THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKLEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2016-001825
Trial Court Case No. 2015-CP-08-01213

Christopher Duvall and Natalie Duvall, Plaintiffs,

v.

The Ryland Group, Inc., Defendant.

And

The Ryland Group, Inc., Third-Party Plaintiff,

v.

Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc., Third-Party Defendants,

Of which The Ryland Group, Inc. is the Appellant,

And

Of which Christopher Duvall and Natalie Duvall, Land Site Services, Inc., Carolina Consulting Engineers, Inc., A.C. Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc. are the Respondents.

RECORD ON APPEAL – VOLUME I

RECEIVED
JUL 18 2017
SC Court of Appeals

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STATE OF SOUTH CAROLINA

COUNTY OF Berkeley

IN THE COURT OF COMMON PLEAS

Christopher Duvall and Natalie Duvall
☐ Plaintiff

v.

The Ryland Group, Inc.
☒ Defendant.

CASE NO.

2015-CP-08-1213

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney: James Taylor Anderson, III	Defendant's Attorney: Olesya V. Vaskevich
Bar No. 77217	Bar No. 101409
Address: PO Box 13897	Address: 200 Meeting Street, Ste 301
Charleston, SC 29422-3897	Charleston, SC 29401
phone: 843.795.7800 fax:	phone: 843.727.2692 fax:
email: tanderson@kernodlelaw.com other:	email: olesyavaskevich@parkerpoe.com. other:

15 DEC -4 PM 1:35
CLERK OF COURT BERKELEY COUNTY, S.C.

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)**

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ YES ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Olesya Vaskevich — 11/18/2015
Signature of Attorney for ☐ Plaintiff / ☒ Defendant — Date Submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter:
- ☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE
CODE: Date:

CLERK'S VERIFICATION

Collected by: DW — Date Filed:

☐ MOTION FEE COLLECTED:
☐ CONTESTED – AMOUNT DUE:

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	CASE NO.: 2015-CP-08-01213
Christopher Duvall and Natalie Duvall,	)	
Plaintiffs,	)	**CONSENT ORDER ALLOWING THE AMENDED ANSWER OF THE RYLAND GROUP, INC.**
vs.	)	
The Ryland Group, Inc.	)	
Defendant.	)	

15 DEC -4 PM 1:35
CLERK OF COURT
BERKELEY COUNTY, S.C.

On motion of the Defendant The Ryland Group, Inc., pursuant to Rules 14 and 15(a) of the South Carolina Rules of Civil Procedure, and with the consent of the Plaintiffs Christopher Duvall and Natalie Duvall, leave is hereby granted to The Ryland Group, Inc. to amend its Answer to Plaintiffs' Complaint to assert third-party claims against Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc.

Circuit Court Judge, Ninth Judicial Circuit

December 3, 2015
Moncks Corner, South Carolina

PPAB 2997459v1

Christopher Duvall and Natalie Duvall v. The Ryland Group, Inc.

Case No.: 2015-CP-08-01213

WE MOVE:

Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

By: Olesya Vaskevich
Thomas C. Hildebrand, Jr.
Olesya V. Vaskevich

Attorneys for Defendant The Ryland Group, Inc.

PPAB 2997459v1

2

RMD 8/2

Christopher Duvall and Natalie Duvall v. The Ryland Group, Inc.

Case No.: 2015-CP-08-01213

WE CONSENT:

Kernodle Root & Coleman
914 Folly Road, Suite 2
Charleston, SC 29422

By: James Taylor Anderson, III / by Olesya Vaskevich with express permission
James Taylor Anderson, III

Attorneys for Plaintiffs Christopher Duvall and Natalie Duvall

PPAB 2997459v1

3

RMO 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	CASE NO.: 2015-CP-08-01213
Christopher Duvall and Natalie Duvall,	)	
Plaintiffs,	)	
vs.	)	
The Ryland Group, Inc.	)	
Defendant.	)	**ORDER GRANTING MOTION TO COMPEL**
The Ryland Group, Inc.,	)	
Third-Party Plaintiff,	)	
vs.	)	
Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc.,	)	
Third-Party Defendants.	)	

FILED
16 JAN 21 AM 9:29
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

This matter comes before the Court by Motion to Compel filed by The Ryland Group, Inc. ("Ryland") on December 31, 2015. A hearing was held on Monday, January 11, 2016. Appearing for the Plaintiffs was their counsel, James Taylor Anderson, III. Appearing for the Defendant The Ryland Group, Inc. was its attorney Thomas C. Hildebrand, Jr.

Ryland moved to compel the Plaintiffs to allow Ryland to place crack monitors at the residence.. Plaintiffs claim that cracks have developed in the residence that have continued to expand, and will cause further damage if they expand in the future. I find

that Defendant should be, and hereby is, authorized to place a reasonable number of monitors at any exterior cracks in the residence. Plaintiffs shall provide Defendant Ryland with reasonable access AND w/ 24 HRS. NOTICE to check the crack monitors on a reasonably periodic basis, but no more than 45 days between visits and also within one month of trial.

AND IT IS SO ORDERED.

The Honorable Judge J.C. Nicholson, Jr.

1/19 ,2016

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-08-1213

Christopher Duvall, et al

FILED

The Ryland Group, Inc., et al

PLAINTIFF(S)

16 JUN 30 PM 1:31

DEFENDANT(S)

Submitted by:	CLERK OF COURT BERKELEY COUNTY, S.C.	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. ☐ See Page 2 for additional information.

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

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

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion to Compel Arbitration, filed on 3/17/16, 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	2060 Judge Code	6/28/16 Date

For Clerk of Court Office Use Only

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)	IN THE COURT OF COMMON PLEAS Case No. 2015-CP-08-1213
Chriptopher Duvall and Natalie Duvall Plaintiff, v. **The Ryland Group, Inc.** Defendant.	)	ORDER
The Ryland Group, Inc. **Third Party Plaintiff** v. **Land Site Services, Inc, et al** **Third Party Defendants**	)	

FILED
16 JUL 29 PM 1:00
CLERK OF COURT
BERKELEY COUNTY, S.C.

This matter comes before me upon The Ryland Group, Inc.'s Motion to Reconsider, Amend, and/or Alter Order Denying Motion to Compel Arbitration, filed on 7/8/16. After fully considering said Motion, this Court finds no need for oral argument in this matter and therefore the Motion for Reconsideration is DENIED;

AND IT IS SO ORDERED!

R. MARKLEY DENNIS, JR
Presiding Judge

Charleston, South Carolina
July 26, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
CHRISTOPHER DUVALL and NATALIE DUVALL,)
Plaintiff(s))
)
vs.)
)
THE RYLAND GROUP, INC.)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP - 08- 1213

Submitted By: James Taylor Anderson, III
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P.O. Box 13897
Charleston, SC 29422-3897

SC Bar #: 77217
Telephone #: (843) 795-7800
Fax #: (843) 795-3032
Other:
E-mail: tanderson@kernodlelaw.com

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

FILED
2015 MAY 20 PM 12:31
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

DOCKETING INFORMATION (*Check all that apply*)

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

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

NATURE OF ACTION (*Check One Box Below*)

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

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- Previous Notice of Intent Case # 20____-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

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

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

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- ☐ Habeas Corpus (530)
- ☐ Other (599)

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- ☐ Judicial Review (810)
- ☐ Relief (820)
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- ☐ Forfeiture—Consent Order (850)
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- ☐ Lis Pendens (750)
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- ☐ Confession of Judgment (770)
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- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

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

Submitting Party Signature: _____ **Date:** May 15, 2015

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

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

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

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

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

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

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

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

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

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

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

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

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

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELY	)	CASE NO. 2015CP-08-1213
CHRISTOPHER DUVALL and NATALIE DUVALL,	)	
Plaintiffs,	)	**SUMMONS (JURY TRAIL DEMANDED)**
vs.	)	
THE RYLAND GROUP, INC.,	)	
Defendant.	)	

FILED
2015 MAY 20 PM 12:31
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

TO THE DEFENDANT THE RYLAND GROUP, INC.:

YOU ARE HEREBY SUMMONED and required to answer the allegations of the attached complaint within 30 days from the first day after receipt of the Summons. Your answer must be received by the Court of Common Pleas of Berkeley County located at Berkeley County Courthouse, 300 California Avenue, Moncks Corner, SC 29461, and it must also be received by the Plaintiffs' attorney, James Taylor Anderson III at Kernodle, Root, & Coleman, P.O. Box 13897, Charleston, South Carolina 29422-3897.

If you should fail to answer within the prescribed time, a judgment by default will be entered against you for the amount or other remedy requested in the attached Complaint, plus interest and all costs.

KERNODLE ROOT + COLEMAN

By: _____

James Taylor Anderson, III
914 Folly Road, Suite 2 (29412)
P. O. Box 13897
Charleston, SC 29422-3897
(843) 795-7800
(843) 795-3032 Fax
tanderson@kernodlelaw.com

May 15, 2015

Charleston, South Carolina

ATTORNEYS FOR PLAINTIFFS

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY CHRISTOPHER DUVALL and NATALIE DUVALL Plaintiffs, v. THE RYLAND GROUP, INC., Defendant.	))))))))))))))	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO. 2015-CP-08- 1213 **COMPLAINT** **(JURY TRIAL DEMANDED)**

COMES NOW Plaintiffs, Christopher and Natalie Duvall, and file this their Complaint against Defendant The Ryland Group, Inc. and show the Court as follows:

PARTIES AND JURISDICTION

1. Plaintiffs, Christopher and Natalie Duvall ("Homeowners") are citizens and residents of Berkeley County, South Carolina. Homeowners own the property located at 1502 Marsh Reed Court, Hanahan, Berkeley County, South Carolina (the "Home").

2. Defendant The Ryland Group, Inc. ("Ryland") is a Maryland Corporation. Ryland is registered to do business, and is conducting business, in South Carolina. Ryland may be served with a copy of the Summons and Complaint by service on its registered agent, CT Corporation System, 2 Office Park Court, Columbia, South Carolina 29223.

3. This Court has jurisdiction over the above named Defendant.

4. Venue is appropriate in this Court.

FACTS

5. Defendant Ryland developed and constructed the Home during 2006.

6. Defendant Ryland warranted the Home for 10 years.

7. Homeowners currently own the home.

FILED
2015 MAY 20 PM 12: 31
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

8. The Home has major structural defects, including but not limited to, significant cracking in the foundation.

9. Homeowners have notified Ryland of these major structural defects.

10. Ryland failed to remedy the major structural defects.

11. Ryland failed to honor the terms of the warranty provided for the Home.

12. Upon information and belief, Ryland's failure to honor the terms of the warranty is part of a pattern and practice of false and deceptive practices, intended and designed by Ryland to deprive home purchasers of their rights under Ryland's warranty program.

COUNT ONE –BREACH OF EXPRESS WARRANTY

13. Homeowners reallege paragraphs 1 through 12 above and incorporate said paragraphs herein by reference.

14. The defects at the Home constitute Major Structural Defects, as that term is used in the express warranty issued by Ryland.

15. Homeowners notified Ryland of the defects.

16. Ryland refused to remedy the defects.

17. Ryland's refusal constitutes a breach of the express warranty issued for the Home.

COUNT TWO – BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT

18. Homeowners reallege paragraphs 1 through 17 above and incorporate said paragraphs herein by reference.

19. Ryland breached its contractual duties under the express warranty.

20. Homeowners are expressly granted contractual rights under the express warranty.

21. Ryland's breach was accompanied by a fraudulent intent.

22. Ryland's employees and agents made fraudulent misrepresentations in connection with its breach including, but not limited to, the false and fraudulent representation to Homeowners that the major structural defects at the Home were "normal" and did not need to be fixed, and the false and fraudulent representation that, during the warranty period, it was Homeowners' responsibility, and not Ryland's, to hire appropriate professionals to determine the cause of the major structural defects.

COUNT THREE – BREACH OF IMPLIED WARRANTIES OF HABITABILITY, WORKMANLIKE SERVICES, AND FITNESS FOR A PARTICULAR PURPOSE.

23. Homeowners reallege paragraphs 1 through 22 above and incorporate said paragraphs herein by reference.

24. Defendant Ryland implicitly warranted that the Home would be habitable and fit for its intended use as a single family residence, and that the Home would be developed, designed and constructed in a workmanlike fashion.

25. Defendant Ryland breached the above implied warranties by developing, designing and constructing the Home in a manner that violates applicable building codes and standard building practices.

26. As a direct and proximate result of Ryland's breach of the above warranties Homeowners have suffered actual, direct, incidental, consequential and special damages.

COUNT FOUR-NEGLIGENCE

27. Homeowners reallege paragraphs 1 through 26 above and incorporate said paragraphs herein by reference.

28. Defendant Ryland negligently developed, designed and constructed the Home in a manner that violates applicable building codes and standard building practices.

29. Among other damages, Ryland's negligence has led to significant cracking in the foundation of the Home.

30. As a direct and proximate result of Ryland's negligence Homeowners have suffered actual, direct, incidental, consequential and special damages.

COUNT FIVE-UNFAIR TRADE PRACTICES

31. Homeowners reallege paragraphs 1 through 30 above and incorporate said paragraphs herein by reference.

32. Ryland is a "person" within the meaning of S.C. Code Ann. § 39-5-10(a) and is engaged in commerce within the meaning of S.C. Code Ann. § 39-5-10(b).

33. Ryland's actions described above, including Ryland's false assertions that the cracking at the Home is "normal," requesting that the Homeowners, not Ryland, incur the cost of hiring professionals to investigate the cracking in the foundation of the Home, and in negligently developing, designing and constructing the Home, constitute unfair and deceptive practices within the meaning of S.C. Code Ann. § 39-5-20(a).

34. Ryland's acts are capable of repetition and, upon information and belief, have been repeated.

35. Ryland's conduct affects the public interest of the people of South Carolina.

36. Ryland knew or should have reasonably known that its conduct violated the South Carolina Unfair Trade Practices Act.

37. As a direct, foreseeable and proximate result of Ryland's unfair and deceptive practices Homeowners have suffered actual, direct, incidental, consequential and special damages.

WHEREFORE, Homeowners respectfully pray for the following relief:

a. An award of actual damages in an amount to be determined by the jury;

b. An award of punitive damages in an amount to be determined by the jury;

c. An award of treble damages pursuant to S.C. Code Ann. § 39-5-10, et seq.

d. An award of Homeowners' reasonable attorney's fees;

e. An award of pre-judgment interest at the legal rate;

f. That all costs be taxed against Ryland;

g. For such other and further relief in favor of Homeowners as this Court deems just and appropriate.

KERNODLE ROOT + COLEMAN

By: _____

James Taylor Anderson, III
914 Folly Road, Suite 2 (29412)
P. O. Box 13897
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tanderson@kernodlelaw.com

ATTORNEYS FOR PLAINTIFFS

May 15, 2015

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	CASE NO.: 2015-CP-08-01213
Christopher Duvall and Natalie Duvall,	)	
Plaintiffs,	)	**ANSWER TO COMPLAINT**
vs.	)	
The Ryland Group, Inc.	)	
Defendant.	)	

FILED
2015 JUL 28 PM 12: 34
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

The Defendant The Ryland Group, Inc. (hereinafter "Ryland"), by and through its below-signed attorneys, hereby answers the Complaint of the Plaintiffs and alleges as follows:

1. Ryland is without information sufficient to form a belief as to the allegations of Paragraphs 1.

2. Ryland admits the allegations of Paragraph 2.

3. The allegations of Paragraphs 3 and 4 state legal conclusions which require no response from Ryland. To the extent a response is required, Ryland denies the allegations of Paragraphs 3 and 4.

AS TO THE FACTUAL ALLEGATIONS

4. Ryland admits the allegations of Paragraph 5.

5. Answering the allegations of Paragraph 6, Ryland craves reference to its written agreements and warranties for their exact terms and contents and denies each and every allegation inconsistent therewith.

PPAB 2862773v1

6. Ryland is without information sufficient to form a belief as to the allegations of Paragraph 7 and therefore denies the same and requires strict proof thereof.

7. Ryland denies the allegations of Paragraphs 8 through 12.

AS TO THE FIRST CAUSE OF ACTION

8. Answering the allegations of Paragraph 13, Ryland realleges its responses to the above paragraphs as if repeated herein verbatim.

9. Ryland denies the allegations of Paragraphs 14 through 17.

AS TO THE SECOND CAUSE OF ACTION

10. Answering the allegations of Paragraph 18, Ryland realleges its responses to the above paragraphs as if repeated herein verbatim.

11. Ryland denies the allegations of Paragraph 19.

12. Answering the allegations of Paragraph 20, Ryland craves reference to its written agreements and warranties for their exact terms and contents and denies each and every allegation inconsistent therewith.

13. Ryland denies the allegations of Paragraphs 21 and 22.

AS TO THE THIRD CAUSE OF ACTION

14. Answering the allegations of Paragraph 23, Ryland realleges its responses to the above paragraphs as if repeated herein verbatim.

15. Ryland denies the allegations of Paragraphs 24 through 26.

AS FOR THE FOURTH CAUSE OF ACTION

16. Answering the allegations of Paragraph 27, Ryland realleges its responses to the above paragraphs as if repeated herein verbatim.

17. Ryland denies the allegations of Paragraphs 28 through 30.

AS TO THE FIFTH CAUSE OF ACTION

18. Answering the allegations of Paragraph 31, Ryland realleges its responses to the above paragraphs as if repeated herein verbatim.

19. Ryland denies the allegations of Paragraphs 32 through 37.

20. Ryland denies each and every allegation of the Plaintiff's Complaint not specifically admitted above.

21. Ryland denies the allegations of the "Wherefore" clause and the relief and remedies sought therein.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

22. The Plaintiffs lack standing to make the claims asserted against Ryland in this action.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

23. That all claims asserted against Ryland are barred by the applicable statute of limitations and/or the applicable statute of repose.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

24. The Plaintiffs' claims, if any, are barred, or should be reduced, by the Plaintiffs' own comparative negligence and recklessness by the Plaintiffs' failure to properly maintain the property and to mitigate their damages.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

25. The Plaintiffs' claims, if any, are the result of acts and omissions of other entities over whom Ryland has no control, barring the Plaintiffs' claims against Ryland.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

26. That all claims are barred by the doctrine of Laches, Waiver and Estoppel.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

27. That the final completion and acceptance of the work undertaken by Ryland pursuant to the original contract and all modifications thereto constitutes a complete defense to all claims asserted by the Plaintiffs.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

28. The Plaintiffs' claims are, upon information and belief, barred as it has failed to make a claim against Ryland within any applicable warranty period.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

29. That all claims asserted by the Plaintiffs are barred by the doctrine of unclean hands.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

30. That Plaintiffs failed to give Ryland reasonable notice of the existence of any alleged defects due to faulty workmanship and/or materials and failed to provide Ryland a reasonable opportunity to correct any such alleged defects.

31. That the Plaintiffs' failure to give Ryland notice of and an opportunity to correct any alleged defects due to faulty workmanship and/or materials constitutes a complete defense to all claims of breach of warranty.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

32. Upon information and belief, any express or implied warranties were limited in duration from the date of completion and acceptance of the project.

33. That the failure of the Plaintiffs within the warranty period from the date of the completion and acceptance of the project by the Plaintiffs, to give notice of or make any claim for alleged deficiencies in the workmanship and/or materials provided by Ryland constitutes a complete defense to all claims asserted by Plaintiffs.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

34. The Plaintiffs' Complaint is barred by payment and/or release.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

35. The Plaintiffs have waived and/or are estopped from asserting the claims set forth in the Complaint.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

36. If the Plaintiffs sustained injuries and damages in the manner alleged in the Complaint, which injuries and damages are specifically denied by Ryland, then the alleged injuries and damages were sustained not as the result of any fault, neglect, breach of warranty (express or implied) or want of due care on the part of Ryland nor of anyone for whose conduct Ryland is anyway responsible, but solely through the fault, neglect, breach of warranty (express or implied) and want of due care on the part of the Plaintiffs, all of which will be shown at the trial of this case, and for which the Plaintiffs can have no recovery against Ryland or, in the alternative, for which the Plaintiffs' recovery should be appropriately reduced. The Plaintiffs' comparative negligence

includes, but is not limited to, failing to exercise reasonable care in maintaining the structure.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

37. The Plaintiffs' claims are barred as the court lacks jurisdiction over the subject matter of the case.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

38. The Plaintiffs' claims fail to state facts sufficient to constitute causes of action against Ryland.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

39. Ryland has contractually limited its warranty and non-warranty obligations and exposure to the Plaintiffs, excluding liability for many claims the Plaintiffs are making, barring the Plaintiffs' claims and/or the Plaintiffs' claimed damages, including the Plaintiffs' claim for consequential damages, in whole or in part, against Ryland.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

40. The Plaintiffs' claims are barred, or should be stayed, pending arbitration as there exists a valid arbitration provision in the contract between the Plaintiffs and Ryland.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

41. Venue in this action is improper.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

42. The Plaintiffs' claims are barred or would be reduced as Ryland provided a limited warranty to the Plaintiffs which was in lieu of all other warranties or obligations, express or implied, including the warranty of habitability, warranty of suitability for residential purposes, any warranties of marketability or fitness for particular purposes. The Plaintiffs' claims and remedies are limited to claims and remedies under the limited warranty that was provided and any other claims are barred.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

43. The Plaintiffs' claims are barred or should be dismissed by virtue of the doctrine of spoliation of evidence, to the extent the Plaintiffs spoiled evidence and repaired alleged deficiencies without notice to Ryland and without giving Ryland an opportunity to observe the alleged deficiencies.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

44. The Plaintiffs' claims are barred and/or should be stayed or dismissed by virtue of the Plaintiffs' failure to comply with the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, South Carolina Code § 40-59-810, et. seq. (1976 as amended).

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

45. The Plaintiffs' claims are barred by the economic loss rule.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

46. The Plaintiffs' claims are barred as the Plaintiffs have failed to plead facts or allege all nine elements of fraud.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

47. The Plaintiffs' claims under the South Carolina Unfair Trade Practices Act should be dismissed as the alleged actions of Ryland did not have an impact on the public interest.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

48. Ryland hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus reserves the right to amend its Answer to assert any such defenses.

WHEREFORE, having fully answered the Plaintiffs' Complaint, Ryland prays that the Plaintiffs' claims be dismissed with costs and for such other and further relief as this Court may deem just and proper.

PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

By: Olesya Vaskevich
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Olesya V. Vaskevich
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olesyavaskevich@parkerpoe.com

Attorneys for Defendant The Ryland Group, Inc.

July 27, 2015

CERTIFICATE OF SERVICE

This is to certify that a copy of Defendant's Answer to the Plaintiffs' Complaint has been served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 27th day of July, 2015.

James Taylor Anderson, III, Esq.
Kernodle Root + Coleman
PO Box 13897
Charleston, SC 29422
tanderson@kernodlelaw.com

Lauren Heuss, Legal Professional Assistant
PARKER POE ADAMS & BERNSTEIN LLC
200 Meeting Street, Suite 301
Charleston, SC 29401-2240

FILED
2015 JUL 28 PM 12: 34
MARY E. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	CASE NO.: 2015-CP-08-01213
Christopher Duvall and Natalie Duvall,	)	
Plaintiffs,	)	**MOTION TO AMEND THE RYLAND GROUP, INC.'S ANSWER TO PLAINTIFFS' COMPLAINT**
vs.	)	
The Ryland Group, Inc.	)	
Defendant.	)	

FILED
15 NOV 12 PM 1:27
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Pursuant to Rules 14 and 15(a) of the South Carolina Rules of Civil Procedure, the Defendant The Ryland Group, Inc. (hereinafter "Ryland"), by and through their undersigned counsel, moves for leave to amend its Answer to Plaintiffs' Complaint and for leave, as Third-Party Plaintiff, to cause to be served a third-party summons and third-party complaint upon Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc. A copy of Ryland's Amended Answer to Plaintiffs' Complaint and Third-Party Complaint is attached to this Motion as Exhibit A.

1. Rule 15(a) provides that leave to amend "shall be freely given when justice so requires." *Parker v. Spartanburg Sanitary Sewer District*, 362 S.C. 276, 286, 607 S.E.2d 711, 716 (Ct. App. 2005). Any party opposing the amendment bears the burden of establishing that it would be prejudiced by that amendment. *Id.* Recognizing the important policy behind amendments, our appellate courts have held that Rule 15(a) "strongly favors amendments and the court is encouraged to freely grant leave to amend." *Id.*, 607 S.E.2d at 717.

PPAB 2984812v1

2. Ryland filed a timely Answer to Plaintiffs' Complaint on July 28, 2015. This is Ryland's first request to amend its Answer to Plaintiffs' Complaint.

3. Amendment is necessary to afford complete relief in this matter. Specifically, Ryland seeks to amend to add the third-party defendants Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc., the subcontractors and materialmen who performed work and provided materials for the subject residence, whose identities Ryland just recently managed to ascertain after all applicable due diligence.

4. There is no prejudice to Plaintiffs as a result of this amendment. It is well established that a party does not suffer prejudice when the pleadings are amended during active discovery. *See City of Charleston v. Hotels.com, LP*, 487 F. Supp. 2d 676, 681 (D.S.C. 2007). Because this litigation is in an early stage such that the parties have not yet engaged in discovery and no depositions have yet been scheduled, no prejudice will result from the amendment.

5. The amendment is made in good faith, without undue delay, and without any intention of delaying or otherwise obstructing these proceedings in any way.

6. This Motion is based upon the pleadings herein, the applicable law, and such other materials as may be served before or at the hearing of the Motion.

WHEREFORE, Ryland respectfully requests that this Court grant its Motion to Amend its Answer to Plaintiffs' Complaint in accordance with Rules 14 and 15(a) of the South Carolina Rules of Civil Procedure.

PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

By: Olesya Vaskevich
Thomas C. Hildebrand, Jr.
843.727.2653 (direct dial)
tomhildebrand@parkerpoe.com

Olesya V. Vaskevich
843.727.2692 (direct dial)
olesyavaskevich@parkerpoe.com

Attorneys for Defendant The Ryland Group, Inc.

November 10, 2015

CERTIFICATE OF SERVICE

This is to certify that a copy of Motion to Amend the Ryland Group, Inc.'s Answer to Plaintiffs' Complaint has been served upon the following counsel of record by electronic mail and by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 10th day of November, 2015.

James Taylor Anderson, III, Esq.
Kernodle Root + Coleman
PO Box 13897
Charleston, SC 29422
tanderson@kernodlelaw.com

Lauren Heuss, Legal Professional Assistant
PARKER POE ADAMS & BERNSTEIN, LLC
200 Meeting Street, Suite 301
Charleston, SC 29401-2240

FILED
NOV 12 PM 4:27
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Exhibit “A”

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	CASE NO.: 2015-CP-08-01213
Christopher Duvall and Natalie Duvall,	)	
Plaintiffs,	)	
vs.	)	
The Ryland Group, Inc.	)	
Defendant.	)	
The Ryland Group, Inc.,	)	**THIRD-PARTY SUMMONS**
Third-Party Plaintiff,	)	
vs.	)	
Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc.,	)	
Third-Party Defendants.	)	

TO: THIRD-PARTY DEFENDANTS LAND SITE SERVICES, INC., CAROLINA CONSULTING ENGINEERS, INC., HIGDON CONCRETE, LLC, A.C. CONSTRUCTION, INC., AND STARK TRUSS COMPANY, INC. A/K/A STARK TRUSS COMPANY OF SUMMERVILLE, LTD. A/K/A STARK TRUSS, INC. D/B/A CAROLINA TRUSS SYSTEMS, INC.

YOU ARE HEREBY SUMMONED AND REQUIRED to answer The Ryland Group, Inc.'s Third-Party Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto on the below-signed at their office located at 200 Meeting Street, Suite 301, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to

PPAB 2984971v1

answer the Third-Party Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Third-Party Complaint.

PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

By: Olesya Vaskevich
Thomas C. Hildebrand, Jr.
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Olesya V. Vaskevich
843.727.2692 (direct dial)
olesyavaskevich@parkerpoe.com

Attorneys for Defendant The Ryland Group, Inc.

November 10, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	CASE NO.: 2015-CP-08-01213
Christopher Duvall and Natalie Duvall,	)	
Plaintiffs,	)	
vs.	)	
The Ryland Group, Inc.	)	
Defendant.	)	
The Ryland Group, Inc.,	)	**THE RYLAND GROUP, INC.'S AMENDED ANSWER TO PLAINTIFFS' COMPLAINT AND THIRD-PARTY COMPLAINT**
Third-Party Plaintiff,	)	
vs.	)	
Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc.,	)	
Third-Party Defendants.	)	

The Defendant The Ryland Group, Inc. (hereinafter "Ryland"), by and through its below-signed attorneys, hereby amends its answer to the Complaint of the Plaintiffs above-named, and by way of Third-Party Claims, alleges as follows:

1. Ryland is without information sufficient to form a belief as to the allegations of Paragraphs 1.

2. Ryland admits the allegations of Paragraph 2.

PPAB 2984994v1

3. The allegations of Paragraphs 3 and 4 state legal conclusions which require no response from Ryland. To the extent a response is required, Ryland denies the allegations of Paragraphs 3 and 4.

AS TO THE FACTUAL ALLEGATIONS

4. Ryland admits the allegations of Paragraph 5.

5. Answering the allegations of Paragraph 6, Ryland craves reference to its written agreements and warranties for their exact terms and contents and denies each and every allegation inconsistent therewith.

6. Ryland is without information sufficient to form a belief as to the allegations of Paragraph 7 and therefore denies the same and requires strict proof thereof.

7. Ryland denies the allegations of Paragraphs 8 through 12.

AS TO THE FIRST CAUSE OF ACTION

8. Answering the allegations of Paragraph 13, Ryland realleges its responses to the above paragraphs as if repeated herein verbatim.

9. Ryland denies the allegations of Paragraphs 14 through 17.

AS TO THE SECOND CAUSE OF ACTION

10. Answering the allegations of Paragraph 18, Ryland realleges its responses to the above paragraphs as if repeated herein verbatim.

11. Ryland denies the allegations of Paragraph 19.

12. Answering the allegations of Paragraph 20, Ryland craves reference to its written agreements and warranties for their exact terms and contents and denies each and every allegation inconsistent therewith.

13. Ryland denies the allegations of Paragraphs 21 and 22.

AS TO THE THIRD CAUSE OF ACTION

14. Answering the allegations of Paragraph 23, Ryland realleges its responses to the above paragraphs as if repeated herein verbatim.

15. Ryland denies the allegations of Paragraphs 24 through 26.

AS FOR THE FOURTH CAUSE OF ACTION

16. Answering the allegations of Paragraph 27, Ryland realleges its responses to the above paragraphs as if repeated herein verbatim.

17. Ryland denies the allegations of Paragraphs 28 through 30.

AS TO THE FIFTH CAUSE OF ACTION

18. Answering the allegations of Paragraph 31, Ryland realleges its responses to the above paragraphs as if repeated herein verbatim.

19. Ryland denies the allegations of Paragraphs 32 through 37.

20. Ryland denies each and every allegation of the Plaintiff's Complaint not specifically admitted above.

21. Ryland denies the allegations of the "Wherefore" clause and the relief and remedies sought therein.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

22. The Plaintiffs lack standing to make the claims asserted against Ryland in this action.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

23. That all claims asserted against Ryland are barred by the applicable statute of limitations and/or the applicable statute of repose.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

24. The Plaintiffs' claims, if any, are barred, or should be reduced, by the Plaintiffs' own comparative negligence and recklessness by the Plaintiffs' failure to properly maintain the property and to mitigate their damages.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

25. The Plaintiffs' claims, if any, are the result of acts and omissions of other entities over whom Ryland has no control, barring the Plaintiffs' claims against Ryland.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

26. That all claims are barred by the doctrine of Laches, Waiver and Estoppel.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

27. That the final completion and acceptance of the work undertaken by Ryland pursuant to the original contract and all modifications thereto constitutes a complete defense to all claims asserted by the Plaintiffs.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

28. The Plaintiffs' claims are, upon information and belief, barred as it has failed to make a claim against Ryland within any applicable warranty period.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

29. That all claims asserted by the Plaintiffs are barred by the doctrine of unclean hands.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

30. That Plaintiffs failed to give Ryland reasonable notice of the existence of any alleged defects due to faulty workmanship and/or materials and failed to provide Ryland a reasonable opportunity to correct any such alleged defects.

31. That the Plaintiffs' failure to give Ryland notice of and an opportunity to correct any alleged defects due to faulty workmanship and/or materials constitutes a complete defense to all claims of breach of warranty.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

32. Upon information and belief, any express or implied warranties were limited in duration from the date of completion and acceptance of the project.

33. That the failure of the Plaintiffs within the warranty period from the date of the completion and acceptance of the project by the Plaintiffs, to give notice of or make any claim for alleged deficiencies in the workmanship and/or materials provided by Ryland constitutes a complete defense to all claims asserted by Plaintiffs.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

34. The Plaintiffs' Complaint is barred by payment and/or release.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

35. The Plaintiffs have waived and/or are estopped from asserting the claims set forth in the Complaint.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

36. If the Plaintiffs sustained injuries and damages in the manner alleged in the Complaint, which injuries and damages are specifically denied by Ryland, then the alleged injuries and damages were sustained not as the result of any fault, neglect, breach of warranty (express or implied) or want of due care on the part of Ryland nor of anyone for whose conduct Ryland is anyway responsible, but solely through the fault, neglect, breach of warranty (express or implied) and want of due care on the part of the Plaintiffs, all of which will be shown at the trial of this case, and for which the Plaintiffs can have no recovery against Ryland or, in the alternative, for which the Plaintiffs' recovery should be appropriately reduced. The Plaintiffs' comparative negligence includes, but is not limited to, failing to exercise reasonable care in maintaining the structure.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

37. The Plaintiffs' claims are barred as the court lacks jurisdiction over the subject matter of the case.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

38. The Plaintiffs' claims fail to state facts sufficient to constitute causes of action against Ryland.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

39. Ryland has contractually limited its warranty and non-warranty obligations and exposure to the Plaintiffs, excluding liability for many claims the Plaintiffs are

making, barring the Plaintiffs' claims and/or the Plaintiffs' claimed damages, including the Plaintiffs' claim for consequential damages, in whole or in part, against Ryland.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

40. The Plaintiffs' claims are barred, or should be stayed, pending arbitration as there exists a valid arbitration provision in the contract between the Plaintiffs and Ryland.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

41. Venue in this action is improper.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

42. The Plaintiffs' claims are barred or would be reduced as Ryland provided a limited warranty to the Plaintiffs which was in lieu of all other warranties or obligations, express or implied, including the warranty of habitability, warranty of suitability for residential purposes, any warranties of marketability or fitness for particular purposes. The Plaintiffs' claims and remedies are limited to claims and remedies under the limited warranty that was provided and any other claims are barred.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

43. The Plaintiffs' claims are barred or should be dismissed by virtue of the doctrine of spoliation of evidence, to the extent the Plaintiffs spoiled evidence and repaired alleged deficiencies without notice to Ryland and without giving Ryland an opportunity to observe the alleged deficiencies.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

44. The Plaintiffs' claims are barred and/or should be stayed or dismissed by virtue of the Plaintiffs' failure to comply with the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, South Carolina Code § 40-59-810, et. seq. (1976 as amended).

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

45. The Plaintiffs' claims are barred by the economic loss rule.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

46. The Plaintiffs' claims are barred as the Plaintiffs have failed to plead facts or allege all nine elements of fraud.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

47. The Plaintiffs' claims under the South Carolina Unfair Trade Practices Act should be dismissed as the alleged actions of Ryland did not have an impact on the public interest.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

48. Ryland hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus reserves the right to amend its Amended Answer to assert any such defenses.

FURTHER ANSWERING AND BY WAY OF THIRD-PARTY CLAIMS AGAINST THE ABOVE-NAMED THIRD-PARTY DEFENDANTS, RYLAND ALLEGES AS FOLLOWS:

49. Ryland realleges the Paragraphs above as if repeated herein verbatim.

50. Plaintiffs have sued Ryland claiming damages caused by alleged deficient design, engineering and construction services provided by Third-Party Defendants on the subject residence.

51. Ryland contracted with the following entities (herein collectively referred to as "Third-Party Defendants") to perform work and provide materials as subcontractors and materialmen for the subject residence. Those entities are as follows:

(a) clearing and grubbing

- Land Site Services, Inc.

(b) pad preparation

- Land Site Services, Inc.

(c) soils testing

- Carolina Consulting Engineers, Inc.

(d) concrete pad and footings provider

- Higdon Concrete, LLC

(e) concrete supplier

- Higdon Concrete, LLC

(f) framing

- A.C. Construction, Inc.

(g) framing and truss designer

- Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc.[1]

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[1] Upon information and belief, Stark Truss Company, Inc., Stark Truss Company of Summerville, Ltd., Stark Truss, Inc., and Carolina Truss Systems, Inc. are successors in interest, are subsidiaries, are instrumentalities and/or alter egos, are amalgamated, and/or fail to respect the corporate form such that the actions, obligations, and liabilities

FURTHER ANSWERING AND AS A FIRST THIRD-PARTY CLAIM AGAINST THIRD-PARTY DEFENDANTS, RYLAND ALLEGES AS FOLLOWS:
(Indemnity)

52. Ryland realleges the Paragraphs above as if repeated herein verbatim.

53. Plaintiffs have sued Ryland claiming damages caused by alleged deficient construction services provided by Third-Party Defendants on the subject residence.

54. Ryland has denied all of the substantive allegations against it that were made by Plaintiffs.

55. A special relationship existed between Ryland and Third-Party Defendants.

56. To the extent, if any, that Ryland is held liable to Plaintiffs in this action, such liability would be because the wrongful acts, omissions, negligence, gross negligence, recklessness, breaches and/or representations of Third-Party Defendants were imputed to Ryland.

57. A right of indemnity exists in favor of Ryland as the relation between Ryland and Third-Party Defendants is such that in law or equity there is an obligation for Third-Party Defendants to indemnify Ryland, as Ryland is required to defend itself in this action and exposed to liability due to the wrongful acts, omissions, negligence, gross negligence, recklessness, breaches and/or representations of Third-Party Defendants.

58. To the extent, if any, that Ryland is held liable to Plaintiffs in this action, such liability would be a direct and proximate result of the wrongful acts, omissions,

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of one apply to the other. Among other things, upon information and belief, the entities share or shared offices, shareholders, officers, directors, employees, equipment, suppliers, dealers, and/or customers, the entities perform or performed substantially the same work, and the delineation between the entities is blurred.

negligence, gross negligence, recklessness, breaches and/or representations of Third-Party Defendants, which has damaged Ryland as Ryland has been subjected to liability, and has incurred consequential damages in having to expend attorney's fees and costs in defending this action.

59. To the extent, if any, that the construction was defective or deficient in workmanship, installation, materials, and/or were not merchantable or fit for their particular purposes, such defects and deficiencies would be the result of the breach of the express and implied contractual obligations and warranties that Third-Party Defendants provided, damaging Ryland as Ryland has been subjected to liability, and has incurred consequential damages in having to expend attorney's fees and costs in defending this action.

60. Ryland is entitled to full indemnification from Third-Party Defendants for any liability Ryland is found to have to Plaintiffs in this action, and Ryland would be entitled to damages for Third-Party Defendants' negligence, gross negligence, and recklessness as aforedescribed and for Third-Party Defendants' breach of its implied and express warranties, entitling Ryland to recover from Third-Party Defendants its attorney's fees, costs and other expenses incurred in investigating and defending this action, and entitling Ryland to recover from Third-Party Defendants any sums for which it may be held liable to Plaintiffs, or which it pays Plaintiffs in settlement of Plaintiffs' claims.

61. The subject residence has allegedly sustained actual property damage caused by continuous exposure to the improper and negligent construction and faulty work of Third-Party Defendants resulting in property damage which is not the work

product of each of these Third-Party Defendants. In addition, the alleged faulty construction, breaches, errors, omissions and wrongful acts of Third-Party Defendants were, and have resulted in, occurrences that were unintended, unforeseen, gratuitous and/or injurious events that caused property damage.

AS A SECOND THIRD-PARTY CLAIM AGAINST THIRD-PARTY DEFENDANTS:
(Negligence)

62. Ryland realleges the Paragraphs above as if repeated herein verbatim.

63. Third-Party Defendants were negligent, grossly negligent, reckless and careless in the construction, supervision, inspection and/or supplying of the work or materials outlined above and incorporated into the subject residence.

64. As a direct and proximate result of such negligence, gross negligence, recklessness and carelessness, Ryland has been damaged in the amount of any monies it is adjudged to owe Plaintiffs, or which it pays Plaintiffs in settlement of Plaintiffs' claims, other indirect and direct damages, punitive damages, plus the cost of investigating and defending this claim.

