

EXHIBIT A

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Patricia Damico and Lenna Lucas as Class Representative, et al.,)

Plaintiff)

v.)

Lennar Carolinas, LLC, Et Al.)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.

2014-CP-08-02424

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

18 FEB 27 PM 4:28
MARY GROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

Plaintiff's Attorney: John C. Hayes, Iv, Esquire, Bar No. 69740 Address: 180 Meeting Street, Suite 300 Charleston, SC 29401 phone: 843-805-7003 fax: 843-573-7388 e-mail: jhayes@hayeslaw.org other:	Defendant's Attorney: F. Elliotte Quinn, Iv, Esquire, Bar No. 69740 Address: 200 Meeting Street, Ste 301 Charleston, SC 29401 phone: 843-727-6315 fax: e-mail: elliottequinn@parkerpoe.com other:
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Plaintiffs' Motion to Lift Stay for Purposes of Discovery Estimated Time Needed: 30 mins. Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant Date submitted: 2/27/18	
SECTION III: Motion Fee <input checked="" type="checkbox"/> PAID - AMOUNT: \$25.00 <input type="checkbox"/> EXEMPT: <ul style="list-style-type: none"> <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input checked="" type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE: _____ CODE: _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____	

<input type="checkbox"/> CONTESTED – AMOUNT DUE: _____
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STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2014-CP-08-02424

Patricia Damico and Lenna Lucas,
individually and on behalf of all others
similarly situated, Joshua and Brettany
Buetow, Edward and Sylvia Dengg,
Jonathan and Theresa Douglass, Anthony
and Stacey Ray, Danny and Ellen Davis
Morrow, Czara and Chad England, Bryan
and Cynthia Camara, and Matthew Collins,

Plaintiffs,

vs.

Lennar Carolinas, LLC, Spring Grove
Plantation Development, Inc., Manale
Landscaping, LLC, Super Concrete of SC,
Inc., Southern Green, Inc., TJB
Trucking/Leasing, LLC, Paragon Site
Constructors, Inc., Civil Site Environmental,
and Rick Bryant, individually.

Defendants.

Lennar Carolinas, LLC,

Third-Party Plaintiff,

vs.

The Earthworks Group, Inc., Volkmar
Consulting Services, LLC, Geometrics
Consulting, LLC, Land/Site Services, Inc.,
Myers Landscaping, Inc., A.C. & A.
Concrete, Inc., Knight's Concrete Products,
Inc., Knight's Redi-Mix, Inc., Coastal
Concrete Southeast, LLC, Coastal Concrete
Southeast II, LLC, Guaranteed Framing, LLC,
Ozzy Construction, LLC, Construction
Applicators Charleston, LLC, LA New
Enterprises, LLC, Décor Corporation, DVS,
Inc., Raul Martinez Masonry, LLC, Alpha
Omega Construction Group, Inc., South

PLAINTIFFS' MOTION AND MEMORANDUM IN
SUPPORT OF MOTION TO LIFT AUTOMATIC
STAY

HARRY E. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

18 FEB 27 PM 4:22

[Handwritten Signature]
FILED

Carolina Exteriors, LLC, Builders FirstSource)
– Southeast Group, LLC, and Low Country)
Renovations and Siding, LLP,)

Third-Party Defendants.)
_____)

Décor Corporation,)

Fourth Party Plaintiff,)

vs.)

Baranov Flooring, LLC, DJ Construction)
Services, LLC, Creative Wood Floors, LLC,)
Geraldo Cunha, Ebenezer Flooring, LLC,)
Enmanuel Flooring and Siding, LLC, Eusi)
Flooring and Covering, LLC, Nicolas Flores,)
Alexander Martinez, Isidru Mejia, Juan)
Perez Son, Ernesto M. Perez, N&B)
Construction, LLC, Jose Dias Rodrigues,)
Livia Sousa, Jose Betio Pereira, Jose Paz)
Castro Hernandez, Divinio Aparecido)
Corgosinho, Ricardo Chiche, Cebis)
Construction, Bayshore Siding and Flooring,)
Sebastio Luiz De Araujo, and John Does 1 –)
4,)

Fourth-Party Defendants.)
_____)

Alpha Omega Construction Group, Inc.)

Fourth-Party Plaintiff,)

Vs.)

Garcia Roofing, LLC, Juan Garza Ramos,)
Jose Vera, and Espino Roofing, LLC,)

Fourth-Party Defendants.)
_____)

DVS, Inc.,)

Fourth-Party Plaintiff,)

Vs.)
_____)

Sousa Construction, LLC, Lima)
Construction, LLC, N&B Construction, LLC,)
Itatiaia Construction, LLC and JC)
Contractors, LLC)

Fourth-Party Defendants.)

South Carolina Exteriors, LLC)

Fourth-Party Plaintiff,)

Vs.)

Juan Garza Ramos, d/b/a Juan)
Constructors,)

Fourth-Party Defendant.)

Guaranteed Framing, LLC)

Fourth-Party Plaintiff,)

Vs.)

First Construction, LLC, JC Contractors, LLC,)
Jessica Marroquin d/b/a Marroquin)
Construction, and Unique Framing, LLC,)

Fourth Party Defendants.)

COME NOW Plaintiffs, Patricia Damico and Lenna Lucas, to hereby file this Motion to Lift the Stay Only for Purposes of Discovery and Memorandum in Support of said Motion. The basis for this Motion is that Plaintiffs would like to continue conducting discovery in an effort to keep the case progressing along pending resolution of Lennar's appeal.

SUMMARY OF ARGUMENT

The Court should lift the automatic stay under SCACR 241 for the following reasons:

1)The matters that are being appealed by the Defendant relate only to arbitration and not to

matters such as discovery in the underlying case.

2)The chances of spoliation of evidence are greatly increased by the delay.

3)There are no alleged arbitration agreements between the Plaintiffs and the subcontractor Defendants.

4)If discovery is not allowed to continue the case will be prolonged indefinitely, severely prejudicing the Plaintiffs.

5)Witnesses' memories are fresh concerning important facts and need to be memorialized through discovery.

6)The videos included as exhibits show the dangerous conditions that homeowners are living in. Examples include:

- Massive cracks extending from the ceiling to the floor. These cracks are expanding daily and require urgent repair.
- Pieces of drywall are falling from the walls and ceiling due to the expanding cracks.
- Cracks are extending into electrical outlets and light fixtures making them unsafe to use.
- Floors are cracking and causing insect infestation requiring immediate extermination.
- Counters in bathrooms and kitchens are separating from the walls.
- One homeowner has been without heating and air conditioning for over two years because the ground cannot support HVAC units.

7)Construction defects have created extremely hazardous conditions that need to be repaired in a timely manner.

8)The arbitration clause at issue is unconscionable and unenforceable and Defendant's appeal will be unsuccessful.

FACTUAL BACKGROUND

This is a construction defect case filed by homeowners in the development known as The Abbey at Spring Grove located in Moncks Corner, South Carolina. The Abbey development was originally started by Defendant Spring Grove Plantation Development, Inc. in 2011 and was subsequently sold to Defendant Lennar Carolinas, LLC. After purchasing the development Defendant Lennar took over the control, construction, management, and sale of the Properties.

