is the quintessential example of a purely intrastate activity." *Zabinski vs. Bright Acres, Ass'n*, 346 S.C. 580, 595, 553 S.E.2d 110, 117-18 (2001).

Our Supreme Court has held that when a home purchase agreement provides that a purchaser is receiving a completed dwelling and is not contracting for the construction of a home, the transaction does not involve interstate commerce, meaning that the transaction is not subject to the Federal Arbitration Act. *Bradley*, 398 S.C. at 458, 730 S.E.2d at 318. This is the case here. Paragraph One (1) of the purchase agreement explicitly states that the contract is for the sale of property. (R. p. 359). Additionally, Appellant's own witness, Dennis A. Black, a Division Quality Manager for Appellant, states in Paragraph Three (3) of his affidavit supporting Appellant's motion that the Phillipses "entered a purchase agreement with JWH to buy a home in the located [sic] at 1417 Hooper Street, Charleston, SC 29492." (R. pp. 159-160). The sale occurred after the Supreme Court of South Carolina decided *Bradley vs. Brentwood Homes, Inc.* It is clear in this context that this was a contract for the sale of a dwelling and not for the construction of a home. Consequently, the agreement is not governed by the Federal Arbitration Act.

Appellant relies on *Munoz vs. Green Tree Fin. Corp.* in an attempt to claim that arbitration agreements are enforceable according to their terms. 343 S.C. 531, 539, 542 S.E.2d 360, 363-64 (2001). However, *Munoz* involved "an installment contract and security agreement with Gerald Sealy (Builder) to finance home improvements in the amount of $15,000 secured by a mortgage on their home." 343 S.C. at 536, 542 S.E.2d at 362. The facts in *Munoz* implicate interstate commerce. First, it was a construction contract; additionally, the Court found that the Builder assigned its right to a Delaware corporation, the principal place of business of that

corporation was in Minnesota, the agreement was prepared in Minnesota, and the proceeds of their loan were disbursed from a Minnesota bank. *Munoz*, 343 S.C. at 539, 542 S.E.2d at 364. The instant case deals solely with the sale of a home, and the sale of a home is a purely intrastate activity. *Zabinski*, 346 S.C. at 595, 553 S.E.2d 117-18.

II. The Trial Court correctly considered the Addenda to the Agreement in finding the Agreement was not governed by the Federal Arbitration Act.

Appellant claims that because the Phillipses made some choices regarding the home that the Purchase Agreement was for the construction of a home rather than for the sale of a home. However, Appellants' argument is flawed.

In *Bradley*, the Supreme Court of South Carolina found that arbitration was not mandatory when the Purchaser made incidental choices regarding the home. This Court can review the public record and take judicial notice of the *Bradley* Home Purchase Agreement where the seller "[gave] $1,000.00 credit towards [sic] refrigerator to Buyer" and "upgrade[d] lighting to Buyer satisfaction in kitchen and dining room." Plaintiff's Notice of Motion and motion for Summary Judgment Pursuant to Rule 56, S.C.R.C.P., "Exhibit C," at 59, *Bradley vs. Brentwood Homes*, 398 S.C. 447, 730 S.E.2d 312 (2012). Mr. Bradley, the purchaser, determined which appliances would be in his kitchen with the $1,000.00 credit, and also chose the lighting in the kitchen and the dining room. Even though the Purchaser made some choices regarding the home, the Supreme Court of South Carolina found these were not significant and that the Home Purchase Agreement was for the purchase of a home and not the construction of a home.

The present case is on point with *Bradley* in that the choices made by the Phillipses were, at most, incidental. In Section Eight (8) of the Purchase Agreement, the seller (John Wieland Homes) is given full authority to make all decisions over the materials used on the home. (R. p.

360). Section Twelve (12) of the purchase agreement states that the seller "reserves the right to approve the lot, house placement, driveway location, number of deck steps included in Purchase Price and all exterior colors." (R. p. 361). Additionally, Section Fourteen (14) of the purchase agreement states that the purchaser (Phillipses) or the purchaser's agents have no authority to do work on the property prior to closing on the home. (R. p. 361). In Section Nine (9) of the purchase agreement, the Phillipses were given the option to choose the type of carpet, vinyl, and fixtures. (R. p. 360). In Addendum One, the Phillipses were to make selections regarding heated and cooled rooms, the bathrooms, and the closets on the third floor. (R. p. 368). The addendum has a Design Selection Checklist where the Phillipses had the option to choose incidental, purely aesthetic features of the home. (R. p. 369). From both the original Agreement and the Addendum, it is clear that the Phillipses, like in *Bradley*, had no real decision-making authority regarding the construction specifics of the home. If the contract were for the actual construction of a home, then the Phillipses would have made the ultimate decisions regarding the materials and would have been allowed access to the construction process prior to closing. (R. pp. 359-64). However, like in *Bradley*, since the Phillipses made only incidental choices, it is clear that the contract was for the sale of a home and not the construction of a home.