65. Upon information and belief, Ryland is entitled to judgment for actual damages collectively or individually against Third-Party Defendants in the amount of any monies it is adjudged to owe Plaintiffs, or which it pays Plaintiffs in settlement of Plaintiffs' claims, other indirect and direct damages, punitive damages, as well as fees and costs incurred in the investigation, defense and settlement of this claim.

66. The subject residence has allegedly sustained actual property damage caused by continuous exposure to the improper and negligent, gross negligent, and/or reckless construction and faulty work of Third-Party Defendants resulting in property damage which is not the work product of each of these Third-Party Defendants. In

addition, the alleged faulty construction, breaches, errors, omissions and wrongful acts of Third-Party Defendants were, and have resulted in, occurrences that were unintended, unforeseen, gratuitous and/or injurious events that caused property damage.

67. Further, Ryland has been exposed to special damages recoverable at law in that its professional reputation has been harmed, and it has incurred and continues to incur costs reasonably necessary to defend its interests including fees and costs which are associated with its investigation of this matter which are the legal consequences of Third-Party Defendants' negligence and for which Third-Party Defendants are also liable to Ryland.

AS A THIRD THIRD-PARTY CLAIM AGAINST THIRD-PARTY DEFENDANTS:
(Breach of Warranty)

68. Ryland realleges the Paragraphs above as if repeated herein verbatim.

69. Third-Party Defendants expressly or impliedly warranted to Ryland that all work performed by them would be performed in a careful, diligent and workmanlike manner, and that any materials and/or services designed, supplied or sold by them for use on the subject residence would be merchantable and fit for their intended or specific purpose. Third-Party Defendants breached their implied and/or express warranties of merchantability, workmanlike service, and/or fitness for a particular or intended purpose in the construction of the subject residence.

70. As a result of these breaches of warranties, Ryland has incurred damage in the amount of any money it is adjudged to owe Plaintiffs, or which it pays Plaintiffs in settlement of Plaintiffs' claims, plus consequential damages and the cost of investigating and defending this claim.

71. Upon information and belief, Ryland is entitled to judgment against Third-Party Defendants in the amount of any monies it is adjudged to owe Plaintiffs, or which it pays Plaintiffs in settlement of Plaintiffs' claims, as well as consequential damages, and costs and fees incurred in the investigation, defense and settlement of this claim.

72. The subject residence has allegedly sustained actual property damage caused by continuous exposure to the improper and negligent construction and faulty work of Third-Party Defendants resulting in property damage which is not the work product of each of these Third-Party Defendants. In addition, the alleged faulty construction, breaches, errors, omissions and wrongful acts of Third-Party Defendants were, and have resulted in, occurrences that were unintended, unforeseen, gratuitous and/or injurious events that caused property damage.

73. Further, Ryland has been exposed to special damages recoverable at law in that its professional reputation has been harmed, and it has incurred and continues to incur costs reasonably necessary to defend its interests including fees and costs which are associated with its investigation of this matter which are the legal consequences of Third-Party Defendants' breach of warranty and for which Third-Party Defendants are also liable to Ryland.

AS A FOURTH THIRD-PARTY CLAIM AGAINST THIRD-PARTY DEFENDANTS
(Breach of Contract)

74. Ryland realleges the Paragraphs above as if repeated herein verbatim.

75. Ryland entered into a contract(s) with Third-Party Defendants. Third-Party Defendants were to provide work and materials to the subject residence as described above.

76. The terms of the contract(s) required Third-Party Defendants to provide construction goods and services for the subject residence that, among other things, would produce a quality building free from defects and otherwise in conformance of all contract documents, including all building codes and industry standards. The contract(s) further required Third-Party Defendants to supervise and direct their work, using the best skill and attention.

77. Third-Party Defendants breached their contract(s) by failing to provide appropriate construction goods and services to the subject residence, by failing to perform their work in a careful, diligent and workmanlike manner, by failing to provide goods and services that resulted in a quality building free from defects and otherwise in conformance with all contract documents, and failing to provide goods and services that were in conformity with all appropriate building codes and industry standards.

78. As a result of these breaches of contract(s), Ryland has incurred damage in the amount of any money it is adjudged to owe Plaintiffs, or which it paid Plaintiffs in settlement of Plaintiffs' claims, plus its actual costs, consequential costs, and the costs of investigating and defending this claim.

79. Upon information and belief, Ryland is entitled to judgment against Third-Party Defendants in the amount of any monies it is adjudged to owe Plaintiffs, or which it paid Plaintiffs in settlement of Plaintiffs' claims, as well as its actual costs, consequential costs, and the costs and fees incurred in the investigation, defense and settlement of this claim.

80. The subject residence has allegedly sustained actual property damage caused by continuous exposure to the improper and negligent construction and faulty

work of Third-Party Defendants resulting in property damage which is not the work product of each of these Third-Party Defendants. In addition, the alleged faulty construction, breaches, errors, omissions and wrongful acts of Third-Party Defendants were, and have resulted in, occurrences that were unintended, unforeseen, gratuitous and/or injurious events that caused property damage.

WHEREFORE, having amended and fully answered Plaintiffs' Complaint, Ryland prays that Plaintiffs' claims be dismissed with costs, and that Ryland be given judgment against Third-Party Defendants in the amount of any liability Ryland is found to have to Plaintiffs in this action, and Ryland demands judgment requiring Third-Party Defendants to defend and indemnify Ryland against any liability which Ryland may suffer to Plaintiffs in this action, to include Ryland's attorneys' fees, costs, and other expenses incurred in defending this action. Ryland further demands judgment for actual and punitive damages against Third-Party Defendants and to reimburse it fully for all costs, expenses, and attorneys' fees associated with the deficiencies described herein, in an amount to be determined by the trier of fact, and for such other and further relief as this Court may deem just and proper.

PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

By: Olesya Vaskevich
Thomas C. Hildebrand, Jr.
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843.727.2692 (direct dial)
olesyavaskevich@parkerpoe.com

Attorneys for Defendant The Ryland Group, Inc.

November 10, 2015

STATE OF SOUTH CAROLINA

COUNTY OF Berkeley

IN THE COURT OF COMMON PLEAS

Christopher Duvall and Natalie Duvall
☐ Plaintiff

v.

The Ryland Group, Inc.
☒ Defendant.

CASE NO.

2015-CP-08-1213

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney: James Taylor Anderson, III Bar No. 77217 Address: PO Box 13897 Charleston, SC 29422-3897 phone: 843.795.7800 fax: email: tanderson@kernodlelaw.com other:	Defendant's Attorney: Olesya V. Vaskevich Bar No. 101409 Address: 200 Meeting Street, Ste 301 Charleston, SC 29401 phone: 843.727.2692 fax: email: olesyavaskevich@parkerpoe.com. other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS 1 and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Amend Answer to Plaintiffs' Complaint

Estimated Time Needed: Court Reporter Needed: ☐ YES ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Olesya Vaskevich — Signature of Attorney for ☐ Plaintiff / ☒ Defendant

11/10/2015 — Date Submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00

☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter:
- ☐ Other:

FILED
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.
2015 NOV 12 PM 4:27

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: Date Filed:

☐ MOTION FEE COLLECTED:
☐ CONTESTED – AMOUNT DUE:

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	CASE NO.: 2015-CP-08-01213
Christopher Duvall and Natalie Duvall,	)	
Plaintiffs,	)	
vs.	)	
The Ryland Group, Inc.	)	
Defendant.	)	
The Ryland Group, Inc.,	)	**THIRD-PARTY SUMMONS**
Third-Party Plaintiff,	)	
vs:	)	
Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc.,	)	
Third-Party Defendants.	)	

2015 DEC 10 PM 2:41
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

TO: THIRD-PARTY DEFENDANTS LAND SITE SERVICES, INC., CAROLINA CONSULTING ENGINEERS, INC., HIGDON CONCRETE, LLC, A.C. CONSTRUCTION, INC., AND STARK TRUSS COMPANY, INC. A/K/A STARK TRUSS COMPANY OF SUMMERVILLE, LTD. A/K/A STARK TRUSS, INC. D/B/A CAROLINA TRUSS SYSTEMS, INC.

YOU ARE HEREBY SUMMONED AND REQUIRED to answer The Ryland Group, Inc.'s Third-Party Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto on the below-signed at their office located at 200 Meeting Street, Suite 301, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to

answer the Third-Party Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Third-Party Complaint.

PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

By: Olesya Vaskevich
Thomas C. Hildebrand, Jr.
843.727.2653 (direct dial)
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Olesya V. Vaskevich
843.727.2692 (direct dial)
olesyavaskevich@parkerpoe.com

Attorneys for Defendant The Ryland Group, Inc.

November 10, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	CASE NO.: 2015-CP-08-01213
Christopher Duvall and Natalie Duvall,	)	
Plaintiffs,	)	
vs.	)	
The Ryland Group, Inc.	)	
Defendant.	)	
The Ryland Group, Inc.,	)	**THE RYLAND GROUP, INC.'S AMENDED ANSWER TO PLAINTIFFS' COMPLAINT AND THIRD-PARTY COMPLAINT**
Third-Party Plaintiff,	)	
vs.	)	
Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc.,	)	
Third-Party Defendants.	)	

2015 DEC 10 PM 2:41
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

The Defendant The Ryland Group, Inc. (hereinafter "Ryland"), by and through its below-signed attorneys, hereby amends its answer to the Complaint of the Plaintiffs above-named, and by way of Third-Party Claims, alleges as follows:

1. Ryland is without information sufficient to form a belief as to the allegations of Paragraphs 1.

2. Ryland admits the allegations of Paragraph 2.

PPAB 2984994v1

3. The allegations of Paragraphs 3 and 4 state legal conclusions which require no response from Ryland. To the extent a response is required, Ryland denies the allegations of Paragraphs 3 and 4.

AS TO THE FACTUAL ALLEGATIONS

4. Ryland admits the allegations of Paragraph 5.

5. Answering the allegations of Paragraph 6, Ryland craves reference to its written agreements and warranties for their exact terms and contents and denies each and every allegation inconsistent therewith.

6. Ryland is without information sufficient to form a belief as to the allegations of Paragraph 7 and therefore denies the same and requires strict proof thereof.

7. Ryland denies the allegations of Paragraphs 8 through 12.

AS TO THE FIRST CAUSE OF ACTION

8. Answering the allegations of Paragraph 13, Ryland realleges its responses to the above paragraphs as if repeated herein verbatim.

9. Ryland denies the allegations of Paragraphs 14 through 17.

AS TO THE SECOND CAUSE OF ACTION

10. Answering the allegations of Paragraph 18, Ryland realleges its responses to the above paragraphs as if repeated herein verbatim.

11. Ryland denies the allegations of Paragraph 19.

12. Answering the allegations of Paragraph 20, Ryland craves reference to its written agreements and warranties for their exact terms and contents and denies each and every allegation inconsistent therewith.

13. Ryland denies the allegations of Paragraphs 21 and 22.

AS TO THE THIRD CAUSE OF ACTION

14. Answering the allegations of Paragraph 23, Ryland realleges its responses to the above paragraphs as if repeated herein verbatim.

15. Ryland denies the allegations of Paragraphs 24 through 26.

AS FOR THE FOURTH CAUSE OF ACTION

16. Answering the allegations of Paragraph 27, Ryland realleges its responses to the above paragraphs as if repeated herein verbatim.

17. Ryland denies the allegations of Paragraphs 28 through 30.

AS TO THE FIFTH CAUSE OF ACTION

18. Answering the allegations of Paragraph 31, Ryland realleges its responses to the above paragraphs as if repeated herein verbatim.

19. Ryland denies the allegations of Paragraphs 32 through 37.

20. Ryland denies each and every allegation of the Plaintiff's Complaint not specifically admitted above.

21. Ryland denies the allegations of the "Wherefore" clause and the relief and remedies sought therein.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

22. The Plaintiffs lack standing to make the claims asserted against Ryland in this action.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

23. That all claims asserted against Ryland are barred by the applicable statute of limitations and/or the applicable statute of repose.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

24. The Plaintiffs' claims, if any, are barred, or should be reduced, by the Plaintiffs' own comparative negligence and recklessness by the Plaintiffs' failure to properly maintain the property and to mitigate their damages.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

25. The Plaintiffs' claims, if any, are the result of acts and omissions of other entities over whom Ryland has no control, barring the Plaintiffs' claims against Ryland.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

26. That all claims are barred by the doctrine of Laches, Waiver and Estoppel.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

27. That the final completion and acceptance of the work undertaken by Ryland pursuant to the original contract and all modifications thereto constitutes a complete defense to all claims asserted by the Plaintiffs.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

28. The Plaintiffs' claims are, upon information and belief, barred as it has failed to make a claim against Ryland within any applicable warranty period.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

29. That all claims asserted by the Plaintiffs are barred by the doctrine of unclean hands.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

30. That Plaintiffs failed to give Ryland reasonable notice of the existence of any alleged defects due to faulty workmanship and/or materials and failed to provide Ryland a reasonable opportunity to correct any such alleged defects.

31. That the Plaintiffs' failure to give Ryland notice of and an opportunity to correct any alleged defects due to faulty workmanship and/or materials constitutes a complete defense to all claims of breach of warranty.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

32. Upon information and belief, any express or implied warranties were limited in duration from the date of completion and acceptance of the project.

33. That the failure of the Plaintiffs within the warranty period from the date of the completion and acceptance of the project by the Plaintiffs, to give notice of or make any claim for alleged deficiencies in the workmanship and/or materials provided by Ryland constitutes a complete defense to all claims asserted by Plaintiffs.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

34. The Plaintiffs' Complaint is barred by payment and/or release.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

35. The Plaintiffs have waived and/or are estopped from asserting the claims set forth in the Complaint.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

36. If the Plaintiffs sustained injuries and damages in the manner alleged in the Complaint, which injuries and damages are specifically denied by Ryland, then the alleged injuries and damages were sustained not as the result of any fault, neglect, breach of warranty (express or implied) or want of due care on the part of Ryland nor of anyone for whose conduct Ryland is anyway responsible, but solely through the fault, neglect, breach of warranty (express or implied) and want of due care on the part of the Plaintiffs, all of which will be shown at the trial of this case, and for which the Plaintiffs can have no recovery against Ryland or, in the alternative, for which the Plaintiffs' recovery should be appropriately reduced. The Plaintiffs' comparative negligence includes, but is not limited to, failing to exercise reasonable care in maintaining the structure.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

37. The Plaintiffs' claims are barred as the court lacks jurisdiction over the subject matter of the case.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

38. The Plaintiffs' claims fail to state facts sufficient to constitute causes of action against Ryland.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

39. Ryland has contractually limited its warranty and non-warranty obligations and exposure to the Plaintiffs, excluding liability for many claims the Plaintiffs are

making, barring the Plaintiffs' claims and/or the Plaintiffs' claimed damages, including the Plaintiffs' claim for consequential damages, in whole or in part, against Ryland.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

40. The Plaintiffs' claims are barred, or should be stayed, pending arbitration as there exists a valid arbitration provision in the contract between the Plaintiffs and Ryland.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

41. Venue in this action is improper.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

42. The Plaintiffs' claims are barred or would be reduced as Ryland provided a limited warranty to the Plaintiffs which was in lieu of all other warranties or obligations, express or implied, including the warranty of habitability, warranty of suitability for residential purposes, any warranties of marketability or fitness for particular purposes. The Plaintiffs' claims and remedies are limited to claims and remedies under the limited warranty that was provided and any other claims are barred.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

43. The Plaintiffs' claims are barred or should be dismissed by virtue of the doctrine of spoliation of evidence, to the extent the Plaintiffs spoiled evidence and repaired alleged deficiencies without notice to Ryland and without giving Ryland an opportunity to observe the alleged deficiencies.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

44. The Plaintiffs' claims are barred and/or should be stayed or dismissed by virtue of the Plaintiffs' failure to comply with the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, South Carolina Code § 40-59-810, et. seq. (1976 as amended).

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

45. The Plaintiffs' claims are barred by the economic loss rule.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

46. The Plaintiffs' claims are barred as the Plaintiffs have failed to plead facts or allege all nine elements of fraud.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

47. The Plaintiffs' claims under the South Carolina Unfair Trade Practices Act should be dismissed as the alleged actions of Ryland did not have an impact on the public interest.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

48. Ryland hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus reserves the right to amend its Amended Answer to assert any such defenses.

FURTHER ANSWERING AND BY WAY OF THIRD-PARTY CLAIMS AGAINST THE ABOVE-NAMED THIRD-PARTY DEFENDANTS, RYLAND ALLEGES AS FOLLOWS:

49. Ryland realleges the Paragraphs above as if repeated herein verbatim.

50. Plaintiffs have sued Ryland claiming damages caused by alleged deficient design, engineering and construction services provided by Third-Party Defendants on the subject residence.

51. Ryland contracted with the following entities (herein collectively referred to as "Third-Party Defendants") to perform work and provide materials as subcontractors and materialmen for the subject residence. Those entities are as follows:

(a) clearing and grubbing

- Land Site Services, Inc.

(b) pad preparation

- Land Site Services, Inc.

(c) soils testing

- Carolina Consulting Engineers, Inc.

(d) concrete pad and footings provider

- Higdon Concrete, LLC

(e) concrete supplier

- Higdon Concrete, LLC

(f) framing

- A.C. Construction, Inc.

(g) framing and truss designer

- Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc.[1]

[1] Upon information and belief, Stark Truss Company, Inc., Stark Truss Company of Summerville, Ltd., Stark Truss, Inc., and Carolina Truss Systems, Inc. are successors in interest, are subsidiaries, are instrumentalities and/or alter egos, are amalgamated, and/or fail to respect the corporate form such that the actions, obligations, and liabilities

FURTHER ANSWERING AND AS A FIRST THIRD-PARTY CLAIM AGAINST THIRD-PARTY DEFENDANTS, RYLAND ALLEGES AS FOLLOWS:
(Indemnity)

52. Ryland realleges the Paragraphs above as if repeated herein verbatim.

53. Plaintiffs have sued Ryland claiming damages caused by alleged deficient construction services provided by Third-Party Defendants on the subject residence.

54. Ryland has denied all of the substantive allegations against it that were made by Plaintiffs.

55. A special relationship existed between Ryland and Third-Party Defendants.

56. To the extent, if any, that Ryland is held liable to Plaintiffs in this action, such liability would be because the wrongful acts, omissions, negligence, gross negligence, recklessness, breaches and/or representations of Third-Party Defendants were imputed to Ryland.

57. A right of indemnity exists in favor of Ryland as the relation between Ryland and Third-Party Defendants is such that in law or equity there is an obligation for Third-Party Defendants to indemnify Ryland, as Ryland is required to defend itself in this action and exposed to liability due to the wrongful acts, omissions, negligence, gross negligence, recklessness, breaches and/or representations of Third-Party Defendants.

58. To the extent, if any, that Ryland is held liable to Plaintiffs in this action, such liability would be a direct and proximate result of the wrongful acts, omissions,

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of one apply to the other. Among other things, upon information and belief, the entities share or shared offices, shareholders, officers, directors, employees, equipment, suppliers, dealers, and/or customers, the entities perform or performed substantially the same work, and the delineation between the entities is blurred.

negligence, gross negligence, recklessness, breaches and/or representations of Third-Party Defendants, which has damaged Ryland as Ryland has been subjected to liability, and has incurred consequential damages in having to expend attorney's fees and costs in defending this action.

59. To the extent, if any, that the construction was defective or deficient in workmanship, installation, materials, and/or were not merchantable or fit for their particular purposes, such defects and deficiencies would be the result of the breach of the express and implied contractual obligations and warranties that Third-Party Defendants provided, damaging Ryland as Ryland has been subjected to liability, and has incurred consequential damages in having to expend attorney's fees and costs in defending this action.

60. Ryland is entitled to full indemnification from Third-Party Defendants for any liability Ryland is found to have to Plaintiffs in this action, and Ryland would be entitled to damages for Third-Party Defendants' negligence, gross negligence, and recklessness as aforedescribed and for Third-Party Defendants' breach of its implied and express warranties, entitling Ryland to recover from Third-Party Defendants its attorney's fees, costs and other expenses incurred in investigating and defending this action, and entitling Ryland to recover from Third-Party Defendants any sums for which it may be held liable to Plaintiffs, or which it pays Plaintiffs in settlement of Plaintiffs' claims.

61. The subject residence has allegedly sustained actual property damage caused by continuous exposure to the improper and negligent construction and faulty work of Third-Party Defendants resulting in property damage which is not the work

product of each of these Third-Party Defendants. In addition, the alleged faulty construction, breaches, errors, omissions and wrongful acts of Third-Party Defendants were, and have resulted in, occurrences that were unintended, unforeseen, gratuitous and/or injurious events that caused property damage.

AS A SECOND THIRD-PARTY CLAIM AGAINST THIRD-PARTY DEFENDANTS:
(Negligence)

62. Ryland realleges the Paragraphs above as if repeated herein verbatim.

63. Third-Party Defendants were negligent, grossly negligent, reckless and careless in the construction, supervision, inspection and/or supplying of the work or materials outlined above and incorporated into the subject residence.

64. As a direct and proximate result of such negligence, gross negligence, recklessness and carelessness, Ryland has been damaged in the amount of any monies it is adjudged to owe Plaintiffs, or which it pays Plaintiffs in settlement of Plaintiffs' claims, other indirect and direct damages, punitive damages, plus the cost of investigating and defending this claim.

65. Upon information and belief, Ryland is entitled to judgment for actual damages collectively or individually against Third-Party Defendants in the amount of any monies it is adjudged to owe Plaintiffs, or which it pays Plaintiffs in settlement of Plaintiffs' claims, other indirect and direct damages, punitive damages, as well as fees and costs incurred in the investigation, defense and settlement of this claim.

66. The subject residence has allegedly sustained actual property damage caused by continuous exposure to the improper and negligent, gross negligent, and/or reckless construction and faulty work of Third-Party Defendants resulting in property damage which is not the work product of each of these Third-Party Defendants. In

addition, the alleged faulty construction, breaches, errors, omissions and wrongful acts of Third-Party Defendants were, and have resulted in, occurrences that were unintended, unforeseen, gratuitous and/or injurious events that caused property damage.

67. Further, Ryland has been exposed to special damages recoverable at law in that its professional reputation has been harmed, and it has incurred and continues to incur costs reasonably necessary to defend its interests including fees and costs which are associated with its investigation of this matter which are the legal consequences of Third-Party Defendants' negligence and for which Third-Party Defendants are also liable to Ryland.

AS A THIRD THIRD-PARTY CLAIM AGAINST THIRD-PARTY DEFENDANTS:
(Breach of Warranty)

68. Ryland realleges the Paragraphs above as if repeated herein verbatim.

69. Third-Party Defendants expressly or impliedly warranted to Ryland that all work performed by them would be performed in a careful, diligent and workmanlike manner, and that any materials and/or services designed, supplied or sold by them for use on the subject residence would be merchantable and fit for their intended or specific purpose. Third-Party Defendants breached their implied and/or express warranties of merchantability, workmanlike service, and/or fitness for a particular or intended purpose in the construction of the subject residence.

70. As a result of these breaches of warranties, Ryland has incurred damage in the amount of any money it is adjudged to owe Plaintiffs, or which it pays Plaintiffs in settlement of Plaintiffs' claims, plus consequential damages and the cost of investigating and defending this claim.

71. Upon information and belief, Ryland is entitled to judgment against Third-Party Defendants in the amount of any monies it is adjudged to owe Plaintiffs, or which it pays Plaintiffs in settlement of Plaintiffs' claims, as well as consequential damages, and costs and fees incurred in the investigation, defense and settlement of this claim.

72. The subject residence has allegedly sustained actual property damage caused by continuous exposure to the improper and negligent construction and faulty work of Third-Party Defendants resulting in property damage which is not the work product of each of these Third-Party Defendants. In addition, the alleged faulty construction, breaches, errors, omissions and wrongful acts of Third-Party Defendants were, and have resulted in, occurrences that were unintended, unforeseen, gratuitous and/or injurious events that caused property damage.

73. Further, Ryland has been exposed to special damages recoverable at law in that its professional reputation has been harmed, and it has incurred and continues to incur costs reasonably necessary to defend its interests including fees and costs which are associated with its investigation of this matter which are the legal consequences of Third-Party Defendants' breach of warranty and for which Third-Party Defendants are also liable to Ryland.

AS A FOURTH THIRD-PARTY CLAIM AGAINST THIRD-PARTY DEFENDANTS
(Breach of Contract)

74. Ryland realleges the Paragraphs above as if repeated herein verbatim.

75. Ryland entered into a contract(s) with Third-Party Defendants. Third-Party Defendants were to provide work and materials to the subject residence as described above.

76. The terms of the contract(s) required Third-Party Defendants to provide construction goods and services for the subject residence that, among other things, would produce a quality building free from defects and otherwise in conformance of all contract documents, including all building codes and industry standards. The contract(s) further required Third-Party Defendants to supervise and direct their work, using the best skill and attention.

77. Third-Party Defendants breached their contract(s) by failing to provide appropriate construction goods and services to the subject residence, by failing to perform their work in a careful, diligent and workmanlike manner, by failing to provide goods and services that resulted in a quality building free from defects and otherwise in conformance with all contract documents, and failing to provide goods and services that were in conformity with all appropriate building codes and industry standards.

78. As a result of these breaches of contract(s), Ryland has incurred damage in the amount of any money it is adjudged to owe Plaintiffs, or which it paid Plaintiffs in settlement of Plaintiffs' claims, plus its actual costs, consequential costs, and the costs of investigating and defending this claim.

79. Upon information and belief, Ryland is entitled to judgment against Third-Party Defendants in the amount of any monies it is adjudged to owe Plaintiffs, or which it paid Plaintiffs in settlement of Plaintiffs' claims, as well as its actual costs, consequential costs, and the costs and fees incurred in the investigation, defense and settlement of this claim.

80. The subject residence has allegedly sustained actual property damage caused by continuous exposure to the improper and negligent construction and faulty

work of Third-Party Defendants resulting in property damage which is not the work product of each of these Third-Party Defendants. In addition, the alleged faulty construction, breaches, errors, omissions and wrongful acts of Third-Party Defendants were, and have resulted in, occurrences that were unintended, unforeseen, gratuitous and/or injurious events that caused property damage.

WHEREFORE, having amended and fully answered Plaintiffs' Complaint, Ryland prays that Plaintiffs' claims be dismissed with costs, and that Ryland be given judgment against Third-Party Defendants in the amount of any liability Ryland is found to have to Plaintiffs in this action, and Ryland demands judgment requiring Third-Party Defendants to defend and indemnify Ryland against any liability which Ryland may suffer to Plaintiffs in this action, to include Ryland's attorneys' fees, costs, and other expenses incurred in defending this action. Ryland further demands judgment for actual and punitive damages against Third-Party Defendants and to reimburse it fully for all costs, expenses, and attorneys' fees associated with the deficiencies described herein, in an amount to be determined by the trier of fact, and for such other and further relief as this Court may deem just and proper.

PARKER POE ADAMS & BERNSTEIN LLP
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By: Olesya Vaskevich
Thomas C. Hildebrand, Jr.
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Attorneys for Defendant The Ryland Group, Inc.

November 10, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF Berkeley

Christopher Duvall and Natalie Duvall
☐ Plaintiff

v.

The Ryland Group, Inc.
☒ Defendant.

CASE NO.

2015-CP-08-1213

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

2015 DEC 31 PM 12:06
FILED
BERNY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

Plaintiff's Attorney: James Taylor Anderson, III Bar No. 77217 Address: PO Box 13897 Charleston, SC 29422-3897 phone: 843.795.7800 fax: email: tanderson@kernodlelaw.com other:	Defendant's Attorney: Olesya V. Vaskevich Bar No. 101409 Address: 200 Meeting Street, Ste 301 Charleston, SC 29401 hone: 843.727.2692 fax: email: olesyavaskevich@parkerpoe.com. other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS 1 and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Compel Against Plaintiffs

Estimated Time Needed: Court Reporter Needed: ☐ YES ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Olesya Vaskevich — 12/29/2015

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — Date Submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter:
- ☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed:

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	CASE NO.: 2015-CP-08-01213
Christopher Duvall and Natalie Duvall,	)	
Plaintiffs,	)	
vs.	)	
The Ryland Group, Inc.	)	
Defendant.	)	**THE RYLAND GROUP, INC.'S MOTION TO COMPEL AGAINST PLAINTIFFS**
The Ryland Group, Inc.,	)	
Third-Party Plaintiff,	)	
vs.	)	
Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc.,	)	
Third-Party Defendants.	)	

FILED
2015 DEC 31 PM 12:06
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

Pursuant to Rules 34 and 37 of the South Carolina Rules of Civil Procedure, the Defendant and Third-Party Plaintiff The Ryland Group, Inc. (hereinafter "Ryland"), by and through their undersigned counsel, respectfully moves the Court for an Order compelling the Plaintiffs Christopher Duvall and Natalie Duvall ("Plaintiffs") to allow Ryland's request for authorization to install crack monitors at the residence which is the subject of this litigation. In support of its Motion, Ryland shows the following:

1. By way of telephone communications with Plaintiffs' counsel, Ryland's counsel repeatedly has requested that Plaintiffs agree to the placement of the crack

monitors at the subject residence. On December 1, 2015, Plaintiffs' counsel rejected Ryland's request to install crack monitors by way of electronic correspondence to Ryland's counsel. A copy of this electronic correspondence is attached hereto as Exhibit A.

2. Ryland served its Request for Production on Plaintiffs by U.S. Mail and by electronic mail on December 14, 2015. A copy of Ryland's Request for Production is attached hereto as Exhibit B.

3. Rules 26 and 34 of the South Carolina Rules of Civil Procedure allow Ryland to serve on Plaintiffs a request "to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b)."

4. On December 22, 2015, Plaintiffs' counsel responded to Ryland's Request for Production by way of electronic correspondence and again rejected Ryland's request to install crack monitors. A copy of this electronic correspondence is attached hereto as Exhibit C.

5. To date, Ryland has not received authorization to install crack monitors at the residence which is the subject of this litigation from Plaintiffs.

WHEREFORE, Ryland respectfully requests an Order compelling Plaintiffs to allow Ryland's request for authorization to install crack monitors at the residence which is the subject of this litigation.

PARKER POE ADAMS & BERNSTEIN LLP
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Olesya V. Vaskevich
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olesyavaskevich@parkerpoe.com

Attorneys for Defendant and Third-Party Plaintiff The Ryland Group, Inc.

December 29, 2015

CERTIFICATE OF SERVICE

This is to certify that a copy of The Ryland Group, Inc.'s Motion to Compeel Against Plaintiffs has been served upon the following counsel of record by electronic mail and by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 29th day of December, 2015.

FILED
2015 DEC 31 PM 12: 06
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

James Taylor Anderson, III, Esq.
Kernodle Root + Coleman
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Charleston, SC 29422
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John E. Rogers, II
The Ward Law Firm
233 S. Pine Street
Spartanburg, SC 29302
jrogers@wardlawfirm.com

Lauren Heuss, Legal Professional Assistant
PARKER POE ADAMS & BERNSTEIN, LLC
200 Meeting Street, Suite 301
Charleston, SC 29401-2240

EXHIBIT

A

Vaskevich, Olesya V.

From: Taylor Anderson <tanderson@kernodlelaw.com>
Sent: Tuesday, December 01, 2015 9:47 AM
To: Hildebrand, Jr., Thomas C.
Cc: Vaskevich, Olesya V.
Subject: Duvall v. Ryland

Tom, the Duvalls are not agreeable to Ryland installing crack monitors at their home. Ryland was afforded an opportunity, prior to any lawyer involvement, and during the warranty period, to fully investigate the foundation and wall cracking at the Duvalls' home. At that time Ryland determined that there were no warrantable problems at the home. Ryland did not ask to install any crack monitors at that time.

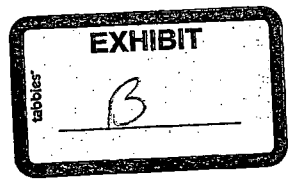
After suit was filed Ryland requested another visit to the home to investigate the foundation and wall cracking. On July 9, 2015, the Duvalls again made their home available for Ryland's inspection. Ryland personnel, accompanied by three professionals from Volkmar Consulting Services, LLC, performed an inspection of the Duvalls' home. The inspection included the cracked foundation, the drywall cracking in the master bedroom, the floor issues in the kitchen, and an investigation of the attic space. Ryland's engineers also dug holes at various locations around the home to collect soil samples.

The Duvalls have fulfilled their obligation to allow Ryland to inspect the home. Ryland has filed a Motion to Amend the Ryland Group, Inc.'s Answer to Plaintiff's Complaint in order to add Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company as Third-Party Defendants. These newly added Third-Party Defendants have a right to inspect the home and the Duvalls will make the home available for inspection. Ryland, of course, can also attend the Third-Party Defendants' site inspection. However, the Duvalls do not want Ryland to attach monitors to their home. The Duvalls' home will be stigmatized enough by having multiple site inspections and the neighbors watching engineers dig holes around the home. The Duvalls do not want monitors affixed to the home.

Ryland was told of the cracking in 2013, and has been afforded multiple opportunities to inspect. It should have a record of the width of the cracks from each inspection. Ryland can compare its previous measurements to any measurements at future inspections. Crack monitors should not be necessary.

Thank you and please feel free to let me know if you have any questions or concerns.

Taylor



Parker Poe

Thomas C. Hildebrand, Jr.
Partner
Telephone 843 727.2653
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tomhildebrand@parkerpoe.com

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

December 14, 2015

VIA EMAIL AND US MAIL

James Taylor Anderson, III, Esq.
Kernodle Root & Coleman
PO Box 13897
Charleston, SC 29422-3897

Re: Christopher Duvall and Natalie Duvall v. The Ryland Group, Inc.
Case No.: 2015-CP-08-01213

Dear Taylor:

Enclosed please find Defendant The Ryland Group, Inc.'s Request for Production to the Plaintiffs in the above-referenced matter.

With best regards,

Yours very truly,

Tom

Thomas C. Hildebrand, Jr.

TCHJr/lah
Enclosure

PPAB 3015815v1

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY Christopher Duvall and Natalie Duvall, Plaintiffs, vs. The Ryland Group, Inc. Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL DISTRICT Case No.: 2015-CP-08-1213 DEFENDANT THE RYLAND GROUP, INC.'S REQUEST FOR PRODUCTION TO THE PLAINTIFFS

TO: THE PLAINTIFFS CHRISTOPHER DUVALL AND NATALIE DUVALL AND THEIR ATTORNEY JAMES TAYLOR ANDERSON, III, ESQUIRE:

Pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, the Defendant The Ryland Group, Inc. ("Ryland"), by and through its undersigned counsel, hereby serve upon counsel for Plaintiffs the following Requests for Production of materials and documents to be answered in the manner required under the South Carolina Rules of Civil Procedure within thirty (30) days of service, exclusive of the date of service, which responses are to be served upon the undersigned. These Requests shall be deemed continuing and to require supplemental responses if Plaintiffs obtain further documents or materials at any time between the date of production and the conclusion of trial.

1. Defendant requests authorization to place crack monitors into the cracks in the masonry on the home and to then leave them in place and undisturbed for the remainder of this litigation.

PPAB 3022929v1

PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

By:_____
Thomas C. Hildebrand, Jr.
843.727.2653 (direct dial)
tomhildebrand@parkerpoe.com

Olesya V. Vaskevich
843.727.2642 (direct dial)
olesyavaskevich@parkerpoe.com

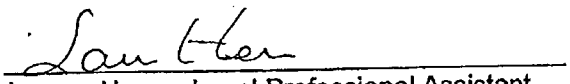
Attorneys for Defendant The Ryland Group, Inc.

December 14, 2015

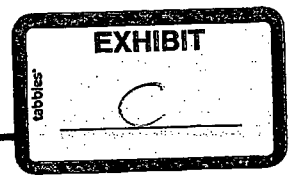
CERTIFICATE OF SERVICE

This is to certify that a copy of Defendant The Ryland Group, Inc.'s Requests for Production to Plaintiffs has been served upon the following counsel of record by electronic mail and by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 14th day of December, 2015.

James Taylor Anderson, III, Esq.
Kernodle Root + Coleman
PO Box 13897
Charleston, SC 29422
tanderson@kernodlelaw.com



Lauren Heuss, Legal Professional Assistant
PARKER POE ADAMS & BERNSTEIN, LLC
200 Meeting Street, Suite 301
Charleston, SC 29401-2240



Vaskevich, Olesya V.

From: Taylor Anderson <tanderson@kernodlelaw.com>
Sent: Tuesday, December 22, 2015 3:45 PM
To: Hildebrand, Jr., Thomas C.
Cc: Heuss, Lauren A.; Gouin, Kelly J.; Vaskevich, Olesya V.
Subject: RE: Duvall v. The Ryland Group, Inc.

Hey Tom, sorry for the delayed response.

Our position is unchanged. The Duvalls do not authorize Ryland to place crack monitors on their home.

From: Hildebrand, Jr., Thomas C. [mailto:tomhildebrand@parkerpoe.com]
Sent: Monday, December 14, 2015 10:30 AM
To: 'tanderson@kernodlelaw.com' <tanderson@kernodlelaw.com>
Cc: Heuss, Lauren A. <laurenheuss@parkerpoe.com>; Gouin, Kelly J. <kellygouin@parkerpoe.com>; Vaskevich, Olesya V. <olesyavaskevich@parkerpoe.com>
Subject: Duvall v. The Ryland Group, Inc.

Taylor,

I have drafted the attached request to place crack monitors as a formality. You have already advised me of your position on this issue as noted in your email of December 1 (attached). If you simply want to respond to this email stating that your position is unchanged, that will be fine as your formal response and no other formality will be necessary. Thank you. Regards, Tom.

Thomas C. Hildebrand, Jr.
Partner

Parker Poe

200 Meeting Street | Suite 301 | Charleston, SC 29401-3156
Office: 843.727.2653 | Fax: 843.727.2680 | map

Visit our website at
www.parkerpoe.com

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	CASE NO.: 2015-CP-08-01213
Christopher Duvall and Natalie Duvall,	)	
Plaintiffs,	)	
vs.	)	
The Ryland Group, Inc.	)	
Defendant.	)	
The Ryland Group, Inc.,	)	**THE RYLAND GROUP, INC.'S NOTICE OF MOTION AND MOTION TO COMPEL ARBITRATION**
Third-Party Plaintiff,	)	
vs.	)	
Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc.,	)	
Third-Party Defendants.	)	

FILED
2016 MAR 17 PM 12: 22
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

PLEASE TAKE NOTICE that Defendant and Third-Party Plaintiff The Ryland Group, Inc. ("Ryland"), by and through its below-signed attorneys, hereby moves to dismiss or stay this action and to compel Plaintiffs Christopher Duvall and Natalie Duvall ("Plaintiffs") to pursue their claims in arbitration with the American Arbitration Association. Ryland also moves to compel arbitration of its third-party claims against Third-Party Defendants Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc. a/k/a

Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc. and to join those claims in the same arbitration with Plaintiffs.

The basis for this Motion is that the claims asserted in Plaintiffs' Complaint are subject to mandatory arbitration under the terms of the terms of the Agreement of Sale dated February 12, 2006, between the original purchasers of the subject residence and Ryland (the "Agreement"). *See* Affidavit of Michael Boyle. While Plaintiffs are subsequent purchasers of the subject residence, Plaintiffs have specifically pled claims for breach of the ten year express warranty issued by Ryland to the original purchasers for structural deficiencies, which warranty contains arbitration provisions, as does the Agreement with the original purchasers. *Id.* Because Plaintiffs are asserting specific rights under the original Agreement and warranty, Plaintiffs become obligated to the provisions of that Agreement and warranty. Similarly, the subcontractor agreements between Ryland and Third-Party Defendants Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc. also require the parties to participate in mandatory and binding arbitration and to join the arbitration with Plaintiffs. *Id.*

WHEREFORE, Ryland respectfully requests that the Court dismiss the action or, alternatively, stay the action pending arbitration and compel Plaintiffs and Third-Party Defendants Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc. to arbitrate all claims related to the subject residence in accordance with

the Agreement, the warranty, and the subcontractor agreements. This Motion is supported by the attached Affidavit of Michael Boyle, the attached Memorandum in Support of Motion to Compel Arbitration, the pleadings, any additional affidavits, and any additional documents filed with or required by the Court.

PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

By: Olesya Vaskevich
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Olesya V. Vaskevich
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olesyavaskevich@parkerpoe.com

Attorneys for Defendant and Third-Party Plaintiff The Ryland Group, Inc.

March 16, 2016

CERTIFICATE OF SERVICE

This is to certify that a copy of The Ryland Group, Inc.'s Notice of Motion and Motion to Compel Arbitration has been served upon the following counsel of record by electronic mail and by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 16 day of March, 2016.