Since the construction of the homes at Spring Grove, homeowners have experienced severe defects in their homes. Plaintiffs' investigations have revealed significant design and construction defects including but not limited to improper soil grading, improper drainage, and structural defects resulting in hazardous structural deterioration¹. Because the defects are so severe, the grading, structures, and drainage must be completely redone to fix the harm.

PROCEDURAL BACKGROUND

Plaintiffs commenced the current action by Summons and Complaint on December 12, 2014 and asserted claims including negligence, negligent misrepresentation, breach of implied warranties, breach of fiduciary duties, and unfair trade practices against Defendant Lennar. On March 24, 2016 Plaintiffs moved for class certification and Filed an Amended Complaint. Shortly thereafter, Defendant Lennar filed a Motion to Compel Arbitration on March 30, 2016. That Motion was subsequently denied by the court and Lennar served a Notice of Appeal on Plaintiffs on November 18, 2016. (Attached hereto as Exhibit D). Afterwards, the South Carolina Court of

¹ Attached to this memorandum are three videos of homeowners and the conditions in their home. (Exhibits A-C). The conditions present in these homes are common in the neighborhood and convey the hazardous conditions present. The safety concerns caused by these conditions are reasons the stay should be lifted so the case may continue and the homes may be repaired and restored.

Appeals issued an order staying all matters affected by the appeal during its pendency. (Attached hereto as Exhibit E). Plaintiffs take the position that discovery is not affected by the Defendant's appeal. As a result, Plaintiffs have brought this motion to request the Court lift the stay to allow discovery to continue and move the case forward.

STANDARD OF REVIEW

It is within the inherent powers of this Court to control the order of its business and to safeguard the rights of litigants that come before it. *Williams v. Borden's Inc.*, 274 S.C. 275, 262 S.E.2d 881 (1980).

ARGUMENT

I. Rules 205 and 241 do not stay the entire case during appeal.

When a notice of appeal of a trial court's judgment or order is served the appellate court will have jurisdiction over the matters and claims being appealed. SCACR 205. Further, any notice of appeal operates as an automatic stay on any matters being appealed. SCACR 241(a). Any matter or action that is not subject to the notice of appeal will still be under the jurisdiction of the lower court. *Id.*

In the case at hand, the matter that has been appealed is a Motion to Compel Arbitration made by Defendant Lennar. As discussed below, this is merely an attempt to prolong and delay the case and the appeal has a very low likelihood of being successful. The majority of discovery is not related to the arbitration issue and therefore does not come under the automatic stay imposed by Rule 241(a). Since the stay does not apply to such discovery, the Court should allow the process to continue. If discovery is not allowed to continue, witnesses' recollections of important facts will diminish and the hazardous conditions present at The Abbey as Spring Grove

will worsen and continue to severely harm the Plaintiffs. Further, if the hazardous conditions and construction defects continue to worsen, the Defendants will be harmed as damages will continue to accrue. The likelihood of spoliation of evidence issues increases as well. With a lengthy delay comes the possibility of valuable information and evidence being lost, destroyed, or tampered with. It will also keep the parties from fully assessing the relative strengths and weaknesses of their cases, possibly leading to surprises during trial that could further prolong the litigation. This will harm both parties and benefits no one involved in the case. Lifting the stay for discovery will eliminate the possibility of this occurring and move the case along.

The subcontractors in the case do not have arbitration agreements with the Plaintiffs. But, since Defendant Lennar has appealed the ruling on their motion to compel and a stay has been ordered Plaintiffs and other Defendants are unable to work towards discovery and resolving the case. Lifting the stay would allow for discovery to continue with the Subcontractor Defendants in this case and could possibly lead to resolution of this matter.

Further, not only will the damages to the homes increase, the homeowners will be severely prejudiced as they cannot sell or rent their homes. They are saddled with defective and hazardous dwellings that urgently require repair. It is in the best interests of all involved parties that the discovery process be allowed to continue in order to conclude the case in an efficient manner.

II. The Court should grant a motion to lift the stay for purposes of discovery.

Generally, after service of notice of an appeal and automatic stay comes into effect. Any party may move the Court to issue an order lifting that automatic stay pursuant to SCACR 241(c)(1). This order may be issued by a lower court, adjudicative tribunal, or appellate court.

SCACR 241(c)(2).

The court should lift the automatic stay for the following reasons:

- 1) Witnesses that are essential to both sides will be unable to recall important facts that are currently fresh in their memories.
- 2) It is in the best interests of the Court to promote an efficient timeline for this case and keep it moving along to lower the costs of repair and litigation and also keep the Plaintiff homeowners safe from hazardous conditions.
- 3) There is no arbitration agreement between the Plaintiffs and the subcontractor Defendants in the case.
- 4) Discovery conducted with subcontractor defendants in the case may lead to settlements that will benefit the homeowners.
- 5) Discovery needs to continue to prevent issues such as spoliation of evidence, lapsing memories, or illnesses or deaths of potential witnesses.
- 6) The Plaintiffs continue to suffer from the hazardous conditions caused by the design and construction defects at Spring Grove and will be severely prejudiced by any lengthy delay.
- 7) Damages and costs of repair will increase leaving the homes and their owners in a vulnerable state.

While the case at hand does not involve a Motion for a Discretionary Stay, it is important for the Court to consider the reasons a discretionary stay will not be upheld. Factors that are commonly weighed by the South Carolina District Court include: (1) likelihood of success of the appeal, (2) likelihood of injury to Defendants if stay is denied or lifted, (3) the likelihood of injury to the other parties if stay is upheld, and (4) the public interest served by allowing the stay to

remain. *Long v. Robinson*, 432 F.2d 977, 979 (4th Cir. 1970). Even though the matter at hand is not in Federal District Court, the Court should look to these factors as guidance in lifting the stay.

A. The Likelihood of the Success of Defendant's Appeal is Minimal.

The arbitration clause in Article 16 of Lennar's purchase and sale agreement, (attached hereto as Exhibit F), is unconscionable under South Carolina Law and consequentially unenforceable. Therefore, the likelihood of Defendant's success in moving for this appeal is minimal.

The Federal Arbitration Act provides that arbitration clauses are unenforceable when state law invalidates contract clause provisions. 9 U.S.C. §2. This means that state laws governing contracts generally will also apply to arbitration clauses between parties.