Appellants cite *Bradley* to state that this Purchase Agreement should be governed by the Federal Arbitration Act and argue that the Supreme Court of South Carolina did not consider the Bradleys' choices when determining whether the contract was for the sale of a home or the construction of a home. The Appellants cite a footnote which states that if the Agreement was for the construction of a residence, then it would have been subject to the Federal Arbitration Act. *Bradley*, 398 S.C. at 458, 730 S.E.2d at 318, n. 8. We agree that if this Purchase Agreement had been for the construction of a home that it would have been governed by the

Federal Arbitration Act, but this, like the Purchase Agreement in *Bradley*, was for the sale of a home for the reasons set forth above.

Appellants' argument that the Agreement was for the construction of a home fails, and this Court should uphold the circuit court's factual analysis and determination that the transaction is not governed by the Federal Arbitration Act.

III. The trial court correctly found that the Purchase Agreement does not expressly and unambiguously compel arbitration because the arbitration clause is unconscionable.

The trial court correctly determined that the Purchase Agreement does not expressly and unambiguously compel arbitration of all claims. "General contract principles of state law apply to arbitration clauses governed by the FAA." *Munoz*, 343 S.C. at 549, 542 S.E.2d at 364. Therefore, even if this Court were to find that the arbitration clause is subject to the Federal Arbitration Act, this Court should not enforce the arbitration clause because it is unconscionable. In South Carolina, to assert the defense of unconscionability, one must prove, first, the absence of meaningful choice, and, second, that the terms are oppressive and one-sided. *Simpson*, 373 S.C. at 24-25, 644 S.E.2d at 668-69.

When determining whether there was a lack of meaningful choice in the bargaining process, courts generally "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. The contract between the Phillipses and John Wieland Homes was a contract of adhesion. The majority of the terms in the agreement were from a standard agreement used by John Wieland Homes.

In *York vs. Dodgeland*, the South Carolina Court of Appeals examined an arbitration agreement between York and Dodgeland and another arbitration agreement between Cristy and Jim Hudson. 406 S.C. 67, 749 S.E.2d 139 (Ct. App. 2013). The Court of Appeals determined that Cristy lacked meaningful choice when "[a]side from the selection of the desired vehicle VIN and figures dependent upon the agreed price, the remaining terms of the sale, many of which are quite significant, were pre-printed, and presumptively, non-negotiable." 406 S.C. at 67, 749 S.E.2d at 149. In *York*, Cristy lost the right to a jury trial, her purchase price was not a substantial business concern of the car dealership, and there was a significant disparity in the bargaining power between the purchaser and the car dealership. *Id.* As in *York*, the Phillipses lacked meaningful choice because they, too, lost the right to a jury trial, the purchase price of the home was not a substantial business concern of John Wieland Homes, and there was a significant disparity in the bargaining power between the Phillipses and John Wieland Homes.

The Phillipses can also satisfy the second prong of the unconscionability defense because the terms of the agreement are both oppressive and one-sided. A clause is considered oppressive when "'no reasonable person would make them and no fair and honest person would accept them.'" *York*, 406 S.C. at 67, 749 S.E.2d at 149-50 (citing *Simpson*, 373 S.C. at 25, 644 S.E.2d at 668). The South Carolina Court of Appeals has held that when the amount of damages are restricted by the arbitration clause that the terms are oppressive. *York*, 406 S.C. at 67, 749 S.E.2d at 150. The Wieland 5-20 Extended Warranty similarly restricts the Phillipses amount of damages: "The maximum amount payable under this warranty by Wieland for all claims submitted is the original final sales price of the Home shown on the warranty certificate applicable to the Home, which includes the parcel of land on which the Home was constructed." (R. p. 382).

