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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Case No. 2010-CP-10-10355

R. Markley Dennis, Circuit Court Judge

JAN 20 2016

SC Court of Appeals

Appellate Case No.: 2015-001238

D.R. Horton, Inc. f/k/a C. Richard Dobson Builders, Inc. Appellant,

v.

Builders FirstSource - Southeast Group, LLC, and Builders FirstSource, Inc., and Joseph Naccari, Individually and d/b/a Master Framers..... Defendants,

Of whom Builders FirstSource - Southeast Group, LLC, and Builders FirstSource, Inc., are the Respondents.

Joseph Naccari, Individually, and d/b/a Master Framers..... Third-Party Plaintiff,

v.

Jaime Arreguin d/b/a Maya Construction Third Party Defendant.

RECORD ON APPEAL
Volume I

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APPEAL FROM CHARLESTON COUNTY
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D.R. Horton, Inc. f/k/a C. Richard Dobson Builders, Inc. Plaintiff/Appellant,

v.

Builders FirstSource - Southeast Group, LLC, and
Builders FirstSource, Inc. Defendants/Respondent,

Joseph Naccari, Individually, and d/b/a Masterframers. Defendant/Third-Party Plaintiff,

v.

Jaime Arreguin d/b/a Maya Construction Third Party Defendant.

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Volume I

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Case No. 2010-CP-10-10355
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Builders FirstSource - Southeast Group, LLC, and
Builders FirstSource, Inc.. Defendants/Respondent,

Joseph Naccari, Individually, and d/b/a Masterframers. Defendant/Third-Party Plaintiff,

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Jaime Arreguin d/b/a Maya Construction Third Party Defendant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C.A. NO.: 2010-CP-10-10355
D.R. HORTON, INC. d/b/a C. RICHARD	)	
DOBSON BUILDERS, INC.,	)	
	)	
Plaintiff,	)	
	)	
-versus-	)	AMENDED COMPLAINT
	)	(Non-Jury)
BUILDERS FIRSTSOURCE -	)	
SOUTHEAST GROUP, LLC;	)	
BUILDERS FIRSTSOURCE, INC., and	)	
JOSEPH NACCARI, INDIVIDUALLY,	)	
AND D/B/A MASTERSFRAMERS,	)	
	)	
Defendants.	)	

COMES NOW, the Plaintiff, D.R. Horton, Inc. (hereinafter referred to as "DRH"), by and through its undersigned counsel, would show unto this Honorable Court as follows:

1. Defendants, Builders FirstSource Southeast Group, LLC and Builders FirstSource Holdings, Inc. (hereinafter collectively referred to as "Builders FirstSource") are, upon information and belief, corporations registered in a state other than the State of Carolina, and are doing business as a South Carolina Company, and whose principal place of business are, upon information and belief, located in Charleston County, South Carolina.
2. **Defendants, Joseph Naccari, individually, and d/b/a MastersFramers ("Naccari"), are, upon information and belief, individuals or companies operating under the laws of the State of South Carolina, doing business in Charleston and Berkeley counties.**
3. The Court has jurisdiction over the parties and subject matter hereto as the allegations out of which this action arises all involve a residence located in the County of Berkeley, State of South Carolina.

4. In 2001, DRH undertook contractual duties for the construction of a single family dwelling located at 403 Milner Court, Charleston, South Carolina 29492 (the "Residence").
5. Builders FirstSource, contracted with DRH to perform certain aspects of the construction of the Residence in compliance with the terms of their contracts.
6. **Naccari contracted with Builders FirstSource to perform framing, among other things, at the Residence in compliance with the terms of their contracts at the Residence.**
7. Patricia Clark (hereinafter referred to as "Clark") filed a Complaint against DRH, a copy of which attached hereto as Exhibit "A" and incorporated by reference, which alleges the construction of the Residence was performed improperly as is more specifically set forth in Exhibit "A".
8. Clark alleged that she suffered significant damages resulting from the allegedly defective work on the Residence which Builders FirstSource was responsible for under their contract with DRH **and Naccari was responsible for under their contract with Builders FirstSource.**
9. DRH satisfied a judgment entered on February 26, 2010, in the amount of One Hundred Fifty Thousand and No/100ths (\$150,000.00) on March 5, 2010, a copy of which is attached hereto as Exhibit "B" and incorporated by reference, which extinguishes the common liability of DRH, and Builders FirstSource.
10. Builders FirstSource is responsible, in whole or in part, for the claims asserted against DRH by Clark.
11. **Naccari is responsible, in whole or in part, for the claims asserted against DRH by Clark.**

FOR A FIRST CAUSE OF ACTION
(Contribution Under S.C. Code Ann. § 15-38-10 *et. seq.*)

12. DRH realleges and reavers Paragraphs 1 through 11 above as if fully stated verbatim herein.
13. DRH and Builders FirstSource are joint tortfeasors and share in the common liability to Clark, and DRH was exposed to liability to Clark as a result of the acts and/or omissions of Builders FirstSource.
14. The common liability to DRH caused by the construction defects of Builders FirstSource caused structural issues and damage to components of the Residence that were not installed by Builders FirstSource.
15. DRH was forced to incur costs and expenses in order to defend itself in the Clark litigation and to protect its interests, and satisfy a judgment entered against it in the amount of \$150,000.00 in order to extinguish the liability of DRH to Clark and to extinguish the liability of Builders FirstSource.
16. Builders FirstSource's acts and/or omissions caused fifty percent or greater of the damages awarded to Clark.
17. DRH is informed and believes that it is entitled to a judgment against Builders FirstSource in the amount of that DRH paid in excess of its pro rata share of liability to Clark pursuant to §15-38-10, *et seq.*, S.C. Code Ann. (Supp. 1998).

FOR A SECOND CAUSE OF ACTION
(Contractual Indemnification)

18. DRH realleges and reavers Paragraphs 1 through 17 above as if set forth herein.
19. Builders First Source was under a duty by virtue of their contracts with DRH and/or duties

undertaken on the project site as set forth above to comply with the project plans and specifications, applicable building codes, industry standards, and manufacturer's instructions.

20. Clark filed a Complaint against DRH, a copy of which attached hereto as Exhibit "A" and incorporated by reference, which alleges the construction of the Residence was performed improperly as is more specifically set forth in Exhibit "A".

21. Clark alleged that she suffered significant damages resulting from the allegedly defective work on the Residence which Builders FirstSource was responsible for under their contract with DRH.

22. DRH satisfied a judgment entered on February 26, 2010, in the amount of One Hundred Fifty Thousand and No/100ths (\$150,000.00) on March 5, 2010, a copy of which is attached hereto as Exhibit "B" and incorporated by reference, which extinguishes the common liability of DRH, and Builders FirstSource.

23. Builders FirstSource is responsible, in whole or in part, for the claims asserted against DRH by Clark.

24. Builders FirstSource was negligent and/or careless in failing to properly carry out their tasks or by improperly instructing others to carry out their tasks and by failing to employ practices and methods of construction in compliance with project plans and specifications, applicable building codes, industry standards, or manufacturers' instructions.

25. DRH is entitled to indemnity from these Defendants for costs and expenses incurred in defending the Clark action, and for the amounts paid to Clark as a result of the acts or omission by Builders FirstSource.

FOR A THIRD CAUSE OF ACTION

(Negligence, Gross Negligence, Carelessness, Recklessness, Willfulness and Wantonness)

26. DRH realleges and reavers Paragraphs 1 through 25 above as if set forth herein.
27. The Defendant, Naccari, was negligent, grossly negligent, careless, reckless, willful, and wanton in performing its scope of work raising out of the contract between Builders FirstSource and Naccari, including, but not limited to installing of framing in accordance with applicable building code(s), and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects, deficiencies, and damage, which will need to be or have been corrected, repaired and/or replaced.
28. That as a direct and proximate result of the negligence, gross negligence, carelessness, willfulness, wantonness of Naccari, Clark has suffered significant damages in the amount of One Hundred Fifty Thousand and No/100ths (\$150,000.00).
29. Naccari is responsible, in whole or in part, for the claims asserted against DRH by Clark.
30. DRH is entitled to damages from Naccari for costs and expenses incurred in defending the Clark action, for the amounts paid to Clark as a result of the acts or omission by Naccari.

WHEREFORE, DRH, prays that the Court inquire into the above-referenced matter and, to the extent the principals of law and equity allow, award:

- (1) DRH judgment against Builders FirstSource **and Naccari** in the amount of DRH's satisfaction of the judgment to Clark which extinguished the common liability of DRH and Builders FirstSource, and exceeded DRH's pro rata share plus prejudgment

interest;

- (2) DRH the costs incurred in defending the Clark action, including reasonable attorneys' fees; and
- (3) DRH other and further relief as the Court deems just and proper.

Dated this 13 day of July 2012.

Respectfully submitted,

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EXHIBIT “A”

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

PATRICIA CLARK,

Plaintiff,

v.

D.R. HORTON, INC.,

Defendants.

IN THE COURT OF
COMMON PLEAS

CASE NO.: 2008-CP-08-1633

SUMMONS

(Jury Trial Demanded)

2008 JUN 12 PM 4:16
CLERK OF COURT
BERKELEY COUNTY, SC

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at 864 Lowcountry Blvd., Ste. A, Mt. Pleasant, South Carolina, 29465, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Segui Law Firm, LLC

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Attorneys for Plaintiffs

Charleston, South Carolina

Dated: 6/9, 2008

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

PATRICIA CLARK,

Plaintiff,

v.

D.R. HORTON, INC.,

Defendants.

IN THE COURT OF
COMMON PLEAS

CASE NO.: 2008-CP-08-1

COMPLAINT

(Jury Trial Demanded)

2008 JUN 12 PM 4:15
FILED
CLERK OF COURT
BERKELEY COUNTY, SC

The Plaintiffs above named, complaining of the Defendants above named, would allege and show as follows:

PARTIES

1. The Plaintiff is a citizen and resident of the County of Berkeley, State of South Carolina and at all times hereinafter mentioned, own the residence located at 403 Milner Court on Daniel Island, South Carolina.

2. That, upon information and belief, Defendant, D.R. Horton, Inc., is a corporation organized in the State of South Carolina conducting business in Berkeley County, State of South Carolina and at all times relevant hereto was engaged in the design, development, construction and/or repair of residential housing and specifically, constructed and/or repaired the Plaintiff's residence located at 403 Milner Court on Daniel Island, South Carolina.

JURISDICTION

3. The Court has jurisdiction over the parties and subject matters hereto and that the allegations out of which this action arises all involve the residence of the Plaintiff located in the County of Berkeley, State of South Carolina.

FACTUAL BACKGROUND

4. That the Defendant, D.R. Horton, Inc., designed, developed and constructed the residence located at 403 Milner Court on Daniel Island, South Carolina.

5. That the Plaintiff purchased the home from the Defendant, D.R. Horton, Inc., on or about July 2002, and became aware of defects and deficiencies that include but are not limited to the installation of the siding and other construction deficiencies that D.R. Horton, Inc., has attempted to repair on numerous occasions.

6. That as a result of the various defects and deficiencies relative to the construction of this home, the Plaintiff has been damaged and will be required to expend large sums of money to repair, correct and replace various parts and components of the residence and reconstruct major portions of the residence; have been exposed to and will be subject to loss of use, enjoyment and depreciation of the value of her property.

FOR A FIRST CAUSE OF ACTION (Negligence) (As To D.R. Horton, Inc.)

7. Each and every allegation contained in Paragraphs 1 through 6 above are incorporated herein by express reference as though fully set forth.

8. At all times material hereto, the Defendant, D.R. Horton, Inc., by and through its agents, servants and employees undertook and were under a duty to design, develop, construct and/or repair the residence and to provide materials and services in accordance with applicable building codes, manufacturers' recommendations and in conformance with accepted construction and industry standards.

9. The Defendant, D.R. Horton, Inc., was negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, remodeling, developing, designing, supervising and inspecting the subject residence and in failing to construct and/or repair said residence in accordance with applicable building codes, manufacturers' recommendations and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the residence, which will need to be or have been corrected, repaired and/or replaced. Such negligence, gross negligence, carelessness, recklessness, willfulness and wantonness include but are not limited to the following particulars, to wit:

- a. In failing to use due care in the design, development, construction, repair and remodeling of the subject residence;
- b. In failing to adequately supervise the work and construction, repair and remodeling of the subject residence;
- c. In failing to hire competent subcontractors or specialty contractors;
- d. In failing to adequately and competently supervise and/or train said subcontractors or specialty contractors;
- e. In constructing, repairing and remodeling subject residence in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices.
- f. In improperly installing siding and exterior wall system;
- g. In failing to properly install the rough opening flashing and other flashing;
- h. In failing to properly install the moisture barrier;
- i. In installing a home exterior which fails to provide a sufficient barrier against the intrusion of water into the wall system and adequate avenue for exit of water that gets into the wall system;
- j. In constructing the subject residence in such a manner that water entered the dwelling;
- k. In improperly installing kick-out flashings;
- l. In failing to properly install the framing;
- m. In improperly installing the slab and driveway;
- n. In improperly installing the roof and shingles;
- o. In improperly installing the gas hot water heater;
- p. Other deficiencies or failures as will be proven at trial.

10. That as a direct and proximate result of the negligence, gross negligence, carelessness, willfulness and wantonness of the Defendant, D.R. Horton, Inc., the Plaintiff has suffered actual, direct, incidental, consequential and special damages including, but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the residence to make it safe and habitable. Additionally, Plaintiff has been injured and otherwise damaged in that structural and framing deficiencies have caused damage to the components of the home and excessive water and moisture exists and continues to exist and moisture has intruded and continues to intrude into the subject residence causing rot, deterioration and other damages to the finish and structural elements of Plaintiff's home. All of which will require the Plaintiff to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of the property as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)
(As to D.R. Horton, Inc.)

11. Each and every allegation contained in Paragraphs 1 through 10 above are incorporated herein by express reference as though fully set forth.

12. That at all times herein, the Plaintiffs entered into a contract with the Defendant D.R. Horton, Inc., for the design, development, construction and purchase of her residence located at 403 Milner Court on Daniel Island, South Carolina.

13. That at all relevant times herein, the Defendant, D.R. Horton, Inc., by and through its agents, servants and employees had an obligation and duty to construct

and/or repair the residence and to provide materials and services in accordance with the terms and conditions of the contract, applicable building codes, manufacturers' recommendations and in conformance with accepted construction and industry standards.

14. That the Defendant, D.R. Horton, Inc., breached the contract with the Plaintiff by failing to develop, construct and/or repair said residence in accordance with the terms and conditions of the contract, applicable building codes, manufacturers' recommendations and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the residence which will need to be or have been corrected, repaired and/or replaced and are in breach of the aforesaid contract. Such breach includes but is not limited to the following particulars, to wit:

- a. In failing to use due care in the design, development, construction, repair and remodeling of the subject residence;
- b. In failing to adequately supervise the work and construction, repair and remodeling of the subject residence;
- c. In failing to hire competent subcontractors or specialty contractors;
- d. In failing to adequately and competently supervise and/or train said subcontractors or specialty contractors;
- e. In constructing, repairing and remodeling subject residence in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices.
- f. In improperly installing siding and exterior wall system;
- g. In failing to properly install the rough opening flashing and other flashing;
- h. In failing to properly install the moisture barrier;
- i. In installing a home exterior which fails to provide a sufficient barrier against the intrusion of water into the wall system and adequate avenue for exit of water that gets into the wall system;
- j. In constructing the subject residence in such a manner that water entered the dwelling;
- k. In improperly installing kick-out flashings;
- l. In failing to properly install the framing;
- m. In improperly installing the slab and driveway;
- n. In improperly installing the roof and shingles;

- a. In improperly installing the gas hot water heater;
- p. Other deficiencies or failures as will be proven at trial.

15. That as a direct and proximate result of the Defendant, D. R. Horton, Inc.'s, breach of contract with the Plaintiff, the Plaintiff has suffered actual, direct, incidental, consequential and special damages including, but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and her having to spend substantial sums of money in order to renovate, correct, repair and restore her residence to make it safe and habitable. Additionally, Plaintiff has been injured and otherwise damaged in that structural and framing deficiencies have caused damage to the components of the home and excessive water and moisture exists and continues to exist and moisture has intruded and continues to intrude into the subject residence causing rot, deterioration and other damages to the finish and structural elements of Plaintiff's home. All of which has or will require the Plaintiff to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of her property as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

FOR A THIRD CAUSE OF ACTION

(Breach of Warranty of Habitability, Breach of Warranty of Workmanlike Services,
Breach of Warranty for Fitness for a Particular Purpose, Breach of Warranty of
Merchantability and Breach of Warranty Against Latent Defects)
(As To D.R. Horton, Inc.)

16. Each and every allegation contained in Paragraphs 1 through 15 above are incorporated herein by express reference as though fully set forth.

17. That Defendants, D.R. Horton, Inc., implicitly and/or expressly warranted that the subject residence and its components would be habitable and fit for its intended use as a single family residence and home, that said residence and its

components would be sold, designed, manufactured, constructed, installed, repaired and remodeled in a fit, serviceable, good and workmanlike fashion in accordance with the applicable building codes, product specifications, accepted building component manufacturing standards and accepted construction industry standards applicable thereto and that the subject residence and/or the manufactured components installed into and/or onto said residence would be merchantable, free from latent defects and fit for the particular purpose for which it was sold.

18. That Defendant, D.R. Horton, Inc., breached said warranties by designing, developing, manufacturing, selling, constructing, remodeling or repairing subject residence and/or the manufactured components installed into and/or onto said residence in such manner as to be in violation of applicable building codes, standard building practices, relevant product specifications, accepted building component manufacturing standards and accepted construction industry standards and practices

19. As a direct and proximate result of the Defendants, D.R. Horton, Inc.'s, breach of these warranties, the Plaintiff has suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the residence to make it safe and habitable. Additionally, Plaintiff has been injured and otherwise damaged in that structural and framing deficiencies have caused damage to the components of the home and excessive water and moisture exists and continues to exist and excessive water and moisture exists and continues to exist and moisture has intruded and continues to intrude into the subject residence causing rot,

deterioration and other damages to the finish and structural elements of Plaintiff's home. All of which has or will require the Plaintiff to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of the property as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

FOR A FOURTH CAUSE OF ACTION
(Unfair Trade Practices)
(As To D.R. Horton, Inc.)

20. Each and every allegation contained in Paragraphs 1 through 19 above are incorporated herein by express reference as though fully set forth.

21. The Defendant, D.R. Horton, Inc., is a "person" within the meaning of South Carolina Code § 39-5-10(a), and the Defendant by its actions in designing, developing, manufacturing, selling, constructing, remodeling or repairing subject residence and/or the manufactured components installed into and/or onto said residence are engaged in commerce within the meaning of South Carolina Code §29-5-10(b).

22. The Defendant by its action(s) described herein above, constitute unfair and deceptive practices within the meaning of South Carolina Code §39-5-20(a).

23. The Defendant's act(s) is capable of repetition and, upon information and belief, have been repeated.

24. The Defendant's conduct affects the public interest of the people of South Carolina.

25. The Defendant knew or should have reasonably known, that its conduct violated the Unfair Trade Practices Act. As a direct, foreseeable and proximate result of the Defendants' unfair and deceptive practices, the Plaintiff has suffered actual, direct, incidental, consequential and special damages, including but not limited to, the

expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the residence to make it safe and habitable. Additionally, Plaintiff has been injured and otherwise damaged in that structural and framing deficiencies have caused damage to the components of the home and excessive water and moisture exists and continues to exist and excessive water and moisture exists and continues to exist and moisture has intruded and continues to intrude into the subject residence causing rot, deterioration and other damages to the finish and structural elements of Plaintiff's home. All of which will require the Plaintiff to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of the property as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

WHEREFORE, the Plaintiff prays for judgment against the Defendant, D.R. Horton, Inc., in a reasonable amount of actual, punitive and treble damages to be determined by the jury; for the attorneys fees and cost of this action; for a prejudgment or post-judgment interest on Plaintiff's damages; and for such other and further relief as this Court may deem just and proper.

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Charleston, South Carolina
Dated: 6/9, 2008

EXHIBIT “B”

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Patricia Clark

Plaintiff,

v.

D.R. Horton, Inc.,

Defendant.

SATISFACTION OF JUDGMENT

C.A. No.: 2008-CP-08-1633

FILED
2010 MAR 24 AM 9:59
MARY E. STONER
CLERK OF COURT
BERKELEY COUNTY, SC

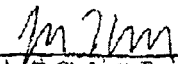
TO: BERKELEY COUNTY CLERK OF COURT

WHEREAS, on June 12, 2008, Plaintiff Patricia Clark ("Plaintiff") instituted an action against Defendant D.R. Horton, Inc. ("Defendant"), bearing Civil Action No. 2008-CP-08-1633 and,

WHEREAS, on February 26, 2010, judgment was filed with the Berkeley County Clerk of Court and entered on Plaintiff's behalf against Defendant in the amount of One Hundred Fifty Thousand and No/100ths (\$150,000.00) Dollars; and,

WHEREAS, this judgment was SATISFIED AND PAID IN FULL on this 5 day of March, 2010.

NOW, THEREFORE, Plaintiff instructs the Office of the Clerk of Court for Berkeley County to mark the aforesaid judgment "SATISFIED" and cancelled of record. This Satisfaction of Judgment completely releases the aforesaid judgment, including all principal, interest, post-judgment interest, and court costs arising thereby.


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Date: 3/15/10

Philip W. Segal, Jr.
for JLM

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Date: 3/15/10

Attorneys for Plaintiff,
Patricia Clark

8127031.1 (DGLETR2E)

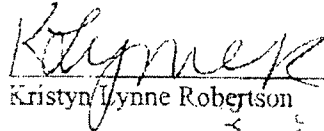
CERTIFICATE OF SERVICE

The undersigned employee of WALL TEMPLETON & HALDRUP, P.A. hereby certifies that on this 13 day of July 2012 she served a copy of **AMENDED SUMMONS AND COMPLAINT** by placing a copy in a postpaid envelope for collection and processing for mailing, following this business's ordinary practice, with which she is readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited with the United States Postal Service in the ordinary course of business and addressed to the persons hereinafter named, at the places and addresses stated below, which are the last known address, in Charleston, South Carolina:

ADDRESSEE(S)

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Kernodle, Root & Coleman
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Post Office Box 13897
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**ATTORNEYS FOR BUILDERS
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INC.**

David S. Cobb
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Charleston, South Carolina 29401
**ATTORNEYS FOR JOSEPH
NACCARRI, INDIVIDUALLY, AND
D/B/A MASTERSFRAMERS**


Kristyn Lynne Robertson

CLERK OF COURT
JUL 13 2012

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FILED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A NO.: 2010-CP-10-10355
D.R. HORTON, INC. f/k/a C. RICHARD	)	
DOBSON BUILDERS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
BUILDERS FIRSTSOURCE -	)	BUILDERS FIRSTSOURCE -
SOUTHEAST GROUP, LLC; and	)	SOUTHEAST GROUP, LLC and
BUILDERS FIRSTSOURCE, INC., and	)	BUILDERS FIRSTSOURCE, INC.'S
JOSEPH NACCARI, INDIVIDUALLY	)	ANSWER TO PLAINTIFF'S
AND D/B/A MASTERFRAMERS	)	AMENDED COMPLAINT
	)	WITH CROSS-CLAIMS AGAINST
	)	JOSEPH NACCARI, INDIVIDUALLY
	)	AND D/B/A MASTERFRAMERS
	)	
Defendants.	)	(Jury Trial Requested)

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 JUSTICE OF COURT
 ARMSTRONG
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Defendants Builders FirstSource, Inc., making a special appearance, and Builders FirstSource – Southeast Group, LLC (together referred to herein as “BFS”), respond to Plaintiff’s Amended Complaint and assert Cross-Claims against Joseph Naccari individually and d/b/a MasterFramers (collectively “Naccari”) as follows:

1. As a preliminary matter, Builders FirstSource, Inc., is not a proper party in interest.
2. BFS denies each and every allegation of the Amended Complaint not hereinafter specifically admitted.

FOR A FIRST DEFENSE

3. As to the allegations of Paragraph 1 of the Complaint, BFS admits only that Builders FirstSource Southeast Group, LLC, and Builders FirstSource Holdings, Inc., are corporations registered in a state other than the State of South Carolina that are licensed to do business in South Carolina. BFS further notes that Builders FirstSource Holdings, Inc., is not a named party to this action. The remaining allegations of Paragraph 1 of the Amended Complaint

constitute conclusions of law to which BFS is neither required to admit nor deny; to the extent a response is required, BFS denies the same and demands strict proof thereof.

4. BFS admits the allegations of Paragraph 2, on information and belief.
5. The allegations of Paragraph 3 of the Amended Complaint constitute conclusions of law to which BFS is neither required to admit nor deny; to the extent a response is required, BFS admits that this action involves a residence located in Berkeley County, South Carolina.
6. BFS is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 4 of the Amended Complaint and therefore, denies the same and demands strict proof thereof.
7. BFS admits the allegations of Paragraph 5 of the Amended Complaint and further admits that it performed in accordance with any contractual obligations required of it.
8. BFS admits the allegations of Paragraph 6.
9. As to the allegations of Paragraph 7 of the Amended Complaint, BFS craves reference to the referenced Complaint filed by Patricia Clark, which speaks for itself and is the best evidence of the allegations made therein and denies any allegation of Paragraph 7 inconsistent therewith.
10. As to the allegations of Paragraph 8 of the Amended Complaint, BFS craves reference to the referenced Complaint filed by Patricia Clark, which speaks for itself and is the best evidence of the damages claimed therein and denies any allegation of Paragraph 8 regarding claimed damages inconsistent therewith. BFS further denies any responsibility or liability for the damages claimed by Ms. Clark.
11. As to the allegations of Paragraph 9 of the Amended Complaint, BFS craves reference to the Satisfaction of Judgment, which speaks for itself and is the best evidence of the information

therein and the consequences thereof and denies any allegations of Paragraph 9 of the Amended Complaint inconsistent therewith.

12. BFS denies the allegations of Paragraph 10 and 11 of the Amended Complaint, as stated as to it.

AS TO THE FIRST CAUSE OF ACTION
(Contribution Under S.C. Code Ann. § 15-38-10 *et. seq.*)

13. As to the allegations of Paragraph 12 of the Amended Complaint, BFS repeats and realleges, as if set forth verbatim herein, the responses set forth above.
14. BFS denies the allegations of Paragraphs 13, 14, 15, 16, and 17 of the Amended Complaint.

AS TO THE SECOND CAUSE OF ACTION
(Contractual Indemnification)

15. As to the allegations of Paragraph 18 of the Amended Complaint, BFS repeats and realleges, as if set forth verbatim herein, the responses set forth above.
16. As to the allegations of Paragraph 19 of the Amended Complaint, BFS craves reference to any contract it may have with Plaintiff, which speaks for itself and is the best evidence of any duties contained therein and denies any allegations of Paragraph 19 inconsistent therewith. Further, BFS states that it complied with project plans and specifications, applicable building codes, industry standards and manufacturer's instructions and denies any allegation or implication otherwise.
17. As to the allegations of Paragraph 20 of the Amended Complaint, BFS craves reference to the referenced Complaint filed by Patricia Clark, which speaks for itself and is the best evidence of the allegations made therein and denies any allegation of Paragraph 20 inconsistent therewith.

18. As to the allegations of Paragraph 21 of the Amended Complaint, BFS craves reference to the referenced Complaint filed by Patricia Clark, which speaks for itself and is the best evidence of the damages claimed therein and denies any allegation of Paragraph 21 regarding claimed damages inconsistent therewith. BFS further denies any responsibility or liability for the damages claimed by Ms. Clark.
19. As to the allegations of Paragraph 22 of the Amended Complaint, BFS craves reference to the Satisfaction of Judgment, which speaks for itself and is the best evidence of the information therein and the consequences thereof and denies any allegations of Paragraph 22 of the Amended Complaint inconsistent therewith.
20. BFS denies the allegations of Paragraphs 23, 24, and 25 of the Amended Complaint.

AS TO THE THIRD CAUSE OF ACTION

(Negligence, Gross Negligence, Carelessness, Recklessness, Willfulness, Wantonness)

21. As to the allegations of Paragraph 26 of the Amended Complaint, BFS repeats and realleges, as if set forth verbatim herein, the responses set forth above.
22. The allegations contained in Paragraphs 27 through 30 are directed toward another Defendant and thus require no response from BFS. To the extent a response is deemed required, BFS denies any fault or liability as to it.
23. BFS denies the allegations of the WHEREFORE clause following Paragraph 30 of the Amended Complaint and denies all liability to Plaintiff.

FOR A SECOND DEFENSE

(Improper Party Defendant)

24. Builders FirstSource, Inc., is not a proper party defendant to this action and should therefore be dismissed.

FOR A THIRD DEFENSE
(Failure to State a Claim)

25. Plaintiff has failed to state facts sufficient to constitute any cause of action against BFS. Thus, each of Plaintiff's causes of action should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE
(Acts of Others)

26. Upon information and belief, Plaintiff's damages, if any, were caused by the acts or omissions of third parties over whom BFS had no control.

FOR A FIFTH DEFENSE
(Comparative Negligence/Assumption of Risk)

27. Upon information and belief, Plaintiff's claims are barred or limited by the doctrines of comparative negligence and assumption of the risk.

FOR A SIXTH DEFENSE
(Indemnity)

28. Plaintiff's claims for indemnity may fail by operation of law.

FOR A SEVENTH DEFENSE
(Failure to Mitigate)

29. To the extent Plaintiff has breached its duty to mitigate its damages, it is barred from recovery against BFS.

FOR AN EIGHTH DEFENSE
(Misuse and Abuse of Work and Product)

30. To the extent the damages alleged by Plaintiff were caused by misuse and/or abuse of BFS's work or work product, and were not reasonably foreseeable by BFS, Plaintiff is barred from recovery against BFS.

FOR A NINTH DEFENSE
(Estoppel, Laches, Waiver)

31. Plaintiff's claims may be barred or limited by the doctrines of estoppel, laches, and/or waiver.

FOR A TENTH DEFENSE
(Intervening/Superseding Act(s))

32. Any damages sustained by Plaintiff, which are denied, were solely caused by the acts or omissions of parties or persons other than BFS, over whom BFS had no control, which acts or omissions constitute the intervening and/or superseding cause of Plaintiff's alleged damages, if any, which are denied, and bar Plaintiff's claims.

FOR AN ELEVENTH DEFENSE
(Affirmation)

33. BFS alleges that all actions taken by it were ratified and affirmed by Plaintiff and BFS pleads affirmation as a complete defense to Plaintiff's claims.

FOR A TWELFTH DEFENSE
(Standing)

34. Plaintiff lacks standing to bring certain claims against BFS.

FOR A THIRTEENTH DEFENSE
(Unclean Hands)

35. Plaintiff is barred from recovery by operation of the Unclean Hands doctrine.

FOR A FOURTEENTH DEFENSE
(Spoilation)

36. Upon information and belief, Plaintiff's right to recover damages from BFS is barred, in whole or in part, due to Plaintiff's spoilation of evidence.

FOR A FIFTEENTH DEFENSE
(Spearin Doctrine)

37. BFS performed its work in conformance with the applicable plans and specifications, and thus Plaintiff's claims are barred or limited by operation of the *Spearin* doctrine.

FOR A SIXTEENTH DEFENSE
(Economic Loss)

38. Upon information and belief, Plaintiff's right to recover damages from BFS is barred, in whole or in part, by operation of the economic loss doctrine.

FOR A SEVENTEENTH DEFENSE
(Warranty)

39. BFS specifically pleads and incorporates herein the terms of any limitations of remedy in any applicable warranty, if any, in bar of any recovery.

FOR AN EIGHTEENTH DEFENSE
(Notice)

40. If work performed and/or products supplied by BFS were defective, which is denied, failure to give reasonable notice is pled in bar of any recovery under a warranty claim or otherwise.

FOR AN ADDITIONAL DEFENSE
(Reservation/Non-Waiver and Adoption)

41. BFS specifically reserves any additional defenses, including affirmative defenses, as may be available or revealed to it during the course of its investigation and/or discovery in the case, and as are consistent with the South Carolina Rules of Civil Procedure. Further, BFS adopts by reference all defenses, including affirmative defenses, where relevant and consistent with BFS's position, as alleged by other defendants in this action.

FOR AN ADDITIONAL DEFENSE AND BY WAY OF
CROSS-CLAIM AGAINST NACCARI

42. BFS repeats its foregoing allegations, where consistent with the relief claimed herein.

43. During the times relevant hereto, BFS was operating under the laws of the State of South Carolina and was in the business of selling building materials, including installed sales.
44. Plaintiff has alleged various causes of action against BFS arising out of alleged defects in work and materials provided for property located at 403 Milner Court, Charleston, South Carolina (the "Subject Property.")
45. Naccari is an individual or company operating under the laws of the State of South Carolina, doing business in Charleston and Berkeley counties, and at all times relevant hereto performed framing, among other things, at the Subject Property.
46. This Court has jurisdiction over the parties hereto and the subject matter hereof.
47. Venue is proper in Charleston County.

FOR A FIRST CAUSE OF ACTION BY WAY OF
CROSS-CLAIM AGAINST NACCARI
(Contractual Indemnification)

48. BFS repeats its foregoing allegations, where consistent with the relief claimed herein.
49. BFS is informed and believes that at times material to the subject matter of Plaintiff's Amended Complaint, Defendant Naccari was a party to a Subcontractor Agreement with BFS, whereby Naccari agreed to indemnify, defend, and hold harmless BFS from claims such as those made by Plaintiff as relates to work of Naccari.
50. Plaintiff's claims against BFS relate to work performed and materials provided by Naccari, and as such BFS is entitled to be held harmless and indemnified, pursuant to the terms of Naccari's contract with BFS, for defense costs (including attorney fees), as well as any and all sums paid in settlement of Plaintiff's claims or pursuant to a verdict, order, judgment, or similar instrument, and for any such other liability as BFS might incur as a result of the work performed and materials provided by Naccari.

**FOR A SECOND CAUSE OF ACTION BY WAY OF
CROSS-CLAIM AGAINST NACCARI**
(Equitable Indemnification)

51. BFS repeats its foregoing allegations, where consistent with the relief claimed herein.
52. BFS relied upon Naccari to perform work and provide materials consistent with industry standards, in a workmanlike manner, and following the applicable building codes.
53. Plaintiff has named BFS as a party to this action, alleging, *inter alia*, defects related to work performed and materials supplied by Naccari.
54. As a result of the foregoing, BFS has been required to defend this action and incur attorneys' fees and costs and uncertain liability exposure.
55. If BFS is found liable on any ground related to defects in work performed and/or materials supplied by Naccari, the fault would lie entirely with Naccari, and BFS's liability would be secondary and passive.
56. In spite of the foregoing, BFS has nevertheless been involved in this litigation and forced to incur damages, including but not limited to attorneys' fees and costs and uncertain liability exposure.
57. A special relationship existed between BFS and Naccari.
58. BFS is therefore entitled to full indemnification from Naccari for any liability which may be imposed on BFS, or which it pays in settlement of Plaintiff's claims, which relates to any of Naccari's work and/or materials, as outlined above, including recovery of reasonable attorneys' fees and costs incurred in the defense of this lawsuit.

**FOR A THIRD CAUSE OF ACTION BY WAY OF
CROSS-CLAIM AGAINST NACCARI**
(Negligence)

59. BFS repeats its foregoing allegations, where consistent with the relief claimed herein.

60. Plaintiff has named BFS as a party to this action, alleging, *inter alia*, defects related to work performed and materials supplied by Naccari.
61. BFS contracted with Naccari to perform framing, install windows and doors, and install siding and trim, among other things, for the Subject Property.
62. While supplying labor and/or materials for use in the construction of the Subject Property, Naccari owed BFS a duty to exercise due care and to perform its work and supply materials in a manner consistent with, among other things, product specifications, industry standards, and codes requirements.
63. To the extent the allegations in Plaintiff's Amended Complaint, as relate to alleged defects in the work and/or materials of Naccari are proven true, then Naccari was negligent, grossly negligent, willful and wanton in the performance of its work and/or as to materials supplied, and BFS is therefore entitled to judgment against Naccari in the amount of any sums BFS pays Plaintiff pursuant to judgment, settlement, or otherwise, to include the costs associated with defending itself in this action, including attorney fees, as well as such other relief as the court may find proper.

FOR A FOURTH CAUSE OF ACTION BY WAY OF
CROSS-CLAIM AGAINST NACCARI
(Breach of Contract)

64. BFS repeats its foregoing allegations, where consistent with the relief claimed herein.
65. Plaintiff has named BFS as a party to this action, alleging, *inter alia*, defects related to work performed and materials supplied by Naccari.
66. BFS contracted with Naccari to perform framing, install windows and doors, and install siding and trim, among other things, for the Subject Property.

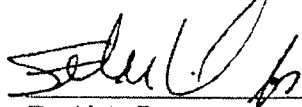
67. To the extent the allegations in Plaintiff's Amended Complaint, as relate to alleged defects in the work and/or materials of Naccari are proven true, then Naccari breached its contract with BFS, and BFS is therefore entitled to judgment against it in the amount of any sums BFS pays Plaintiff pursuant to judgment, settlement, or otherwise, to include the costs associated with defending itself in this action, including attorney fees, as well as such other relief as the court may find proper.

FOR A FIFTH CAUSE OF ACTION BY WAY OF
CROSS-CLAIM AGAINST NACCARI
(Breach of Warranties)

68. BFS repeats its foregoing allegations, where consistent with the relief claimed herein.
69. Plaintiff has named BFS as a party to this action, alleging, *inter alia*, defects related to work performed and materials supplied by Naccari.
70. BFS contracted with Naccari to perform framing, among other things, for the Subject Property.
71. Naccari expressly and/or impliedly warranted that its work would be performed in a careful, diligent, and workmanlike manner, that its work would be of proper workmanship and reasonably fitted for the intended purpose.
72. To the extent the allegations in Plaintiff's Amended Complaint, as relate to alleged defects in the work and/or materials of Naccari are proven true, then Naccari breached its express and/or implied warranties, and BFS is therefore entitled to judgment against it in the amount of sums BFS pays Plaintiff pursuant to judgment, settlement, or otherwise, and to include the costs associated with defending itself in this action, including attorney fees, as well as such other relief as to the court may find proper.

WHEREFORE, having fully answered Plaintiff's Amended Complaint and asserted Cross-Claims against Naccari, BFS demands a trial by jury and prays that Plaintiff's Amended Complaint be dismissed, with costs, that BFS be granted the relief prayed for in its Cross-Claims against Naccari, and for such other relief as the Court may deem proper.

KERNODLE, ROOT & COLEMAN

By: 

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ATTORNEYS FOR DEFENDANTS BUILDERS
FIRSTSOURCE-SOUTHEAST GROUP, LLC and
BUILDERS FIRSTSOURCE, INC.

Charleston, South Carolina

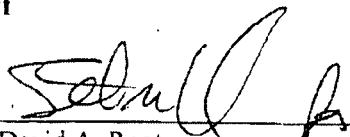
July 23, 2012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the attached *Answer and Cross-Claims of Builders FirstSource, Inc. and Builders FirstSource - Southeast Group, LLC to Plaintiff's Amended Complaint* was sent via United States Mail, First Class, to:

Peden Brown McLeod, Jr., Esquire
Neil S. Haldrup, Esquire
Wall Templeton & Haldrup, PA
P. O. Box 1200
Charleston, SC 29402

Attorneys for Plaintiff


David A. Root

July 23, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A NO. 2010-CP-10-10355
D.R. HORTON, INC. f/k/a C. RICHARD	)	
DOBSON BUILDERS, INC.,	)	
	)	
Plaintiff,	)	BUILDERS FIRSTSOURCE-SOUTHEAST
	)	GROUP, LLC and BUILDERS
v.	)	FIRSTSOURCE, INC.'S
	)	MOTION FOR SUMMARY JUDGMENT
BUILDERS FIRSTSOURCE-SOUTHEAST	)	
GROUP, LLC; and BUILDERS	)	
FIRSTSOURCE, INC., and JOSEPH	)	
NACCARI, Individually and d/b/a	)	
MASTERFRAMERS,	)	
	)	
Defendants.	)	


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 JULIE J. ARMSTRONG
 CLERK OF COURT
FILED

PLEASE TAKE NOTICE that within ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Defendants Builders FirstSource-Southeast Group, LLC and Builders Firstsource, Inc. ("BFS") by and through their undersigned attorneys, will move before the presiding judge of the Court of Common Pleas of the Ninth Judicial Circuit for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure finding that there is no genuine dispute of material fact and that BFS is entitled to judgment and dismissal of D.R. Horton, Inc.'s ("DRH") claims against BFS on the following grounds:

In this action DRH seeks indemnification and contribution from BFS in connection with liability incurred by DRH in the case of *Clark v. D.R. Horton, Inc.*, Berkeley County Case No. 2008-CP-08-1633 ("the Underlying Action"). The Underlying Action was filed in the Berkeley County Court of Common Pleas in June of 2008 and with the consent of all parties was referred to binding arbitration pursuant to S.C. Code Ann. § 15-48-10, *et seq.* The parties to the Underlying Action did not join BFS as a party pursuant to S.C. Code Ann. § 15-48-60. The parties to the Underlying

Action requested that the arbitrator enter an award with no findings of fact and no conclusions of law.

1. DRH's claims for contribution pursuant to S.C. Code Ann. § 15-38-10, *et seq.* fail because DRH's actions in arbitrating the Underlying Action, and specifically requesting that the arbitrator not make findings of fact or conclusions of law, have rendered it impossible to ascertain whether or not the arbitrator found any of BFS's work defective and (1) have resulted in DRH's waiver of any right to contribution; and (2) have rendered any damages award in the instant action impermissibly speculative.

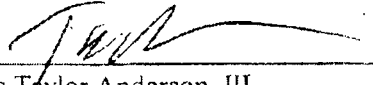
2. DRH's claims for contractual indemnity fail because (1) the indemnification clause drafted by DRH, and included in its contract with BFS, purports to require BFS to indemnify DRH for DRH's sole negligence and thus violates S.C. Code Ann. § 32-2-10, and is unenforceable and void; and (2) DRH's actions in arbitrating the Underlying Action, and specifically requesting that the arbitrator make no findings of fact or conclusions of law have rendered it impossible to ascertain whether or not the arbitrator found any of BFS's work defective and (a) have resulted in DRH's waiver of any right to contractual indemnification; and (b) have rendered any damages award in the instant action impermissibly speculative.

This motion is based on the foregoing, a memorandum of law to be filed, the pleadings and discovery in this case, and the statutory and common law of the State of South Carolina, and any such other materials the Court may choose to consider.