The South Carolina Code states that "[i]f a Court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the Court may refuse to enforce the contract" S.C. Code Ann. §36-2-302(1). As with fraud and duress, unconscionability is a common defense to contract enforcement. The Supreme Court of South Carolina recently ruled on this issue in *Smith v. D.R. Horton, Inc.*. The *D.R. Horton* case involved a "contract of adhesion" between a large construction corporation that built houses in 27 states and a homeowner.² The Court ruled that when a contract contains one-sided, unfair and oppressive terms and the party lacks a meaningful choice in the negotiation and execution of the agreement, a contract provision will be unconscionable and unenforceable. *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 49, 790 S.E.2d 1, 4 (2016). It was also noted that while a contract of

² The Court defined a "contract of adhesion" as a "standard form contract offered on a take it or leave it basis with terms that are not negotiable." *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 49, 790 S.E.2d 1, 4 (2016) (quoting *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001)).

adhesion is not unconscionable *per se*, such contracts or agreements should be looked upon with “considerable skepticism.” *Id.* (quoting *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 26-27, 644 S.E.2d 663, 669-70 (2007)). In determining whether there was a lack of meaningful choice in the negotiations of the contract, the Court looked to the disparity of the bargaining power between the parties. Further, the Court adopted the view that the “modern buyer of new residential housing is in an unequal bargaining position as against the seller.” *Id.* at 50 (quoting *Kennedy v. Columbia Lumber and Mfg. Co.*, 299 S.C. 335, 343, 384 S.E.2d 730, 735-36 (1989)). Using this view and the fact that the homeowners were a single client to a nationwide homebuilder, the court found that there was a lack of meaningful choice due to little to no bargaining power. As a result, the D.R. Horton arbitration clause was found to be unenforceable.

In this case, Defendant’s purchase and sale agreements with the owners were contracts of adhesion. They are standard forms with boilerplate language that are not open to full and open negotiation between the parties entering the agreement. Therefore, looking at the contract with the “skepticism” used by the *D.R. Horton* Court, it is clear that there was a lack of meaningful choice due to the large disparity in bargaining power and the arbitration clause in question is unfair, oppressive, and one sided in favor of the Defendant. Much like the Defendant in *D.R. Horton*, Lennar is a large homebuilder that operates in twenty-one (21) states in some of the “finest markets in the nation.” (Lennar’s website). Further, their marketing reaches out to first time home buyers. The purchasers of the homes at The Abbey clearly fall within the Court’s adopted view of the “modern homebuyer” and were left with no bargaining power or ability to make a meaningful choice. Based on this view and the facts at hand, Defendant’s likelihood of success in appealing the Motion to Compel Arbitration is minimal.

Also, as single clients to the Defendant, there were no serious business concerns that would warrant substantial negotiations between the purchasers and the Defendant. The *D.R. Horton* Court found that when there is a single client that is dealing with a massive corporation, there is an inherent difference in bargaining power. *Smith*, 417 S.C. at 49, 790 S.E.2d at 4. If a purchaser is not a substantial business concern to the corporation presenting the terms, there is likely going to be no negotiations. In the case of The Abbey homeowners, they were of little concern the Defendant and were not allowed any negotiation opportunities. Therefore, they held little to no bargaining power and were left with a lack of meaningful choice.

Based on the overall lack of meaningful choice and inability to negotiate the terms of the contracts at issue, the arbitration clause is unconscionable and, as a result, unenforceable. Therefore, Defendant Lennar's appeal of their Motion to Compel will be denied.

B. There is No Likelihood of Injury to Defendants if the Stay is Lifted.

Should the Court lift the stay, the injury to Defendants will be minimal if not non-existent. Allowing discovery to continue will benefit both parties because time sensitive information will be able to be gathered and analyzed. This allows the case to move on at an efficient pace and possibly be resolved in the near future. The only harm that the Defendant may suffer is in their attempts to prolong and delay the case. Therefore, the harm is minimal and the Court should find this factor weighing in favor of the Plaintiffs.

C. There is a High Likelihood of Injury to Plaintiffs if the Stay is Enforced.

Unlike the factor above, the likelihood of injury to the Plaintiffs is high. The Plaintiffs are living in extremely hazardous conditions that will only continue to get worse if the stay is not lifted and the case is stalled. As seen in the attached exhibit videos, there are dangerous

conditions present at The Abbey. An unreasonable delay will put Plaintiffs and their families in danger. Further, facts and information that are important to the Plaintiffs' case may be lost or forgotten if discovery does not continue. There is also a high risk of spoliation of evidence occurring due to a substantial delay. Upholding the stay will severely prejudice the Plaintiffs. Therefore, the Court should conclude this factor supports a lifting of the stay.

D. The Public Interest Will Be Best Served by Lifting the Stay.

Allowing discovery to continue will promote efficiency and not slow the court system down with needless and prolonged delay. Also, the prospect of settlement will grow with the continuation of the case as more facts and information are discovered.

CONCLUSION

The Court should lift the automatic stay for purposes of discovery. Failure to lift the stay will impose harm on both the Defendants and Plaintiffs and place the safety of the homeowners in jeopardy. Staying the case will also lead to an inefficient delay that is not in the best interests of the Court system. Based on the interests of all parties involved in this case, the Court should lift the stay and allow the action to move forward in a timely manner.

[Signature Page to Follow]

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February 21 2018
Charleston, South Carolina

**EXHIBITS A-C
ARE ATTACHED
VIA DVD DISC**

[NOTE: Exhibits A-C are Exhibits to Plaintiff's Motion and Memorandum in Support of Motion to Lift Automatic Stay - Filed on Feb. 27, 2018. These disks are not included in this Return.]

EXHIBIT D

[NOTE: This Exhibits D is an Exhibit to Plaintiff's Motion and Memorandum in Support of Motion to Lift Automatic Stay - Filed on Feb. 27, 2018.]

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

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

Case No. 2014-CP-08-2424

PATRICIA DAMICO, AND
LENNA LUCAS, individually and
on behalf of all other similarly
situated, JOSHUA AND
BRETTANY BUETOW,
EDWARD AND SYLVIA
DENG, JONATHAN AND
THERESA DOUGLASS,
ANTHONY AND STACEY RAY,
DANNY AND ELLEN DAVIS
MORROW, CZARA AND CHAD
ENGLAND, BRYAN AND
CYNTHIA CAMARA, AND
MATTHEW COLLINS,

Plaintiffs,

v.

LENNAR CAROLINAS, LLC,
SPRING GROVE PLANTATION
DEVELOPMENT, INC., MANALE
LANDSCAPING, LLC, SUPER
CONCRETE OF SC, INC.,
SOUTHERN GREEN, INC. TJB
TRUCKING/LEASING, LLC,
PARAGON SITE
CONSTRUCTORS, INC., CIVIL
SITE ENVIRONMENTAL AND
RICK BRYANT, Individually.

2016 NOV 21 PM 2:36
FILED
CLERK OF COUNTY
BERKELEY COUNTY, SC

Defendants.

LENNAR CAROLINAS, LLC,

Third-Party Plaintiff,

v.