While the sales price of the home is the **most** one can recover, the warranty further restricts recovery in certain situations, all of which arguably apply here. According to the Wieland 5-20 Extended Warranty, only the defective item itself will be repaired or replaced should there be a defect, not the damage caused by the defect, and damage caused by failure to comply with warranty requirements "by anyone other than Wieland or Wieland's employees, agents or subcontractors" is not covered by the Extended Warranty. (R. p. 376). "Loss or damage not caused by a defect or deficiency in the design or construction of the Home by Wieland or Wieland's employees, agents or subcontractors" is not covered by the warranty. (R. p. 379). John Wieland Homes also states in its warranty that it is not liable for any loss, defect, or claim if the Phillips had insurance on the home. (R. p. 383). Since this case involves an allegedly defective product, and also involves a subrogated claim, the warranty on its face would not cover the damages to the home, the Phillipses contents, or the Phillipses loss of use of the home. Appellant John Weiland Homes, who through its agents and/or servants chose the allegedly defective product, installed the allegedly defective product, and sold the home to the Phillipses containing the allegedly defective product, would be responsible for at most, the cost of replacing corrugated stainless steel tubing. No reasonable person would make or accept these incredibly oppressive provisions.

The terms of the arbitration clause in the Purchase Agreement and Warranty are unconscionable, and the lower court correctly chose not to enforce the arbitration clause even though the Phillips signed the Agreement that the Purchase Agreement was subject to the FAA, which factually it was not.

IV. The Circuit Court did not commit an error in law in denying Appellant John Wieland Homes' motion to arbitrate the Phillipses' claims against the Trade Contractors.

The Phillipses have no contract between themselves and any of the Trade Contractors. The Phillipses claims against the Trade Contractors are based in whole or in part on work they did on the home sold to the Phillipses. Since the Federal Arbitration Act does not apply to the transaction between the Phillipses and John Wieland Homes, it should not govern any claims by the Phillipses against the Trade Contractors. The Phillipses agree that the claims against John Wieland Homes and the Trade Contractors should be handled in a consistent manner and as determined under the circuit judge's order.

CONCLUSION

The Circuit Court's decision that the Purchase Agreement between the Phillipses and John Wieland Homes was not governed by the Federal Arbitration Act should be affirmed because the Agreement was for the sale of a home rather than the construction of a home.

For the foregoing reasons, the Circuit Court's Order Denying the Motion to Compel Arbitration filed by John Wieland Homes and the Order Denying John Wieland Homes' Motion to Reconsider Alter or Amend the Order Denying the motion to Compel Arbitration should be **AFFIRMED**.

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Columbia, South Carolina
April 21, 2014

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No.: 2012-CP-10-03870

Peter T. Phillips and Summar C. Phillips .....Respondents,

v.

Omega Flex, Inc., John Wieland homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., ...Defendants,

Of whom John Wieland Homes and Neighborhoods of the Carolinas, Inc., is the ...Appellant,

And Omega Flex, Inc., AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., are.....Respondents.

CERTIFICATE OF COMPLIANCE WITH RULE 211(b)

I hereby certify that the Final Brief of Respondents Peter T. Phillips and Summar C. Phillips complies with Rule 211(b), SCACR.

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Columbia, South Carolina
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I hereby certify that a copy of the Final Brief of Respondents Peter T. Phillips and Summar C. Phillips and the Certificate of Compliance with Rule 211(b) were served upon the attorneys listed below by depositing said paper(s) in the United States Mail, Columbia, South Carolina, on the 22nd day of April, 2014, with the first class postage duly-affixed and a return address clearly indicated on the envelope, addressed as follows:

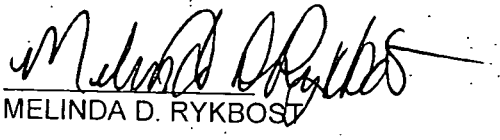
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IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Civil Action No. 2012-CP-10-03870
Appellate Case No. 2013-001449

Peter T. Phillips and Summar C. Phillips ..... Respondents,

v.

Omega Flex, Inc., John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., ... Defendants,

Of Whom John Wieland Homes and Neighborhoods of the Carolinas, Inc. is the .....Appellant,

And Omega Flex, Inc, AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., are..... Respondents.