James Taylor Anderson, III, Esq.
Kernodle Root + Coleman
PO Box 13897
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tanderson@kernodlelaw.com

John E. Rogers, II, Esq.
The Ward Law Firm, P.A.
233 S. Pine Street
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jrogers@wardfirm.com

Christy E. Mahon, Esquire
Sweeny Wingate & Barrow
P.O. Box 12129
Columbia, SC 29211
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Lauren Heuss, Legal Professional Assistant
PARKER POE ADAMS & BERNSTEIN, LLC
200 Meeting Street, Suite 301
Charleston, SC 29401-2240

TSM

FILED
2016 MAR 17 PM 12: 22
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	CASE NO.: 2015-CP-08-01213
Christopher Duvall and Natalie Duvall,	)	
Plaintiffs,	)	
vs.	)	
The Ryland Group, Inc.	)	
Defendant.	)	
The Ryland Group, Inc.,	)	**THE RYLAND GROUP, INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION TO COMPEL ARBITRATION**
Third-Party Plaintiff,	)	
vs.	)	
Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc.,	)	
Third-Party Defendants.	)	

FILED
2016 MAR 17 PM 12: 22
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

INTRODUCTION

Defendant and Third-Party Plaintiff The Ryland Group, Inc. ("Ryland") move to compel Plaintiffs Christopher Duvall and Natalie Duvall ("Plaintiffs") to pursue their claims in arbitration with the American Arbitration Association as well as to compel arbitration of Ryland's third-party claims against Third-Party Defendants Land Site Services, Inc. ("Land Site"), Carolina Consulting Engineers, Inc. ("CCE"), Higdon Concrete, LLC ("Higdon"), A.C. Construction, Inc. ("A.C. Construction"), and Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc.

d/b/a Carolina Truss Systems, Inc. ("Stark") and to join those claims in the same arbitration with Plaintiffs. As discussed below, Ryland respectfully requests that the Court grant its Motion and compel arbitration.

FACTS

This is a construction defect case. The subject residence was completed on September 18, 2006, and sold to the original purchasers. The residence was then purchased by Plaintiffs, the current owners, on December 31, 2008. Plaintiffs filed its Complaint against Ryland on May 20, 2015, alleging that structural defects, including but not limited to, cracking in the foundation exist in their residence. In its Amended Answer to Plaintiff's Complaint and Third-Party Complaint, Ryland asserted claims against the subcontractors who performed work and provided materials for the subject residence with regard to clearing and grubbing, pad preparation, soils testing, provision of concrete pad and footings, supply of concrete, framing, and framing and truss design, and also included an affirmative defense that the dispute was subject to a mandatory arbitration provision.[1]

The residence at issue in this litigation was purchased from Ryland by the original purchasers pursuant to the Agreement of Sale dated February 12, 2006 (the "Agreement."). *See* Exhibit A to Affidavit of Michael Boyle. The first page of the Agreement contains a statement at the top typed in underlined, bold capital letters that states that "**THIS AGREEMENT CONTAINS A BINDING IRREVOCABLE AGREEMENT TO ARBITRATION.**" *Id.* The Agreement further provides that "**ANY CONTROVERSY, CLAIM OR DISPUTE ARISING OUT OF OR IN ANY WAY**

[1] Ryland also included this reservation of all arbitration rights relative to the parties in this matter in its Answer to Plaintiff's Complaint filed on July 28, 2015, Ryland's first responsive pleading in this case.

RELATING TO THIS AGREEMENT, THE PROPERTY, . . . PURCHASE OF THE PROPERTY OR . . . CONSTRUCTION OF THE HOME SHALL BE SETTLED BY BINDING ARBITRATION . . . ." *See* Agreement ¶ 10.

The original purchasers of the subject residence also signed the Warranty Enrollment Form on September 22, 2006, which enrolled the subject residence in the Ryland Home Warranty Program (the "Warranty"). *See* Exhibit B to Affidavit of Michael Boyle. The first substantive page of the Warranty contains a statement in bold capital letters that states that "**THIS AGREEMENT INCLUDES PROCEDURES FOR INFORMAL SETTLEMENT OF DISPUTES, INCLUDING . . . BINDING ARBITRATION IN ACCORDANCE WITH THE PROCEDURES OF THE FEDERAL ARBITRATION ACT.**" *Id.* The Warranty further provides that any dispute with Ryland "shall be submitted to binding arbitration governed by the procedures of the Federal Arbitration Act . . . ." *See* Warranty ¶ 5e.

While Plaintiffs are subsequent purchasers of the subject residence, Plaintiffs have specifically pled claims for breach of the Warranty issued by Ryland to the original purchasers for structural deficiencies. Because Plaintiffs are asserting specific rights under the original Agreement and Warranty, Plaintiffs become obligated to the provisions of that Agreement and Warranty, including the arbitration provisions contained therein.

Ryland entered into an agreement with its subcontractor Third-Party Defendant Land Site that relates to the subcontractor's work and materials with regard to clearing and grubbing and pad preparation provided for the residence in this case. *See* Exhibit C to Affidavit of Michael Boyle. The agreement between Land Site and Ryland requires

the arbitration of "any dispute arising out of or relating to" Land Site's work or any breach of the agreement. *See* Land Site Agreement ¶ 16.

Ryland entered into an agreement with its subcontractor Third-Party Defendant Higdon that relates to the subcontractor's work and materials with regard to the provision of concrete pad and footings and the supply of concrete provided for the residence in this case. *See* Exhibit D to Affidavit of Michael Boyle. The agreement between Higdon and Ryland requires the arbitration of "any dispute arising out of or relating to" Higdon's work or any breach of the agreement. *See* Higdon Agreement ¶ 16.

Ryland entered into an agreement with its subcontractor Third-Party Defendant CCE that relates to the subcontractor's work and services with regard to soils testing provided for the residence in this case. *See* Exhibit E to Affidavit of Michael Boyle. The agreement between CCE and Ryland requires the arbitration of "**ANY CONTROVERSY, CLAIM OR DISPUTE ARISING OUT OF OR IN ANY WAY RELATING TO**" CCE's work and services or any breach of the agreement. *See* CCE Agreement ¶ 7. The agreement between CCE and Ryland further provides that the arbitration shall be "**PURSUANT TO THE FEDERAL ARBITRATION ACT . . . .**" *Id.*

Ryland entered into an agreement with its subcontractor Third-Party Defendant A.C. Construction that relates to the subcontractor's work and materials with regard to framing provided for the residence in this case. *See* Exhibit F to Affidavit of Michael Boyle. The agreement between A.C. Construction and Ryland requires the arbitration of "any dispute arising out of or relating to" A.C. Construction's work or any breach of the agreement. *See* A.C. Construction Agreement ¶ 16.

Ryland entered into an agreement with its subcontractor Third-Party Defendant Stark that relates to the subcontractor's work and materials with regard to framing and truss design provided for the residence in this case. *See* Exhibit G to Affidavit of Michael Boyle. The agreement between Stark and Ryland requires the arbitration of "any dispute arising out of or relating to" Stark's work or any breach of the agreement. *See* Stark Agreement ¶ 16.

Because the applicable agreements among the parties contain arbitration provisions that cover the issues in dispute in this litigation, Ryland respectfully requests that the Court grant its Motion and compel arbitration.

ARGUMENT AND CITATION OF AUTHORITY

Whether brought under the Federal Arbitration Act ("FAA"), 9 U.S.C. §1 *et seq.*, or the South Carolina Uniform Arbitration Act, S.C. Code Ann. §15-48-10, *et seq.*, Federal and South Carolina courts clearly favor arbitration of disputes. *Heffner v. Destiny, Inc.*, 321 S.C. 536, 471 S.E.2d 135 (1995); *O'Neil v. Hilton Head Hosp.*, 115 F.3d 272, 273 (4th Cir. 1997) (stating that the FAA represents "a liberal federal policy favoring arbitration agreements."). The purpose of the FAA "was to reverse the longstanding judicial hostility to arbitration agreements that had existed at English common law and had been adopted by American courts, and to place arbitration agreements upon the same footing as other contracts." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 591, 553 S.E.2d 110, 115 (2001) ("The basic purpose of the FAA is to overcome state courts' refusal to enforce arbitration agreements.").

Thus, when one party files a motion to compel arbitration, the court must determine whether a binding arbitration clause applies to the parties, and what claims that clause encompasses. *Merit Ins. Co. v. Leatherby Ins. Co.*, 581 F.2d 137 (7th Cir.

1978). Because of the preference for arbitration, when making these determinations, courts must resolve any doubts concerning the application and scope of arbitration agreements in favor of arbitration. *Towles v. United Healthcare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (Ct. App. 1999) (stating that trial court should apply ordinary principles that govern the formation of contracts when determining whether an agreement to arbitrate exists); *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 542 S.E.2d 360 (2001) (overturning trial court's refusal to apply the FAA to parties' agreement which stated that "this contract and the relationships which result from this contract" is to be governed by the FAA).

I. The Parties' Agreements with Ryland Contain Binding Arbitration Provisions.

The first page of the Agreement between Ryland and the original purchasers contains a statement at the top typed in underlined, bold capital letters that states that "**THIS AGREEMENT CONTAINS A BINDING IRREVOCABLE AGREEMENT TO ARBITRATION.**" *See* Exhibit A to Affidavit of Michael Boyle. In addition, the Agreement includes a more detailed arbitration provision on page 3 which provides that "**ANY CONTROVERSY, CLAIM OR DISPUTE ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT, THE PROPERTY, . . . PURCHASE OF THE PROPERTY OR . . . CONSTRUCTION OF THE HOME SHALL BE SETTLED BY BINDING ARBITRATION . . . .**" *See* Agreement ¶ 10. The original purchasers also signed the warranty enrollment form which enrolled the subject residence in the Warranty. The first substantive page of the Warranty contains a statement in bold capital letters that states that "**THIS AGREEMENT INCLUDES PROCEDURES FOR INFORMAL SETTLEMENT OF DISPUTES, INCLUDING . . . BINDING ARBITRATION**

IN ACCORDANCE WITH THE PROCEDURES OF THE FEDERAL ARBITRATION ACT." *See* Exhibit B to Affidavit of Michael Boyle. The Warranty further provides that any dispute with Ryland "shall be submitted to binding arbitration governed by the procedures of the Federal Arbitration Act . . . ." *See* Warranty ¶ 5e. At no time have Plaintiffs disputed the validity of the Agreement or the Warranty. In fact, Plaintiffs have brought claims against Ryland based on the Warranty. *See* Plaintiff's Complaint ¶¶ 6, 11-22.

While Plaintiffs are subsequent purchasers of the subject residence, Plaintiffs have specifically pled claims for breach of the Warranty issued by Ryland to the original purchasers for structural deficiencies. Because Plaintiffs are asserting specific rights under the original Agreement and Warranty, Plaintiffs become obligated to the provisions of that Agreement and Warranty, including the arbitration provisions contained therein. In *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012), the South Carolina Court of Appeals held that when a signatory seeks to enforce an arbitration agreement against a non-signatory, the doctrine of equitable estoppel estops the non-signatory from claiming that he is not bound to the arbitration agreement when he receives a direct benefit from a contract containing an arbitration clause. Similarly, in *Wilson v. Willis*, No. 2014-000946, 2016 WL 806063, at *8-9 (S.C. Ct. App. Mar. 2, 2016), the South Carolina Court of Appeals recently held that the parties were equitably estopped from arguing their status as nonsignatories precluded enforcement of the arbitration provision when their complaints sought to benefit from the enforcement of other provisions in the agreement because "the allegations in their complaints necessarily depend[ed] upon the terms, authority, and duties created and imposed by that agreement." *Id.* Interpreting South Carolina law, the Fourth Circuit

Court of Appeals similarly has held that ("[a] nonsignatory is estopped from refusing to comply with an arbitration clause when it [is seeking or] receives a direct benefit from a contract containing an arbitration clause." *R.J. Griffin & Co. v. Beach Club II Homeowners Ass'n*, 384 F.3d 157 (4th Cir. 2004) (citing *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 418 (4th Cir. 2000)).

Ryland's agreements with its subcontractors, Third-Party Defendants Land Site, Higdon, CCE, A.C. Construction, and Stark, also contain clear and unambiguous arbitration provisions, as set forth in detail above.

Where, as here, "an agreement is clear and capable of legal interpretation, the court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Ellie, Inc. v. Miccichi,* 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004) (citation omitted) (internal quotation marks omitted).

Moreover, the Warranty for the subject residence on which Plaintiffs rely in bringing their claims against Ryland expressly stipulates that any dispute with Ryland "shall be submitted to binding arbitration governed by the procedures of the Federal Arbitration Act . . . ." *See* Warranty ¶ 5e. Even if Ryland and the original purchasers, and by extension the Plaintiffs, did not expressly agree that the construction and sale of the residence involved interstate commerce, South Carolina courts essentially accept it as given that construction involves interstate commerce. *See Episcopal Hous. Corp. v. Fed. Ins. Co.*, 269 S.C. 631, 640, 239 S.E.2d 647, 652 (1977) ("It would be virtually impossible to construct [a housing project for the elderly] with materials, equipment and supplies all produced and manufactured solely within the State of South Carolina."). Because the subcontractor agreements "contemplated the use of materials

manufactured outside the state of South Carolina" and could not be performed "without the use of materials in interstate commerce," the claims against Third-Party Defendants subcontractors also implicate interstate commerce and are subject to the FAA. *See Blanton v. Stathos*, 351 S.C. 534, 541, 570 S.E.2d 565, 569 (Ct. App. 2002) (determining that a contract for design and architectural services in the construction of a restaurant in South Carolina involved interstate commerce). Furthermore, Ryland has provided specific instances of the involvement of interstate commerce in the construction of the subject residence. *See* Affidavit of Michael Boyle.

Thus, even if Plaintiffs or Third-Party Defendants attempt to point to any state law to void the arbitration provisions, such law cannot stand against the preemptive effect of the FAA. As the South Carolina Supreme Court has stated, the "federal policy favoring arbitration, as expressed in the FAA, is binding in state courts and supersedes inconsistent state law and statutes that invalidate arbitration agreements." *Toler's Cove Homeowners Ass'n, Inc. v. Trident Constr. Co., Inc.*, 355 S.C. 605, 611, 586 S.E.2d 581, 584 (2003).

The parties cannot claim that they had no notice that they agreed to arbitrate any claims. Again, the mandatory binding arbitration provision is found in the Warranty for the subject residence on which Plaintiffs rely in bringing their claims against Ryland. Similarly, Ryland's agreements with its subcontractors, Third-Party Defendants Land Site, Higdon, CCE, A.C. Construction, and Stark, also contain clear and unambiguous arbitration provisions. In *Towles v. United Healthcare Corp.*, the plaintiff argued that he had no notice of an arbitration agreement because the arbitration clause was incorporated by reference in an acknowledgement that plaintiff had signed. *Towles*, 338 S.C. at 38-40, 524 S.E.2d at 844-45. The Court of Appeals rejected that argument,

stating that "[a]fter receiving and signing the acknowledgement, [the plaintiff] cannot legitimately claim [the defendant] failed to provide actual notice of the arbitration provisions because the law does not impose a duty to explain a document's contents to an individual when the individual can learn the contents from simply reading the document." *Id.* at 39, 524 S.E.2d at 845 (citing *Citizens & S. Nat'l Bank of S.C. v. Lanford*, 313 S.C. 540, 545, 443 S.E.2d 549, 551 (1994); *Burwell v. S.C. Nat'l Bank*, 288 S.C. 34, 39, 340 S.E.2d 786, 789 (1986) (noting that "every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it")).

Because the parties' agreements with Ryland contain unambiguous and binding arbitration provisions, the Court should grant Ryland's Motion and compel arbitration.

II. The Scope of the Arbitration Agreements Covers the Relevant Claims.

Plaintiffs' allegations that structural defects, including but not limited to, cracking in the foundation exist in their residence clearly fall within the ambit of the arbitration provision contained in the Agreement and the Warranty. The Agreement and the Warranty relate to the residence that Ryland sold to the original purchasers, who then sold it to Plaintiffs, and Plaintiffs' claims in the Complaint directly relate to the construction of the residence and assert specific rights under the original Agreement and Warranty. The arbitration provision referenced in the Agreement provides that **"ANY CONTROVERSY, CLAIM OR DISPUTE ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT, THE PROPERTY, . . . PURCHASE OF THE PROPERTY OR . . . CONSTRUCTION OF THE HOME SHALL BE SETTLED BY BINDING ARBITRATION . . . ."** *See* Agreement ¶ 10. Furthermore, the arbitration provision referenced in the Warranty provides that "[a]ny 'unresolved dispute' . . . with

[Ryland] shall be submitted to binding arbitration governed by the procedures of the Federal Arbitration Act . . . ." *See* Warranty ¶ 5e. The Warranty defines the term "unresolved dispute" to mean "all claims, demands, disputes, controversies, and differences that may arise between You[2] and Your Builder[3], including without limitation, disputes: (1) as to events, representations, or omissions which pre-date this Agreement; (2) arising out of this Agreement or other action performed or to be performed by Your Builder pursuant to this Agreement; (3) as to repairs or warranty claims arising during the term of this Agreement; or (4) as to repairs or replacements made or the reasonableness of costs offered for any defect covered by this Agreement . . . ." *See* Warranty ¶ 5f. Therefore, the arbitration provisions of the Agreement and the Warranty encompass the claims alleged in Plaintiffs' Complaint, and those claims are subject to mandatory arbitration as provided for in the Agreement and the Warranty.

Similarly, the agreements between Ryland and its subcontractors, Third-Party Defendants Land Site, Higdon, CCE, A.C. Construction, and Stark, contemplate the arbitration of Ryland's third-party claims for breach of contract, breach of warranty, negligence, and indemnification against the subcontractors. Specifically, the agreements with Land Site, Higdon, A.C. Construction, and Stark all provide that "any dispute arising out of or relating to this Agreement or the breach, termination or validity thereof shall be settled by binding arbitration . . . ." *See* Land Site Agreement ¶ 16; Higdon Agreement ¶ 16; A.C. Construction Agreement ¶ 16; Stark Agreement ¶ 16. Such agreements further provide that the "parties agree to (a) allow to join into the

[2] The term "You" is defined in the Warranty as a term "referring to the Home Owner," and the term "Home Owner" is defined in the Warranty as including "the first purchaser of the Home and any and all successors in title during the term of this Agreement . . . ." *See* Warranty Section A(8) & (16).
[3] The term "Builder" is defined in the Warranty as "[t]he builder of the Home, which is The Ryland Group, Inc. or one of its subsidiaries." *See* Warranty Section A(1).

arbitration proceeding hereunder or (b) join any other arbitration proceeding being conducted by, persons or entities related to the dispute whose involvement may be necessary to completely resolve the dispute, such as (1) a homeowner . . . and (4) Subcontractor's materialmen or subcontractors." *Id.* Similarly, the agreement with CCE provides that the "**PARTIES AGREE THAT ANY CONTROVERSY, CLAIM OR DISPUTE ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT, OR CONSULTANT'S WORK UNDER THIS AGREEMENT SHALL BE SETTLED BY BINDING ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT . . . .**" *See* CCE Agreement ¶ 7. Therefore, the arbitration provisions of the agreements between Ryland and Third-Party Defendants are implicated by Ryland's third-party claims against Third-Party Defendants for allegedly deficient work performed by Third-Party Defendants on Plaintiffs' residence that allegedly resulted in structural defects, including but not limited to, cracking in the foundation.

Because Plaintiffs' claims against Ryland and Ryland's third-party claims against Third-Party Defendants clearly fall within the scope of the applicable arbitration provisions, the parties are required to arbitrate their disputes. *See Zabinski*, 346 S.C. at 597, 553 S.E.2d at 118 ("[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.").

CONCLUSION

Because the parties' agreements with Ryland contain unambiguous and binding arbitration provisions which clearly cover the claims at issue in this litigation, Ryland respectfully requests that the Court grant its Motion to stay this action and compel

arbitration with Plaintiffs and Third-Party Defendants to be conducted by the American Arbitration Association.

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Attorneys for Defendant and Third-Party Plaintiff The Ryland Group, Inc.

March 16, 2016

CERTIFICATE OF SERVICE

This is to certify that a copy of The Ryland Group, Inc.'s Memorandum in Support of Its Motion to Compel Arbitration has been served upon the following counsel of record by electronic mail and by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 16 day of March, 2016.

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FILED
2016 MAR 17 PM 12: 22
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	CASE NO.: 2015-CP-08-01213
Christopher Duvall and Natalie Duvall,	)	
Plaintiffs,	)	
vs.	)	
The Ryland Group, Inc.	)	
Defendant.	)	**AFFIDAVIT OF MICHAEL BOYLE**
The Ryland Group, Inc.,	)	
Third-Party Plaintiff,	)	
vs.	)	
Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc.,	)	
Third-Party Defendants.	)	

FILED
2016 MAR 17 PM 12: 23
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

PERSONALLY APPEARED before me, Michael Boyle, who being first duly sworn, deposes and says:

1. I am the Vice President of Operations for CalAtlantic Homes and had direct supervision and managerial responsibilities for Defendant and Third-Party Plaintiff The Ryland Group, Inc. ("Ryland").

2. Attached hereto as Exhibit A is the Agreement of Sale dated February 12, 2006, between the original purchasers and Ryland to purchase the residence that is the subject of this action (the "Agreement"). The first page of the Agreement contains a

statement at the top typed in underlined, bold capital letters that states that "**THIS AGREEMENT CONTAINS A BINDING IRREVOCABLE AGREEMENT TO ARBITRATION.**" *Id.* The Agreement further provides that "**ANY CONTROVERSY, CLAIM OR DISPUTE ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT, THE PROPERTY, . . . PURCHASE OF THE PROPERTY OR . . . CONSTRUCTION OF THE HOME SHALL BE SETTLED BY BINDING ARBITRATION . . . .**" *See* Agreement ¶ 10.

3. Attached hereto as Exhibit B is the Warranty Enrollment Form signed by the original purchasers of the subject residence on September 22, 2006, and the Ryland Home Warranty Program that would have been applicable to this time period (the "Warranty"). The first substantive page of the Warranty contains a statement in bold capital letters that states that "**THIS AGREEMENT INCLUDES PROCEDURES FOR INFORMAL SETTLEMENT OF DISPUTES, INCLUDING . . . BINDING ARBITRATION IN ACCORDANCE WITH THE PROCEDURES OF THE FEDERAL ARBITRATION ACT.**" *Id.* The Warranty further provides that any dispute with Ryland "shall be submitted to binding arbitration governed by the procedures of the Federal Arbitration Act . . . ." *See* Warranty ¶ 5e.

4. Attached hereto as Exhibit C is Ryland's agreement with its subcontractor Third-Party Defendant Land Site Services, Inc. ("Land Site") that relates to the work and materials provided for the residence in this case. The agreement between Land Site and Ryland requires the arbitration of "any dispute arising out of or relating to" Land Site's work or any breach of the agreement. *See* Land Site Agreement ¶ 16.

5. Attached hereto as Exhibit D is Ryland's agreement with its subcontractor Third-Party Defendant Higdon Concrete, LLC ("Higdon") that relates to the work and

materials provided for the residence in this case. The agreement between Higdon and Ryland requires the arbitration of "any dispute arising out of or relating to" Higdon's work or any breach of the agreement. *See* Higdon Agreement ¶ 16.

6. Attached hereto as Exhibit E is Ryland's agreement with its subcontractor Third-Party Defendant Carolina Consulting Engineers, Inc. ("CCE") that relates to the work and services provided for the residence in this case. The agreement between CCE and Ryland requires the arbitration of ""**ANY CONTROVERSY, CLAIM OR DISPUTE ARISING OUT OF OR IN ANY WAY RELATING TO**" CCE's work and services or any breach of the agreement. *See* CCE Agreement ¶ 7. The agreement between CCE and Ryland further provides that the arbitration shall be "**PURSUANT TO THE FEDERAL ARBITRATION ACT . . . .**" *Id.*

7. Attached hereto as Exhibit F is Ryland's agreement with its subcontractor Third-Party Defendant A.C. Construction, Inc. ("A.C. Construction") that relates to the work and materials provided for the residence in this case. The agreement between A.C. Construction and Ryland requires the arbitration of "any dispute arising out of or relating to" A.C. Construction's work or any breach of the agreement. *See* A.C. Construction Agreement ¶ 16.

8. Attached hereto as Exhibit G is Ryland's agreement with its subcontractor Third-Party Defendant Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc. ("Stark") that relates to the work and materials provided for the residence in this case. The agreement between Stark and Ryland requires the arbitration of "any dispute arising out of or relating to" Stark's work or any breach of the agreement. *See* Stark Agreement ¶ 16. The South Carolina Secretary of State's website indicates that the Stark entities are

incorporated in the State of Ohio. Furthermore, as evidenced by a sampling of invoices attached hereto as Exhibit H, payment to Stark for its work and materials provided for the subject residence was required across state lines as Stark instructed Ryland to send remittance to a Canton, Ohio address, which payments were remitted accordingly.

9. The Ryland Group, Inc., which executed the Agreement with the original purchasers for the sale of the subject residence as evidenced by Exhibit A, is an entity that was incorporated in the State of Maryland, which further evidences interstate commerce relative to the construction and sale of the residence that is the subject of this action.

10. Attached hereto as Exhibit I is the Mortgage for the subject residence signed by the original purchasers that shows that the lender was based out of and organized and existing under the laws of the State of Pennsylvania, which further evidences interstate commerce relative to the construction and sale of the residence that is the subject of this action.

11. Interstate communications, and products that were manufactured outside the State of South Carolina, were used relative to the construction and sale of the residence that is the subject of this action.

FURTHER AFFIANT SAYETH NOT.

Michael Boyle

Sworn to and subscribed before me
this 15th day of March ___, 2016

(L.S.)

Notary Public for South Carolina
My commission expires: 4-5-25

SEASON L MONROE
COM. EXP.
NOTARY
PUBLIC
4-05-25
SOUTH CAROLINA

PPAB 3151352v1

EXHIBIT A

THIS AGREEMENT CONTAINS A BINDING IRREVOCABLE AGREEMENT TO ARBITRATE. SEE UNIFORM ARBITRATION ACT (TITLE 15, CHAPTER 48 SC CODE)

RYLAND HOMES

Agreement of Sale

Thomas Czajkowski
BUYER(S) NAME

Ginger Czajkowski
BUYER(S) NAME

1001 Bear Island Rd
PRESENT ADDRESS

Summerville SC 29483-7062
CITY STATE ZIP

Ryland Homes Charleston Division
SELLER

3955 Faber Place, Suite 100
ADDRESS

North Charleston SC 29405
CITY STATE ZIP

0074 The Reserve 08786010000
HOMESITE PROJECT NAME SECTION NO.

1502 Marsh Reed Court
PROPERTY ADDRESS

Goose Creek Berkley SC 29445
CITY COUNTY STATE ZIP

BRUNSWICK C 3361
PLAN NAME PLAN #

PURCHASE PRICE	
Base Price	$228,990.00
Option Total	$ 14,250.00
Lot Premium	$ 5,000.00
Other	($ .00)
Total Purchase Price	$248,240.00

PAYMENTS:	
Deposit paid upon signing this Agreement:	$ 1,000.00
Additional Deposit to be paid by You upon completion of design selections:	$2,000.00
Additional Deposit to be paid by You prior to the start of construction:	$2,000.00
Cash from You at Settlement (Excluding Your Settlement Costs and applicable financing costs):	$0.00
Estimated Cash from mortgage proceeds at Settlement (the Mortgage Amount):	$243,240.00

Mortgage Application is due 5 days after You sign this Agreement of Sale.

You must make option selections within 14 days from the date You sign this Agreement of Sale.

Mortgage Approval is due 45 days from the Mortgage Application.

Estimated (See page 2 Article 4) Date of Substantial Completion of Home: 9/22/2006.

DEFINITIONS

AGREEMENT OF SALE DATE: Date this Agreement of Sale is countersigned by authorized officer.

DEPOSIT: Any money that You pay Us prior to Settlement. The Deposit and any additional deposits will be held in escrow by Us and will be applied against the Purchase Price at Settlement or forfeited in accordance with this Agreement of Sale.

HOMEOWNERS' ASSOCIATION: An association, if any, of property owners for the community in which the Property is located.

MORTGAGE: If the Mortgage Amount is filled in above, You will be obtaining a mortgage for part of the Purchase Price. Your financing rider, if applicable, explains Your rights and obligations, including costs, and Our rights and obligations relating to Your mortgage. Your exact mortgage agreement will be determined by the lender.

MORTGAGE APPROVAL: An unconditional written commitment from a recognized lender for a mortgage loan to be secured by the Property. Ryland Mortgage Company is a recognized lender.

PROPERTY: The Home site and the Home that We will construct.

PROPERTY CHARGES: One time or periodic charges that are levied against the Property, such as real estate and property value taxes; metropolitan or utility district and sanitary commission charges; homeowners' association and other benefit assessments; charges for water, sewer, drainage and other public improvements and private utilities.

SETTLEMENT: The time when You pay the balance of the Purchase Price and Your Settlement Costs; and We deliver to You a deed to the Property.

SETTLEMENT COSTS: All costs of settlement and transferring title, such as loan origination fees and discount points, transfer taxes, documentary/tax/deed stamps, conveyance and recordation costs, survey, title research, mortgagee and owner's title insurance premiums, flood insurance, attorneys' fees, deed preparation, mortgage insurance, funding fees, fire and hazard insurance premiums, prepaid items and prorated Property Charges.

SUBSTANTIAL COMPLETION: When an occupancy permit is issued by the local building authority, or when the Home is otherwise habitable. Substantial completion will occur even though some items such as landscaping, exterior concrete, driveways, final grading and exterior painting, are not complete as long as the Home is habitable. We will complete unfinished work as soon as possible after the Settlement. You grant Us a temporary license to enter the Property after Settlement for purposes of completing such work in accordance with this Agreement of Sale or to meet any governmental requirements.

WE, US, OURS, SELLER: Refers to The Ryland Group, Inc. or Ryland Homes.

YOU, YOUR, YOURS: Refers to the Buyers.

Buyer's Initials Buyer's Initials

Revised 5/16/05

GENERAL TERMS

1. PURCHASE: You agree to purchase and We agree to sell the Property for the Purchase Price as determined and revised by the [Customer Selected Option Sheet] and any Amendments.

2. CONSTRUCTION OF HOME: We will begin construction within a reasonable time after all land development work is complete on the Property and We receive (a) all necessary governmental and private approvals, (b) all payments due to Us prior to start of construction and (c) proof, satisfactory to Us, of Your ability to pay the balance of the Purchase Price at Settlement.

Construction will substantially follow the Home blueprints and the Customer Selected Option Sheet. We reserve the right to make changes in the Home Plan as We deem reasonably appropriate, as may be necessitated by (a) material availability, (b) construction requirements in the field or (c) modifications or changes required by any controlling governmental authority. It is important for You to understand details concerning availability and location of options and standard features, the position of the Home on the lot, the proposed final grade, and any easements, rights-of-way or landscaping that may pertain to the Home site. Questions that may arise about the Home or lot before, during or after the construction process will be answered via specific reference to the applicable blueprints.

You understand that roof trusses are not designed for weight bearing capacity, and You agree to hold Us harmless from any problems which may occur due to Your storing of any articles in the attic area.

In accordance with good building practice and the applicable building codes, the following items on the blueprints will be located at Our discretion:

Sump pump (if required), heating system, hot water heater, all plumbing lines and laundry trays, wiring and electrical system, gas and electric meters, basement exit and stairwell, if applicable, and garage service doors.

We also have the right to:

- determine the ground elevation;
- determine the location of the Home on the Home site and homes on neighboring home sites;
- reverse or modify the position of the Home on the Home site;
- substitute materials and equipment of equal quality and similar design; and
- remove trees and shrubbery from the Home site. We will not be liable for any damage to trees or shrubbery not removed.

We make no warranty, express or implied, as to your Home conforming to any model home, floor plan, rendering or any other example that we may use in our advertising or promotional programs, other than that which is shown on the blueprints for the plan name and plan number set forth below. We make no representation as to the location of cluster mailboxes, utility boxes, street lights, fire hydrants or storm drain inlets or basins. Model home furnishings, decorator wall and floor coverings, lighting and window treatments, shrubbery, landscaping, displays, advertising, and promotional materials are for display and marketing purposes only and are not part of this Agreement of Sale.

You also understand that all optional extras selected and shown on Your Customer Selected Option Sheet supersede the blueprints and will be included in Your new Home as additions to the Community Included Feature Sheet that You signed.

By Your initials below, You confirm that You have reviewed and accepted the following:

Blueprints for BRUNSWICK C/3361
(Plan Name / Plan Number)

Record Plat for 08786010000/0074
(Project / Lot)

Buyer's Initials Buyer's Initials

3. DELAYS IN CONSTRUCTION: Substantial Completion may occur before or after the Estimated Date of Substantial Completion, but not later than One (1) year from the Agreement of Sale Date, unless delayed by circumstances or conditions beyond Our control. Notwithstanding the foregoing, Substantial Completion will occur, in any case, not later than two (2) years from the date You sign this Agreement of Sale. Examples of "circumstances or conditions beyond Our control" include, but are not limited to, theft; changes in soil conditions; sink holes; incomplete infrastructure development; governmental moratoriums, regulations or orders; work stoppages; material shortages; weather conditions and our inability to purchase the Home site. We will not be liable for these delays in construction. It is the intention of the parties that this sale qualify for the exemption provided by 15 U.S.C. Section 1702(a)(2), and that nothing contained in this Agreement of Sale shall be construed or so operate as to any of Our obligations or Your rights in a manner which would render the exemption inapplicable.

4. SETTLEMENT: Settlement will take place upon Substantial Completion in charleston County at a date and time that We select. *THE ESTIMATED DATE OF SUBSTANTIAL COMPLETION IS ONLY A GUIDELINE.* We will provide You with a more accurate estimated Settlement date at completion of drywall. Within 5 days of Us informing You of completion of drywall, You will inform Us of the name of the attorney who will handle the Settlement. Payment must be made in the form of a cashier's check or federal wire transfer.

We will give You at least ten (10) days prior notice of the date, time and place for Settlement. If we agree to allow You to postpone Settlement, You agree to pay Us an amount equal to one-thirtieth of 1% of the Purchase Price for each day that Settlement is postponed.

If Settlement has not occurred within one (1) year from the Agreement of Sale Date because of Our unexcused delay, You may end this Agreement and Your sole remedy shall be that We return to You all sums that You paid Us.

At Settlement, We will pay the Property Charges apportioned to the Property prior to the Settlement Date, deed stamps and attorney document preparation fees. Except if otherwise provided on a Rider, You will pay all other Settlement Costs, which include all Property Charges apportioned to the Property after the Settlement Date.

5. TITLE TO PROPERTY: Neither legal nor equitable title shall pass until delivery of the deed. Our deed will give You good and marketable fee simple title to the Property. At Settlement, title to the Property may be subject to any of the following, some of which may be recorded between the Agreement of Sale Date and the Settlement Date, and to which You hereby consent and subordinate any interest You may have in the Property:

Buyer's Initials Buyer's Initials

- comprehensive land use plans and matters appearing on the plat;
- restrictions, conditions, covenants, charges, patents, reservations, easements, Homeowners' Association covenants and similar instruments that may be recorded prior to Settlement;
- any observable easements; and
- governmental requirements, such as zoning and building restrictions, and Property Charges not yet due and payable.

6. DEFAULT: You will be in default and will forfeit Your rights under this Agreement of Sale if You fail to:

- make mortgage application and decoration selections as required;
- comply with all requirements of the lending institution providing Your mortgage loan;
- make any payment due under this Agreement on time;
- settle as scheduled;
- disclose all requested credit information; or
- otherwise comply with this Agreement of Sale.

If You default, We can do the following:

- end this Agreement of Sale and retain Your deposit(s) as liquidated damages;
- exercise the remedy of specific performance by requiring You to purchase the Home; or
- exercise any other right or remedy available under applicable law.

7. TERMINATION BY US: This Agreement of Sale is contingent on and We may end this Agreement of Sale at any time if any of the following occur:

- House to Sell Contingency not released at the time the house reaches drywall;
- We determine that Your Mortgage Approval (a) does not meet the requirements of this Agreement, (b) was not obtained within the required time, or (c) is conditional or non-binding;
- We determine that for reasons beyond our control, We cannot achieve Substantial Completion within a reasonable time after the Estimated Date of Substantial Completion;
- We are unable to obtain all necessary public and private approvals and permits within a reasonable time; or
- We determine in Our sole and absolute discretion there are irreconcilable disputes between You and Us.

Often We do not own title to the land at the time We enter into an Agreement of Sale for a Home. In such a case, the Agreement of Sale is contingent on Our obtaining title to the land. If We cannot obtain title to the land, We may terminate this Agreement of Sale.

We will notify You if We choose to terminate. If We terminate for any of these reasons, and provided that You are not in default, We will return all sums that You paid to Us.

8. ELECTROMAGNETIC FIELDS: All power lines and electrical appliances that draw electric current have electromagnetic fields (EMF) around them. We have no expertise or information about EMF or the detection of EMF and do not review or monitor research efforts regarding EMF. As a result, We do not make representations or warranties of any kind, express or implied, or provide information about the presence or effect of EMF on or in proximity to the Property. The local electric utility company servicing the Property or Your state or local environmental, energy or health agencies or the regional office of the EPA may provide such information.

9. RADON GAS: The United States Environmental Protection Agency ("EPA") has indicated that a number of homes in the United States experience elevated levels of radon gas. Radon is a naturally occurring gas that is caused by the radioactive decay of the element radium. Since radium is contained in the earth's crust and dissolves readily in water, radon can be found virtually everywhere and can enter the home through a variety of sources. Homeowners seeking information about radon can contact the EPA or their state environmental office. We have no expertise in the measurement or reduction of radon in homes or regarding acceptable levels or possible health hazards associated with radon. The EPA may provide information about testing and methods for reducing the level of radon gas in homes. We make no warranty or representation of any kind, express or implied, regarding the presence or absence of radon gas, or regarding the effectiveness of any architectural or engineering activities for reducing the presence of radon.

10. ARBITRATION: YOU AGREE THAT ANY CONTROVERSY, CLAIM OR DISPUTE ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT, THE PROPERTY, YOUR PURCHASE OF THE PROPERTY OR OUR CONSTRUCTION OF THE HOME SHALL BE SETTLED BY BINDING ARBITRATION WITH AN INDEPENDENT THIRD PARTY ARBITRATION ORGANIZATION MUTUALLY AGREED UPON BY YOU AND US FROM A LIST PROVIDED BY OUR WARRANTY ADMINISTRATOR. THE DECISION OF THE ARBITRATOR SHALL BE FINAL AND BINDING ON YOU AND US AND JUDGMENT UPON THE AWARD MAY BE ENFORCED IN ANY COURT HAVING JURISDICTION. YOU ACKNOWLEDGE THAT THIS SECTION ELIMINATES YOUR RIGHT TO A TRIAL. THE NON-PREVAILING PARTY IN THE ARBITRATION SHALL PAY THE COSTS OF ARBITRATION INCLUDING THE PREVAILING PARTY'S REASONABLE ATTORNEYS' FEES AND COSTS.

11. TIME: TIME IS OF THE ESSENCE for the Settlement date and for all of Your obligations under this Agreement of Sale. This means that You will be in default if You fail to settle on the date selected.

12. POSSESSION: You have the right to possession of the Property after Settlement. We accept the risk of loss or damage to the Property until the earlier to occur of Settlement or delivery of possession to You.

13. ASSIGNMENT: You may not assign or record this Agreement of Sale.

14. NOTICES: All notices must be in writing and delivered to the addresses set forth on page one. All notices of default must be sent by certified or registered mail, return receipt requested. Notices are deemed given two days after mailing.

15. MODIFICATIONS AND WAIVERS: This Agreement may be changed, modified or amended only by a written instrument, signed by both You and Us. The start of any activity by Us in connection with the Property is not to be deemed a waiver of any of Our rights under this Agreement of Sale. We will not waive any right just because We delayed or failed to enforce that right.

16. ENTRY: A CONSTRUCTION SITE IS A DANGEROUS PLACE AND YOU ARE PROHIBITED FROM ENTERING THE PROPERTY BEFORE SETTLEMENT WITHOUT OUR WRITTEN PERMISSION. IF YOU RECEIVE OUR PERMISSION TO ENTER THE PROPERTY, YOU MUST BE ACCOMPANIED BY A RYLAND REPRESENTATIVE AND WEAR A HARD HAT. YOU AGREE THAT YOU WILL BE RESPONSIBLE FOR AND HEREBY RELEASE US FROM ANY CLAIMS FOR ANY INJURY OR DAMAGE TO PERSONS OR PROPERTY CAUSED BY OR RELATED TO ANY ENTRY ON THE PROPERTY BY YOU OR YOUR INVITEES PRIOR TO SETTLEMENT. UNDER NO CIRCUMSTANCES MAY YOU PERFORM ANY WORK ON THE PROPERTY OR BRING ANY CHILDREN UNDER AGE 18 ONTO THE PROPERTY BEFORE SETTLEMENT.