SIGNATURE ON FOLLOWING PAGE

KERNODLE ROOT + COLEMAN

By:


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ATTORNEYS FOR BUILDERS
FIRSTSOURCE-SOUTHEAST GROUP,
LLC and BUILDERS FIRSTSOURCE, INC.

December 10, 2012

Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of ***Builders FirstSource-Southeast Group, LLC and Builders Firstsource, Inc.'s Motion for Summary Judgment*** was sent via email, facsimile, hand delivery and/or by depositing a copy in the United States Mail, First Class, to:

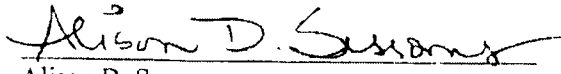
Peden Brown McLeod, Jr., Esquire
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Attorneys for Plaintiff

David S. Cobb, Esquire
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Charleston, SC 29413

**Attorney for Joseph Naccari,
Individually and d/b/a
Masterframers**

December 10, 2012


Alison D. Sessoms

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

D.R. HORTON, INC. f/k/a C. RICHARD
DOBSON BUILDERS, INC.,

Plaintiff,

v.

BUILDERS FIRSTSOURCE-SOUTHEAST
GROUP, LLC; and BUILDERS
FIRSTSOURCE, INC., and JOSEPH
NACCARI, Individually and d/b/a
MASTERFRAMERS,

Defendants.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) C/A NO. 2010-CP-10-10355

) **MEMORANDUM IN SUPPORT OF**
) **BUILDERS FIRSTSOURCE-**
) **SOUTHEAST GROUP LLC AND**
) **BUILDERS FIRSTSOURCE, INC.'S**
) **MOTION FOR SUMMARY**
) **JUDGMENT**

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JULIE J. ARMSTRONG
CLERK OF COURT
BY 

FILED

I. **FACTUAL AND PROCEDURAL BACKGROUND:**

In February of 2001, D.R. Horton, Inc. ("DRH"), and Builders FirstSource-Southeast Group, LLC ("BFS"), entered into an Independent Contractor Agreement. (the "Contract") (attached hereto as Exhibit 1). The Contract, which was drafted by DRH, contains an indemnification clause which requires BFS to indemnify DRH for any damages caused by BFS's work and, further, to indemnify DRH for DRH's own negligent acts and omissions. *See* Contract at ¶ 11. The Contract also contains an arbitration clause which provides that BFS "agrees to participate in, and be bound by, any arbitration proceeding between [DRH] and any third party relating to the Work . . ." *See* Contract at ¶ 22.

During the summer of 2001, BFS performed framing work as a subcontractor for DRH at 403 Milner Court, Charleston, South Carolina (the "Residence"). BFS subcontracted the framing work to Defendant Joseph Naccari d/b/a MasterFramers, who, in turn, subcontracted the framing work to

Third-Party Defendant Jaime Arreguin d/b/a Maya Construction.

In 2008, the purchaser of the Residence, Patricia Clark, filed suit in the Berkeley County Circuit Court against DRH alleging negligence, breach of contract, breach of warranty and Unfair Trade Practices. (the "Homeowner's Suit") (attached hereto as Exhibit 2.). The Homeowner's Suit alleged that the Residence was defective because of, among other things, improper installation of siding, improper installation of the exterior wall system, improper flashing, improper installation of a moisture barrier, improper water management system, improper installation of framing, improper installation of the slab and driveway, improper installation of the roof and shingles, and improper installation of a gas hot water heater. *See* Homeowner's Suit at ¶ 9 and ¶ 14.

It is undisputed that the Homeowner's Suit included multiple allegations that are unrelated to the framing work BFS performed at the Residence. BFS did not install the roofing, did not install the siding, did not install the concrete slab or driveway, and did not install the hot water heater.

DHR filed a Motion to Compel Arbitration and to Stay in the Homeowner's Suit and, on April 1, 2009, the court entered a Consent Order Referring Claims to Arbitration, whereby the Homeowner's Suit was referred to binding arbitration. (attached hereto as Exhibit 3). The court in the Homeowner's Suit retained jurisdiction for the purpose of confirming, enforcing, or taking any appeal of the arbitrator's award. Despite the fact that the Contract required BFS "to participate in, and be bound by, any arbitration proceeding between Owner and any third party relating to the Work," and despite the fact that S.C. Code Ann. § 15-48-60, permits joinder of third-parties to arbitration proceedings, BFS was not made a party to the arbitration of the Homeowner's Suit.

An arbitration was held on December 10 and 11, 2009, and the arbitrator awarded the Homeowner \$150,000. (the "Arbitration Order") (attached hereto as Exhibit 4). No transcript of the

hearing was made.¹ DRH did not request that the arbitrator make findings of fact or conclusions of law and specifically requested that the arbitrator enter an award "containing a monetary award only."² See Arbitration Order. Because of DRH's request to omit conclusions of law, the Arbitration Order lacks such basic legal findings as whether it is based on tort or contract. Further, because of DRH's request to omit factual findings, there is no factual finding regarding what work was, in fact, determined to be defective.

The Arbitration Order was filed, confirmed, and made a judgment of the Berkeley County Court of Common Pleas in accordance with S.C. Code Ann. § 15-48-120 and S.C. Code Ann. § 15-48-150. DRH did not object to the confirmation of the Arbitration Order, did not move to clarify or set aside the Arbitration Order, and did not appeal the Arbitration Order.

With its "monetary award only" Arbitration Order in hand, on December 17, 2009, DRH initiated the instant action against BFS seeking contribution and contractual indemnification for the Arbitration Order.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when it is clear that there is no genuine issue of material

¹The SC Uniform Arbitration Act provides that any party is entitled to request a transcript of the arbitration hearing be made. See S.C. Code Ann. § 15-48-120(d) ("Upon the request of any party or arbitrator, the arbitrators shall cause to be made a record of the testimony and evidence introduced at the hearing").

²It is, of course, common practice to request that arbitrators make findings of fact and conclusions of law. The default rule under the American Arbitration Association Construction Industry Arbitration Rules and Mediation Procedures ("AAA Construction Rules") requires the arbitrator to "provide a concise written financial breakdown of any monetary awards." See AAA Construction Rules 44(b). Available at www.adr.org. The AAA Construction rules, as well as customary practice, give the parties wide latitude in fashioning awards containing concise findings of fact and conclusions of law. See Rule 44.

fact and the moving party is entitled to judgment as a matter of law. *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 59 (Ct.App. 1999). Materials used to refute a motion for summary judgment must be those which would be admissible at trial. *Hall v. Fedor*, 349 S.C. 169, 175 (Ct.App. 2002). The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. *Baughman v. American Tel. and Tel Co.*, 306 S.C. 101, 116 (1991).

III. DRH CANNOT RELITIGATE THE ISSUE OF WHETHER OR NOT BFS'S WORK AT THE RESIDENCE WAS DEFECTIVE AND THE AMOUNT OF DAMAGES CAUSED THEREBY

In its discovery responses, DRH lists as witnesses the various experts who were deposed in the Homeowner's Suit.³ Apparently DRH intends a wholesale relitigation of the underling construction dispute in this action. DRH presumably proposes that all of the witnesses and evidence presented in the arbitration be presented again to the jury hearing this case. After watching a re-enactment of the arbitration the jury could then venture guesses regarding the basis for the Arbitration Order.

Any suggestion that the entire construction defect case be relitigated in this action fundamentally misses the point that DRH has already fully litigated the issue of whether BFS's work

³While BFS has been provided with some depositions from the Homeowner's Suit, DRH has not disclosed what witnesses actually testified at the arbitration of the Homeowner's Suit.

at the Residence was defective and the damages caused thereby. DRH litigated the issue, received an arbitration award, had the award confirmed by the Berkeley County Circuit Court, and reduced it to a judgment.

“[A]n arbitration award is a final, binding award on the merits.” *Palmetto Homes, Inc. v. Bradley*, 357 S.C. 485, 494 (Ct.App. 2003). “[A]n arbitration award is conclusive and binding . . . as to all matters submitted to the arbitrators.” *Id.* at 494. General principle of res judicata and collateral estoppel apply to arbitration awards. See *Palmetto Homes, Inc., supra* (giving *res judicata* effect to arbitration award); *Murakami v. Wilmington Star News, Inc.*, 137 N.C.App. 357, 360 (2000) (“collateral estoppel will bar relitigation of the issues actually decided during the arbitration proceeding”).

“Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same.” *Carolina Renewal, Inc. v. SCDOT*, 385 S.C. 550, 554 (Ct.App. 2009); See also *Crosby v. Prysmian Communications Cables and Systems USA, LLC*, 397 S.C. 101, 111 (Ct.App. 2011)(giving preclusive effect to findings of Workers Compensation Commission in subsequent retaliatory discharge litigation). “The doctrine of collateral estoppel prevents the relitigation of *issues*, not claims, necessarily determined in a former proceeding regardless of whether the identity of the causes of action in successive lawsuits are the same.” *Id.* at 556. (emphasis in original).

The fact that BFS was not a party to the Homeowner’s Suit is irrelevant. “As far back as 1982, our supreme court held the doctrine of collateral estoppel barred the plaintiff from relitigating an issue even though the defendant was not a party, or in privity with a party, to the initial action.”

Id. at 555. “[T]he identity of the parties, and their relationship to one another, is simply not a concern when deciding whether to apply the doctrine of collateral estoppel.” *Id.*

“The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action, (2) directly determined in the prior action; and (3) necessary to support the prior judgment.” *Carolina Renewal, supra* at 554. Here, the issue of whether BFS’s work at the Residence was defective, and the damages caused thereby, was actually litigated in the Homeowner’s Suit, it was determined by the arbitrator and was necessary to support the Arbitration Order. Indeed, DRH’s entire case against BFS is premised on the assertion that the issue of whether BFS’s work was defective, and the damages caused thereby, was actually litigated, determined and necessary to support the Arbitration Order.⁴

Besides the claims relating to the framing performed by BFS, multiple other issues were also decided in the arbitration of the Homeowner’s Suit and there is simply no way to now “unring the bell” and decipher which portions of the Arbitration Order are attributable to which subcontractors. Did the arbitrator determine that BFS’s framing work was defective? What damages were caused by any defect? What about the roofing, siding, flashing, concrete slab, driveway and hot water heater?

Having neglected to make any record of what was decided by the first fact finder, DRH now essentially wants a “do over” whereby it can relitigate the exact issues that were litigated in the Homeowner Suit but, this time, actually record the results. Not only would this result in a colossal

⁴In order to maintain this suit DRH must take the position that the issue of whether the framing work done by BFS was defective, and the damages caused thereby, was decided in the prior lawsuit. If it was not, then BFS has no liability for the Arbitration Order and summary judgment should be entered for BFS.

waste of judicial resources, it runs afoul of the doctrine of collateral estoppel.

IV. DEFENDANT BFS IS ENTITLED TO SUMMARY JUDGMENT ON DRH'S CLAIMS FOR CONTRIBUTION AND INDEMNIFICATION:

1. Contribution.

The statutory right of contribution among joint tortfeasors is in derogation of the common law and thus the South Carolina Uniform Contribution Among Tortfeasors Act (the "Act") must be strictly construed. *G & P Trucking v. Parks Auto Sales Service & Salvage, Inc.* 357 S.C. 82, 87 (Ct.App. 2003). "Moreover, in a suit in which contribution is sought from a joint tortfeasor, the claimant obviously must prove facts sufficient under the statutes and the common law . . . to establish a right of contribution between wrongdoers." *Id.* As part of its burden, DRH must prove the damages attributable to BFS with reasonable certainty. *See Gray v. Southern Facilities, Inc.*, 256 S.C. 558, 570-571 (1971).

a. There is no evidence that the Arbitration Order is based on tort liability.

The right of contribution exists only between joint tortfeasors. In order for a party who has litigated a case to judgment to maintain an action as a joint tortfeasor that party must have first been adjudicated to have committed a tort. *See* SC Code Ann. § 15-38-40(B) ("Once the issue of liability has been resolved . . . a defendant has the right to seek contribution against any judgment defendant and other persons who were not made parties to the action").

Here, the Homeowner's Suit asserted causes of action based on tort and contract. *See* Homeowner's Suit. Because the Arbitration Order is silent on the issue of DRH's negligence, there is no way to determine whether the judgment entered against DRH is based in tort.⁵ *See Jenkins v.*

⁵Of note, DRH's Amended Complaint does not even allege that DRH was adjudged to be a tortfeasor in the Homeowner's Suit and its contribution claim is subject to dismissal on that

Few, 391 S.C. 209, 221 (Ct.App. 2010)(“Because the verdict was a general verdict, it is impossible to determine how the jury allocated damages between civil conspiracy, conversion, and trespass to personal property. We will not speculate as to how the jury allocated damages.”).

One who litigates a claim to verdict, or award, with the intention of suing a third-party for contribution as a “joint tortfeasor” must, at a minimum, have the finder of fact say “yay or nay” on the issue of negligence. Because there is no evidence that the Arbitration Order is based on tort DRH cannot maintain this action.

b. There is no evidence that the Arbitration Order includes damages relating to the framing work performed by BFS.

There is no evidence that the arbitrator determined that the framing work performed by BFS was defective. Although the parties to the arbitration litigated the issue of whether the framing work was defective, and the damages caused thereby, they failed to make a record of what was determined. As stated above, DRH cannot relitigate the issue of whether the framing was defective, and the amount of damages caused thereby, and therefore cannot prove its damages. *See Carolina Renewal, Inc., supra*.

c. Any award of damages based on contribution would be impermissibly speculative.

The Act provides that the “right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability.” S.C. Code Ann. § 15-38-20. While fault is not considered in determining the pro-rata shares of joint tortfeasors, the Court must still make a determination regarding what constitutes the common liability of DRH and BFS. *See Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53 (Ct.App. 1999).

basis alone.

BFS is not a joint tortfeasor with the roofer, siding contractor, concrete contractor and hot water heater installer. To the extent that DRH's and BFS's negligence combined to cause an indivisible harm, it would only have done so in relation to the framing work. Thus, in order to determine the common liability of DRH and BFS, it is necessary to determine what portion of the Arbitration Order relates to the framing work. This is impossible.

The South Carolina Court of Appeals has dealt with this issue in the context of settlements. In *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, *supra*, an injured plaintiff had previously sued both Vermeer and Wood/Chuck for personal injuries. Shortly before trial in the underlying lawsuit the plaintiff dismissed Wood/Chuck with prejudice. Vermeer then settled with the plaintiff. *Vermeer* at 58.

Having settled with the plaintiff in the underlying lawsuit, Vermeer then sued Wood/Chuck for contribution under the Act. *Id.* Wood/Chuck defended on the grounds that, at the time of Vermeer's settlement, Wood/Chuck had already been dismissed with prejudice and therefore Vermeer's settlement with the plaintiff could not have "extinguished" Wood/Chuck's liability. *Vermeer* at 68-69. Vermeer countered that the settlement included a release of the plaintiff's wife's claims for loss of consortium, as well as the plaintiff's claims, and that the plaintiff's wife had not been a party to the underlying lawsuit. Therefore, Vermeer argued that its settlement extinguished Wood/Chuck's liability to plaintiff's wife and it was entitled to contribution. *Id.*

The Vermeer Court held that because the settlement between Vermeer, the plaintiff, and the plaintiff's wife, did not allocate the settlement proceeds between the plaintiff's claims and the plaintiff's wife's claims, it was impossible to prove what portion of the settlement funds were attributable to the wife's cause of action and therefore Vermeer could not maintain a contribution

action:

The settlement agreement does not place a specific value on any potential claim by Ms. Causey. Under the agreement no portion of the settlement is allocated to her for any potential loss of consortium claim. We cannot, therefore, determine whether Vermeer paid more than its pro rata share of liability to Ms. Causey.

Vermeer, supra at 70-71.

The *Vermeer* Court held that in order for a settling party to maintain a cause of action for contribution, the settlement must allocate payments between those claims subject to contribution, and those claims not subject to contribution. If the party seeking contribution fails to separate the settlement funds between claims subject to contribution, and claims not subject to contribution, that party will be unable to prove its damages and cannot maintain an action for contribution. See *Vermeer, supra* at 70-71.

Just as Vermeer's failure to allocate damages between claims subject to contribution, and those not subject to contribution, defeated its claim for contribution, DRH's failure to request that the arbitrator allocate damages between claims related to BFS's work, and those unrelated to BFS's work, defeats its claim for contribution. As the *Vermeer* Court noted this problem is purely of DRH's own making. See *Vermeer* at 70 ("In this case the lack of apportionment may work a hardship . . . but it is one which he could have avoided by a properly drawn release."); See Also *Jenkins v. Few*, 391 S.C. 209, 221 (Ct.App. 2010)(refusing to speculate as to how jury allocated damages among various causes of action when defendant "contributed to drafting and agreed to use a general verdict form that did not include a separate damages award for each cause of action.").

2. Contractual Indemnity.

a. The indemnification clause in the Contract violates S.C. Code Ann. §32-2-10.

Pursuant to S.C. Code Ann. §32-2-10:

Notwithstanding any other provision of law, a promise or agreement in connection with the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating, purporting to indemnify the promisee, its independent contractors, agents, employees, or indemnitees against liability for damages arising out of bodily injury or property damage proximately caused by or resulting from the sole negligence of the promisee, its independent contractors, agents, employees, or indemnitees is against public policy and unenforceable . . .

S.C. Code Ann. §32-2-10.

The indemnification clause in the Contract violates this statute. In relevant part, the indemnification clause provides:

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR HEREBY AGREES TO . . . INDEMNIFY AND HOLD . . . INDEMNITEE, FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS . . . WHETHER ASSERTED BY THE HOMEOWNER, CONTRACTOR, OR ANY THIRD-PARTY . . . ON ACCOUNT OF . . . (III) ANY NEGLIGENT ACTION AND/OR OMISSION OF THE INDEMNITEE RELATED IN ANY WAY TO THE WORK, EVEN WHEN THE LOSS IS CAUSED BY THE FAULT OR NEGLIGENCE OF THE INDEMNITEE . . .

Contract, ¶ 11.

This indemnity agreement purports to require BFS to indemnify DRH for DRH's own negligent acts or omissions "even when the loss is caused by the fault or negligence of" DRH.

Pursuant to the plain language of the statute the "agreement" is "unenforceable."

- b. DRH's has waived its right to contractual indemnification by failing to follow the dispute resolution procedure set forth in the Contract.

"Waiver is an intentional relinquishment of a known right and may be implied from circumstances indicating an intent to waive. Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute a waiver." *Freeman v. McBee*, 280 S.C. 490,

493 (Ct.App. 1984).

The Contract provides that all disputes arising out of the Contract, or “any other agreement relating to, or arising from, the business of the Owner or the Work” shall be submitted to a single arbitration. *“The parties agree that if multiple arbitrations should be commenced, all such proceedings shall be consolidated into one arbitration. [BFS] agrees to participate in, and be bound by, any arbitration proceeding between Owner and any third party relating to the Work . . .”* Contract at ¶ 22.

Rather than following the agreed upon dispute resolution procedure DRH chose to arbitrate the Homeowner’s Suit without joining BFS, without making any transcript of the hearing, and without having the arbitrator make findings of fact and conclusions of law relating to the portion of the award attributable to the framing performed by BFS. DRH’s actions are inconsistent with the assertion of a right to indemnification from BFS and have resulted in DRH’s waiver of any rights to seek contractual indemnification from BFS. *See Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 428 (2009)(finding plaintiff waived its right to an accounting by “refusing to effectively communicate and cooperate . . . and further failing to independently resolve the matter when [plaintiff] had access . . . to bank records.”).

c. DRH’s failure to request that the arbitrator make findings of fact and conclusions of law renders its contractual indemnity claim impermissibly speculative.

DRH has the burden of proving its damages. *See Jackson v. Midlands Human Resources Center*, 296 S.C. 526 (1988). “[I]n order for damages to be recoverable the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy. Neither the existence, causation nor amount of damages can be left to conjecture, guess or

speculation.” *Gray v. Southern Facilities, Inc.*, 256 S.C. 558, 570-571 (1971).

DRH made a decision to request an award with no findings or conclusions. The South Carolina Appellate Courts have recognized the inherently speculative nature of any attempt to determine how a jury allocated damages in a general verdict and have repeatedly declined to indulge in such guesswork. *See Jenkins v. Few, supra*, at 221 (“Because the verdict was a general verdict, it is impossible to determine how the jury allocated damages . . .”); *Moore v. Moore*, 360 S.C. 241, 257 (Ct.App. 2004)(“Without a special verdict form, we cannot speculate as to what portion of the award the jury attributed to lost profit as opposed to other tort damages.”); *Armstrong v. Collins*, 366 S.C. 204, 227 (Ct.App. 2005) (“Because the verdict was a general verdict, we cannot now speculate as to how the jury allocated damages.”). Attempting to sort out what was actually awarded in the Arbitration Order, which is entirely devoid of legal or factual conclusions, would be an exercise fraught with impermissible guesses, speculation, and conjecture.

Just as the plaintiff in *Vermeer, supra*, neglected to allocate settlement proceeds between those subject to contribution, and those not subject to contribution, DRH neglected to request that the Arbitration Order allocate damages between those attributable to BFS’s work, and damages not attributable to BFS’s work. *See Vermeer, supra* at 70 (no recovery where “open-end, blanket, joint release gives no indication as to how the amount paid for the release relates to any present or future damage . . .”).⁶ DRH’s conduct of the Homeowner’s Suit has made its indemnification claim

⁶ DRH is actually in a much worse position than it would be had it settled the Homeowner’s Suit. If the Homeowner’s Suit had been settled, as opposed to litigated to judgment, DRH could argue that it be allowed to litigate, for the first time, whether the framing is defective and the repair costs. Having already litigated that issue in the Homeowner’s Suit, however, DRH cannot call witnesses to testify regarding the framing work and the amount required for repairs. *See Carolina Renewal, Inc., supra* at 554 (“Collateral estoppel . . . prevents a party from relitigating an issue that was decided in a previous action.”).

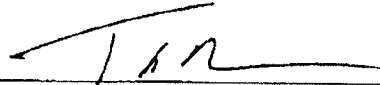
impermissibly speculative.

V. CONCLUSION:

DRH is in a mess of its own making. DRH controlled whether or not BFS would be added to the Homeowner's Suit arbitration, DRH controlled whether the Homeowner's Suit arbitration would proceed all the way to judgment, and DRH controlled whether the Arbitration Order would contain findings of fact and conclusions of law. DRH is now stuck with the Arbitration Order that it asked for.

KERNODLE, ROOT & COLEMAN

By:


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ATTORNEYS FOR DEFENDANTS BUILDERS
FIRSTSOURCE-SOUTHEAST GROUP, LLC and
BUILDERS FIRSTSOURCE, INC.

April 9, 2013

Charleston, South Carolina

10-CP-10-10355

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the Attached *Memorandum in Support of Builders FirstSource- Southeast Group LLC and Builders FirstSource, Inc.'s Motion for Summary Judgment* was sent via email, facsimile, hand delivery and/or by depositing a copy in the United States Mail, First Class, to:

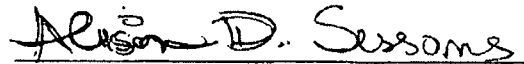
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Individually and d/b/a
Masterframers**

April 7, 2012


Alison D. Sessoms

FILED
2013 APR 10 PM 1:22
JULIE J. ARMSTRONG
CLERK OF COURT
BY

D.R. HORTON**EXHIBIT 1**

Division Name: HIT
 Area Name: _____
 Assigned Vendor No.: 8/AW

INDEPENDENT CONTRACTOR AGREEMENT

FEB - 6 2001

NAME OF CONTRACTOR BUILDERS FIRST SOURCE DBA - S.A.W. ("Contractor")Sole Proprietorship Partnership ☒ Corporation L.L.C. Other (ATTACH W-9)Social Security No. or Tax ID No.: 57-0618425Name of Owner(s)/Officer(s): MORRIS TOLLY, SE GROUP PRESIDENTAddress for All Notices: ROUTE 1, BOX 170City: MINNEAPOLIS State: SC Zip Code: 29956Telephone: (P43) 987-0810 Fax: (P43) 987-0810 E-Mail Address: _____Insurance Carriers: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDINGThis agreement (the "Agreement") is entered into on this 31 day of JANUARY, 2001, between D.R. HORTON

(hereinafter "Owner") and Contractor

1. **Scope of Work.** All work performed by Contractor for Owner shall be subject to the terms and conditions of this Agreement. The work to be performed hereunder (the "Work") is the labor, services and/or materials, equipment, transportation, or facilities necessary to complete the construction-related activities generally described as: TURKEY

and shall include all work performed by Contractor for Owner. The applicable quantities and pricing for the Work shall be that reflected in the price sheet, proposal, bid or other documentation most recently accepted and approved by Owner (the "Pricing Schedule"). It is understood and agreed that no Pricing Schedule will modify any other terms of this Agreement other than price and quantity. It is understood and agreed that Owner is not obligated to award any work on specific property to Contractor, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform work similar to the Work to be performed hereunder at any job location in addition to or in place of Contractor.

2. **Schedule of Work.** Owner shall have the right to determine the time, order and priority in which all components of the Work shall be performed and all matters relative to the timely and orderly conduct of the Work. Owner shall issue authorization (either pursuant to a written purchase order or work invoice (hereinafter the "Purchase Order") or verbal instructions from an authorized Owner representative to commence the Work, and Contractor shall not commence the Work at a job location until Contractor has received instructions to begin Work at a specific job location. Contractor shall commence the Work within three (3) days of notice to proceed from Owner, and if such work is interrupted at the direction of Owner, Contractor shall resume such work within two (2) working days from Owner's direction to resume. Contractor agrees that Owner shall have the right to make changes to the schedule of Work at Owner's discretion and agrees to comply with such changes.

3. **Performance of Work.** Contractor's acceptance/commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized Owner employee and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location and approves of the requirements so specified. Contractor acknowledges that TIME IS OF THE ESSENCE in the performance of all Work. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors. Contractor shall perform all Work in a good and workmanlike manner, in accordance with the plans and specifications of Owner, according to industry standard practices, and warrants that the Work will meet or exceed FHA minimum property standards, VA requirements, all laws and regulations and any applicable building code requirements. Owner shall have the right to inspect the Work at any time, but inspection shall not be construed as a waiver of any obligations, representations or warranties of Contractor as to the Work. Notwithstanding anything contained herein to the contrary, all Work shall be performed and any defects shall be corrected in accordance with this Agreement to the satisfaction of Owner. Contractor acknowledges that Contractor is thoroughly familiar with the plans and specifications as such plans and specifications affect the Work and materials incorporated therein. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work, and shall report in writing to Owner any defects prior to commencement of any Work, or Contractor shall be deemed to have accepted such work for inclusion into Contractor's Work. Contractor shall secure and maintain all permits, licenses and approvals necessary for or applicable to the performance of the Work hereunder. When Owner orders the Work in writing, Contractor shall make any and all changes in the Work as directed by Owner's authorized representative, and adjustments to the price shall be made only in accordance with a "Variation to Purchase Order" signed by Owner and Contractor prior to the commencement of such changes.

4. **Safety.** Contractor shall, at its own expense, protect its employees and all other persons from risk of death, injury or bodily harm arising from or in any way related to the Work. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards and statutes concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations. Contractor shall provide Owner with written verification of compliance with Hazard Communication Standard, 29 C.F.R. §1926.59 et seq, and provide written notice to Owner of the contact person responsible for Contractor's safety compliance. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, permitted subcontractors or suppliers at a job location or performance by any such person under the influence of alcohol or drugs. Contractor shall prohibit and prevent the presence of children under age 18 from the work site. Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work. Contractor shall conduct inspections to determine that safe working conditions and equipment exist and safe practices are observed, and accepts sole responsibility for providing a safe place to work for its employees and the employees of all subcontractors and material suppliers. Contractor shall immediately notify Owner's construction supervisors of any unsafe condition or practice observed on the Work site. Further, Contractor shall immediately notify Owner of any accidents or injuries on the Work site.

5. **Contract Price.** The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor, and Contractor shall pay all applicable sales taxes and any other taxes resulting from such payment or related to the Work. CONTRACTOR FURTHER AGREES THAT NO PRICE INCREASE SHALL BE BINDING UPON OWNER BEFORE CONTRACTOR GIVES OWNER (120) DAYS' WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule, the superseded Pricing Schedule shall remain in effect for Purchase Orders issued after the date of any new Pricing Schedule until the expiration of the notice period unless other prior written notice was given to Owner by Contractor.

THIS AGREEMENT CONSISTS OF THREE (3) PAGES

Executed this 5th day of FEBRUARY, 2001

Owner

By: Richard SchwartzName: RICHARD SCHWARTZTitle: Division Manager

Contractor

By: Buildings First SourceName: Morris TollyTitle: Southeast Division

6. **Payment/Liens.** Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage. Contractor acknowledges and agrees that all Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order. Contractor acknowledges and agrees that no payments shall be due under this Agreement until Contractor's invoice (or Purchase Order, if applicable) for such Work has been submitted to Owner for payment, which action shall constitute a representation and confirmation that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. **CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS AGAINST OWNER OR ITS PROPERTY.** As a condition to payment, Owner may require a full and complete release of all liens for materials furnished and labor performed from Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Owner may, at any time, in its discretion, make checks payable to Contractor and one or more third parties. Such payment shall be deemed satisfaction of amounts owed by Owner to Contractor, notwithstanding the fact that such third parties may not endorse said checks. At all times during the performance of this Agreement, Owner shall be entitled to hold, for all Work in progress, any allowable retainage and any statutory sums in accordance with the laws of the State where the Work is performed. In the event that any liens are filed against Owner relating to the Work, Contractor agrees that Owner shall be entitled to withhold all payments to Contractor or until Contractor causes such lien or affidavit to be removed and released of record. Contractor agrees to INDEMNIFY and HOLD OWNER HARMLESS from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any liens, and further agrees as Owner's request to: (i) procure a bond to indemnify Owner and any home purchaser from Owner, in an amount equal to one hundred fifty percent of the lien amount, against such lien, or (ii) refund to Owner all monies, including any additional amount necessary to cover all of Owner's or home purchaser's attorneys' fees and court costs paid in discharging the lien, whichever remedy Owner elects in its sole and absolute discretion. Payment to Contractor for any Work shall not be construed as a waiver by Owner as to Work later found to be defective and shall not release Contractor from liability for warranties and warranty service and/or defective Work.

7. **Independent Contractor Status.** Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right to control the performance of the Work, except that the Work must be performed in accordance with this Agreement. Contractor shall be responsible for the performance of its employees and permitted subcontractors, and all personnel used by Contractor in the performance of Work shall be qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor acknowledges that this is a lump sum contract and that Contractor shall be solely responsible for all withholding, Social Security, state unemployment and other similar taxes for Contractor's employees, agents or permitted subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work. Taxes will not be collected nor paid by Owner under this Agreement. Contractor further agrees to provide written notification to all of its present and future employees of Contractor's provision for Worker's Compensation Insurance.

8. **Contractor's Warranties.** Contractor unconditionally warrants to Owner, its successors and assigns, and to each purchaser of a house incorporating the Work from Owner, each subsequent owner, and their successors and assigns (collectively referred to as the "Homeowner"), that all labor performed and materials furnished by Contractor shall conform to the specifications of this Agreement, are free from any defects or deficiencies in workmanship or materials when judged by the standards of accepted residential construction industry trade practices, and be in accordance with the requirements of all applicable government authorities. All Work not conforming to the aforementioned requirements shall be considered to be defective. In addition to the foregoing warranty, Contractor expressly warrants that the Work shall remain free of defects for the following warranty periods: (a) for a period of ten (10) years all structural elements, including, but not limited to, roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneer), girders, load-bearing beams, and foundation and footing systems; (b) for a period of two (2) years all (i) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (ii) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home, and (iii) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; (c) all other elements for a period of one (1) year. The foregoing notwithstanding, in no event shall a warranty period for any system, element or other portion of the Work be less than the applicable warranty period for such system, element, or other portion of the Work under any residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner as any Homeowner (a "Home Owners Warranty"). Owner shall use its best efforts to provide Contractor with notice of any Home Owners Warranty which is longer than the Warranty Period stated above; provided, however, failure to give such notice will not affect the extension of the Warranty Period to the applicable warranty period under the Home Owners Warranty. Contractor agrees that the performance/fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty obligations. Contractor's limitation provided for herein, or the ability of Owner to request Contractor to perform warranty services in the future. Contractor shall furnish all warranties and/or guarantees by manufacturers on appliances and equipment, and shall furnish all certificates required by any municipality and/or VA and/or FHA. The foregoing is in addition to all other warranties provided by law or otherwise and not in limitation of periods of applicable statutes of limitation.

9. **Governmental Requirements.** Contractor agrees to comply with all applicable federal, state, local, and county statutes, ordinances, regulations, codes, licensing requirements and standards, and the requirements of the Williams-Steiger Occupational Safety and Health Act of 1970 and amendments thereto, as well as the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., or similar law or regulations, and the rules, regulations, or orders of all public authorities relating to performance of the Work, including without limitation, the procurement and posting of all required permits and notices. Contractor further agrees to indemnify and hold Owner harmless from the payment of any fine or penalty imposed as a result of Contractor's failure to comply with applicable laws and regulations.

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

11. **CONTRACTOR'S INDEMNITY AND WAIVER TO THE FULLEST EXTENT PERMITTED BY LAW.** CONTRACTOR HEREBY AGREES TO PROTECT, DEFEND, INDEMNIFY, AND HOLD OWNER, ITS PARENT CORPORATION, SUBSIDIARIES AND AFFILIATES, AND ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS, (HEREIN COLLECTIVELY REFERRED TO AS THE "INDEMNITEE"), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTIONS, SUITS, OR OTHER LITIGATION OF EVERY KIND AND CHARACTER (INCLUDING ALL COSTS THEREOF AND ATTORNEYS' FEES), WHETHER ASSERTED BY THE HOMEOWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, PERSONNEL FURNISHED BY CONTRACTOR, ITS SUPPLIERS AND PERMITTED SUBCONTRACTORS OF ANY TYPE), ON ACCOUNT OF BODILY OR PERSONAL INJURY, DEATH, OR DAMAGE TO OR LOSS OF PROPERTY (INCLUDING THE LOSS OF USE THEREOF), (HEREIN COLLECTIVELY REFERRED TO AS "LOSS"), IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH: (i) A BREACH OF THE WARRANTIES, REPRESENTATIONS, OBLIGATIONS, AND COVENANTS PROVIDED HEREIN BY CONTRACTOR; (ii) THE WORK PERFORMED OR TO BE PERFORMED BY CONTRACTOR OR CONTRACTOR'S PERSONNEL, AGENTS, SUPPLIERS, OR PERMITTED SUBCONTRACTORS; OR (iii) ANY NEGLIGENT ACTION AND/OR OMISSION OF THE INDEMNITEE RELATED IN ANY WAY TO THE WORK, EVEN WHEN THE LOSS IS CAUSED BY THE FAULT OR NEGLIGENCE OF THE INDEMNITEE. ANY PAYMENTS BY CONTRACTOR UNDER THIS PARAGRAPH ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ANY AND ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. CONTRACTOR AND CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, AND PERMITTED SUBCONTRACTORS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS AND EQUIPMENT; AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO ANY LOSS INVOLVING SUCH TOOLS OR EQUIPMENT IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH, THE WORK TO BE PERFORMED HEREUNDER.

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

13. **Insurance.** Contractor agrees to carry: (a) Broad Form Commercial General Liability Insurance on an Occurrence Form, naming the Indemnitee as an additional insured with completed operations coverage and containing a per occurrence limit of no less than One Million Dollars (\$1,000,000.00), and an aggregate limit of no less than One Million Dollars (\$1,000,000.00) protecting against bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) pre-loss operations; (ii) products and completed operations including materials designed, furnished, and/or modified in any way by Contractor; (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) property damage resulting from explosion, collapse, or underground (x, c, u) exposures; (b) Worker's Compensation Insurance that provides statutory benefits and coverage such that Owner will have no liability to Contractor's personnel, employees or agents; and (c) Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than One Million Dollars (\$1,000,000.00) and an aggregate of no less than One Million Dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgement. Owner and Contractor (collectively, the Parties) intend and agree that the coverage obtained by Contractor naming Owner as an additional insured as set forth herein shall apply on a primary basis with any insurance of Owner being excess coverage. Such coverages will be carried continuously during the term of this Agreement with insurance companies acceptable to Owner in its sole and absolute discretion. Such insurance shall provide for a waiver of subrogation.

INITIALS:

Owner:

Contractor:

CORPORATE

Contractor shall provide evidence that such insurance is in full force by furnishing Owner with a Certificate of Insurance, or certified copies of the above policies. Each Certificate of Insurance or policy shall contain an unqualified clause to the effect that the policy shall not be subject to cancellation, nonrenewal, adverse change, or reduction of amounts of coverage without thirty (30) days' prior written notice to Owner. Such insurance shall be carried continuously from the date of commencement of the Work until expiration of the period of the Contractor's warranty provided in this Agreement. The amounts and types of insurance set forth herein are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and types of insurance which Contractor shall determine to be reasonably necessary to protect itself and the Work required to be performed under this Agreement. NOTWITHSTANDING THE FOREGOING, IN THE EVENT THAT THE CONTRACTOR FAILS TO PROVIDE OWNER WITH EVIDENCE OF INSURANCE AS REQUIRED HEREUNDER, OWNER SHALL BE ENTITLED, BUT SHALL NOT BE OBLIGATED, TO: (A) WITHHOLD AN AMOUNT (ESTABLISHED BY OWNER IN ITS SOLE AND ABSOLUTE DISCRETION) FROM CONTRACTOR TO COMPENSATE OWNER FOR THE ADDITIONAL COSTS OF ITS WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND RISKS AND ADMINISTRATIVE COSTS TO OWNER ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYEES OR AGENTS, CONTRACTOR EXPRESSLY ACKNOWLEDGES THAT THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE, AND CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS CONTRACT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

14. **Subcontractors.** If Contractor subcontracts any of the Work to the extent permitted under this Agreement, Contractor guarantees that such third party shall indemnify Owner and meet all insurance requirements set forth herein. Prior to the subcontractor's commencement of the Work, Contractor shall obtain a signed agreement from such third party indemnifying Owner and provide to Owner evidence of satisfactory insurance. In addition, Contractor shall require that each supplier or subcontractor indemnify Owner from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms set forth herein. Contractor understands and agrees that for all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for any and all of the actions of any subcontractor engaged by Contractor or who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed to be the obligation of such subcontractors to Owner, for which Contractor shall be fully responsible to Owner.

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

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

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

The duties and obligations imposed by this Agreement and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. The prevailing party to any dispute shall have a right to collect its reasonable attorney's fees and expenses.

17. **Confidentiality.** Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of the contents thereof. Contractor shall provide any and all samples and/or shop drawings requested by Owner.

18. **Assignment.** Contractor's rights and obligations under this Agreement are nontransferable and not assignable, and Contractor shall not subcontract all or any part of the Work contemplated by this Agreement without obtaining the prior written consent of Owner, which consent may be withheld in Owner's sole and absolute discretion. Owner may assign this Agreement without Contractor's consent.

19. **Notices.** All notices required pursuant to this Agreement or otherwise shall be in writing and shall be delivered to the respective business address of the Parties.

20. **Entire Agreement.** This Agreement, and with respect to prices and quantities only, the Price Schedule and all written Purchase Orders shall constitute the entire agreement between the Parties, and there are no other agreements, oral or written, by and between the Parties. Except as otherwise provided herein, no provision of this Agreement may be amended or added to except in writing signed by both Parties.

21. **Termination and Waiver.** This Agreement shall remain in full force and effect until terminated in writing by mailing notice to the other Party. Owner may terminate this Agreement at any time, irrespective of whether Contractor is in default or breach hereunder, at will. Contractor shall provide One Hundred Twenty (120) Days' notice prior to the effective date of termination, and agrees to perform fully under this Agreement during such notice period. If the Agreement is terminated by Owner, the Parties agree that, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement. Anything herein contained to the contrary notwithstanding, the Work to be performed by Contractor shall only include such work as specifically authorized by an authorized representative of Owner. Any failure of Owner to enforce any of the terms and provisions of this Agreement shall not constitute a waiver of such required performance by Contractor or of any other performances in the future required by Contractor hereunder.

22. **Dispute Resolution.** If a dispute arises out of or relating to this Agreement or a breach thereof and if the dispute cannot be settled through negotiation, the parties agree to first try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules, before resorting to arbitration, litigation, or another dispute resolution procedure. If mediation fails, any claim, controversy or dispute of any kind among the Parties, now existing or arising in the future, whether relating to the interpretation of any provision of this Agreement, the rights and obligations of the Parties under this Agreement, any other agreement relating to, or arising from, the business of Owner or the Work, shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq. The arbitration shall be conducted by the American Arbitration Association ("AAA"). The arbitration shall be conducted in accordance with the Construction Industry Arbitration, to the extent not in conflict with the Federal Arbitration Act. The Parties agree that if multiple arbitrations should be commenced, all such proceedings shall be consolidated into one arbitration. Contractor agrees to participate in, and be bound by, any arbitration proceeding between Owner and any third party relating to the Work. Notwithstanding any provision to the contrary, Owner shall be entitled to terminate this Agreement and/or any Purchase Order, in whole or in part, in the event any dispute arises between Contractor and Owner, whereupon Owner shall also be entitled to exercise any and all remedies, deductions, and offsets authorized pursuant to the terms and provisions of this Agreement. Notwithstanding any other provision of this paragraph, in the event that a subcontractor or material supplier of Contractor, or any other necessary third party, cannot be forced to mediate or arbitrate, Owner may elect to unilaterally waive mediation or arbitration.

23. **Survival.** All terms of this Agreement survive its termination and shall remain in full force and effect and shall be binding upon the Parties and any successors and assigns.

24. **General Contract Provisions.** The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. The terms of the Agreement shall be binding on all Parties, their respective successors, representatives, heirs and assigns. In the event of a conflict between this Agreement and the terms of any Purchase Order or any other agreement or document pertaining to the subject matter hereof which cannot be reconciled by the Parties, the terms of this Agreement shall control. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs, sections or articles hereof. No delay or failure by Owner to exercise any right hereunder, and no partial or single exercise of such right, will constitute a waiver of that or any other right except by a written agreement executed by Owner.

INITIALS:

Owner:

Contractor:

CORPORATE

EXHIBIT 2

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

PATRICIA CLARK,

Plaintiff,

v.

D.R. HORTON, INC.,

Defendants.

IN THE COURT OF
COMMON PLEAS

CASE NO.: 2008-CP-08-

SUMMONS

(Jury Trial Demanded)

2008 JUN 12 PM 4:16
CLERK OF COURT
BERKELEY COUNTY, SC

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at 864 Lowcountry Blvd., Ste. A, Mt. Pleasant, South Carolina, 29465, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Segui Law Firm, LLC

By: Phillip W. Segui, Jr.