FINAL REPLY BRIEF OF APPELLANT JOHN WIELAND HOMES AND NEIGHBORHOODS OF THE CAROLINAS, INC. IN REPLY TO RESPONDENTS PETER T. PHILLIPS AND SUMMAR C. PHILLIPS

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REPLY ARGUMENT

I. Respondents Peter T. Phillips and Summar C. Phillips, like the circuit court, mistakenly ignore that where, as here, the subject agreement expressly provides that the relevant transaction involves interstate commerce, the Federal Arbitration Act applies as a matter of law.

Respondents Peter T. Phillips and Summar C. Phillips (the "Phillipses") argue that the Purchase and Sale Agreement (the "Purchase Agreement"), which incorporates the terms of the John Wieland Homes and Neighborhoods 5-20 Extended Warranty program (the "Warranty") (collectively, the "Agreement"), is not government by the Federal Arbitration Act ("FAA") because the Agreement purportedly involves the sale of a home and not the construction of a home. As explained in section II. *infra*, the Agreement was not merely for the sale of a completed home, but included numerous elements relating to the construction of the home. However, even if the Phillipses' characterization of the Agreement was correct, clearly established South Carolina law provides that the Agreement is governed by the FAA because it expressly provides that the Purchase Agreement and Warranty are transactions involving interstate commerce and that the Purchase Agreement and Warranty are governed by the FAA: ***"As the purchase agreement with Wieland and this warranty are transactions involving interstate commerce, arbitrations shall be governed by the U.S. Arbitration Act. . . ."*** **(R.p.200, §V, ¶ O)** (double emphasis added).

"The construction of a clear and unambiguous contract presents a question of law for the court." U.S. Bank Trust Nat. Ass'n v. Bell, 385 S.C. 364, 379, 684 S.E.2d 199, 207 (Ct. App. 2009). An appellate court may decide questions of law "with no particular deference to the lower court." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 411, 526 S.E.2d 716, 718-19 (2000).

The Supreme Court of South Carolina has held that a contractual provision that a particular agreement involves interstate commerce such that it is governed by the FAA—like the

provision quoted above in the Agreement between Appellant John Wieland Homes and Neighborhoods of the Carolinas, Inc. ("John Wieland Homes") and the Phillipses—is enforceable. See Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 539, 542 S.E.2d 360, 363-64 (2001). Specifically, in Munoz, the Court held that "the arbitration agreement, which applies to this contract and the relationships which result from this contract, ***provides it shall be governed by the FAA . . . [and] . . . [a]rbitration agreements, like other contracts, are enforceable in accordance with their terms***." Id. at 539, 542 S.E.2d at 363-64 (internal quotation marks omitted; double emphasis added) (citing Volt Info. Sciences, Inc. v. Bd. of Trustees of Leland, 489 U.S. 468, 478 (1989)). Moreover, the Supreme Court of South Carolina recently reiterated this holding in Cape Romain Contractors, Inc. v. Wando E., LLC, 405 S.C. 115, 126, 747 S.E.2d 461, 466 (2013), by parenthetically citing to this ruling in Munoz.

Nevertheless, the Phillipses, mistakenly relying on Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 458, 730 S.E.2d 312, 318 (2012), argue that the Agreement is *not* governed by the FAA because, according to the Phillipses, the Agreement only involves the sale of a completed home. In addition to ignoring the true nature of the transaction, as set for in section II. *infra*, this argument ignores the impact of Munoz and Cape Romain Contractors, which unequivocally emphasize that the FAA governs an agreement that states that the transaction involves interstate commerce. The Phillipses argue that Munoz is distinguishable, because in that case, after deciding that the agreement that the FAA applied was enforceable on its terms, the Court mentioned some ways in which the contract at issue involved interstate commerce. See Munoz, at 539, 542 S.E.2d at 364 (noting as "further" support for its holding that the contract at issue involved interstate commerce). However, the Court's opinion makes clear that the ways in which the contract actually involved interstate commerce were offered as *further* justification—

an additional affirming ground—for the Court's holding, not as a necessary part of its determination that the express terms of the contract in that case regarding application of the FAA controled:

> Here, the arbitration agreement, which applies to "this contract and the relationships which result from this contract," provides it shall be governed by the FAA. Arbitration agreements, like other contracts, are enforceable in accordance with their terms. Volt Info. Sciences, Inc. v. Bd. of Trustees of Leland Stanford Jr. Univ., 489 U.S. 468, 478, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989).
>
> ***Further***, the transaction in this case in fact involves interstate commerce.

Id., at 539, 542 S.E.2d at 363-64 (double emphasis added).