17. DISCLAIMER-CONSUMER PRODUCTS WARRANTIES LIMITED TO MANUFACTURERS: YOU ACKNOWLEDGE THAT WE HAVE PROVIDED YOU WITH ACCESS TO AND HAVE MADE AVAILABLE TO YOU COPIES OF ALL WRITTEN WARRANTIES

Buyer's Initials Buyer's Initials

ON CONSUMER PRODUCTS WHICH MAY BE INSTALLED IN THE HOME AS THE TERM "CONSUMER PRODUCTS" IS DEFINED IN TITLE 15 U.S.C. SECTION 2301 AND PART 702 OF THE FEDERAL TRADE COMMISSION RULES AND REGULATIONS UNDER THE MAGNUSON MOSS WARRANTY ACT, PRIOR TO THE EXECUTION OF THIS AGREEMENT. YOU FURTHER ACKNOWLEDGE THAT YOU HAD SUFFICIENT OPPORTUNITY TO REVIEW SUCH WARRANTIES TO THE EXTENT YOU DEEM NECESSARY TO INFORM YOURSELF OF THE CONTENTS OF SUCH WRITTEN WARRANTIES. WE WILL PASS ALONG TO YOU THE WRITTEN WARRANTIES PROVIDED BY THE MANUFACTURERS OF "CONSUMER PRODUCTS." WE MAKE NO WARRANTIES, INCLUDING ANY WARRANTIES AS TO MERCHANTABILITY OR FITNESS, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO APPLIANCES OR OTHER CONSUMER PRODUCTS EITHER ATTACHED TO OR INSTALLED IN THE HOME, AND WE ARE NOT RESPONSIBLE FOR ANY PROMISE OR WARRANTY MADE BY THE MANUFACTURERS OF SUCH PRODUCTS.

18. HOME OWNERS WARRANTY: We will register Your Home with the Your Ryland Home Warranty Plan. At that time We will provide You with a warranty document detailing the coverage under Our warranty program. You agree to accept this warranty plan as the only warranty from Us.

19. HOME OWNERS MANUAL: You acknowledge that You have received the Ryland Home Owner's Manual and have read and reviewed the procedures outlined therein. The Home Owner's Manual is the book upon which We base Our warranties, and it is important that You be familiar with everything contained in the Manual in order to care for Your new Home.

20. NO OTHER AGREEMENTS: We make no express or implied warranties to You except as required by law and as set forth in this Agreement of Sale and on the Riders. There are no other oral or written agreements or representations, directly or indirectly, connected with this Agreement of Sale. We make no representation concerning (a) any land adjacent to or near the Property (b) the quality of utility service or (c) future market conditions and their resulting impact on housing prices. We will not be bound by any representations or promises made by any salesperson or other person unless they are included in this Agreement of Sale. Furthermore, We reserve the right to change Our pricing and marketing strategies as We deem necessary. By including the following terms, We are making them a part of this Agreement of Sale: **All sales incentives are contingent on the Buyers using Ryland Mortgage and Ryland Insurance.**

BY INITIALING BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS PARAGRAPH AND ARE NOT RELYING ON ANY ORAL STATEMENTS OR PROMISES.

Buyer's Initials _____ Buyer's Initials GC

YOUR FAILURE TO INITIAL THIS SECTION SHALL NOT BE DEEMED TO IMPLY THAT YOU HAVE RELIED ON ORAL STATEMENTS OR PROMISES.

21. ENTIRE AGREEMENT: This Agreement will be effective when signed by You and an authorized officer of The Ryland Group, Inc. This Agreement of Sale includes all DEFINITIONS, GENERAL TERMS, AND THE FOLLOWING CHECKED RIDERS, all of which are attached and incorporated by reference into the Agreement of Sale, and, together with the Home Owner's Manual, form the complete agreement between You and Us:

Check all riders that are attached to and incorporated in the Agreement of Sale:

- ☐ Acknowledgment of Agency Disclosure
- ☐ Cash Sale Rider
- ☐ Customer Selection Sheet
- ☐ Financing and Approved Settlement Costs Rider
- ☐ Homeowners' Association Rider
- ☐ House to Sell Rider
- ☐ Model Home/Inventory Home Rider
- ☐ Outside Lender Rider
- ☐ Privacy Policy Notice
- ☐ Real Estate Company Rider
- ☐ Notice of Affiliated Business Arrangements (RMC, RTC, RIS)
- ☐ Slab Foundations
- ☐ State Rider
- ☐ Tree & Lawn Policy Rider
- ☐ Wetlands/Flood Plain Disclosure
- ☐ Other (specify) _____
- ☐ Other (specify) _____

22. APPLICABLE LAW: This Agreement of Sale is governed by the Laws of the State in which the Property is located. If any clause or provision of this Agreement of Sale shall for any reason be determined to be illegal, invalid or unenforceable, the remainder of this Agreement of Sale shall not be affected thereby and may be enforced to the maximum extent possible.

THIS IS A LEGALLY BINDING AGREEMENT. PLEASE MAKE SURE THAT YOU READ AND UNDERSTAND ALL PROVISIONS BEFORE SIGNING. IF YOU DO NOT UNDERSTAND ANY PROVISION, YOU SHOULD SEEK LEGAL ADVICE.

WITNESS — BUYER(S) SIGNATURE — DATE 2/12/06
SOCIAL SECURITY NUMBER

WITNESS — BUYER(S) SIGNATURE — DATE 2/12/06
SOCIAL SECURITY NUMBER

THE RYLAND GROUP, INC.

WITNESS OR ATTEST — By: AUTHORIZED OFFICER — DATE 2/22/06

Please print below your name the way you wish it to appear on your deed.

	First Name	Middle Name or Initial (optional)	Last Name
Mr. ☐ Ms. ☐ Mrs. ☐	Thomas	J.	Czajkowski
Mr. ☐ Ms. ☐ Mrs. ☐	Ginger		Czajkowski

Buyer's Initials _____ Buyer's Initials GC

Revised 5/16/05

Community ID 08786010000 Homesite 0074

Rider to Agreement of Sale
Between Thomas Czajkowski and Ginger Czajkowski Buyer(s)
And
The Ryland Group, Inc., Seller

FINANCING AND NON-RECURRING SETTLEMENT COSTS RIDER

1. Financing and Non-Recurring Settlement Costs.

A. You must deliver a copy of Your Mortgage Approval to Us within the time set forth in the Agreement of Sale. If You do not obtain Your Mortgage Approval within such time, We may, at Our sole discretion, either terminate Your Agreement of Sale and return Your Deposit to You or extend Your time for obtaining Mortgage Approval up to an additional 60 days. If You diligently pursue obtaining Mortgage Approval by cooperating fully with Your lender, and providing accurate and timely information and documentation and, through no fault of Yours, You are unable to obtain a Mortgage Approval without contingencies that You cannot satisfy, then You may terminate the Agreement of Sale by written notice to Us within the time frame specified in the Agreement of Sale, as such time may be extended by Us. If you terminate the Agreement of Sale by written notice to Us within the specified time frame, We will refund all deposit money paid by You to Us. If You fail to terminate the Agreement of Sale by written notice to Us within the specified time frame, We will be entitled to retain Your deposit if You fail to settle for any reason, even if Your failure to settle is because You cannot satisfy Your Mortgage Approval contingencies.

B. You understand and agree that Your loan on the Property shall bear an interest rate as determined between You and Your lender and any agreement to lock in Your interest rate and loan terms must be determined by You and Your Lender.

C. Because of the unpredictability that sometimes exists during the building process, which can result in settlement delays, We will not accept responsibility for any expired lock-in agreements.

D. You have the right to use a closing service chosen by You, the right to procure homeowner's insurance from an insurance company chosen by You and, in the event You are financing the purchase of Your Home, a lender chosen by You in connection with the purchase of the Home. We agree to pay up to $3000 toward non-recurring settlement costs; provided, however, in order to receive the non-recurring settlement cost credit, You must elect in Your sole discretion to (1) finance through Ryland Mortgage, (2) use the closing services of Dodds and Hennessy and (3) procure homeowner's insurance from Ryland Insurance Services. For FHA and VA loans, Buyer's non-allowable closing costs will be paid as part of Ryland's closing cost contribution (not in addition to). Notwithstanding the foregoing, if You elect not to finance the purchase of the Home, You will receive the non-recurring settlement cost credit if You use the closing services of Dodds and Hennessy, and procure homeowner's insurance from Ryland Insurance Services. In the event You elect to use an attorney or title company other than Dodds and Hennessy, We shall have no duty or obligation related to or arising from the issuance/delivery of a title insurance commitment and are hereby released from any and all duty and/or obligations arising therefrom, if any, or to provide such attorney or title company any document(s) whatsoever, including but not limited to, any documentation regarding Our formation, existence and/or good standing, Our authority to convey a Home or the authority of any person acting on Our behalf to execute and/or deliver documents on Our behalf.

E. "Non-recurring Settlement Costs" means: One-time fees and expenses required by lending institutions, with the exception of appraisal fee, credit report fee, mortgage insurance premiums and VA funding fee.

F. In the event that at the time of Settlement, the actual Discount Points and Approved Settlement Costs are less than the maximum, We will pay only for the actual costs incurred. Any unused amounts will not be paid to You.

☒ 2. Conventional Financing. If the box is checked, You have indicated Your intention to apply for a conventional mortgage loan.

☐ 3. FHA Financing. If the box is checked, You have indicated Your intention to apply for a mortgage loan insured by the Federal Housing Administration (FHA) and this paragraph applies to You. It is expressly agreed that notwithstanding any other provisions of this Agreement, You shall not be obligated to complete the purchase of the Property described herein or incur any penalty by forfeiture of earnest money deposits or otherwise unless You have been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration, or Direct Endorsement lender setting forth the appraised value of the property of not less than $233,990.00. You shall have the privilege and option of proceeding with consummation of the Agreement of Sale without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development (HUD) will insure. HUD does not warrant the value nor the condition of the Property. You should satisfy Yourself that the price and condition of the Property are acceptable.

☐ 4. VA Financing. If the box is checked, You have indicated Your intention to apply for a mortgage loan guaranteed by the Department of Veteran Affairs (VA) and this paragraph applies to you.

A. It is expressly agreed, notwithstanding any other provisions of the Agreement, that You shall not incur any penalty by forfeiture of earnest money or otherwise be obligated to complete the purchase of the Property described herein, if the Purchase Price of the Property exceeds the reasonable value of the Property established by the VA. You shall, however, have the privilege and option of proceeding with the consummation of the agreement without regard to the amount of reasonable value established by the VA.

B. The substitution of materials as provided for in the "Construction of Home" section of the General Terms of the Agreement will be subject to the approval of the VA and You in accordance with VA regulations. Except for such approved substitutions the Home will be built in accordance with the Plans and Specifications submitted to the VA.

C. All earnest money and other deposits made by You shall be deposited in a special trust account as required by 38 USC Section 3706.

D. You acknowledge and agree that, in the event You obtain VA funding, Your Design Center options are limited to five percent (5%) of the Base Price plus Structural Options.

Buyers Initials TC Buyers Initials GC

Revised 08/22/05

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Project: 08786010000 Lot: 0074

Rider to Agreement of Sale
Between Thomas Czajkowski and Ginger Czajkowski, Buyer(s)
and
The Ryland Group, Inc., Seller

HOMEOWNERS' ASSOCIATION RIDER

1. You acknowledge that Your ownership of the Home will require that You belong to the Homeowners' Association, and that You will be required to pay cash to the Homeowners' Association from time to time. The following indicated documents, each substantially in the form which You have received prior to Your execution of this Agreement, will affect Your Property:

☒ A. Declaration of Covenants, Conditions, Restrictions, Easements, and Liens

☒ B. By-laws of the Homeowners' Association.

☒ C. Rules and Regulations

☒ D. Articles of Incorporation for Homeowners' Association

☐ E. Other (specify) _____

Your initial assessments for Homeowners' Association are estimated to be $ 435 /year. Please consult Your Homeowners' Association Documents for verification of this amount.

Buyer's Initials GC Buyer's Initials

Community ID: 08786010000 Homesite: 0074

Rider to Agreement of Sale

Between Thomas Czajkowski and Ginger Czajkowski, Buyer(s)

and

The Ryland Group, Inc., Seller

HOUSE TO SELL / LEASE RIDER

You have advised Us that You presently have a house to sell or lease located at 667 Aster Dr, Davenport, Davenport, FL 33897 3816 (Residence address). You agree to list the Residence for sale or lease with a licensed real estate broker affiliated with a multiple listing service in the area the Residence is located and who is regularly doing business in the county where the Residence is located. Prior to Your Design Center appointment, You agree to deliver a copy of the signed listing agreement together with a marketing plan and market analysis to Us. Please fax all documents to Our Sales Coordinator at 843-746-4325.

Upon entering into a contract of sale or lease of the existing Residence, You must deliver a copy of a bona fide Contract or Lease signed by You and Your buyer/lessor to Our Sales Coordinator via fax at 843-746-4325.

☒ REFUNDABLE DEPOSIT

You have chosen the option of a contingent refundable earnest money deposit to have Ryland Homes construct a new Home for You while Your Residence is being marketed for sale by a licensed real estate broker. You understand that upon start of insulation, if You have not sold Your Residence, We will have the right to terminate Your Agreement of Sale, in which event We will return Your deposits less any non-refundable customer option costs You requested for Your home. Non-refundable option costs are Designer Options that total ten percent (10%) of the Base Price as set forth in this Agreement of Sale.

Election to Make Deposit Non-Refundable

If, at insulation, You have not sold Your Residence and You wish to continue with the Agreement of Sale through completion of the home, You must notify Us in writing of Your intent to do so and Your earnest money deposit will become fully non-refundable. Failure to notify Us at commencement of drywall of Your intent to continue with the Agreement of Sale will be deemed an election to have Your deposit refunded.

You understand that if You agree to continue with the Agreement of Sale with a non-refundable earnest money deposit, we will notify You of substantial completion of the home and will schedule Your pre-settlement walk-though and Settlement date. If You cannot Settle for any reason, including Your inability to obtain mortgage financing, by the Settlement date We have scheduled, We will retain Your earnest money deposit on that date. If We agree, in Our sole discretion, to reschedule closing because of Your inability to Settle, You agree to pay Us an amount equal to one-thirtieth of 1% of the Purchase Price for each day that Settlement is postponed. We will ordinarily not schedule settlement on the last day of the month. You understand that Designer Options will be limited to five percent (5%) of Base Price plus Structural Options purchase price.

JC GC
Buyer's Initials Buyer's Initials

☐ NON-REFUNDABLE DEPOSIT

You have chosen the option of a contingent non-refundable earnest money deposit to have Ryland Homes construct a new Home for You while Your existing home is being marketed for sale by a licensed real estate broker. You understand that You will have until We notify You of substantial completion of the Home to sell or lease Your existing residence. At no point during construction of Your new Home will We market the Property for sale until after completion. If You cannot provide evidence satisfactory to Us of Your ability to purchase the Home upon notification of substantial completion We will retain Your earnest money deposit and market the Home for sale.

If We agree, in Our discretion, to reschedule closing because of Your inability to Settle, You agree to pay Us an amount equal to one-thirtieth of 1% of the Purchase Price for each day that Settlement is postponed. We will ordinarily not schedule settlement on the last day of the month.

Buyer's Initials Buyer's Initials

Community ID: 08786010000 Homesite: 0074

Rider to Agreement of Sale
Between Thomas Czajkowski and Ginger Czajkowski, Buyer(s)
and
The Ryland Group, Inc., Seller

REAL ESTATE COMPANY RIDER

Fill in requested information and attach a business card in order to receive a copy of the Agreement of Sale:

REAL ESTATE COMPANY: Prudential Carolina Real Estate

AGENT: William Stover

ADDRESS: 3040 N Highway 17, , Mt Pleasant, SC 29466 8958

PHONE: (843) 266-5000

FAX:

CO. FEDERAL TAX ID #: _____

**No commission amounts will be dispensed without Tax ID Number.

In connection with this purchase, We will pay to the Real Estate Company listed above a commission of 3% of the Total Purchase Price, payable and/or_____, if and when this purchase is settled and the proceeds are paid to Us.

In order to induce Us to execute a contract with You for the sale of this Home and to pay a commission to the Real Estate Company, the Real Estate Company and You each represent as follows:

A. None of Our representatives referred You to the Real Estate Company or any agent of the Real Estate Company, or referred the Real Estate Company or any agent of the Real Estate Company to You.

B. No part of the commission which We may pay to the Real Estate Company shall be paid, directly or indirectly, to You unless You are a licensed agent of the Real Estate Company. In this case, We would need a signed letter from the Broker in Charge on Real Estate Company letterhead sent to Us authorizing Us to pay You directly.

C. The Agreement of Sale and all Riders attached hereto constitute the entire Agreement between Buyer and Seller and to the best knowledge and belief of the undersigned there are no other agreements entered into among any of the parties that are not attached to the Agreement of Sale.

Signed this 12th day of February, 2006.

Buyer: _____

Buyer: _____

Real Estate Company: Prudential Carolina Real Estate

By: _____
Agent/Broker

The Ryland Group, Inc.

By: _____
Authorized Officer

You acknowledge that You have NOT been represented by any real estate Agent/Broker in this transaction.

Signed this _____ day of _____, 20_____

Buyer: _____

Buyer: _____

Community ID: 08786010000 Homesite: 0074

Rider to Agreement of Sale
Between Thomas Czajkowski and Ginger Czajkowski, Buyer(s)
and
The Ryland Group, Inc., Seller

STATE RIDER
(South Carolina)

1. Notices Regarding Selections.

A. Your sales representative will review and discuss all of Your options with You and answer any questions You may have. The sales representative's role, however, is advisory only. All selections that You make are Your sole responsibility. It is Your responsibility to verify the accuracy of Your selections of color, location, option numbers and description on the sheet containing Your option selections.

B. Colors on some products may vary slightly due to different dye lots, production runs or other factors. We are not responsible for exact color matching.

C. We will order materials and construct Your Home based on Your selections on the Customer Selected Option Sheet and all selection and order forms signed by You in connection with the purchase of Your Home. The selections are binding on You and cannot be changed without Our acceptance and Your payment of a change order fee and execution of a written change order.

D. If You default on Your Agreement of Sale, We may retain any deposits paid, including any option deposits, as liquidated damages.

E. If the material You selected is not available, You agree to make a new selection within 5 days after We notify you. We reserve the right to substitute material of like pattern, quality and design if You fail to do so upon request.

2. Trusses.

You understand that roof trusses are not designed for weight bearing capacity. You agree to hold Us harmless from any problems which may occur due to Your storing of any articles in the attic area.

3. Insulation.

The type, thickness and R-value, according to manufacturer of insulation, used in the Home areas are:

AREAS OF HOME	TYPE OF INSULATION	THICKNESS	R-VALUE
Top Floor Ceilings - Flat	Blown Loose Fill Fiber Glass	11¼	R-30
Top Floor Ceilings - Other than Flat[1]	Kraft Faced Fiberglass Batt	11¼	R-30
Exterior Walls	Kraft Faced Fiberglass Batt	3½	R-13
Floors Over Unconditioned Space[2]	Kraft Faced Fiberglass Batt	5½	R-19
Floors Over Outdoor or Open Space	Kraft Faced Fiberglass Batt	5½	R-19
Rim or Band Joist Areas	Kraft Faced Fiberglass Batt	3½	R-13
Conditioned Crawl Space Walls	N/A	N/A	N/A
Conditioned Basement Walls	Kraft Faced Fiberglass Batt	3½	R-13

1 Vaulted/Cathedral/Sloped or Other Non-Flat Areas
2 Garrison Overhangs or Cantilevered Floors

We reserve the right to substitute insulation materials similar in quality to those set forth above as long as there is no significant change in the R-value of the insulation. You will be provided a notice setting forth the new information for the substituted insulation.

Notwithstanding the foregoing, insulation may be of a lesser R-value than indicated above in certain areas where the design of the subject dwelling is limiting. Examples of locations where R-value may vary include locations where studs are placed in walls, at corners, windows, and where roof trusses attach to outside walls.

The R-value stated above are based on the representations of the manufacturer and/or installer of the insulation, and We do not warrant or represent that these R-values are correct.

Thickness of insulation may vary due to the type of material, age, settlement, and shrinkage.

Locations specified are only those surrounding air-conditioned livable areas of the residence. They do not include ceilings and walls surrounding garages, patios, or any areas beyond the exterior walls of the house.

Buyer's Initials GC Buyer's Initials

State Rider (continued)

4. VIEW NOT GUARANTEED. You acknowledge that Your right to a view will stop at Your property line. By signing this agreement, You acknowledge that We make no representations concerning the future use of adjacent real estate. You acknowledge that You are aware there may be dwellings, landscaping, or other improvements in adjacent areas which might interfere with the view of surrounding areas as it now exists.

5. MULTIPLE PHASE DEVELOPMENTS. We do not guarantee the type of product that may be constructed on a any future phases of development. You are advised that Plats for future phases in the community or surrounding property may be changed prior to final development.

6. SEX OFFENDER REGISTRY. We do not make any representation regarding the presence of any sex offenders in the community or area. If such information is material to Your decision to purchase a home, You can obtain the information from the official South Carolina Sex Offender Registry from the local Sheriff's Department or other appropriate law enforcement source, such as SCattorneygeneral.com.

☐ 7. WETLANDS/FLOOD PLAIN DISCLOSURE. You acknowledge that the lot or property adjacent to the lot may contain a wetland and/or flood plain area. You understand that this area may be prone to standing water or prolonged moisture conditions. You accept the lot with these conditions and understand that We will leave the adjacent land and all portions of Your lot natural except for areas disturbed by home construction. You also understand there may be additional homeowner's insurance costs associated with a lot that has a flood plain on it.

☐ 8. UNFINISHED COMMUNITY RIDER. The parties to the attached Agreement of Sale hereby agree to incorporate the following conditions as a part of the Agreement of Sale, for the original consideration set forth herein:

1. That it is understood that the Property as described in the Agreement of Sale and recorded in the land records of _____ County in the State of South Carolina, has not been fully developed to meet the criteria for The Ryland Group, Inc. to begin home construction. To meet this criteria the following must be accomplished prior to start of home construction:

   a. Underground utilities installed,
   b. Curb and gutter installed,
   c. Base course of paving installed, and
   d. All city and/or county approvals necessary to obtain building permits must have been obtained

2. That in the event that the Property is not fully developed as described above in paragraph one (1) prior to _____, We shall have the right to terminate this Agreement with no further obligation or liability to You. In that event, the Agreement shall be considered null and void and We will refund all deposit monies paid by You.

3. That in the event the Property is fully developed as described in paragraph one (1) above prior to _____, the Agreement of Sale shall automatically become a binding contract and You shall be bound by the terms and provisions therein.

4. We intend to begin construction of Your Home in a timely fashion as soon as the foregoing are completed and other requirements of the attached Agreement are met. We will not guarantee any delivery dates nor will We be responsible for any interest rate lock-ins.

Buyer's Initials _____ Buyer's Initials _____

Community ID: 08786010000 Homesite: 0074

Rider to Agreement of Sale
Between Thomas Czajkowski and Ginger Czajkowski Buyer(s)
and
The Ryland Group, Inc., Seller

TREE AND LAWN POLICY RIDER

LAWN POLICY

The yard You will receive is a STARTER lawn. You can expect approximately 50% grass seed germination, even with proper watering and care. It will take at least three full seasons of aerating, overseeding, and fertilizing Your lawn, along with applying pre-emergent and post-emergent herbicides, before You can expect to have a lush, full crop of grass. We do not guarantee that You will have a weed-free lawn. For best results, consult with a lawn care company or Your Cooperative Extension branch.

Yards will be graded, seeded, fertilized and strawed or, if applicable, sodded before Settlement (weather permitting). After Settlement, lawn care and maintenance will be Your responsibility. We will correct any ponding of water that stands for more than 24 hours (48 hours in a swale).

TREE POLICY

A. At Our sole and absolute discretion, We reserve the right, but shall not be obligated, to remove any trees (1) within twenty (20) feet of the home and (2) in close proximity to the water, gas and/or electrical lines, and/or driveway. We also reserve the right, in Our sole and absolute discretion, to remove any dead trees on the land. By initialing below, You hereby waive and release any claim against Us arising from or relating to Our decision with respect to removal of any tree(s) from the land.

B. All stumps and debris from clearing the lot for the placement of Your home will be removed.

C. During construction it is necessary to use large equipment. In the process, some damage may occur to the remaining trees. We recommend that You repair these areas by sawing broken limbs flush with the main trunk and treating those areas as well as any bark damaged areas with a tree compound. WE WILL NOT REMOVE, AND WILL NOT BE RESPONSIBLE FOR THE LOSS OF ANY NATURAL TREE AFTER CLOSING. Unless You fail to water shrubs and trees sufficiently, We will warrant shrubs and trees installed by Us for 30 days after Settlement.

D. It is Your responsibility to understand local municipal ordinances regarding removal of trees form the land.

NATURAL AREAS

Natural areas will be cleared of construction-related trash. Small islands of natural areas in the front yard will also be cleared of vines and underbrush and will then be mulched or pine strawed. Underbrush elsewhere will be left in natural state.

You acknowledge that You have read, understand and accept the above Tree and Lawn Policy. You have also been informed of available optional landscaping upgrades.

Buyer's Initials _____ Buyer's Initials _____

Revised 8/22/05

Community ID: 08786010000 Homesite: 0074

Rider to Agreement of Sale

between Thomas Czajkowski and Ginger Czajkowski, Buyer(s)
and
The Ryland Group, Inc., Seller

NOTICE OF AFFILIATED BUSINESS ARRANGEMENT
RYLAND INSURANCE SERVICES

This is to give notice that Ryland Insurance Services ("Ryland Insurance") has a business relationship with Us. Ryland Insurance is a subsidiary of Ryland Mortgage Company, which is a subsidiary of Us. Because of this relationship, this referral may provide The Ryland Group, Inc. a financial or other benefit.

If there is financing in connection with Your property, You may be required to procure homeowners' insurance. The rates for homeowners' insurance are regulated and approved by the State of South Carolina. The cost of the insurance varies based upon the purchase price and other factors. A quotation of the cost of homeowners' insurance premiums can be obtained by calling Ryland Insurance Services at 800-440-7942.

You are not required to use Ryland Insurance as a condition of Your sales contract or the purchase of a Ryland home.

THERE ARE FREQUENTLY OTHER INSURANCE SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

Acknowledgment:

You have read this disclosure form and understand that The Ryland Group, Inc. is referring You to purchase the above-described insurance services from Ryland Insurance Services and may receive a financial or other benefit as a result of this referral.

Buyer's Signature _____ Date 2/12/06

Buyer's Signature _____ Date 2/12/06

Community ID: 08786010000 Homesite: 0074

Rider to Agreement of Sale

between Thomas Czajkowski and Ginger Czajkowski, Buyer(s)
and
The Ryland Group, Inc., Seller

NOTICE OF AFFILIATED BUSINESS ARRANGEMENT
(RYLAND TITLE COMPANY)

This is to give You notice that The Ryland Group, Inc. has a business relationship with Ryland Title Charleston, L.L.C. ("Ryland Title"). Ryland Title Charleston is a limited liability company having Cornerstone Title Company d/b/a Ryland Title, an affiliate of The Ryland Group, Inc., and Dodds and Hennessy, LLP, as its members. Because of this relationship, this referral may provide The Ryland Group, Inc. a financial or other benefit.

If You elect, in Your sole discretion, to use the settlement service providers listed below, the following table reflects the estimated charge, or range of charges for such services.

Provider	Settlement Service	Charge or Range of Charges
Ryland Title	Owner's and Lender's Title Insurance	$3.60 per $1,000.00 of coverage for 1st $50,000.00 $3.00 per $1,000.00 of coverage over $50,000.00 up to $100,000.00 $2.10 per $1,000.00 of coverage over $100,000.00 Up to $500,000.00
Ryland Title	Simultaneous Issuance Fees	$75.00
Dodds & Hennessy	Attorneys' Fees	$375.00
	Document Preparation Fee	$150.00

If there is financing in connection with Your property, You will be required to procure lender's title insurance. At closing, You will be entitled to purchase owner's title insurance as well. The rates for title insurance are filed with the State of South Carolina. The cost of the insurance varies based upon the purchase price and loan amount. A quotation of the cost of Owner's and/or lender's title insurance premium can be obtained by calling Dodds & Hennessy at (843) 881-1022.

You are not required to use Ryland Title as a condition of Your sales contract or the purchase of a Ryland home.

THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

Acknowledgment:

You have read this disclosure form and understand that The Ryland Group, Inc. is referring You to purchase the above-described settlement service(s) and may receive a financial or other benefit as the result of this referral.

Buyer's Signature 2/12/06 Date Buyer's Signature 2/12/06 Date

Community ID: 08786010000 Homesite: 0074

Rider to Agreement of Sale
Between Thomas Czajkowski and Ginger Czajkowski, Buyer(s)
and
The Ryland Group, Inc., Seller

NOTICE OF AFFILIATED BUSINESS ARRANGEMENT
(RYLAND MORTGAGE COMPANY)

This is to give You notice that Ryland Mortgage Company has a business relationship with Us. Ryland Mortgage Company is a wholly-owned subsidiary of The Ryland Group, Inc. Because of this relationship, this referral may provide The Ryland Group, Inc. a financial or other benefit. The settlement service charges stated below are estimated charges and/or estimated ranges of charges generally charged by Ryland Mortgage Company. If You apply for a mortgage loan, Ryland Mortgage Company will provide You with a "Good Faith Estimate of Settlement Charges" which will further detail these estimated charges. The type of loan program for which You will apply will determine the actual fees You will be required to pay. The interest rate and any applicable discount points associated with Your loan program are based on general market conditions and will also be disclosed on the "Good Faith Estimate of Settlement Charges."

Description	Charges
Origination Fee:	1% (Max) of Mortgage Amount
Application (including appraisal):	$0 - $350
Processing Fee:	$250
Credit Report:	$50 - $55
Settlement Fee:	$35
Miscellaneous Fee:	$0 - $500
Underwriting Fee	$350.00

You are not required to use Ryland Mortgage Company as a condition of Your sales contract or the purchase of a Ryland home.

THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

A lender is allowed to require the use of specific real estate appraisers, credit reporting agencies or an attorney to represent its interests.

Acknowledgment:

You have read this disclosure form and understand that The Ryland Group, Inc. is referring You to purchase the above-described settlement services from Ryland Mortgage Company and may receive a financial or other benefit as a result of this referral.

Buyer's Signature 2/12/06 Date

Buyer's Signature 2/12/06 Date

Community ID: 08786010000 Homesite: 0074

Rider to Agreement of Sale
Between Thomas Czajkowski and Ginger Czajkowski, Buyer(s)
and
The Ryland Group, Inc., Seller

OWNER OCCUPANCY RIDER

We desire to sell the Property only to a buyer who will occupy the Property as buyer's principal or secondary residence for a minimum of one (1) year.

1. Use as Principal or Secondary Residence for One Year. In consideration of Us entering into the Agreement of Sale and as an inducement to Us to sell the Property to You, You covenant and warrant to Us that the Property is to be used and occupied by You as Your principal or secondary residence for at least one (1) year after the date of Settlement and not as an investment property for resale or lease. The foregoing covenant and warranty is material and is being relied upon by Us (and the truth and accuracy of which shall constitute a condition precedent to Our obligations under the Agreement of Sale). Your covenant and warranty set forth in this paragraph shall survive the date of Settlement for one (1) year and shall not be merged with the deed conveying the Property from Us to You.

2. Default. Notwithstanding anything to the contrary contained in the Agreement of Sale, You acknowledge and agree that We have the right to unilaterally cancel the Agreement of Sale and retain any funds deposited by You with Us if any of the following occur prior to the date of Settlement, subject to Section 3(E) below:

(A) You assign Your right, title and interest in and to the Agreement to another person;
(B) You advertise, list or otherwise offer the Property for sale or rent to others;
(C) You enter into an agreement to sell or rent all or any portion of the Property;
(D) You take any other action, which indicates to Us that You do not have a bona-fide intention of residing in the Property as Your principal or secondary residence for one (1) year or more; or
(E) We have a good faith reason to believe that the Property will not be used and occupied by You as Your principal or secondary residence for at least one (1) year after the date of Settlement.

3. Option to Receive Profit on Resale or Rental of Property.

(A) Effective as of the date of Settlement, You grant to Us an option to receive, as the case may be, the profit on resale of the Property or all rent or other economic consideration payable or paid to You or for the benefit of You in connection with the leasing of the Property ("Profit Payment") exercisable in Our sole and absolute discretion, upon the occurrence of any of the following: (i) You advertise, list or otherwise offer the Property for sale or rent to others within the first year after the date of Settlement, (ii) You enter into an agreement to sell or rent the Property within the first year after the date of Settlement, (iii) You take any other action, which indicates to Us that You do not have a bona-fide intention of residing in the Property as Your principal or secondary residence for one (1) year after the date of Settlement, or (iv) We have a good faith reason to believe that the Property is not being used and occupied by You as Your principal or secondary residence at any time during the first year after the date of Settlement.

(B) In the event You rent the Property within the one (1) year period described herein and if We elect to exercise Our right to Profit Payment, We shall notify You of such election and You agree to pay Us an amount equal to the rent or other economic consideration payable or paid to You or for the benefit of You in connection with the lease or occupancy of the Property.

(C) In the event You resell the Property within the one (1) year period described herein and if We elect to exercise Our right to Profit Payment, We shall notify You of such election and You agree to pay Us an amount equal to fifteen percent (15%) of the purchase price of the Property at the time of Your sale or transfer of the Property.

(D) If You do not immediately remit the Profit Payment to Us as required by the terms and conditions of this Rider, We shall be entitled to exercise any and all rights and seek any and all remedies which We may hold or to which We may be entitled at law or in equity, including the right to seek damages or the right to seek specific performance, as well as a right for reimbursement of Our attorneys' fees in connection with these actions at law or equity or enforcement of Our rights. Without limiting the foregoing, if You do not immediately remit the Profit Payment to Us as required by the terms and conditions of this Rider, You shall be solely responsible for payment to Us of minimum damages in an amount equal to One Hundred Dollars ($100.00) per day, calculated from the date that You were required to deliver the Profit Payment to Us. You irrevocably appoint Us as Your attorney-in-fact and in Your name, place and stead to execute any and all documents required to remit the Profit Payment to Us if You fail to do so.

(E) The Profit Payment shall not be effective in the event You sell, rent, assign or convey (collectively, "a Transfer") Your right, title and interest in the Property following the date of Settlement as a result of any of the following situations, provided that You provide Us with sufficient documentation evidencing the particular situation and obtain Our waiver of Profit Payment in writing, which waiver will not be unreasonably withheld, prior to any such Transfer: (1) a Transfer resulting from Your death (in which case Your surviving spouse, or heirs, attorney or other representative will be responsible for providing Us with the appropriate documentation and obtaining Our waiver), (2) a Transfer by You where Your spouse becomes the only co-owner of the Property with You, (3) a Transfer resulting from a decree of dissolution of marriage or legal separation or from a property settlement agreement incident to such decree, (4) a Transfer by You into a revocable inter vivos trust in which You are a beneficiary, (5) a financing of the Property or re-financing of the Property by You, (6) a Transfer by You where necessary to accommodate a mandatory (required by Your employer, not including You, if You are self-employed) job transfer either to a state other than _____ or to a permanent location that is more than one hundred (100) miles away from your current location, or (7) a Transfer necessitated by a medical or financial emergency.

(F) On or prior to the date of Settlement, We shall have the right (but not the obligation) to require You to deliver to Us an executed and acknowledged Memorandum of Agreement which describes the Property and sets forth a notice of Our right to have You deliver the Profit Payment to Us pursuant to the terms of this Rider. If We require You to deliver a Memorandum of Agreement to Us, We shall have the right (but not the obligation) to record said Memorandum of Agreement with the County Recorder of the county in which the Property is located on or after the date of Settlement. You acknowledge and agree that, notwithstanding anything to the contrary contained herein or in the Agreement of Sale, title to the Property will be subject to the Memorandum of Agreement in the event We elect to record the Memorandum of Agreement. The right to Profit Payment shall automatically terminate and be of no further force and effect on the date which is one (1) year following the date of Settlement.

Created 6/29/05

Buyer's Initials Buyer's Initials

4. **No Unreasonable Restraint.** You acknowledge that the purpose of this Rider is to assure that the Home You are purchasing from Us will be occupied as a principal or secondary residence. You agree that the provisions and restrictions set forth in this Rider do not constitute an unreasonable restraint upon alienation of the Property.

5. **Subordination.** We and You hereby acknowledge and agree that a violation of this Rider by You shall not defeat or render invalid the lien of any first mortgage or deed of trust made in good faith and for value by You, and that the covenants and provisions of this Rider shall be inferior and subordinate to the lien of any such first mortgage or deed of trust recorded concurrently with the deed conveying the Property to You.

6. **Survival; Severability.** All of the covenants contained herein shall survive the delivery and recordation of the deed conveying the Property from Us to You for a period of one (1) year. The provisions of this Rider shall be independent and severable, and a determination of invalidity or partial invalidity or enforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision of this Rider or the Agreement.

You acknowledge that You have read the provisions of this Rider and that the provisions are understood as well as reasonable.

THE RYLAND GROUP, INC.

By: _____ 2/22/06
AUTHORIZED OFFICER DATE

_____ 2/12/06
BUYER'S SIGNATURE DATE

_____ 2/12/06
BUYER'S SIGNATURE DATE

Community ID: 08786010000 Homesite: 0074

Rider to Agreement of Sale

Between Thomas Czajkowski and Ginger Czajkowski, Buyer(s)
and
The Ryland Group, Inc., d/b/a Ryland Homes, Seller

The Ryland Group, Inc. and Affiliated Companies

Privacy Policy Notice

The purpose of this Notice is to inform you of how The Ryland Group, Inc. and its affiliated companies, including Ryland Mortgage Company, Ryland Title Company, Ryland Escrow Company and Ryland Insurance Services, protect and use your nonpublic personal information during the course of your home buying experience with our family of companies. Title V of the Gramm-Leach-Bliley Act (GLBA) requires that we provide you with a notice of our privacy policies and practices which informs you of the types of information that we collect from you, and the persons or entities to whom your personal information may be disclosed.

In the course of your home buying experience with The Ryland Group, Inc. and its affiliated companies, you may share nonpublic personal information about yourself with us in a number of ways. You may provide personal information to us on applications or other forms when communicating or transacting with us in writing, electronically, or by phone, and through requests for forms or literature in connection with your purchase of a Ryland home. On occasion, such information may come from consumer reporting agencies and those companies providing services to us incident to your home purchase, such as property appraisers.

We treat this information as confidential and recognize the importance of protecting access to it. We may share information within The Ryland Group, Inc. family of companies to best meet your needs, but we do not disclose nonpublic personal information about you with third parties unless necessary to complete your purchase of a Ryland home, and any mortgage, title, insurance and escrow transactions incident to your home purchase, or as otherwise permitted by law.

From time to time, The Ryland Group, Inc. may be approached by companies and organizations that have a product or service that we believe may be of interest to you. We may share certain personally-identifiable information such as your name, address, and e-mail address with these companies in an effort to help you find these resources. We will, however, offer you the opportunity to "opt out" of having this personally-identifiable information shared with third parties that are not affiliated with The Ryland Group, Inc. Should you decide to opt out of having your personally identifiable information shared with non-affiliated third parties, please contact the company at (800) 638-1768 or send us an e-mail at webmaster@ryland.com.

We maintain physical, electronic, and procedural safeguards to protect your personal information. Within The Ryland Group, Inc. and its affiliates, access to such information is limited to those who need it to perform their jobs, such as completing transactions incident to your home purchase, mortgage, insurance, title and escrow services, or informing you of new products or services. Finally, our Data Security Policy, which applies to all employees, restricts the use of customer information and requires that it be held in strict confidence.

The policies set forth in this notice are effective at the time of publishing, but are subject to change in order to best meet the needs of our customers and to reflect changes in local, state and federal laws.

Buyer's Initials GC Buyer's Initials

Community ID: 08786010000 Homesite: 0074

Rider to Agreement of Sale
between Thomas Czajkowski and Ginger Czajkowski, Buyer(s)
and
The Ryland Group, Inc., Seller

SEISMIC DISCLOSURE

1. Your Ryland Home is located within a zone of seismic activity. In 1886, this area experienced the most damaging earthquake recorded in the Eastern United States. Damage throughout the Charleston Area during the 1886 earthquake was widespread and extensive. On average, the area experiences 12 to 15 small earthquakes per year. These small earthquakes are recorded by sensitive seismic equipment but are not widely felt by the public.