Phillip W. Segui, Jr.
864 Lowcountry Blvd., Ste. A
Mt. Pleasant, SC 29465
(843) 884-1865
psegui@seguilawfirm.com

THE CHAKERIS LAW FIRM

By: John J. Chakeris

John J. Chakeris
P. O. Box 397
Charleston, SC 29402
(843) 853-5678
john@chakerislawfirm.com
Attorneys for Plaintiffs

Charleston, South Carolina

Dated: 6/9, 2008

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

PATRICIA CLARK,

Plaintiff,

v.

D.R. HORTON, INC.,

Defendants.

IN THE COURT OF
COMMON PLEAS

CASE NO.: 2008-CP-08-

COMPLAINT

(Jury Trial Demanded)

1633
2008 JUN 12 PM 4:16
CLERK OF COURT
BERKELEY COUNTY, SC

The Plaintiffs above named, complaining of the Defendants above named, would allege and show as follows:

PARTIES

1. The Plaintiff is a citizen and resident of the County of Berkeley, State of South Carolina and at all times hereinafter mentioned, own the residence located at 403 Milner Court on Daniel Island, South Carolina.

2. That, upon information and belief, Defendant, D.R. Horton, Inc., is a corporation organized in the State of South Carolina conducting business in Berkeley County, State of South Carolina and at all times relevant hereto was engaged in the design, development, construction and/or repair of residential housing and specifically, constructed and/or repaired the Plaintiff's residence located at 403 Milner Court on Daniel Island, South Carolina.

JURISDICTION

3. The Court has jurisdiction over the parties and subject matters hereto and that the allegations out of which this action arises all involve the residence of the Plaintiff located in the County of Berkeley, State of South Carolina.

FACTUAL BACKGROUND

4. That the Defendant, D.R. Horton, Inc., designed, developed and constructed the residence located at 403 Milner Court on Daniel Island, South Carolina.

5. That the Plaintiff purchased the home from the Defendant, D.R. Horton, Inc., on or about July 2002, and became aware of defects and deficiencies that include but are not limited to the installation of the siding and other construction deficiencies that D.R. Horton, Inc., has attempted to repair on numerous occasions.

6. That as a result of the various defects and deficiencies relative to the construction of this home, the Plaintiff has been damaged and will be required to expend large sums of money to repair, correct and replace various parts and components of the residence and reconstruct major portions of the residence; have been exposed to and will be subject to loss of use, enjoyment and depreciation of the value of her property.

FOR A FIRST CAUSE OF ACTION (Negligence) (As To D.R. Horton, Inc.)

7. Each and every allegation contained in Paragraphs 1 through 6 above are incorporated herein by express reference as though fully set forth.

8. At all times material hereto, the Defendant, D.R. Horton, Inc., by and through its agents, servants and employees undertook and were under a duty to design, develop, construct and/or repair the residence and to provide materials and services in accordance with applicable building codes, manufacturers' recommendations and in conformance with accepted construction and industry standards.

9. The Defendant, D.R. Horton, Inc., was negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, remodeling, developing, designing, supervising and inspecting the subject residence and in failing to construct and/or repair said residence in accordance with applicable building codes, manufacturers' recommendations and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the residence, which will need to be or have been corrected, repaired and/or replaced. Such negligence, gross negligence, carelessness, recklessness, willfulness and wantonness include but are not limited to the following particulars, to wit:

- a. In failing to use due care in the design, development, construction, repair and remodeling of the subject residence;
- b. In failing to adequately supervise the work and construction, repair and remodeling of the subject residence;
- c. In failing to hire competent subcontractors or specialty contractors;
- d. In failing to adequately and competently supervise and/or train said subcontractors or specialty contractors;
- e. In constructing, repairing and remodeling subject residence in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices.
- f. In improperly installing siding and exterior wall system;
- g. In failing to properly install the rough opening flashing and other flashing;
- h. In failing to properly install the moisture barrier;
- i. In installing a home exterior which fails to provide a sufficient barrier against the intrusion of water into the wall system and adequate avenue for exit of water that gets into the wall system;
- j. In constructing the subject residence in such a manner that water entered the dwelling;
- k. In improperly installing kick-out flashings;
- l. In failing to properly install the framing;
- m. In improperly installing the slab and driveway;
- n. In improperly installing the roof and shingles;
- o. In improperly installing the gas hot water heater;
- p. Other deficiencies or failures as will be proven at trial.

10. That as a direct and proximate result of the negligence, gross negligence, carelessness, willfulness and wantonness of the Defendant, D.R. Horton, Inc., the Plaintiff has suffered actual, direct, incidental, consequential and special damages including, but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the residence to make it safe and habitable. Additionally, Plaintiff has been injured and otherwise damaged in that structural and framing deficiencies have caused damage to the components of the home and excessive water and moisture exists and continues to exist and moisture has intruded and continues to intrude into the subject residence causing rot, deterioration and other damages to the finish and structural elements of Plaintiff's home. All of which will require the Plaintiff to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of the property as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

**FOR A SECOND CAUSE OF ACTION
(Breach of Contract)
(As to D.R. Horton, Inc.)**

11. Each and every allegation contained in Paragraphs 1 through 10 above are incorporated herein by express reference as though fully set forth.

12. That at all times herein, the Plaintiffs entered into a contract with the Defendant D.R. Horton, Inc., for the design, development, construction and purchase of her residence located at 403 Milner Court on Daniel Island, South Carolina.

13. That at all relevant times herein, the Defendant, D.R. Horton, Inc., by and through its agents, servants and employees had an obligation and duty to construct

and/or repair the residence and to provide materials and services in accordance with the terms and conditions of the contract, applicable building codes, manufacturers' recommendations and in conformance with accepted construction and industry standards.

14. That the Defendant, D.R. Horton, Inc., breached the contract with the Plaintiff by failing to develop, construct and/or repair said residence in accordance with the terms and conditions of the contract, applicable building codes, manufacturers' recommendations and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the residence which will need to be or have been corrected, repaired and/or replaced and are in breach of the aforesaid contract. Such breach includes but is not limited to the following particulars, to wit:

- a. In failing to use due care in the design, development, construction, repair and remodeling of the subject residence;
- b. In failing to adequately supervise the work and construction, repair and remodeling of the subject residence;
- c. In failing to hire competent subcontractors or specialty contractors;
- d. In failing to adequately and competently supervise and/or train said subcontractors or specialty contractors;
- e. In constructing, repairing and remodeling subject residence in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices.
- f. In improperly installing siding and exterior wall system;
- g. In failing to properly install the rough opening flashing and other flashing;
- h. In failing to properly install the moisture barrier;
- i. In installing a home exterior which fails to provide a sufficient barrier against the intrusion of water into the wall system and adequate avenue for exit of water that gets into the wall system;
- j. In constructing the subject residence in such a manner that water entered the dwelling;
- k. In improperly installing kick-out flashings;
- l. In failing to properly install the framing;
- m. In improperly installing the slab and driveway;
- n. In improperly installing the roof and shingles;

- o. In improperly installing the gas hot water heater,
- p. Other deficiencies or failures as will be proven at trial.

15. That as a direct and proximate result of the Defendant, D. R. Horton, Inc.'s, breach of contract with the Plaintiff, the Plaintiff has suffered actual, direct, incidental, consequential and special damages including, but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and her having to spend substantial sums of money in order to renovate, correct, repair and restore her residence to make it safe and habitable. Additionally, Plaintiff has been injured and otherwise damaged in that structural and framing deficiencies have caused damage to the components of the home and excessive water and moisture exists and continues to exist and moisture has intruded and continues to intrude into the subject residence causing rot, deterioration and other damages to the finish and structural elements of Plaintiff's home. All of which has or will require the Plaintiff to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of her property as well as loss of value in depreciation by virtue of the defects and damages aforesaid

FOR A THIRD CAUSE OF ACTION

**(Breach of Warranty of Habitability, Breach of Warranty of Workmanlike Services,
Breach of Warranty for Fitness for a Particular Purpose, Breach of Warranty of
Merchantability and Breach of Warranty Against Latent Defects)
(As To D.R. Horton, Inc.)**

16. Each and every allegation contained in Paragraphs 1 through 15 above are incorporated herein by express reference as though fully set forth.

17. That Defendants, D.R. Horton, Inc., implicitly and/or expressly warranted that the subject residence and its components would be habitable and fit for its intended uses as a single family residence and home, that said residence and its

components would be sold, designed, manufactured, constructed, installed, repaired and remodeled in a fit, serviceable, good and workmanlike fashion in accordance with the applicable building codes, product specifications, accepted building component manufacturing standards and accepted construction industry standards applicable thereto and that the subject residence and/or the manufactured components installed into and/or onto said residence would be merchantable, free from latent defects and fit for the particular purpose for which it was sold.

18. That Defendant, D.R. Horton, Inc., breached said warranties by designing, developing, manufacturing, selling, constructing, remodeling or repairing subject residence and/or the manufactured components installed into and/or onto said residence in such manner as to be in violation of applicable building codes, standard building practices, relevant product specifications, accepted building component manufacturing standards and accepted construction industry standards and practices.

19. As a direct and proximate result of the Defendants, D.R. Horton, Inc.'s, breach of these warranties, the Plaintiff has suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the residence to make it safe and habitable. Additionally, Plaintiff has been injured and otherwise damaged in that structural and framing deficiencies have caused damage to the components of the home and excessive water and moisture exists and continues to exist and excessive water and moisture exists and continues to exist and moisture has intruded and continues to intrude into the subject residence causing rot,

deterioration and other damages to the finish and structural elements of Plaintiff's home. All of which has or will require the Plaintiff to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of the property as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

**FOR A FOURTH CAUSE OF ACTION
(Unfair Trade Practices)
(As To D.R. Horton, Inc.)**

20. Each and every allegation contained in Paragraphs 1 through 19 above are incorporated herein by express reference as though fully set forth.

21. The Defendant, D.R. Horton, Inc., is a "person" within the meaning of South Carolina Code § 39-5-10(a), and the Defendant by its actions in designing, developing, manufacturing, selling, constructing, remodeling or repairing subject residence and/or the manufactured components installed into and/or onto said residence are engaged in commerce within the meaning of South Carolina Code §29-5-10(b).

22. The Defendant by its action(s) described herein above, constitute unfair and deceptive practices within the meaning of South Carolina Code §39-5-20(a).

23. The Defendant's act(s) is capable of repetition and, upon information and belief, have been repeated.

24. The Defendant's conduct affects the public interest of the people of South Carolina.

25. The Defendant knew or should have reasonably known, that its conduct violated the Unfair Trade Practices Act. As a direct, foreseeable and proximate result of the Defendants' unfair and deceptive practices, the Plaintiff has suffered actual, direct, incidental, consequential and special damages, including but not limited to, the

expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the residence to make it safe and habitable. Additionally, Plaintiff has been injured and otherwise damaged in that structural and framing deficiencies have caused damage to the components of the home and excessive water and moisture exists and continues to exist and excessive water and moisture exists and continues to exist and moisture has intruded and continues to intrude into the subject residence causing rot, deterioration and other damages to the finish and structural elements of Plaintiff's home. All of which will require the Plaintiff to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of the property as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

WHEREFORE, the Plaintiff prays for judgment against the Defendant, D.R. Horton, Inc., in a reasonable amount of actual, punitive and treble damages to be determined by the jury; for the attorneys fees and cost of this action; for a prejudgment or post-judgment interest on Plaintiff's damages; and for such other and further relief as this Court may deem just and proper.

THE CHAKERIS LAW FIRM

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Attorneys for Plaintiff

Charleston, South Carolina
Dated: 6/9, 2008

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Patricia Clark,

Plaintiff,

v.

D.R. Horton, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

C.A. No.: 2008-CP-08-1633

CONSENT ORDER REFERRING CLAIMS TO ARBITRATION

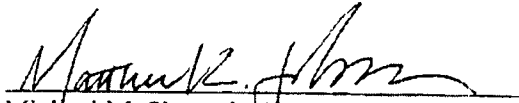
Before the Court is Defendant, D.R. Horton, Inc.'s, Motion to Compel Arbitration and to Stay, to which Plaintiff has given its consent. After reviewing said Motion, and with Plaintiff's consent, the Court is of the opinion that the Motion should be GRANTED. It is therefore:

ORDERED that the Motion to Compel Arbitration and to Stay is granted in its entirety pursuant to S.C. Code Ann. § 15-48-20 and this case is hereby referred to binding arbitration and stayed pending completion of the arbitration. This Court shall retain jurisdiction for the purpose of confirming, enforcing, or taking any appeal from the arbitrator's award.

AND IT IS SO ORDERED dated this 1 day of April, 2009.

S. D. G. Jefferson
Presiding Judge, Ninth Judicial Circuit

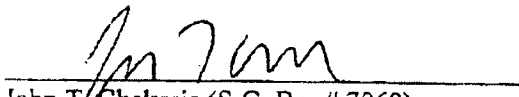
WE SO MOVE:



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WE CONSENT:



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Attorneys for Plaintiff,
Patricia Clark

Patricia Clark v. D.R. Horton, Inc.
Case No.: 2008-CP-08-1633

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EXHIBIT 4

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY)

CASE NO.: 08-CO-08-1633

PATRICIA CLARK,)

Plaintiff,)

ARBITRATION ORDER

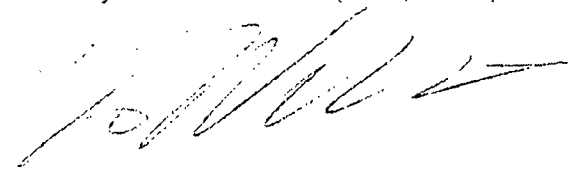
vs.)

D.R. HORTON, INC.,)

Defendant.)

FILED
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CLERK OF COURT
BERKELEY COUNTY, SC

This matter is before me pursuant to Consent Order Referring Claims to Arbitration dated April 1, 2009. The Arbitration in this matter was held on December 10 and 11, 2009. Counsel for the parties have requested an Order containing a monetary award only. Based upon the testimony presented at trial and a thorough review of the documentary evidence and applicable authorities, I find in favor of the Plaintiff in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00).


Thomas J. Wills, IV, Esquire, Arbitrator
Wills & Massalon, LLC
P.O. Box 859
Charleston, SC 29402

January 5, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C.A. NO.: 2010-CP-10-10355

D.R. HORTON, INC. f/k/a C. RICHARD
DOBSON BUILDERS, INC.,)

Plaintiff,)

-versus-)

BUILDERS FIRSTSOURCE -)
SOUTHEAST GROUP, LLC; and)
BUILDERS FIRSTSOURCE, INC; and)
JOSEPH NACCARI, INDIVIDUALLY,)
AND D/B/A MASTERFRAMERS,)

Defendants,)

**PLAINTIFF'S MEMORANDUM OF
LAW IN OPPOSITION TO
DEFENDANT BUILDERS
FIRSTSOURCE'S MOTION FOR
SUMMARY JUDGMENT**

JOSEPH NACCARI, INDIVIDUALLY,)
AND D/B/A MASTERFRAMERS,)

Third-Party Plaintiff,)

-versus-)

JAMIE ARREGUIN D/B/A MAYA)
CONSTRUCTION,)

Third-Party Defendant.)

2013 APR 10 PM 3:32
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

Plaintiff, D.R. Horton, Inc. f/k/a C. Richard Dobson Builders, Inc., ("D.R. Horton")

submits this memorandum of law in opposition to Defendant Builders FirstSource-Southeast Group, LLC and Builders FirstSource, Inc.'s ("BFS") motion for summary judgment. BFS asserts that it is entitled to summary judgment as to D.R. Horton's claims for contribution and contractual indemnification. For the following reasons, BFS's motion should be denied.

I. Factual and Procedural Background

D.R. Horton was named as a defendant in a construction defect action captioned as Patricia Clark v. D.R. Horton, Inc., 2003-CP-08-1633 ("Underlying Action") wherein Clark asserted D.R. Horton was negligent in the construction of 403 Milner Court on Daniel Island, South Carolina. During the litigation of the Underlying Action Clark retained Robert Sisnroy, P.E. to conduct an investigations into the conditions of 403 Milner Court. On February 29, 2008, Robert Sisnroy produced a Construction Deficiencies Investigation Report ("Sisnroy Report") which detailed Mr. Sisnroy's findings during his investigation. See Exhibit "A".

The Sisnroy Report notes that there were construction deficiencies with: (1) flashing of the windows and framed openings; (2) structural framing of the roof, first floor, and second floor - including inadequate support for the roof LVL beam, stud framing, lack of lateral support in perimeter girder, improper construction of beams, improper attachment of beams, and unacceptable floor deflections. The Sisnroy Report also has a repair scope to address the issues identified within the Report itself. Id.

Sisnroy also recommended in his report that a structural engineer be hired to further investigate the structural issues that are noted within the report. Id. Curry Engineering was hired in the Underlying Action to investigate the structural issues. Depo. of Howard Althen 11:9 - 12:2 (Oct. 2, 2009). Curry's scope included an analysis of the gravity design, lateral design, and pier design. Id. at 26:10 - 26:14. Specifically, Curry Engineering performed a preliminary gravity analysis of the structure (tracing loads down from the roof to the foundation). Id. at 24:11 - 24:20. Ultimately, Curry Engineering prepared a layout of the structure and structural plans, and suggested repairs. Id. at 36:13 - 36:16.

The following is a general description of some of the required structural repairs as noted in the Sisnroy Report: (1) undersized beam above the mezzanine; (2) lack of thru bolts attaching the trusses; (3) improper installation of tiedowns; (4) missing structural elements; (5) inadequate bearing on certain beams; (6) lack of blocking at plywood edges; (7) inadequate framing system in certain areas; (8) lack of consideration of load transfer on structural drawings; and (9) lack of continuous structural members from floor to roof. See Exhibit "A".

Mr. Sisnroy was deposed on August 11, 2009, in the Underlying Action wherein he was asked about his opinions as to the construction of 403 Milner Court. During his deposition, Mr. Sisnroy testified that there were numerous structural and framing issues which corresponded to his Report. Specifically, Mr. Sisnroy testified that cracking that he observed in the residence was the result of a separation in the multiple structural framing which indicates that there is a loading condition that is causing movement within the structural framing members. Depo. of Robert Sisnroy 79:3 - 81:5 (Aug. 11, 2009). Mr. Sisnroy testified that he arrived at this opinion after he opened the interior wall and found gaps between the stud framing which is a typical condition when there is an overload of a multi-member configuration of the framing. Id. 81:11 - 81:23.

Sisnroy further testified that the open web trusses that were installed were not properly attached to the structural framing (rim girders). Id. 83:21 - 84:10. Furthermore, the rim girders installed were not properly installed in that the rim girders did not have any proper lateral support which allowed the rim girders to lean outward under loads of the two-story walls. Id. 84:21 - 85:10.

These are only several examples of the conditions Mr. Sisnroy provided testimony about. Mr. Sisnroy further testified about those conditions as noted in his Report which were in

violation of the CABO Code, violations of industry standards of care, and violations of manufacturer's instructions requirements. Id. at 35:7 - 36:2. Most of these issues related to framing including improper installation of the building wrap, improper installation of the window flashing which had resulted in water damage to the sheathing and structural members.

Clark hired Calibogue Construction, Inc. to produce an estimate for the repairs based on the scope of work contained within the Sisroy Report and the information from Curry Engineering. See Exhibit "B". A Preliminary Remediation & Restoration Estimate Scope of Work was produced by plaintiff in the underlying action which provided the following estimates:

General Conditions	\$29,803
Cladding Removal & Scaffolding	\$10,040
Ext'r Wall Repair Allowance	\$10,272
Window & Door Repair	\$14,025
Water Management System	\$7,622
Ext. Wall Cladding: Siding	\$17,976
Curry Engineering Allowances	\$29,800
Interior Repairs	\$47,789
Exterior Repairs	\$31,470
Roofing System Repairs	\$7,975
Electrical/Plumbing/Mechanical	\$11,000
Site Work	\$5,000
Subtotal	\$223,072
Contractor's Fee (10% + 10%)	\$46,845

TOTAL

\$269,917

Jay Henderson with D.R. Horton was also deposed in the Underlying Action on August 6, 2009. In his deposition Mr. Henderson testified that BFS was the framing contractor for 403 Milner Court and that BFS's scope of work included designing the trusses, roof, interm floor, and the lower floor as a single group. Depo. of Jay Henderson 58:11 - 59:25 (Aug. 6, 2009). Mr. Henderson further testified that BFS provided the labor and materials to complete the job, installed the building wrap, setting the windows and doors, and installed flashing of the windows and doors. Id. at 86:18 - 88:9.

The Underlying Action was arbitrated pursuant to the contract between Clark and D.R. Horton, and Clark was awarded \$150,000 in damages. The award was entered into the judgment roll of Berkeley County, and was subsequently satisfied by D.R. Horton. Furthermore, D.R. Horton incurred attorney fees related to the defense of this action. The attached breakdown of attorney fees has been produced in this action. See Exhibit "C".

D.R. Horton filed this action seeking to recovery from BFS through claims of contribution and contractual indemnification for the arbitration award and costs and attorney fees associated with the defense of the Underlying Action. BFS moved, and the Court granted leave for BFS to add Joseph Naccari d/b/a Masterframers ("Naccari") as a Third-Party Defendant. D.R. Horton then moved to name Naccari as a first party defendant, and the Court granted leave to amend. Naccari subsequently moved to name Jamie Arreguin d/b/a Maya Construction as a Third-Party defendant.

Written discovery has taken place in this action, as well as the deposition of Joseph Naccari (BFS's subcontractor). BFS responded to interrogatories stating that BFS designed and

provided the trusses installed at 403 Milner Court, as well as providing other materials for installation at 403 Milner Court. See Exhibit "D" (BFS' Answers to Plaintiff Interrogatories, No. 16).

BFS further identified Scott Coffman, P.E. in discovery responses as a witness and noting that "Mr. Coffman was Director of Engineering for BFS," and that "During 2007, Mr. Coffman performed an analysis of the roof trusses at 403 Milner Court, Daniel Island, South Carolina," and that "as a result of of his analysis, Mr. Coffman produced a letter dated October 2, 2007." See Exhibit "D" (BFS' Answer to Plaintiff's Interrogatories, No. 1). Attach as Exhibit "E" is a copy of Mr. Coffman's letter which states that there are three issues which he inspected at 403 Milner Court based on communications with Gifford Shaw which includes noting that the roof trusses were incorrectly fabricated.

BFS also identified Gifford Shaw as a witness in discovery responses and noted that he "participated in the investigation of this matter on behalf of BFS." See Exhibit "D" (BFS's Answers to Plaintiff's Interrogatories, No. 1).

In the Underlying Action an e-mail dated September 24, 2007, from Gifford Shaw to Bill Crabtree, Larry Wozniak, Randy Thomason, and others was produced. The e-mail identifies some of the issues that were present at 403 Milner Court including notations that: (1) two sets of trusses and lateral bracing were not installed; (2) dips in the second level floor is out of code; (3) a suspicion that there is a lack of support under a beam; (4) dips in the floor on the first floor which are probably out of code and resulting from a deflected load from a beam. See Exhibit "F".

BFS also identifying Bill Crabtree, Larry Wozniak, and Randy Thomason as witnesses in

their discovery responses. See Exhibit "D" (BFS' Answer to Plaintiff's Interrogatories, No. 1). BFS further indicated in discovery that Bill Crabtree was BFS Installed Sales Manager for the Charleston market, Larry Wozniak was BFS Market Manager, and that Randy Thomason "participated in the investigation of this matter on behalf of BFS." See Exhibit "D" (BFS's Answers to Plaintiff's Interrogatories, No. 1).

The attached e-mail from Gifford Shaw to the other BFS employees dated September 24, 2007, provides recommendations to address concerns with the roof issues, second floor issues, wall sheetwall cracks, and first floor issues at 403 Milner Court. On each of these issues, Mr. Shaw indicates there are problems with the construction and/design, and recommend each of these issues be corrected or fixed. See Exhibit "F".

In addition to written interrogatories, D.R. Horton served BFS with Requests for Admission to which BFS admitted that: (1) BFS manufactured the roof trusses for the Clark Residence; (2) BFS manufactured the roof trusses for the Clark Residence; (3) BFS and/or one of its subcontractors installed the roof trusses for the Clark Residence; and (4) BFS and/or one of its subcontractors installed the floor trusses for the Clark Residence. See Exhibit "G" (BFS Responses to Requests for Admission, Nos. 20, 21, 22, and 23).

The deposition of Joseph Naccari was taken in this action on December 21, 2012. During his deposition Mr. Naccari testified that he was the framing subcontractor for BFS, and Maya Construction would have been the framing crew he used on the job. Depo. of Joseph Naccari 7:4 - 12:25 (Dec. 21, 2012). Mr. Naccari further testified that his scope of work as the framing subcontractor would have included the framing work of the structure, setting the windows and doors, and installing the building wrap. Id. Mr. Naccari testified that installing the windows

would have included “set the window, and . . . put the silicone on the back, and . . . nail. Id. at 11:16 - 12:25. He further testified that after this, they would have installed tape over the edge of the windows and onto the building wrap. Id. However, when specifically asked about flashing of the windows, Mr. Nacarri testified that he believed that the windows that were installed were “self-flashing” windows. Id. Mr. Nacarri also testified that his main contact for the job was Bill Crabtree with BFS, and that Mr. Crabtree would have a set of plans that were provided by BFS, which were normally engineered by BFS. Id.

II. Summary Judgment Standard

“Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Toomer v. Norfolk S. Ry. Co., 544 S.E.2d 634, 635 (S.C. Ct. App. 2001) (citing SCRCP 56(c); Mosteller v. County of Lexington, 520 S.E.2d 620 (S.C. 1999); Young v. South Carolina Dep't of Corrections, 511 S.E.2d 413 (S.C. Ct. App.1999)). “It is not appropriate, however, where further inquiry into the facts of the case is desirable to clarify the application of the law.” Id. (citing Carolina Alliance for Fair Employment v. South Carolina Dep't of Labor, Licensing, & Regulation, 523 S.E.2d 795 (S.C. Ct. App.1999)). “All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party.” Id. (citing Young, 511 S.E.2d at 415). “[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” Hancock v. Mid-S. Mgmt. Co., Inc., 673 S.E.2d 801, 803 (S.C. 2009).

II. Law and Analysis

A. Collateral Estoppel

The issue in the Underlying Action was whether there was any construction defects present at 403 Milner Court, and if so, what were homeowners' damages. The arbitrator determined that there were in fact defective conditions present, and determined that Clark was entitled to \$150,000 as evidenced by the Arbitration Award. D.R. Horton is not now seeking to relitigate the issue of whether there were any defective conditions at the residence, but rather D.R. Horton is seeking contribution for the arbitrator's award, and seeking to recover the amount paid over and beyond D.R. Horton's pro rata share of the damages awarded. D.R. Horton's contribution claim was not addressed at the arbitration of the Underlying Action.

D.R. Horton is asserting claims for contractual indemnification seeking to recover the from BFS the amount awarded at arbitration, as well as the costs and fees associated with defending the Underlying Action. D.R. Horton's claim for contractual indemnification for the arbitration award and attorney fees was not addressed at the arbitration of the Underlying Action.

Furthermore, South Carolina case law is clear that "the right to contribution does not arise prior to payment." First Gen. Services of Charleston, Inc. v. Miller, 314 S.C. 439, 444, 445 S.E.2d 446, 448 (1994). In applying this rule to this case, there was no right to contribution from BFS, until D.R. Horton satisfied the judgment in the Underlying Action because the cause of action for contribution was not ripe until payment. Id. (citing Southeastern Freight Lines v. City of Hartsville, 313 S.C. 466, 443 S.E.2d 395 (1994)). Accordingly, the issue of contribution from BFS to D.R. Horton could not have been addressed at arbitration in the Underlying Action because the claim was not ripe.

The same argument can be made as to D.R. Horton's claims for contractual indemnification regarding damages available under the indemnification clause. D.R. Horton may be able to assert a claim for contractual indemnification against BFS in the Underlying Action, but the total damages would not have been definitively set because D.R. Horton is entitled to recovering costs and attorney fees involved in the defense of the Underlying Action. The total amount of costs and attorney fees could only be determined upon the resolution of the Underlying Action. Accordingly, the issue of costs and attorney fees related to the Underlying Action could not have been addressed at arbitration of the Underlying Action.

BFS has failed to demonstrate that the issue of contribution, and the issues of contractual indemnification was (1) actually litigated in the Underlying Action, (2) directly determined in the Underlying Action; and (3) necessary to support the prior judgment. In fact, the issues related to contribution and contractual indemnification as pled in this action are totally unrelated to the Underlying Action. BFS fails to carry the burden to establish collateral estoppel. Accordingly, collateral estoppel cannot apply.

B. Contribution

The Common law rule against contribution was abrogated when the General Assembly enacted the South Carolina Uniform Contribution Among Tortfeasors Act. G & P Trucking v. Parks Auto Sales Service & Salvage, Inc., 357 S.C. 82, 591 S.E.2d 42 (Ct. App. 2003). The basic premise of contribution is commonality; thus, "common negligence," rather than joint negligence, determines the right to contribution. Vermeer Carolina's, Inc. v Wood/Chuck Chipper Corp., 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999). The Code specifically states that "[w]hether or not a judgment has been entered in an action against two or more tortfeasors for the

same injury . . . contribution may be enforced by separate action.” S.C. Code § 15-38-40. “Once the issue of liability has been resolved . . . a defendant has the right to seek contribution against any judgment defendant and other persons who were not made parties to the action.” Id.

“According to the Act, where two or more persons become jointly or severally liable in tort for the same injury to property, a right of contribution arises among them, even if judgment has not been recovered against all or any of them.” Cowden Enterprises, Inc. v. E. Coast Millwork Distributors, 363 S.C. 540, 543, 611 S.E.2d 259, 260 (Ct. App. 2005)(citing S.C.Code Ann. § 15-38-20(A)). “In these situations, the right of contribution exists only in favor of a tortfeasor who, like [the General Contractor], has paid more than his pro rata share of the common liability. Id. (citing S.C.Code Ann. § 15-38-20(B) (Supp. 2003); Vermeer, 336 S.C. at 68, 518 S.E.2d at 309). “The right to recover contribution arises only when one tort-feasor has paid or settled a claim for which other wrongdoers are also liable, while the cause of action for contribution arises at the time of the jointly negligent acts. Cousar v. New London Eng'g Co., Inc., 306 S.C. 37, 39-40, 410 S.E.2d 243, 244 (1991)(quoting Shiflet v. Eller, 228 Va. 115, 319 S.E.2d 750 (1984))(emphasis added).

1. South Carolina Courts have held that when a builder “acts in a way that violates a legal duty . . . his liability is both in contract and in tort.”

The South Carolina Supreme Court in Kennedy v. Columbia Lumber & Mfg. Co., Inc., 299 S.C. 335, 345-46, 384 S.E.2d 730, 736-37 (1989), addressed the issue of whether an action against a builder for violating a legal duty is a action in contract or an action in tort when it was discussing the “economic loss” rule. In Kennedy, the Supreme Court stated that “[t]he Court of Appeals itself correctly recognized in Kincaid v. Landing Dev. Corp., 289 S.C. 89, 344 S.E.2d

869 (Ct.App.1986), that a violation of a building code violates a legal duty for which a builder can be held liable in tort for proximately caused losses.” Id. The Court continued in its opinion and stated “Terlinde, 275 S.C. at 399, 271 S.E.2d at 770, imposes a legal duty on builders to undertake construction commensurate with industry standards. Where a building code or industry standard does not apply, public policy further demands the imposition of a legal duty on a builder to refrain from constructing housing that he knows or should know will pose serious risks of physical harm.” Id.

In the Court’s analysis, the Court noted that the prior legal framework regarding “economic loss” rule as it relates to the purchase of a residence generates difficulties because the framework’s focus is on consequence, not action. Id. The court noted that “Builder ‘A’ and Builder ‘B’ can be equally blameworthy, and build equally shoddy housing, but because Builder ‘A’ ’s negligence happened to be discovered early enough, no one was harmed.” Id. The Court continued and noted that “[i]t hardly seems fair that Builder ‘A’ should profit from a diligent buyer’s discovery, or because he was fortunate,” and that the new “framework we adopt focuses on activity, not consequence.” Id.

The Court stated that “[i]f a builder performs construction in such a way that he violates a contractual duty only, then his liability is only contractual,” and “[i]f he acts in a way as to violate a legal duty, however, his liability is both in contract and in tort.” Id. The Court in adopting this new frame work states “a cause of action in negligence will be available where a builder has violated a legal duty, no matter the type of resulting damage.” Id.

In the underlying action there is sufficient evidence that BFS violated a legal duty in the construction of 403 Milner Court. The evidence indicates that BFS violated building codes,

industry standards, and manufacture's installation recommendations in the work they performed at 403 Milner Court as noted by the Sisnroy Report and Mr. Sisnroy's deposition testimony. Furthermore, even BFS's own employees that were involved in the investigation of the conditions of 403 Milner Court in 2007 noted that there were building code violations. See Exhibit "D". All these duties arise **outside** of the contractual duties included in the contract between Clark and D.R. Horton. Accordingly, these are the types of legal duties that when violated by a builder, the South Carolina Supreme Court has determined give rise to liability "both in contract and in tort." Accordingly, the arbitrator's award was based on liability arising **both in contract and in tort.**

2. There is sufficient evidence of damages that related to framing work.

Based on the deposition testimony provided in Underlying Action, the discovery responses of BFS, and the deposition of Joseph Naccari, there is sufficient evidence to establish that BFS scope of work included the designing and manufacturing of the structural elements, the framing of 403 Milner Court (including framing of structural elements), the installation of building wrap, the setting of windows and doors (including flashing or lack of flashing because subcontractor believed the windows were "self-flashing"), and the taping of the windows.

In order to address the structural elements the removal of the exterior siding, sheathing, and interior walls will be necessary. Therefore, the cladding removal and scaffolding will be necessary, an engineer will be necessary to address structural issues, exterior walls and interior wall will need to be repaired after structural issues addressed, and site work will be necessary to protect the landscaping during the repairs. The total for all the framing related repairs will total \$139,533.76.

The following are the repairs related to BFS's scope of work (framing and structural issues) based on the evidence in the Underlying Action and discovery in this action:

Cladding Removal & Scaffolding	\$ 10,040
Curry Engineering Allowances	\$ 29,800
Exterior Wall Repair Allowance	\$ 10,272
Interior Repairs	\$ 47,789
Site work	<u>\$ 5,000</u>
Total	\$102,901
General Conditions	
(13% base on Calibogue Const. Est.)	<u>\$ 13,377.13</u>
Subtotal	\$116,278.13
Contractor Fee (10% + 10%)	<u>\$ 23,255.63</u>
TOTAL	\$139,533.76

The total repair estimate was \$269,917, and the arbitration award totaled \$150,000. The difference between the total repair estimate and those repairs related to framing is \$130,388.24, so \$130,388.24 is related to non-framing issues.¹ Based on these calculations at least some of the award had to have been related to framing because the award of \$150,000 exceeded non-framing related repairs of \$130,388.24. Therefore, at least \$10,466.24 was related to framing.

Under a analysis most favorable to BFS, the award still included at least some damages for framing. Accordingly, there is some evidence that the award included damages associated

¹ D.R. Horton reserves the right to assert that the arbitration award was primarily related to framing issues, but makes this argument to establish that in a worse case analysis, at least some of the award had to have been related to framing.

with framing.

3. Arbitration Award is not speculative, it was determined at the time of the Arbitration and totals \$150,000.

Defendant BFS speculative damages argument fails as well because there is no speculation as to what D.R. Horton paid to satisfy the judgment rendered in the arbitration. "Speculative damages are damages that depend upon future developments which are contingent, conjectural, or improbable." 11 S.C. Jur. Damages § 5(citing Blacks Law Dictionary). The arbitration award was an award of money ordered by the arbitrator to be given to the homeowner in the Underlying Action to compensate the homeowner for loss or injury that occurred at the time of the construction of the residence. The arbitration award did not depend upon any future developments. Accordingly, BFS speculative damages argument fails.

C. Contractual Indemnification

1. S.C. Code Ann. § 32-2-10 specifically notes the statute will not affect BFS's promise to indemnify D.R. Horton for damages resulting for BFS's negligence, in whole or in part.

BFS is seeking summary judgment as to D.R. Horton's contractual indemnification claims asserting that the indemnification clause purports to require BFS to indemnify DRH for DRH's sole negligence and thus violates S.C. Code Ann. § 32-2-10, and is unenforceable and void. However, the indemnification clause only addresses indemnification arising out of BFS's "work." Furthermore, based on the clear language of S.C. Code Ann. § 32-2-10, "[n]othing contained in this section shall affect a promise or agreement whereby the promisor shall indemnify or hold harmless the promisee . . . against liability for damages resulting from the

negligence, in whole or in part, of the promisor.” Id.

BFS executed an Independent Contractor Agreement whereby “Work” was defined as “labor, services and/or materials, equipment, transportation, or facilities necessary to complete the construction-related activities generally described as Turnkey and shall include all work performed by [BFS] for [D.R. Horton].” The Independent Contractor Agreement included a indemnification clause whereby BFS agreed to defend, indemnify and hold D.R. Horton free and harmless from and against any and all claims asserted by homeowner on account of damages to or loss of property arising out of or in connection with (1) a breach of the warranties by BFS; (2) the Work performed or to be performed by BFS; and (3) any negligent action and/or omission of D.R. Horton related to the Work even when the loss is caused by the fault or negligence of D.R. Horton.

D.R. Horton is seeking indemnification for BFS’s breach of warranties, and is seeking indemnification for the Work performed by BFS. Based on the clear language of Section 32-2-10, “**Nothing contained in this section shall affect a promise or agreement whereby [BFS] shall indemnify or hold harmless [D.R. Horton] . . . against liability for damages resulting from the negligence, in whole or in part, of [BFS].**” Id. (emphasis added).

Section 32-2-10 does not affect BFS’s promise or agreement to indemnify D.R. Horton for BFS’s breach of warranties, and for the Work that BFS performed. Because this Section does not affect indemnification for BFS’s breach of warranties and for the Work that BFS performed, BFS’s argument that the indemnification clause violates S.C. Code Ann. § 32-2-10 fails based on the clear language of the statute itself.

- b. BFS waived any right to assert it was entitled to arbitration by failing to raise this

in their answer and seek to compel this matter to arbitration.

In South Carolina “[i]t is generally held that the right to enforce an arbitration clause may be waived.” Gen. Equip. & Supply Co., Inc. v. Keller Rigging & Const., SC, Inc., 344 S.C. 553, 556, 544 S.E.2d 643, 645 (Ct. App. 2001)(citing Hyload, Inc. v. Pre-Engineered Prods., Inc., 308 S.C. 277, 280, 417 S.E.2d 622, 624 (Ct.App.1992)). “In order to establish waiver, a party must show prejudice through an undue burden caused by delay in demanding arbitration.” Sentry Eng'g & Constr., Inc. v. Mariner's Cay Dev. Corp., 287 S.C. 346, 351, 338 S.E.2d 631, 634 (1985).

D.R. Horton filed this action in December 2010. BFS answered the original complaint in February 2011 and asserted general denials and specific defenses. BFS failed to raise any issue related to arbitration of this action in their answer. Exhibit “H” (BFS's Answer). Furthermore, BFS has never moved to compel this matter to arbitration. The first time arbitration was presented as an issue was in BFS memorandum in support of the motion for summary judgment.

BFS did not raise arbitration in its answer to D.R. Complaint, and should not now be allowed to argue that they are entitled to arbitration. As such, any argument asserting that this matter should be arbitrated has been waived by BFS.

- c. Contractual indemnity claims are not speculative based on the documented arbitration award of \$150,000 and the attorneys fees that were incurred by D.R. Horton in the defense of the Underlying Action.

“Indemnity is that form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party.” First Gen. Services of Charleston, Inc. v. Miller, 314 S.C. 439, 442, 445 S.E.2d 446, 448 (1994)(quoting Winnsboro v.

Wiedeman-Singleton, 303 S.C. 52 at 56, 398 S.E.2d 500 at 502 (Ct.App.1990), affirmed 307 S.C. 128, 414 S.E.2d 118 (1992)). "The right is created by operation of law "in cases of imputed fault or where some special relationship exists between the first and second parties." Id. (quoting 303 S.C. at 57, 398 S.E.2d at 503).

D.R. Horton asserting a claim against BFS for contractual indemnification, and is seeking to be compensated for the award D.R. Horton was required to pay in the Underlying Action, as well as the costs and attorney fees incurred in defending the Underlying Action. The contractual indemnification claim arises under the terms of the contract between D.R. Horton and BFS.

The order issued in arbitration clearly states the amount of D.R. Horton was required to pay Clark. There can be no question that this award was certain. Furthermore, the satisfaction of the judgment in the amount of \$150,000 indicates that D.R. Horton actually paid \$150,000 to Clark.

In addition to the award D.R. Horton has paid to Clark, D.R. Horton also incurred costs and attorney fees associated with the defense the Underlying Action. These are types of damages that are recoverable under the indemnity clause contained in the contract between D.R. Horton and BFS.

Both the award and the costs and attorney fees are numbers that are measurable and are not speculative. As noted above, "speculative damages are damages that depend upon future developments which are contingent, conjectural, or improbable." 11 S.C. Jur. Damages § 5(citing Blacks Law Dictionary). The amount of the award ordered by the arbitrator does not depend upon any future developments, and the costs and fees associated with D.R. Horton defending the Underlying Action does not depend of any future developments. These are

numbers that are based on events that have already occurred. Accordingly, BFS speculative damages argument fails.

III. Conclusion

BFS's motion for summary judgment as to D.R. Horton's claims for contribution and as to D.R. Horton's claims for contractual indemnification should be denied because of the above cited authorities and arguments. Accordingly, D.R. Horton respectfully request that BFS's motion for summary judgment be denied.

Dated this 10 day of April 2013.

Respectfully submitted,

WALL TEMPLETON & HALDRUP, P.A.



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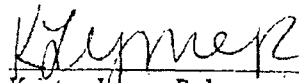
CERTIFICATE OF SERVICE

The undersigned employee of WALL TEMPLETON & HALDRUP, P.A. hereby certifies that on this 10th day of April 2013 she served a copy of **PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT BUILDERS FIRSTSOURCE'S MOTION FOR SUMMARY JUDGMENT** via electronic mail and by placing a copy in a postpaid envelope for collection and processing for mailing, following this business's ordinary practice, with which she is readily familiar to James Taylor Anderson, III. On the same day correspondence is placed for collection and mailing, it is deposited with the United States Postal Service in the ordinary course of business and addressed to James Taylor Anderson III, at the place and address stated below, which is the last known address, in Charleston, South Carolina:

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Kristyn Lynne Robertson

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JULIE J. ARDSTRONG
CLERK OF COURT
BY

EXHIBIT “A”

CONSTRUCTION DEFICIENCIES INVESTIGATION
403 Milner Court

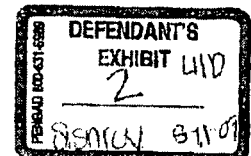
Prepared for:
Ms. Patricia Clark

Prepared by:
Robert G. Sisnroy, P.E.