THE EARTHWORKS GROUP,
INC., VOLKMAR CONSULTING
SERVICES, LLC, GEOMETRICS
CONSULTING, LLC, LAND/SITE
SERVICES, INC., MYERS
LANDSCAPING, INC., A.C. & A.
CONCRETE, INC., KNIGHT'S
CONCRETE PRODUCTS, INC.,
KNIGHT'S REDI-MIX, INC.,
COASTAL CONCRETE
SOUTHEAST, LLC, COASTAL
CONCRETE SOUTHEAST II,
LLC, GUARANTEED FRAMING,
LLC, OZZY CONSTRUCTION,
LLC, CONSTRUCTION
APPLICATORS CHARLESTON,
LLC, LA NEW ENTERPRISES,
LLC, DÉCOR CORPORATION,
DVS, INC., RAUL MARTINEZ
MASONRY, LLC, ALPHA
OMEGA CONSTRUCTION
GROUP, INC., SOUTH
CAROLINA EXTERIORS, LLC,
BUILDERS FIRSTSOURCE-
SOUTHEAST GROUP, LLC, AND
LOW COUNTRY
RENOVATIONS AND SIDING,
LLP,

Third-Party
Defendants.

DÉCOR CORPORATION,

Fourth Party

Plaintiff,

v.

BARANOV FLOORING, LLC,
DJ CONSTRUCTION
SERVICES, LLC, CREATIVE
WOOD FLOORS, LLC,
GERALDO CUNHA,
EBENEZER FLOORING, LLC,
ENMANUEL FLOORING AND
SIDING, LLC, EUSI FLOORING
AND COVERING, LLC,
NICOLAS FLORES,
ALEXANDER MARTINEZ,
ISIDRU MEJIA, JUAN PEREZ
SON, ERNESTO M. PEREZ,
N&B CONSTRUCTION, LLC,
JOSE DIAS RODRIGUES,
LIVIA SOUSA, JOSE BETIO
PEREIRA, JOSE PAZ CASTRO
HERNANDEZ, DIVINIO
APERECIDO CORGOSINHO,
RICARDO CHICHE, CEBS
CONSTRUCTION, BAYSHORE
SIDING AND FLOORING,
SEBASTIO LUIZ DE ARAUJO,
AND JOHN DOES 1-4,

Fourth-Party
Defendants.

Of which Lennar Carolinas, LLC is the Appellant and Patricia Damico; Joshua and Brettany Buetow; Bryan and Cynthia Camara; Matthew Collins; Edward and Sylvia Degg; Jonathan and Theresa Douglass; Czara and Chad England; Lenna Lucas; Danny and Ellen Davis Morrow; Anthony and Stacey Ray; and Defendants and Third-Party Defendants A.C.&A. Concrete, Inc.; Alpha Omega Construction Group, Inc.; Builders FirstSource-Southeast Group, LLC; Coastal Concrete Southeast, LLC; Coastal Concrete Southeast II, LLC; Construction Applicators Charleston, LLC; Civil Site Environmental, Inc.; Décor Corporation; DVS, Inc.; Guaranteed Framing, LLC; Knight's Concrete Products, Inc.; Knight's Redi-Mix, Inc.; LA New Enterprises, LLC; Land/Site Services, Inc.; Manale Landscaping, LLC; Myers Landscaping, Inc.; Ozy Construction, LLC; Raul Martinez Masonry, LLC; South Carolina Exteriors,

LLC; Southern Green, Inc.; Spring Grove Plantation Development, Inc.; Super Concrete of SC, Inc.; TJB Trucking/Leasing, LLC; and Volkmar Consulting Services, LLC are the Respondents.

AMENDED NOTICE OF APPEAL

Lennar Carolinas, LLC ("Appellant") appeals the orders of the Honorable J.C. Nicholson, Jr. denying Appellant's motion to compel arbitration. The Court issued an Order dated September 19, 2016, denying Appellant's motion to compel arbitration, Appellant moved for reconsideration on September 29, 2016, and Appellant received notice of the ruling on its motion to reconsider on October 28, 2016.

November 18, 2016



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R. Batten Farrar, Esquire
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Edward and Sylvia Dengg
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Moncks Corner, SC 29461
Pro Se Respondents

Anthony and Stacey Ray
107 Loch Circle
Hampton, VA 23669
Pro Se Respondents

Third-Party Defendant Myers Landscaping, Inc.¹
c/o Joseph H. Myers, Registered Agent
Myers Landscaping, Inc.
382 Big Bird Lane
Summerville, SC 29486

¹ Myers Landscaping, Inc. was served, but has not appeared.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

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

Case No. 2014-CP-08-2424

PATRICIA DAMICO, AND
LENNA LUCAS, individually and
on behalf of all other similarly
situated, JOSHUA AND
BRETTANY BUETOW,
EDWARD AND SYLVIA
DENG, JONATHAN AND
THERESA DOUGLASS,
ANTHONY AND STACEY RAY,
DANNY AND ELLEN DAVIS
MORROW, CZARA AND CHAD
ENGLAND, BRYAN AND
CYNTHIA CAMARA, AND
MATTHEW COLLINS,

Plaintiffs,

v.

LENNAR CAROLINAS, LLC,
SPRING GROVE PLANTATION
DEVELOPMENT, INC., MANALE
LANDSCAPING, LLC, SUPER
CONCRETE OF SC, INC.,
SOUTHERN GREEN, INC. TJB
TRUCKING/LEASING, LLC,
PARAGON SITE
CONSTRUCTORS, INC., CIVIL
SITE ENVIRONMENTAL AND
RICK BRYANT, Individually.

FILED
2016 NOV 21 PM 2:37
CLERK OF COURT
BERKELEY COUNTY, SC

Defendants.

LENNAR CAROLINAS, LLC,

Third-Party Plaintiff,

v.

THE EARTHWORKS GROUP,
INC., VOLKMAR CONSULTING
SERVICES, LLC, GEOMETRICS
CONSULTING, LLC, LAND/SITE
SERVICES, INC., MYERS
LANDSCAPING, INC., A.C. & A.
CONCRETE, INC., KNIGHT'S
CONCRETE PRODUCTS, INC.,
KNIGHT'S REDI-MIX, INC.,
COASTAL CONCRETE
SOUTHEAST, LLC, COASTAL
CONCRETE SOUTHEAST II,
LLC, GUARANTEED FRAMING,
LLC, OZZY CONSTRUCTION,
LLC, CONSTRUCTION
APPLICATORS CHARLESTON,
LLC, LA NEW ENTERPRISES,
LLC, DÉCOR CORPORATION,
DVS, INC., RAUL MARTINEZ
MASONRY, LLC, ALPHA
OMEGA CONSTRUCTION
GROUP, INC., SOUTII
CAROLINA EXTERIORS, LLC,
BUILDERS FIRSTSOURCE-
SOUTHEAST GROUP, LLC, AND
LOW COUNTRY
RENOVATIONS AND SIDING,
LLP,

Third-Party Defendants.

DÉCOR CORPORATION,

Fourth Party Plaintiff,

v.