2. The Residential Building Code (IRC 2000) dictates the associated design procedures for residential structures according to the "site class" of the property. We design and build to the IRC 2000 requirements.

3. You must make Your own independent review and assessment of the information contained herein.

4. You should contact an insurance expert to discuss obtaining earthquake insurance.

5. You acknowledge and agree We make no representation or warranty as to the accuracy of this information. You must rely on your own review and assessment of the information.

6. YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD THIS DISCLOSURE. YOU ARE RELYING ON YOUR INDEPENDENT EVALUATION OF THE INFORMATION CONTAINED WITHIN THIS DISCLOSURE. YOU ARE NOT RELYING UPON US (INCLUDING OUR EMPLOYEES, SALES PERSONNEL, AGENTS OR ANYONE ELSE ASSOCIATED WITH US) WITH RESPECT TO OR IN EVALUATING THE INFORMATION CONTAINED WITHIN THIS DISCLOSURE AND THEIR RELATIONSHIP TO YOUR DECISION TO BUY A HOME. AS PART OF THE CONSIDERATION FOR PURCHASING YOUR RYLAND HOME, YOU RELEASE AND HOLD HARMLESS US AND ANY RELATED ENTITIES OR PERSON ASSOCIATED WITH US FROM ANY CLAIM, LIABILITY, OBLIGATION, EXPENSE, COST, RESPONSIBILITY, DEMAND, DAMAGE, ACTION OR CAUSE OF ACTION RELATED IN ANY WAY TO THE INFORMATION CONTAINED WITHIN THIS DISCLOSURE.

Buyer's Signature 2/12/06 Date

Buyer's Signature 2/12/06 Date

Project: 08786010000 Lot: 0074

Rider to Agreement of Sale
Between Thomas Czajkowski and Ginger Czajkowski, Buyer(s)
and
The Ryland Group, Inc., Seller

SLAB FOUNDATIONS

You understand that when a home is built upon a slab foundation, all heat and air-conditioning ducts must be run from the attic downward to the lower floors, and in doing so, there will be a need to create spaces for this duct work. We will place these ducts following two guidelines:

1. HVAC design and efficiency
2. Placement whenever possible to be within a closet.

☐ If the box is checked, You understand that sitework is incomplete, and until the sitework is complete, the foundation type (slab or crawl) cannot be determined. You have indicated a desire to buy a home with a slab foundation. You understand that if We, in our sole discretion, determine that the home cannot be built with a slab foundation, You will have the option of either (a) receiving a full earnest money refund; (b) making another homesite selection or (c) paying $0.00 more and receiving a crawl space foundation.

Buyer's Initials GC Buyer's Initials

Slab Foundations Revised 5/20/02

RYLAND

Rider to Agreement of Sale

between Thomas Czajkowski and Ginger Czajkowski, Buyer(s)

and

The Ryland Group, Inc., Seller

Net Effect
as of Selection Sheet

Order By Option Number

The Reserve - 08786010000

Date Printed: February 12,2006
Prepared By: David Dix
Lot Address: 1502 Marsh Reed Court
Goose Creek, SC 29445
Lot: 0074
Contract Date:
Plan/Elev: BRUNSWICK C-3361 (30)
Estimated Close:
Swing:

Option Number	Color/Location	Quantity	Description	Extended Price
A115050	/	1	BONUS ROOM	$13,900.00
A116694	/	1	ALTERNATE MASTER BATH | SEPERATE TUB & SHOWER	$0.00
A123900	/	1	5-4 ATRIUM DOOR	$350.00
A130455	/	1	ADD'L BOWL AT VANITY | MASTER BATH	$0.00

Total Options: $14,250.00
Lot Premium: $5,000.00
Base Price: $228,990.00
Total Sales Price: $248,240.00

Options Deposit: $0.00 Check #: _____

By your signature below you acknowledge that you were advised of the included features and optional features shown on this sheet. We believe that this list is accurate as of the date above. The included and optional features and their prices are subject to change without notice, however, and we make no promises that these will be the features or prices in effect at the time you sign an agreement of sale.

Amendment to Agreement of Sale

1. When ratified by Our Authorized Officer, this Selection Sheet shall be an amendment to the Agreement to the extent that (a) any options that You select differ from any previously selected options and/or (b) the total sales price changes.

☐ 2. See Attached.
☐ 3. If this box is checked, the revised Estimate Date of Substantial Completion is _____

Witness:

SALES Representative/HOMESTORE Representative

SALES Representative/HOMESTORE Representative

Buyer — Date 2/12/06

Buyer — Date 2/12/06

The Ryland Group, Inc.

By: Authorized Officer — Date 2/22/06

By: Broker Approval — Date

Buyer's Initials

Buyer's Initials

©2004, The Ryland Group, Inc.

ADDENDUM TO AGREEMENT OF SALE

BETWEEN _____, BUYER(S)

AND

THE RYLAND GROUP, INC., SELLER

WETLANDS DISCLOSURE

You acknowledge that the property adjacent to your home site may contain a wetland area. You understand that this area is regulated under Federal and State law and contains certain prohibitions as stated in the Declaration of Restrictive Covenants.

Buyers: _____

_____

Seller: _____

BUYERS ARE AWARE THAT THE PROPERTY IS LOCATED IN AN EAGLE NESTING ZONE. DHEC RESERVES THE RIGHT TO MONITOR ANY NOISE LEVEL THAT INTERFERES WITH EAGLES DURING THEIR NESTING SEASON. IT HAS BEEN DETERMINED THAT THE EAGLE NEST WITH THE CLOSEST PROXIMITY TO YOUR LOT IS AN ABANDONED NEST; HOWEVER, SHOULD THE EAGLE'S ACTIVITY CHANGE, DHEC RESERVES THE RIGHT TO LIMIT THE CONSTRUCTION OF YOUR HOME, AND BUILDING ACTIVITY MAY HAVE TO BE POSTPONED.

Initial

Initial

Home Inspection: Ryland Homes recognizes that buyers may desire that a home inspector review their home prior to closing. Ryland Homes agrees to allow such inspection with the following provisions:

1. Ryland Homes reserves the right to have an appointed representative accompany the Home Inspector at its discretion.
2. The Home Inspection will not be allowed to delay our construction schedule.
3. All inspections must be scheduled through the Community Sales Counselor. The inspection must be scheduled at least one week in advance, is to take place during normal working hours (Mon.-Fri. 9:00am to 4:00pm) and must be in accordance with the Community Building Supervisor's schedule.
4. Buyer shall pay for all inspections initiated by buyer.
5. Ryland is not required to service any or all requests on the inspector's list
6. The inspection may not be scheduled during the Pre-Settlement Orientation.
7. The inspector must be licensed by the State of South Carolina as a Home Inspector. The Inspector must provide Ryland Homes with proof of licensure plus proof of General Liability Insurance, Automobile Insurance and Workman's Compensation Insurance (if any employees of the Home Inspector will be on site). Proof of required insurances and licensure must be submitted and approved by the Purchasing Department one week before the inspection.

Signature _____ Date 2/12/06

Signature _____ Date 2/12/06

RYLAND

CUSTOMER – SALES REPRESENTATIVE CHECKLIST

Building a new home is a very important decision to you and The Ryland Group, Inc. (Ryland Homes). Construction involves many people and factors and We want to be sure that important points have not been overlooked. Please review this checklist with your salesperson and initial each line and sign below when all of the items listed are explained to your satisfaction.

R	Explanation of the exterior elevation of the home you are purchasing. Front elevation is Brunswick. Front material Vinyl Side & Rear material Vinyl.
R	You have reviewed the blueprints dated To be reviewed at the Preconstruction Meeting and all questions have been answered to Your satisfaction. You understand that Your home will be built to substantially follow the blueprints and if any discrepancies arise during construction, the blueprint will be the definitive authority, not any model You visited or sales brochure You may have seen or any oral representation made to You by the Ryland Sales Representative.
R	You understand Ryland Homes' elevation and color scheme policy regarding building the same elevation You purchased, as it pertains to the community You are purchasing in.
R	You understand standard items which have been included in Your home and have discussed optional items available to You. Further options will be made available to You at the Ryland Design Center appointment.
R	Lighting packages vary per home type (not per community) and You understand which lighting fixtures are standard in Your home.
R	You understand that model homes are for display purposes only and Your home may not be built exactly as the model is demonstrated (refer to blueprints). You also understand that Ryland's vendors and products may sometimes change. Ryland reserves the right to substitute materials of equal quality.
R	Your Sales Representative has shown You the recorded plat for the community in which You are purchasing and You have walked Your specific homesite. Approximate boundaries were noted and special conditions (if any) were discussed.
R	Discussion of financing and qualifications to purchase this home: interest rates, monthly payments, HOA dues, PMI and property taxes. You understand that You have 5 days in which to make application for a mortgage.
R	Discussion of Ryland Group's Policy on: Pre-Start Walk Through of the site, Optional Pre-Drywall Inspection (Construction will not be delayed more than 2 days), Pre- Settlement & Post Settlement inspections, Ryland Warranty Program.
R	You understand that Your estimated delivery date will be set by Ryland Homes' Operations Manager and can be subject to change depending on weather or subcontractor situations. It has not been represented at contract in any way that Your delivery date is a guaranteed date. If You make plans to move without a written letter from Ryland Homes Division office stating Your exact closing date, place, and time, You do so at Your own risk. You do not hold Ryland Homes responsible for any oral representations made to You.
R	Explanation of earnest money, closing attorney, inability to close and consequences. If You fail to close for any reason, except for loan denial, Ryland Homes has the right to retain Your deposit as liquidated damages or to ask for interest to be paid for any delay. Seller-paid closing costs can only be used for specific nonrecurring closing cost items. We will retain any unused seller-paid closing cost contribution.
R	You understand that time is of the essence and it is imperative that Ryland Homes start Your home as soon as possible and it is incumbent upon You to make Your designer selections within 14 days. Failure to do so will put You in default of Your contract and subject You to forfeiture of Your earnest money.
R	You have purchased an inventory home and changes to the original selections may require Your estimated delivery date to be amended by the Operations Manager.
R	If You are using a lender other than Ryland Mortgage, You acknowledge You have been given a copy of the Outside Lender Rider and You understand all of the provisions in the rider.
R	Ryland Homes reserves the right to choose whether to build Your home as drawn on blueprint (garage on the right) or flipped/mirrored (garage on the left) depending on lot conditions.
R	Due to the possibility of theft or damage from vandalism, We will lock homes under construction at 5:00 pm daily. Due to insurance liability, all visits to the site are at Your own risk and You are to be escorted by a Ryland employee. Please call and schedule an appointment with Your Construction Supervisor or Sales Representative prior to coming out to the neighborhood.
R	You are purchasing a home with a room (bonus or bath) over a garage and You understand there may be a temperature variance compared to the rest of Your home.
R	A copy of the Covenants, Conditions and Restrictions as well as any Deed Restrictions have been made available for Your review. You understand that Home Owners Association participation is mandatory.
R	We have discussed the Homeowner's Manual and given You a copy.
R	Hard Hat Policy (the wearing of hard hats is mandatory when on job site.)
R	There have been no representations made by any Ryland employee pertaining to the future development of this community or surrounding land.
R	All construction meetings are to be scheduled during normal business hours, Monday through Friday 9 a.m. to 5 p.m.

BUYER: _____ BUYER: _____

SALES REP: _____ DATE: _____

NOTICE REGARDING STRUCTURAL OPTIONS

We will order materials and construct your home based on the structural options chosen by you and listed in the Sales Agreement. These options are binding on you. YOU HAVE THREE (3) CALENDAR DAYS FROM THE DATE OF THIS CONTRACT TO MAKE ANY STRUCTURAL OPTION CHANGES. AFTER THREE (3) CALENDAR DAYS, NO STRUCTURAL OPTIONS CAN BE CHANGED. Please contact your Sales Counselor as to your request via phone, email or fax. Your Sales Counselor will prepare the required paperwork. All parties listed as BUYER on the Sales Agreement must sign the paperwork within 48 hours of requesting the change. TIME IS OF THE ESSENCE for the dates in this notice.

I understand and agree with the terms above,

Buyer _____ Date 2/12/06

Buyer _____ Date 2/12/06

MODEL HOME DISCLAIMER:

The options that are displayed in the Model Homes or Inventory Homes may not be available for purchase, may be obsolete options or may not be standard items that are included in your home.

Initials

Initials

"THE ST. AUGUSTINE"
MODEL OPTIONS

- SCREEN PORCH
- TREY CEILINGS @ DINING ROOM
- TREY CEILINGS @ MASTER BDRM
- DORMER OFF BEDROOM # 2
- JETTED TUB
- CATHEDRAL SPOUT-CHROME KITCHEN FAUCET
- ADDITIONAL BOWL AT HALL BATH VANITY
- CASTLEBY SATINE/BRASS BATH FAUCETS
- ELONGATED COMMODES
- 8" STAINLESS KITCHEN SINK
- 2020 WINDOWS @ LIVING ROOM
- 36" DIRECT VENTED FIREPLACE
- UPGRADE MARBLE SURROUND
- UPGRADE MANTLE
- CEILING FAN
- UNDER-CABINET FLUORESCENT LIGHT
- DOUBLE FLOOD LIGHT
- ADDITIONAL RECESSED CAN LIGHTS
- RENAISSANCE LIGHT PACKAGE
- BATH MATCH FIXTURES – MASTER AND HALL BATHS
- WINDOW CASING
- BRIGHT BRASS HANDLESET – EXTERIOR FRONT DOOR
- LEVER SET DOOR HARDWARE
- OAK RAILS @ STAIRS/LANDING
- HOME THEATER PACKAGE
- SECURITY SYSTEM TRIM OUT
- ZODIAQ LEVEL 2 IN KITCHEN
- DOUBLE 5 VINYL SIDING
- CARPET UPGRADE
- VINYL UPGRADE
- WOOD UPGRADE
- TILE UPGRADE
- 1ST UPGRADE DISHWASHER
- XL CAPACITY DRYER
- XL CAPACITY WASHER
- SPACEMAKER MICROWAVE
- REFRIGERATOR
- 1ST UPGRADE RANGE

Please see your Ryland Sales Counselor for current prices on these and other available options to personalize your new home.

All pricing, products, options and availability are subject to change without prior notice.

Initial

Initial

"THE SPRINGFIELD"

MODEL OPTIONS

- SUN ROOM
- BONUS ROOM
- TREY CEILINGS @ DINING ROOM
- TREY CEILINGS @ MASTER BDRM
- CATHEDRAL SPOUT-CHROME / KITCHEN FAUCET
- ELONGATED COMMODES
- 36" DIR. VENT FP
- UNDER-CABINET FLUORESCENT LIGHT
- DOUBLE FLOOD LIGHT
- ADDITIONAL RECESSED CAN LIGHTS
- VERONA LIGHT PACKAGE
- BATH MATCH FIXTURES – MASTER AND HALL BATHS
- SATIN NICKEL DOOR HARDWARE
- SECURITY SYSTEM TRIM OUT
- CORIAN LEVEL 2 IN KITCHEN
- BRICK/SHAKE
- CARPET UPGRADE
- HARDWOOD UPGRADE
- VINYL UPGRADE
- TILE UPGRADE
- 3RD UPGRADE DISHWASHER
- SPACEMAKER MICROWAVE – STAINLESS STEEL
- REFRIGERATOR – STAINLESS STEEL
- 3RD UPGRADE RANGE

Please see your Ryland Sales Counselor for current prices on these and other available options to personalize your new home.

All pricing, products, options and availability are subject to change without prior notice.

Initial

Initial

RYLAND [illegible] Option List

The Reserve - 08786010000

Selected Plan: 3361 BRUNSWICK C
Elevation: 30

Prepared By: David Dix

Option Type: Sales Center Option
Category: All Categories
Sub Category: All Sub Categories

Prepared On: February 12, 2008

Included Features

OptionId	Plan / Elev	Description	Price
___A116884	3361 *	ALTERNATE MASTER BATH | SEPERATE TUB & SHOWER	$0.00
___A130455	3361 *	ADD'L BOWL AT VANITY | MASTER BATH	$0.00

Optional Features

OptionId	Plan / Elev	Description	Price
___A111072	3361 30	CRAWL SPACE FOUNDATION | 4 SIDES PARGED BLOCK	$20,800.00
___A113056	3361 *	GUEST SUITE | ILO OF DEN	$6,000.00
___A113057	3361 *	SUNROOM | ILO OF BEDROOM #3	$3,500.00
___A114274	3361 *	GUEST SUITE | OVER GARAGE	$16,900.00
___A114294	3361 *	NO HALF WALL AT SUNROOM | AVAILABLE PER PLAN	$0.00
___A115050	3361 *	BONUS ROOM	$13,900.00
___A119225	3361 30	WRAP FRONT PORCH	$3,600.00
___A119226	3361 30	WRAP FRONT PORCH | CRAWL	$4,800.00
___A119227	3361 *	SCREEN PORCH | AT LANAI	$2,900.00
___A119228	3361 *	SCREEN PORCH | AT LANAI	$2,900.00
___A119258	3361 *	WOOD DECK | ILO PATIO	$3,200.00
___A121352	3361 *	TREY CEILINGS @ DINING RM	$750.00
___A121354	3361 *	TREY CEILINGS @ MASTER BDRM	$1,250.00
___A123900	3361 *	5-4 ATRIUM DOOR	$350.00
___A123910 *	*	GARAGE SERVICE DOOR	$750.00
___A123920	3361 *	2868 DOOR @ MASTER BEDROOM	$750.00
___A140087	3361 *	(3) 2020 WINDOWS | @ DEN	$700.00
___A140096	3361 *	GLASS BLOCK | ALT MASTER BATH	$350.00
___A155072	3361 *	36" DIR. VENT FP | ON SLAB (INSIDE)	$2,900.00
___A167360 *	*	MEDIA NICHE OVER FIREPLACE	$250.00

By your signature below you acknowledge that you were advised of the included features and optional features shown on this sheet. We believe that this list is accurate as of the date above. The included and optional features and their prices are subject to change without notice, however, and we make no promises that these will be the features or prices in effect at the time you sign an agreement of sale.

Buyer Signature

Co-Buyer Signature

Agency Relationships in South Carolina

The SC Real Estate License Law, in Section 40-57-139 (A) (1) and (2), requires a real estate licensee to provide you this brochure and a meaningful explanation of agency relationships offered by the licensee's Company. This must be done at the first practical opportunity when you and the licensee have substantive contact.

Before you begin to work with a real estate licensee, it is important for you to know the difference between a broker-in-charge and associated licensees. The broker-in-charge is the person in charge of a real estate Company. Associated licensees may work only through a broker-in-charge. In other words, when you choose to work with any real estate licensee, your business relationship is legally with the Company and not with the associated licensee.

A real estate Company and its associated licensees can provide buyers and sellers valuable real estate services, whether in the form of basic customer services, or through client-level agency representation. The services you can expect will depend upon the legal relationship you establish with the Company. It is important for you to discuss the following information with the real estate licensee and agree on whether in your business relationship you will be a customer or a client.

Now You Are a Customer of the Company

South Carolina license law defines customers as buyers or sellers who choose NOT to establish an agency relationship. The law requires real estate licensees to perform the following *basic duties* when dealing with *any* real estate buyer or seller as customers:

- Present all offers in a timely manner
- Account for money or other property received on your behalf
- Provide an explanation of the scope of services to be provided
- Be fair and honest and provide accurate information
- Disclose "adverse material facts" about the property or the transaction which are within the licensee's knowledge

Unless or until you enter into a written agreement with the Company for agency representation, you are considered a "Customer" of the Company, and the Company will not act as your agent. As a Customer, you should not expect the Company or its licensees to promote your best interest, or to keep your bargaining information confidential.

Customer service does not require a written agreement; therefore, you are not committed to the Company in any way.

You Can Become a Client

Clients receive more services than customers. If client status is offered by the real estate Company, you can become a client by entering into a written agency agreement requiring the Company and its associated licensees to act as an agent on your behalf and promote your best interests. If you choose to become a client, you will be asked to confirm in your written representation agreement that you received this brochure in a timely manner.

A seller becomes a client of a real estate company by signing a formal listing agreement with the Company. For a seller to become a client, this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the seller and the Company which becomes the agent for the seller.

A buyer becomes a client of a real estate Company by signing a formal buyer agency agreement with the Company. For a buyer to become a client, this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the buyer and the Company which becomes the agent for the buyer.

If you enter into a written agency agreement, as a Client, you can expect the real estate Company to provide the following client-level services:

- Obedience
- Loyalty
- Disclosure
- Confidentiality
- Accounting
- Reasonable care and skill

Client-level services also include advice, counsel and assistance in negotiations.

Single Agency

When the Company represents only one client in the same transaction (the seller or the buyer), it is called single agency.

Dual Agency

Dual Agency exists when the real estate Company has two clients in one transaction – a seller client and a buyer client.

At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the Company to represent both you and the other client in a disclosed dual agency relationship.

Disclosed Dual Agency

In a disclosed dual agency, the Company's representation duties are limited because a buyer and seller have recognized conflicts of interest. Both clients' interests are represented by the

Company. *As a disclosed dual agent, the Company and its associated licensees cannot advocate on behalf of one client over the other, and cannot disclose confidential client information concerning the price negotiations, terms, or factors motivating the buyer/client to buy or the seller/client to sell.* Each Dual Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

Designated Agency

In designated agency, a broker-in-charge may designate individual associated licensees to act solely on behalf of each client. Designated agents are not limited by the Company's agency relationship with the other client, but instead have a duty to promote the best interest of their clients, including negotiating a price. The broker-in-charge remains a disclosed dual agent for both clients, and ensures the assigned agents fulfill their duties to their respective clients.

At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the Company to designate a representative for you and one for the other client in a designated agency.

Each Designated Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

What to Look For in Any Agreement

When you choose client-level service, your written Agency Agreement or your agent should answer these questions:

- Can I work with other Companies during the time of the Agreement?
- What will happen if I buy or sell on my own without the agent?
- When will this agreement expire?
- How will the Company be paid for its services?
- Does this Company represent both buyers and sellers as clients?
- If so, what are the choices if two clients become involved in one transaction?
- What duties will the Company continue to provide me after the transaction is completed?

If you plan to become a client of a Company, the licensee will explain the agreement to you fully and will answer questions you may have about the agreement. Remember, however, that until you enter into a representation agreement with the Company, you are considered a customer and the Company cannot be your advocate, cannot advise you on price or terms, and cannot keep your confidences.

It's Your Choice

As a real estate consumer in South Carolina, it is your choice as to the type and nature of services you receive.

- You can choose to remain a customer and represent yourself while the Company represents the other party.
- You can choose to hire the Company for representation through a written agreement.
- If represented by the Company, you can decide whether to go forward under the shared services of dual agency or designated agency or to remain in single agency.

The choice of services belongs to you—the South Carolina real estate consumer.

This brochure has been approved by the S.C. Real Estate Commission for use in explaining representation issues in real estate transactions and consumers' rights as a buyer or seller. Reprinting without permission is prohibited provided no changes or modifications are made.

Agency Disclosure Brochure

Agency Relationships in Real Estate

South Carolina Department of Labor, Licensing and Regulation

South Carolina Real Estate Commission
PO Box 11847
Synergy Business Park, Kingstree Building
110 Centerview Dr., Suite 201
Columbia, SC 29210

Telephone: (803) 896-4400
Fax: (803) 896-4404

www.llr.state.sc.us/Pol/RealEstateCommission/

(Rev. 1/05)

EXHIBIT
B

Columbia National Risk Retention Group, Inc.
100 Bank Street, Suite 610
Burlington, Vermont 05401
Telephone (802) 864-5599
Facsimile (802) 864-5764

LETTER OF ACCEPTANCE
HUD Approved 10-Year Warranty

Name of Warranty Company: COLUMBIA NATIONAL RISK RETENTION GROUP, INC.

Name of Builder: Ryland Homes

Name of Homeowner(s): Thomas and Ginger Czajkowski

Property Address: 1502 Marsh Reed Court
Goose Creek, SC 29445

TO WHOM IT MAY CONCERN:

This is to confirm that the property referenced above has been accepted for coverage by the above-referenced warranty company.

Type of Warranty: 10-Year Warranty

Effective date of coverage: 9/22/06

The Builder is in good standing with our firm and the property has been accepted.

Charles East
me: Charles East, president

9/19/06
Date

P.O. Box 530, Burlington, VT 05402-0530.

Ryland Homes
Warranty Enrollment Form

Division Charleston - 143

Community Name THE RESERVE Lot Number/Job Number 74

Purchasers Name THOMAS AND GINGER CAJKOWSKI

1502 MARSH REED COURT
City State Zip Code

Type of Financing [X] Conventional [ ] FHA Case Number: [ ] VA

Exclusions:
The Purchaser acknowledges that the following items, if any, will not be covered by the Ryland warranty since they were not furnished by Ryland or were excluded by contract or are not included in the final sales price. (Ryland and the Purchaser must initial any listed exclusions):

A.
B.
C.
D.

Settlement Date 9/22/2006 First Occupancy Date:

Final Sales Price: $266,826 Maximum Liability

Upon execution of this form by the Purchaser and the Builder, and completion of the settlement of the purchase of the home, the home identified above is automatically enrolled in the Ryland Homes Warranty Program insured by Columbia National Risk Retention Group, Inc.

Both Ryland the Purchaser's must sign this enrollment form. By signing, the Purchaser acknowledges that he/she has read the booklet given to them at sale and received a copy of this form along with any forms needed to comply with state or local government requirements. Ryland certifies that the home is in compliance with all approved Ryland standards, has been properly inspected and all necessaty approvals for processing of the home have been obtained.

THOMAS CZAJKWSKI Purchaser's Signature

GINGER CZAJKOWSKI Purchaser's Signature

Builder: RYLAND HOMES

By:

Name Don McDonough
Authorized Signature (Please Print)

RYLAND HOMES

CAROLINAS

207 Regency Executive Park Dr.
Suite 100
Charlotte, NC 28217

Office: 704-531-9135
Fax: 704-531-2078

495-J Arbor Hill Road
Kernersville, NC 27284

Office: 336-993-7183
Fax: 336-993-1403

430 Roper Mountain Road
Suite J
Greenville, SC 29615

Office: 864-271-3550
Fax: 864-271-1256

3955 Faber Place
Suite 100
North Charleston, SC 29405

Office: 843-746-4300
Fax: 843-746-4325

www.ryland.com

Dear Homebuyer:

Congratulations on the purchase of Your new Home. As one of the nation's leading builders, Ryland is pleased to provide you with its exclusive, insured, limited "Your Ryland Home Warranty Program."

This unique Ryland warranty affords You protection for ten full years of home ownership. As part of this coverage, We warrant against defects in materials and workmanship for the first year, and for certain components, the second year; but the continued performance of Your Home depends on the care You give Your Home. That is why this warranty contains certain exclusions and limitations. It is just as important for You to understand these exclusions/limitations as it is for You to understand Your coverage.

Take a minute now to become familiar with this warranty. It defines Our responsibilities to You and Your responsibilities to Your Home. It is vital that You perform required maintenance. Without such maintenance this warranty will be voided.

Please refer to Your Home Owner's Manual contained in the book entitled "YOUR RYLAND HOME" for additional recommendations for home maintenance. Our staff will be happy to answer any questions You may have about the warranty or specific construction standards and how they apply to Your Home.

Again, congratulations and enjoy your new home!

Very truly yours,

RYLAND

RYLAND

YOUR RYLAND HOME WARRANTY PROGRAM INSURED LIMITED WARRANTY

INSURER: COLUMBIA NATIONAL RISK RETENTION GROUP, INC.

THIS LIMITED WARRANTY DOES NOT COVER CONSEQUENTIAL OR INCIDENTAL DAMAGES.

LIABILITY UNDER THIS LIMITED WARRANTY IS LIMITED TO THE ORIGINAL SALES PRICE OF THE HOME.

BUILDER MAKES NO HOUSING MERCHANT IMPLIED WARRANTY OR ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE AGREEMENT OF SALE OR THE WARRANTED HOME, AND ALL SUCH WARRANTIES ARE EXCLUDED, EXCEPT AS EXPRESSLY PROVIDED IN THIS LIMITED WARRANTY. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE FACE OF THIS LIMITED WARRANTY.

Some states do not allow the exclusion or limitation of incidental or consequential damages by a builder so all of the exclusions and limitations may not apply to You.

The Ryland Group, Inc.
24025 Park Sorrento, Suite 400
Calabasas, California 91302

RYLAND HOME BUYER'S GUIDE

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YOUR RYLAND HOME WARRANTY PROGRAM

INTRODUCTION

During the ten-year term of **Your Ryland Home Warranty Program,** Your builder ("Builder") is the warrantor. Your Builder has purchased warranty coverage from Columbia National Risk Retention Group, Inc. ("CN"). CN will act if Your Builder fails to perform its obligations as described in this Agreement.

Section A defines the terms used in this Agreement.

Section B describes the protection which **Your Ryland Home Warranty Program** gives You.

Section C sets forth performance standards that will govern the program.

Section D describes the exclusions from the program.

THIS AGREEMENT INCLUDES PROCEDURES FOR INFORMAL SETTLEMENT OF DISPUTES, INCLUDING MEDIATION AND BINDING ARBITRATION IN ACCORDANCE WITH THE PROCEDURES OF THE FEDERAL ARBITRATION ACT. YOU SHOULD READ THIS AGREEMENT IN ITS ENTIRETY IN ORDER TO UNDERSTAND THE PROTECTION IT AFFORDS, THE PERFORMANCE STANDARDS THAT WILL GOVERN ITS INTERPRETATION AND OPERATION, THE EXCLUSIONS APPLICABLE TO IT, AND YOUR RESPONSIBILITIES.

Every home needs maintenance to prolong its life. It is Your responsibility, not Your Builder's, to maintain the Home. Regular maintenance includes such items as preserving soil drainage conditions, caulking, cleaning, resealing or repainting of finished surfaces as necessary, routine maintenance of mechanical systems, etc. The booklet that You receive from Your Builder entitled Your Ryland Home, contains Your Home Owner's Manual. You should read the Home Owner's Manual for details regarding the care and maintenance of Your Home.

Any damage or defect caused or worsened by neglect, abnormal use, or improper maintenance and operation of the Home, the surrounding lot, or the common elements of a condominium will not be covered by this Agreement.

SECTION A. DEFINITIONS

For the purpose of this Agreement, the following terms have the meanings set forth:

1. Builder: The builder of the Home, which is The Ryland Group, Inc. or one of its subsidiaries.

2. Claims Administrator: Columbia National Risk Retention Group, Inc. ("CN").

3. Effective Date: The first to occur of the date of (1) transfer of title to the first Home Owner or (ii) first occupancy by the first Home Owner.

4. Electrical Systems: All wiring, electrical boxes, switches, outlets, and connections, up to the public utility connection.

5. Fixtures, Appliances and Items of Equipment: Water heaters, pumps, stoves, refrigerators, compactors, garbage disposals, stoves and ranges, dishwashers, washers and dryers, bathtubs, sinks, commodes, faucets and valves, lights and fixtures, circuit breakers, thermostats, furnaces, oil tanks, humidifiers, oil purifiers, ventilating fans, air conditioning material, in-house sprinkler systems, and similar items, including attachments and appurtenances.

6. Heating , Ventilating and Air-Conditioning (HVAC) Systems: All ductwork, refrigerant lines, steam and water pipes, registers, convectors, dampers, and radiation elements.

7. Home: (i) A single-family dwelling, (ii) one unit in a two-or-more unit structure in which each unit may be conveyed separately, or (iii) the common elements which comprise the building in which a condominium unit is situated and which it shares in common with other units in the building.

8. Home Owner: The Home Owner includes the first purchaser of the Home and any and all successors in title during the term of this Agreement, lessees having a leasehold interest of at least fifty (50) years in the Home, and a mortgagee in possession of the Home. With respect to condominium common elements, the Condominium Association is the Home Owner.

9. Insurer: Columbia National Risk Retention Group, Inc.

10. Load-Bearing Components of the Home are:
    - (i) roof framing members (rafters and trusses);
    - (ii) floor framing members (joists and trusses);
    - (iii) bearing walls;
    - (iv) columns;
    - (v) lintels (other than lintels supporting veneers);
    - (vi) girders;
    - (vii) load-bearing beams; and
    - (viii) foundation systems and footings.

    Examples of Non-Load-Bearing Components, damage to which do not constitute a Major Structural Defect are:
    - (i) non-load-bearing partitions and walls;
    - (ii) dry wall;
    - (iii) floor covering; sub-floor material; or wall covering material;
    - (iv) brick, stucco, stone, or veneer;
    - (v) any type of exterior siding;
    - (vi) roof shingles, sheathing and tar paper;

(vii) heating, ventilating, air-conditioning, plumbing, electrical, and mechanical systems;
(viii) appliances, fixtures, or items of equipment;
(ix) doors, windows, trim, cabinets, hardware, insulation, paint, and stains;
(x) concrete floors in attached garages and basements that are built separately from foundation walls or other structural elements of the Home.

11. Major Structural Defects (MSD): A Major Structural Defect occurs when there is actual physical damage to one or more of the Load-Bearing Components that causes the failure of the load-bearing capacity of the Load-Bearing Component such that the Home becomes unsafe, unsanitary or otherwise uninhabitable.

12. Plumbing Systems: All pipes (supply and waste) and their fittings; gas supply lines and vent pipes located within the Home and their extensions to the public utility.

13. Property: The land owned by the Home Owner on which the Home is located.

14. Warrantor: Your Builder.

15. We, Us: Terms referring to the Builder or CN, if the Builder fails to act.

16. You, Your: Terms referring to the Home Owner.

SECTION B. THE LIMITED WARRANTY PROGRAM

We, as Your Builder, are the warrantor during the term of this Agreement. CN, the insurer, will perform Our obligations if We fail to do so.

1. PROTECTION PROVIDED

Your Ryland Home Warranty Program provides you with the following protection:

a. Beginning of Coverage: Your limited warranty coverage begins on the Effective Date.

b. Coverage During Year One: We warrant that for a period of one year Your Home will be free from defects in materials and workmanship. We determine whether a defect exists by referring to the performance standards in Section C of this Agreement. Manufactured items of fixtures, appliances and equipment that are covered by a manufacturer's warranty are not covered by this warranty. We assign manufacturer's warranties to You at closing. We will, however, administer any claim that you have for a defective manufactured item during the first year.

c. Coverage During Years One and Two: We warrant that for a period of two years, specified portions of the heating, ventilating and air conditioning (HVAC) system, and the electrical and plumbing systems will be free from defects. Again, We determine whether a defect exists by referring to the performance standards set forth in Section C of this Agreement. Manufactured items of fixtures, appliances and items of equipment covered by a manufacturer's warranty that are part of these systems are not covered by this warranty.

d. Coverage During Years One Through Ten: We warrant for a period of ten years that Your Home is protected against loss resulting from Major Structural Defects (as defined in Section A of this Agreement).

e. **YOUR WARRANTY COVERAGE MAY NOT BE CANCELLED AFTER THE EFFECTIVE DATE BY EITHER THE BUILDER OR THE INSURER.**

2. CONDOMINIUM COVERAGE -- COMMON ELEMENTS

This Agreement applies to condominium units as well as specified common elements. In a condominium, the Association has the maintenance responsibilities for the common elements. Warranted common elements are those portions of a condominium which serve two or more residential units that We constructed. Warranty coverage for common elements shall be for the same periods and to the same extent as similar or comparable items in individual residential units. Examples of common elements which are covered by the warranty are hallways, meeting rooms and other spaces wholly within the residential structure and designated for the use of two or more units; and those portions of the electrical, heating, ventilating, cooling, and plumbing systems which serve two or more units.

3. OUR RESPONSIBILITY AND YOUR RIGHTS

If a defect occurs in Your Home evidenced by nonconformity with the performance standards during the first year of this Agreement, or if a covered defect in portions of Your Home's HVAC, electrical or plumbing systems occurs evidenced by nonconformity with the performance standards during the first two years of this Agreement, We will repair, replace or pay You the reasonable cost of repairing or replacing the defective item.

The warranty against Major Structural Defects is limited to actions that are necessary to restore load-bearing capability to the Load-Bearing Components of the Home and to repair those elements of the Home damaged by the Major Structural Defect which make the Home unsafe, unsanitary or otherwise uninhabitable.

In each instance, Our warranty coverage under this program is subject to the following:

a. The decision of whether to repair or replace a defective item, or to pay you the reasonable cost of repair or replacement, is solely Ours.

b. **OUR TOTAL LIABILITY FOR ALL CLAIMS MADE DURING THE TERM OF THIS LIMITED WARRANTY AGREEMENT SHALL NOT EXCEED THE ORIGINAL SALE PRICE OF THE HOME.**

c. No actions taken to cure defects will extend the periods of coverage specified in this Agreement.

d. Before We repair or replace a defective item, We will ask You to acknowledge in writing Your agreement to the proposed repair or replacement and deliver to Us an agreement to release Us with respect to the defect and any conditions arising from the defect. The repair of a covered Home will be to a condition approximating the condition just prior to the manifestation of the defect, **not** to a "like new" condition. The repairs or replacement item will continue to be covered by this warranty.

e. If We pay You the reasonable cost of repairs or replacement of a defective item instead of replacing or repairing the item, then prior to such payment, We will ask You to sign and deliver to Us a full and unconditional release, in recordable form, of all legal obligations with respect to the defect, any condition arising from the defect and any repair or replacement of the defective item. We will not have any obligation to make payment jointly to You and Your mortgagee unless the mortgagee has notified Us in writing of its security interest in the Home prior to the payment of the claim. However, We may ask that Your mortgagee join in the release. A mortgagee and any subsequent Home Owner shall be completely bound by any agreement accepted by You or arbitration relating to a claim under this Agreement.

f. If We repair or replace a defective item, or pay You the reasonable cost of the repair or replacement of any defective item covered by this Agreement, We will be subrogated to all of your rights of recovery therefor against any person or entity. You agree to execute and deliver any papers and to take any actions necessary to secure such rights, including, but not limited to, assignment of the proceeds of any other insurance or warranties to Us. You shall do nothing to prejudice such rights of subrogation.

g. If a claim under this Agreement involves a common element in a condominium, the claim may be made only by an authorized representative of the Condominium Association. However, if We retain a voting interest in the Association of more than 50%, the claim may be made by unit owners representing 10% of the voting interests in the Association.

h. If a claim under this Agreement involves a common element affecting multiple units, and all affected units are not warranted by this **Your Ryland Home Warranty Program,** CN's liability will be limited to only those units insured by CN. CN's limit of liability will be prorated based upon the number of units insured by CN.

4. CN'S RESPONSIBILITY

In the ten-year term, if Your Builder does not fulfill its obligations under this Agreement, CN will be responsible for Your Builder's obligations.

5. HOW TO MAKE A WARRANTY CLAIM; DISPUTE SETTLEMENT – PLEASE REFER TO "HOW TO MAKE A WARRANTY CLAIM" ATTACHED AS ADDENDUM E6 FOR A SUMMARY OF THIS SECTION.

a. NOTICE TO BUILDER OF WARRANTED ITEM

If you have a problem that you believe is covered by this Agreement, you should contact Your Builder's local office. Your Builder's local division office address is at the beginning of this warranty. Even if You report a problem orally, You must also give written notice. When submitting written notice to Your Builder, clearly describe the problem. Use the form entitled "Warranty Request Form" in the back of this booklet. You must notify Your Builder in writing no later than thirty (30) days after the expiration of the applicable warranty period.

b. INITIAL INSPECTION PERIOD

We will investigate, inspect and report to You within 30 days of receipt of a request for warranty service. If We agree that the item is covered by the warranty, We will advise You whether We will repair, replace or pay the reasonable cost of repairing or replacing the defective item. We will have 60 days to complete repairs or replacement or to pay You. The time may be extended to allow for seasonal inability to complete work.

c. MEDIATION

After We complete repairs or replacement, if You believe that Our repair work is unsatisfactory, You will have 30 days to file a written request for mediation with CN. Use the form entitled "Request for Mediation" in the back of this booklet. In no event may You request mediation later than 120 days after Your initial written notice was given to Us or 30 days after the expiration of the applicable warranty period, whichever is later.

You may also request mediation if You have a problem that you believe is covered by this Agreement and Our local office advises You that it does not believe We have any obligation to You.

Your written request should be given to CN as Claims Administrator at 100 Bank Street, Suite 610, P.O. Box 530, Burlington, Vermont 05402-0530, ATTN - Claims Department. The notice should describe each defect in reasonable detail and should be forwarded by Certified Mail, Return Receipt Requested. Written notice may include any item which is unresolved between You and Our local office.