The Phillipses have not cited any precedent holding, contrary to Munoz, that a contract that provides that it shall be governed by the FAA is unenforceable in accordance with its terms. Furthermore, the Phillipses' reliance on Brentwood Homes is misplaced because this issue was not raised or addressed in the Brentwood Homes opinion. In fact, the Court in Brentwood Homes specifically noted that the contract at issue in that case provided that the South Carolina Uniform Arbitration Act governed: "The second page of the Agreement also contained the following statement: 'THIS CONTRACT IS SUBJECT TO MANDATORY BINDING ARBITRATION PURSUANT TO THE SOUTH CAROLINA or NORTH CAROLINA UNIFORM ARBITRATION ACT, WHICHEVER IS APPLICABLE.'" Brentwood Homes, at 451, 730 S.E.2d at 314. This alone makes Brentwood Homes distinguishable from the present case.

Based on the foregoing, the circuit court committed an error of law warranting reversal because the plain, unambiguous language of the Agreement states that the underlying transaction involves interstate commerce and that the FAA governs the transaction.

II. Respondents Peter T. Phillips and Summar C. Phillips, like the circuit court, mistakenly ignore the Addenda to the Purchase Agreement, including the customization specifications applicable to the construction of the Phillipses' house, which unambiguously involve interstate commerce. For this alternative reason, the FAA governs, as a matter of law.

Not only did the Phillipses and John Wieland Homes expressly state that the Agreement would be governed by the FAA, but the Agreement also unambiguously involved the construction and customization of the subject home. Accordingly, as a matter of law, the Agreement includes transactions involving interstate commerce, and the FAA applies.

Appellate courts in South Carolina have consistently held that a contract involving the construction of a residence, by its very nature, involves interstate commerce. For instance, in Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 458, 730 S.E.2d 312, 318, n. 8 (2012), the Supreme Court of South Carolina held that a contract for the mere purchase of real property would not involve interstate commerce, but nevertheless emphasized "that had the Agreement actually encompassed the construction of the residence, it would have been subject to the FAA as our appellate courts have consistently recognized that contracts for construction are governed by the FAA." (citations omitted); see also Episcopal Hous. Corp. v. Fed. Ins. Co., 269 S.C. 631, 639, 239 S.E.2d 647, 651 (1977) (holding that the contract for the construction of an elderly housing project involved interstate commerce where materials, equipment, and supplies were produced and manufactured out-of-state); Circle S. Enterprises, Inc. v. Stanley Smith & Sons, 288 S.C. 428, 431-32, 343 S.E.2d 45, 47 (Ct. App. 1986) (finding a construction contract involved interstate commerce where the equipment, materials, and subcontractors at issue were furnished from out-of-state).

Relying on Brentwood Homes, the Phillipses argue that the Agreement did not involve interstate commerce because, according to the Phillipses, the Agreement only involved the purchase of a completed residence. This belies both the unambiguous language of the Agreement and the only evidence submitted as to the nature of the transaction, which establishes, as a matter of law, that the subject transaction involved interstate commerce.

In this respect, a comparison of the facts in the present case to those involved in Brentwood Homes is instructive. In Brentwood Homes, 398 S.C. at 458, 730 S.E.2d at 317, the Court held that the sale and purchase of residential real estate was a purely intrastate activity. In reaching its conclusion, the Court specifically noted that the contract in that case did *not* include customizations of the home: "Notably, the provisions of the Agreement providing for . . . 'Options,' and 'Color Selection,' are eliminated as 'N/A' and were not signed by Bradley." Id.

In this case, on the other hand, the parties contracted for the customizations which were noticeably absent in Brentwood Homes. Specifically, the parties agreed to the following customizations in various Addenda to the Agreement: (1) adding custom paint colors; (2) converting the patio and front walkway to oyster shell; (3) adding phone/cable to the bonus room over garage; (4) adding a dedicated receptacle for a wine cooler in butler's pantry area; (5) reframing of the stairs to accommodate hardwood treads on first flight of stairs to second floor; (6) constructing an additional parking pad to the drive; (7) adding additional patio space; (8) converting the entire house to 7 ¼ inch baseboards; and (9) several modifications related to wiring or prewiring for surround sound. **(R.pp.161-68).**

These customizations, which are incorporated into the Purchase Agreement, involve interstate commerce, as confirmed by the only evidence submitted to the circuit court on this issue—the affidavit of Dennis A. Black, the one-time Division Quality Control Manager for John