February 29, 2008

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SISNROY ENGINEERING L.L.C.

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Charleston, South Carolina 29422
(843) 795-0450
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February 29, 2008
2007-160

Patricia Clark
403 Milner Court
Daniel Island, South Carolina 29492

RE: Construction Deficiencies Investigation
403 Milner Court

Dear Ms. Clark,

The following report is based on the construction deficiencies investigation performed at your home on November 19 and 28, 2007. The purpose of the investigation was to observe and document construction deficiencies in the home including but not limited to primarily exterior cladding and structural elements of the home. In general, the construction deficiencies observed are violations of the CABO Code, violations of industry standards of care, and violations of manufacturers' installation requirements. The report summarizes the conditions observed and identifies the respective deficiencies documented during the investigation. In addition, recommendations for repair are also included in the report.

DESCRIPTION

In order to properly identify the location of the deficiencies, a description of the home is necessary. The referenced home is a two-story single family, wood framed structure constructed on concrete masonry unit (CMU) columns installed on continuous concrete footings. The CMU column foundation provides a park under garage with a concrete slab on grade. The exterior cladding is Hardiplank fiber cement lap siding on all surfaces with Harditrim installations around the windows, doors and at exterior wall corners. Additionally, molded foam pediments have been installed above the window installations. A pressure treated 2x10 wood band board has been installed at the base of the first floor wall around the perimeter of the home. The roof configuration is a gable construction with the rear facing west roof extending down to the top of the first floor. The roof covering is architectural composition shingles. Architectural features include a covered front entryway porch, and a screened-in porch at the south end of the rear elevation. For orientation purposes, the front of the home faces approximately east.

BACKGROUND

According to the City of Charleston Building Department, the building permit for the original construction of the home was issued on June 7, 2001. Therefore, the applicable building Code at the time of construction was the CABO One and Two Family Dwelling Code, 1995 Edition.

CONSTRUCTION DEFICIENCIES

Construction conditions in violation of the CABO Code, manufacturer's installation requirements, and industry standards of care were observed in the exterior cladding, structural framing, garage concrete slab on grade, composition shingle roofing, and other components of the home. The following documented construction deficiencies are unacceptable conditions that are either manifesting damage in the home or that indicate improper construction practices that contribute to inadequate conditions in the structure.

Exterior Cladding

1. The exterior cladding on the home is Hardiplank horizontal lap siding with Harditrin installed around the perimeter of the windows and at exterior wall corners. Installation of the exterior cladding has not been accomplished in accordance with James Hardie Siding Products installation requirements and is in violation of CABO Code Section 703.1.
 1. Observations revealed the 7 1/2" plank siding boards were installed using a 2" ring shank siding nail. According to HardiPlank installation requirements, this fastener is not acceptable for the wind load requirements in the Charleston coastal region for blind nail fastening of planks. Consequently, this condition is in violation of CABO Code Section 703.1.
 2. Intrusive observations revealed that several of the fasteners have not been nailed into the stud framing as required by Hardiplank installation requirements. Measurement of the nail placement in the Hardiplank siding board removed from the head of the first floor window at the west end of the north elevation revealed that none of the 4 fasteners attaching the board to the wall framing were installed into the stud framing. (See Photo 1) Additionally, measurement of the placement of the 6 fasteners in the siding board beneath the window sill revealed that 5 were not installed in the stud framing. (See Photo 2 and 3) These conditions are violations of the Hardiplank installation requirements which indicate installation in the stud framing.
 3. Intrusive observations of the blind nailing fastener placement revealed all 12 of the nails observed have been installed at 3/4 inch or less from the top

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edge of the plank. (See Photo 2 and 3) This condition is a violation of the Hardiplank Installation requirements that require the fasteners to be placed not less than one inch from the top edge of the siding board.

4. Observations where the Hardiplank siding abuts the Harditrim boards revealed in many locations that the siding has been installed hard abutted to the trim boards. This is a violation of the manufacturer's Installation requirements that calls for a 1/8" gap between the siding end and the trim board. Additionally, the abutted condition does not allow for a proper sealant application. A thin failing surface applied sealant application was observed at most locations. (See Photo 4) This installation is in violation of Harditrim installation requirements and serves to promote water intrusion as evidenced by an unacceptable moisture content of 20% at the base of the wall adjacent to the siding and trim board intersection. This is a violation of CABO Code, Section 703.1. (See Photo 5)
 5. Observations of the fasteners used to install the Harditrim are exhibiting corrosion with corrosion staining observed at the heads of the fasteners. This is a violation of the manufacturer's Installation requirements for the use of proper corrosion resistant fasteners. (See Photo 6)
 6. In general, the improper fastener installations and use of improper fasteners observed in the siding installation require the entire cladding installation to be removed and replaced with properly installed siding, in accordance with manufacturers' installation requirements and IRC requirements.
- II. Intrusive and visual observations of the flashing installations revealed evidence of installation not in accordance with CABO Code requirements.
1. Typically, a molded foam pediment has been installed on the exterior face of the Hardiplank siding above the window heads. (See Photo 7) Observations were made of the pediment above the first floor window unit at the west end of the north elevation. (See Photo 8) Heavy water intrusion staining was observed behind and on back of the pediment, evidence that the pediment is promoting water intrusion. (See Photo 9 and 10) A vinyl flashing has been installed at the base of the pediment above the Harditrim at the head of the window. The flashing installed above the projecting Harditrim on the exterior face of the Tyvek house wrap is not leak proof and promoting water intrusion in violation of CABO Code, Section 703.8. (See Photo 11) Moisture measurement of the Harditrim below this flashing revealed 85% relative moisture content in the Harditrim indicating heavy water intrusion. (See Photo 12) This condition is in violation of CABO Code Section 703.1.

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2. Removal of the Harditrim around the window revealed that improper framed opening flashing has been installed. The Tyvek house wrap has been cut to the corner of the opening and folded into the opening. The use of Tyvek house wrap for framed opening flashing is in violation of the Brick Industry Association (BIA) industry standard of care that delineates air-infiltration barriers and building felt are not acceptable for use as flashings. Sticky back moisture barrier has been installed on the window nailing fin and onto the Tyvek house wrap. This is a violation of CABO Code, Section 703.8. (See Photo 13) It should be noted that the sill sticky barrier was installed directly to the window fin and on the weather barrier thus trapping any water intrusion at the wall.
3. Observations of the sticky back moisture barrier installations at the intrusive window observation revealed that it has not been installed in a weather-lapped configuration. This installation promotes water intrusion in violation of CABO Code, Section 703.1. (See Photo 14)
4. Intrusive observations at the base of the wall on top of the horizontal pressure treated floor band revealed the aluminum flashing has been installed on the exterior of the Tyvek house wrap thus creating a non-weather lapped condition and promoting water intrusion. Additionally, the flashing installation terminates at the end of the Hardiplank and does not extend beneath the Harditrim corner board. (See Photo 15) Observations of the wood floor band at the corner of the wall revealed evidence of heavy water intrusion. The wood floor band is heavily stained and the fasteners are heavily corroded due to water intrusion. (See Photo 16) Furthermore, moisture measurement in the OSB wall sheathing at this location revealed an unacceptable 20% moisture content. These conditions are in violation of CABO Code Section 703.1. (See Photo 17) Additionally, the extent of fastener corrosion indicates that the fasteners were not proper corrosion resistant components in violation of CABO Code Section 322.3. (See Photo 18)
5. Observations at the sloped roof termination on each side of the front entryway porch on the east elevation revealed that no leak proof (kick-out) or diverter flashing has been installed. The step flashing and shingle installation terminates behind the notched Hardiplank installation at the sloped roof termination. This installation is in violation of the Hardiplank installation instructions and promotes water intrusion and is in violation of CABO Code, Section 703.8. (See Photo 19 and 20)

Structural Framing

- I. Intrusive and visual observations of the structural framing of the home revealed improper construction practices in violation of the CABO Code and

Clark Residence

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industry standard of care requirements

1. Observations in the attic revealed that the roof is constructed of a doubled truss configuration. The two truss systems have been installed to create the front east facing roof and the upper west facing roof that bears on the east elevation framing and on a beam constructed of fastened 1-3/4"x14" and 3-3/4"x14" LVL's located above the banister on the second floor mezzanine overlooking the first floor living room. Rafters of 2x10 lumber are installed on the trusses above the LVL beam and extend down to the top of the first floor west facing wall framing to create the vaulted ceiling of the living room.
 - a. Heavy drywall cracking was observed at the load bearing wall at the LVL beam bearing on the exterior south wall. This is evidence of inadequate support for the beam loading in violation of CABO Code, Section 601.2. (See Photo 21)
 - b. Intrusive observations at the south end of the beam revealed five studs below the beam bearing at the heavy drywall cracking location; however, spaces were observed between the stud framing indicating that they have not been properly fastened together. This is a violation of CABO Code; Table 602.3a that requires doubled studs to be fastened with 10d nails at a maximum of 24" on center. Furthermore, the inadequate support at each end of the beam has lead to damage to the interior finishes. This is a violation of CABO Code, Section 601.2. (See Photo 22)
2. Observations of the first floor framing revealed improper beam configurations and inadequate lateral support of the exterior perimeter girders.
 - a. The first floor framing of the home is constructed of 12" open web trusses (OWT). The OWT system is supported by doubled 2x10 girders installed below the floor framing around the entire perimeter of the house, with the girders bearing on the CMU piers.
 - i. The perimeter girder has no lateral support other than the opposing girders at each corner of the home. (See Photo 23 and 24) This configuration is inherently unstable as evidenced by measurements of out of plane rotation of the girders observed throughout the garage. Measurements in four locations revealed the girders have rotated between 4° and 7° out of plumb. (See Photo 25 and 26)

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- ii. As constructed, the girders are unstable against lateral loading and as such are in violation of CABO Code, Section 301.1 and industry standard of care requirements. In accordance with CABO Code Section 108.1, the industry standard of care is the performance based provisions of the Standard Building Code, Section 1601.1(3), design in accordance with the Standard for Hurricane Resistant Residential Construction, SSTDR-97 for wood framed exterior walls in the Charleston coastal area. The girders to foundation and floor system connections are not in accordance with the requirements of engineered design requirements delineated by SSTDR-97.
- b. Removal of the drywall from beneath the first floor structural framing revealed beams that have not been constructed and attached in accordance with methods prescribed according to industry standards of care of SSTDR-97. Consequently, this condition is in violation of CABO Code Section 301.1.
 - i. The east/west beam south of the stairwell in the garage is constructed by stacking two tripled 2x10 beams with two 2x4's installed on the flat, sandwiched between the beams. This layered beam and 2x4 configuration has a layer of 1/2" OSB attached to each face. (See Photo 27) This configuration is not in accordance with SSTDR-10 requirements for engineered attachment to foundation elements and floor framing to resist and transfer lateral loads.
 - ii. Intrusive observations of the north/south beam west of the stairwell in the garage revealed the beam framing has been constructed using similar improper methods as described in item i above. (See Photo 28)
- c. Heavy drywall cracking was observed below the north end of the mezzanine in the first floor living room. (See Photo 29 and 30)
 - i. Observations in the attic revealed that the built-up 14" LVL supporting the roof trusses bears on the wall corner above this location.
 - ii. A small hole was drilled through the floor adjacent to the wall corner at the base of the wall to determine the location of the columnar load. (See Photo 31) Removal of the drywall in the ceiling of the garage in this location revealed that the wall corner supporting a large area of the second floor and roof structure is supported by a single 12" OWT.

- iii. The truss is supported by the north/south beam described in item I.2.b.ii above. The OWT bearing is located at midspan of the CMU columns that are spaced 6'-8" apart, face of pier to face of pier. (See Photo 32)
 - iv. The inability of this framing system to adequately support the applied loading has created the damage to the interior drywall observed below the north end of the mezzanine, and as such is a violation of CABO Code, Section 501.2.
 - d. Observations in the first and second floor revealed unevenness in the floor framing.
 - i. Measurements revealed unacceptable floor deflections on each side of the east/west beam between the foyer and dining room at the east end of the house. The measurements on the dining room side of the beam revealed $3/8"$ deflection in 25" and $7/16"$ in 35". (See Photo 33 and 34) On the foyer side of the beam the floor deflects $3/16"$ in 22". This is a violation of the South Carolina Construction Standards that states that the allowable deflection is $1/4"$ in 32".
- II. Heavy cracking in the slab on grade installations were observed in the park-under garage and driveway in violation of the CABO Code.
- 1. Observations of the slab on grade in the park-under garage revealed heavy cracking and construction not in accordance with the industry standard of care as defined by ACI.
 - a. A heavy crack was observed extending from the base of the CMU pier adjacent to the east side of the west garage door. The crack extends in a northwest direction for approximately 12 feet. This crack was measured to be 0.013" in width. (See Photo 35) An additional crack extends from the approximate center of the western garage bay in a northeast direction through the staircase support to the third CMU pier from the northeast corner of the home on the north elevation, bisecting the slab approximately in half. Measurements of this crack revealed between 0.025" and .040" in thickness. (See Photo 36)
 - b. Measurement of the overall dimension of the slab on grade in the park-under garage revealed that it is approximately 40 feet by 30 feet. Observations of the slab on grade revealed that no control or expansion joints have been provided. Additionally, the concrete

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has been placed abutted to all of the CMU piers without expansion material between the slab and piers. (See Photo 37)

- a. The cracking has been caused by the lack of stress relief through proper control joint and/or expansion joint installation. ACI 302.1 recommends installation of joints every 24 to 36 times the slab thickness, not to exceed 18 feet. ACI 302.1 also states that cracking is caused by restraint, specifically by not providing isolation joints around columns that penetrate the slab. Each of these unacceptable conditions has contributed to the cracking observed in the slab on grade and is in violation of the industry standard of care as defined by ACI 302.1.
2. Heavy cracking was observed in the driveway slab on grade in two locations due to lack of sub grade support and improper detailing.
 - a. A crack measuring 1/16" in width was observed at the intersection of the "tire-track" slab intersection with the solid slab section adjacent to the garage doors. The control joint in the solid slab section parallel with the tire-track slab terminates at the north/south control joint at the edge of the solid slab section. The crack that has been controlled in the east/west joint telegraphs through the adjacent section since the control joint does not extend to the slab edge. This is a violation of the industry standard of care as defined by ACI 302.1 that states that joints should be continuous, not staggered or offset. (See Photo 38 and 39)
 - b. Cracking measuring 1/8" wide was observed in and adjacent to the east/west control joint in the western most section of the solid slab section. Observations of the cracking revealed that the slab has rotated at this location due to improper sub grade support of the slab section. This is a violation of the industry standard of care as defined by ACI 360R-92 that requires both hard and soft pockets of soil material should be removed and recompact to provide a uniform support for the base, sub base or concrete slab. The mechanical compaction should be approximately 95% of the modified Proctor density. (See Photo 40, 41 and 42)
- III. Observations of the composition shingle installation revealed evidence that it has not been installed in accordance with the typical shingle manufacturer's installation instructions. Four random locations were observed of the shingle installation in order to determine the method of installation.

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1. Measurement of the bottom tab of the architectural shingles revealed that it is 6-1/2" wide. In the four locations observed, a total of 29 fasteners were measured for installation distance above the bottom edge of the shingle. Observations indicated that 25 of the fasteners were improperly placed exceeding 6-1/2" from the edge indicating that they did not mechanically fasten the bottom shingle tab to the roof. Fasteners were above the designated nailing line. This is a violation of the typical shingle manufacturer's installation requirement. (See Photo 43 and 44)
2. One of the four shingles observed was installed using five fasteners. This is a violation of the typical manufacturer's installation requirements and CABO Code, Section 903.4 and Table 903.4.
3. Observations of the edge of the roof revealed evidence of an improper starter strip installation in violation of the manufacturer's installation requirements. (See Photo 45) Additionally, measurement of the shingle overhang on the rear elevation revealed that the shingles overhang the roof edge by 2-3/4" causing the shingle edges to sag. This is also in violation of the typical manufacturer's installation instruction and the industry standards of care in accordance with the Asphalt Roofing Manufacturers' Association (ARMA), Residential Asphalt Roofing Manual. (See Photo 46)
4. Observations of the gas hot water heater installation in the second floor utility closet near the center of the home revealed that the exhaust vent pipe has been installed such that the joint is upside-down. This installation is not in accordance with the CABO Code Section 2101.1 installation requirements and will have to be repaired. (See Photo 47) Additionally, the connection at the base of the expansion tank is heavily corroded due to an inadequate seal. This condition must also be repaired. (See Photo 48)

CONCLUSION

Based on the results of the investigation it is evident that there are numerous construction deficiencies which have lead to damage to the home. Improper installation of the fiber cement siding was observed. Improper fastening, improper fastener, and the lack of corrosion resistant fasteners will require that the entire siding installation be removed and replaced.

Improper structural framing was observed in the first floor framing, interior and exterior walls for beam support, and evidence of floor deflections. The improper framing has lead to damage to the interior finishes, and more importantly, the improper framing observed in the first floor system indicates a lack of lateral stability. These issues must be addressed by a structural engineer and repaired.

The improperly fastened composition shingle roofing installation will have to be removed and replaced. The new shingle installation must be installed in accordance with the IRC and the manufacturer's installation requirements.

The improperly detailed and installed slab on grade installations must be removed and replaced with new slabs that are designed and installed in accordance with ACI 302.1. Furthermore, the improperly installed hot water heater in the second floor utility closet must be repaired to meet all Code and manufacturer's requirements.

RECOMMENDATIONS

- I. Due to the extent of improper installation, it will be necessary to remove and replace the exterior fiber cement plank siding. Due to the lack of proper framed opening flashing, it will be necessary to remove all of the window and door installations so that proper framed opening flashing can be installed at the time of siding replacement. The siding and window/door installations must be in accordance with the IRC, all manufacturer's installation requirements, and appropriate industry standards of care. It is also recommended that doors, as a minimum, be installed in prefabricated, fully soldered copper pans.
- II. The instability identified in the perimeter drop-sill rim girder configuration in the park-under garage must be addressed. This will require a substantial connection at each CMU column to transfer all lateral shear and uplift load from the floor diaphragm to the foundation in accordance with the IRC current code. In order to accomplish this analysis a structural engineer must be engaged to produce a sealed copy of calculations determining the load at this location along with a detailed repair protocol and drawings. Additionally, the CMU columns must be evaluated to determine structural adequacy to resist lateral loads and transfer to the foundation. Structurally inadequate masonry columns must be replaced.
 1. All floor framing members and girders must have acceptable engineered connections to transfer lateral and uplift loads to masonry foundation members.
- III. Interior floor framing support beams must be evaluated by a structural engineer and a sealed set of calculations and repair protocol and drawings provided. All interior beams must be designed in accordance with current IRC requirements to resist and transfer lateral loads and transfer them to the foundation. All interior beams shall accommodate the proper shear wall hold downs to proper stud framing.
- IV. The inadequate support of the 14" LVL roof support beam must be repaired. This will require exposing the framing behind the drywall at each end of the beam so that it can be evaluated and repairs made. Additionally, the improperly

SISNROY ENGINEERING LLC.

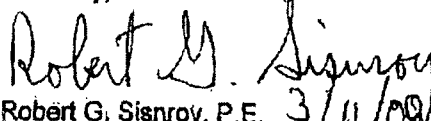
constructed beam that is supporting the first floor framing beneath the north end of the beam must be replaced with a member that has the Code required capacity for the applied loading. Furthermore, both of the stacked triple 2x10 beams must be removed and replaced with a new member that has the Code required capacity for the applied loading.

- V. The deflections in the first and second floors must be evaluated to determine the exact cause of the deflections. This will require the removal of the drywall beneath the floor areas and/or removal of the finished flooring. Once the exact cause is revealed, repairs must be made to the floor framing such that the floor meets the requirements of the Code and the South Carolina Residential Construction Standards.
- VI. All construction deficiencies such as lack of properly installed leak proof flashing must be repaired. It is further recommended that all flashing applications be replaced with new flashing. All locations must have leak proof flashing installed as required by the IRC.
- VII. As indicated previously, improper installation of the shingle roofing requires that all asphalt composition shingle roofing be replaced. All flashings associated with the roofing installation must also be replaced.
- VIII. The damaged concrete slab on grade must be removed and replaced with a new slab on grade that is detailed and installed according to all IRC requirements and the industry standard of care as defined by ACI 302.1.
- IX. The improperly installed gas hot water heater in the second floor utility closet must be repaired such that it is installed in accordance with the IRC and the manufacturer's installation requirements.
- X. At the completion of all repairs, all damage to the interior finishes in the home must be repaired so that they match the existing finishes in color and texture.

This report is based on information available at the time of the development of the report. If additional information becomes available which has a bearing on the conclusion then an addendum report will be provide. Photographs or prior status reports may document other deficiencies.

Representative photographs are included. If you have any questions concerning this report, please call me.

Sincerely,


Robert G. Sisnroy, P.E. 3/11/08
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Clark Residence

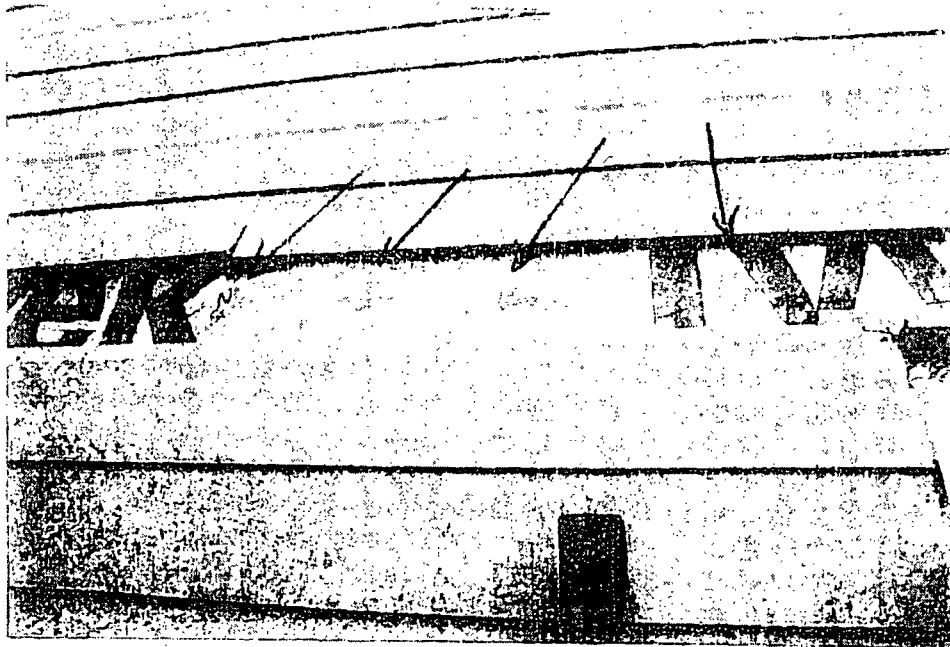


Photo 1: Intrusive observations revealed that several of the fasteners have not been nailed into the stud framing as required by Hardiplank Installation requirements. Measurement of the nail placement in the Hardiplank siding board removed from the head of the first floor window at the west end of the north elevation revealed that none of the 4 fasteners attaching the board to the wall framing were installed into the stud framing.

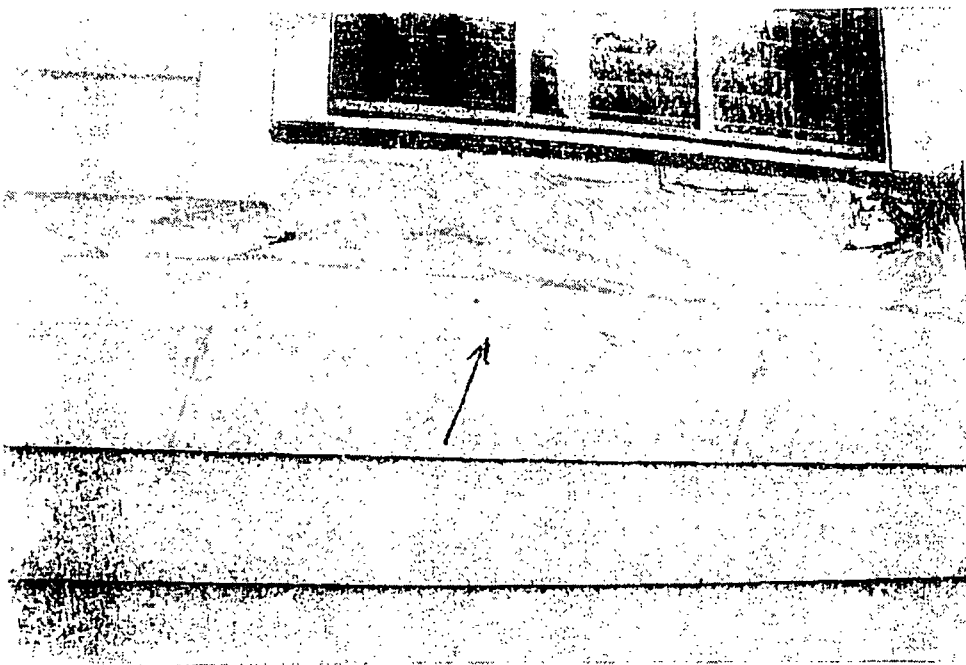


Photo 2: Measurement of the placement of the 6 fasteners in the siding board beneath the windowsill revealed that 5 were not installed in the stud framing. Intrusive observations of the blind nailing fastener placement revealed all 12 of the nails observed have been installed at $\frac{3}{4}$ inch or less from the top edge of the plank.

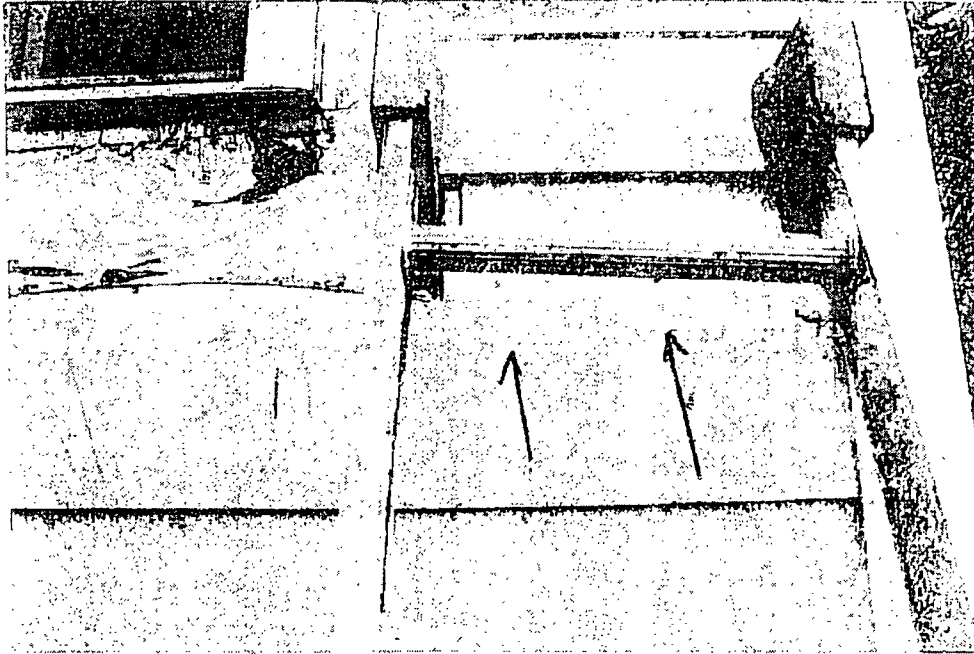


Photo 3: Measurement of the placement of the 6 fasteners in the siding board beneath the windowsill revealed that 5 were not installed in the stud framing. Intrusive observations of the blind nailing fastener placement revealed all 12 of the nails observed have been installed at $\frac{3}{4}$ inch or less from the top edge of the plank.

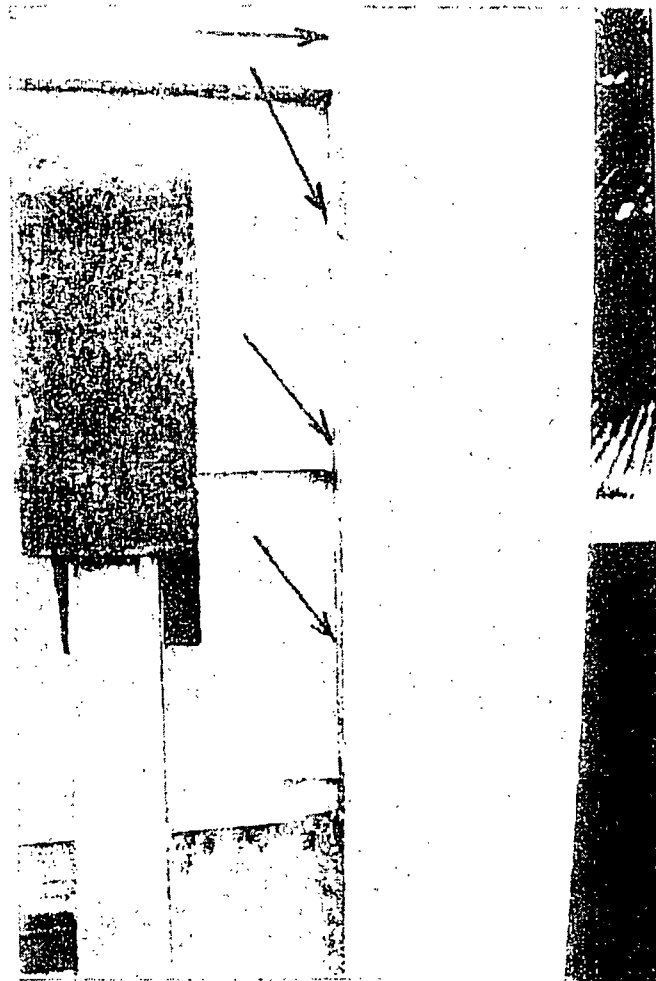


Photo 4: Observations where the Hardiplank siding abuts the Harditrim boards revealed in many locations that the siding has been installed hard abutted to the trim boards. This is a violation of the manufacturer's installation requirements that calls for a 1/8" gap between the siding end and the trim board. Additionally, the abutted condition does not allow for a proper sealant application. A thin failing surface applied sealant application was observed at most locations. This installation is in violation of Harditrim installation requirements and serves to promote water intrusion in violation of CABO Code, Section 703.1.

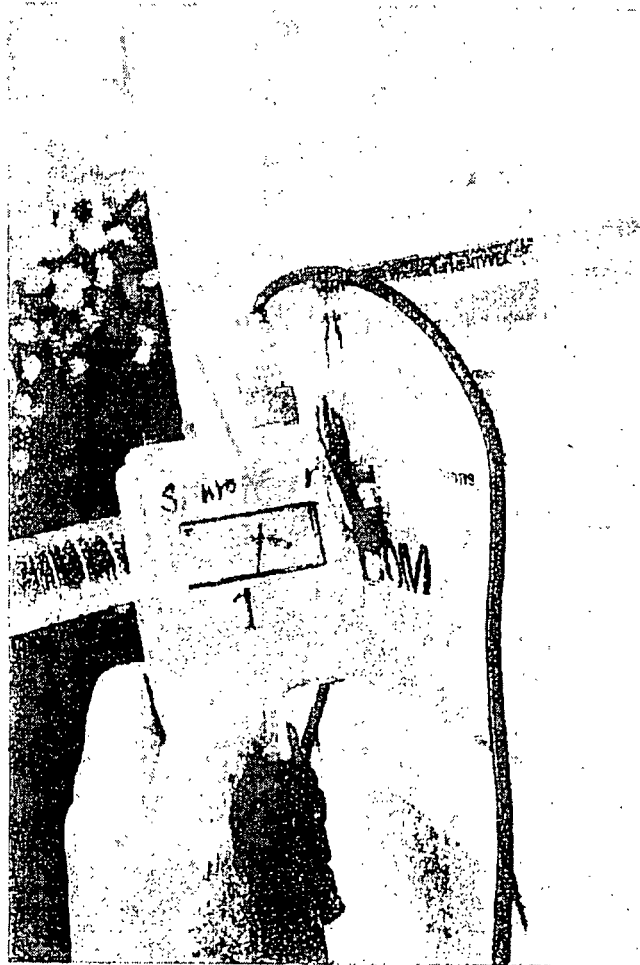


Photo 5: This installation is in violation of Harditrim installation requirements and serves to promote water intrusion as evidenced by an unacceptable moisture content of 20% at the base of the wall adjacent to the siding and trim board intersection. This is a violation of CABO Code, Section 703.1.



Photo 6: Observations of the fasteners used to install the Harditrim are exhibiting corrosion with corrosion staining observed at the heads of the fasteners. This is a violation of the manufacturer's installation requirements for the use of proper corrosion resistant fasteners.



Photo 7: Typically molded foam pediment has been installed on the exterior face of the Hardiplank siding above the window heads.

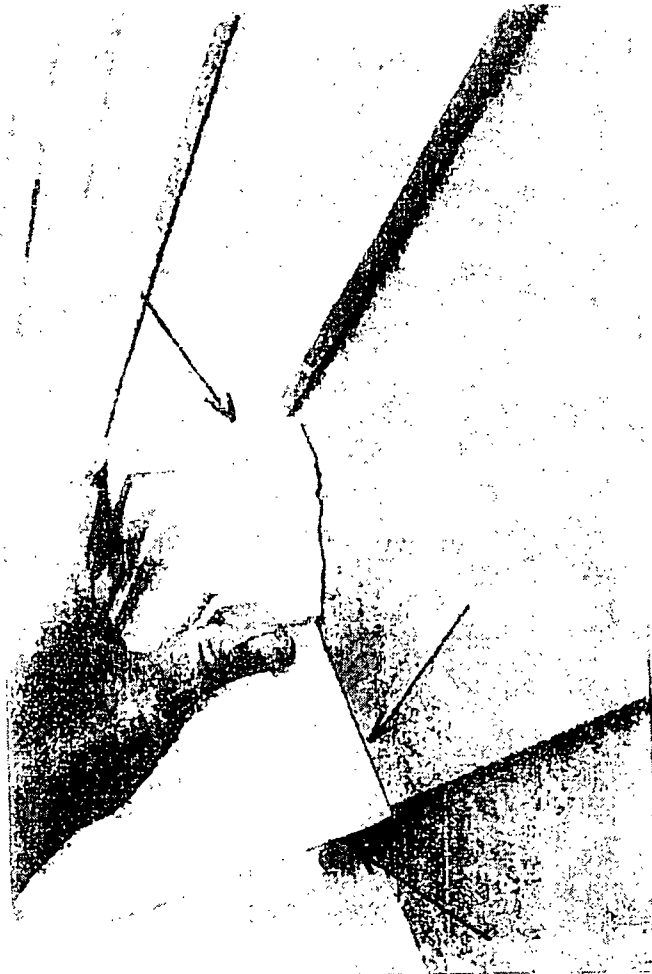


Photo 8: Observations were made of the pediment above the first floor window unit at the west end of the north elevation.

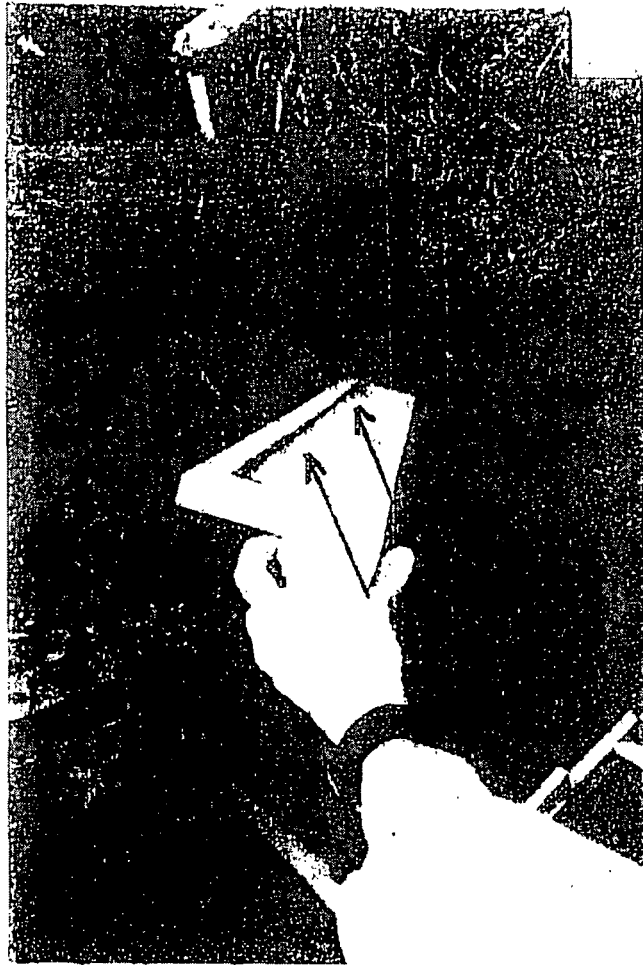


Photo 9: Heavy water intrusion staining was observed behind and on back of the pediment, evidence that the pediment is promoting water intrusion.

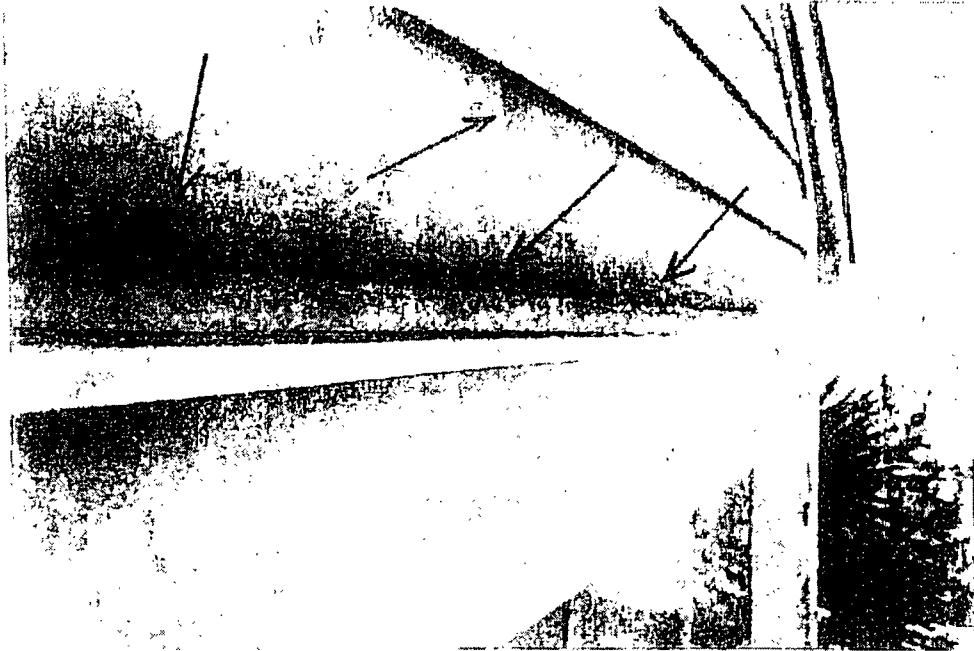


Photo 10: Heavy water intrusion staining was observed behind and on back of the pediment, evidence that the pediment is promoting water intrusion.

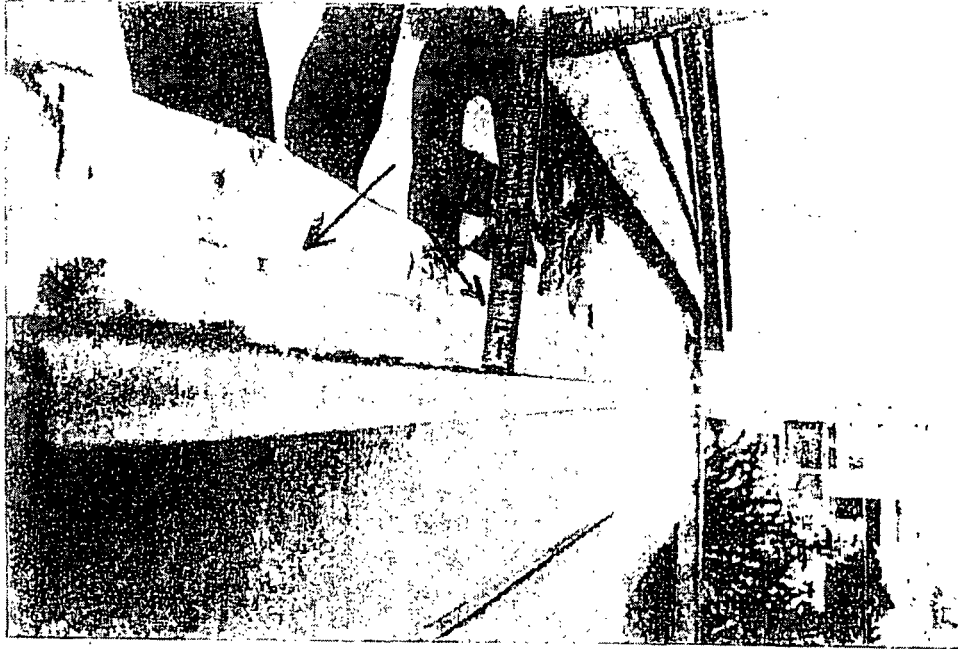


Photo 11: A vinyl flashing has been installed at the base of the pediment above the Harditrim at the head of the window. The flashing installed above the projecting Harditrim on the exterior face of the Tyvek house wrap is not leak proof and promoting water intrusion in violation of CABO Code, Section 703.8.