During the first 30 days following the Claims Administrator's receipt of a proper request for mediation, the Claims Administrator will review and mediate the claim by communicating with You and any other individuals or entities whom the Claims Administrator believes possess relevant information. The Claims Administrator may engage an independent claims adjuster to assist in the mediation process as the Claims Administrator deems necessary.

The Claims Administrator may refer the claim to an independent mediation/arbitration association such as the American Arbitration Association (AAA) or the National Academy of Conciliators (NAC) to mediate the claim. The parties will share the cost of the independent mediator. If the Claims Administrator believes that You and Your Builder are at an impasse, then the Claims Administrator will notify You that Your claim is an "unresolved dispute." If no resolution is achieved within thirty (30) days following the Claims Administrator's receipt of a proper request for mediation, or such longer period of time as the parties may agree, then the Claims Administrator will notify the parties that the claim is an "unresolved dispute."

The Claims Administrator, at any time following the receipt of proper notice of Your claim, may schedule an inspection of the defect. You must provide the Claims Administrator reasonable access for any such inspection as discussed in sub-paragraph (i.) below.

d. COOPERATION

You and the Builder have an obligation to cooperate with the Claims Administrator's inspection and investigation of Your claim. From time to time, the Claims Administrator may request information from You or the Builder regarding Your claim. If You fail to respond to a request for information within 30 days of the request, Your claim file will be closed. If Your Builder fails to respond to a request for information within 30 days of the request, Your claim will be deemed an "unresolved dispute."

e. BINDING ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT

Any "unresolved dispute" that You may have with Us shall be submitted to binding arbitration governed by the procedures of the Federal Arbitration Act, 9 U.S.C. 1 et. seq. Copies of this Act are available from the Claims Administrator. You commence the arbitration process by giving the Claims Administrator written notice of Your demand for Arbitration of an unresolved dispute on the form entitled "Request for Arbitration" in the back of this booklet. The dispute will be submitted to AAA,

NAC or any other independent arbitration service that is agreeable to the Claims Administrator, Your Builder and You within twenty (20) days after the Claims Administrator's receipt of Your Request for Arbitration. The person selected from the arbitration service is called the Arbitrator. If You submit a Request for Arbitration, You must pay the Arbitrator's filing fee prior to the matter being referred to the Arbitrator except in any state or municipal jurisdiction that provides that no portion of the fees shall be payable by the Home Owner. The Arbitration will be conducted in accordance with the Arbitrator's rules and regulations relating to home warranties to the extent that they are not in conflict with the Federal Arbitration Act or this Agreement.

f. UNRESOLVED DISPUTE

The term "unresolved dispute" means all claims, demands, disputes, controversies, and differences that may arise between You and Your Builder, including without limitation, disputes: (1) as to events, representations, or omissions which pre-date this Agreement; (2) arising out of this Agreement or other action performed or to be performed by Your Builder pursuant to this Agreement; (3) as to repairs or warranty claims arising during the term of this Agreement; or (4) as to repairs or replacements made or the reasonableness of costs offered for any defect covered by this Agreement which have not been resolved during the mediation period.

g. EFFECT OF ARBITRATOR'S DECISION

Either party may, within one year after an arbitration award, apply to the U.S. District Court in which the Home is situated, to confirm the award. Filing a written Request for Arbitration will toll the running of any applicable statute of limitations for the matter to be arbitrated. The Arbitrator will have the authority to award costs, including reasonable attorneys' fees and expert fees, to the substantially prevailing party in such arbitration. THE DECISION OF THE ARBITRATOR SHALL BE FINAL AND BINDING UPON ALL PARTIES EXCEPT AS PROVIDED IN SECTION G OF THE HUD/VA ADDENDUM.

h. COMPLIANCE

We will have 60 days after the Arbitrator's decision to comply with the Arbitrator's decision, subject to any seasonal repairs or items that would reasonably take more than 60 days to complete. We will complete such repairs or replacement with diligence but without the necessity of incurring overtime or weekend expenses.

i. RIGHT OF ACCESS

You must provide reasonable weekday access during normal business hours in order for Us to perform Our obligations. If You fail to provide such access to Us, it may relieve Us of Our obligations under this Agreement.

6. TIMING OF ARBITRATION ACTIONS

If You institute arbitration proceedings or litigation against Us or CN for any obligation arising or claimed to have arisen under this Agreement before giving the proper notices and opportunities to cure warranty defects or before finishing the mediation process, as provided under this Agreement, You agree to indemnify Us and CN, as appropriate, for all costs and expenses of such arbitration, including reasonable attorneys' fees, regardless of whether You have an otherwise legitimate claim under this Agreement.

7. GENERAL TERMS AND CONDITIONS AFFECTING THIS AGREEMENT

The following terms and conditions of general applicability will govern the interpretation and operation of this Agreement:

a. Your Builder will assign to You all manufacturers' warranties on products included in the sales price of Your Home.

b. All notices required under this Agreement must be in writing and sent by certified mail, postage prepaid, to:

1. If to the Home Owner -- the address of the Home

2. If to Your Builder -- to the local office of the Builder, Attn: Division President. The address of the local office of Your Builder is on the cover letter to this warranty document.

IF THERE IS NO LOCAL OFFICE,
TO THE RYLAND GROUP, INC., 24025 PARK SORRENTO, SUITE 400
CALABASAS, CALIFORNIA 91302, ATTN: PRESIDENT
TELEPHONE NO. 1-800-638-1768

3. **IF TO COLUMBIA NATIONAL RISK RETENTION GROUP, INC.**
100 BANK STREET, SUITE 610, P.O. BOX 530
BURLINGTON, VERMONT 05402-0530, ATTN: CLAIMS DEPARTMENT
TELEPHONE NO. 1-888-379-9171

c. Should any provision of this Agreement be determined by a court of competent jurisdiction to be unenforceable, that determination will not affect the validity of the remaining provisions.

d. This Agreement is binding on the Builder and the Home Owner and their respective heirs, executors, administrators, successors and assigns. Subsequent purchasers of the Home after the original Home Owner should notify the Builder and CN in writing of transfer of title. Failure to notify the Builder or CN will not affect the warranty, however. The protection provided under the Limited Warranty Program automatically transfers to subsequent purchasers for the ten-year term of this Agreement.

e. This Agreement shall be interpreted and enforced in accordance with the laws of the state in which the Home is located.

f. This Agreement cannot be modified, altered or amended in any way except by a written instrument signed by all of the parties hereto.

g. If performance by the Builder of its obligations under this Agreement is delayed by an event not resulting from its own conduct, Builder's performance will be excused until the delaying effects of the event are remedied. Such events include acts of God or the common enemy, war, riot, civil commotion or sovereign conduct, or acts or omissions by the Home Owner or any other person, not a party to this Agreement.

h. If CN is required to fulfill any of the Builder's obligations under this Agreement, the rights of the Builder are assigned to CN.

SECTION C. PERFORMANCE STANDARDS

1. PURPOSE OF THE STANDARDS

This section describes the standards by which We will determine whether Your Home has a problem that is covered by this Agreement and whether Your Builder has an obligation to correct the problem. Your Home is constructed in accordance with specifications that equal or exceed the requirements of applicable building codes in effect at the time of construction. If specific standards and obligations are not set forth in this Section C, then the applicable building code in effect at the time of construction of the Home will be used to determine whether Your Builder has an obligation to correct the problem. If neither the standards, nor the building code addresses the issue, then the manufacturer's recommended installation procedures shall govern. If none of the previous is applicable, the standard shall be the accepted industry practice for workmanship and materials.

2. HOME OWNER'S RESPONSIBILITY

This warranty coverage is conditioned upon Your proper maintenance of the Home, the Condominium Association's proper maintenance of common elements (if applicable) and Your maintenance of the surrounding property to prevent damage. Your Home Owner's Manual gives You detailed instructions on how to maintain Your Home. Wherever You see an *, please refer to details in the Home Owner's Manual.

4. PERFORMANCE STANDARDS RELATING TO SPECIFIC PROBLEMS YEAR ONE ONLY

ISSUE	COMMENTS	BUILDER'S AND HOME OWNER'S OBLIGATIONS (Performance Standard)
A. MASONRY AND CONCRETE		**COVERAGE: YEAR ONE ONLY**
1. Cracks in Concrete Foundation Wall	Shrinkage or settlement cracks are common and should be expected within certain tolerances.	We will repair any cracks greater than 1/8 inch in width; We will not correct color variations.
2. Cracks in block or veneer walls	Settlement cracks are not unusual and can be expected within certain tolerances.	We will repair any cracks greater than 1/4 inch in width; We will not correct color variations.
3. Cracks in concrete floor slab	Shrinkage (hairline) cracks are common and should be expected within certain tolerances.	We will repair any cracks greater than 1/4 inch in width or vertical displacement in conditioned space. We will not correct color variations.
4. Vertical or horizontal movement of concrete floor slabs at joints	Concrete floor slabs are engineered to move at expansion joints and control joints.	None.
5. Uneven concrete floors in rooms designed for living	Slopes purposefully created for drainage are not covered.	We will correct any unevenness that exceeds 1/4 inch in a 32-inch measurement.

ISSUE	COMMENTS	BUILDER'S AND HOME OWNER'S OBLIGATIONS (Performance Standard)
6. Cracks in concrete floors in rooms designed for living	Cracks should not cause finished floor coverings to rupture.	We will correct the problem so that the repair is not noticeable, except for color matching of flooring materials.
7. Powdering, scaling or pitting of interior concrete (aggregate showing or loose)	Interior concrete surfaces should not disintegrate. Minor scaling is not controllable. Exterior surfaces are not warranted.	We will repair if the deterioration occurs under normal use and conditions. Normal conditions do not include the presence or use of salt or other chemicals. * **See Your Home Owner's Manual for preventive maintenance.**
8. Vertical or horizontal separation of stoops away from the house or driveways or sidewalks from adjoining slab or apron due to settling or heaving (exclusive of expansion joints)	Minor separation is normal.	We will repair separation of adjoining assemblies that exceed 1 inch.
9. Cracks in exterior concrete (porches, steps, stoops, driveways, patios and sidewalks)		We will correct any crack that exceeds 1/4 inch in width or 1/4 inch in vertical displacement.
6. LOT GRADING AND DRAINAGE		**COVERAGE: YEAR ONE ONLY**
1. Ground settles around foundation, utility trenches, or other filled areas	Ground settlement should not disrupt water drainage away from the house. You can expect some settlement around the foundation at utility trenches and other filled areas.	If We have provided final grading, upon Your request, We will fill settled areas affecting proper drainage in excess of 6 inches, one time only during the warranty period. * **You are responsible for the removal and replacement of landscaping.**
2. Improper grades and swales that cause standing water and affect the drainage in an area that may affect the foundation	After normal rainfall, water should not stand in yard for more than 24 hours nor 48 hours in swales. No decision regarding coverage will be made while frost or snow or saturation exist on the ground.	We will establish the proper grades and swales to eliminate excess standing water. * **After closing, You must maintain proper grades and swales.**

ISSUE	COMMENTS	BUILDER'S AND HOME OWNER'S OBLIGATIONS (Performance Standard)
	c. FOUNDATION MOISTURE AND LEAKS	COVERAGE: YEAR ONE ONLY
1. Water leaks into basement	This should not happen.	We will correct actual flow and accumulation of water in the basement so long as it is not caused by improper landscaping maintenance or Home Owner neglect. *Note: Dampness on the basement wall or floor due to condensation of water vapors on cool walls and floor are not Our responsibility.* * **See Your Home Owner's Manual for details.**
2. Ventilation of crawl spaces		We will correct to meet applicable building code at time of construction.
	d. CARPENTRY (ROUGH-IN)	
1. Walls that bulge, bow or are out-of-plumb	All interior and exterior framed walls have minor differences.	We will correct walls that bulge or bow in excess of 1/4 inch within a 32-inch measurement (floor to ceiling or wall to wall) and walls that are out of plumb in excess of 3/4 inch within a vertical measurement of eight feet.
2. Floor squeaks	We cannot assure a squeak-proof floor. Floor squeaks are often temporary and caused by lumber shrinkage or temperature changes.	We will correct if squeak results from a construction defect.
3. Uneven wood floors	Floors should be even within certain tolerances.	We will correct if high or low areas exceed 1/4 inch within a 32-inch distance, measuring perpendicular to the high or low area or if floor slopes exceed 1/240 of the width or length within a room, measured in the direction of the slope.

ISSUE	COMMENTS	BUILDER'S AND HOME OWNER'S OBLIGATIONS (Performance Standard)
	6. ROOFING	**COVERAGE: YEAR ONE ONLY**
1. Roof Leaking	The roof should not leak. The area around flashing should not leak. However, leaks may occur if snow and ice are allowed to build up.	We will repair all roof and flashing leaks not caused by snow and ice buildup or other neglect by the Home Owner. We are not responsible for color variations. * **Prevention of snow and ice buildup is Your responsibility.**
2. Leaks in gutters and downspout leaders	Gutters and leaders should not leak. However, during heavy rains, overflow could occur.	We will repair leaks not caused by Your neglect. * **You are responsible for keeping the gutters and leaders open and free from debris.**
3. Leakage of elements through attic louvers and vents, including ridge and soffit vents	This is not a defect; vents and louvers must be provided for proper ventilation of attics.	Even if vents are properly installed, wind driven snow and rain may enter. We will install vents in accordance with manufacturer's installation requirements and applicable building codes.
	7. SIDING	**COVERAGE: YEAR ONE ONLY**
1. Exterior Trim	Siding, trim and masonry must be capable of excluding the elements.	We will correct any separation at joints, exterior trim, or between trim and surfaces of siding or masonry that exceeds 1/4 inch.
2. Wall leaks	Walls may leak due to shrinkage of caulking.	We will recaulk once all junctions and separations of affected wall surfaces to prevent further water leakage. * **Caulking replacement is a Home Owner's maintenance item.**
3. Exterior joint separation of siding, delamination of veneer siding or loose siding	Siding should not be loose or separate or delaminate unless You have failed to maintain properly. * **See Your Home Owner's Manual for details.**	We will correct if failure is due to installation not in accordance with manufacturer's recommendations and so long as the problem is not due to Your failure to maintain. We cannot assure exact color, style or texture match.

ISSUE	COMMENTS	BUILDER'S AND HOME OWNER'S OBLIGATIONS (Performance Standard)
4. Paint or stain peels	Exterior paints and stains should not peel or deteriorate during the first year of warranty coverage. However, some fading is normal and is caused by weathering. Varnish and lacquer are not covered by this warranty.	We will correct if paint or stain peels. We cannot assure exact color and texture match.
5. Mildew and fungus	Mildew and fungus on siding are caused by climactic conditions or nearby bodies of water, and are not covered by this warranty.	* **This is a Home Owner's maintenance item.**
6. Cracks in stucco wall finish	Cracks in stucco wall finishes are common and should be expected within certain tolerances.	We will repair once cracks in excess of 1/8 inch in width. We cannot assure exact color and texture match.
CHIMNEYS AND FIREPLACES		**COVERAGE: YEAR ONE ONLY**
1. Not enough draw or down draft	High winds can cause down drafts. Some homes are extremely air-tight, and You may need to open a window in order to maintain an effective draft.	We will correct the problem if it is caused by improper construction or design.
2. Chimney separated from home	Some minor separation is normal and should be expected within certain tolerances.	We will correct separation in excess of 1/2 inch in any 10-foot measurement.
3. Cracking of firebrick	Heat will cause some cracking. Cracks in firebrick are not warranted.	None.
4. Fireplace brick veneer cracking	Some cracking should be expected within certain tolerances.	We will repair cracks in brick veneer greater than 1/4 inch in width. We cannot assure an exact color and texture match.
5. Creosote or resin build up or creosote seepage through chimney	Creosote and resin buildup are not warranted.	None. * **Chimney flues should be cleaned regularly.**
6. Water infiltration into the firebox	Some water infiltration can be expected under certain weather conditions, such as during wind driven rains and snow. This is not covered by this warranty.	None.

ISSUE	COMMENTS	BUILDER'S AND HOME OWNER'S OBLIGATIONS (Performance Standard)
	6. WINDOWS AND DOORS	COVERAGE: YEAR ONE ONLY
1. Doors warp	Some warping, cupping, bowing or twisting, especially of exterior doors, is normal and is caused by surface temperature and humidity changes.	We will repair or replace defective doors whose warp, bow, cup or twist exceeds 1/4 inch. We cannot assure an exact color match.
2. Door panel shrinks	Expansion and contraction is normal and may cause unfinished surfaces to appear. This is not warranted.	None.
3. Door panel splits	Light should not be visible through split.	We will correct a split panel if light is visible through the split. We cannot assure an exact color match.
4. Glass breakage	This is not covered by your warranty. You should inspect your property and bring any glass breakage to Our attention prior to occupancy.	None.
5. Garage door malfunctions	Following proper installation, maintenance is Your responsibility.	The warranty is voided if homeowner installs a garage door opener. We will correct if the malfunction is not due to improper maintenance.
6. Rain or snow enters through garage door	Some entrance of the elements can be expected under certain weather conditions.	We will install the door to meet the manufacturer's specifications. We will correct if problem is due to improper installation or manufacture.
7. Windows do not operate	Reasonable pressure should open and close windows.	We will correct if windows do not properly operate.
8. Drafts around windows and doors		We will correct defective weather-stripping and improperly fitted windows and doors. * **Adjustments to thresholds and caulking are considered routine maintenance and are your responsibility.**

ISSUE	COMMENTS	BUILDER'S AND HOME OWNER'S OBLIGATIONS (Performance Standard)
9. Condensation and frost on windows	Condensation or frost on windows is caused by temperature differences between the interior and the exterior of the home, as well as the personal living habits of the occupants. These conditions are beyond Our control and are not covered by this warranty.	None.
10. Water infiltration around doors and windows	No water should pass beyond the interior face of the unit or flow into the wall area or the room in wind speeds under 54 miles per hour. All caulking materials expand and contract due to temperature variations and dissimilar materials.	We will correct the situation. * **Adjustment to weather-stripping is Your responsibility.**
11. Screen panels	The screen panels should fit properly. The function of screen panels is to deter insects from entering the Home; they are not safety grids for children.	We will correct improperly fitted screen panels. * **Rips and gouges are Home Owner's responsibility.**
INTERIOR WALL AND TRIM		**COVERAGE: YEAR ONE ONLY**
1. Trim	Some separations at joints in moldings and between moldings and adjacent surfaces are normal and should be expected within certain tolerances.	We will correct separation of moldings and adjacent surfaces in excess of 1/4 inch; We will correct miter joint separations in excess of 1/8 inch.
2. Wall or ceiling cracks	Hairline cracks and seam or tape cracks are normal and should be expected within certain tolerances.	We will repair cracks exceeding 1/8 inch in width once during the warranty period. It will be the homeowner's responsibility to repaint the affected area.
3. Nail pops	Nail pops are to be expected, and are not covered by this warranty. Nail pops that are readily visible from a distance of 6 feet under normal lighting conditions are unacceptable.	We will correct nail pops one time only. It will be the homeowner's responsibility to repaint the affected area.
4. Cracking of ceramic tile; grout joints		We will replace cracked tiles. We will repair cracking of grout joints once. We cannot assure exact color match.

ISSUE	COMMENTS	BUILDER'S AND HOME OWNER'S OBLIGATIONS (Performance Standard)
5. Wallpaper or covering begins to peel		We will correct Builder-installed wallpaper that peels. We cannot assure exact color match.
	FLOORING AND COVERING	COVERAGE: YEAR ONE ONLY
1. Separation between finished floor boards		We will correct separations in excess of 1/8 inch.
2. Nails popping through resilient flooring		We will repair nail pops that have broken through floor covering. We will repair or replace covering. We will match colors as closely as possible.
3. Imperfections causing ridges or depressions in resilient flooring		We will correct ridges or indentations exceeding 1/8 inch. We will match colors and patterns as closely as possible, but We are not responsible for discontinued patterns.
4. Floor covering becomes loose or bubbles		We will repair or replace the affected area. We will match colors as closely as possible.
5. Gaps in seams of resilient coverings		We will correct gaps and separations in seams in excess of 1/16 inch. We cannot assure an exact color match. ***If You install the flooring and covering, sub-floor preparation is Your responsibility. If sub-floor repairs are to be made where You installed floor covering, the removal and replacement of the floor covering is Your responsibility.**
6. Gaps in carpet seams	Gaps at seams should not be apparent. Observable seams in carpet are normal. Carpet should perform in accordance with manufacturer's specifications.	We will correct apparent gaps at seams.

ISSUE	COMMENTS	BUILDER'S AND HOME OWNER'S OBLIGATIONS (Performance Standard)
	I. CABINETS AND COUNTER TOPS	COVERAGE: YEAR ONE ONLY
1. Counter and vanity tops	Cracks, chips and scratches not reported to Us prior to occupancy will not be covered by this warranty. Counter and vanity top material should not delaminate.	We will repair or replace delaminated counter and vanity tops.
2. Cabinet doors or drawers		Some warping, cupping, bowing or twisting is normal and caused by surface temperature and humidity changes. We will correct warpage in excess of 1/4 inch measured diagonally from corner to corner on the face of the cabinet.
3. Cabinet separates from wall or ceiling	Some separation is common and could be experienced within certain tolerances.	We will correct separation in excess of 1/4 inch.
	II. COOLING AND HEATING	COVERAGE: YEAR ONE ONLY
1. Insufficient heating	Heating system should be capable of maintaining an inside temperature of 70 degrees F. as measured in the center of each room at a height of 5 feet above the floor, under local outdoor winter design conditions as specified in the ASHRAE Handbook: Fundamentals. Federal, state or local energy codes supersede ASHRAE standards where such codes have been locally adopted.	We will correct the heating system to provide the required temperatures.
2. Insufficient cooling	Where applicable, the cooling system should be able to maintain a temperature of 78 degrees (measured 5 feet above the center of the floor) under local outdoor summer ASHRAE specifications. In the case of outdoor temperature exceeding 95 degrees Fahrenheit, a 15 degree difference is acceptable. Homeowner is responsible for minor adjustments such as balancing dampers and registers. Federal, state or local energy codes shall supersede this standard where such codes have been adopted.	We will correct the cooling system to meet applicable codes at the time of construction.

ISSUE	COMMENTS	BUILDER'S AND HOME OWNER'S OBLIGATIONS (Performance Standard)
3. Ductwork noisy	When metal ducts heat and cool, some noise will result. Very loud noise known as oil canning is not acceptable.	We will correct the oil canning noise only.
m. PLUMBING		**COVERAGE: YEAR ONE ONLY**
1. Pipes burst	* **You are responsible for maintaining suitable temperatures in the Home to prevent pipes from freezing. Proper winterization, including draining water supply lines connected to outside faucets, is a Home Owner's maintenance item.**	We will correct burst pipes if the problem is caused by defective workmanship, materials or design.
2. Leaks or malfunctions in plumbing fixtures, appliances and trim fittings		We will correct leaks or malfunction in pipes, faucet valves, appliances and trim fittings caused by defects in materials or workmanship.
3. Noisy pipes	Expansion and contraction caused by water flow could cause some noise.	We will correct loud, hammering noises in pipes.
4. Cracks or chips in porcelain or fiberglass	You should inspect these items before taking occupancy and report them to Us prior to occupancy.	We will be responsible for these items only if reported prior to occupancy.
n. ELECTRICAL		**COVERAGE: YEAR ONE ONLY**
1. Outlets, switches or fixtures fail		We will correct defective outlets, switches and fixtures.
2. Consistently blown fuses or circuit breakers kicking off	Ground-fault Circuit-interrupters (GFCI's) are designed to kick off as necessary for safety reasons. This is not considered a defect. We do not recommend plugging a refrigerator or freezer into GFCI outlets.	We will correct defects caused by improper workmanship and materials. We are not responsible if caused by the Home Owner overloading the system.

4. PERFORMANCE STANDARDS APPLICABLE TO SPECIFIC PROBLEMS – THROUGH YEAR TWO

ISSUE	COMMENTS	BUILDER'S AND HOME OWNER'S OBLIGATIONS (Performance Standard)
	a. COOLING AND HEATING	COVERAGE: THROUGH YEAR TWO
1. Ductwork separates	Ductwork shall remain intact and secure.	We will re-attach and re-secure.
2. Refrigerant lines leak	Refrigerant lines damaged by homeowner are not covered by this warranty.	We will repair leaking lines and re-charge the unit if due to faulty installation.
	b. PLUMBING	COVERAGE: THROUGH YEAR TWO
1. Water supply system fails	On-site connections to water main or private water supply are Our responsibility.	We will correct if failure is the result of faulty workmanship or materials.
2. Sewage system fails to operate properly	**We will not be responsible for sewers, fixtures and drains, which are clogged through Home Owner negligence.**	*We will correct if failure is caused by inadequate design or faulty installation as determined by local code requirements in effect at the time of construction.*
3. Pipe leaks	**Condensation on pipes is normal and is not covered by this warranty. Burst pipes due to freezing are a Home Owner responsibility.**	We will correct leaks within the pipe only. Leaks in faucets, valves, joints and fittings are the Home Owner's responsibility.
	c. ELECTRICAL	COVERAGE: THROUGH YEAR TWO
1. Wiring fails to carry specified load		We will correct wiring not conforming to code specifications if caused by a defect in workmanship or materials.

5. STANDARDS APPLICABLE DURING YEARS ONE THROUGH TEN

ISSUE	COMMENTS	BUILDER'S AND HOME OWNER'S OBLIGATIONS (Performance Standard)
	a. MAJOR STRUCTURAL DEFECTS	COVERAGE: YEARS ONE THROUGH TEN
1. Major Structural Defects as set forth in Section B.1.(d) of this Limited Warranty and defined in Section A.11		We will correct a defective Major Structural Defect by taking such actions as are necessary to restore the load-bearing capability of the Load-Bearing Component(s) and will correct any items of the Home damaged by the Major Structural Defect.

SECTION D. EXCLUSIONS

The following are not covered under this Agreement:

1. Any claim reported after an unreasonable delay or not reported as required by this Agreement.

2. Any loss or defect that arises while the Home is used primarily for nonresidential purposes.

3. Loss or damage caused by soil movement, including subsidence, expansion or lateral movement of the soil which is covered by any other insurance or for which compensation is granted by legislation.

4. Normal wear and tear or normal deterioration.

5. Any deficiencies in or damage in or caused by material or work supplied by anyone other than Your Builder or its employees, agents, or subcontractors.

6. Damages or losses not caused by a defect in construction of the Home by Your Builder or its employees, agents, or subcontractors, but resulting instead from acts or omissions of the Home Owner, his agents, employees, licensees, invitees; accidents; riots; civil commotion; nuclear hazards; acts of God or nature; fire; explosion; blasting; smoke; water escape; windstorms; hail; lightning; falling trees; aircraft; vehicles; flood; mud slides; sinkholes; faults; crevices; earthquake including land shock waves or tremors before, during or after a volcanic eruption; insects, birds, vermin, rodents, or wild or domestic animals.

7. **LOSS OR DAMAGE RESULTING FROM HOME OWNER'S FAILURE TO PERFORM ROUTINE MAINTENANCE.**

8. Loss or damage resulting from or made worse by the Home Owner's failure to minimize or prevent such loss or damage in a timely manner, such as, for example, failure to notify the Builder within a reasonable amount of time.

9. Loss or damage to real property, such as land, which is not part of the Home and which may or may not have been included in the original sales price.

10. Loss or damage resulting from, or made worse by, changes in the grading of the property surrounding the Home by anyone except the Builder or its employees, agents or subcontractors, or changes in the grading or drainage resulting from erosion or subsidence.

11. Loss or damage resulting from, or made worse by, modifications or additions to the Home, or property under or around the Home, made after the Effective Date (other than changes made in order to meet the obligations of this Agreement).

12. Loss or damage resulting from, or made worse by, dampness, condensation or heat build-up caused by the failure of the Home Owner to maintain proper ventilation.

13. Any defect, damage, or loss caused or made worse by failure by anyone other than the Builder or its agents, employees, or subcontractors to comply with the manufacturers' warranty requirements concerning appliances, fixtures or items of equipment.

14. Loss or damage resulting from, or made worse by, neglect, abnormal use, negligent or improper maintenance or operation of the Home and its systems or the common elements of a condominium by anyone other than the Builder or its employees, agents, or subcontractors.

15. Loss or damage resulting from, contributed to or aggravated by a condition not resulting in actual physical damage to the Home. This includes uninhabitability or health risk due to the presence or consequences of such things as insects, radon, formaldehyde, mold, other potentially carcinogenic substances, or other pollutants; contaminants; or hazardous or toxic materials.

16. Loss or damage caused directly or indirectly by flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these (whether or not driven by wind), water which backs up from sewers or drains originating off the property, changes in the water table which were not reasonably foreseeable, or water below the surface of the ground (including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool, or other structure) wetlands, springs or aquifers.

17. Any loss or damage resulting from loading on floors which exceeds design load, such as a waterbed or any other furnishings excessive in weight for which the Home was not designed.

18. Any defect that does not result in actual physical damage or loss to the Home, such as items that are purely cosmetic.

19. Consequential damages, including but not limited to, (a) costs of shelter, transportation, food, moving and storage, or (b) other incidental expenses related to relocation during repairs.

20. Violations of applicable building codes or ordinances that do not result in a defect otherwise covered under this warranty.

21. After the first year of the warranty, loss or damage occurring in concrete floors of basements and attached garages and chimneys that are constructed separate from foundation walls or other structural elements of the Home.

22. Loss or damage to off-site improvements.

23. Failure of the Builder to complete construction of the Home or any part of the Home before the Effective Date or damages arising from such failure.

SECTION E. ADDENDA AND APPENDIX

E.1 HUD/VA ADDENDUM (APPLICABLE TO FHA/VA FINANCED HOMES ONLY)

A. The following language is substituted: SECTION A.3. Effective Date. The Effective Date will be the date on which closing of settlement occurs in connection with the initial sale of the Home. In no event will the Effective Date be later than the date of FHA endorsement of the first Home Owner's Mortgage on the Home.

B. In SECTION A.10(i) (Load-Bearing) "roof framing members" shall include roof sheathing and "floor framing members" shall include basement slabs in homes constructed in the State of Colorado on expansive or collapsible soils; and in SECTION A.10(vi) examples of Non-Load-Bearing Components shall include roof sheathing.

C. SECTION B.I.b. Coverage During Year One. The following language is added: Notwithstanding anything to the contrary herein contained, during the first year of coverage, the Builder will correct problems with, or restore the reliable function of, appliances and equipment damaged during installation or improperly installed by the Builder.

D. SECTION B.I.d. Coverage During Years One Through Ten. We warrant for a period of ten years that Your Home is protected against loss resulting from Major Structural Defects (as defined in Section A of this Agreement), except that coverage for defects in basement slabs built on expansive or collapsible soils in Colorado shall be covered from the first through fourth years only.

E. The following is added to SECTION B.3.e.: Where a covered defect is determined to exist and where either the Builder or CN elects to pay the reasonable cost of repair or replacement in lieu of effectuating such repair or replacement, the cash offer must be in writing and the Home Owner will be given ten (10) business days to respond. Cash offers over $5,000 are subject to an on-site review by a HUD-approved fee inspector (inspection costs to be paid by the Builder or CN, as appropriate) unless:

(i) The cash offer is made pursuant to a binding bid by an independent third-party contractor, which will accept an award of a contract from the Home Owner pursuant to such bid;
(ii) Payment is being made in settlement of legal action; or
(iii) The Home Owner is represented by legal counsel.

When CN elects to pay the reasonable cost of repair in lieu of effectuating a repair or replacement, the payment will be made jointly to the Home Owner and the mortgagee. Endorsement of the check by the mortgagee will signify its acceptance of the settlement offer.

F. The following sentence is substituted for the 4th sentence in the 3rd paragraph of SECTION B.5.c: The Builder shall pay the cost of the mediation.

G. THE FOLLOWING LANGUAGE IS SUBSTITUTED FOR THE FIRST SENTENCE OF SECTION B.5.E.: ANY "UNRESOLVED DISPUTE" (DEFINED BELOW) THAT YOU MAY HAVE WITH THE BUILDER YOU MAY SUBMIT TO BINDING ARBITRATION GOVERNED BY THE PROCEDURES OF THE FEDERAL ARBITRATION ACT, 9 U.S.C. I ET. SEQ. OR YOU MAY FILE SUIT IN A COURT OF PROPER JURISDICTION.

H. Notwithstanding anything otherwise contained in the warranty document, repair of a Major Structural Defect is limited to (1) repair of damage to designated load bearing portions of the Home which is necessary to restore their load-bearing ability; (2) repair of those Non-Load-Bearing Components damaged by the Major Structural Defect (MSD), which make the Home unsafe, unsanitary or otherwise unlivable; and (3) repair and cosmetic construction of only those surfaces, finishes and coverings, original to the Home, damaged by the MSD or which require removal and replacement (a) attendant to repair of the MSD or (b) in order to repair other damage directly attributable to the MSD.

I. SECTION C.3.b.i. The Year One Coverage is as follows: We will fill settled areas affecting proper drainage. **You are responsible for the removal and replacement of landscaping.**

E.2 STATE OF INDIANA ADDENDUM – RIDER AMENDMENTS

Notwithstanding anything contained in the attached printed form of **Your Ryland Home Warranty Program,** the warranty shall include the following protection:

A. **SECTION A.3.** is revised to read as follows: "Effective Date" means the date of the first occupancy of the new home as a residence by the initial homebuyer.

B. **SECTION A.11.** is revised to read as follows: "Major Structural Defect" means actual damage to the load-bearing part of a new home including actual damage due to subsidence, expansion, or lateral movement of the soil affecting the load-bearing function unless the subsidence, expansion, or lateral movement of the soil is caused by flood, earthquake, or some other natural disaster.

C. **SECTION B.1. PROTECTION PROVIDED** is amended to read as follows:

Your Ryland Home Warranty Program provides you with the following protection:

(a.) During the two-year (2) period beginning on the Effective Date, the Home will be free from defects caused by faulty workmanship or defective materials.

(b.) During the two-year (2) period beginning on the Effective Date, the Home will be free from defects caused by installation of plumbing, electrical, heating, cooling, or ventilating systems, exclusive of fixtures, appliances, or items of equipment.

(c.) During the four-year (4) period beginning on the Effective Date, the Home will be free from defects caused by faulty workmanship or defective materials in the roof or roof systems of the Home.

(d). During the ten-year (10) period beginning on the Effective Date, the Home will be free from Major Structural Defects.

D. **SECTION D. EXCLUSIONS** – Exclusion D.19. is deleted.

E.3 MARYLAND ADDENDUM

You should contact the New Home Warranty Security Plan at 1-888-379-9171, personally, to verify the existence of your warranty. Further, you should report any warranty problems, which are not promptly resolved by the Builder, to the New Home Warranty Security Plan.

Section B.1.C. shall be amended to read as follows:

Coverage During Years One and Two: We warrant that for a period of two years, the Home shall be free of any defect in the electrical, plumbing, heating, cooling and ventilating systems, except that in the case of appliances, fixtures and items of equipment, the warranty shall not exceed the length and scope of the manufacturer's warranty.

Section A.6. is revised to read as follows:

Heating, Cooling and Ventilating Systems: All duct work, steam, water and refrigerant lines, registers, convectors, radiation elements and dampers.

Section A.12. is revised to read as follows:

Plumbing Systems: Gas supply lines and fittings; water supply, waste and vent pipes and their fittings; septic tanks and their drain fields; and water, gas, and sewer service piping and their extensions to the tie-in of a public utility connection; or on-site wells and sewage disposal systems.

Notwithstanding anything to the contrary contained herein, the Home Owner shall have benefit of the provisions of Section 10, Subtitle 2 of the Real Property Article of the Maryland Code.

The fourth sentence of Section B.2. is revised to read as follows:

The warranty on common elements commences with the first transfer of title to a unit owner. The warranty of any common elements not completed at that time shall commence with the completion of that element or with its availability for use by all unit owners, whichever occurs later. The warranty extends for a period of three years.

E.4 MONTGOMERY COUNTY, MARYLAND ADDENDUM

Montgomery County, Maryland Executive Regulation 20-90 prescribing the form and coverage of minimum warranty standards on all new homes sold in that county took effect on November 8, 1990.

Should the provisions of this limited warranty agreement be more rigid or less rigid than those enacted by Montgomery County, Maryland, the more rigid requirements shall apply whenever they are in conflict. Where specific standards and obligations are set forth, the standard shall be the good industry practice for workmanship and materials.

* * *

The following sections are amended by substituting the following for the original and shall apply to all new homes constructed by Your Builder.

The following language is substituted for Section A.4.
Electrical Systems: includes but is not necessarily limited to the following: all wiring, electrical boxes, circuit boards switches, outlets, overload protector devices and connections up to the public utility connections.

The following language is substituted for Section A.6.
Heating, Ventilating, Cooling and Mechanical Systems: includes but is not necessarily limited to the following: duct work, steam, water, and refrigerant lines, registers, convectors, radiation elements, dampers, boiler, heat pump, thermostat, furnace, air conditioning equipment, exhaust fans, oil tanks and fittings, air handling equipment and air purifiers.

The following language is substituted for Section A.12.
Plumbing Systems: includes but is not necessarily limited to the following: gas supply lines and fittings; water supply; waste and vent pipes and their fittings; septic tanks and their drainfields; water, gas and sewer service piping and their extension to the property line which tie into a public utility connection or on-site weel and/or sewage disposal system; valves; faucets, fixtures and trim fittings, pumps, water heater and sprinkler systems.

The following language is substituted for Section B.1.b.
COVERAGE DURING YEAR ONE
Commencing on the Effective Date and subject to the terms and conditions listed herein, Your Builder warrants that for a period of one year your Home will be free from defects due to nonconformity with the performance standards set forth in Section C of this Agreement. With respect to fixtures, appliances and items of equipment, the warranty is for one year, except for those fixtures, appliances, and items of equipment relating to the heating, cooling, electrical or mechanical systems, which will be covered for two years.

The following language is substituted for Section B.1.c.
COVERAGE DURING YEARS ONE AND TWO
Commencing on the Effective Date of warranty and subject to the terms and conditions listed herein, Your Builder warrants that for a period of two years, the cooling, heating, ventilating, electrical and plumbing systems will be free from defects due to nonconformity with the performance standards set forth in Section C of this Agreement.

E.4 MONTGOMERY COUNTY, MARYLAND ADDENDUM (Continued)

The following language is substituted for Section B.3.c.
Actions taken to cure defects will not extend the periods of coverage specified in this Agreement provided that the Builder (or CN or its agents) does not attempt to conceal or cosmetically repair the defect in effecting a cure.

The following language is substituted for the first sentence of Section B.3.e.
When the Builder or CN pays you the reasonable cost of repair or replacement, you must sign and deliver to the Builder or CN, as the case may be, a full and unconditional release in recordable form, of all legal obligations with respect to the defect. This release is binding provided that the Builder (or CN or its agents) does not attempt to conceal or cosmetically repair the defect in effecting a cure.

The following language is added to Section B.5.c.
Notice to the warrantor or the administrator can be sent by regular first class mail.

The following language is substituted for the fourth and sixth sentences of Section B.5.e.
Any unresolved dispute shall be submitted for arbitration to the American Arbitration Association (AAA) under the AAA Home Warranty Rules, or such other independent arbitration service as may be agreed upon between the parties within 20 days after the Claims Administrator's receipt of Your Request for Arbitration, for resolution in accordance with the procedures and standards established by the laws and regulations of Montgomery County, Maryland regarding new home warranties and builder licensing. The cost of arbitration shall be borne by the Builder or CN. They have agreed to be bound by the final award of arbitration.

Section B.6.
Deleted in its entirety.

The following language is substituted for (or added to, as noted) the corresponding PERFORMANCE STANDARDS RELATING TO SPECIFIC PROBLEMS in Section C.3.:

Issue	Comments	Builder's and Home Owner's Obligations (Performance Standard)
a.3. Cracks in basement floors	Shrinkage (hairline) cracks are common and should be expected within certain tolerances.	We will repair cracks exceeding 3/16 inch in width or 1/8 inch vertical displacement. We will not correct color variations.