BARANOV FLOORING, LLC,
DJ CONSTRUCTION
SERVICES, LLC, CREATIVE
WOOD FLOORS, LLC,
GERALDO CUNHA,
EBENEZER FLOORING, LLC,
ENMANUEL FLOORING AND
SIDING, LLC, EUSI FLOORING
AND COVERING, LLC,
NICOLAS FLORES,
ALEXANDER MARTINEZ,
ISIDRU MEJIA, JUAN PEREZ
SON, ERNESTO M. PEREZ,
N&B CONSTRUCTION, LLC,
JOSE DIAS RODRIGUES,
LIVIA SOUSA, JOSE BETIO
PEREIRA, JOSE PAZ CASTRO
HERNANDEZ, DIVINIO
APERECIDO CORGOSINHO,
RICARDO CHICHE, CEBS
CONSTRUCTION, BAYSHORE
SIDING AND FLOORING,
SEBASTIO LUIZ DE ARAUJO,
AND JOHN DOES 1-4,

Fourth-Party Defendants.

Of which Lennar Carolinas, LLC is the Appellant and Patricia Damico; Joshua and Brettany Buetow; Bryan and Cynthia Camara; Matthew Collins; Edward and Sylvia Degg; Jonathan and Theresa Douglass; Czara and Chad England; Lenna Lucas; Danny and Ellen Davis Morrow; Anthony and Stacey Ray; and Defendants and Third-Party Defendants A.C.&A. Concrete, Inc.; Alpha Omega Construction Group, Inc.; Builders FirstSource-Southeast Group, LLC; Coastal Concrete Southeast, LLC; Coastal Concrete Southeast II, LLC; Construction Applicators Charleston, LLC; Civil Site Environmental, Inc.; Décor Corporation; DVS, Inc.; Guaranteed Framing, LLC; Knight's Concrete Products, Inc.; Knight's Redi-Mix, Inc.; LA New Enterprises, LLC; Land/Site Services, Inc.; Manale Landscaping, LLC; Myers Landscaping, Inc.; Ozzy Construction, LLC; Raul Martinez Masonry, LLC; South Carolina Exteriors, LLC; Southern Green, Inc.; Spring Grove Plantation Development, Inc.; Super Concrete of SC, Inc.; TJB Trucking/Leasing, LLC; and Volkmar Consulting Services, LLC are the Respondents.

PROOF OF SERVICE

I certify that I have served the Amended Notice of Appeal on all Respondents by depositing a copy of it in the United States Mail, postage prepaid, on November 18, 2016, addressed to the following:

Michael J. Jordan, Esq.
Catherine K. Dunn, Esq.
The Steinberg Law Firm, LLP
P.O. Box 1028
Goose Creek, SC 29445

and

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Katherine C. Miars
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Matthews, NC 28105

and

Stephen L. Brown, Esquire
Catherine H. Chase, Esquire
Young Clement Rivers, LLP
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Charleston, SC 29402

and

Preston B. Dawkins, Jr., Esquire
Aiken Bridges, P.A.
P.O. Drawer 1931
Florence, SC 29503

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Turner Padgett
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and

Christine Companion Varnado, Esquire
The Seibels Law Firm
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and
Alan R. Belcher, Jr., Esq.
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Zachary J. Closser, Esquire
Samuel M. Wheeler, Esquire
Smith Closser, P.A.
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Michal Kalwajtys
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David Shuler Black, Esq.
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Pro Se Respondents

Anthony and Stacey Ray
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Hampton, VA 23669
Pro Se Respondents

Third-Party Defendant Myers Landscaping, Inc.
c/o Joseph H. Myers, Registered Agent
Myers Landscaping, Inc.
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Summerville, SC 29486



Jenna K. McGee
F. Elliotte Quinn IV
Parker, Poe, Adams & Bernstein LLP
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Charleston, South Carolina 29401
(843) 727-2650
Attorneys for Appellant Lennar Carolinas, LLC

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-08-2424

Patricia Damico, et al

Lennar Carolinas, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> 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(h), SCRPC; Rule 12(b), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other:
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify; arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

BERKELEY COUNTY, SOUTH CAROLINA
 16 OCT 26 PM 2:30
 FILED

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: Defendant's Motion to Reconsider the Court's September 21, 2016 Order denying the Motion to Compel Arbitration is respectfully denied without a rehearing. This Order also denies all Joining Motions to Reconsider filed in response to the Court's September 21, 2016 Order.

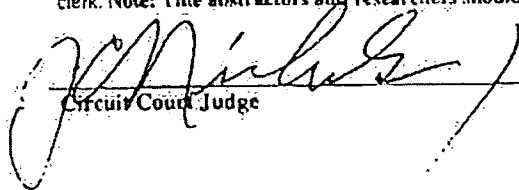
ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

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


 Circuit Court Judge

2117
 Judge Code

10-24-16
 Date



F. Elliott Quinn IV
Associate
Telephone: 843.727.6315
Direct Fax: 843.727.2680
elliottquinn@parkerpoe.com

Charleston, SC
Charlotte, NC
Columbia, SC
Raleigh, NC
Spartanburg, SC

November 18, 2016

The Honorable Mary P. Brown
Berkeley County Clerk of Court
PO Box 219
Moncks Corner, SC 29461

Re: *Damico, et al. v. Lennar Carolinas, LLC, et al.*
Case No.: 2014-CP-08-02424

Dear Ms. Brown

Enclosed for filing please find the original and a copy of the Amended Notice of Appeal in connection with the above-referenced matter. Please file the original and return a filed-stamped copy to me in the enclosed self-addressed stamped envelope.

Please note that the Amended Notice of Appeal correctly lists the parties that are Respondents as all the parties were not listed on the Notice of Appeal mailed for filing on November 16, 2016. The Amended Notice of Appeal also reflects the new address for Pro Se Respondents Anthony and Stacey Ray.

Please do not hesitate to contact me if you have any questions. By copy of this letter, we are serving same on all parties.

Sincerely,

Elliott Quinn

FEQiv/kjg
Enclosures

cc: All Counsel of Record (via email and US Mail with enclosures)
Edward and Sylvia Dengg (via US Mail with enclosures)
Anthony and Stacey Ray (via US Mail with enclosures)
Joseph H. Myers, Registered Agent (via US Mail with enclosures)

PPAB 3490365v1

EXHIBIT E

[NOTE: This Exhibits E is an Exhibit to Plaintiff's Motion and Memorandum in Support of Motion to Lift Automatic Stay - Filed on Feb. 27, 2018.]

The South Carolina Court of Appeals

Patricia Damico and Lenna Lucas, Individually and on behalf of all others similarly situated; Joshua and Brettany Buetow; Edward and Sylvia Dengg; Jonathan and Theresa Douglass; Anthony and Stacey Ray; Danny and Ellen Davis Morrow; Czara and Chad England; Bryan and Cynthia Camara; and Matthew Collins, Respondents,

v.

Lennar Carolinas, LLC; Spring Grove Plantation Development, Inc.; Manale Landscaping, LLC; Super Concrete of SC, Inc., Southern Green, Inc.; TJB Trucking/Leasing, LLC; Paragon Site Constructors, Inc.; Civil Site Environmental; and Rick Bryant, Individually, Defendants,

Of which Spring Grove Plantation Development, Inc.; Manale Landscaping, LLC; Super Concrete of SC, Inc.; Southern Green, Inc.; TJB Trucking/Leasing, LLC; and Civil Site Environmental are Respondents.