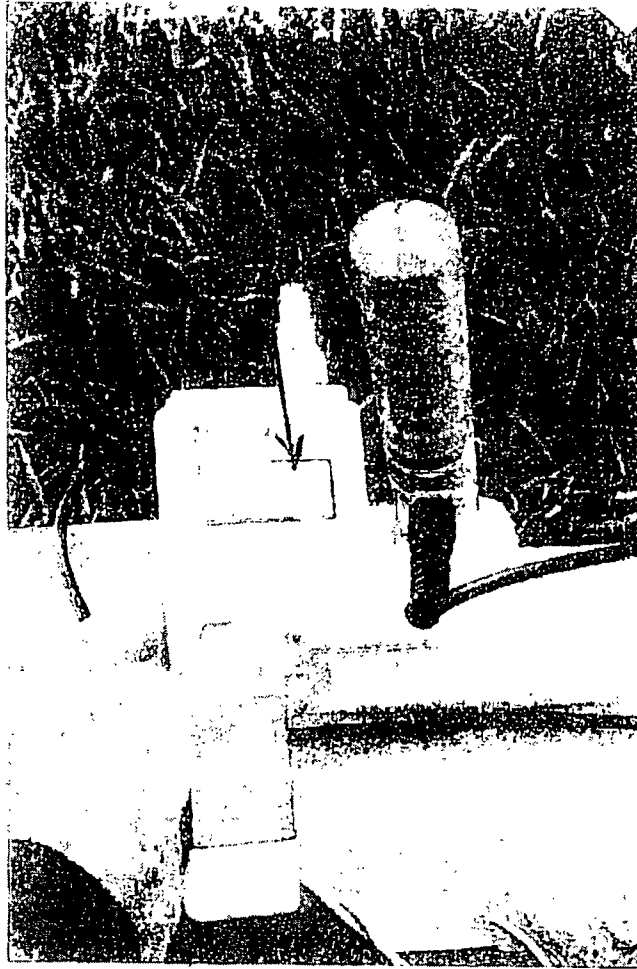


Photo 12: Moisture measurement of the Harditrim below this flashing revealed 85% relative moisture content in the Harditrim indicating heavy water intrusion.



Photo 13: Removal of the Harditrим around the window revealed that no framed opening flashing has been installed. The Tyvek house wrap has been cut to the corner of the opening and folded into the opening. The use of Tyvek house wrap for framed opening flashing is in violation of the Brick Industry Association (BIA) industry standard of care that delineates air-infiltration barriers and building felt are not acceptable for use as flashings. Sticky back moisture barrier has been installed on the window nailing fin and onto the Tyvek house wrap. This is a violation of CABO Code, Section 703.8.

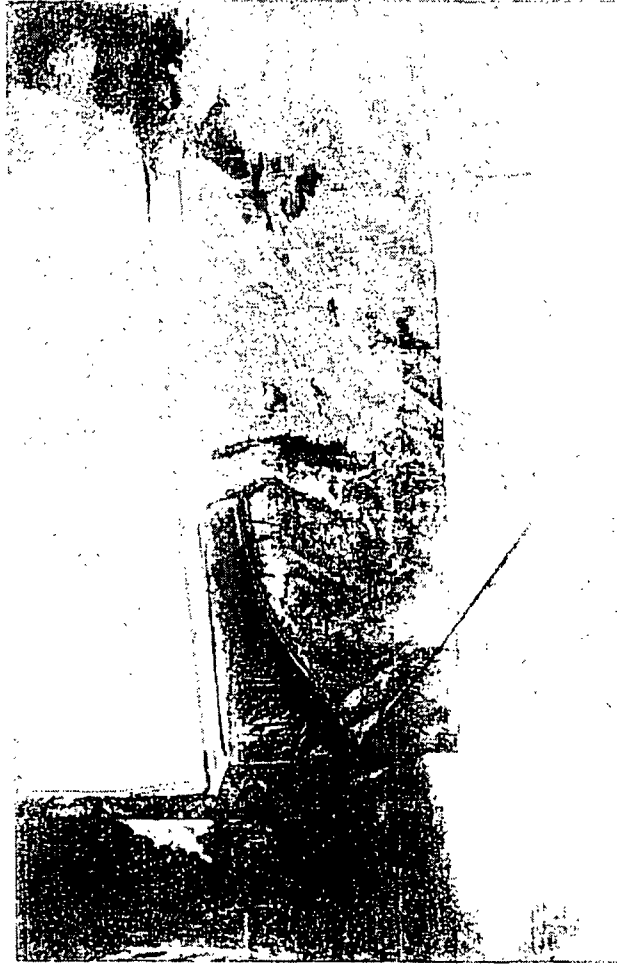


Photo 14: Observations of the sticky back moisture barrier installations at the intrusive window observation revealed that it has not been installed in a weather-lapped configuration. This installation promotes water intrusion in violation of CABO Code, Section 703.1.

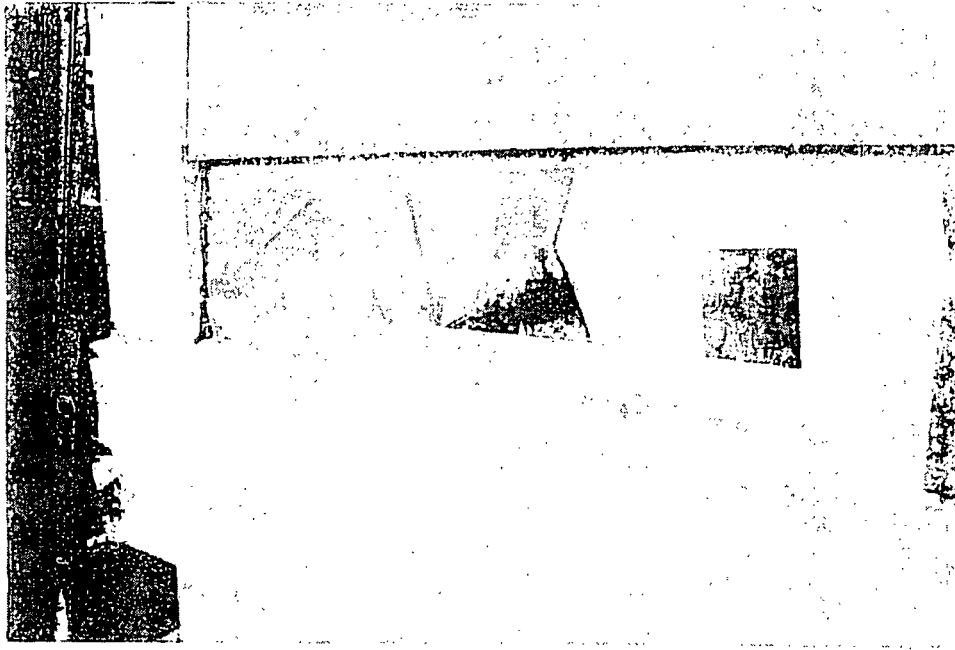


Photo 15: Intrusive observations at the base of the wall on top of the horizontal pressure treated floor band revealed the aluminum flashing has been installed on the exterior of the Tyvek house wrap thus creating a non-weather lapped condition and promoting water intrusion. Additionally, the flashing installation terminates at the end of the Hardiplank and does not extend beneath the Harditrin corner board.

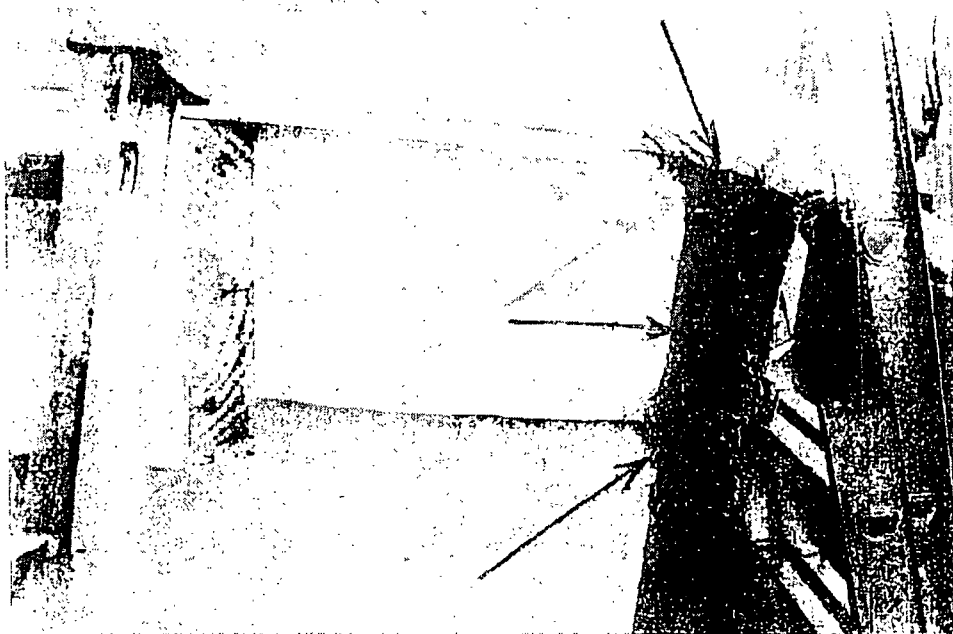


Photo 16: Observations of the wood floor band at the corner of the wall revealed evidence of heavy water intrusion. The wood floor band is heavily stained and the fasteners are heavily corroded due to water intrusion.

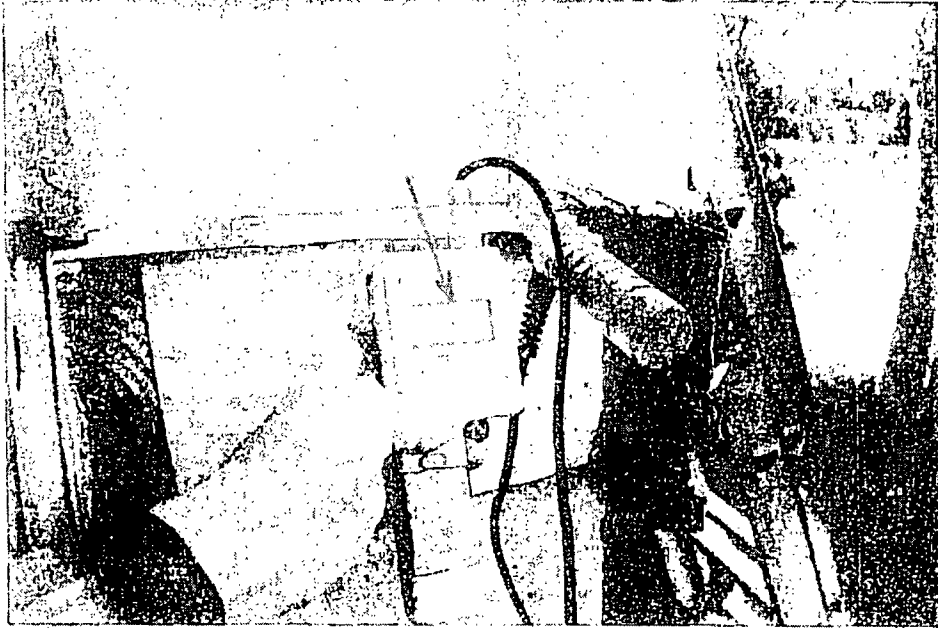


Photo 17: Moisture measurement in the OSB wall sheathing at this location revealed and unacceptable 20% moisture content. These conditions are in violation of CABO Code Section 703.1.

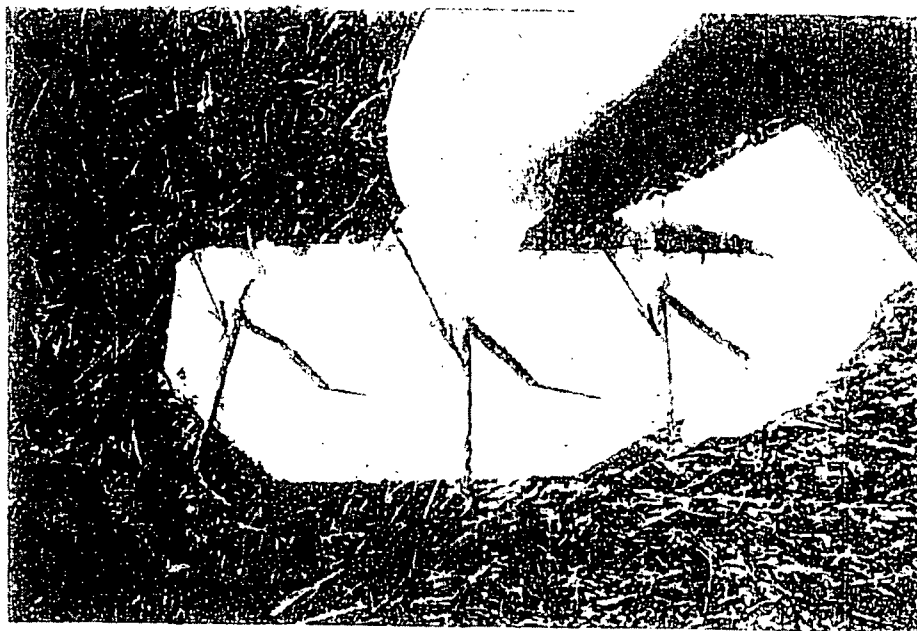


Photo 18: The extent of fastener corrosion indicates that the fasteners were not proper corrosion resistant fasteners in violation of CABO Code Section 322.3.

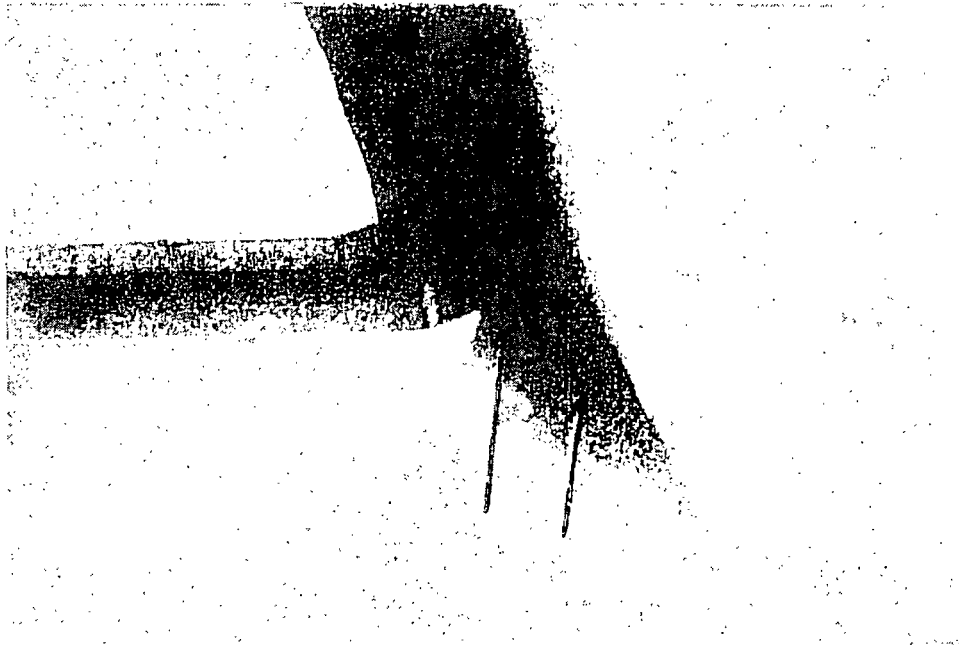


Photo 20: Observations at the sloped roof termination on each side of the front entryway porch on the east elevation revealed that no leak proof (lock-out) or diverter flashing has been installed. The step flashing and shingle installation terminates behind the notched Hardiplank installation at the sloped roof termination. This installation is in violation of the Hardiplank Installation instructions and promotes water intrusion and is in violation of CABO Code, Section 703.8.

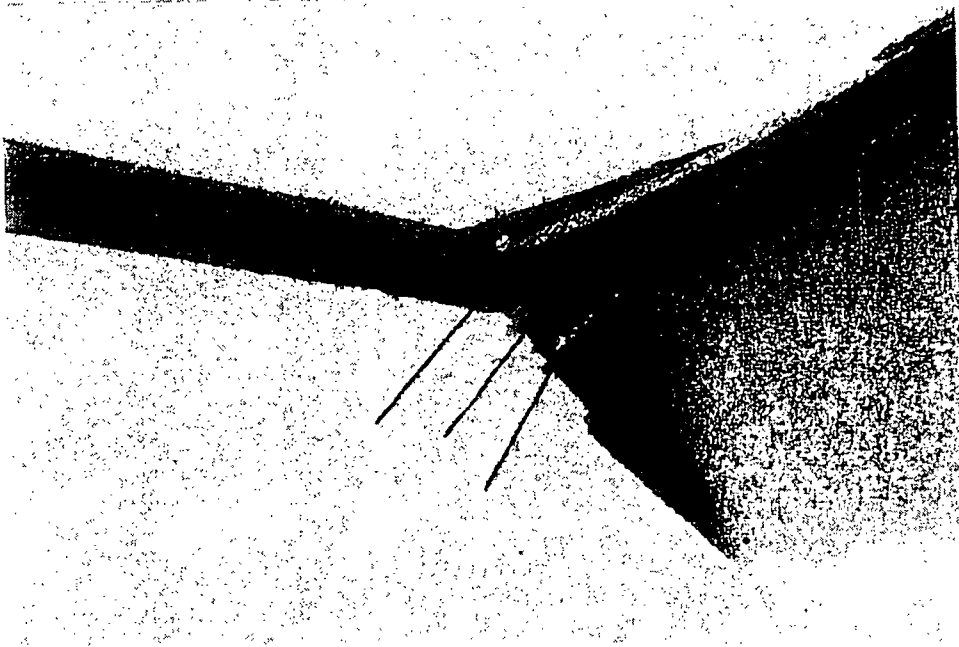


Photo 19: Observations at the sloped roof termination on each side of the front entryway porch on the east elevation revealed that no leak proof (lock-out) or diverter flashing has been installed. The step flashing and shingle installation terminates behind the notched Hardiplank installation at the sloped roof termination. This installation is in violation of the Hardiplank installation instructions and promotes water intrusion and is in violation of CABO Code, Section 703.8.

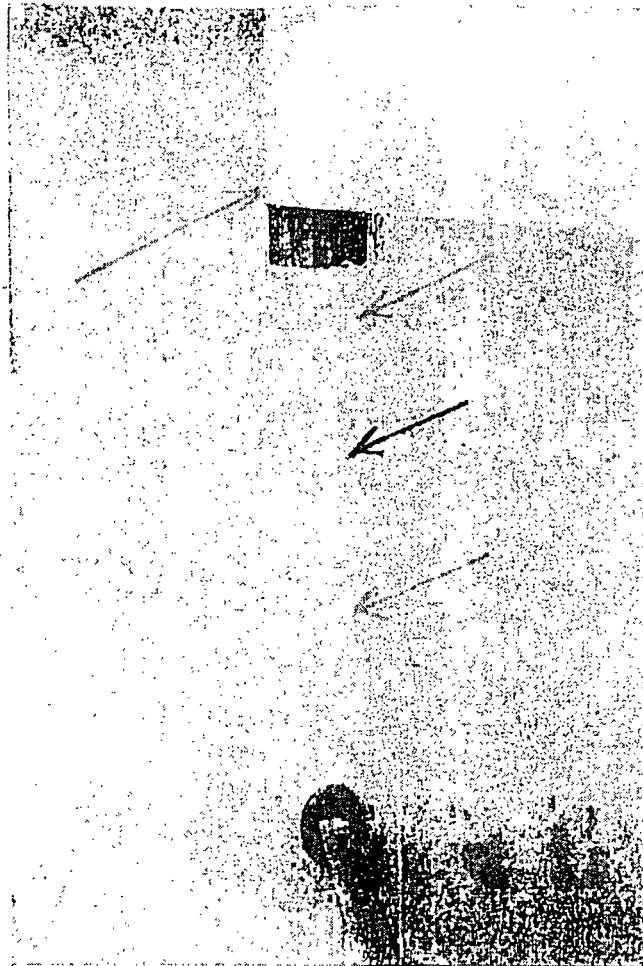


Photo 21: Heavy drywall cracking was observed at the load bearing wall at the LVL beam bearing on the exterior south wall. This is evidence of inadequate support for the beam loading in violation of CABO Code, Section 601.2.

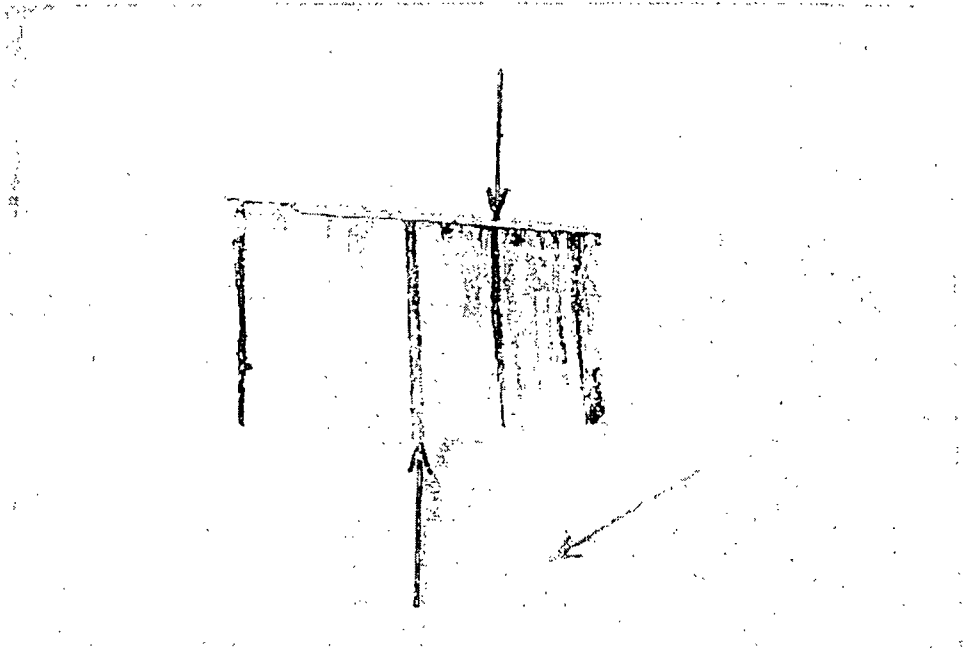


Photo 22: Intrusive observations at the south end of the beam revealed five studs below the beam bearing at the heavy drywall cracking location; however, spaces were observed between the stud framing indicating that they have not been fastened together. This is a violation of CABO Code; Table 602.3a that requires doubled studs to be fastened with 10d nails at a maximum of 24" on center. Furthermore, the inadequate support at each end of the beam has lead to damage to the interior finishes. This is a violation of CABO Code, Section 601.2.

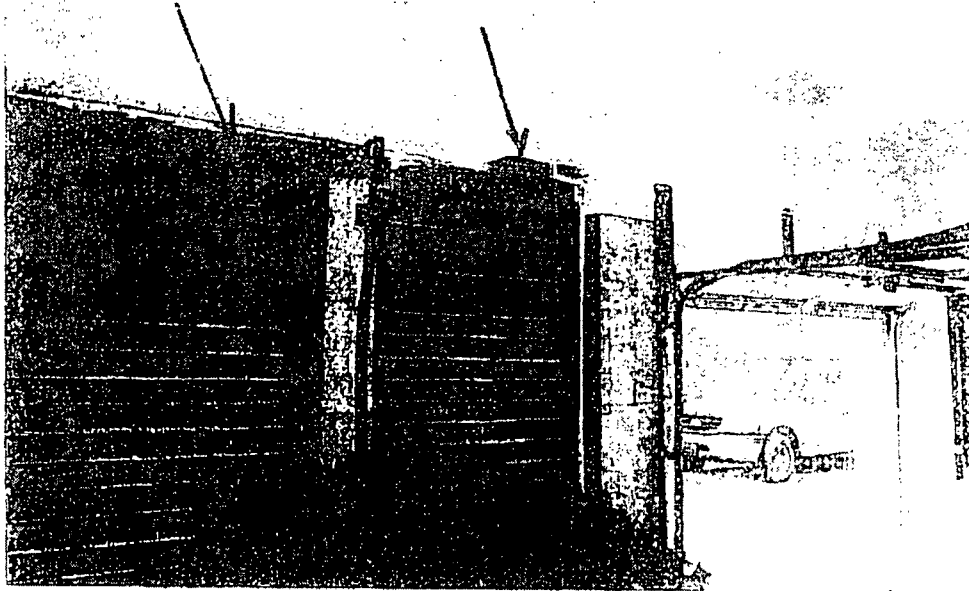


Photo 23: The first floor framing of the home is constructed of 12" open web trusses (OWT). The OWT system is supported by doubled 2x10 girders installed below the floor framing around the entire perimeter of the house, with the girders bearing on the CMU piers. The perimeter girder has no lateral support other than the opposing girders at each corner of the home.

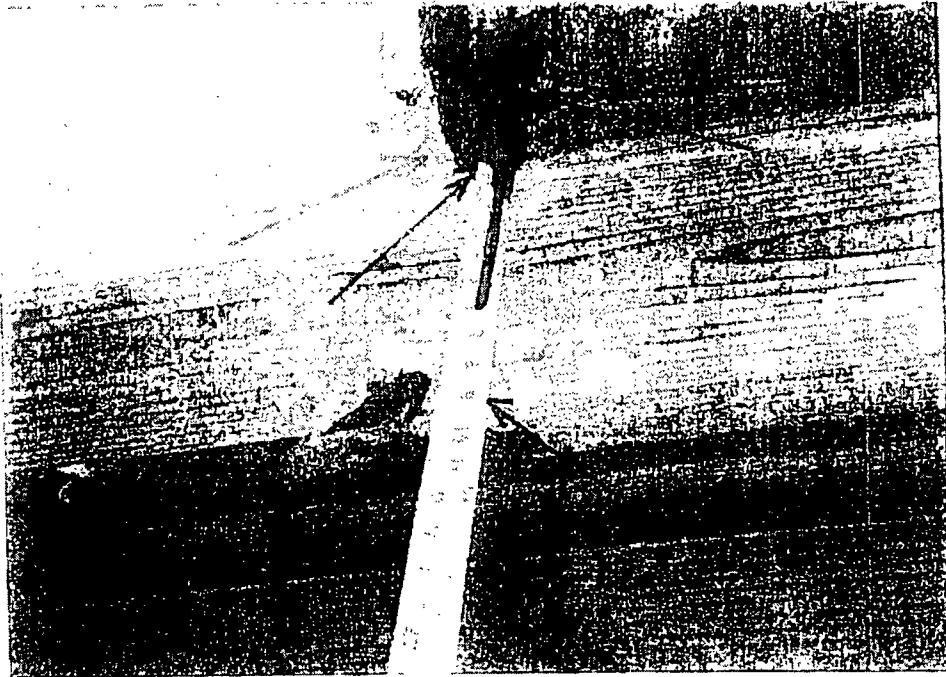


Photo 24: The first floor framing of the home is constructed of 12" open web trusses (OWT). The OWT system is supported by doubled 2x10 girders installed below the floor framing around the entire perimeter of the house, with the girders bearing on the CMU piers. The perimeter girder has no lateral support other than the opposing girders at each corner of the home.

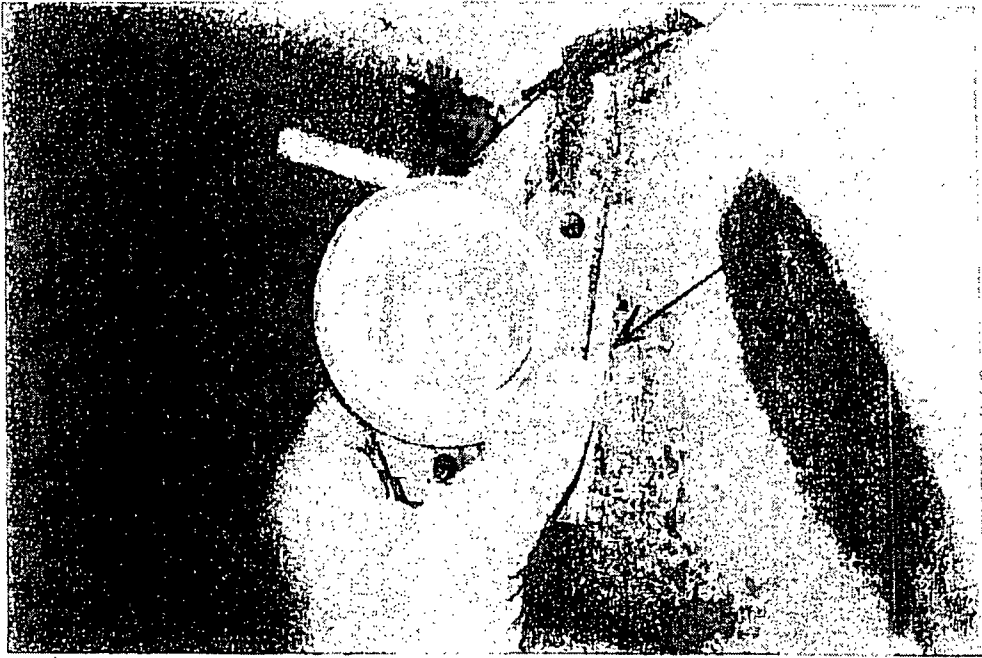


Photo 25: This configuration is inherently unstable as evidenced by measurements of out of plane rotation of the girders observed throughout the garage. Measurements in four locations revealed the girders have rotated between 4° and 7° out of plumb.

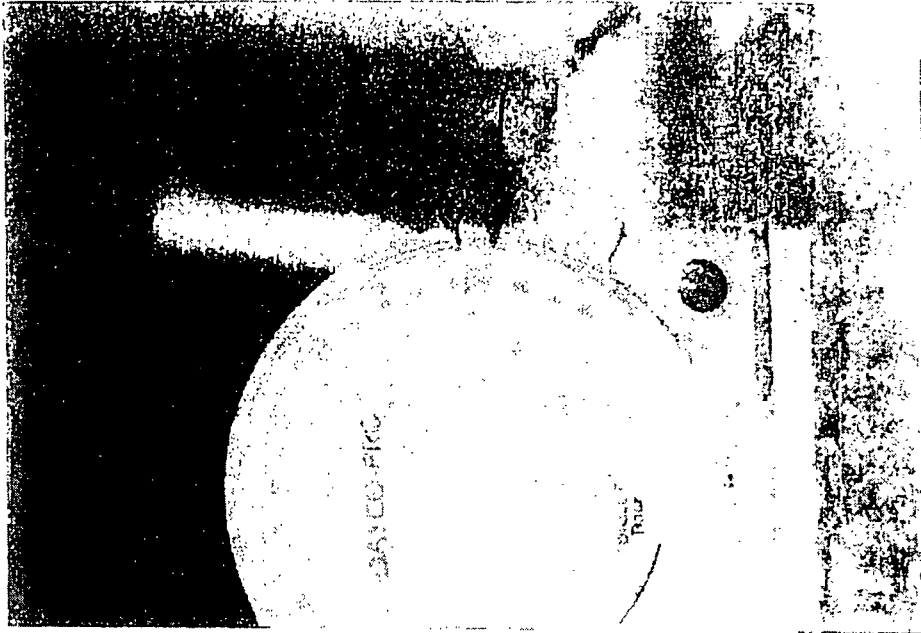


Photo 26: This configuration is inherently unstable as evidenced by measurements of out of plane rotation of the girders observed throughout the garage. Measurements in four locations revealed the girders have rotated between 4° and 7° out of plumb.

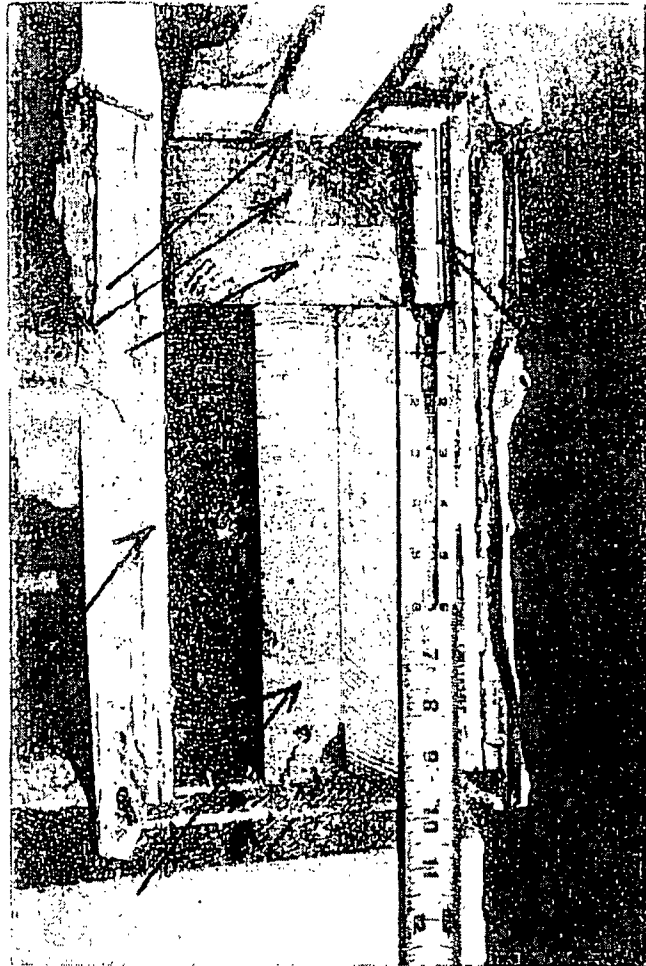


Photo 27: The east/west beam south of the stairwell in the garage is constructed by stacking two tripled 2x10 beams with two 2x4's installed on the flat, sandwiched between the beams. This layered beam and 2x4 configuration has a layer of $\frac{1}{2}$ " OSB attached to each face. This configuration is not in accordance with SSTD-10 requirements for engineered attachment to foundation elements and floor framing to resist and transfer lateral loads.

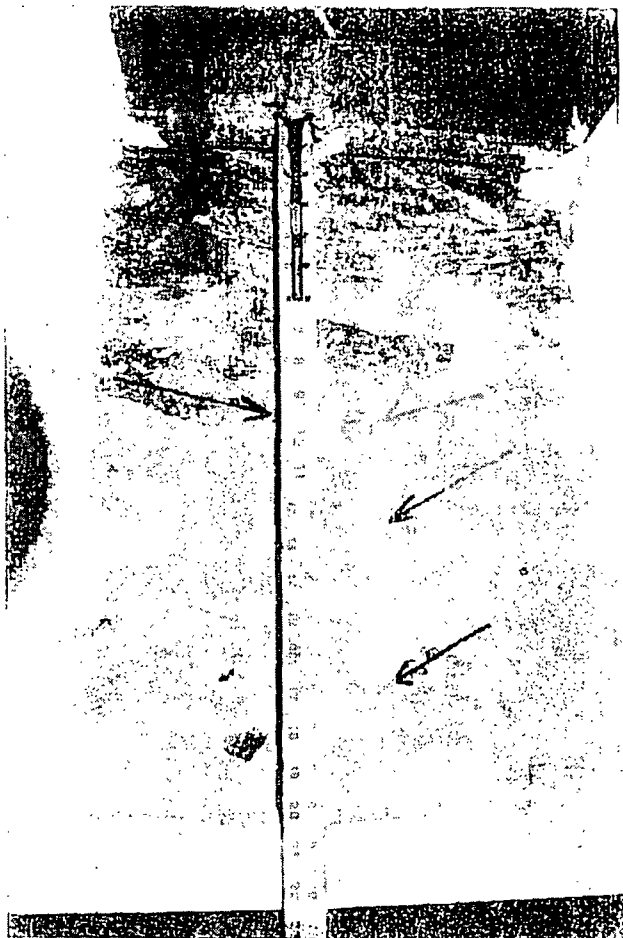


Photo 28: Intrusive observations of the north/south beam west of the stairwell in the garage revealed the beam framing has been constructed using similar improper methods as illustrated in Photo 27.

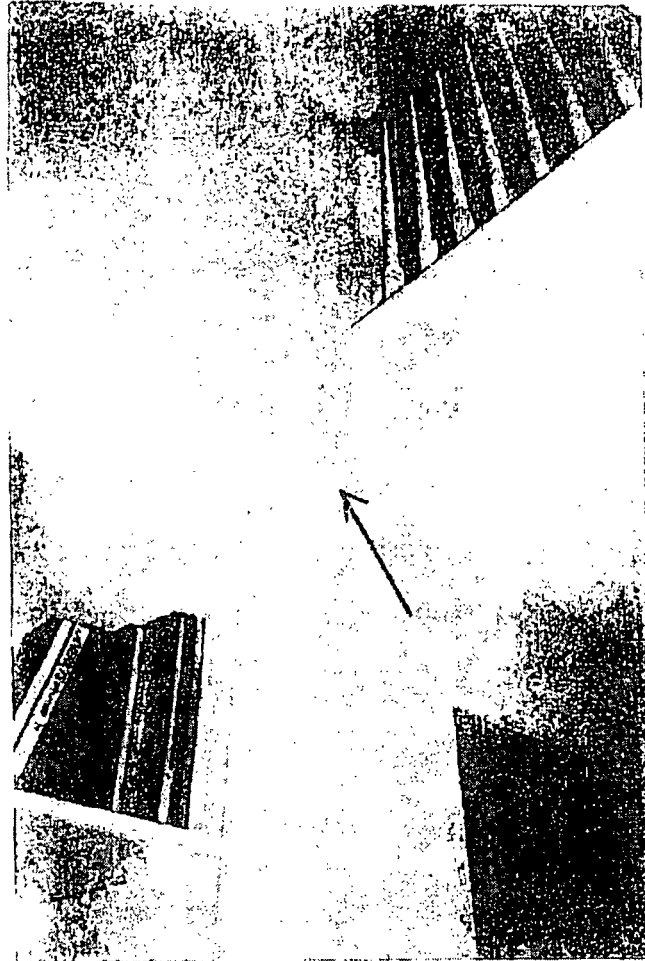


Photo 28: Heavy drywall cracking was observed below the north end of the mezzanine in the first floor living room.

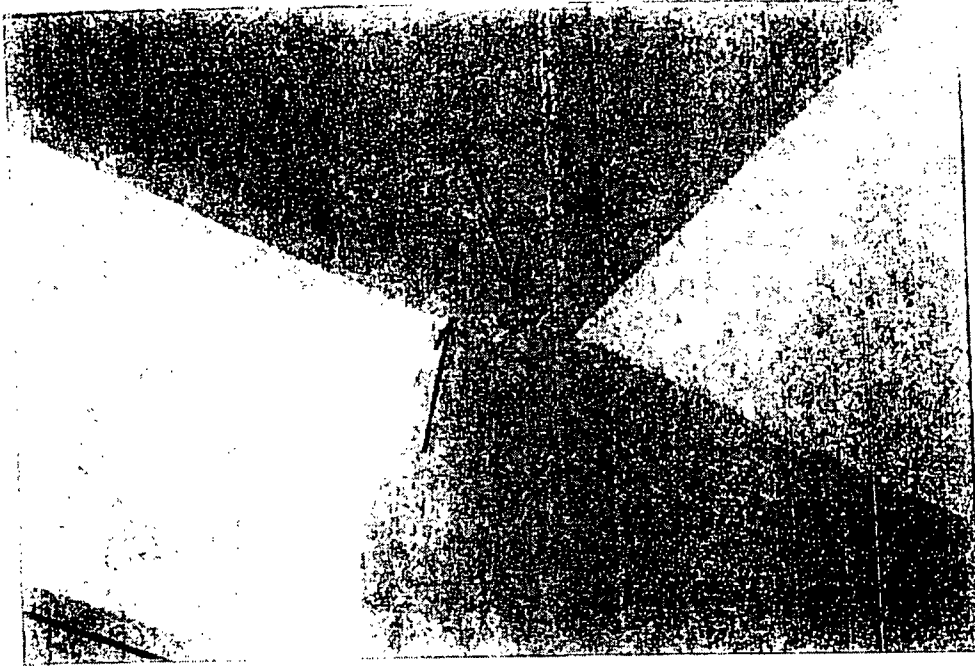


Photo 30: Heavy drywall cracking was observed below the north end of the mezzanine in the first floor living room.



Photo 31: A small hole was drilled through the floor adjacent to the wall corner at the base of the wall to determine the location of the columnar load.

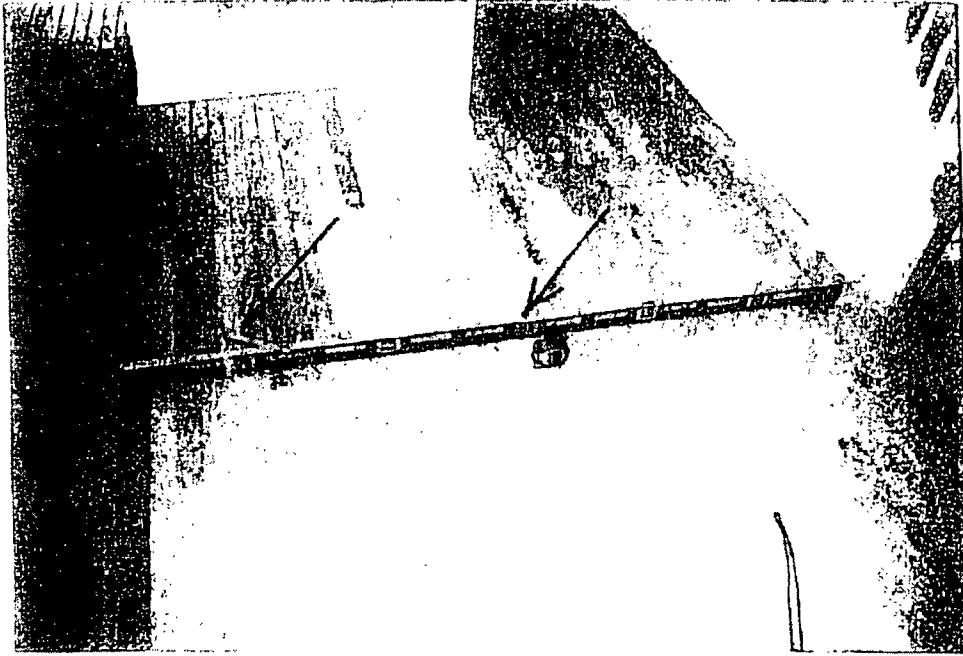


Photo 33: Measurements revealed unacceptable floor deflections on each side of the east/west beam between the foyer and dining room at the east end of the house. The measurements on the dining room side of the beam revealed 3/8" deflection in 25" and 7/16" in 35".