E.4 MONTGOMERY COUNTY, MARYLAND ADDENDUM (Continued)

Issue	Comments	Builder's and Home Owner's Obligations (Performance Standard)
a.8. Cracking, settling or heaving of stoops and steps	Stoops and steps are not to settle, crack or heave in excess of certain tolerances.	We will correct separation of one inch in relation to the house structure; cracks, in excess of 1/8 inch and separation greater than 1/2 inch where the stoop or steps abut the house or where an expansion strip has been installed. In cases where repair is made to the concrete surface, We will match the adjoining surfaces as closely as possible or resurface or replace the entire area.
Add: a.9. Cracks in structurally attached patios with footing or foundation systems		We will repair cracks in excess of 1/4 inch in width or 1/4 inch in vertical displacement. Where cracks are caused by settlement or improper installation, We will replace that portion which has settled and finish as close as possible to match existing surface. Where a major portion of the patio has cracked, the entire patio will be replaced.
a.10. Standing Water on Stoops	Water should drain from outdoor stoops and steps. Minor water standing on stoops for a short period after rain can be anticipated.	We will take corrective action to assure drainage of steps and stoops.
b.1. Settlement of ground around foundation, utility trenches or other areas	Settling of ground around foundation walls, utility trenches or other filled areas should not interfere with water drainage from the home.	If We are required to provide final grading, We will fill settled areas affecting proper drainage. We are responsible for removal and replacement of shrubs and other landscaping installed by Us affected by placement of the fill. Grassed or landscaped areas which are disturbed during repair work are defects. We will restore grade, seed and landscape to meet proper condition. * **Landscaping added by the Home Owner is not Our responsibility.**

E.4 MONTGOMERY COUNTY, MARYLAND ADDENDUM (Continued)

Issue	Comments	Builder's and Home Owner's Obligations (Performance Standard)
d.1. Walls which bulge, bow or are out-of-plumb	All interior and exterior walls have minor differences.	We will correct walls bowing more than 1/4 inch within a 32-inch vertical or horizontal measurement.
d.2. Floors squeak or subfloor appears loose	Floor squeaks and loose subfloor are often temporary conditions common to new home construction, and a squeak-proof floor cannot be guaranteed.	We will correct the problem if caused by faulty construction within reasonable repair capability. Where a finished ceiling exists under the floor, the corrective work may be attempted from the floor side. Where necessary, We may remove the floor finish materials to make the repair and reinstall or replace if damaged.
e.2. Leaks in gutters and downspout leaders	Gutters and downspouts should not leak and are to be sized not to overflow during heavy rainfall.	We will repair leaks. * **It is the Home Owner's responsibility to keep gutters and downspouts free from leaves and debris which could cause overflow.**
e.3. Leaks due to snow or rain driven into the attic through louvers or vents	Louvers and vents must not permit penetration of the elements under normal conditions. However, properly installed louvers and vents may, at times, allow penetration of rain and snow under strong wind conditions.	We will correct to meet requirements of the standard.
Add: e.4. Water stays in gutters	A gutter improperly pitched to drain water is a deficiency. Water should not stand in gutters in excess of 1/2 inch.	We will pitch gutters properly to meet the standards. * **You are responsible for keeping gutters and downspouts free from leaves and debris.**
Add: e.5. Insufficient insulation		We will install insulation in accordance with applicable energy and building code requirements.

E.4 MONTGOMERY COUNTY, MARYLAND ADDENDUM (Continued)

Issue	Comments	Builder's and Home Owner's Obligations (Performance Standard)
f.5. Cracks in stucco wall finish	Cracks in stucco wall finishes are common and can be expected within certain tolerances.	We will repair cracks in excess of 1/8 inch in width.
h.5. Garage doors fail to operate properly under normal use	Garage doors should operate properly and fit the door opening.	We will make necessary adjustments.
i.1. Trim	Some separations at joints in moldings and between moldings and adjacent surfaces is normal and should be expected within certain tolerances.	We will correct separation in excess of 1/8 inch.
i.4. Ceramic tile cracks or becomes loose	Ceramic tile should not crack or become loose. Some separation is normal and should be expected within certain tolerances.	We will replace cracked tiles and re-secure loose tiles. We will correct a separation in excess of 1/8 inch. We will correct the cause of the loose or cracking tile condition. We will not be responsible for discontinued patterns or color variations in ceramic tile but will match as closely as possible.
Add: i.6. Cracks appear in grouting of ceramic tile joints or at junctions with other material such as a bathtub	Cracks in grouting of ceramic tile joints are commonly due to shrinking condition.	We will repair grouting as necessary, one time only. We will match as closely as possible. * **Regrouting of these cracks is a maintenance responsibility of the Home Owner after the first year.**
i.7. Inadequate interior paint application and coverage	Interior paint is to be applied in a manner sufficient to visually cover wall, ceiling and trim surfaces.	We will repaint wall, ceiling or trim surfaces where inadequate paint has been applied. Where a large area is affected, the entire surface will be repainted.
j.1. Separations between finished floor boards	Minor gaps are common and should be expected within certain tolerances.	We will correct separations exceeding 1/16 inch in width in resilient flooring joints.

E.4 MONTGOMERY COUNTY, MARYLAND ADDENDUM (Continued)

Issue	Comments	Builder's and Home Owner's Obligations (Performance Standard)
j.5. Carpeting becomes loose, seams separate or stretching occurs	Wall-to-wall carpeting, installed by Us as the primary floor covering, when stretched and secured properly should not come up, become loose or separate from its point of attachment.	We will re-stretch or re-secure carpeting as needed.
k.1. Surface cracks, delaminations and chips in high pressure laminates, porcelain and fiberglass fixtures and counter tops of vanity and kitchen cabinets	Counter tops fabricated with high pressure laminated coverings should not delaminate, crack or chip.	We will repair or replace laminated, porcelain or fiberglass counter tops and fixtures having chips, cracks, scratches or delaminations if reported on a pre-closing inspection report. If a pre-closing inspection report was not performed, the owner shall notify Us within 30 days of the effective date of warranty.

Add:
THE FOLLOWING PERFORMANCE STANDARDS ARE APPLICABLE DURING YEARS ONE AND TWO

Issue	Comments	Builder's Obligation
Water supply stops or water pressure is too low	All service connections to municipal water main or private water supply are Our responsibility when installed by Us. If conditions exist which disrupt or eliminate the source of water supply that are beyond Our control, then We will not be responsible.	We will repair as required if failure is due to faulty workmanship or materials.
Water supply system fails to deliver water or pressure is too low	All on-site service connections to municipal water main and private water supply is Our responsibility.	We will repair if failure is the result of defective workmanship or materials.
Pipes, faucet or valve leak	A valve or faucet leak due to material or workmanship is a deficiency. No leaks of any kind are to be present in any sanitary soil, waste vent or water piping. Condensation on piping does not constitute leakage and is not covered except where pipe insulation is required.	We will repair or replace the leaking faucet or valve and will make repairs to eliminate pipe leakage.

E.4 MONTGOMERY COUNTY, MARYLAND ADDENDUM (Continued)

Issue	Comments	Builder's Obligation
Septic system fails to operate properly	Septic system will function adequately during all seasons, under climatic conditions normal or reasonably anticipated, based on local records, for the location of the home. Septic systems shall be designed and installed to comply with applicable State laws.	We will repair, or otherwise correct, a malfunctioning or non-operating system, if failure is caused by inadequate design, faulty installation, or other cause relating to actions of the builder or contractors or subcontractors under the builder's control. We will not be responsible for system malfunction or damage which is caused by owner negligence, lack of system maintenance, or other causes attributable to actions of the owner or owner's contractors, not under the control of Builder; including, but not necessarily limited to: the addition of fixtures, items of equipment, appliances or other sources of waste or water to the plumbing system served by the septic system; and damage, or changes to the septic system installation or surrounding soil conditions critical to the system's functioning.
Refrigerant lines leak	Refrigerant lines should not develop leaks during normal operation.	We will repair leaking refrigerant lines and re-charge unit as required.
Improper mechanical equipment operation of evaporative cooling system	Equip. should function properly at temperature standard set w/o unreasonable fuel consumption.	We will correct and adjust so that blower and water system operate as designed.

E.5 HOW TO MAKE A WARRANTY CLAIM

A. Contact the local Ryland division office if you have a claim that You think is covered by the Warranty.

If you call, also send a written claim (Use the Warranty Request Form in your Warranty Booklet)
Notice must be made no later than thirty (30) days after the warranty period expires

B. The Builder's local office has 30 days to investigate the claim.

Builder will notify you in 30 days if Builder will (a) repair, (b) replace, (c) pay the cost of repair/replacement or (d) do nothing because the item is not covered by the warranty.

C. If Builder agrees to repair, replace or pay, Builder has 60 days after notice to you to do so.

D. If you think the Builder's resolution is unsatisfactory, send a Request for Mediation to Columbia National (CN)on the form provided in your Warranty Booklet.

E. CN will attempt to mediate the claim with the Builder; if CN is unsuccessful, CN will refer the claim to an independent arbitration association such as the American Arbitration Association (AAA) or the National Academy of Conciliators (NAC) or another mutually agreeable independent entity (the "Mediator") for mediation.

The cost of any independent Mediator will be borne equally by the parties.

F. CN or the Mediator will determine within 30 days whether the dispute is unresolvable. If the dispute is unresolvable, CN will notify both You and Your Builder and either party may then submit to CN a Request for Arbitration (or for FHA insured mortgages:You may submit the issue to the local HUD field office for resolution) on the form entitled "Request for Arbitration" provided in the warranty booklet.

Within 20 days after receiving a Request for Arbitration, CN will refer the matter to an independent arbitration association such as AAA or NAC for arbitration.

The requesting party will pay the Arbitrator's fee initially, but the arbitrator has the authority to award costs and reasonable attorney and expert fees to the prevailing party.

G. The Arbitrator's ruling will be final and unappealable (except for FHA insured mortgages, which You may appeal to the local HUD office within 30 days of the arbitrator's decision).

H. The Builder will have 60 days after the arbitrator's or HUD's decision (as the case may be) to comply with the decision (subject to any seasonal items that would reasonably take more than 60 days to complete).

E.6 ACTIVE SOILS ADDENDUM

Home Owner Maintenance Responsibilities for Homes Constructed on Active Soils

Soils having a high clay content can expand and contract when variations occur in the moisture content of the soils. Where seasonal moisture changes in the sub-surface soils are common, it is the Home Owner(s) responsibility to provide proper ongoing maintenance. Although foundations are specifically designed for soil conditions in each area, conditions may be encountered that were not revealed by sub-surface exploration and testing.

Improper Home Owner maintenance can adversely affect the performance and structural integrity of any foundation constructed on active soils and void the warranty coverage. These post-construction practices are beyond the control of the design engineer and the builder.

To minimize the probability of movement and displacement in the foundation caused by moisture content variations, You must follow post-construction maintenance requirements. Your failure to do so will void the warranty coverage provided by this Warranty.

1. The final grade that has been established by the builder meets the warranty requirements. You are responsible for maintaining such grades. You should maintain the grade around the foundation in such a manner that surface drainage is away from the foundation. You should not permit water to pond or become trapped in localized areas against the foundation as this can cause variations in moisture content that can damage the foundation.

2. Watering should be done in a uniform systematic manner as equally as possible on all sides of the foundation to keep the soil moist, NOT SATURATED. Areas of soil that do not have ground cover may require more moisture as they are more susceptible to evaporation, causing a moisture content imbalance.

3. During extreme hot and dry periods, close observations should be made around the foundation to insure adequate watering is being provided, preventing soil from separating or pulling back from the foundation.

4. Gutters and downspouts shall be maintained to prevent injection of moisture into the soil from roof run-off in localized areas. Keep downspout extensions in place.

5. Trees planted in close proximity to the foundation can damage the structural integrity of the foundation because they can develop a root system which can penetrate beneath the foundation and draw moisture from the soil. Areas around trees will require more water in periods of extreme drought. If You plant a tree closer to the foundation than 1½ times the anticipated tree foliage diameter at maturity, warranty coverage can be affected. Precautionary measures such as the installation of a root shield or root injection system should be taken to maintain moisture equilibrium.

6. Placing flower gardens and beds or shrubs next to the foundation and watering these areas heavily will generally result in a net increase of the soil moisture content in that localized area. This may result in soil expansion in that localized area of the foundation.

7. You must maintain a balanced soil moisture content around the perimeter of the foundation.

YOUR RYLAND
HOME WARRANTY

COLUMBIA NATIONAL RISK RETENTION GROUP, INC.
100 BANK STREET, SUITE 610, P.O. BOX 530
BURLINGTON, VERMONT 05402-0530
TELEPHONE 1-888-379-9171

RYLAND

REQUEST FOR MEDIATION

Please read the Your Ryland Home Warranty documents for filing instructions and pertinent information.

If you believe your Builder's performance of its warranty obligations is unsatisfactory, then send this completed form directly to Columbia National Risk Retention Group, with a copy of the Application for Home Enrollment and copies of all relevant correspondence between the Builder and Homebuyer(s) involving this matter, including any past conciliation or arbitration proceedings. Please provide any correspondence that indicates that this Builder has failed to perform its warranty obligations, if applicable. Send copies of this notice to the Builder also.

This form must be received by the Builder and Columbia National no later than thirty (30) days after the expiration of the applicable warranty term or the complaint/claim will be denied.

HOMEOWNER'S NAME: _____

ADDRESS: _____

HOME PHONE ( ) _____ BUSINESS PHONE ( ) _____

BUILDER'S NAME: _____

ADDRESS: _____

PHONE NUMBER: ( ) _____

EFFECTIVE DATE
OF WARRANTY: _____/_____/_____
(Mo.) (Day) (Year)

(DATE OF CLOSING OR SETTLEMENT)

NATURE OF DEFECT (BE SPECIFIC; IF AVAILABLE, ENCLOSE PHOTOGRAPHS) _____

_____

_____

_____

_____

_____

_____

_____

DATE DEFECT FIRST OBSERVED_____/_____/_____ DATE FIRST REPORTED TO BUILDER_____/_____/_____
(Mo.) (Day) (Year) (Mo.) (Day) (Year)

_____
Homebuyer(s) Signature (Date)

CHECK ONE (if applicable)
1. ☐ FHA 2. ☐ VA 3. ☐ FmHa
Case # _____

YOUR RYLAND
HOME WARRANTY

COLUMBIA NATIONAL RISK RETENTION GROUP, INC.
100 BANK STREET, SUITE 610, P.O. BOX 530
BURLINGTON, VERMONT 05402-0530
TELEPHONE 1-888-379-9171

RYLAND

REQUEST FOR ARBITRATION

Please read the Your Ryland Home Warranty documents for filing instructions and pertinent information.

If you believe your Builder's performance of its warranty obligations is unsatisfactory, and you have been notified by Columbia National that your claim is an unresolved dispute and you wish to pursue the claim further, then send this completed form directly to Columbia National Risk Retention Group, with a copy of the Application for Home Enrollment and copies of all relevant correspondence between the Builder and Homebuyer(s) involving this matter, including any past conciliation or arbitration proceedings. Please provide any correspondence that indicates that this Builder has failed to perform its warranty obligations, if applicable. Send copies of this notice to the Builder also.

This form must be received by the Builder and Columbia National no later than thirty (30) days after the expiration of the applicable warranty term or the complaint/claim will be denied.

HOMEOWNER'S NAME: _____

ADDRESS: _____

HOME PHONE ( ) _____ BUSINESS PHONE ( ) _____

BUILDER'S NAME: _____

ADDRESS: _____

PHONE NUMBER: ( ) _____

EFFECTIVE DATE
OF WARRANTY: _____/_____/_____
(Mo.) (Day) (Year)

(DATE OF CLOSING OR SETTLEMENT)

NATURE OF DEFECT (BE SPECIFIC; IF AVAILABLE, ENCLOSE PHOTOGRAPHS) _____

_____

_____

_____

_____

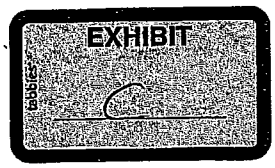
_____

_____

DATE DEFECT FIRST OBSERVED_____/_____/_____ DATE FIRST REPORTED TO BUILDER_____/_____/_____
(Mo.) (Day) (Year) (Mo.) (Day) (Year)

_____
Homebuyer(s) Signature (Date)

CHECK ONE (if applicable)
1. ☐ FHA 2. ☐ VA 3. ☐ FmHa
Case # _____



THE RYLAND GROUP, INC.
SUBCONTRACTOR AGREEMENT
GENERAL TERMS

SUBCONTRACTOR: LAND SITE SERVICES
Address: 1330 PORCHERS BLUFF RD
Phone No.: 843-514-6168 MT. PLEASANT, SC 29464
Effective Date: 4/8/02

RYLAND DIVISIONS: 443
(insert all divisions for which work is performed under this contract)

This Subcontractor Agreement ("Agreement") shall govern the relationship between Subcontractor and THE RYLAND GROUP, INC. ("RYLAND") for any project ("Project") on which Subcontractor provides services to Ryland. The description of any work ("Work") to be performed on any Project, any specifics regarding the Work, rules and regulations regarding the Work and the price ("Price") shall be contained on bid sheets, proposals, drawings, specifications, scopes of work, site plans and other documentation governing the Work (collectively, the "Documents"). All Documents are incorporated herein by reference and made a part hereof. The Documents shall be identified as being subject to this Agreement.

Subcontractor and Ryland agree as follows:

1. (a) Subcontractor shall complete the Work in strict conformity with generally accepted building practices and the Documents. All materials incorporated into the Work shall be new, and the Work shall be completed in a good and workmanlike manner free from defects.

(b) Subcontractor has examined the Documents and is fully aware of their provisions.

(c) Subcontractor represents, warrants and covenants that the Documents are complete and sufficient to enable Subcontractor to determine the Price, to construct the Work and otherwise to fulfill its obligations hereunder. Subcontractor has visited the site and examined the conditions affecting the Work.

(d) Subcontractor has satisfied itself as to the location of all utilities that may affect or interfere with the Work and agrees to protect all utilities and keep them operational at all times.

2. Time is of the essence. Subcontractor shall begin the Work on the date designated by Ryland and shall proceed diligently to complete the Work in accordance with the schedule set by Ryland without delays to Ryland or to other subcontractors.

3. (a) Subcontractor is an independent contractor. Subcontractor is not an employee of Ryland for any purpose.

(b) Subcontractor is responsible for the manner, method and means of accomplishing the Work; hiring, training, disciplining, firing and scheduling its own employees; withholding appropriate amounts for federal, state and local taxes; and providing fringe benefits to employees, including, but not limited to, workers' compensation benefits. Ryland shall not be liable for any such items. Ryland does not have the right to cause Subcontractor to take any disciplinary action against its employees except as specifically provided in this Agreement or to assign work to any of Subcontractor's employees.

(c) Ryland reserves the right to (1) inspect all Work to determine, in good faith, whether the Work has been satisfactorily completed, (2) control access to each Ryland work site, (3) schedule Work in a logical sequence or to avoid disturbances, and (4) stop Work for safety reasons or to insure conformity of end product with contracted for results.

4. (a) Ryland shall pay Subcontractor [weekly] [biweekly] [monthly] [by autopay] so long as Subcontractor is not in default,upon written certification by Ryland's Homebuilding Supervisor that the portion of the Work for which payment has been requested has been completed satisfactorily. Payment shall be in accordance with the Price set forth in the Documents. Subcontractor agrees to provide notice of price increases to Ryland for the longer of completion of current backlog or 120 days. Payment for additions or extra work will be made only pursuant to advance written change orders, which may include purchase orders, signed by the purchasing manager of Ryland.

(b) Ryland, in its sole discretion, may retain any payment or portion thereof and/or offset such amounts against future payments due to Subcontractor to assure satisfactory completion of the Work and all service work arising therefrom or to compensate Ryland for any damages Ryland suffers as a result of Subcontractor's default of this Agreement. Any retainage shall be paid to the Subcontractor upon satisfactory final completion of any Work and/or service work applicable for the warranty period.

(c) Subcontractor shall submit to Ryland with Subcontractor's request for payment, executed lien waivers in the form attached as Addendum 1 from Subcontractor and all persons and entities furnishing any labor, equipment, materials or services on the Project in any way concerning or relating to Subcontractor's Work, including, without limitation Subcontractor's employees, suppliers, subcontractors, agents and officers ("Subcontractor's Agents"). Upon completion of the Work on any Project Subcontractor shall deliver to Ryland a Final Waiver and Release of Liens in form attached as Addendum 2 executed by Subcontractor and each of Subcontractor's Agents. If any of Subcontractor's Agents files or maintains any such lien or claim after payment by Ryland to Subcontractor, Subcontractor agrees to cause such lien and claim to be satisfied, removed or discharged at its own expense by bond, payment or otherwise within ten (10) days from the day of filing thereof. Upon Subcontractor's failure to satisfy, remove or discharge the lien or claim, Ryland shall have the right, in addition to all other rights and remedies provided under the Agreement or by law, to cause such lien or claim to be satisfied, removed or discharged by whatever means Ryland chooses, at the entire cost and expense of the Subcontractor, including without limitation, legal fees. To the maximum extent permitted by law, Subcontractor agrees to indemnify, protect and save harmless Ryland from and against any and all such liens and claims and actions brought or judgments rendered thereon, and from and against any and all loss, damages, liability, costs and expenses, including legal fees, which Ryland may sustain or incur in connection therewith.

(d) Subcontractor shall be in default if any demand is made on Ryland for amounts due to Subcontractor's Agents, and Ryland shall have the right to withhold such amounts claimed out of any payments due to the Subcontractor.

5. INSURANCE.

(a) Ryland requires that Subcontractor maintain minimum insurance coverages as detailed on Addendum 3. All insurance policies required shall (i) not contain endorsements that restrict limits of liability to additional insureds; and (ii) have coverage forms acceptable to Ryland. If requested, Subcontractor shall provide certified copies of all such policies to Ryland within 30 days of such request.

(b) Subcontractor shall maintain all required insurance coverage in force until completion of Work. Subcontractor shall maintain Products and Completed Operations Insurance coverage, including required endorsements, in force until expiration of the applicable statute of limitations relating to latent defects in construction of or improvements to real property.

(c) The use of self-insured retentions or deductibles in excess of $5,000 is not allowed. Subcontractor is fully responsible for payment of any self-insured retentions or deductibles.

Subcontractor's Initials

(d) The insurance requirements shall not limit Subcontractor's obligations under this Agreement or Subcontractor's indemnification, warranty obligations or other liability in any manner. The requirements merely represent the minimum amounts of insurance coverage required to be maintained by Subcontractor.

(e) Subcontractor shall provide evidence of the renewal of policies required 30 days in advance of the expiration of any such policy.

(f) If Subcontractor fails to secure and maintain the required insurance, Ryland shall have the right (without any obligation to do so, however) to secure same in the name and for the account of the Subcontractor, in which event the Subcontractor shall pay the costs thereof and furnish upon demand all information that may be required in connection therewith.

6. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SUBCONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND RYLAND, ITS OFFICERS, DIRECTORS, EMPLOYEES, SUPPLIERS AND AGENTS ("RYLAND'S AGENTS") AND THE PROPERTY OF RYLAND, INCLUDING ANY PROJECT COVERED BY THIS AGREEMENT, FROM ANY AND ALL CLAIMS, COSTS, LOSSES, DAMAGES, FINES, PENALTIES, FEES AND OTHER COSTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND DISPUTE RELATED COSTS (COLLECTIVELY, "SUCH COSTS"), TO THE EXTENT THAT SUCH COSTS ARISE OUT OF, ARE INCIDENTAL TO OR RESULT FROM (A) THE PERFORMANCE OF THE WORK OR SUBCONTRACTOR'S FAILURE TO ENFORCE THE DRUG AND ALCOHOL ADDENDUM AND ARE ATTRIBUTABLE TO BODILY INJURY, PERSONAL INJURY, SICKNESS, DISEASE OR DEATH OF ANY PERSON, INCLUDING ANY INJURY OR DEATH OF AN EMPLOYEE OR OWNER OF SUBCONTRACTOR, OR INJURY TO, DEFECT IN, DAMAGE TO OR DESTRUCTION OF THE WORK OR OF ANY PROPERTY; OR (B) SUBCONTRACTOR'S OR SUBCONTRACTOR'S AGENTS FAILURE TO COMPLY WITH THE LEGAL REQUIREMENTS AND (A) OR (B) IS CAUSED BY ANY ACT OR OMISSION OF SUBCONTRACTOR OR ANYONE ACTING FOR, ON BEHALF OF OR THROUGH OR REPRESENTING SUBCONTRACTOR OR SUBCONTRACTOR'S AGENT. SUBCONTRACTOR SHALL SO INDEMNIFY, HOLD HARMLESS AND DEFEND RYLAND AND RYLAND'S AGENTS FROM SUCH COSTS AND EVEN THOUGH IT IS ALLEGED OR FOUND THAT ANY NEGLIGENT ACT OR OMISSION, OR WRONGFUL ACT OF RYLAND OR RYLAND'S AGENTS ALSO CAUSED OR CONTRIBUTED TO SUCH COSTS WITHOUT REGARD TO WHETHER THE EXTENT OF ANY SUCH ALLEGED NEGLIGENT ACT OR OMISSION, OR WRONGFUL ACT OF RYLAND OR RYLAND'S AGENTS IS GREATER OR LESSER THAN ANY ALLEGED NEGLIGENT ACT OR OMISSION, OR WRONGFUL ACT OF SUBCONTRACTOR OR SUBCONTRACTOR'S AGENTS. THIS INDEMNIFICATION IS NOT INTENDED TO COVER THE NEGLIGENCE OR WILLFUL MISCONDUCT OF RYLAND OR RYLAND'S AGENTS. SUBCONTRACTOR AGREES THAT A PORTION OF THE PRICE HAS BEEN PAID TO THE SUBCONTRACTOR AS SPECIFIC CONSIDERATION FOR THE INDEMNIFICATIONS REQUIRED OR GIVEN IN ACCORDANCE WITH THIS AGREEMENT AND THAT ALL INDEMNIFICATIONS, WARRANTIES, GUARANTEES AND OBLIGATIONS GIVEN IN ACCORDANCE WITH THIS AGREEMENT OR THE DOCUMENTS SHALL SURVIVE FINAL PAYMENT, COMPLETION AND ACCEPTANCE OF THE WORK AND TERMINATION OR COMPLETION OF THIS AGREEMENT. UNDER NO CIRCUMSTANCES SHALL THE INSURANCE REQUIREMENTS AND LIMITS SET FORTH IN THIS AGREEMENT BE CONSTRUED TO LIMIT SUBCONTRACTOR'S INDEMNIFICATION OBLIGATIONS OR OTHER LIABILITY HEREUNDER. SUBCONTRACTOR WAIVES ANY RIGHTS OF SUBROGATION AGAINST RYLAND AND SHALL REQUIRE SUBCONTRACTOR'S AGENTS TO WAIVE SUBROGATION RIGHTS AGAINST RYLAND.

7. Subcontractor warrants and represents that it is familiar with and covenants to comply with all laws, regulations and rulings of all federal, state, county and municipal jurisdictions and agencies applicable to this Agreement and to the Work, including, without limitation, OSHA, state occupational safety and health laws, workers' compensation laws, minimum wage and overtime laws, employment discrimination laws, building codes and all regulations and rules promulgated thereunder (collectively, the "Legal Requirements"). Subcontractor shall maintain all records required for compliance with the Legal Requirements and will indemnify and save Ryland harmless from any damage, fine or penalty which may be assessed against Ryland and any attorneys' fees and other costs incurred by Ryland by reason of the breach or alleged breach of this section by Subcontractor or Subcontractor's Agents.

(a) At all times, Subcontractor shall:
(1) conduct, operate and maintain a safe, clean and healthful workplace;
(2) provide to its employees the protective clothing, equipment, training and safety devices necessary to ensure compliance with relevant Legal Requirements; and
(3) abide by the Drug and Alcohol Addendum 4.

(b) To the maximum extent permitted by law, Ryland may withhold from payment to Subcontractor the full amount of any fine, damages or penalty assessed or proposed to be assessed against Ryland by local, state or federal authorities as well as a sum sufficient to cover any attorneys' fees and costs that are incurred by Ryland as a result of Subcontractor's or Subcontractor's Agents failure to comply with applicable Legal Requirements. When any such amounts are actually assessed and paid by Ryland, Ryland will release to Subcontractor any excess withheld.

(c) Either Subcontractor or Ryland may contest responsibility for Subcontractor's or Subcontractor's Agents failure to comply with applicable Legal Requirements. Subcontractor shall reimburse Ryland up to the full amount of any legal costs and expenses that Ryland may incur to contest responsibility which relates to Subcontractor's or Subcontractor's Agents failure or alleged failure to comply with applicable Legal Requirements.

(d) COMPLIANCE WITH APPLICABLE OCCUPATIONAL SAFETY AND HEALTH STANDARDS IS AN EXPRESS CONDITION OF WORK UNDER THIS AGREEMENT.

(e) Addendum 5 applies to all FHA approved Projects.

8. All Work shall be performed by qualified tradespersons. Ryland reserves the right to reject any materials or Work which do not, in Ryland's opinion, comply with the terms of this Agreement. All materials shall be installed in accordance with applicable Legal Requirements and manufacturer's specifications or recommendations.

9. Subcontractor agrees, at its expense, (a) to remedy any defect in the Work due to faulty or unacceptable material or workmanship, (b) to repair or replace any Work not in compliance with the Documents, and (c) to pay any expenses and costs, including legal fees and dispute resolution costs, incurred by Ryland as a result of (i) such defect or (ii) any personal injury or damage to other property caused by Subcontractor or Subcontractor's Agents. Subcontractor shall fully cooperate with Ryland in responding to any warranty claims. All warranties made by Ryland to its homebuyer, whether under the Ryland warranty or applicable law, are, to the extent applicable, deemed made by Subcontractor to Ryland.

10. Subcontractor agrees, at the request of Ryland, to take delivery or assume custody of materials purchased by Ryland from manufacturers. Risk of loss of all material and equipment supplied by, delivered to or under the custody of the Subcontractor shall be upon the Subcontractor until the Work reaches final completion and is accepted by Ryland.

Subcontractor's Initials

11. Subcontractor shall keep the jobsite free of accumulations of trash and debris. At the conclusion of daily work on any housing unit, Subcontractor shall remove all trash and debris caused by its operations and leave the site broom clean.

12. Subcontractor shall abide by all directives which Ryland may publish from time to time.

13. If Subcontractor fails to perform any of its obligations hereunder, Subcontractor shall be in default. If such default is not cured within two (2) days after oral or written notice, then Ryland may pursue any remedy or combination of remedies available at law or equity, including, without limitation: (a) terminating this Agreement; (b) applying any retainage or other amounts due to Subcontractor to cure Subcontractor's defaults or compensate Ryland for damages suffered; (c) taking any action necessary to perform the Work by other means, in which case Subcontractor shall upon demand reimburse Ryland for any amounts expended by Ryland to complete the Work in excess of the Price together with interest from the date paid by Ryland to the date reimbursed by Subcontractor at the rate of eighteen percent (18%) per annum or the maximum amount permitted under applicable law; and (d) pursuing an action for damages and recovery of all costs and expenses, including legal fees, incurred by Ryland in enforcing this Agreement. All remedies shall be cumulative and not exclusive.

14. Ryland may terminate Subcontractor's performance under this Agreement at any time, at the sole option of Ryland and for Ryland's own convenience. In such event, Subcontractor will turn over all equipment and materials ordered, purchased for, or delivered to the Project, and Ryland will pay the Subcontractor any amounts due based on the percentage of completion of the Subcontractor's Work that is in compliance with this Agreement and the Price for Work actually accomplished and equipment and materials supplied to the Project, excluding any payment for unearned profit and overhead. The payments for percentage completion shall be Subcontractor's sole remedy under this Agreement at law or in equity. Subcontractor will facilitate transfer of the Work to Ryland by assigning its rights under subcontracts and purchase orders.

15. Subcontractor shall fully cooperate and coordinate performance of the Work with the work of Ryland and other subcontractors of Ryland. Ryland may suspend or reschedule the Work in its discretion. Subcontractor shall not be entitled to any damages or additional compensation for any delay caused by rescheduling or suspension of the Work other than an equivalent extension of time to perform.

16. Except in the event that either party is sued by someone other than a party hereto or it would be appropriate for complete resolution of the issues for either party to cross-claim against the other party in a legal action not initiated by either of the parties hereto, any dispute arising out of or relating to this Agreement or the breach, termination or validity thereof shall be settled by binding arbitration conducted by a neutral arbitrator. If the parties do not mutually agree on an arbitrator, the arbitrator shall be selected by the American Arbitration Association at its offices closest to the construction site where the dispute arose. The arbitration shall be conducted according to the American Arbitration Association Construction Arbitration Rules unless other procedures are agreed upon by the parties. The parties agree to (a) allow to join into the arbitration proceeding hereunder or (b) join any other arbitration proceeding being conducted by, persons or entities related to the dispute whose involvement may be necessary to completely resolve the dispute, such as (1) a homeowner, (2) Ryland's home warranty corporation, (3) Ryland's or Subcontractor's insurers, and (4) Subcontractor's materialmen or subcontractors. The arbitration shall determine all rights and obligations under this Agreement and the award of the arbitrator shall be final, binding and enforceable. Subcontractor shall include a comparable arbitration provision in all of its subcontracts related to the Work.

17. (a) This Agreement (including all Documents incorporated herein) constitutes the entire Agreement between the parties, supersedes any prior negotiations, agreements or contracts, written or oral, between the parties and may not be amended without the written agreement of both parties.

(b) Subcontractor shall have no right to assign this Agreement or its right to payments hereunder.

(c) All plans, drawings, specifications and the subject matter contained therein and all other information given to Subcontractor in connection with the Work ("Proprietary Materials") shall remain the property of Ryland and shall not be used by or disclosed to anyone by Subcontractor for any purpose other than performance of the Work. Upon completion of the Work, Subcontractor shall return all Proprietary Materials to Ryland.

(d) If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall be construed as if the invalid, illegal or unenforceable portion of the provision had never been contained herein.

(e) This Agreement shall be governed by the laws of the state in which the Work is performed.

IN WITNESS WHEREOF, the parties have executed and ensealed this Agreement as of the date set forth above.

THE RYLAND GROUP, INC.

By: _____ (SEAL)

Name: GANNIN GREEN

Title: DIVISION MGR.

_____ (SUBCONTRACTOR)

License # _____

Expiration Date _____

By: _____ (SEAL)

Name: LAND SITE SERVICES

Title: OWNER

Ryland shall retain _____% retention until _____.

SUBCONTRACTOR AGREEMENT

THE RYLAND GROUP, INC.

ADDENDUM 1

RELEASE OF LIENS

OWNER: _____
SUBCONTRACTOR: _____
PROPERTY: _____
CONTRACT DATED: _____
FOR WORK AND MATERIALS FURNISHED THROUGH _____, 200_

The undersigned, which provided services, materials or equipment for the above Property in accordance with a contract with the Subcontractor identified above, for good and valuable consideration received by it, hereby waives and releases all claims for, liens and rights of lien now existing to the extent of $_____, which represents full payment received by the undersigned (exclusive of contractual retainage) for work, services, materials and/or equipment furnished in connection with the above Property to the date of this release.

This Release of Liens is executed and delivered simultaneously with or after payment has been received for the work, services, materials and/or equipment performed or provided to the date referenced above.

This Release of Liens may be relied upon by purchasers procuring improvements from Owner, by mortgagees making mortgage loans to said purchasers, and title insurance companies insuring titles for said purchasers and shall run to the benefit of any such persons/entities and their successors and assigns.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal [as the duly authorized officer/partner of the undersigned] this _____ day of _____, 200_.

_____ [Corporate or Partnership Name of Subcontractor/supplier]

By: _____
Name: _____
Title: _____

_____
[Individual Subcontractor/supplier]

Corporate/Partnership Acknowledgment

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 200_, before me, personally appeared _____, the _____ of _____ who I am satisfied is the person who signed the within Instrument and he/she did acknowledge that he/she signed and delivered this Instrument as the [officer] [partner] above stated, and that the foregoing instrument is the act and deed of said [Corporation] [Partnership].

_____
Notary Public

My commission expires: _____

Individual Acknowledgment

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 200_ before me personally appeared _____, who I am satisfied is the person who signed the within instrument and he/she did acknowledge that he/she signed and delivered this Instrument on his/her behalf and that the foregoing Instrument is his/her voluntary act and deed.

_____
Notary Public

My commission expires: _____

SUBCONTRACTOR AGREEMENT

THE RYLAND GROUP, INC.

ADDENDUM 2

FINAL WAIVER AND RELEASE OF LIENS

OWNER: ____
SUBCONTRACTOR: ____
PROPERTY: ____
CONTRACT DATED: ____
FOR WORK AND MATERIALS FURNISHED THROUGH ____, 200_

The undersigned for itself, its successors and assigns and its subcontractors and suppliers, which/who has provided materials, work, services and/or equipment in connection with the Project on the Property for the Owner in consideration of the sum of $_____ paid [by Owner] which sum represents the final payment due pursuant to the Contract, together with any amendments or change orders related thereto (all of the foregoing being collectively referred to as the "Contract"):

1. Acknowledges that it has been paid in full for all materials, work, services and/or equipment furnished in connection with the performance of the Contract or otherwise in connection with the construction on the Property.

2. Waives and releases any and all construction lien claim(s) and/or Notices(s) of Unpaid Balance and Right to File Lien and the like ("Lien") which Subcontractor has had or currently has, against or upon any portion of the Project or Property for materials, work, services and/or equipment provided.

3. Agrees that if, after the date hereof, there shall be evidence of any lien filed (i) by the undersigned or (ii) any subcontractor or supplier of the undersigned for which, if established, Owner might become liable or which might encumber title to the Property or Project, the undersigned shall promptly discharge same and indemnify, hold harmless and defend Owner against any loss, damages or costs or expenses, including attorneys' fees, associated therewith.

4. The undersigned for itself, its successors and assigns, releases and forever discharges Owner (and its shareholders, directors, officers, employees, and agents) and their successors and assigns, from all claims, demands or causes of action which it has had, currently has, or may in the future have, arising from or in any way relating to the Contract or the Property.

5. Agrees that this Release may be relied upon by purchasers procuring improvements from Owner, by mortgagees making mortgage loans to said purchasers, and title insurance companies insuring titles for said purchasers and shall run to the benefit of any such persons/entities and their successors and assigns.

IN WITNESS WHEREOF, the undersigned has set his hand and seal [as the duly authorized officer/partner of the undersigned] on this _____ day of _____, 200_.

_____ [Corporate or Partnership Name of Subcontractor]

By: _____
Name: _____
Title: _____

_____
[Individual Subcontractor]

Corporate/Partnership Acknowledgment

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 200_, before me, personally appeared _____, the _____ of _____ who I am satisfied is the person who signed the within Instrument and he/she did acknowledge that he/she signed and delivered this Instrument as the [officer] [partner] above stated, and that the foregoing instrument is the act and deed of said [Corporation] [Partnership].

_____
Notary Public

My commission expires: _____

Individual Acknowledgment

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 200_ before me personally appeared _____, who I am satisfied is the person who signed the within instrum did acknowledge that he/she signed and delivered this Instrument on his/her behalf and that the foregoing Instrument is his/her voluntary act and d

_____
Notary Public

My commission expires: _____

SUBCONTRACTOR AGREEMENT

THE RYLAND GROUP, INC.

ADDENDUM 3

SUBCONTRACTOR INSURANCE REQUIREMENTS

CERTIFICATES OF INSURANCE, INCLUDING COPIES OF POLICY ENDORSEMENTS LISTED BELOW, EVIDENCING REQUIRED COVERAGE SHALL BE DELIVERED TO RYLAND PRIOR TO THE COMMENCEMENT OF ANY WORK (SAMPLE CERTIFICATES ATTACHED).

PLEASE DIRECT INSURANCE INQUIRIES TO _____ AT _____.