Wieland Homes. In fact, Black specifically states in his affidavit that the construction of the Phillipses' home "implicates interstate commerce." **(R.p.159, ¶¶ 1, 4).** The terms of the Addenda to the Purchase Agreement and Black's affidavit that the construction of the Phillipses' house involved interstate commerce unequivocally establish that the Agreement was governed by the FAA. See e.g., New Hope Missionary Baptist Church v. Paragon Bldrs., 379 S.C. 620, 626–27, 667 S.E.2d 1, 4 (Ct. App. 2008) ("[W]e find the trial court properly determined the Federal Arbitration Act . . . applies to the arbitration agreement in this matter since the parties did not contract to the contrary and the arbitration agreement pertains to a transaction involving interstate commerce due to the nature of the construction project . . . [the builder's] affidavit swearing the project will involve businesses and supplies from outside South Carolina.").

In an effort to discount the importance of the Addenda, the Phillipses ask this Court to take judicial notice of two specific terms of the contract at issue in Brentwood Homes, which were not addressed by the Court in the Brentwood Homes opinion. Because these provisions of the contract in Brentwood Homes were not addressed by the Court in that case, a hypothetical interpretation of them has no precedential value. See e.g., Hutto v. S. Farm Bureau Life Ins. Co., 259 S.C. 170, 173, 191 S.E.2d 7, 8-9 (1972) ("It is, of course, settled law that 'a case cannot be considered as a binding precedent on a legal point that was not argued in the case and not mentioned in the opinion.'") (quoting 20 Am.Jur.(2d), Courts, Sec. 190, p. 526 (1965)). Therefore, this Court should reject the Phillipses' argument asking it to review the record in Brentwood Homes and take judicial notice of aspects of the contract in that case that were not addressed anywhere in the Court's opinion.

The Phillipses also argue that under the terms of the Agreement they had no "real decision-making authority." This argument overlooks the numerous decisions they made, which

are memorialized in the Addenda above. Furthermore, this argument overlooks that in determining whether the FAA governs a particular agreement, an evaluation of a party's level of decision making authority under the contract is not dispositive—whether the contract involves interstate commerce is the relevant inquiry. See e.g., 9 U.S.C.A. § 2 ("A written provision in . . . a contract ***evidencing a transaction involving commerce*** to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable. . ." (double emphasis added)); see also e.g., Blanton v. Stathos, 351 S.C. 534, 540, 570 S.E.2d 565, 568 (Ct. App. 2002) ("The United States Supreme Court has held that the phrase 'involving commerce' is the same as 'affecting commerce,' which has been broadly interpreted to mean Congress intended to utilize its powers to regulate interstate commerce to its full extent." (citation omitted)). As explained in detail above, the Agreement in this case did in fact involve interstate commerce.

Based on the foregoing, the circuit court's decision that the Agreement did not encompass transactions involving interstate commerce is an error of law, warranting reversal. See Brentwood Homes, at 458, 730 S.E.2d at 318, n. 8 ("We emphasize that had the Agreement *actually encompassed the construction of the residence*, it would have been subject to the FAA as our appellate courts have consistently recognized that contracts for construction are governed by the FAA." (emphasis added)).

III. Respondents Peter T. Phillips and Summar C. Phillips incorrectly argue that the arbitration clause or the separate warranty provisions is/are unconscionable. In order to set aside an arbitration clause, the clause itself must be unconscionable. As a matter of law, the arbitration clause in this case is not unconscionable.

As an alternative argument, the Phillipses contend that the arbitration clause of the Agreement is unconscionable and unenforceable. The circuit court never ruled on this issue, so the Phillipses' argument enjoys no presumption of correctness and the Phillipses fail to show that

the arbitration clause is unconscionable. "The validity of an arbitration clause which is attacked on the grounds of unconscionability raises a question of law." Lackey v. Green Tree Fin. Corp., 330 S.C. 388, 393-94, 498 S.E.2d 898, 901 (Ct. App. 1998). "Unconscionability is characterized by the 'absence of meaningful choice on the part of one party due to one-sided contract provisions, *together with* terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them.'" Id. at 395, 498 S.E.2d at 902 (emphasis in original) (citations omitted).