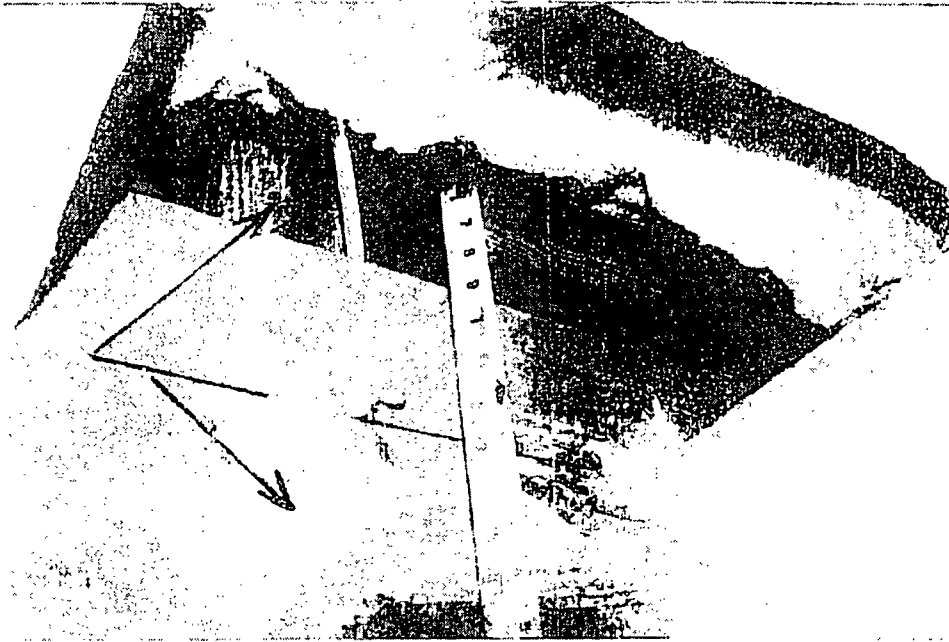


Photo 32: The truss is supported by the north/south beam described in Structural Framing 2.b.ii. The OWT bearing is located at midspan of the CMU piers that are spaced 6'-8" apart, face of pier to face of pier.

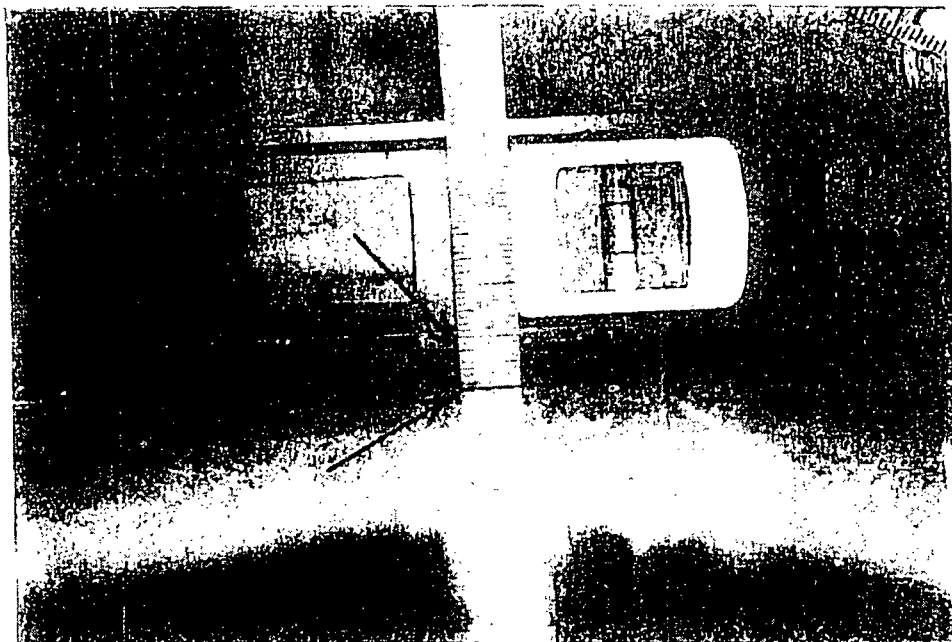


Photo 34: Measurements revealed unacceptable floor deflections on each side of the east/west beam between the foyer and dining room at the east end of the house. The measurements on the dining room side of the beam revealed $3/8"$ deflection in 25" and $7/16"$ in 35".

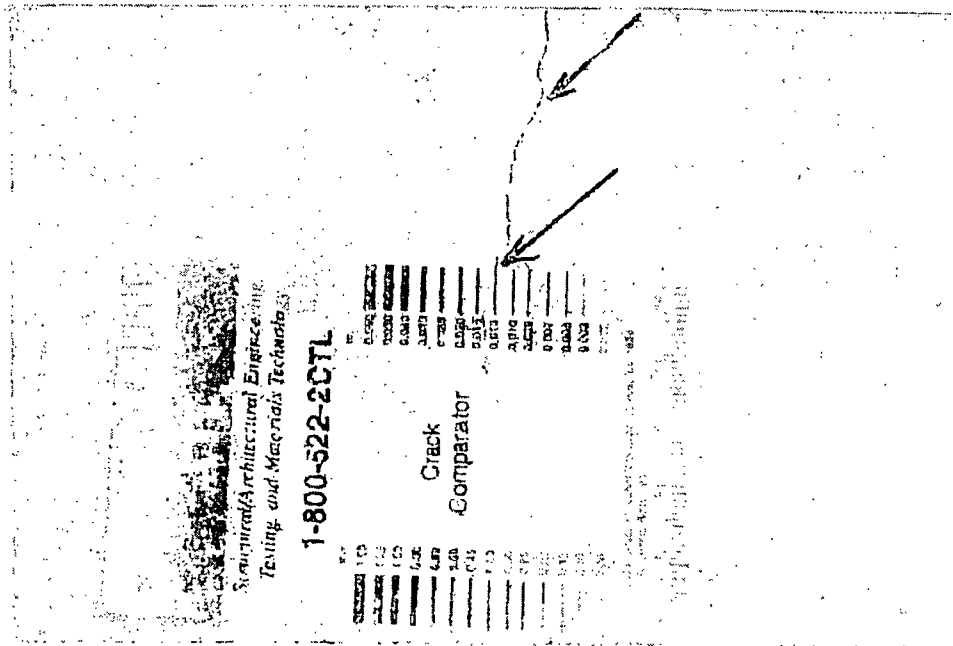


Photo 35: A heavy crack was observed extending from the base of the CMU pier adjacent to the east side of the west garage door. The crack extends in a northwest direction for approximately 12 feet. This crack was measured to be 0.013" in width.



Photo 36: An additional crack extends from the approximate center of the western garage bay in a northeast direction through the staircase support to the third CMU pier from the northeast corner of the home on the north elevation, bisecting the slab approximately in half. Measurements of this crack revealed between 0.025" and .040" in thickness.



Photo 37: Measurement of the overall dimension of the slab on grade in the park-under garage revealed that it is approximately 40 feet by 30 feet. Observations of the slab on grade revealed that no control or expansion joints have been provided. Additionally, the concrete has been placed abutted to all of the CMU piers without expansion material between the slab and piers.



Photo 38: A crack measuring 1/16" was observed at the intersection of the "fire-track" slab intersection with the solid slab section adjacent to the garage doors. The control joint in the solid slab section parallel with the fire-track slab terminates at the north/south control joint at the edge of the solid slab section. The crack that has been controlled in the east/west joint telegraphs through the adjacent section since the control joint does not extend to the slab edge. This is a violation of the industry standard of care as defined by ACI 302.1 that states that joints should be continuous, not staggered or offset.

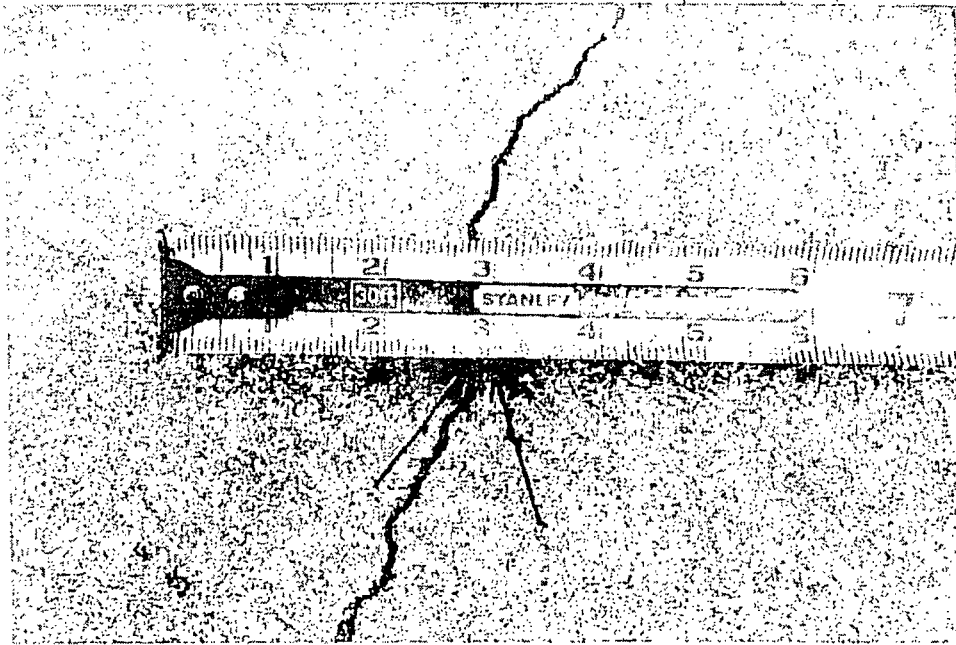


Photo 39: A crack measuring 1/16" in width was observed at the intersection of the "tire-track" slab intersection with the solid slab section adjacent to the garage doors. The control joint in the solid slab section parallel with the tire-track slab terminates at the north/south control joint at the edge of the solid slab section. The crack that has been controlled in the east/west joint telegraphs through the adjacent section since the control joint does not extend to the slab edge. This is a violation of the industry standard of care as defined by ACI 302.1 that states that joints should be continuous, not staggered or offset.

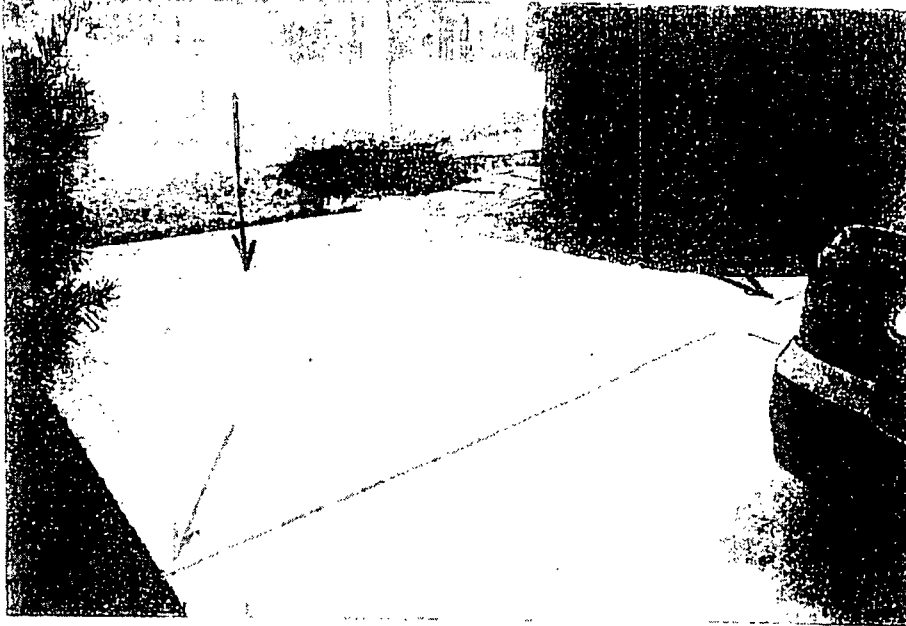


Photo 40: Cracking measuring 1/8" wide was observed in and adjacent to the east/west control joint in the western most section of the solid slab section. Observations of the cracking revealed that the slab has rotated at this location due to improper sub grade support of the slab section. This is a violation of the industry standard of care as defined by ACI 360R-92 that requires both hard and soft pockets of soil material should be removed and recompact to provide a uniform support for the base, sub base or concrete slab. The mechanical compaction should be approximately 95% of the modified Proctor density.

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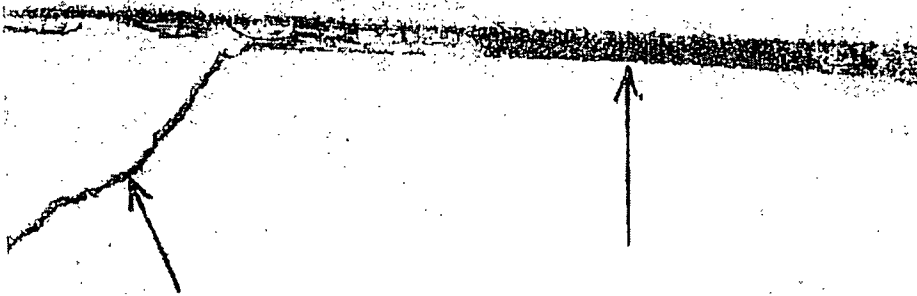


Photo 41: Cracking measuring 1/8" wide was observed in and adjacent to the east/west control joint in the western most section of the solid slab section. Observations of the cracking revealed that the slab has rotated at this location due to improper sub grade support of the slab section. This is a violation of the industry standard of care as defined by ACI 360R-02 that requires both hard and soft pockets of soil material should be removed and recompacted to provide a uniform support for the base, sub base or concrete slab. The mechanical compaction should be approximately 95% of the modified Proctor density.



Photo 42: Cracking measuring 1/8" wide was observed in and adjacent to the east/west control joint in the western most section of the solid slab section. Observations of the cracking revealed that the slab has rotated at this location due to improper sub grade support of the slab section. This is a violation of the industry standard of care as defined by ACI 360R-92 that requires both hard and soft pockets of soil material should be removed and recompact to provide a uniform support for the base, sub base or concrete slab. The mechanical compaction should be approximately 95% of the modified Proctor density.

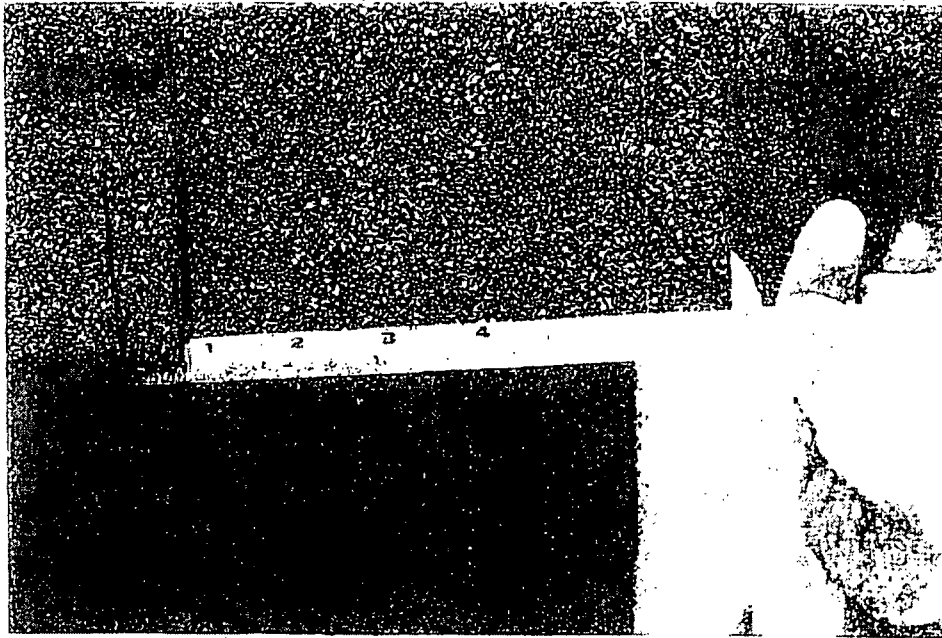


Photo 43: Measurement of the bottom tab of the architectural shingles revealed that it is 5-1/2" wide.

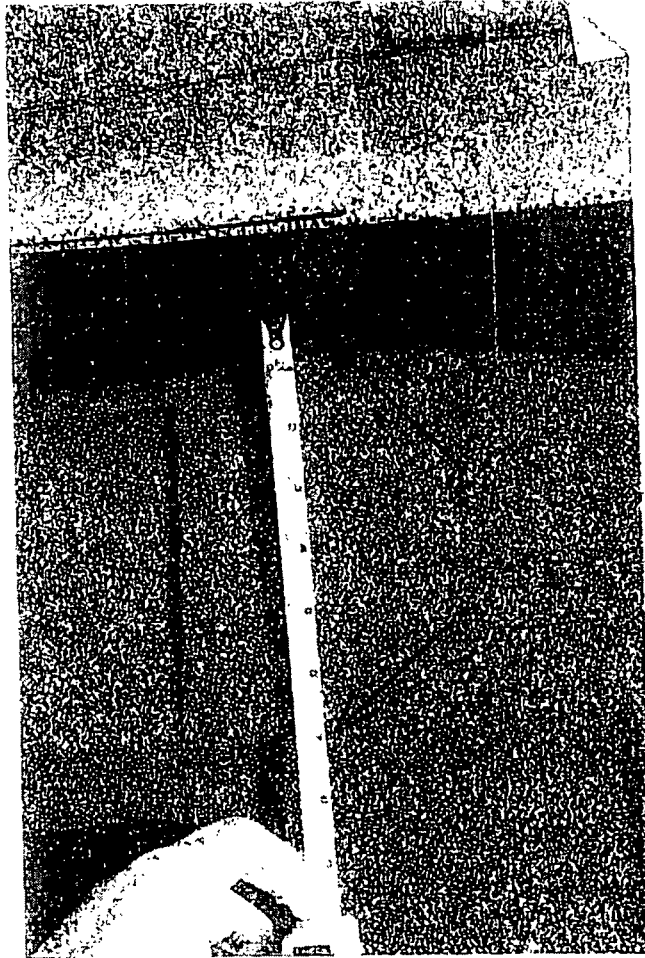


Photo 44: In the four locations observed, a total of 29 fasteners were measured for installation distance above the bottom edge of the shingle. Observations indicated that 25 of the fasteners were improperly placed exceeding 8-1/2" from the edge indicating that they did not mechanically fasten the bottom shingle tab to the roof. Fasteners were above the designated line. This is a violation of the typical shingle manufacturer's installation requirement.

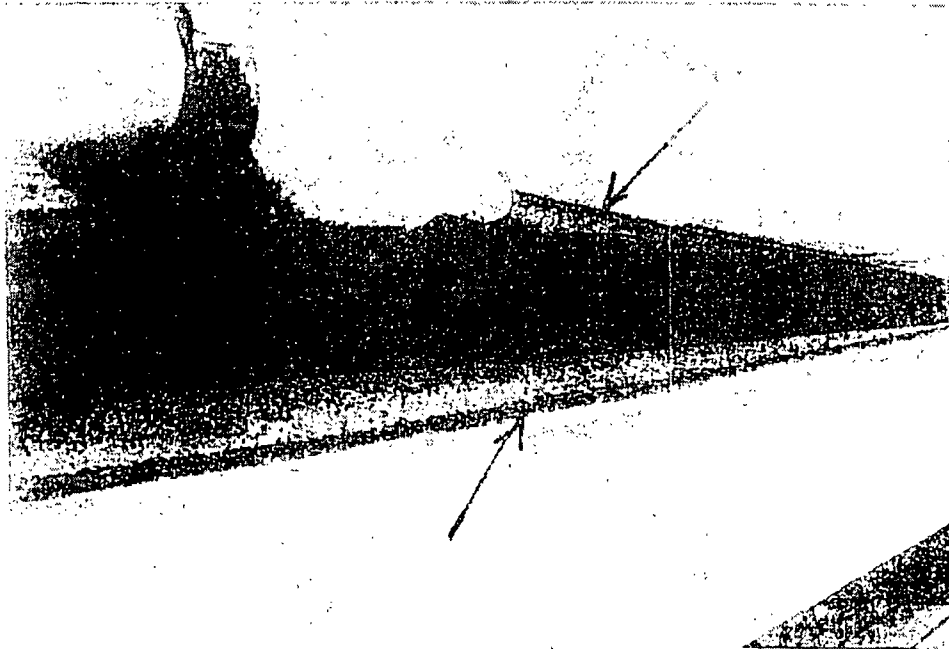


Photo 45: Observations of the edge of the roof revealed evidence of an improper starter strip installation in violation of the manufacturer's installation requirements.



Photo 46: Measurement of the shingle overhang on the rear elevation revealed that the shingles overhang the roof edge by 2-3/4" causing the shingle edges to sag. This is also in violation of the typical manufacturer's installation instruction and the industry standard of care in accordance with the Asphalt Roofing Manufacturers' Association (ARMA), Residential Asphalt Roofing Manual.

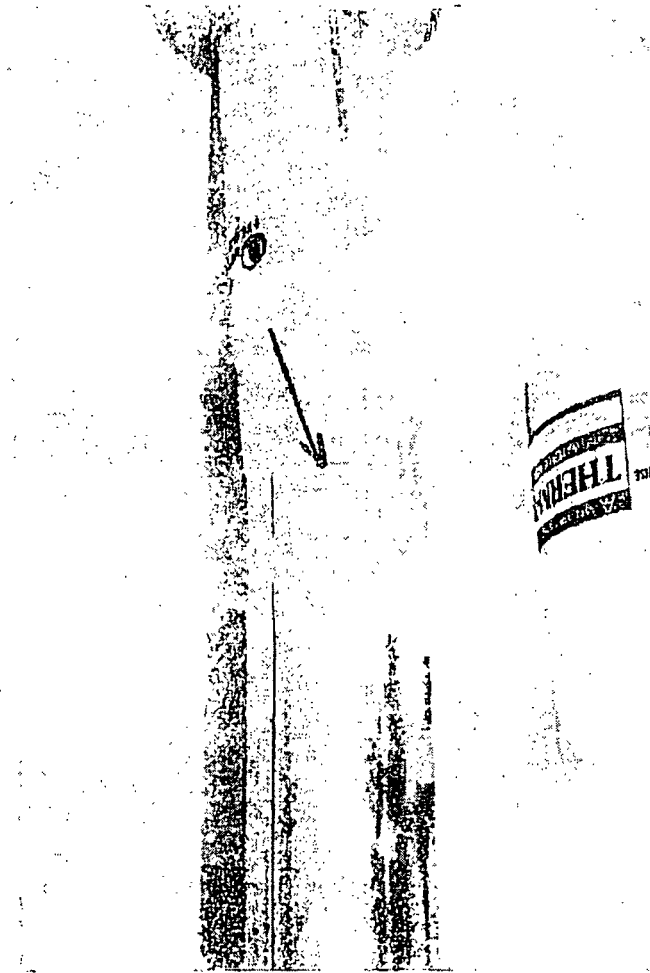


Photo 47: Observations of the gas hot water heater installation in the second floor utility closet near the center of the home revealed that the exhaust vent pipe has been installed such that the joint is upside-down. This installation is not in accordance with the CABO Code Section 2101.1 installation requirements and will have to be repaired.

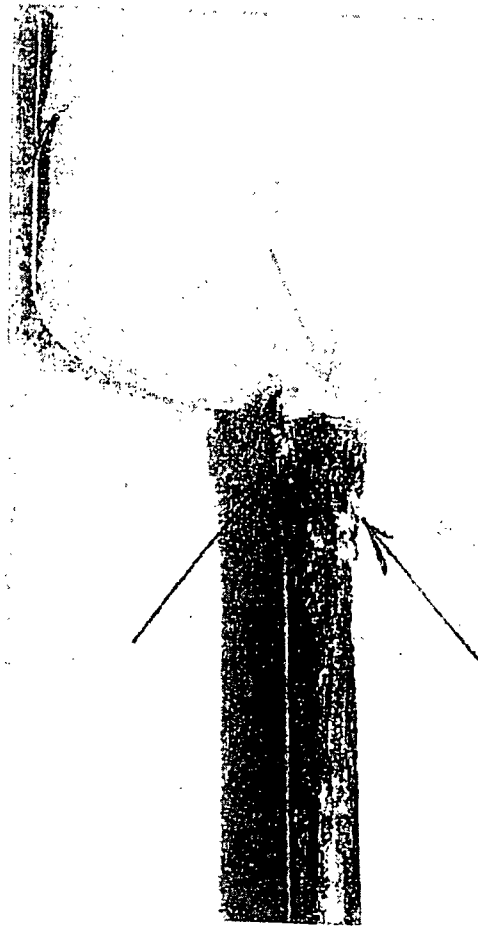


Photo 48: The connection at the base of the expansion tank is heavily corroded due to an inadequate seal. This condition must also be repaired.

Clark Residence

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EXHIBIT “B”

Calibogue Construction Company, Inc.

GENERAL CONTRACTOR
102 WAPPOO CREEK DRIVE #9, CHARLESTON, SC 29412
TELEPHONE (843) 762-9600 FAX (843) 762-0130
Email: caliboguetonr@aol.com

CLARK RESIDENCE
403 MILNER COURT
DANIEL ISLAND, SOUTH CAROLINA

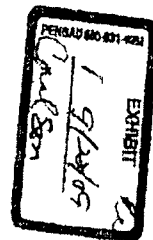
PRELIMINARY REMEDIATION & RESTORATION ESTIMATE SCOPE OF WORK August 5, 2009

This scope of work is based on Siamoy Engineering's Report, dated February 29, 2008, Framing Design/Repairs Drawings by Curry Engineers, dated July 30, 2009, and a site inspection on 7/24/09 by Edward (Ted) Whitlock.

While reasonable efforts were made to identify construction deficiencies, there may be, and probably are other deficient conditions not currently identified.

GENERAL CONDITIONS

- Provide City of Charleston building permit & business license.
- Provide project management and daily supervision of work.
- Provide equipment & temporary facilities as required.
- Provide General Liability Insurance.
- Provide dumpster and offsite disposal for general repairs.
- Provide daily cleanup of site.
- Provide finish cleaning and window cleaning at completion of project.
- Electrical and water utilities to be furnished by owner. (Estimated cost included in estimate)



EXTERIOR WALL SYSTEM REPAIRS

- Provide temporary protection during remediation procedures.
- Remove all existing horizontal siding & exterior trim components.
- Replace any decay damaged wall sheathing or framing system components as required (Allowance).
- Provide a concealed gravity drainage plane water management system utilizing a secondary weather barrier, engineered sealant joints and weep flashing assemblies.
- Install James Hardie cementitious lap siding with a six-inch (6") exposure and 5/4" thick fiber cement window and door trim components to match appearance of existing siding and trim.

PARKING AREA REPAIRS

- Remove and replace 5/8" Firecode GWB at ceilings and girders as required in order to make the specified structural repairs to the 1st floor framing.
- Remove and replace deficient framing support beams as specified by Curry Engineering Framing Repairs, dated 7/30/09 (Allowance).
- Remove and replace concrete floor incorporating required expansion joints, 6x6 welded wire mesh, vapor barrier, compacted soil and termite pretreatment.
- Paint ceiling GWB at car park area.

WINDOW & DOOR REPAIRS

- Remove and reinstall all of the existing windows in order to provide code required rough opening flashing, as well as Carlisle E-Z pan flashing assemblies.
- Install two (2) compatible sill pans with end dams at front and rear entry doors.
- Install 0.032" aluminum bead flashing with end dams at all window and door openings.
- Replace and paint interior trim at all reinstalled windows.
- Remove, store and reset interior window treatments as requirements.

WINDOW & DOOR REPAIRS (con't)

- Remove, store and reset hurricane shutters at the front elevation.

INTERIOR REPAIRS

- Remove and replace compression damaged gypsum wallboard (GWB) at the stairwell. (Allowance)
- Remove and reinstall all kitchen countertops and base cabinets. The purpose for removal is to gain access to the floor and subfloor beneath the base cabinets for remedial repairs.
- Remove and replace the existing 1st floor engineered prefinished flooring and shoe molding.
- Remove and replace LVL roof beam supports.
- As a result of the magnitude of repairs to be performed on the uneven floor framing system, it will be necessary to remove all 1st and 2nd floor furniture, kitchen base cabinets, granite countertops and appliances and store offsite until all interior framing repairs are completed.
- At the powder room, remove and replace the travertine tile floor and remove, store and reinstall the pedestal sink and the water closet to accomplish floor framing repairs.
- Remove, store and reinstall carpet with new pad at master bedroom, living room and upstairs bedrooms.
- Paint interior trim, walls and ceilings as required, and restore finishes damaged or impacted by various remediation and restoration procedures.

EXTERIOR REPAIRS

- Protect and restore landscaping as required.
- Remove and replace the decking boards at the front entry landings and the stair treads and landing deck boards at the rear stairs using code compliant fasteners.
- Paint siding and exterior trim.
- Inspect and replace any non-compliant fasteners in pressure treated lumber. (Allowance)
- Remove and replace the concrete driveway.

Clark Residence
403 Millner Court
Daniel Island, SC

Calibogue Construction Company, Inc.
Scope of Work
August 5, 2009

Page 4 of 4

ROOFING SYSTEM REPAIRS

- Remove & replace the sloped shingle roofing system including felt underlayment, metal drip edge, and flashing assemblies to correct installation deficiencies. (Allowance)
- Repair any incomplete or damaged roof sheathing as required. (Allowance)
- Install proper flashing assemblies at roof to wall intersections and terminations including kick-outs, stopped and horizontal flashing assemblies.

ELECTRICAL, PLUMBING & HVAC REPAIRS

- Miscellaneous electrical and plumbing repairs including removal and resetting of meter base, utility boxes and fixtures associated with exterior wall siding removal and replacement, window, door and kitchen repairs.
- Remove, store and reset kitchen sink, dishwasher, range and refrigerator.
- Remove, store and reset pedestal sink and toilet at powder room.
- Correct flue pipe installation at hot water tank.
- Correct leak at water heater expansion tank.

MISCELLANEOUS SCOPE OF WORK NOTES

- While reasonable efforts were made to identify construction deficiencies, there may be, and probably are other deficient conditions not currently identified.
- Supplemental destructive testing and/or inspections may be required.

CLARK RESIDENCE
403 MILLER COURT
DANIEL ISLAND, SC

CAUBOGUE CO. CITINCO, INC.
PRELIMINARY REMED. & RESTORATION COST ESTIMATE
AUGUST 5, 2008

CLARK RESIDENCE
PRELIMINARY REMEDIATION & RESTORATION COST ESTIMATE

DIVISION # - DESCRIPTION OF WORK	LABOR COST ESTIMATE TOTAL	MATL/EQUIP MISC COST ESTIMATE TOTAL	SUBCONTR COST ESTIMATE TOTAL	PRELIM COST ESTIMATE TOTAL	NOTES:
DIV #1 - GENERAL CONDITIONS	\$14,800	\$12,328	\$2,575	\$29,803	SEE DETAIL ON PAGE 3
DIV #2 - CLADDING REMOVAL & SCAFFOLDING	\$5,723	\$4,317	\$0	\$10,040	SEE DETAIL ON PAGE 4
DIV #3 - EXTER WALL REPAIR ALLOWANCE	\$8,218	\$2,054	\$0	\$10,272	SEE DETAIL ON PAGE 4
DIV #4 - WINDOW & DOOR REPAIRS	\$13,200	\$825	\$0	\$14,025	SEE DETAIL ON PAGE 5
DIV #5 - WATER MANAGEMENT SYSTEM	\$4,897	\$2,625	\$0	\$7,622	SEE DETAIL ON PAGE 6
DIV #6 - EXT. WALL CLADDING: SIDING	\$0	\$0	\$17,976	\$17,976	SEE DETAIL ON PAGE 6
DIV #7 - CURRY ENGINEERING ALLOWANCES	\$0	\$0	\$28,800	\$28,800	SEE DETAIL ON PAGE 8
DIV #8 - INTERIOR REPAIRS	\$0	\$0	\$47,789	\$47,789	SEE DETAIL ON PAGE 7
DIV #9 - EXTERIOR REPAIR ALLOWANCE	\$300	\$0	\$31,470	\$31,770	SEE DETAIL ON PAGE 8
DIV #10 - ROOFING SYSTEM REPAIRS	\$0	\$400	\$7,876	\$7,976	SEE DETAIL ON PAGE 8
DIV #11 - ELEC/PLUMBING/MECH ALLOWANCE	\$0	\$0	\$11,000	\$11,000	SEE DETAIL ON PAGE 8
DIV #12 - SITE WORK	\$0	\$0	\$5,000	\$5,000	SEE DETAIL ON PAGE 9
DIVISIONS #1 - 12 ESTIMATE SUBTOTAL	\$47,238	\$22,849	\$163,256	\$223,072	
CONTRACTOR'S FEE (10% + 10%)				\$46,845	
CLARK RESIDENCE PRELIMINARY ESTIMATE TOTAL				\$289,917	

10 RESIDENCE
40. LAR COURT
DANIEL ISLAND, SC

CALIBOGUE CO. • FETTON CO., INC
PRELIMINARY REMEDIAL COST ESTIMATE
AUGUST 5, 2009

Preliminary Remediation and Restoration Cost Estimate Notes:

- 1 This estimate is based upon information contained in Slattery Engineering's Report, dated 2/29/08, Framing Design/Repairs Drawings by Curry Engineers, dated 7/30/09, and a site visit on 7/24/09 by Edward M. Whitlock, and is subject to revision as additional information becomes available.
- 2 This estimate INCLUDES 100% removal and replacement of existing siding and trim components with James Hardie lap siding and trim accessories.
- 3 This estimate INCLUDES an ALLOWANCE for exterior wall sheathing and framing component damage repairs.
- 4 This estimate INCLUDES removal & reinstallation of the existing windows and (2) exterior doors in order to provide framed opening and sill pan flashing.
- 5 This estimate INCLUDES the installation of an integrated water management secondary weather barrier.
- 6 This estimate INCLUDES ALLOWANCES to repair interior damage related to remediation of siding, window, oak flooring repairs and floor framing repairs.
- 7 This estimate INCLUDES ALLOWANCES to repair GWB at the car park area and interior areas affected by repairs.
- 8 This estimate INCLUDES removal and replacement of all engineered oak flooring and shoe molding at the 1st floor.
- 9 This estimate INCLUDES removal, storage and reinstallation of all kitchen base cabinets, countertops and appliances in order to level the floor framing.
- 10 This estimate INCLUDES removal and replacement of travertine tile floor at 1st floor powder room as part of floor leveling repairs.
- 10 This estimate DOES NOT include removal, offsite storage and reset of first and second floor contents to allow for floor repairs.
- 11 This estimate INCLUDES an ALLOWANCE for interior drywall repairs and painting of walls, windows, trim and drywall impacted by remedial procedures.
- 12 This estimate INCLUDES repairs to rim joists, wall, attic truss and other miscellaneous structural repairs shown on Curry Engineers Drawings, dated 7/30/09.
- 13 This estimate INCLUDES an ALLOWANCE for repairs to roof sheathing prior to the replacement of the sloped shingle roofing system.
- 14 This estimate INCLUDES painting of all new siding and exterior trim.
- 15 This estimate INCLUDES repair ALLOWANCES for HVAC, electrical and plumbing repairs related to remediation of siding, floor framing system and exterior wall repairs.
- 16 This estimate DOES NOT include loss of use for any portion of the estimated five (5) month duration of repairs.
- 17 See Calibogue's 'Preliminary Remediation & Restoration Estimate Scope of Work' dated 8/5/09 for additional scope of work clarifications.
- 18 This estimate is subject to revision after thirty (30) days.

CL. RESIDENCE
401 ARLINER COURT
DANIEL ISLAND, SC

CAUBOGUE CONSTRUCTION CO, INC
PRELIMINARY REMEDIATION COST ESTIMATE
AUGUST 8, 2009

COST CODE DIV #1 - GENERAL CONDITIONS	LABOR COST ESTIMATE TOTAL	MAT./EQUIP MISC COST ESTIMATE TOTAL	SUBCONTR COST ESTIMATE TOTAL	PRELIM COST ESTIMATE TOTAL	NOTES:
1001 CITY OF CHARLESTON BLDG PERMIT & BUSINESS LICENSE	0	1903	0	1903	BASED ON \$289K > PERMIT \$1455 & BUS LIC \$448
1002 PRECONSTRUCTION/MOBILIZATION EXPENSE	800	200	0	1000	PROJECT EXPENSE
1003 PROJECT MANAGEMENT/SUPERVISION	10825	0	0	10825	21.85 WK @ \$500/WK (PART TIME)
1004 GAS. & OIL EXPENSE	0	800	0	800	5 MOS @ \$160/MO
1005 CONSTRUCTION DOCUMENTATION/PHOTOS	0	400	0	400	5 MOS @ \$80/MO
1006 JOBSITE/MOBILE PHONE EXPENSE	0	400	0	400	5 MOS @ \$80/MO
1007 VEHICLE EXPENSE	0	625	0	625	5 MOS @ \$125/MO (PART TIME)
1008 GENERAL UNALLOCATED DUMPSTER EXPENSE	0	2000	0	2000	5 LOADS @ \$400/LOAD
1009 TEMPORARY POWER (BY OWNER)	0	750	0	750	BY OWNER: 5 MOS @ \$150/MO
1010 TEMPORARY WATER (BY OWNER)	0	250	0	250	BY OWNER: 5 MOS @ \$50/MO
1011 TEMPORARY FACILITIES	0	325	0	325	5 MOS @ \$65/MO
1012 SAFETY & SECURITY	375	125	0	500	5 MOS @ \$100/MO
1013 CONSUMABLE TOOL & EQUIPMENT EXPENSE	0	300	0	300	5 MOS @ \$60/MO
1014 FINISH CLEANING/WINDOW CLEANING	0	0	2000	2000	PROJECT EXPENSE
1015 MISC EQUIPMENT RENTAL EXPENSE	0	500	0	500	5 MOS @ \$100/MO
1016 GENERAL LIABILITY INSURANCE	0	3000	0	3000	ALLOCATED PROJECT EXPENSE
1017 BUILDERS RISK INSURANCE (BY OWNER)	0	0	0	0	BY OWNER
1018 GENERAL CONSTRUCTION CLEANUP	2000	0	0	2000	5 MOS @ \$400/MO
1019 PROJECT DEMOBILIZATION/CLOSEOUT	800	200	0	1000	PROJECT EXPENSE
1020 STORAGE TRAILER EXPENSE TOOLS & MATERIALS	0	550	0	550	5 MOS @ \$110/MO
1021 STORAGE UNIT FOR CABINETS/APPLIANCE/MISC	0	0	675	675	5 MOS @ \$135/MO PACK RAT 7/29/09 QUOTE
DIV #1 - GENERAL CONDITIONS	14800	12328	2675	29803	

CL ISSIDENCE
403 S. LINDER COURT
DANIEL ISLAND, SC

CALABOGUE CO. OTION CO, INC
PRELIMINARY REMEDIATION COST ESTIMATE
AUGUST 8, 2008

COST	LABOR COST ESTIMATE TOTAL	MATL/EQUIP MISC COST ESTIMATE TOTAL	SUBCONTR COST ESTIMATE TOTAL	PRELIM COST ESTIMATE TOTAL	NOTES:
CODE DIV #2 - CLADDING REMOVAL & SCAFFOLDING					
2001 SIDING & TRIM REMOVAL	2440	125	0	2565	2565 SF @ \$1.00/SF
2002 CLADDING DEMOLITION DUMPSTER EXPENSE	0	400	0	400	1 LOAD @ \$400 EACH
2003 TEMPORARY PROTECTION DURING DEMO PROCEDURES	815	411	0	1027	2565 SF @ \$0.40/SF
2004 SCAFFOLDING EQUIPMENT EXPENSE	0	3378	0	3378	3855 SF @ \$0.85/SF
2005 SCAFFOLDING ERECTION & DISMANTLE LABOR	2667	0	0	2667	3658 SF @ \$0.73/SF
DIV #2 - CLADDING REMOVAL & SCAFFOLDING	5723	4317	0	10040	
COST	LABOR COST ESTIMATE TOTAL	MATL/EQUIP MISC COST ESTIMATE TOTAL	SUBCONTR COST ESTIMATE TOTAL	PRELIM COST ESTIMATE TOTAL	
CODE DIV #3 - EXTR WALL REPAIR ALLOWANCE					
3001 EXTR WALL DAMAGE REPAIR ALLOWANCE	8218	2054	0	10272	2565 SF @ \$4.00/SF
DIV #3 - EXTR WALL REPAIR ALLOWANCE	8218	2054	0	10272	

CL. RESIDENCE
403 MILNER COURT
DANIEL ISLAND, SC

CALIBOGUE CONSTRUCTION CO, INC
PRELIMINARY REMEDIAL ACTION COST ESTIMATE
AUGUST 5, 2006

COST CODE DIV #4 - WINDOW & DOOR REPAIRS	LABOR COST ESTIMATE TOTAL	MATL/EQUIP MISC COST ESTIMATE TOTAL	SUBCONTR COST ESTIMATE TOTAL	PRELIM COST ESTIMATE TOTAL	NOTES: 1 TWIN = 1.5 WINDOW UNITS 1 TRIPLE = 2 WINDOW UNITS
4001 WINDOW REMOVAL & REINSTALLATION LABOR	8000	0	0	8000	18 WINDOW UNITS & 2 VENTS @ \$400 EACH
4002 EXT. DOOR REMOVE & REINSTALL LABOR	1000	0	0	1000	2 DOORS @ \$500/DOOR
4003 WINDOW/INTERIOR TRIM REPLACEMENT	2100	525	0	2625	16 OPENINGS @ \$175 EACH
4004 WINDOW & INTERIOR TRIM PAINTING	1200	300	0	1500	16 OPENINGS @ \$100 EACH
4005 WINDOW TREATMENT REMOVAL & RESET	900	0	0	900	ASSUME 12 OPENINGS @ \$75 EACH
DIV #4 - WINDOW & DOOR REPAIRS	13200	825	0	14025	

COST CODE DIV #5 - WATER MANAGEMENT SYSTEM	LABOR COST ESTIMATE TOTAL	MATL/EQUIP MISC COST ESTIMATE TOTAL	SUBCONTR COST ESTIMATE TOTAL	PRELIM COST ESTIMATE TOTAL	NOTES:
5001 WEATHER BARRIER & FLEXIBLE FLASHING	2896	1156	0	3852	2896 SF @ \$1.50/SF
5002 WINDOW & DOOR HEAD FLASHING ASSEMBLY	456	304	0	760	76 LF @ \$10/LF
5003 WINDOW EZ PAN FLASHING	750	750	0	1500	18 WINDOW OPENINGS @ \$100/EACH
5004 EXTERIOR DOOR SILL PANS	75	75	0	150	10 LF @ \$15/LF
5005 SEALANT JOINTS	1020	340	0	1360	800 LF @ \$1.70/LF
DIV #5 - WATER MANAGEMENT SYSTEM	4897	2525	0	7622	

01 RESIDENCE
603 1/2 N. HART COURT
DANIEL ISLAND, SC

GA/ BROGUS CO. OTTOM CO. INC
PRELIMINARY REMEDIAL ACTION COST ESTIMATE
AUGUST 6, 2008

COST CODE DIV #6 - EXT. WALL CLADDING: SIDING	LABOR COST ESTIMATE TOTAL	MATL/EQUIP MISC COST ESTIMATE TOTAL	SUBCONTR COST ESTIMATE TOTAL	PRELIM COST ESTIMATE TOTAL	NOTES:
8001 SIDING & EXTERIOR TRIM REPLACEMENT	0	0	17978	17978	2588 SF @ \$7.00/SF
DIV #6 - EXT. WALL CLADDING: SIDING	0	0	17978	17978	