And

Lennar Carolinas, LLC, Appellant,

v.

The Earthworks Group, Inc.; Volkmar Consulting Services, LLC; Geometrics Consulting, LLC; Land/Site Services, Inc.; Myers Landscaping, Inc.; A.C. & A. Concrete, Inc.; Knight's Concrete Products, Inc.; Knight's Redi-Mix, Inc.; Coastal Concrete Southeast, LLC; Coastal Concrete Southeast II, LLC; Guaranteed Framing, LLC; Ozzy Construction, LLC; Construction Applicators Charleston, LLC; LA New Enterprises, LLC;

16 SEP 22 AM 11:28
FILED
L. MORROW
CLERK OF COURT
BERKELEY COUNTY, S.C.

Decor Corporation, DVS, Inc.; Raul Martinez Masonry, LLC; Alpha Omega Construction Group, Inc.; South Carolina Exteriors, LLC; Builders Firstsource-Southeast Group, LLC; and Low Country Renovations and Siding, LLP, Third-Party Defendants,

Of which Volkmar Consulting Services, LLC; Land/Site Services, Inc.; Myers Landscaping, Inc.; A.C. & A. Concrete, Inc.; Knight's Concrete Products, Inc.; Knight's Redi-Mix, Inc.; Coastal Concrete Southeast, LLC; Coastal Concrete Southeast II, LLC; Guaranteed Framing, LLC; Ozzy Construction, LLC; Construction Applicators Charleston, LLC; LA New Enterprises, LLC; Decor Corporation, DVS, Inc.; Raul Martinez Masonry, LLC; Alpha Omega Construction Group, Inc.; South Carolina Exteriors, LLC; Builders Firstsource-Southeast Group, LLC; are also Respondents.

And

Decor Corporation, Fourth Party Plaintiff,

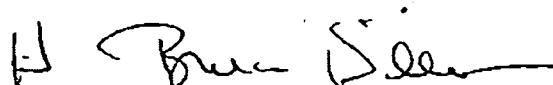
v.

Baranov Flooring, LLC; DJ Construction Services, LLC; Creative Wood Floors, LLC; Geraldo Cunha; Ebenezer Flooring, LLC; Emmanuel Flooring and Siding, LLC; Eusi Flooring and Covering, LLC; Nicolas Flores; Alexander Martinez; Isidru Mejia; Juan Perez; N&B Construction, LLC; Jose Dias Rodrigues; Livia Sousa; Jose Paz Castro Hernandez; Divinio Aperecido Corgosinho; Ricardo Chiche; CEBS Construction; Bayshore Siding and Flooring; Sebastio Luiz de Araujo; and John Does 1-4, Fourth-Party Defendants.

Appellate Case No. 2016-002339

ORDER

Lennar Carolinas, LLC (Lennar) served and filed a notice of appeal from a circuit court order denying its motion to compel arbitration. Lennar now moves this court to enforce a stay of proceedings in the circuit court. First, this court notes the order denying the motion to compel arbitration is immediately appealable. *See Towles v. United Healthcare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (Ct. App. 1999) (holding an order denying a motion to compel arbitration is immediately appealable). Second, because Lennar has served a notice of appeal from an appealable order, all matters affected by this appeal must be stayed during the pendency of the appeal. *See* Rule 205, SCACR ("Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal."); Rule 241(a), SCACR ("As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision."); *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012) ("[T]he lower court is deprived of the power to proceed with matters that are affected by the appeal").



FOR THE COURT

Columbia, South Carolina

cc: Jenna Brooke Kiziah McGee, Esquire
Frederick Elliott Quinn, IV, Esquire
Michael J. Jordan, Esquire
Catherine Dunn Meehan, Esquire
John Calvin Hayes, IV, Esquire
R. Patrick Flynn, Esquire
Michael Wade Allen, Jr., Esquire
Bachman S. Smith, IV, Esquire
James H. Elliott, Jr., Esquire
Samia Hanafi Nettles, Esquire

FILED

December 19, 2016

David Shuler Black, Esquire
Shanna Milcetic Stephens, Esquire
Stephen Lynwood Brown, Esquire
Catherine Holland Chase, Esquire
Preston Bruce Dawkins, Jr., Esquire
Stephen P. Hughes, Esquire
Kathy Aboe Carlsten, Esquire
N. Keith Emge, Jr., Esquire
Brent Morris Boyd, Esquire
David Starr Cobb, Esquire
Sidney Markey Stubbs, Esquire
Derek Michael Newberry, Esquire
Christine Companion Varnado, Esquire
Alan Ross Belcher, Jr., Esquire
Steven L. Smith, Esquire
Zachary James Closser, Esquire
Samuel Melvil Wheeler, Esquire
Erin DuBose Dean, Esquire
Thomas Frank Dougall, Esquire
William Ansel Collins, Jr., Esquire
Michal Kalwajtys, Esquire
John Elliott Rogers, II, Esquire
Jenny Costa Honeycutt, Esquire
Robert Trippett Boineau, III, Esquire
Heath McAlvin Stewart, III, Esquire
Ronald G. Tate, Jr., Esquire
Robert Batten Farrar, Esquire
Edward Dengg
Sylvia Dengg
Anthony Ray
Stacey Ray
The Honorable Mary P. Brown
The Honorable J.C. Nicholson, Jr.

EXHIBIT F

[NOTE: This Exhibits F is an Exhibit to Plaintiff's Motion and Memorandum in Support of Motion to Lift Automatic Stay - Filed on Feb. 27, 2018.]

not be constructed in accordance with the plans and specifications on file with the applicable governmental authorities. Without limiting the generality of the provisions of Rider B attached hereto, Seller disclaims and Buyer waives any and all express or implied warranties that construction will be accomplished in compliance with such plans and specifications. Seller has not given and Buyer has not relied on or bargained for any such warranties. In furtherance of the foregoing, in the event of any conflict between the actual construction of the Home and/or the Community, and that which is set forth on the plans and specifications, Buyer agrees that the actual construction shall prevail and to accept the Home and Community as actually constructed (in lieu of what is set forth on the plans and specifications).

13.2 Lot Change. In the event that Seller, in its sole discretion, determines that the Model of the Home selected under this Agreement cannot reasonably be built on the Homesite, then Buyer and Seller hereby agree that they will negotiate in good faith to relocate the Home to another lot in the Community, provided however that there are lots available for sale. If no replacement lot is available, then Buyer may terminate this Agreement and will be entitled to a refund of any paid Deposit.

13.3 Decorative and Landscaping Items.

13.3.1 Buyer understands and agrees that certain of the finishing items, such as tile, marble, carpet, cabinets, stone, brickwork, wood, paint, stain and mica are subject to size and color variations, grain and quality variations, and may vary in accordance with price, availability and changes by manufacturers from those shown in the model, if any, or in illustrations or brochures or those included in the specifications. Furthermore, if circumstances arise that, in Seller's opinion, warrant changes of subcontractors, suppliers, manufacturers, brand names or items, Seller reserves the right to substitute equipment, materials, appliances, etc., which in Seller's opinion are considered to be of quality substantially similar or equal, or of better quality, subject to their availability. Buyer also understands that Seller has the right to substitute or change materials and/or stain colors utilized in wood decor, if any.