"In analyzing claims of unconscionability in the context of arbitration agreements, the Fourth Circuit [Court of Appeals] has instructed courts to focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker." Smith v. D.R. Horton, Inc., 403 S.C. 10, 14, 742 S.E.2d 37, 40 (Ct. App. 2013) (quoting Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 25, 644 S.E.2d 663, 668 (2007). "Our supreme court adopted the Fourth Circuit's view, and noted '[i]t is under this general rubric that we determine whether a contract provision is unconscionable. . . .'" Id. (quoting Simpson, 373 S.C. at 25, 644 S.E.2d at 669 (additional citation omitted)). "Unconscionability is characterized by the absence of meaningful choice on the part of one party due to one-sided contract provisions, *together with* terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them." Lackey, at 395, 498 S.E.2d at 902 (emphasis in original) (citation omitted). "Thus, unconscionability is due to *both* an absence of meaningful choice and oppressive, one-sided terms." York v. Dodgeland of Columbia, Inc., 406 S.C. 67, 85, 749 S.E.2d 139, 148 (Ct. App. 2013) (citation omitted) (emphasis in original). Here, the Phillipses have failed to show either.

a. The Phillipses fail to point to anything in the record showing that there was an absence of meaningful choice on their part due to one-sided contract provisions.

"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 v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 25, 644 S.E.2d 663, 669 (2007) (internal citations omitted); York, at 86, 749 S.E.2d at 148-49.

In arguing that they lacked meaningful choice in entering into the Agreement, the Phillipses make the following claims: they lost the right to a jury trial, the purchase price of the home was not a substantial business concern of John Wieland Homes, and there was a significant disparity in the bargaining power between the Phillipses and John Wieland Homes. **Res. Brief at 9**. The Phillipses have not included any citations to the record supporting these assertions. The Phillipses ostensibly ask the Court to make the assumption that the purchase price of the home was not a substantial business concern of John Wieland Homes, and the further assumption that there was a significant disparity in the bargaining power between the Phillipses and John Wieland Homes. Furthermore, they do not even address several other factors that the court would need to consider before it could rule in their favor, such as "the nature of the injuries suffered by the plaintiff;" "the parties' relative sophistication;" "whether there is an element of surprise in the inclusion of the challenged clause"; and "the conspicuousness of the clause." See e.g., York, at 86, 749 S.E.2d at 148-49 (noting that courts should take into account the factors listed above in determining whether a contract was tainted by an absence of meaningful choice).

Therefore, because the Phillipses have failed to point to anything in the record showing that there was an absence of meaningful choice on their part, their argument that the arbitration

clause was unconscionable fails as a matter of law and the Court should reject this alternative sustaining ground argued by the Phillipses.

b. The Phillipses fail to advance any argument showing that the terms of the arbitration clause are so oppressive that no reasonable person would make them and no fair and honest person would accept them.

Assuming *arguendo* that the Phillipses were able to show an absence of meaningful choise, the Phillipses would also have to show that the terms of the arbitration agreement are offensive and one-sided in order to prevail on their defense that the arbitration clause was unconscionable.

A contract's terms are oppressive and one sided when the terms are "so oppressive that no reasonable person would make them and no fair and honest person would accept them." York, at 85, 749 S.E.2d at 148. The Phillipses do not point to anything in the *arbitration clause* as oppressive. Instead, they argue that the terms of the *Warranty* are so oppressive that no reasonable person would make them and no fair and honest person would accept them. See **Res. Brief at 9-10.** Each of the provisions of the Warranty cited by the Phillipses concerns the coverage provided by the Warranty not the arbitration clause. See **(R.p.198, ¶ E; R.p.192, 19, A; R.p.195, ¶ I; R.p.195, ¶ J, R.p.199, ¶ M.).**

The Phillipses argument also fails as a matter of law because they fail to cite to any oppressive or one-sided terms within the arbitration provision. "Under the FAA, an arbitration clause is separable from the contract in which it is embedded and the issue of its validity is distinct from the substantive validity of the contract as a whole." Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 540, 542 S.E.2d 360, 364 (2001); see also Hooters of Am., Inc. v. Phillips, 173 F.3d 933, 938 (4th Cir. 1999) ("In this case, the challenge goes to the validity of the arbitration agreement itself."). "[A] party cannot avoid arbitration through rescission of the entire

contract when there is no independent challenge to the arbitration clause." S.C. Pub. Serv. Auth. v. Great W. Coal (Kentucky), Inc., 312 S.C. 559, 562-63, 437 S.E.2d 22, 24 (1993). "The Arbitration Act establishes that, as a matter of federal law, 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." Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp., 460 U.S. 1, 24-25 (1983).