COST CODE DIV #7 - CURRY ENGINEERING ALLOWANCES	LABOR COST ESTIMATE TOTAL	MATL/EQUIP MISC COST ESTIMATE TOTAL	SUBCONTR COST ESTIMATE TOTAL	PRELIM COST ESTIMATE TOTAL	NOTES:
7001 RIM JOIST REPAIRS AS SPECIFIED	0	0	5000	5000	ALLOWANCE
7002 LATERAL BRACING @ CMU PIERS AS SPECIFIED	0	0	8300	8300	\$300/PIER ALLOWANCE
7003 JACKING & SHORING DURING STRUCTURAL REPAIRS	0	0	2500	2500	ALLOWANCE
7004 LIVING ROOM WALL FRAMING REPAIRS	0	0	2500	2500	ALLOWANCE
7006 ATTIC TRUSS REPAIRS	0	0	5000	5000	ALLOWANCE
7006 LVL ROOF BEAM SUPPORT REPAIRS	0	0	1000	1000	ALLOWANCE
7007 REMOVE & REPLACE 5/8" GWS IN GARAGE	0	0	3000	3000	ALLOWANCE
7008 PAINT GWS IN GARAGE (LOWER LEVEL)	0	0	1500	1500	ALLOWANCE
DIV #7 - CURRY ENGINEERING ALLOWANCES	0	0	28800	28800	

CA 15872620
403 LAMER COURT
DANIEL ISLAND, SC

CALIBDQUE CONSTRUCTION CO., INC
PRELIMINARY REMEDIATION COST ESTIMATE
AUGUST 6, 2009

COST	LABOR COST ESTIMATE TOTAL	MATL/EQUIP MISC COST ESTIMATE TOTAL	SUBCONTR COST ESTIMATE TOTAL	PRELIM COST ESTIMATE TOTAL	NOTES
CC001 DIV #8- INTERIOR REPAIRS					
8001 INTERIOR GWS REPAIR ALLOWANCE	0	0	12000	10000	ALLOWANCE
8002 INTERIOR PAINTING & DECORATING ALLOWANCE	0	0	12000	12000	ALLOWANCE
8003 REMOVE & REPLACE 1ST FLOOR HARDWOOD FLOORING	0	0	8008	6008	PRECISION FLOORING 7/31/09 QUOTE
8004 REM, STORE & RESET INT. CONTENTS 1ST & 2ND FLR ITEMS	0	0	0	0	NIC BY OWNER
8005 REPAIRS TO LEVEL 1ST & 2ND FLOOR FRAMING	0	0	11760	11780	2356 SF @ \$5.00/SF
8006 REMOVE & REINSTALL POWDER ROOM VANITY (PLUMBING)	0	0	0	0	INCLUDED IN CC #11003
8007 REMOVE & REINSTALL POWDER ROOM WATER CLOSET	0	0	0	0	INCLUDED IN CC #11003
8008 REMOVE & REPL TRAVERTINE TILE FLOOR @ POWDER ROOM	0	0	0	0	INCL IN CC #8003 PRECISION FLG 7/31/09 QUOTE
8009 REM, STORE & REINSTALL ALL BUILT-IN KIT BASE CABINETS	0	0	3000	3000	ALLOWANCE
8010 REM, STORE & REINSTALL GRANITE COUNTERTOPS & BACKSP	0	0	2500	2500	ALLOWANCE
8011 REMOVE & REPLACE INTERIOR TRIM @ 1ST & 2ND FLOORS	0	0	2500	2500	ALLOWANCE
8012 REM, STORE & REINSTALL 1ST & 2ND FLR CARPET W/ NEW PAD	0	0	0	0	INCL IN CC #8003 PRECISION FLG 7/31/09 QUOTE
DIV #8- INTERIOR REPAIRS	0	0	47788	47788	

CL RESIDENCE
403 PALMER COURT
DANIEL ISLAND, SC

CALIBOQUE CONSTRUCTION CO, INC
PRELIMINARY REMEDIAL COST ESTIMATE
AUGUST 5, 2008

COST CODE DIV #9 - EXTERIOR REPAIR ALLOWANCE	LABOR COST ESTIMATE TOTAL	MAT/EQUIP MISC COST ESTIMATE TOTAL	SUBCONTR COST ESTIMATE TOTAL	PRELIM COST ESTIMATE TOTAL	NOTES:
9001 REMOVE, STORE & RESET SHUTTERS	300	0	0	300	4 PAIR @ \$75/PAIR
9002 PAINT SIDING AND EXTERIOR TRIM	0	0	10000	10000	ALLOWANCE
9003 REMOVE AND REPLACE EXT. REAR STAIR TREAD BOARDS	0	0	240	240	18 RISERS @ \$15/RISER
9004 REM & REPL DECK BOARDS @ FRONT & REAR STAIR LANDINGS	0	0	830	830	\$3 SF @ \$10/SF
9005 INSPECT & REPLACE NAILS IN PRESSURE TREATED LUMBER	0	0	500	500	ALLOWANCE FOR NONCOMPLIANT FASTENERS
9008 REMOVE & REPLACE CONCRETE DRIVE & GARAGE B.O.G.	0	0	19800	19800	SEE MASONRY, 8/3/08 QUOTE
DIV #9 - EXTERIOR REPAIR ALLOWANCE	300	0	21470	31770	

COST CODE DIV #10 - ROOFING SYSTEM REPAIRS	LABOR COST ESTIMATE TOTAL	MAT/EQUIP MISC COST ESTIMATE TOTAL	SUBCONTR COST ESTIMATE TOTAL	PRELIM COST ESTIMATE TOTAL	NOTES:
10001 SHINGLE ROOFING SYSTEM REMOVAL & REPLACEMENT	0	0	5175	5175	23 SQ @ \$225/SQ
10002 ROOF SHEATHING REPAIR ALLOWANCE	0	0	1000	1000	ALLOWANCE
10003 HORIZONTAL ROOF TO WALL FLASHING	0	0	800	800	60 LF @ \$10/LF
10004 STEPPED ROOF TO WALL FLASHING	0	0	800	800	20 LF @ \$40/LF
10005 KICKOUT FLASHING	0	0	200	200	4 AREAS @ \$50/AREA
10006 ROOFING REPLACEMENT DUMPSTER EXPENSE	0	400	0	400	1 LOAD @ \$400 EACH
DIV #10 - ROOFING SYSTEM REPAIRS	0	400	7575	7975	

CLIA RESIDENCE
403 MILLER COURT
DANIEL ISLAND, SC

CALIBOGUE CONSTRUCTION CO, INC
PRELIMINARY REMEDIATION COST ESTIMATE
AUGUST 5, 2008

2008

COST CODE DIV #11 - ELEC/ PLUMBING/MECH ALLOWANCE	LABOR COST ESTIMATE TOTAL	MAT/EQUIP MISC COST ESTIMATE TOTAL	SUBCONTR COST ESTIMATE TOTAL	PRELIM COST ESTIMATE TOTAL	NOTES:
11001 HVAC REPAIR ALLOWANCE	0	0	1000	1000	ALLOWANCE
11002 ELECTRICAL REPAIRS ALLOWANCE	0	0	5000	5000	EXTERIOR FIXTURES & KITCHEN FIXTURES
11003 PLUMBING REPAIR ALLOWANCE	0	0	5000	5000	EXT. FIXTURES, HW HEATER REPAIRS, KITCHEN & POWDER ROOM FIXTURES
DIV #11 - ELEC/ PLUMBING/ MECH ALLOWANCE	0	0	11000	11000	

COST CODE DIV #12 - SITE WORK	LABOR COST ESTIMATE TOTAL	MAT/EQUIP MISC COST ESTIMATE TOTAL	SUBCONTR COST ESTIMATE TOTAL	PRELIM COST ESTIMATE TOTAL	NOTES:
12001 LANDSCAPE PROTECTION & RESTORATION	0	0	5000	5000	ALLOWANCE
DIV #12 - SITE WORK	0	0	5000	5000	

EXHIBIT “C”

Patricia Clark
Defense Costs Paid by D.R. Horton, Inc.

Vendor	Invoice No.	Invoice Date	Period Ending	Date Paid	Amount Paid
Ogletree, Deakins, Nash, Smoak & Stewart	516771	10/31/2007	10/31/2007	11/30/2007	\$621.18
Ogletree, Deakins, Nash, Smoak & Stewart	546718	3/31/2008	3/31/2008	4/30/2008	\$387.20
Ogletree, Deakins, Nash, Smoak & Stewart	553105	4/30/2008	4/30/2008	5/30/2008	\$202.95
Ogletree, Deakins, Nash, Smoak & Stewart	565241	6/30/2008	6/30/2008	7/20/2008	\$5,514.90
Ogletree, Deakins, Nash, Smoak & Stewart	572589	7/31/2008	7/31/2008	8/24/2008	\$2,478.70
Ogletree, Deakins, Nash, Smoak & Stewart	578789	8/31/2008	8/31/2008	9/16/2008	\$6,314.50
Ogletree, Deakins, Nash, Smoak & Stewart	591691	10/31/2008	10/31/2008	11/30/2008	\$116.85
Ogletree, Deakins, Nash, Smoak & Stewart	597823	11/30/2008	11/30/2008	12/20/2008	\$67.65
Ogletree, Deakins, Nash, Smoak & Stewart	610144	1/31/2009	1/31/2009	2/25/2009	\$787.50
Ogletree, Deakins, Nash, Smoak & Stewart	615337	2/28/2009	2/28/2009	3/17/2009	\$252.00
Ogletree, Deakins, Nash, Smoak & Stewart	623136	3/31/2009	3/31/2009	5/1/2009	\$4,041.10
Ogletree, Deakins, Nash, Smoak & Stewart	629877	4/30/2009	4/30/2009	5/15/2009	\$1,426.92
Ogletree, Deakins, Nash, Smoak & Stewart	636419	5/31/2009	5/31/2009	6/25/2009	\$351.74
Ogletree, Deakins, Nash, Smoak & Stewart	642840	6/30/2009	6/30/2009	8/3/2009	\$4,730.36
Ogletree, Deakins, Nash, Smoak & Stewart	650249	7/31/2009	7/31/2009	8/31/2009	\$11,384.96
Ogletree, Deakins, Nash, Smoak & Stewart	657137	8/31/2009	8/31/2009	9/24/2009	\$26,807.56
Ogletree, Deakins, Nash, Smoak & Stewart	663646	9/30/2009	9/30/2009	10/20/2009	\$11,319.94
Ogletree, Deakins, Nash, Smoak & Stewart	668921	10/31/2009	10/31/2009	11/23/2009	\$17,985.69
Ogletree, Deakins, Nash, Smoak & Stewart	676715	11/30/2009	11/30/2009	12/20/2009	\$8,703.89
Ogletree, Deakins, Nash, Smoak & Stewart	683321	12/31/2009	12/31/2009	1/25/2010	\$31,247.28
Ogletree, Deakins, Nash, Smoak & Stewart	689732	1/31/2010	12/31/2009	2/26/2009	\$14,676.48
Ogletree, Deakins, Nash, Smoak & Stewart	704799	3/31/2010	3/31/2010	4/28/2010	\$5,244.25
Ogletree, Deakins, Nash, Smoak & Stewart	712112	4/30/2010	4/30/2010	5/30/2010	\$66.96
Ogletree, Deakins, Nash, Smoak & Stewart	717413	5/31/2010	5/31/2010	6/15/2010	\$433.44
Ogletree, Deakins, Nash, Smoak & Stewart	726783	6/30/2010	6/30/2010	7/21/2010	\$553.05
					<u>\$155,717.05</u>

EXHIBIT “D”

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A NO.: 2010-CP-10-10355
D.R. HORTON, INC. f/k/a C. RICHARD	)	
DOBSON BUILDERS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANTS' ANSWERS TO
	)	PLAINTIFF'S INTERROGATORIES
BUILDERS FIRSTSOURCE -	)	
SOUTHEAST GROUP, LLC; and	)	
BUILDERS FIRSTSOURCE, INC.,	)	
	)	
Defendant.	)	
	)	

TO: NEIL S. HALDRUP, ESQUIRE AND PEDEN BROWN McLEOD, JR., ESQUIRE,
ATTORNEYS FOR PLAINTIFF:

Builders FirstSource-Southeast Group, LLC and Builders FirstSource, Inc. (hereinafter collectively "BFS") answering Plaintiff's Interrogatories to Defendants, states as follows: In setting forth answers hereto, BFS does not waive the attorney-client, work product, or any other privilege or immunity from disclosure which may attach to information called for herein or that is responsive to these Interrogatories. BFS does not concede the relevance or materiality of the Interrogatories or the matters to which these Interrogatories refer. These answers are submitted by BFS subject to, and without in any way waiving or intending to waive, but on the contrary intended to reserve and reserving:

- A. all questions as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose of any of the documents referred to or answers given, or the subject matter thereof in any subsequent proceeding in, or the trial of this action or any other action or proceeding;
- B. the right to object to other discovery procedures involving or relating to the subject

matters of the Interrogatories herein responded to; and

C. the right at any time to revise, correct, add to or clarify any of the answers set forth herein or documents referred to herein.

GENERAL OBJECTIONS

1. BFS objects to the extent that these Interrogatories intend to impose upon it a duty of disclosure or other obligation not required by the South Carolina Rules of Civil Procedure.

2. BFS objects to each Interrogatory to the extent that it pertains to circumstances beyond the time period relevant to this action. Such information and/or documents are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Also, requests for such information or documents pertaining to such extraneous subject matters are overly broad as to time, scope and subject matter, and would be unduly burdensome to produce.

3. BFS objects to each Interrogatory to the extent it calls for answers that would disclose privileged information, including information protected by the attorney-client privilege, attorney work product doctrine, confidential business information, trade secret privilege information, or any other applicable privileges.

4. BFS objects to each Interrogatory to the extent that it seeks documents protected by the South Carolina Trade Secrets Act, §39-8-10, et seq. of the South Carolina Code of Laws.

5. BFS objects to each Interrogatory to the extent that it requires information, documents, things, facts, opinions, or any other matter prepared in anticipation of litigation or for trial which is outside the scope of discovery permitted by Rule 26(b)(3) of the South Carolina Rules of Civil Procedure.

6. BFS incorporates these General Objections by reference as though fully set forth into

its specific answers to each and every Interrogatory herein.

7. BFS reserves the right to supplement its answers to these Interrogatories as additional information or documents become known.

ANSWERS TO INTERROGATORIES

1. Give the names and addresses of persons known to the Defendants or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER: BFS identifies the following:

Bill Crabtree
BFS
Installed Sales Manager- Charleston/Hilton Head Markets
(May be contacted only through counsel)

No written or recorded statement has been taken

Larry Wozniak
BFS
Market Manager
(May be contacted only through counsel)

No written or recorded statement has been taken.

Gifford Shaw
Formerly of BFS

Upon information and belief, Mr. Shaw is now employed with Thompson Industrial Supply, 87 Shaw Street, Sumter, South Carolina. Mr. Shaw participated in the investigation of this matter on behalf of BFS. No written or recorded statement has been taken.

Randy Thomason
Formerly of BFS

Upon information and belief, Mr. Thomason is now employed with Atlantic Building Components. Mr. Thomason participated in the investigation of this matter on behalf of BFS. No written or recorded statement has been taken.

Scott Coffman, P.E.
Formerly of BFS

Mr. Coffman's current location is unknown at this time. Mr. Coffman was a Director of Engineering for BFS. During 2007, Mr. Coffman performed an analysis of the roof trusses at 403 Milner Court, Daniel Island, South Carolina 29492 (hereinafter the "Residence"). As a result of his analysis, Mr. Coffman produced a letter dated October 2, 2007. Said letter is available for inspection upon request. No written or recorded statement has been taken.

Craig Platt
Formerly of BFS

Mr. Platt's current location is unknown at this time. Mr. Platt was the BFS salesperson who would have initially sold the trusses involved in this matter. No written or recorded statement has been taken.

Various other BFS employees may have been involved, at some point, in the sale of materials to Plaintiff or some other entity involved with the construction of the Residence. BFS is in the process of conducting a reasonable investigation into this matter and reserves the right to supplement its Answer to this Interrogatory accordingly.

Chris Pelletier
Formerly of D.R. Horton

Mr. Pelletier was D.R. Horton's project manager for the Residence. No written or recorded statement has been taken.

Jerry Courtney
Formerly of D.R. Horton

Mr. Courtney is a former D.R. Horton purchasing manager who was involved in the investigation of the complaints made by Patricia Clark. No written or recorded statement has been taken.

Patricia Clark
Current whereabouts unknown.

Ms. Clark, at one time, owned the Residence. No written or recorded statement has been taken.

Additionally, BFS states that all parties to this matter are witnesses to the facts of this case. BFS has no knowledge of any written statements from any party to this action.

BFS is continuing the process of a reasonable search of records in an effort to identify any and all other witnesses who may be able to address any of the claims and defenses alleged in the subject action. In addition, BFS expressly reserves the right to call the following persons as witnesses without further notice to the other parties:

- a. All persons identified by any other party through written discovery responses to be a witness in this case.
- b. All persons deposed as witnesses in this case by any party.
- c. Rule 30(b)(6) witnesses for any corporate party in this case.
- d. Records custodian witnesses for any corporate party in this case.
- e. Such additional witnesses as are identifiable through documents exchanged between the parties or otherwise, and will make every effort to specifically identify such witnesses as they become apparent.

2. For each person known to the Defendants or counsel to be a witness concerning the facts of the case, set forth a summary sufficient to accurately state the important facts known to or observed by such witnesses or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See Answer to Interrogatory No. 1.

3. If the Defendants have ever been involved in any civil action (other than the present case) where damages were sought, either as a plaintiff or defendant, state the caption, date and place each action was filed and the result of each action.

ANSWER: BFS objects to this Interrogatory on the grounds that it is vague, overly broad, unduly burdensome and seeks information not reasonably calculated to lead to the discovery of admissible evidence. Further, BFS objects on the basis that the requested information is publicly available and just as easily available to Plaintiff as Defendants.

4. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the Defendants that relate to the claim or the defense in the case; and if you will supply it without the necessity of a motion, please attach a copy to your answers.

ANSWER: Objection. BFS objects on the basis that this Interrogatory is overly broad and encompasses protected documents, documents which may be protected from disclosure by attorney client, work product, anticipation of litigation, trial preparation, or similar doctrine. Thus, excluded from production is correspondence between client and counsel and documents generated by counsel.

Subject to said objections, BFS states that it is currently conducting a reasonable search for any such documents. Documents received from other parties to this litigation, or through discovery, will be made available for inspection and copying at a mutually convenient time. BFS reserves the right to use any documents it now has, or will receive through discovery, in the trial of this matter. By way of further Answer BFS directs Plaintiff to its Responses to Plaintiff's Requests for Production.

5. Identify the names and addresses of all general liability companies that insure the Defendants that may provide coverage for the subject claims and set forth the number or numbers of the policies involved, the limits of liability coverage, and policy years for each carrier.

ANSWER: BFS objects to this Interrogatory on the grounds that it is vague, overly broad, unduly burdensome and seeks information not reasonably calculated to lead to the discovery of

admissible evidence. Subject to said objections:

Liberty Mutual Insurance Company
P. O. Box 100058
3235 Satellite Boulevard / Suite 400

This carrier has policies which may be applicable to this case, in such amounts of coverage as are adequate to cover any reasonable judgment that could possibly be rendered against BFS in this action. BFS reserves the right to supplement this response at a later date as necessary.

6. Set forth a list of all individuals who are your employees or agents who have knowledge of the Residence. For each individual so identified, please state:

- a. His or her title and general job responsibility;
- b. His or her specific responsibility with regard to the Residence; and
- c. The date he or she was hired and, if applicable, the date his or her employment with you ended.

ANSWER: BFS objects to this Interrogatory on the grounds that it is vague, overly broad, unduly burdensome and seeks information not reasonably calculated to lead to the discovery of admissible evidence. Further, BFS objects to the extent this Interrogatory seeks information protected by the attorney-client or work product doctrine.

Subject to said objections, See Answer to Interrogatory No. 1.

7. Identify all consultants, agents, employees, personnel, contractors, subcontractors, or independent contractors of the Defendants charged with and/or performing any field supervision or having site inspection responsibility with respect to the Residence, and as to each such person, state his or her title, position and scope of responsibility.

ANSWER: BFS objects to this Interrogatory on the grounds that it is vague, overly broad,

unduly burdensome and seeks information not reasonably calculated to lead to the discovery of admissible evidence. Further, BFS objects to the extent this Interrogatory seeks information protected by the attorney-client or work product doctrine.

Subject to said objections, See Answer to Interrogatory No. 1.

8. Identify all consultants, agents, employees, personnel, contractors, subcontractors, or independent contractors of the Defendants charged with and/or performing or having any supervisory, management, or administrative responsibility with respect to the project, and as to each such person, state his or her title, position and scope of responsibility.

ANSWER: BFS objects to this Interrogatory on the grounds that it is vague, overly broad, unduly burdensome and seeks information not reasonably calculated to lead to the discovery of admissible evidence. Further, BFS objects to the extent this Interrogatory seeks information protected by the attorney-client or work product doctrine.

Subject to said objections, See Answer to Interrogatory No. 1.

9. List the names and addresses of any expert witnesses whom the Defendants propose to use as witnesses at the trial of the case.

ANSWER: BFS objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and seeks information protected by the attorney-client and work product privileges. Further, Defendant objects to this Interrogatory to the extent that it seeks information, facts known or opinions as to experts who have been retained or specially employed in anticipation of litigation or preparation for trial and who are not expected to be called as witnesses at trial absent the showing of exceptional circumstances as required by Rule 26(b)(4)(B) of the South Carolina Rules of Civil Procedure and to the extent it seeks information concerning experts consulted informally or not

retained or specially employed.

Subject to said objections BFS states that it has not yet retained any expert witness(es) for use in the trial of this case; however, BFS reserves the right to do so in the future. To the extent certain witnesses or company employees may qualify as experts by virtue of skill, training or experience, they may be called upon to render opinions. In addition, BFS herewith specifically reserves without further notice the right to elicit expert/opinion testimony from any person identified as an expert witness by any other party to this litigation.

10. In connection with each expert witness, give the following information:

- a. State the expert's qualifications;
- b. State the subject matter on which the expert is expected to testify;
- c. State the substance of the facts and opinions to which the expert is expected to testify; and
- d. A summary of the grounds of each opinion.

ANSWER: See Answer to Interrogatory No. 9.

11. State whether any investigation or inspection of matters pertaining in any way to these proceedings or any similar claim has ever been made and, if so, for each person who has conducted or was engaged in each such investigation or inspection, please state such person's name, address, telephone number, occupation, qualifications, and whether the Defendants intend to call such person as a witness in the trial of this action.

ANSWER: BFS objects to this Interrogatory on the grounds that it is vague, overly broad, unduly burdensome and seeks information not reasonably calculated to lead to the discovery of admissible evidence. Further, BFS objects to the extent this Interrogatory seeks information

protected by the attorney-client or work product doctrine.

Subject to said objections, BFS is aware that Patricia Clark, through the experts she obtained in connection with the matter of Patricia Clark v. D.R. Horton, Inc., Court of Common Pleas, Berkeley County, South Carolina, Case No. 2008-CP-08-1633, conducted an investigation of the construction defects allegedly existing at 403 Milner Court, Daniel Island, South Carolina 29492.

Included among those who investigated the Residence on Ms. Clark's behalf are:

Robert G. Sisnroy, P.E.
Sisnroy Engineering, LLC
Post Office Box 12806
Charleston, South Carolina 29422

Thomas J. Carlson
102 Wappoo Creek Drive #9
Charleston, South Carolina 29412

Dewey Campbell
Building Inspection Service
Post Office Box 629
Charleston, South Carolina 29402

Howard D. Althen, P.E.
Curry Engineers, LLC
401 E. Seacoast Parkway
Mt. Pleasant, South Carolina

Additionally, W. Randall Still, Sr., P.E., of H2L Consulting Engineers, 122 Edgeworth Street, Greenville, South Carolina, apparently inspected the Residence on behalf of D.R. Horton.

12. With respect to each investigation mentioned above in the immediately preceding Interrogatory, state the date and times such investigation or inspection, and the results of such investigation or inspection.

ANSWER: BFS objects to this Interrogatory on the grounds that it is vague, overly broad

and unduly burdensome. Additionally, BFS objects on the grounds that Plaintiff was involved in the underlying case of Patricia Clark v. D.R. Horton, Inc., Court of Common Pleas, Berkeley County, South Carolina, Case No. 2008-CP-08-1633, and, therefore, is in a better position to access the requested information than BFS.

13. Did the Defendants employ any engineers, consultants, testing laboratory, experts, or other professionals to inspect, examine, test, or analyze the project, or the project work, or any part thereof, at any time before, during or after the course of construction?

ANSWER: BFS objects to this Interrogatory on the grounds that it is vague, overly broad, unduly burdensome, seeks information not reasonably calculated to lead to the discovery of admissible evidence, and seeks information protected from disclosure by the attorney-client or work product doctrine. Further, Defendant objects to this Interrogatory to the extent that it seeks information, facts known or opinions as to experts who have been retained or specially employed in anticipation of litigation or preparation for trial and who are not expected to be called as witnesses at trial absent the showing of exceptional circumstances as required by Rule 26(b)(4)(B) of the South Carolina Rules of Civil Procedure and to the extent it seeks information concerning experts consulted informally or not retained or specially employed. Subject to said objections, See Answer to Interrogatory No. 1.

14. If the Answer to the immediately preceding Interrogatory is anything other than an unequivocal "no," then provide the following information:

- a. Identify each such person stating his name or other means of identification, address, telephone number, profession or occupation, and the field in which such person allegedly is an expert.

- b. Describe the nature and scope of each such investigation or inspection and the results or findings of that investigation or inspection.
- c. List the date(s) and time(s) of each such investigation or inspection.
- d. State whether any such engineer, consultant, testing laboratory, expert, or other professional has or will submit an oral or written report or reports of their objective findings; if so, as to each report, please identify who prepared the report; state the date the report was or will be submitted; and attach a copy of that report to your answers to these Interrogatories.

ANSWER: BFS objects to this Interrogatory on the grounds that it is vague, overly broad, unduly burdensome, seeks information not reasonably calculated to lead to the discovery of admissible evidence, and seeks information protected from disclosure by the attorney-client or work product doctrine. Further, Defendant objects to this Interrogatory to the extent that it seeks information, facts known or opinions as to experts who have been retained or specially employed in anticipation of litigation or preparation for trial and who are not expected to be called as witnesses at trial absent the showing of exceptional circumstances as required by Rule 26(b)(4)(B) of the South Carolina Rules of Civil Procedure and to the extent it seeks information concerning experts consulted informally or not retained or specially employed. Subject to said objections, See Answer to Interrogatory No. 1.

15. Identify each and every written statement or other document received by the Defendants from persons having or claiming to have knowledge of any facts or circumstances pertaining to this case in any way whatsoever.

ANSWER: BFS objects to this Interrogatory on the grounds that it is vague, overly broad,

unduly burdensome, seeks information not reasonably calculated to lead to the discovery of admissible evidence, and seeks information protected from disclosure by the attorney-client or work product doctrine. Further, Defendant objects to this Interrogatory to the extent that it seeks information, facts known or opinions as to experts who have been retained or specially employed in anticipation of litigation or preparation for trial and who are not expected to be called as witnesses at trial absent the showing of exceptional circumstances as required by Rule 26(b)(4)(B) of the South Carolina Rules of Civil Procedure and to the extent it seeks information concerning experts consulted informally or not retained or specially employed. Subject to said objections, See Answer to Interrogatory No. 1.

16. Describe in comprehensive narrative detail your relationship with the Residence and the nature and scope of the work you performed with respect to the Residence.

ANSWER: BFS provided the roof trusses and certain other materials for installation at the Residence and, upon information and belief, provided some framing labor for the Residence. By way of further Answer, See Defendant's Responses to Plaintiff's Requests for Production.

17. Identify any and all communications between you and the manufacturer of the structural components supplied and installed at the Residence.

ANSWER: BFS objects to this Interrogatory on the grounds that it is vague, overly broad, unduly burdensome, seeks information not reasonably calculated to lead to the discovery of admissible evidence, and seeks information protected from disclosure by the attorney-client or work product doctrine. By way of further Answer, upon information and belief, BFS was the manufacturer of the roof trusses installed at the Residence.

18. Identify any and all communications between you and the designer of the structural

components supplied and installed at the Residence.

ANSWER: BFS objects to this Interrogatory on the grounds that it is vague, overly broad, unduly burdensome, seeks information not reasonably calculated to lead to the discovery of admissible evidence, and seeks information protected from disclosure by the attorney-client or work product doctrine. By way of further Answer, upon information and belief, BFS designed the roof trusses installed at the Residence in accordance with plans provided by Plaintiff.

19. Identify any and all communications between you and Plaintiff regarding the structural components supplied and installed at the Residence.

ANSWER: BFS objects to this Interrogatory on the grounds that it is vague, overly broad, unduly burdensome, seeks information not reasonably calculated to lead to the discovery of admissible evidence, and seeks information protected from disclosure by the attorney-client or work product doctrine.

Subject to said objections, BFS was contacted, during 2007, by Jerry Courtney, concerning Patricia Clark's complaints.

20. Have the Defendants ever been the subject of disciplinary action by any construction or business entity or agency? If so, please list what agency instituted the disciplinary action and give a brief summary of the events surrounding the discipline and the action taken.

ANSWER: BFS objects to this Interrogatory on the grounds that it is vague, overly broad and unduly burdensome. Further, BFS objects on the basis that the requested information is publicly available and just as easily available to Plaintiff as Defendants.

21. Do you contend Plaintiff made any admissions or statements against its interest? If your answer is anything other than an unequivocal "no," please provide the following information

for each such admission or statement:

- a. The substance of the admission or statement;
- b. The time, date and place it was made;
- c. The name of the person who made it; and
- d. The name, address, and phone numbers of each person present when it was made.

ANSWER: BFS is unaware of any such statements at this time. BFS reserves the right to supplement its Answer to this Interrogatory should it discovery additional information in this regard.

22. Identify any and all documents in your possession, custody, or control that pertain to the Residence.

ANSWER: BFS objects to this Interrogatory on the grounds that it is vague, overly broad, unduly burdensome, seeks information not reasonably calculated to lead to the discovery of admissible evidence, and seeks information protected from disclosure by the attorney-client or work product doctrine. Subject to said objections, See Defendant's Responses to Plaintiff's Requests for Production.

23. Identify any and all documents you reviewed, prepared or obtained in connection with any and all work Defendants performed on or materials Defendants supplied to the Residence.

ANSWER: BFS objects to this Interrogatory on the grounds that it is vague, overly broad, unduly burdensome, seeks information not reasonably calculated to lead to the discovery of admissible evidence, and seeks information protected from disclosure by the attorney-client or work product doctrine. Subject to said objections, See Defendant's Responses to Plaintiff's Requests for

Production.

24. Identify and produce copies of any contract related to the Residence, along with all modifications, amendments, addenda or documents referenced or incorporated into that contract by reference.

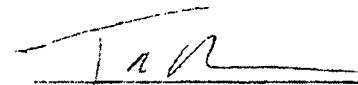
ANSWER: BFS objects to this Interrogatory on the grounds that it is vague, overly broad, unduly burdensome, seeks information not reasonably calculated to lead to the discovery of admissible evidence, and seeks information protected from disclosure by the attorney-client or work product doctrine. Subject to said objections, See Defendant's Responses to Plaintiff's Requests for Production.

25. Do you contend any portion of your contract with Plaintiff was oral? If so, please set forth the date of the contract, the essential terms of that contract, the persons who were parties to its making, the names of all persons present when it was made, the date and time such oral provisions were made, and the names and addresses of all persons present when such oral provisions were made.

ANSWER: Not at this time. BFS reserves the right to supplement its Answer to this Interrogatory should it discover additional information in this regard.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

KERNODLE, ROOT & COLEMAN

By: 

Trent M. Kernodle
Krista M. McGuire
James Taylor Anderson, III
914 Folly Road, Suite 2 (29412)
P. O. Box 13897
Charleston, SC 29422
(843) 795-7800
(843) 795-3032 Fax
tkernodle@kernodlslaw.com
kmcguire@kernodlslaw.com
tanderson@kernodlslaw.com

ATTORNEYS FOR DEFENDANTS
BUILDERS FIRSTSOURCE-SOUTHEAST
GROUP, LLC and BUILDERS FIRSTSOURCE,
INC.

June 23, 2011

Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the attached *Defendants' Answers to Plaintiff's Interrogatories* was sent via facsimile, hand delivery and/or by depositing a copy in the United States Mail, First Class, to:

Peden Brown McLeod, Jr.
Neil S. Haldrup
Elmore & Wall, P.A.
P. O. Box 1200
Charleston, SC 29402

Attorney for Plaintiff

June 23, 2011

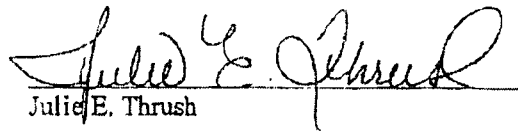

Julie E. Thrush

EXHIBIT “E”



114 & 116 Myrtle Beach Hwy.
P.O. Box 1546
Sumter, SC 29153
TEL 803-778-1921
FAX 803-834-9681

October 2, 2007

Builders FirstSource - Charleston
4450 Arco Lane
North Charleston, South Carolina 29418

Attn: Mr. Larry Wozniak

Re: Builders FirstSource Job #69420 & 70009

Larry,

At Gifford Shaw's request, I am formally addressing three specific items pertaining to the roof truss components provided to the referenced job numbers. This project is also identified as Lot 6D Daniel Island in the Builders FirstSource (BLDR) files. My findings are based on conversations with Gifford and reviewing the above referenced files.

Background:

It is my understanding roof truss components identified in file number 69420 (Exhibit 2) were placed onto the residential building per the placement plan provided (Exhibit 1). Because these "A" type trusses were fabricated with an incorrect 5'- $\frac{1}{16}$ " heel height at each end, additional truss components were fabricated and installed immediately adjacent to the originally erected truss components. File number 70009 (Exhibit 3) details these revised members with 3'- $2\frac{9}{16}$ " and 1'-6" heel heights. The bigger heel heights increased the overall truss height which necessitated installing a "piggy back" member to create the desired roof appearance.

Item 1:

The A1_2 gable frame may be installed to one side of the original A1 provided the A1_2 is located to the exterior wall edge. The A2_2 may be installed to either side of the A2 and A3. Since the larger heel heights dictate roof sheathing must be fastened to the top chord of the A1_2 and A2_2 truss components, it is reasonable to assign all loads to these members. Therefore, the original A1, A2, and A3 trusses can be viewed as non structural members. These trusses can remain within the roof system and I suggest fastening them to the A1_2 and A2_2 with 10d nails (0.131" dia. by 3" long) 24" on center or with two nails at crossing locations.

DRH\Clark
00063



114 & 116 Myrtle Beach Hwy.
P.O. Box 1546
Sumter, SC 29153
TEL 803-778-1921
FAX 803-934-9661

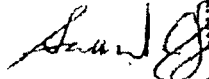
Item 2:

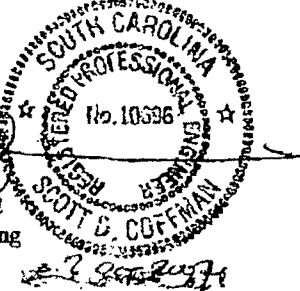
The 4' - $\frac{1}{16}$ " horizontal top chord members in A1-2 (F-G-H) and A2-2 (C-D) do not require any lateral bracing. This can be verified on each truss design drawing which indicates a maximum 6' on center purlin spacing. The PB2 "piggy back" must be connected to the A1_2 and A2-2 base truss with a 2x4x24" lumber scab one face centered about the joint location. The scab may be Spruce-Pine-Fir lumber #2 grade or better fastened with three (3) 10d nails (0.131" dia. by 3" long) each side of the joint (6 nails total per joint; 3 in base truss and 3 in piggy back). A prefabricated metal plate may be used in lieu of the 2x4 scab provided design values are equal to or exceed the calculated reactions shown on the PB2 truss design drawing.

Item 3:

All members must be braced as detailed on each truss design drawing. Bracing procedures outlined in the Building Components Safety Information (BCSI) manual may be used in the absence of specific bracing guidelines by the project building designer. The BCSI information is available through the Wood Truss Council of America (WTCA).

Sincerely,


Scott D. Coffman, PE
Director of Engineering



Documents\69420 letter.doc

DRH\Clark
00064

EXHIBIT “F”

Benjamin E Curnoles

From: Jerry W Courtney
Sent: Tuesday, September 25, 2007 4:25 PM
To: Jay M Henderson; Brian E Christo; Benjamin E Curnoles
Subject: FW: Horton

Please see below for the recommended actions from BFS on 403 Milner Ct.

Thanks,
Jerry

From: Larry Wozniak [mailto:Larry.Wozniak@bkdr.com]
Sent: Monday, September 24, 2007 12:09 PM
To: Jerry W Courtney
Subject: FW: Horton

Jerry,
Would you please call me.

Thankx,
Larry cell 843-290-7528

From: Gifford Shaw
Sent: Monday, September 24, 2007 11:56 AM
To: Bob Lanier; Larry Wozniak; Bill Crabtree; Lou Davis; Terry Rosamond
Cc: Randy Thomason
Subject: Horton

I am recommending the following actions:

Roof: The Issue is that there are 2 sets of trusses and lateral bracing is not installed. I recommend that we install the lateral bracing and get a letter from an engineer stating that there is no reason to remove the trusses.

Second Floor: The homeowner pointed out the floor has dips in it. I noted one area that is probably out of code and recommend that we fix this. It is over the kitchen below:

Wall Sheetrock Crack: The wall sheetrock is cracking on an exterior wall where a lam beam is bearing that is carrying the roof trusses. I suspect that there is not a good stud packing below the beam and this will need to be corrected.

First Floor: The homeowner pointed out numerous dips in the floor. I found two areas that are probably out of code. One area is between the dining room and the foyer and is right over the bearing below. I suspect this could be from when the owner removed the carpet in the dining room and put down oak flooring to match the foyer floor. This is where the two floors joined.
The other area is under the fireplace wall. Here I think we are getting deflected load from where a beam is carrying second floor trusses. This needs to be fixed.

DRH\Clark
00086

07/25/2007

EXHIBIT “G”

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A NO.: 2010-CP-10-10355
	)	
D.R. HORTON, INC. f/k/a C. RICHARD	)	
DOBSON BUILDERS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	BUILDERS FIRSTSOURCE -
	)	SOUTHEAST GROUP, LLC and
BUILDERS FIRSTSOURCE -	)	BUILDERS FIRSTSOURCE, INC.'S
SOUTHEAST GROUP, LLC; and	)	RESPONSES TO REQUEST FOR
BUILDERS FIRSTSOURCE, INC.,	)	ADMISSION
	)	
Defendant.	)	

TO: D.R. HORTON, INC.,

Defendants Builders FirstSource, Inc., making a special appearance, and Builders FirstSource - Southeast Group, LLC (together referred to herein as "BFS"), respond to the Request For Admission of Plaintiff as follows:

In setting forth responses hereto, BFS does not waive the attorney-client, work product, or any other privilege or immunity from disclosure which may attach to information called for herein or which is responsive to the Requests for Admission. BFS does not concede the relevance or materiality of the Requests for Admission or the matters to which the Requests for Admission refer. These responses are submitted by BFS subject to, and without in any way waiving or intending to waive, but on the contrary intended to reserve and reserving:

1. All questions as to competency, relevancy, materiality, privilege, and admissibility as evidence for any purpose of any of the documents referred to or answers given, or the subject matter thereof, in any subsequent proceeding in, or the trial of this action or any other action or proceeding;

2. The right to object to other discovery procedures involving or relating to the subject matter of these Requests for Admission herein responded to; and
3. The right at any time to revise, correct, add to or clarify any of the responses set forth herein or documents referred to herein.

GENERAL OBJECTIONS

1. BFS objects to the extent that these Requests intend to impose upon it a duty of disclosure or other obligation not required by the South Carolina Rules of Civil Procedure.
2. BFS objects to each Request to the extent that it pertains to circumstances beyond the time period relevant to this action. Such information and/or documents are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Also, requests for such information or documents pertaining to such extraneous subject matter are overly broad as to time, scope and subject matter, and would be unduly burdensome to produce.
3. BFS objects to each Request to the extent it calls for responses that would disclose privileged information, including information protected by the attorney-client privilege, attorney work product doctrine, confidential business information, trade secret privilege information, or any other applicable privileges.
4. BFS also objects to each Request to the extent that it seeks documents protected by the South Carolina Trade Secrets Act, §39-8-10 et seq. of the South Carolina Code of Laws.
5. BFS objects to each Request to the extent that it requires information, documents, things, facts, opinions, or any other matter prepared in anticipation of litigation or for trial which is outside the scope of discovery permitted Rule 26 of the South Carolina Rules of Civil Procedure.

6. BFS incorporates its General Objections by reference as though fully set forth into the specific responses to each and every Request herein.
7. BFS reserves the right to supplement its responses to these Requests as additional information or documents become known.

RESPONSES TO REQUESTS FOR ADMISSION

1. Admit that the document, attached hereto as "Exhibit A", is a genuine copy of Builders First Source's contractual agreement with D.R. Horton, Inc., dated January 31, 2001, to provide work to the subject property located at 403 Milner Court, Charleston County, South Carolina (hereinafter referred to as "Clark Residence").

RESPONSE:

Denied. "Exhibit A" contains two contractual documents. The first of which contains only pages one and two of a three page document, which may have contained in addendum or other information, and which bears no signature of BFS. The second document was executed several years after the subject residence was constructed, and its terms, including those contained within its addendum, are materially different than the terms of the portion of the first contract contained within "Exhibit A."

2. Admit that Builders First Source is the "Contractor" as referenced in the attached contract.

RESPONSE:

Denied. See response to Request 1.

3. Admit that D.R. Horton, Inc. is the "Owner" as referenced in the attached contract.

RESPONSE:

Denied. See response to Request 1.

4. Admit that Builders First Source agreed that "The work to be performed hereunder (the "Work") is the labor, services and/or materials, equipment, transportation, or facilities necessary to complete the construction-related activities generally described as Turnkey and shall include all Work performed by Contractor for Owner" as stated in the attached contract.

RESPONSE:

Denied. See response to Request 1.