13.3.2 Lot grades, lot area, options, facades, shrubs, trees, trim, built-ins, wall treatments, window treatments, furniture, furnishings, fences, decks, locations of walks, driveways and other items in or about a model home area in the subdivision are for display purposes only and are not included in the Total Purchase Price unless otherwise expressly provided herein. Seller has the right to remove any existing trees on the Property or on the surrounding area for any reason. Buyer further understands and agrees that the following items (which may be seen in models or shown in illustrations) will also not be included with the sale of the Home: wall coverings, paint colors, accent light fixtures, wall ornaments, drapes, blinds, bedspreads, furniture, furnishings, wet bars, monitoring systems, certain built-in fixtures, special floor coverings, wood trim, upgraded items and/or any other items of this nature which may be added or deleted from time to time. This list of items (which is not all-inclusive) is provided as an illustration of the type of items built-in or placed upon models or shown in illustrations strictly for purposes of decoration and example only.

13.4 Deed. By acceptance of the Deed, Buyer accepts all variations of the Home.

13.5 Survival. All of the terms of this Section 13 shall survive Closing and the delivery of the Deed.

14. Buyer's Default. In the event of Buyer's default and to the extent allowed by law, Seller shall be entitled to keep, as liquidated damages and not as a penalty, Buyer's Deposit not to exceed fifteen percent (15%) of the Total Purchase Price, except that Seller may, in addition, keep, as liquidated damages and not as a penalty, any and all Advanced Payments made by Buyer to Seller for options, extras or upgrades for which Seller has made contractual commitments or incurred liability by placing orders or otherwise. Buyer agrees that actual damages in the event of breach by Buyer would be costly and difficult to calculate, and that such liquidated damages are a fair and reasonable remedy and shall not be considered a penalty. The provisions of this Section shall survive the termination of this Agreement.

15. Seller's Default. In the event of Seller's default and to the extent allowed by law, Buyer may recover actual damages but shall not be entitled to special, consequential or punitive damages. Notwithstanding the foregoing, Buyer retains all remedies at law and in equity with respect to Seller's obligation to complete the Home within two (2) years pursuant to Section 8 above. Notwithstanding anything to the contrary in this Agreement, Buyer releases and holds harmless Seller's past and present officers and employees from all claims, liabilities, and causes of action of any nature. Buyer now has or may have arising from any act or omission of Seller's officers or employees related to Lennar's performance of its obligations under this Agreement and Lennar's construction of a Home on the Homesite. The provisions of this Section shall survive the termination of this Agreement.

16. Mediation / Arbitration of Disputes.

16.1 The parties to this Agreement specifically agree that this transaction involves interstate commerce and that any Dispute (as hereinafter defined) shall first be submitted to mediation and, if not settled during mediation, shall thereafter be submitted to binding arbitration as provided by the Federal Arbitration Act (9 U.S.C. §§1 et seq.) and not by or in a court of law or equity. "Disputes" (whether contract, warranty, tort, statutory or otherwise), shall include, but are not limited to, any and all controversies, disputes or claims (1) arising under, or related to, this Agreement, the Property, the Community or any dealings between Buyer and Seller; (2) arising by virtue of any representations, promises or warranties alleged to have been made by Seller or Seller's representative; and (3) relating to personal injury or property damage alleged to have been sustained by Buyer, Buyer's children or other occupants of the Property, or in the Community. Buyer has executed this Agreement on behalf of his or her children and other occupants of the Property with the intent that all such parties be bound hereby. Any Dispute shall be submitted for binding arbitration within a reasonable time after such Dispute has arisen. Nothing herein shall extend the time period by which a claim or cause of action may be asserted under the applicable statute of limitations or statute of repose, and in no event shall the Dispute be submitted for arbitration after the date when institution of a legal or equitable proceeding based on the underlying claims in such Dispute would be barred by the applicable statute of limitations or statute of repose.

16.2 Any and all mediations commenced by any of the parties to this Agreement shall be filed with and administered by the

American Arbitration Association or any successor thereto ("AAA") in accordance with the AAA's Home Construction Mediation Procedures in effect on the date of the request. If there are no Home Construction Mediation Procedures currently in effect, then the AAA's Construction Industry Mediation Rules in effect on the date of such request shall be utilized. Any party who will be relying upon an expert report or repair estimate at the mediation shall provide the mediator and the other parties with a copy of the reports. If one or more issues directly or indirectly relate to alleged deficiencies in design, materials or construction, all parties and their experts shall be allowed to inspect, document (by photograph, videotape or otherwise) and test the alleged deficiencies prior to mediation. Unless mutually waived in writing by the parties, submission to mediation is a condition precedent to either party taking further action with regard to any matter covered hereunder.

16.3 If the Dispute is not fully resolved by mediation, the Dispute shall be submitted to binding arbitration and administered by the AAA in accordance with the AAA's Home Construction Arbitration Rules in effect on the date of the request. If there are no Home Construction Arbitration Rules currently in effect, then the AAA's Construction Industry Arbitration Rules in effect on the date of such request shall be utilized. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Dispute. If the claimed amount exceeds \$250,000.00 or includes a demand for punitive damages, the Dispute shall be heard and determined by three arbitrators; however, if mutually agreed to by the parties, then the Dispute shall be heard and determined by one arbitrator. Arbitrators shall have expertise in the area(s) of Dispute, which may include legal expertise if legal issues are involved. All decisions respecting the arbitrability of any Dispute shall be decided by the arbitrator(s). At the request of any party, the award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

16.4 The waiver or invalidity of any portion of this Section shall not affect the validity or enforceability of the remaining portions of this Section. Buyer and Seller further agree (1) that any Dispute involving Seller's affiliates, directors, officers, employees and agents shall also be subject to mediation and arbitration as set forth herein, and shall not be pursued in a court of law or equity; (2) that Seller may, at its sole election, include Seller's contractors, subcontractors and suppliers, as well as any warranty company and insurer as parties in the mediation and arbitration; and (3) that the mediation and arbitration will be limited to the parties specified herein.

16.5 To the fullest extent permitted by applicable law, Buyer and Seller agree that no finding or stipulation of fact, no conclusion of law, and no arbitration award in any other arbitration, judicial, or similar proceeding shall be given preclusive or collateral estoppel effect in any arbitration hereunder unless there is mutuality of parties. In addition, Buyer and Seller further agree that no finding or stipulation of fact, no conclusion of law, and no arbitration award in any arbitration hereunder shall be given preclusive or collateral estoppel effect in any other arbitration, judicial, or similar proceeding unless there is mutuality of parties.