Furthermore, the Phillipses argument fails as a matter of law because an arbitration clause in a limited warranty is not *per se* unconscionable. The Phillipses compare the terms of the Warranty, which outline the coverage offered under the Warranty, to the terms of the arbitration clause that were found to be oppressive in York. **Res. Brief at 9-10**. The terms of the arbitration clause in York restricted the amount of damages recoverable under any theory in an arbitration proceeding. See York, at 88, 749 S.E.2d at 150 (holing that a provision in an arbitration agreement banning an arbitrator from awarding statutory remedies provided for in the South Carolina Unfair Trade Practices Act and the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act was an oppressive term). The Phillipses' argument that the terms of the Warranty limiting its coverage are oppressive is not supported by any case law—the terms the Phillipses point to are neither part of the arbitration clause, nor oppresive.

Respondents Peter T. Phillips and Summar C. Phillips have failed to show either a lack of meaningful choice or oppressive and one-sided terms within the arbitration clause itself. Consequently, to the extent this Court sees it necessary to address Respondents' alternative ground, the ground should be rejected as unsupported by any evidence.

IV. Respondents Peter T. Phillips and Summar C. Phillips' failure to substantively respond to the remaining issues in John Wieland Homes' opening brief should amount to a concession that the circuit court ruled incorrectly as to these issues.

A respondent's failure, in the respondent's brief, to address an issue raised in the appellant's brief may amount to a concession as to that issue. See First Union Nat. Bank v. FCVS Commc'ns, 321 S.C. 496, 502, 469 S.E.2d 613, 617 (Ct. App. 1996) rev'd in part on other grounds, 328 S.C. 290, 494 S.E.2d 429 (1997) ("We note initially First Union's failure to respond to this argument in its brief could amount to a concession that the trial court ruled incorrectly.").

In its brief, the Phillipes assert that (1) the Agreement did not involve interstate commerce and, therefore, the Agreement falls outside the scope of the FAA and (2) the arbitration clause is unconscionable. While John Wieland Homes additionally contends in its opening brief that the scope of the arbitration provision in the Agreement encompasses every claim raised by the Phillipses and that any claims against John Wieland's trade contractors should also be subject to arbitration, the Phillipses advance no arguments in opposition to these contentions, other than to say that the claims should be handled in a consistent manner. Consequently, the Phillipses' failure to respond to these arguments should amount to a concession as to their validity.

CONCLUSION

For the foregoing reasons, as well as the reasons stated in the opening brief of John Wieland Homes, the circuit court's orders refusing to compel arbitration should be **REVERSED,** and this Court should remand this case to the circuit court for the entry of an order compelling the parties to arbitrate all claims involved in this case.

Respectfully Submitted,

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April 29, 2014
Charleston, South Carolina

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Civil Action No. 2012-CP-10-03870
Appellate Case No. 2013-001449

Peter T. Phillips and Summar C. Phillips ..... Respondents,

v.

Omega Flex, Inc., John Wieland Homes and Neighborhoods of the Carolinas, Inc., AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., ... Defendants,

Of Whom John Wieland Homes and Neighborhoods of the Carolinas, Inc. is the .....Appellant,

And Omega Flex, Inc, AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., are.....Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Reply Brief of Appellant John Wieland Homes and Neighborhoods of the Carolinas, Inc. in Reply Respondents Peter T. Phillips and Summar C. Phillips enclosed herewith, comply with Rule 211(b), SCACR.

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Of Whom John Wieland Homes and Neighborhoods of the Carolinas, Inc. is the .....Appellant,

And Omega Flex, Inc, AAA Plumbing, Fogel Services, Inc., Charleston LEC, Inc., are.....Respondents.

PROOF OF SERVICE

I hereby certify that true and correct copies of Final Brief of Appellant John Wieland Homes and Neighborhoods of the Carolinas, Inc.; Final Reply Brief of Appellant John Wieland Homes and Neighborhoods of the Carolinas, Inc. in Reply to Respondent Omega Flex, Inc.; and Final Reply Brief of Appellant John Wieland Homes and Neighborhoods of the Carolinas, Inc. in Reply Respondents Peter T. Phillips and Summar C. Phillips were served on this 29th day of September, 2014 via U.S. mail, postage prepaid, upon the following counsel of record:

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