5. Admit that Builders First Source agreed that "Contractor's acceptance / commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized Owner employee..." as stated in the attached contract.

RESPONSE:

Denied. See response to Request 1.

6. Admit that Builders First Source agreed to "... Contractor's acknowledgment that Contractor has inspected the job location and approves requirements so specified" as stated in the attached contract.

RESPONSE:

Denied. See response to Request 1.

7. Admit that Builders First Source agreed that it "...shall perform all Work in a good and workmanlike manner, in accordance with the plans and specifications of Owner, according to industry standard practices, and warrants that Work will meet or exceed FHA minimum property standards, VA requirements, all laws and regulations and any applicable building code requirements" as stated in the attached contract.

RESPONSE:

Denied. See response to Request 1.

8. Admit that Builders First Source was responsible for inspecting any work of another contractor that may affect Contractor's own Work, and shall report in writing to Owner any defects prior to commencement of any Work, or Contractor shall be deemed to have accepted such work for inclusion into Contractor's Work" as stated in the attached contract.

RESPONSE:

Denied. See response to Request 1.

9. Admit that Builders First Source agreed that "Contractor unconditionally warrants to Owner, its successors and assigns, and to each purchaser of a house incorporating the Work from Owner, each subsequent owner, and their successors and assigns (collectively referred to as the "Homeowner"), that all labor performed and materials furnished by Contractor shall conform to the specifications of this Agreement, are free from any defects or deficiencies in workmanship or materials when judged by the standards of accepted residential construction industry trade practices, and be in accordance with the requirements of all applicable government authorities" as stated in the attached contract.

RESPONSE:

Denied. See response to Request 1.

10. Admit that Builders First Source expressly warranted "...that the Work shall remain free of defects for the following warranty periods: (a) a period often (10) years all structural elements, including, but not limited to, roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels, (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems..." as stated in the attached contract.

RESPONSE:

Denied. See response to Request 1.

11. Admit that Builders First Source agreed "...that the performance/fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty obligations, Contractor's indemnity provided for herein, or the ability of Owner to request Contractor to perform warranty services in the future" as stated in the attached contract.

RESPONSE:

Denied. See response to Request 1.

12. Admit that Builders First Source agreed "...to comply with all applicable federal, state, local, and county statutes, ordinances, regulations, codes, and licensing requirements and standards" as stated in the attached contract.

RESPONSE:

Denied. See response to Request 1.

13. Admit that Builders First Source agreed to the following "Contractor's Indemnity and Waiver" as stated in the attached contract:

"...protect, defend, indemnify, and hold owner, its parent corporation, subsidiaries and affiliates, and any of their respective officers, directors, partners, employees, agents and insurers, (herein collectively referred to as the "[i]ndemnatee"), free and harmless from and against any and all claims, demands, causes of actions, suits, or other litigation of every kind and character (including all costs hereof and attorneys' fees), whether asserted by the homeowner, contractor, or any third party including, but not limited to personnel furnished by contractor in any way occurring, incident to, arising out of, or in connections with: (I) a breach of the warranties, representations, obligations, and covenants provided herein by contractor; (II) the work performed or to be performed by contractor or

contractor's personnel, agents, suppliers, or permitted subcontractors; or (III) any negligent action and for omission of the Indemnities related in any way to the work..."

RESPONSE:

Denied. See response to Request 1.

14. Admit that Builders First Source designed the roof trusses for the Clark Residence.

RESPONSE:

Denied, as the term "design" is understood to be meant by Plaintiff in light of Request 19. Rather, in general terms BFS manufactures and supplies floor and roof trusses, the dimensional profiles of which are customarily input by BFS truss technicians, based upon their reading of architectural plans and other supporting data and/or specifications provided by the contractor, structural engineer and/or architect, into component software which is provided by MiTek Industries, the manufacturer/supplier of the metal connector plates used on the subject trusses and owner of applicable evaluation reports that support the use of their proprietary software and metal connector plates. Engineers, either as (an) employee(s) of BFS or (an) engineering firm(s) (including but not limited to MiTek) may become involved in the subject process as compulsory to conform to requirements of the jurisdiction having controlling authority over the construction associated with the subject floor and roof trusses.

15. Admit that Builders First Source designed the floor trusses for the Clark Residence.

RESPONSE:

Denied. See response to Request 14.

16. Admit that Craig Platt is an employee of Builders First Source.

RESPONSE:

Denied. Mr. Platt is no longer with the company.

17. Admit that Craig Platt designed the floor trusses for the Clark Residence.

RESPONSE:

Denied. See response to Request 14.

18. Admit that Craig Platt designed the roof trusses for the Clark Residence.

RESPONSE:

Denied. See response to Request 14.

19. Admit that Craig Platt is not a licensed engineer in the State of South Carolina.

RESPONSE:

Admitted.

20. Admit that Builders First Source manufactured the roof trusses for the Clark Residence.

RESPONSE:

Admitted.

21. Admit that Builders First Source manufactured the floor trusses for the Clark Residence.

ANSWER:

Admitted.

22. Admit that Builders First Source and/or one of its subcontractors installed the roof trusses for the Clark Residence.

ANSWER:

Admitted.

23. Admit that Builders First Source and/or one of the subcontractors installed the floor trusses for the Clark Residence.

ANSWER:

Admitted.

SIGNATURE ON FOLLOWING PAGE

KERNODLE, ROOT & COLEMAN

By:



David A. Root
914 Folly Road, Suite 2 (29412)
P. O. Box 13897
Charleston, SC 29422
(843) 795-7800
(843) 795-3032 Fax
droot@kernodlelaw.com

ATTORNEYS FOR DEFENDANTS
BUILDERS FIRSTSOURCE-SOUTHEAST
GROUP, LLC and BUILDERS FIRSTSOURCE,
INC.

Charleston, South Carolina

June 27, 2012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the attached *Defendant's Responses to Plaintiff's Requests for Admission* was sent e-mail and United States Mail, First Class, to:

Via E-Mail and U.S. Mail

Peden Brown McLeod, Jr., Esquire
Neil S. Haldrup, Esquire
Wall Templeton & Haldrup, PA
P. O. Box 1200
Charleston, SC 29402

Attorneys for Plaintiff



David A. Root

June 27, 2011

EXHIBIT “H”

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

D.R. HORTON, INC. f/k/a C. RICHARD)
DOBSON BUILDERS, INC.,)

Plaintiff,)

v.)

BUILDERS FIRSTSOURCE -)
SOUTHEAST GROUP, LLC; and)
BUILDERS FIRSTSOURCE, INC.,)

Defendants.)

IN THE COURT OF COMMON PLEAS)
NINTH JUDICIAL CIRCUIT)
C/A NO.: 2010-CP-10-10355)

FILED
2010 FEB 22 PM 2:02
JULIE J. ARMSTRONG
CLERK OF COURT

DEFENDANTS' ANSWER TO COMPLAINT
(Jury Trial Demanded)

Defendants Builders FirstSource, Inc., making a special appearance, and Builders FirstSource - Southeast Group, LLC (together referred to herein as "BFS"), respond to Plaintiff's Complaint as follows:

1. As a preliminary matter, Builders FirstSource, Inc., is not a proper party in interest.
2. BFS denies each and every allegation of the Complaint not hereinafter specifically admitted.

FOR A FIRST DEFENSE

3. As to the allegations of Paragraph 1 of the Complaint, BFS admits only that Builders FirstSource Southeast Group, LLC, and Builders FirstSource Holdings, Inc., are corporations registered in a state other than the State of South Carolina that are licensed to do business in South Carolina. BFS further notes that Builders FirstSource Holdings, Inc., is not a named party to this action. The remaining allegations of Paragraph 1 of the Complaint constitute conclusions of law to which BFS is neither required to admit nor deny; to the extent a response is required, BFS denies the same and demands strict proof thereof.

4. The allegations of Paragraph 2 of the Complaint constitute conclusions of law to which BFS is neither required to admit nor deny; to the extent a response is required, BFS admits that this action involves a residence located in Berkeley County, South Carolina.

5. BFS is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 3 of the Complaint and therefore, denies the same and demands strict proof thereof.

6. BFS admits the allegations of Paragraph 4 of the Complaint and further admits that it performed in accordance with any contractual obligations required of it.

7. As to the allegations of Paragraph 5 of the Complaint, BFS craves reference to the referenced Complaint filed by Patricia Clark, which speaks for itself and is the best evidence of the allegations made therein and denies any allegation of Paragraph 5 inconsistent therewith.

8. As to the allegations of Paragraph 6 of the Complaint, BFS craves reference to the referenced Complaint filed by Patricia Clark, which speaks for itself and is the best evidence of the damages claimed therein and denies any allegation of Paragraph 6 regarding claimed damages inconsistent therewith. BFS further denies any responsibility or liability for the damages claimed by Ms. Clark.

9. As to the allegations of Paragraph 7 of the Complaint, BFS craves reference to the Satisfaction of Judgment, which speaks for itself and is the best evidence of the information therein and the consequences thereof and denies any allegations of Paragraph 7 of the Complaint inconsistent therewith.

10. BFS denies the allegations of Paragraph 8 of the Complaint.

AS TO THE FIRST CAUSE OF ACTION
(Contribution Under S.C. Code Ann. § 15-38-10 et. seq.)

11. As to the allegations of Paragraph 9 of the Complaint, BFS repeats and realleges as if set forth verbatim herein the responses set forth above.

12. BFS denies the allegations of Paragraphs 10, 11, 12, 13 and 14 of the Complaint.

AS TO THE SECOND CAUSE OF ACTION
(Contractual Indemnification)

13. As to the allegations of Paragraph 15 of the Complaint, BFS repeats and realleges as if set forth verbatim herein the responses set forth above.

14. As to the allegations of Paragraph 16 of the Complaint, BFS craves reference to any contract it may have with Plaintiff, which speaks for itself and is the best evidence of any duties contained therein and denies any allegations of Paragraph 16 inconsistent therewith. Further, BFS states that it complied with project plans and specifications, applicable building codes, industry standards and manufacturer's instructions and denies any allegation or implication otherwise.

15. As to the allegations of Paragraph 17 of the Complaint, BFS craves reference to the referenced Complaint filed by Patricia Clark, which speaks for itself and is the best evidence of the allegations made therein and denies any allegation of Paragraph 17 inconsistent therewith.

16. As to the allegations of Paragraph 18 of the Complaint, BFS craves reference to the referenced Complaint filed by Patricia Clark, which speaks for itself and is the best evidence of the damages claimed therein and denies any allegation of Paragraph 18 regarding claimed damages inconsistent therewith. BFS further denies any responsibility or liability for the damages claimed by Ms. Clark.

17. As to the allegations of Paragraph 19 of the Complaint, BFS craves reference to the Satisfaction of Judgment, which speaks for itself and is the best evidence of the information therein

and the consequences thereof and denies any allegations of Paragraph 19 of the Complaint inconsistent therewith.

18. BFS denies the allegations of Paragraphs 20, 21 and 22 of the Complaint and the allegations of the WHEREFORE clause following Paragraph 22 of the Complaint and denies all liability to Plaintiff.

FOR A SECOND DEFENSE
(Improper Party Defendant)

19. Builders FirstSource, Inc., is not a proper party defendant to this action and should therefore be dismissed.

FOR A THIRD DEFENSE
(Failure to State a Claim)

20. Plaintiff has failed to state facts sufficient to constitute any cause of action against BFS. Thus, each of Plaintiff's causes of action should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE
(Acts of Others)

21. Upon information and belief, Plaintiff's damages, if any, were caused by the acts or omissions of third parties over whom BFS had no control.

FOR A FIFTH DEFENSE
(Comparative Negligence/Assumption of Risk)

22. Upon information and belief, Plaintiff's claims are barred or limited by the doctrines of comparative negligence and assumption of the risk.

FOR A SIXTH DEFENSE
(Indemnity)

23. Plaintiff's claims for indemnity may fail by operation of law.

FOR SEVENTH DEFENSE
(Failure to Mitigate)

24. To the extent Plaintiff has breached its duty to mitigate its damages, it is barred from recovery against BFS.

FOR AN EIGHTH DEFENSE

(Misuse and Abuse of Work and Product)

25. To the extent the damages alleged by Plaintiff were caused by misuse and/or abuse of BFS's work or work product, and were not reasonably foreseeable by BFS, Plaintiff is barred from recovery against BFS.

FOR A NINTH DEFENSE
(Estoppel)

26. Plaintiff is estopped by its own conduct from asserting a claim for the recovery sought herein.

FOR A TENTH DEFENSE
(Waiver)

27. Plaintiff has waived any claim against BFS by and through its conduct so as to bar recovery herein

FOR AN ELEVENTH DEFENSE
(Intervening/Superseding Act(s))

28. Any damages sustained by Plaintiff, which are denied, were solely caused by the acts or omissions of parties or persons other than BFS, over whom BFS had no control, which acts or omissions constitute the intervening and/or superseding cause of Plaintiff's alleged damages, if any, which are denied, and bar Plaintiff's claims.

FOR A TWELFTH DEFENSE
(Affirmation)

29. BFS alleges that all actions taken by it were ratified and affirmed by Plaintiff and BFS pleads affirmation as a complete defense to Plaintiff's claims.

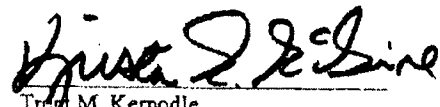
FOR A THIRTEENTH DEFENSE

(Reservation of Rights)

30. BFS hereby gives notice that it reserves the right to assert, and does not waive, any additional or further defenses as may be revealed by additional information acquired during discovery or otherwise, and reserves the right to further amend this Answer to assert any such defenses.

WHEREFORE, having fully answered the Complaint of Plaintiff, BFS prays for a trial by jury and that the Complaint be dismissed, with costs, and for such other relief as the Court may grant.

KERNODLE, ROOT & COLEMAN

By: 

Trent M. Kernodle
Krista M. McGuire
914 Folly Road, Suite 2 (29412)
P. O. Box 13897
Charleston, SC 29422
(843) 795-7800
(843) 795-3032 Fax
tkernodle@kernodlelaw.com
kmcguire@kernodlelaw.com

ATTORNEYS FOR DEFENDANTS BUILDERS
FIRSTSOURCE-SOUTHEAST GROUP, LLC and
BUILDERS FIRSTSOURCE, INC.

February 17, 2011

Charleston, South Carolina

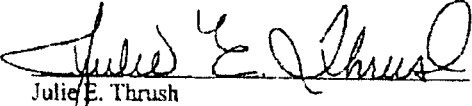
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the attached *Defendants' Answer to Complaint* was sent via facsimile, hand delivery and/or by depositing a copy in the United States Mail, First Class, to:

Peden Brown McLeod, Jr.
Neil S. Haldrup
Elmore & Wall, P.A.
P. O. Box 1200
Charleston, SC 29402

Attorney for Plaintiff

February 17, 2011


Julie E. Thrush

FILED
2011 FEB 22 PM 2:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____



**KERNODLE ROOT
& COLEMAN**
Attorneys at Law

214 Folly Road, Suite 2
Post Office Box 13897
James Island, South Carolina 29422-1897
phone (843) 795-7800 • fax (843) 795-3032

Krista M. McGuire, Esquire
kmcguire@kernodlelaw.com

February 17, 2011

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: D.R. Horton, Inc. v/a C. Richard Dobson Builders, Inc. v. Builders FirstSource-
Southeast Group, LLC; and Builders FirstSource, Inc.
Charleston County / Case No. 10-CP-10-10355
Our File No. 6002-167

Dear Ms. Armstrong:

Enclosed for filing please find an original and one copy of Defendants Builders FirstSource-
Southeast Group, LLC and Builders FirstSource, Inc.'s Answer to Complaint in the above-referenced
matter. Upon filing, please return a date-stamped copy of the Answer to me in the envelope provided
for your convenience.

By copy of this correspondence to opposing counsel, I am serving him with a copy of same.

Should you have any questions or require additional information, please do not hesitate to

contact me at (843) 795-7800
100 Broad Street, Suite 106
Charleston, South Carolina 29401
or by email at kmcguire@kernodlelaw.com

Sincerely,

KERNODLE, ROOT & COLEMAN

Krista M. McGuire
Krista M. McGuire

KMM/jet
Enclosures

cc: Peden Brown McLeod, Jr., Esquire and Neil S. Haldrup, Esquire

1 STATE OF SOUTH CAROLINA
2 COUNTY OF BERKELEY IN THE COURT OF COMMON PLEAS

3 PATRICIA CLARK,
4 Plaintiff,

5 vs.

CASE NO. 2008-CP-08-1633

6 D.R. HORTON, INC.,
7 Defendant.
8
9

10 DEPOSITION OF: HOWARD ALTHEN

11 DATE: October 5, 2009

12 TIME: 9:30 a.m.

13 LOCATION: OGLETREE DEAKINS LAW FIRM
14 211 King Street, Suite 200
Charleston, SC

15 TAKEN BY: Counsel for Defendant

16 REPORTED BY: Karen V. Andersen,
17 Registered Professional Reporter

18 A. WILLIAM ROBERTS, JR. & ASSOCIATES

19 Fast, Accurate & Friendly

20 Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 839-3376 (843) 785-3263

21 Columbia, SC Greenville, SC Charlotte, NC
22 (803) 731-5224 (864) 234-7030 (704) 573-3919

23 A. WILLIAM ROBERTS, JR. & ASSOCIATES (800) 743-DEPO
24
25

1 Q. What has accounted for the increase in
2 structural steel connection design?

3 A. Like I said, we started it in -- we
4 started up the branch of connection design in 2007.
5 And as obvious changes in workload, we just decided
6 to start doing that as well. So we've been doing
7 that since 2007, like I said, mostly with residential
8 to kind of fill the gap, so to speak.

9 Q. Okay. Now, you indicated you went to
10 Ms. Clark's residence on July the 17th?

11 A. Correct.

12 Q. Since July 17th, have you been back to her
13 residence?

14 A. I have not been back.

15 Q. Has anybody on your behalf been back?

16 A. Yes.

17 Q. Who did that?

18 A. Paul Curry, my boss, he went out there
19 along with Jason Boyd. He went out there July 21st,
20 2009.

21 Q. Why did they go?

22 A. We went out there to -- the company -- I
23 can't remember the contractor or the man that was
24 with Bob Sisnroy, Russ, Russell Mease, they went out
25 there to do some evaluation based on Bob's report, as

12

1 well as to open up a couple of areas that we may have
2 had some concerns about.

3 Q. Okay. And do you know particularly where
4 those areas are?

5 A. I do. I actually have pictures of the
6 areas that we took, both in my visit and at Paul's
7 visit as well. So it's pretty much around -- yes, I
8 do have an idea where they all are.

9 Q. We will look at all that before the end of
10 the day.

11 A. Okay.

12 Q. Were there any areas where you had
13 concerns that Paul Curry didn't go back and look at?

14 A. We did, which is why we went back again on
15 the 31st of July.

16 Q. 31st or 21st?

17 A. I'm sorry, 31st. We also went back the
18 31st. We went the 21st, and then he went back out
19 there on the 31st just to kind of cut a hole in the
20 wall to verify certain things were not there.

21 Q. Okay. Now, at this point, based on what
22 you did on the 17th and what Mr. Curry and Jason Boyd
23 did on the 21st of July and the 31st of July, are
24 there any areas that you had concerns about that you
25 hadn't gone back to look at?

24

1 the whole time. She didn't like, shadow us or
2 anything like that.

3 Q. I know you and Jason Boyd were there. Was
4 anybody else there?

5 A. On that day, no.

6 Q. Did you do anything else that day?

7 A. Not that I'm aware of.

8 Q. From the time that you left Ms. Clark's
9 home up until Paul Curry and Jason Boyd went on July
10 the 21st, what did you do on the case?

11 A. We laid out the house plan in AutoCad,
12 including the pier layout. We began preliminary
13 analysis or preliminary gravity analysis of the
14 structure, which is simply tracing the loads down
15 from the roof all the way down to the foundation.

16 We did receive a copy of the truss layout
17 drawings. So we began incorporating the truss layout
18 drawings with our dimensioned house plans as well.
19 And I think I did start a preliminary lateral
20 analysis of the house as well.

21 MR. JOHNSON: Now, I want to go ahead and
22 mark this as Exhibit 1.

23 (DFT. EXH. 1, Document marked Gravity
24 Design, was marked for identification.)
25

1 finger down. One is vertical load, which is your
2 gravity check. And then your lateral check is, you
3 know, pointing left to right, is your loads going
4 that way. And they are different in that they
5 require different mechanisms to resist them.

6 Q. For the sake of using this information,
7 would it be easier or better for us to mark the
8 gravity design information separately from the second
9 bit I'm looking at here, pier design?

10 A. I mean, it's a whole design of the house.
11 So I would say no, it's still -- you've got to do all
12 of it. This was our scope of work, was gravity
13 design, lateral design, pier design. That was our
14 scope of the work.

15 Q. Okay. So given that, if you don't mind,
16 take just a second to flip through Defendant's
17 Exhibit 1. And I will represent to you that it's
18 what I got from Ms. Clark's attorneys. If you don't
19 mind, look through it and let me know if -- I see
20 you've got some other notes here.

21 A. Yes.

22 Q. Other than notes that you may have taken
23 or photographs that you may have taken, I want to
24 make sure I've got everything that would have been in
25 your file.

36

1 A. Yes.

2 Q. Okay. So we will mark this as Exhibit 2
3 to your deposition.

4 A. Okay.

5 Q. And Exhibit 2 consists of several pages.
6 And the bottom right-hand corner, the first one has
7 S100 and the second one has S120.

8 A. Correct.

9 Q. S111?

10 A. Correct.

11 Q. S120 and S130?

12 A. Correct.

13 Q. And tell me, these are the drawings that
14 are the layout that you all did of the home?

15 A. Correct, they are the layout and the
16 suggested repair.

17 Q. Okay. And we were getting ready to talk
18 about a particular page, that's S110?

19 A. Yes, I think that will work.

20 Q. Okay.

21 A. Actually, the north side -- the east side
22 of the structure is the front of the house. That's
23 to be consistent with Siskroy's report. The east
24 side is the front. So the rear of the house or the
25 west side of the house, as you are looking front to

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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
PATRICIA CLARK,
Plaintiff,
vs. CASE NO. 2008-CP-08-1633
D.R. HORTON,
Defendant.

COPY

DEPOSITION OF: ROBERT G. SISNROY
DATE: August 11, 2009
TIME: 9:30 a.m.
LOCATION: Ogletree, Deakins,
Nash, Smoak & Stewart
211 King Street, Suite 200
Charleston, SC 29401
TAKEN BY: Counsel for the Defendant
REPORTED BY: Lauren H. Deerman,
Court Reporter.

A. WILLIAM ROBERTS, JR., & ASSOCIATES
Fast, Accurate & Friendly

Charleston, SC (843) 722-8414	Hilton Head, SC (843) 785-3263	Myrtle Beach, SC (843) 839-3376
Columbia, SC (803) 731-5224	Greenville, SC (864) 234-7030	Charlotte, NC (704) 573-3919

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

1 so late.

2 MR. SEGUI: You just missed a lot of
3 wind up. We started on page one of the report.

4 MR. CHAKERIS: That's why I asked him
5 that question.

6 BY MR. JOHNSON:

7 Q In the first paragraph where you see,
8 In general, the construction deficiencies observed
9 are violations of the CABO Code, violations of
10 industry standards of care, and violations of
11 manufacturer's installation requirements.. Other
12 than the specific codes or industry standards of
13 care or installation requirements that you've
14 identified in your report, are you aware of any
15 others not specifically listed?

16 A Not specifically listed in the report?

17 Q Right. I'm just trying to make sure I
18 have a global view of what standards, what
19 requirements, what codes are in play. And my
20 assumption is that the ones that are listed in your
21 report are applicable, and if they're not listed in
22 your report, they're not applicable. Would that be
23 a fair assumption?

24 A Not actually because there are
25 standards and manufacturer's installation literature

36

1 that I did not address specifically. For instance,
2 with regard to HardiePlank, NER-405.

3 Q NER-405?

4 A Correct. Is the engineering analysis
5 report the CCIES report that submitted to the code
6 authorities with regard to their product which
7 defines the specifics of their product with regard
8 to how it should be installed, for instance, in high
9 wind areas and so on. I did not address that
10 specifically in my report, but I relied on it as a
11 definitive.

12 Q Okay. Other than that HardiePlank
13 document, did you rely on any others?

14 A I indicated with regard to the framed
15 opening flashing, the Brick Industry Association.
16 Their information is in numerous technical notes. I
17 didn't address the specific technical note.

18 Q Now, is it your opinion that the Brick
19 Industry Association document applies to Ms. Clark's
20 house?

21 A Yes. With regard to the reference to
22 the framed opening flashing.

23 Q Okay.

24 A I certainly understand that there is
25 not brick, but the Brick Industry Association makes

1 A I don't have any definitive record of
2 it, no.

3 Q Okay. Do you have any evidence that
4 the crack changed in length or width from the time
5 you first saw it on your first visit through your
6 third visit?

7 A Not that -- not that I recall.

8 Q Okay. Do you have any information on
9 whether or not that crack has changed since your
10 third visit?

11 A No, not that I recall.

12 Q And what, in your opinion, caused the
13 crack?

14 A Well, as I indicate in the report that
15 there was evidence that there was separation in the
16 multiple structural framing which would indicate
17 that there is a loading condition that's causing
18 movement within the structural framing members as
19 far as attachment.

20 Q Were you ever able to definitively
21 determine whether there was such movement?

22 A I think that was later determined by
23 Curry engineers insofar as it was found that the mid
24 wall is a hinge connection rather than a
25 balloon-framed wall. It's not continuous framing

1 from the first floor to the ceiling. At that
2 particular departure of the wall, you essentially
3 have a hinge which can succumb to wind loading and
4 so on with regard to movement which would cause
5 movement to occur or translate up to the beam
6 support above that area and contribute to cracking.

7 Q And that's your understanding of Curry
8 Engineer's findings?

9 A Well, that corroborates my finding that
10 there was a movement condition that resulted in the
11 fact. They found the fact that there was a hinge in
12 the wall which would contribute to movement in the
13 framing above.

14 Q Assuming that there had been movement
15 in the wall, is there any reason to believe that
16 there would be continued or additional movement in
17 the wall?

18 A Yes. That would be my opinion.

19 Q And what would that be based on and
20 why?

21 A Well, the condition has been found that
22 there is a hinge condition in the wall. It's not
23 continuously framed which would allow a
24 noncontinuous wall-framing condition rather than a
25 continuously-framed wall -- wall structural

1 condition. In the current condition, that is not
2 going to change. There is still going to be a hinge
3 condition in the wall, which for structural
4 conditions is an unstable condition when there's a
5 hinge in the wall without the proper support.

6 Q The hinge condition of the wall was not
7 something you were aware of when you initially
8 looked at the house or prepared a report; is that
9 correct?

10 A That is correct.

11 Q Okay. And at that time, where you
12 state in the structural framing section under roman
13 numeral 1.1a, you mentioned inadequate support for
14 the beam. The only evidence you had at that time,
15 correct, would have been the cracking in the
16 drywall?

17 A That is correct. And the fact that we
18 opened the wall and made observations that there
19 were gaps between the stud framing, which is a
20 typical condition when you overload a
21 multiple-member configuration like that, it starts
22 to come apart. And there was evidence of spaces
23 which brought me to that conclusion.

24 Q And just to make sure, you didn't
25 perform any sort of calculations or anything from a

1 A Correct. They're coming apart.

2 Q Now, when you use the word indicating,
3 that would, in my mind, suggest that there might be
4 something else going on. Would that be a fair
5 assumption? Let me ask this: If the code says 10d
6 nails at a maximum of 24 inches on center, if that's
7 the applicable code and that's what it says --

8 A Yes.

9 Q -- do you have any evidence based on
10 what you saw or the inspection that you did that
11 that's not what actually occurred at this location?

12 A I have no physical evidence such as
13 cutting into the wall. However, I've got
14 indications that the components are coming apart
15 which would indicate to me inadequate fastening.

16 Q Okay. Despite that indication, would
17 you agree that it's still possible that the
18 fastening that occurred did comply with
19 Table 602.3a?

20 A It's possible.

21 Q In the next section, roman numeral
22 I.2a, we talk about the use of the open-web trusses.
23 I mean, from your standpoint, is the use of those
24 open-web trusses in and of itself problematic in
25 this instance?

1 A Nope. The fact that they weren't
2 properly attached to the structural framing.

3 Q And are you referring to the double
4 2-by-10 girders?

5 A Correct.

6 Q Okay. In your opinion, how should they
7 have been attached to those girders?

8 A They should have been attached with
9 strapping as indicated in the code recommended
10 provisions of BSTD-10.

11 Q So, strapping would have been the
12 only -- if strapping had occurred per the code, it
13 would have been fine as is?

14 A Now, we're talking about the open-web
15 trusses.

16 Q The open-web trusses and the double
17 2-by-10 girders.

18 A I was just talking about the open-web
19 trusses and their placement on the rim girders. The
20 rim girder problem would not be solved.

21 Q Okay. And describe to me the rim
22 girder problem.

23 A Well, as we discussed and I testified
24 to earlier, the rim girders are rotating outward.
25 In other words, the rim girders are actually leaning

1 outward under the open-web truss bearing on those
2 girders.

3 Q Is it your testimony or opinion that
4 the use of those rim girders is inappropriate in any
5 condition or just as installed?

6 A No. I'm not saying that it's
7 inappropriate. I'm saying as installed, the lack of
8 proper lateral support for those rim girders allowed
9 them to actually lean outward under the loads of the
10 two-story walls.

11 Q What would you have used for lateral
12 support for the rim girders?

13 A Basically what's recommended by Curry
14 Engineers. Structural plates and configurations
15 installed to the top of the pier columns --

16 Q Okay.

17 A -- or fastened to the top of the pier
18 columns with vertical legs attached to the faces of
19 the 2-by-10 rim girders which would keep them from
20 moving laterally or rotating, for that matter.

21 Q I'm trying to picture this my mind, and
22 I'm having trouble. The vertical legs would go on
23 the exterior of the home?

24 A Well, if you can imagine an angle, for
25 instance -- are you familiar with the general

1 STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
 2 COUNTY OF BERKELEY) CASE NO. 2008-CP-08-1633
 3 PATRICIA CLARK,)
 4) Plaintiff,)
 5 -vs-) DEPOSITION OF:
 6 D.R. HORTON, INC.,) JAY M. HENDERSON
 7 Defendant.)
 8 _____)

COPY

9
 10 DATE: August 6, 2009

11 TIME: 1:41 p.m.

12 REPORTER: Ronda K. Blanton, RPR
 13 McCarn Court Reporting, Inc.
 14 Post Office Box 778
 Folly Beach, SC 29439

15 LOCATION: Ogletree Deakins Nash Smoak & Stewart
 211 King Street, Suite 200
 Charleston, South Carolina

16

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McCARN COURT REPORTING, INC.

Phone: (843) 795-0104

lamccarn@comcast.net

Fax: (843) 795-0108

1 A That is correct.

2 Q Okay. And -- and the truss documents -- and
3 I'm just gonna refer to those with the truss documents
4 if you're okay with that, and that's 107 through --

5 A 143.

6 Q -- 143.

7 A Yes.

8 Q If I -- if I call those the truss documents,
9 are you comfortable with that term?

10 A Yes.

11 Q Okay. Who actually designed the truss
12 documents?

13 A Builders First Source.

14 Q Okay.

15 A I don't know the specific designer within
16 their organization, but Builders First Source is the
17 responsible party.

18 Q Okay. And Builders First Source is a building
19 supply house here locally?

20 A Yes, it is. And nationally but, yes, locally.

21 Q What is D.R. Horton's understanding of
22 Builders First Sources's qualifications to
23 design structures?

24 A Builders First Source utilizes a design
25 software by the name of My Tech. My Tech is industry

1 standard, used widely within the industry to design
2 trusses. Many of the firms use My Tech software to
3 design trusses, and each of those is -- is approved by
4 the My Tech corporate --

5 Q Okay.

6 A -- effectively in that design.

7 Q Do you have any understanding about the My
8 Tech software that was utilized by Builders First
9 Source to accommodate non uniform loads on spans?

10 A I can't speak to that.

11 Q Okay. So if we have a load bearing wall
12 coming down on a span, you don't -- you can't -- and
13 D.R. Horton can't tell me today whether or not this
14 software can contemplate that and address that
15 adequately. Is that -- is that fair?

16 A I would expect that it does because they're
17 designing the components from the top down.

18 Q Okay.

19 A They design the components, including the
20 roof, the interim floor, and the lower floor as a
21 single group, which should incorporate all of the loads
22 that are there, that are present in the building. I
23 cannot verify that without clearly looking at the
24 documents a little bit more closely and/or consulting
25 with a My Tech engineer.

1 is there a roster somewhere or can you -- is there
2 something you can look at to tell me or if you know
3 just off the top of your head? I'm just interested in
4 that information.

5 THE WITNESS: Did we not provide that to them?

6 MR. JOHNSON: Yeah.

7 THE WITNESS: It's in the documents.

8 MR. JOHNSON: It's somewhere -- somewhere
9 around the beginning of the --

10 THE WITNESS: No. You don't want the
11 preliminary. You want the job cost detail.

12 MR. JOHNSON: All right.

13 THE WITNESS: And I don't know where that's at
14 in the documents.

15 Q Looks like that's at 98.

16 A Job cost details would identify the
17 contractors that were used on the job.

18 Q Okay. I'm gonna show you Bates stamp 100. It
19 appears to me -- and, again, I'm not trying to trick
20 you -- that Builders First Source provided the framing
21 labor. Does that mean -- well, tell me what that
22 means, presumably.

23 A Builders First Source provided the labor and
24 materials to complete the job.

25 Q Okay. So that means that Builders First

1 Source designed the structural framing of this house,
2 provided the materials for the structural framing for
3 this house, and then installed or built the structural
4 framing for this house; is that correct?

5 A They designed it as relates to the trusses,
6 yes.

7 Q Okay.

8 A Uh-huh.

9 Q All right. And that would also include this
10 dropped girder issue?

11 A Yes.

12 Q Okay. And I -- and I'll give you this whole
13 set, if you'd like. It would be quicker to do that.
14 Who -- who installed the building paper on this house?
15 Was that part of Builders First Source's scope, or
16 would it have been?

17 A Typically it would have been. Typically it
18 would have been. I -- I cannot say 100 percent certain
19 that they do install it; but typically they would, yes.

20 Q Do you have any reason to suspect that was not
21 the case?

22 A I do not have any reason to suspect.

23 Q What about setting the windows into their
24 rough openings?

25 A Builders First Source would have set the

1 windows and the doors in this particular job.

2 Q Okay. Who would have been responsible for
3 installing any rough opening flashing that would have
4 been necessary prior to the setting of the windows into
5 their rough openings?

6 A Any specific flashing needed prior to would be
7 Builders First Source. Any flashing that would be
8 required after the windows were set would be Tom's
9 Vinyl Siding.

10 Q Okay. Is Tom's Vinyl Siding the company that
11 installed the exterior siding and trim for the house at
12 issue in this case?

13 A Yes, they are.

14 Q Okay. Was their job labor only or turn key?

15 A Their job was turn key. They supplied the
16 materials and the labor.

17 Q Okay. And to the extent that -- the means and
18 methods for how they accomplished their job, would that
19 have been governed by Exhibit 1 and the industry
20 standards that applied to them?

21 A To some degree, yes. Exhibit 1, industry
22 standards, yes.

23 Q Okay.

24 A Code requirements, yes.

25 Q And they would have been the ones that would

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON NINTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-10-10355

D.R. HORTON, INC., t/k/a)
C. RICHARD DOBSON BUILDERS, INC.,)
PLAINTIFF,)
)
)

vs.)
)
)
)

BUILDERS FIRSTSOURCE-SOUTHEAST)
GROUP, LLC; and BUILDERS)
FIRSTSOURCE, INC., and JOSEPH)
NACCARI, Individually and d//b/a)
MASTERFRAMERS,)
)
)

DEFENDANTS.)
)

The deposition of JOSEPH NACCARI, taken before
Amanda Barbao, Court Reporter, at the law offices of
Turner Padgett Graham & Laney, P.A., 40 Calhoun Street,
Suite 200, Charleston, South Carolina commencing at
9:15 a.m. on December 21st, 2012.

1 -- I mean, how would you have known it?

2 A It would have been a lot block or described like
3 that. I really never know the street addresses.

4 Q Okay. Do you have any reason to doubt that you
5 were the framing subcontractor for the home that's shown
6 on Exhibit No. 1?

7 A Well, I was the framing subcontractor for Builders
8 Firstsource, and Maya (ph) Construction would have been
9 the framing crew that was on the job.

00:04:0310 Q Maya Construction?

11 A Maya.

12 Q M-I-A [sic]?

13 A Now, they've had different names -- it was Maya
14 Construction, then they changed to EM -- oh, God, they
15 had a couple different names over the years, but Maya
16 would be the -- James Ogrigon [sic] JM -- yeah -- JME
17 -- yeah, JME was one of them, but I don't know what at
18 that time was his company name. It changed due to the
19 partnership that he had or something for some reason,
00:04:4220 but he was a framing subcontractor that worked under me
21 on that job.

22 Q Okay.

23 A And I had supervisors that worked for me at that
24 time.

25 Q All right. But there's no doubt in your mind that

1 Builders Firstsource subcontracted you to do the framing
2 on 403 Milner Court, which is the house pictured in
3 Exhibit 1?

4 A Correct, yes.

5 Q And you in turn subcontracted the framing out to
6 Maya Construction?

7 A Correct.

8 Q When did you start doing framing work for Builders
9 Firstsource, do you recall?

00:05:20 10 A Probably -- maybe a year before that. I really
11 don't remember.

12 Q Okay.

13 A But it wasn't long before that.

14 Q Have you looked for any contract between you and
15 Builders Firstsource that would cover the time period
16 when this house --

17 A I don't have anything.

18 Q -- in exhibit one was built?

19 A I -- I don't really recall ever having an actual
00:05:55 20 contractor. It would be: go finish your job, go do
21 it, here's the job lot, and they would handle all the
22 billing.

23 Q Okay. Do you know if you've ever entered into a
24 contract with Builders Firstsource -- a written
25 contract?

1 A I don't remember an actual contract like I would
2 do now with a company the way it is. I don't remember
3 an actual contract -- not saying I didn't, I just don't
4 remember an actual contract.

5 Q Do you know if you added Builders Forcesource as an
6 additional insured under your insurance policy?

7 A I don't think -- for some reason I want to say --
8 I don't remember.

9 Q Okay. What about a contract between -- can you
10 just not remember whether or not this project was done
11 by Master Framers or Frame Masters, I mean, was there an
12 LLC that existed at that point in time?

13 A I really don't remember. I'd have to dig to find
14 out. I don't remember.

15 Q And do you have a written contract with Maya
16 Construction or did you for this house?

17 A There wasn't -- it's just verbal, you know,
18 casual.

19 Q All right. Did you personally do any work on the
20 house?

21 A No.

22 Q Did anybody that you directly employed as opposed
23 to Mia Construction [sic] --

24 A Maya.

25 Q -- Maya Construction, do any work on one of those

1 residences?

2 A I did not have any employees. I had four partners
3 if I'm not mistaken. I had partners, which they in
4 return were like my supervisors. We all took an area,
5 and wherever we were working, we -- one of them would
6 oversee it or check the job, or we would take turns
7 checking the job.

8 Q Did you actually do supervision of the Maya
9 Construction employees at the house?

10 A Not at the actual employees, I mean, I didn't go
11 out and deal with actual employees. I would go by and
12 check the job, see the progress, do any normal walking
13 around checking things, see if I see anything wrong or
14 anything. I think Bobby Long was on that job also.
15 That was one of my supervisors that -- one of us would
16 hit it on a daily basis, which we did all our jobs.

17 Q Besides Bobby Long, did you have any other
18 supervisors that would have visited the house that we
19 see on Exhibit 1?

20 A Jerry Metz.

21 Q Is it fair to say that on a daily basis, someone
22 from your company would go and inspect the progress of
23 the work of the house?

24 A Uh-huh.

25 Q Yes?

1 A Yes.

2 Q Can you tell me the scope of the work that your
3 company performed at the house that we're here talking
4 about today?

5 A All we did was frame the house -- the carpentry
6 part of it -- the actual structure, set the windows and
7 doors, and that's it.

8 Q What about the building wrap, did y'all put the
9 building wrap on?

00:09:44 10 A Yes, we dried the house in.

11 Q What about the flashing of the windows, did your
12 company do that or --

13 A When you say "flashing," what do you mean?

14 Q Tell me what it takes -- when you say "set the
15 doors and windows," what do you mean by that?

16 A Well, the house wrap is on -- as indicated in this
17 paperwork that I showed you. It tells you how to
18 install the house wrap. We would put the house wrap
19 on. We would set the window, and we would put the

00:10:24 20 silicone on the back, and -- I don't remember whether a
21 nail in every hole or every other hole, but most would
22 be like every other hole in case the window needed some
23 movement. And then the window tape would go over that,
24 and that would be applied directly onto the house wrap
25 over the plans -- windows in that house, if I'm not

1 mistaken, were self-flashing, which meant there was a
2 strip all the way around with nail holes in it and no
3 places for cracks or water to supposedly get in.

4 Q All right.

5 A Self-flashing is the the word they use.

6 Q Who from Builders FirstSource would have contacted
7 you about contracting to do the framing work at this
8 house?

9 A Bill Crabtree.

10 Q All right. Did you have any interaction with
11 anybody else from Builders Firstsource besides Bill
12 Crabtree?

13 A No. He was the head of install sales.

14 Q And what information would you be provided in order
15 to frame the house?

16 A Of course, we would get a schedule more or less,
17 and I don't even remember what that was. It might have
18 been a phone call -- saying -- telling me that you've
19 got this coming up or this coming up, and I'd make
20 notes, but really -- it was very casual. I would have
21 a set of plans, which would be provided by Builders
22 Firstsource, and normally, they engineered their own
23 plans. I don't know if they had to call a certified
24 engineer on their staff, but there would be an
25 engineering sheet that comes with each set of plans.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-10355

D.R. Horton, Inc.
PLAINTIFF(S)

Builders Firstsource- Southeast, et al.
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(b), 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:

Viewing the evidence in a light most favorable to the non-moving party, Defendants', Builders Firstsource-Southeast, et al., Motion for Summary Judgment, heard on May 15, 2013, before the Honorable J.C. Nicholson, Jr., is **DENIED**.

ORDER INFORMATION

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

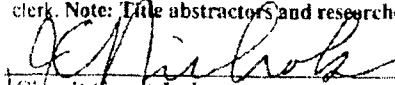
INFORMATION FOR THE JUDGMENT INDEX

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)
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

9/30/13
Date