16.6 Unless otherwise recoverable by law or statute, each party shall bear its own costs and expenses, including attorneys' fees and paraprofessional fees, for any mediation and arbitration. Notwithstanding the foregoing, if a party unsuccessfully contests the validity or scope of arbitration in a court of law or equity, the noncontesting party shall be awarded reasonable attorneys' fees, paraprofessional fees and expenses incurred in defending such contest, including such fees and costs associated with any appellate proceedings. In addition, if a party fails to abide by the terms of a mediation settlement or arbitration award, the other party shall be awarded reasonable attorneys' fees, paraprofessional fees and expenses incurred in enforcing such settlement or award.

16.7 Buyer may obtain additional information concerning the rules of the AAA by visiting its website at www.adr.org or by writing the AAA at 335 Madison Avenue, New York, New York 10017.

16.8 Seller supports the principles set forth in the Consumer Due Process Protocol developed by the National Consumer Dispute Advisory Committee and agrees to the following:

16.8.1 Notwithstanding the requirements of arbitration stated in Section 16.3 of this Agreement, Buyer shall have the option, after pursuing mediation as provided herein, to seek relief in a small claims court for disputes or claims within the scope of the court's jurisdiction in lieu of proceeding to arbitration. This option does not apply to any appeal from a decision by a small claims court.

16.8.2 Seller agrees to pay for one (1) day of mediation (mediator fees plus any administrative fees relating to the mediation). Any mediator and associated administrative fees incurred thereafter shall be shared equally by the parties.

16.8.3 The fees for any claim pursued via arbitration in an amount of \$10,000.00 or less shall be apportioned as provided in the Home Construction Arbitration Rules of the AAA or other applicable rules.

16.9 Notwithstanding the foregoing, if either Seller or Buyer seeks injunctive relief, and not monetary damages, from a court because irreparable damage or harm would otherwise be suffered by either party before mediation or arbitration could be conducted, such actions shall not be interpreted to indicate that either party has waived the right to mediate or arbitrate. The right to mediate and arbitrate should also not be considered waived by the filing of a counterclaim by either party once a claim for injunctive relief had been filed with a court.

16.10 Buyer and Seller specifically agree that notwithstanding anything to the contrary, the rights and obligations set forth in this Section 16 shall survive (1) Closing and the delivery of the Deed; (2) the termination of this Agreement by either party; or (3) the default of this Agreement by either party.

17. Other Dispute Resolutions. Notwithstanding the parties' obligation to submit any Dispute to mediation and arbitration, in the event that a particular dispute is not subject to the mediation or the arbitration provisions of Section 16, then the parties agree to the following provisions: BUYER ACKNOWLEDGES THAT JUSTICE WILL BEST BE SERVED IF ISSUES REGARDING THIS AGREEMENT ARE HEARD BY A JUDGE IN A COURT PROCEEDING, AND NOT A JURY. BUYER AND

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2014-CP-08-02424

Patricia Damico and Lenna Lucas,)
individually and on behalf of all others)
similarly situated, Joshua and Brettany)
Buetow, Edward and Sylvia Dengg,)
Jonathan and Theresa Douglass, Anthony)
and Stacey Ray, Danny and Ellen Davis)
Morrow, Czara and Chad England, Bryan)
and Cynthia Camara, and Matthew Collins,)

Plaintiffs,)

vs.)

Lennar Carolinas, LLC, Spring Grove)
Plantation Development, Inc., Manale)
Landscaping, LLC, Super Concrete of SC,)
Inc., Southern Green, Inc., TJB)
Trucking/Leasing, LLC, Paragon Site)
Constructors, Inc., Civil Site Environmental,)
and Rick Bryant, individually.)

Defendants.)

Lennar Carolinas, LLC,)

Third-Party Plaintiff,)

vs.)

The Earthworks Group, Inc., Volkmar)
Consulting Services, LLC, Geometrics)
Consulting, LLC, Land/Site Services, Inc.,)
Myers Landscaping, Inc., A.C. & A.)
Concrete, Inc., Knight's Concrete Products,)
Inc., Knight's Redi-Mix, Inc., Coastal)
Concrete Southeast, LLC, Coastal Concrete)
Southeast II, LLC, Guaranteed Framing, LLC,)
Ozzy Construction, LLC, Construction)
Applicators Charleston, LLC, LA New)
Enterprises, LLC, Décor Corporation, DVS,)
Inc., Raul Martinez Masonry, LLC, Alpha)
Omega Construction Group, Inc., South)
Carolina Exteriors, LLC, Builders FirstSource)

CERTIFICATE OF SERVICE

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

18 FEB 27 PM 4:22

FILED

– Southeast Group, LLC, and Low Country
Renovations and Siding, LLP,

Third-Party Defendants.

Décor Corporation,

Fourth Party Plaintiff,

vs.

Baranov Flooring, LLC, DJ Construction
Services, LLC, Creative Wood Floors, LLC,
Geraldo Cunha, Ebenezer Flooring, LLC,
Enmanuel Flooring and Siding, LLC, Eusi
Flooring and Covering, LLC, Nicolas Flores,
Alexander Martinez, Isidru Mejia, Juan
Perez Son, Ernesto M. Perez, N&B
Construction, LLC, Jose Dias Rodrigues,
Livia Sousa, Jose Betio Pereira, Jose Paz
Castro Hernandez, Divinio Aparecido
Corgosinho, Ricardo Chiche, Cebes
Construction, Bayshore Siding and Flooring,
Sebastio Luiz De Araujo, and John Does 1 –
4,

Fourth-Party Defendants.

Alpha Omega Construction Group, Inc.

Fourth-Party Plaintiff,

Vs.

Garcia Roofing, LLC, Juan Garza Ramos,
Jose Vera, and Espino Roofing, LLC,

Fourth-Party Defendants.

DVS, Inc.,

Fourth-Party Plaintiff,

Vs.

Sousa Construction, LLC, Lima
Construction, LLC, N&B Construction, LLC,

Itatiaia Construction, LLC and JC)
Contractors, LLC)
))
Fourth-Party Defendants.)
_____))
South Carolina Exteriors, LLC)
))
Fourth-Party Plaintiff,)
))
Vs.)
))
Juan Garza Ramos, d/b/a Juan)
Constructors,)
))
Fourth-Party Defendant.)
_____))
Guaranteed Framing, LLC)
))
Fourth-Party Plaintiff,)
))
Vs.)
))
First Construction, LLC, JC Contractors, LLC,)
Jessica Marroquin d/b/a Marroquin)
Construction, and Unique Framing, LLC,)
))
Fourth Party Defendants.)
_____))
)

The undersigned hereby certifies that on the 27th day of February 2018, a true and correct copy of the attached was served upon all parties and/or their respective counsel of record by placing the same in the U.S. Mail and/or electronic mail with sufficient postage affixed and addressed as follows:

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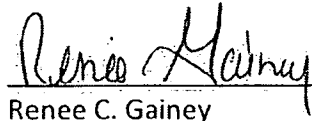
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[Signature Page to Follow]

HAYES LAW FIRM

A handwritten signature in cursive script that reads "Renee C. Gainey". The signature is written in black ink and is positioned above a horizontal line.

Renee C. Gainey

Paralegal to John C. Hayes, IV