TYPE OF COVERAGE	AMOUNT OF COVERAGE
A. WORKER'S COMPENSATION – and Occupational Disease Coverage in accordance with the laws of the State within whose jurisdiction the work is performed. • Coverage to include all employees, agents, officers, partners, and proprietors/owners of Subcontractor. • The certificate should specify that the insurance company's A.M. Best Rating is at least A-/VIII. • If the services of a leasing company are used to insure its workers' compensation exposure, the following documents must be delivered to Ryland before any work can be performed on a Ryland job site: A. One certificate documenting workers' compensation insurance for Subcontractor's employees on Ryland's job sites covered through the leasing company. B. A second certificate of insurance evidencing that the Subcontractor has purchased its own separate workers' compensation insurance policy for any employees not covered by the leasing company's insurance. It is imperative that this second policy be insured through the same insurance company as the leasing company and that the second policy has a different policy number from that of the leasing company. C. A declaration sheet (the cover page of the insurance policy) from the Subcontractor's own policy. • The workers' compensation policy should be amended to include a 30-day cancellation notice provision in lieu of the standard 10-day cancellation notice provision. • Workers' compensation carrier shall waive subrogation against The Ryland Group, Inc. and its subsidiaries, affiliated and successor companies, officers, directors, agents, servants, employees, divisions, partners and shareholders.	Workers Compensation – Statutory
EMPLOYER'S LIABILITY	Employers Liability: $500,000. Ea. Bodily Injury by Accident $500,000. Bodily Injury by Disease, Ea. Employee
B. COMMERCIAL GENERAL LIABILITY – with the following minimum coverage: • Coverage for all residential building including both attached and unattached projects • Occurrence form not modified • Subsidence, no endorsements limiting coverage • Contractual liability coverage included • The Certificates of Insurance must state that "The Ryland Group, Inc. and its subsidiaries, affiliated and successor companies, officers, directors, agents, servants, employees, divisions, partners and shareholders" are named as Additional Insureds on the	$1,000,000. General Aggregate Limit (other than Products/Completed Operations) $1,000,000. Products/Completed Operations Aggregate Limit $1,000,000. Bodily Injury (Ea. Occurrence $1,000,000. Property Damage (Ea. Occurrence) $1,000,000. Personal Injury & Advertising Injury Limit $ 50,000. Fire Damage Limit (any one Fire)

Subcontractor's Initials

Subcontractors' general liability insurance policy. • The additional insured status must be provided only on a CG 2010 (11/85) Additional Insured Endorsement or on a CG 2026 (11/85) Additional Insured Endorsement, or their equivalent. • A copy of the correct Additional Insured Endorsement, as described above, must be attached to the certificate of insurance. • The Additional Insured status will be provided to Ryland on a blanket basis for all jobs performed for Ryland (not project specific). • The general liability insurance provided must be primary over Ryland's insurance and Ryland's insurance should not be called upon to contribute toward the payment of any claim arising out of the Subcontractor's work. The Certificate of Insurance must clearly state that the Subcontractor's insurance is "primary and non-contributory" over Ryland's insurance. • The Certificate of Insurance should specifically state that the Subcontractor's insurance company's A.M. Best Rating is at least A-/VIII. • The general liability policy should be amended to include a 30-day cancellation notice provision in lieu of the standard 10-day cancellation notice provision. The certificate of insurance should so state. There shall be no endorsements limiting coverage for explosion, collapse, or underground damage, Blanket contractual liability, or Broad Form property damage coverage. There shall be no limitation on the limits available to the additional insureds. Nor shall there be any limitation or exclusions as respects the additional insured coverage for claims involving Bodily Injury of a Subcontractor's employees or of any other third party.	
C. BUSINESS AUTO LIABILITY -- covering any automobile, including hired and non-owned autos • The certificates of insurance must evidence that "The Ryland Group, Inc. and its subsidiaries, affiliated and successor companies and their officers, directors, agents, servants, employees, divisions, partners and shareholders" are named as Additional Insureds on the auto liability insurance policy. • The certificate of insurance must reflect that the auto liability insurance insures any vehicle driven by the Subcontractor and its employees. • The certificate of insurance must specify that the Subcontractor's insurance company's A.M. Best rating is at least A-/VIII. • The Subcontractor's auto liability policy should be amended to include a 30-day cancellation notice provision in lieu of the standard 10-day cancellation notice provision.	$500,000. Combined Single Limit

Subcontractor's Initials

SUBCONTRACTOR AGREEMENT

THE RYLAND GROUP, INC.

ADDENDUM 4

DRUG AND ALCOHOL ADDENDUM

FOR THE SAFETY AND WELL BEING OF ALL EMPLOYEES ON RYLAND CONSTRUCTION SITES, RYLAND HAS A POLICY THAT NEITHER CONTROLLED SUBSTANCES NOR ALCOHOL SHALL BE DISTRIBUTED, POSSESSED OR USED ON RYLAND CONSTRUCTION SITES. ANYONE FOUND TO BE IMPAIRED BY OR IN POSSESSION OF CONTROLLED SUBSTANCES OR ALCOHOL MUST IMMEDIATELY LEAVE THE RYLAND CONSTRUCTION SITE OR PROPERTY. To help ensure the safety of all workers, including a worker that may be impaired, Subcontractor agrees to adhere to the following procedures:

(1) If a Subcontractor suspects that one of Subcontractor's Agents is impaired by controlled substances or alcohol, Subcontractor is required to investigate and make inquiries of co-workers on the job site to confirm the suspected impairment. If Ryland becomes aware that one of Subcontractor's Agents has been impaired on the job, Ryland shall have the right, but not the duty, to request that Subcontractor's foreperson investigate. When such a request is given, orally or in writing, Subcontractor's foreperson shall immediately proceed with such investigation and shall thereafter promptly report the results to the Ryland Supervisor. Ryland may send formal written notification to the Subcontractor regarding any such situation, a copy of which will be placed in the Subcontractor's file.

(2) Any worker who is impaired or reasonably believed to be impaired must be immediately removed from the job site. The Subcontractor must provide transportation for the impaired worker and not allow the impaired worker to drive him/herself from the job and endanger the public.

(3) A repeated violation by Subcontractor or any of Subcontractor's Agents of this policy will be cause for immediate termination of this Agreement by Ryland, in Ryland's sole discretion.

Subcontractor's Signature 6/19/02 Date

SUBCONTRACTOR AGREEMENT

THE RYLAND GROUP, INC.

ADDENDUM 5

FOR ALL FHA APPROVED PROJECTS

During the performance of this Agreement, the Subcontractor agrees as follows:

(1) The Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The Subcontractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Subcontractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Subcontractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Subcontractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Subcontractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended, in whole or in part, and the Subcontractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Subcontractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor of Subcontractor. The Subcontractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* that in the event a Subcontractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor of Subcontractor as a result of such direction by the administering agency, the Subcontractor may request the United States to enter into such litigation to protect the interests of the United States.

THE RYLAND GROUP, INC.

RULES AND REGULATIONS FOR SUBCONTRACTORS

THIS DOCUMENT IS A PART OF AND INCORPORATED INTO THE SUBCONTRACTOR AGREEMENT DATED 6/19/00 BY AND BETWEEN THE RYLAND GROUP, INC. AND LAND SITE SERVICES

The following rules and regulations apply to Subcontractors working on Ryland Homes Projects. The term "SUBCONTRACTOR" includes all of Subcontractor's Agents.

I. *General:*

A. License. At the request of Ryland, SUBCONTRACTOR shall submit evidence of city or county business licenses.

B. No Substitutions. There shall be no substitutions of materials or equipment specifications without written approval of Ryland's purchasing department. This policy shall include "or equal" determination.

C. Operation of Vehicles. The operation of vehicles in or about the Project Site by SUBCONTRACTOR (including material delivery vehicles operated by material suppliers of SUBCONTRACTOR) shall be as follows: (1) Use only the designated entries to enter the Project Site; (2) Use only established roadways and temporary roadways as authorized by RYLAND; (3) No crossing of curbs or sidewalks without prior approval by RYLAND; and (4) Observe speed limit of 15 miles per hour within the entire Project Site. SUBCONTRACTORS shall immediately reimburse RYLAND for any damage to curbs, sidewalks, landscaping, or concrete surfaces or any other damage to the Project Site caused by SUBCONTRACTOR.

D. Parking. SUBCONTRACTOR shall provide necessary parking areas for all workers in suitable locations as approved by RYLAND. In the event RYLAND has to tow vehicles owned by SUBCONTRACTOR, or SUBCONTRACTOR'S Agents, to maintain ingress and egress to the Project Site, all such towing charges will be backcharged to SUBCONTRACTOR. There shall be no parking in driveways, garages or carports of the housing units (whether completed or being constructed) or on sidewalks within the Project Site. RYLAND shall have the right to fine or backcharge SUBCONTRACTOR $100.00 per vehicle per day for violation of parking restrictions.

E. NO UNAUTHORIZED PERSONS. THE JOB SITE IS AN EXTREMELY DANGEROUS AREA, AND NO CHILDREN OR OTHER UNAUTHORIZED PERSONS ARE ALLOWED ON THE JOB SITE AT ANY TIME.

F. Toilet Facilities. RYLAND will provide portable toilet facilities within the Project for the use of SUBCONTRACTOR. SUBCONTRACTOR is not permitted to use the toilet facilities or bathrooms of any housing unit (completed or being constructed) within in the Project Site. RYLAND shall have the right to fine or backcharge SUBCONTRACTOR $100.00 per occurrence for any violation of these restrictions.

G. Food and Beverages. No food or drink shall be allowed within a completed housing unit. SUBCONTRACTOR shall be responsible for the cleanup of trash generated by any eating and drinking within the Project Site.

H. Counter-Tops. None of the finished counter-tops to be delivered with each housing unit in the Project Site shall be used for the placement of tools or for use as a work surface. The placing of tools or using of such counter-tops as a work surface by SUBCONTRACTOR shall give RYLAND the right to fine or backcharge SUBCONTRACTOR $100.00 per occurrence in addition to any costs incurred to repair or replace any damaged counter-top.

I. Pets. No pets (other than seeing-eye dogs) shall be brought to the Project Site by SUBCONTRACTOR. RYLAND shall have the right to fine or backcharge SUBCONTRACTOR $100.00 per occurrence for violations of the Pet policy.

J. Prior Work. SUBCONTRACTORS should inspect all previous Subcontractors' work and report any discrepancies that they notice to RYLAND'S Project Superintendent. DO NOT KNOWINGLY CONSTRUCT OVER FAULTY WORK.

K. Storage. If SUBCONTRACTORS require storage for material on the job site or an area for prefabrication, SUBCONTRACTOR and RYLAND'S Project Superintendent shall agree to a location for a storage area. SUBCONTRACTORS are solely responsible to provide their own controlled storage, i.e., bins, chain link fence, lighting, etc. SUBCONTRACTORS are responsible for cleaning the area on a regular basis. After the job is complete, SUBCONTRACTORS must clean the storage area and remove all containers and debris from the job site.

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Subcontractor's Initials

THE RYLAND GROUP, INC.

RULES AND REGULATIONS FOR SUBCONTRACTORS

THIS DOCUMENT IS A PART OF AND INCORPORATED INTO THE SUBCONTRACTOR AGREEMENT DATED 6/19/02 BY AND BETWEEN THE RYLAND GROUP, INC. AND LAND SITE SERVICES

II. *Scheduling:*

A. SUBCONTRACTORS must maintain a minimum schedule of one (1) unit per day or production rate as agreed upon by SUBCONTRACTOR and RYLAND'S Project Superintendent.

B. RYLAND'S Project Superintendent will give SUBCONTRACTOR a production schedule. SUBCONTRACTOR will be required to meet the production schedule even if it requires working six (6) days per week.

C. Commencement of work by SUBCONTRACTOR on any house or garage unit is indicative of SUBCONTRACTOR'S agreement to complete such building or unit of work in its entirety.

III. *Warranty:*

A. During the one-year warranty, SUBCONTRACTORS must respond to all customer service requests within 24 hours of receipt of request and must complete service within seven (7) calendar days of receipt of request.

B. Emergencies shall be corrected immediately. The following conditions are considered as customer service emergencies requiring immediate action and service may be requested during non-working hours:

1. Total stoppage of the complete plumbing system within a unit.

2. A water leak which requires the main water service to be shut off to avoid serious damage to the building and/or furnishings.

3. Complete loss of heat (when evening temperatures fall below 60 degrees). Complete loss of air conditioning in climate zones with temperatures greater than 90 degrees.

4. Total loss of electrical service.

5. Water penetration into the unit, threatening severe interior damage.

C. SUBCONTRACTORS must utilize adequate precautionary measures to protect both the work of other subcontractors, as well as the homeowners' personal belongings. In the event that the SUBCONTRACTOR causes damage to other work in the home or the personal belongings of that homeowner, RYLAND will repair or provide monetary compensation for damaged item(s) to the homeowner at the expense of the SUBCONTRACTOR.

D. SUBCONTRACTOR will provide neat, clean warranty service personnel for work appointments who will act professionally by appearing at the time of the scheduled appointment with the homeowner, and will treat both the homeowner and the home with respect.

E. After one (1) attempt to correct a warranty service issue, if the SUBCONTRACTOR fails to perform work satisfactorily, RYLAND has the right to take necessary steps to ensure the quality of warranty work at the expense of the SUBCONTRACTOR.

F. All areas in which warranty service work is performed shall be free from debris, dirt, stains, drips, droppings, and any other spills which may result from warranty service work. RYLAND will backcharge without notice if RYLAND must clean a residence because of SUBCONTRACTOR'S failure to leave the work area clean.

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Subcontractor's Initials

THE RYLAND GROUP, INC.

RULES AND REGULATIONS FOR SUBCONTRACTORS

THIS DOCUMENT IS A PART OF AND INCORPORATED INTO THE SUBCONTRACTOR AGREEMENT DATED 6/1/02 BY AND BETWEEN THE RYLAND GROUP, INC. AND GMD SITE SERVICES

IV. *Models only:*

A. Models will be constructed on an accelerated schedule. Failure of SUBCONTRACTORS to meet this schedule will be grounds for termination of contract of production work. Due to uncertain economic conditions, Phases may be delayed. SUBCONTRACTORS will not hold RYLAND responsible for extra costs which may be incurred as a result of Phases being delayed. Additional work may be required due to model changes or out-of-sequence installations to expedite construction of models.

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Subcontractor's Initials

RYLAND HOMES

SCOPE OF WORK
RYLAND HOMES - CAROLINAS DIVISION
CLEARING, GRADING, BACKFILL & EXCAVATION
COST CODES: 4304, 4319, 4322, 4340 & 4547

The Subcontractor or Supplier, (hereinafter referred to as the Subcontractor), will adhere to all City, County, State and Federal building regulations, codes and licensing in all areas where work is to be performed

This document defines both Ryland Homes' and the Subcontractors' responsibilities in this phase of construction. It is intended as a checklist that will define the work to be done, the level of quality and any timing that is required when performing said work. The Excavation, Backfill and Grading Subcontractor's work will not be considered complete until all specifications are fully met.

I. Specific Requirements

A. Overview

The Excavation, Backfill and Grading Subcontractor must supply all labor, materials, supervision, tools and equipment to excavate, backfill and grade lots as required by plans and the Customer Selection Sheet. This construction must be done in conformance with all specifications.

B. Excavation

1. The Subcontractor must excavate each lot per architectural drawing, site plan and lot, block and grading plan or per Supervisor's direction.

2. Trees to be saved will be flagged by the Ryland Supervisor prior to clearing. The Subcontractor is responsible for reviewing tree save areas with the Ryland Supervisor prior to commencement of work. Subcontractor is to clear and grub all areas as identified by the Ryland Supervisor including but not limited to the house pad, side yard and 20 feet behind the house pad.

3. In the event that any trees are damaged it is the Subcontractor's responsibility to notify the Supervisor and to patch and/or paint all scarred areas on the trees or remove if necessary.

4. Remaining trees to be trimmed and cleaned as directed by Supervisor.

5. The Subcontractor must not place dirt within the drip line of trees to be saved. (Prior approval must be obtained from the Superintendent)

6. The Subcontractor must clear the "right of way" for flag lots.

7. All clearing and grubbing debris, including all stumps, shall be removed from the site by Subcontractor and disposed of in a government-approved landfill.

8. On fill lots, fill locations will be marked prior to excavation. Fill lots will be coordinated with an engineer for proper "lifts" and compaction.

9. Excavation around each house must be between 30" and 36", with 36" being the maximum, must be to allow for foundation wall placement. Any loose dirt must be cut back to prevent any hazard to the foundation.

10. Excavated area must be within 2" of level or proposed grade

11. Lots where a crawl space foundation is to be built are required to be benched to drain to allow water to properly flow under the house and exit through the crawl drain location.

12. The Subcontractor is responsible for the diversion of water away from the excavated area until the house is complete, when permissible by lot conditions.

13. The Subcontractor will haul all debris away from excavation site the same day.

14. For dirt removal or purchase, Subcontractor must furnish time tickets signed by the Supervisor with all invoices, except when a bid job.

15. The Subcontractor will provide a clear, level area (10' x 60'), near the house site, for rough lumber delivery

16. The Subcontractor will provide access for concrete trucks.

17. The Subcontractor will provide dirt for backfill of slab when necessary.

18. Temporary drives are to be cut out approximately 8" below the curb. One load of 57 or ABC stone is to be spread consistently from the curb to the garage, approximately 8' in width. (Cut 8", fill with 4" of stone and pour drive on top of stone.)

C. <u>Backfill</u>

1. The Subcontractor will properly backfill each lot, with consideration given to the type and condition of the material to be used in the backfill. The Subcontractor is responsible to ensure that no damage to the foundation occurs.

2 The Subcontractor will backfill all garages and establish grade along all walls.

3. No fill may be placed against trees that are flagged to be saved.
(Prior approval must be obtained from the Superintendent)

4. Subcontractor will notify Ryland Supervisor of any damage to the foundation prior to <u>backfill</u>.

5. When placing controlled fill, compacted fill material must be well-graded soil (or other suitable material) that has been tested and accepted by soil engineers.

6. All fill material is to be properly compacted in lifts not to exceed 12".

7 The Subcontractor will grade the entire area within the lot in accordance to the site plan.

8. The swales and berms will be established at time of backfill.

9. The grade must conform to the approved site plan, provide drainage away from the house, and leave no standing water on property.

10. The Subcontractor must confirm with the Ryland Homebuilding Supervisor that all excavations, backfill and grading conforms to the site plan.

11. The Subcontractor will stay out of undisturbed areas unless given permission by the Supervisor.

D. **Rough Grading**

1. Subcontractor will establish swales and grades for finish grade.

2. Subcontractor will cut drive, patio, deck and porch.

3. Subcontractor will establish the grade a minimum of 6" below the siding.

4. Subcontractor is responsible for not piling dirt around trees.

E. **Finish Grade**

1. Swales should conform to Ryland standards.

2. Subcontractor will establish proper grades and swales within +/- 2" so landscaper can complete his/her job. Final grades must ensure proper drainage.

3. Subcontractor shall ensure that the lot is graded so that water is first directed away from the house with a 10% grade (6" in 10') and then directed off of the lot with a minimum grade of 2% unless directed otherwise by a Ryland Supervisor.

As a representative of Land Site Services, INC
(COMPANY NAME)

I have read and fully understand the content of the job scopes and I agree to comply with all of the aforementioned terms. Furthermore, I understand that all of my personnel performing work on Ryland job sites will be given a copy of this job scope and are expected to read, understand and comply with the written responsibilities. Also, they are expected to have the job scope in their possession when on a Ryland job site.

Subcontractor 9/20/06
Date

Ryland Homebuilding/Purchasing Manager 10/23/06
Date

RYLAND HOMES

SCOPE OF WORK
RYLAND HOMES - CAROLINAS DIVISION
General Conditions To Job Specification

I. SPECIFIC REQUIREMENTS

A. OVERVIEW

Ryland's Responsibilities

1. To provide regular supervision and directions from the Ryland Home-Building Supervisor.
2. To supply the most timely and accurate scheduling information.
3. To provide all Pertinent Documents/Plans/Drawings/Details/Selection Sheets/Change Orders/Community Specifications/Site Plans/As-Builts/etc. as required by each subcontractor to perform and complete his/her job duties.

Subcontractor's Responsibilities

1. It is the responsibility of the Subcontractor to maintain current copies of all licenses and certificates of competency. If necessary copies of these documents are to be provided to Ryland Homes before commencement of the work.
2. It is the responsibility of the Subcontractor to have all required Insurance and to provide certificates of insurance to Ryland Homes before commencement of the work. Ryland Homes shall be named as Additional Insured. Minimum notice of cancellation to be thirty (30) days
3. To conform completely to all labor and material specifications per the plans, Ryland Homes specifications, FHA and VA Minimum Property Standards, and all laws and rules of the Federal, State, County, and City authorities having jurisdiction over all projects. In the event of any discrepancy between the laws, rules and codes governing this section and the specifications of this section, the Subcontractor shall use the greater of the requirements.
4. It is the responsibility of the Subcontractor to verify that the correct material, color, options, elevations and garage hands are being used.
5. Each Subcontractor and Supplier should be aware that the schedule is part of his/her contract. Time is of the essence. Subcontractors are to coordinate scheduling of all County or Municipality inspections relative to their own work with Ryland Homes or Municipality Where applicable, all re-inspection fees or fees incurred due to inadequate pass/fail ratios will be paid by the Subcontractor. Inspections must be called in within 24 hrs of scheduled completion of contracted work. Each Subcontractor is expected to have the necessary personnel available to meet the schedule and to make up weather delay(s).

6. The Subcontractor must be prepared to provide the Supervisor with a timeline for job completion.

7. The Subcontractor and Supplier are to perform or deliver per Ryland Homes' schedule at minimum five (5) days per week. Without prior approval, no work should be performed in the community after 6:00 pm.

8. The Subcontractor is to coordinate his/her work with all other Subcontractors to allow the completion of all work. If this coordination hinders both parties from meeting the schedule, then a Ryland Supervisor must be notified as soon as possible.

9. Each Subcontractor shall have a qualified job supervisor on the job with responsibility toward his/her trade. Each Subcontractor is to furnish a representative for Subcontractor Meetings as scheduled by Ryland Homes.

10. It is the responsibility of the Subcontractor to inspect the project prior to beginning his/her work. If any problems or differences from the plans exist he/she should notify Ryland Homes so that these items are corrected. **Subcontractor will be responsible for any known deficiencies, which are covered over.**

11. The Subcontractor must notify the Ryland Supervisor of any missing material. Notification must be made as soon as possible so that materials may be ordered expeditiously.

12. It is each Subcontractor's obligation to check each job to see that the necessary materials to perform his/her work are on the job site. Subcontractor is responsible to carry an adequate supply of material to eliminate any delay in completion and scheduling. The subcontractor is required to immediately inform the Supervisor, prior to commencement of his/her work, of any delay that may result from lack of material, manpower, etc.

13. It is the responsibility of each Subcontractor to properly inspect their own work for quality and completion. All construction punch list items shall be completed within 48 hours of receiving notification.

14. The Subcontractor must notify the Ryland Supervisor of any defects or other conditions that would obstruct him/her from completing his/her work.

15. The Subcontractor must notify the Ryland Supervisor of any material substitutions and approval may be granted only if the quality is of equal or greater in grade level.

16. The Subcontractor must receive written approval from a Ryland Supervisor in the form of a purchase order before beginning any extra work.

17. The Subcontractor must be equipped, during normal business hours, to answer and respond to all phone calls within a two (2) hour period. This can be done through office personnel or by radio or mobile telephone.

18. Once the doors or windows have been installed, it is the responsibility of each Subcontractor to close them during inclement weather in an effort to minimize damage to the home.

19 It is the obligation of each Subcontractor to lock the home after 5:00 p.m. each day. This will include all exterior doors, garage doors, patio doors and windows.

20. **Subcontractors must clean up all Subcontractor related debris prior to leaving the home each day. Each Subcontractor is to broom sweep his or her work area upon completion of their individual job. All debris must be placed in the nearest trash bin or designated area, NOT in the garage. Daily cleaning includes:**

    a. **Removing any incidental trash resulting from his/her work on-site and placing in a designated area.**

b. Removing and cleaning any excess dirt or mud left on streets adjacent to the site as a result of his/her work. The Subcontractor will be liable to any future charges incurred to complete this work.

21. The Subcontractor shall take every precaution and provide suitable means to protect finished work from damage. Protection of countertops, bathtubs, sinks, toilets, floors, walls, etc. is the responsibility of all Subcontractors.

22. Subcontractor/Supplier must furnish appropriate manuals, written warranties and manufacturer supplied tools for all equipment.

23. Supplier is to furnish samples to sales offices, as required.

24. It is the responsibility of the owner or representative of all Subcontractors and Suppliers to make sure that anyone working on a Ryland Homes job site is aware of these specifications and quality requirements. Copies of these specifications and quality requirements should be distributed to and reviewed with all job supervisors. It is the responsibility of the Subcontractor to train their personnel on these job specifications.

25. Any violation or non-conformance to the above regulations may result in additional cost and/or termination of Subcontractor or Supplier.

26. First violation by any Subcontractors employee may result in a written or verbal warning, second violation can result in a minimum $50 fine, third violation can result in a minimum $100 fine and fourth violation can result in termination from the project.

27. Any Subcontractor of a Subcontractor must adhere to all guidelines referred to within this scope.

28. It is the responsibility of the Subcontractor to own a computer with access to email and the Internet. The subcontractor is also responsible for registering for and applying the Ryland Build Pro online system within its day-to-day operations. Any and all Build Pro questions should be directed to the Purchasing Manager.

B. JOB SITE CONDITIONS

No Drinking/Use of Drugs/Eating/Gambling/Pets

1. Ryland Homes' policy of no drinking of alcoholic beverages will be strictly enforced. Drinking on the job and/or the disposal of alcoholic beverage containers will not be tolerated and are subject to termination.

2. Ryland Homes' policy of no taking or possession of drugs will be strictly enforced Taking or possessing drugs on the job will not be tolerated and is subject to termination.

3. Under no circumstances shall food be eaten or smoking be permitted in any home after drywall.

4. Gambling on the jobsite will not be tolerated and any offender is subject to termination.

5. No pets (other than seeing-eye dogs) will be allowed on the project site.

No Parking

1. There is no parking on finish grade lots, wet rough graded lots, driveways or sidewalks. Access to homes will be designated by a Ryland Homes representative. Violators can be subject to a fine. Vehicles are to be parked on one side of the street, leaving access to each construction site for deliveries. Whenever possible, do not park in front of occupied units or mailboxes.

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2. Parking on driveways is subject to a minimum $200 fine. If approved by the supervisor, vehicles may be allowed on driveways for a short period of time for the sole purpose of loading and unloading tools, equipment, etc. Vehicles that leak fluids are never allowed on concrete and are responsible for major damages caused to the street.

Utilities/Storage

1. No one shall use any utilities except ones specifically provided or specified to them by Ryland Homes. Current homeowners' utilities should never be used without prior approval.

2. If properly informed by the Supervisor, the Subcontractor will be required to supply their own power/electricity when certain job conditions demand.

3. No main water supply is to be turned on by any unauthorized Subcontractor. If authorization to turn on the main water supply is granted by a Ryland Homes representative, the main water supply must be turned off prior to leaving the job site. Failure to do so will make the Subcontractor liable for any subsequent water damage.

4. No main panel box or temporary pole service cover is to be removed or tampered with by an unauthorized Subcontractor under any circumstances. The main power breaker can only be turned on by the electrical Subcontractor or a Ryland Homes representative. All work is to be done on a circuit protected by a ground fault circuit interrupter.

5. Prior to excavation or digging, the Subcontractor is to verify that there is no conflict with location of underground utilities, telephone, cable, electric, sewer, water, gas, landscape, etc. Subcontractor is responsible for having all existing underground utilities located prior to excavation or digging. Subcontractor is responsible for any damages and repairs incurred while digging or excavating.

6. All Subcontractors and Suppliers shall use the site portable toilets exclusively.

7. If Subcontractors require storage for material on the job site or an area for prefabrication, the Subcontractor and the Supervisor shall agree to a location for a temporary storage area. Subcontractors are solely responsible to provide their own controlled storage, ie., bins, chain link fence, lighting, etc. with approval from the Supervisor. The Subcontractors will be responsible for cleaning the area on a regular basis. When informed by the Supervisor to vacate, the Subcontractors must clean the storage area and remove all containers and debris from the job site.

General

1. No one shall use abusive or foul language, play loud music, or bring children or pets on any job site. Courtesy should be shown to all customers and potential customers.

2. Under no circumstances shall a Subcontractor take direction or make any changes on behalf of a Homebuyer or Salesperson. Only those documents issued by Ryland Homes, Plans, Selection or Change Orders shall be followed. Any communication with a customer is discouraged and all communication should flow through the Supervisor.

3. All deliveries will be placed in a designated area and checked in by a Ryland Homes representative. Suppliers are responsible to unload their own materials. Shipments are to be checked in and signed for by a Ryland Homes representative. If the Supervisor is out of the subdivision at the time of delivery, the ticket should be left in the construction office mailbox and the shipment should be checked within 24 hours.

4. Curbs, walks, drives and streets must be inspected prior to work. Any damage must be reported to Ryland Homes. Damage found later will be charged to the Subcontractor responsible for the damage.

5. Anyone found placing tools or materials on counter tops, vanity tops or finished floors, or removing protective floor or bathtub coverings at any time during construction can be subject to a fine and will be responsible for all damages..

6. The job site must be kept neat and clean at all times. Any scraps, paper, etc., must be picked up daily. Trash from lunch is not to be left on the job site.

7. The interior and exterior of all homes are to be broom clean at all times to allow each trade to do his work efficiently and safely and to make the job site appear more professional to our customers. All Subcontractors are required to leave proper access to the lot and not to leave any open holes, dirt piles, material piles or any other type of condition preventing safe accessibility. Crawl spaces must be free of all loose debris and trash upon completion of your work.

8. Trash dumpsters or designated areas will be provided and all trash or debris must be placed in those dumpsters or areas. All debris must be compacted and boxes broken down before disposal. All Subcontractors and suppliers must adhere to all environmental regulations regarding hazardous waste. The Subcontractor shall be responsible to properly store and dispose of all hazardous wastes and all spills resulting from his/her work immediately.

9. After carpet is laid in a home, all shoes must be removed at the door before entering. If the removal of protective footwear is a conflict with safety standards, Subcontractor will need to wear "shoe booties". Shoes may not be required on vinyl, tile and hardwoods that are covered with protective paper or cardboard unless designated by the Supervisor.

C. QUALITY OF WORK

1. All materials delivered to the job shall be new and in original condition and shall bear the name of the manufacturer and any required grade stamps.

2. It is the obligation of each Subcontractor to protect and respect the material or work of all other Subcontractors preceding him/her.

3. Subcontractor is responsible for the finished quality of his work. If Subcontractor proceeds to install his work over substandard work by others, it then becomes the responsibility of the Subcontractor to correct the substandard work, as well as his/her own, upon Ryland Homes' request.

4. Subcontractor will assume full responsibility for all materials, if applicable, until they are installed and accepted. If a scheduling error has occurred on the part of the Supervisor which delays timely installation, Ryland Homes will not hold the Subcontractor fully responsible for stolen or damaged material. Do not install damaged materials.

D. SAFETY

1. Hard hats must be worn at all times, off the curb, by all workers, managers and delivery personnel. Subcontractor is to provide his/her workers with all OSHA rules and regulations and is responsible for enforcement. Obey Ryland Safety Rules, regardless of lesser rules by OSHA.

2. No children under the age of 18 years old or other unauthorized persons are allowed on the job site at any time.

3. The Subcontractor is responsible for the assurance that their employees are fully trained in safety practices and have a full understanding of hazards involved in their job and surroundings. There should be procedures in place to control or eliminate these hazards.

4. All Subcontractors and their employees should understand the following:

   (a) Unsafe conditions, accidents, injuries and illness, no matter how minor, must be reported to a Ryland Homes Supervisor at once and an accident report filled out.

(b) Subcontractor and each employee shall provide for frequent and regular inspections of the job site, their materials and equipment. A Safety Manager will be designated by Ryland Homes for inspecting and assuring safe worksites for Subcontractors and Suppliers.

(c) No person is expected to undertake a job until they have received instructions on how to properly do it.

(d) No person should undertake a job that appears to be unsafe.

(e) Mechanical safeguards are to be in place and must be kept in place.

5. Subcontractor shall be responsible for maintaining and supervising all safety precautions and programs in connection with their work. Subcontractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, loss or injury to:

(a) All employees on the job site and all other persons who may be affected thereby.

(b) All the work, materials, and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Subcontractors.

6. The Subcontractor is required to operate all electrical equipment on a ground fault interrupted circuit (GFI).

7. Electric Heaters are NOT ALLOWED. (Propane Heaters may be supplied by the job site Supervisor.) Propane Tanks are NOT ALLOWED inside the home. The heaters are not allowed to sit on top of a wood deck floor unless 2 layers of drywall (approximately 2'x 2' larger in width than the heater itself) separate the heater and the sub-floor.

8. The speed limit in all construction areas is 15 miles per hour or as posted, whichever is lower. Driving on non-established roadways or non-established temporary roadways is prohibited.

9. The Subcontractor is to insure that back up alarms are installed and functioning on all cranes, forklifts, back hoes, bulldozers, rollers and other heavy equipment used on the job site. No equipment with tracks is allowed on streets or curbs, they must be off-loaded directly onto the site.

10. Subcontractor is to comply with all Hazardous Communication Material requirements as set forth by OSHA.

11. Subcontractor will provide Ryland Homes and their own work crews with all necessary Material Safety Data Sheets prior to any hazardous material arriving on the job site.

12. Subcontractor will insure that all containers of hazardous materials are labeled with the appropriate hazard and warning precautions. The Manufacturer's label can be used as the main source of hazard information. If the primary label is removed, becomes illegible or if hazardous material is transferred from a labeled container to an unlabeled container for storage (not immediate use), the container must then be labeled with a copy of the chemical MSDS or NFPA generic label. Subcontractors must inform Ryland Homes in writing of the type of alternative labeling they are using.

13. No flammable materials are to be stored on any job site.

14. No alcohol or non-prescription drugs are allowed on any Ryland Homes job site. Anyone found in violation of this is subject to immediate termination.

E. STANDARDS/WARRANTY

1. The Subcontractor shall guarantee all workmanship free of any defects for 13 months commencing with the Buyer Settlement date. Additional or longer warranty periods will apply if detailed by scope of specific trade of which the Subcontractor is working. Should field inspection warrant the acceptance of inferior workmanship, the subcontractor shall assume liability for any future charges incurred in the correction of this work.

2. Per law, "Latent Defects" have a seven (7) and thirteen (13) year statute of limitations, in the states of North Carolina and South Carolina respectively, and will be warranted for that time frame. Latent Defect is defined as "A construction flaw, related to either a product or workmanship, that can not be seen or is not evident until some manifestation brings notice to the flaw".

3. Each Subcontractor is to supply a professional representative who is a qualified knowledgeable tradesman and professionally dressed, for all contacts with Ryland Homes' customers. This person must be instructed not to discuss other Subcontractors workmanship, or the materials and products chosen by Ryland Homes.

4. All pre-settlement and buyer orientation repairs shall be completed within two (2) working days of receiving notification of the repairs. Time is of the essence. Subcontractor will be financially responsible for any costs incurred due to the delay.

5. All non-emergency customer service work is to be completed within 5 working days after notification from the Ryland Homes Warranty Department or the homeowner. Phone calls must be returned, with appointments scheduled, within 48 hours of a request. Subcontractor will be financially responsible for any costs incurred, such as loss of wages to the homeowner, due to the delay.

6. All service work completed must have two signatures that the work was completed, the person who did the work and the customer, and must be returned to the Warranty Department or Construction Office.

7. Subcontractor's failure to complete warranty work and Ryland Homes' prior notification of non-compliance will result in the selection of others to complete the Subcontractor's work. Should Ryland Homes thereby incur any additional costs, such costs will be passed on to the Subcontractor.

8. All Subcontractors must respond within three (3) hours and complete all Emergency warranty work within twenty-four (24) hours of notification.

9. Suppliers are responsible to furnish material for touch-up work on all materials furnished to Ryland Homes. Replacement parts must be kept in stock for delivery within two (2) days of placing the order.

F. PAYMENT

1. Because Ryland Homes wishes to pay in a timely fashion, all invoices must be submitted within ninety (90) days of the completion of the work or delivery of materials, otherwise payments are forfeited. Rejected invoices due to Subcontractor errors must be resolved within 90 days from the date that the Subcontractor was notified of the error.

2. Ryland Homes reserves the right to hold payment until 100% work completion and applicable county or city inspections are passed.

3. Payment shall be based upon the contract price at the time the home is sold. Upon notification of a price change by the Subcontractor, Ryland Homes may furnish in writing a list of units to be completed at the original contract price. Price changes require at least a 120 day written notification to the Purchasing Manager.

4. Ryland Homes reserves the right to issue joint checks to a subcontractor and his supplier.

5. Subcontractor is responsible to follow all invoicing, verification, and payment procedures.

6. Ryland Homes reserves the right to hold appropriate monies from a subcontractor's payment based on untimely response(s) to warranty work by the Subcontractor. Related moneys may be held until such outstanding or overdue Warranty requests have been honored and satisfied.

7. For any work to be performed, or materials supplied beyond the scope of the contract, there must be a purchase order signed with a fixed dollar amount by a Ryland Homes representative.

8. Ryland Homes reserves the right to debit (back charge) a subcontractor for untimely, incomplete or inferior work. No debits will be issued without prior notification to the Subcontractor. Subcontractors will given proper time to correct &/or respond prior to a back charge. Time is of the essence with regards to response time. Back charges are not encouraged and if necessary are to be for costs only.

9. Subcontractors are expected to coordinate and respect all other Subcontractors' work and work together to eliminate any costs due to deficiencies.

10. All items of deficiency or improperly installed items noted on any superintendent or manager punch list, items appearing on any quality assurance or buyer walk-through list, will be the responsibility of each Subcontractor or Supplier to repair or replace at no cost to Ryland Homes.

11. Subcontractors' bids are to include transportation and trip charges.

12. Fines can be incurred for not adhering to any rules and regulations stated within this general scope or detailed by scope of specific trade of which the Subcontractor is working at the discretion of a Ryland Homes Representative.

G. INSURANCE REQUIREMENTS – SEE ATTACHED ADDENDUM

Subcontractor Date 9/20/06

Ryland Homebuilding/Purchasing Manager Date 10/23/06

EXHIBIT

tabbies

THE RYLAND GROUP, INC.
SUBCONTRACTOR AGREEMENT
GENERAL TERMS

SUBCONTRACTOR: ____
Address: ____
Phone No.: ____
Effective Date: ____

RYLAND DIVISIONS: 443
(insert all divisions for which work is performed under this contract) ____

This Subcontractor Agreement ("Agreement") shall govern the relationship between Subcontractor and THE RYLAND GROUP, INC. ("RYLAND") for any project ("Project") on which Subcontractor provides services to Ryland. The description of any work ("Work") to be performed on any Project, any specifics regarding the Work, rules and regulations regarding the Work and the price ("Price") shall be contained on bid sheets, proposals, drawings, specifications, scopes of work, site plans and other documentation governing the Work (collectively, the "Documents"). All Documents are incorporated herein by reference and made a part hereof. The Documents shall be identified as being subject to this Agreement.

Subcontractor and Ryland agree as follows:

1. (a) Subcontractor shall complete the Work in strict conformity with generally accepted building practices and the Documents. All materials incorporated into the Work shall be new, and the Work shall be completed in a good and workmanlike manner free from defects.

(b) Subcontractor has examined the Documents and is fully aware of their provisions.

(c) Subcontractor represents, warrants and covenants that the Documents are complete and sufficient to enable Subcontractor to determine the Price, to construct the Work and otherwise to fulfill its obligations hereunder. Subcontractor has visited the site and examined the conditions affecting the Work.

(d) Subcontractor has satisfied itself as to the location of all utilities that may affect or interfere with the Work and agrees to protect all utilities and keep them operational at all times.

2. Time is of the essence. Subcontractor shall begin the Work on the date designated by Ryland and shall proceed diligently to complete the Work in accordance with the schedule set by Ryland without delays to Ryland or to other subcontractors.

3. (a) Subcontractor is an independent contractor. Subcontractor is not an employee of Ryland for any purpose.

(b) Subcontractor is responsible for the manner, method and means of accomplishing the Work; hiring, training, disciplining, firing and scheduling its own employees; withholding appropriate amounts for federal, state and local taxes; and providing fringe benefits to employees, including, but not limited to, workers' compensation benefits. Ryland shall not be liable for any such items. Ryland does not have the right to cause Subcontractor to take any disciplinary action against its employees except as specifically provided in this Agreement or to assign work to any of Subcontractor's employees.

(c) Ryland reserves the right to (1) inspect all Work to determine, in good faith, whether the Work has been satisfactorily completed, (2) control access to each Ryland work site, (3) schedule Work in a logical sequence or to avoid disturbances, and (4) stop Work for safety reasons or to insure conformity of end product with contracted for results.

4. (a) Ryland shall pay Subcontractor [weekly] [biweekly] [monthly] [by autopay] so long as Subcontractor is not in default,upon written certification by Ryland's Homebuilding Supervisor that the portion of the Work for which payment has been requested has been completed satisfactorily. Payment shall be in accordance with the Price set forth in the Documents. Subcontractor agrees to provide notice of price increases to Ryland for the longer of completion of current backlog or 120 days. Payment for additions or extra work will be made only pursuant to advance written change orders, which may include purchase orders, signed by the purchasing manager of Ryland.

(b) Ryland, in its sole discretion, may retain any payment or portion thereof and/or offset such amounts against future payments due to Subcontractor to assure satisfactory completion of the Work and all service work arising therefrom or to compensate Ryland for any damages Ryland suffers as a result of Subcontractor's default of this Agreement. Any retainage shall be paid to the Subcontractor upon satisfactory final completion of any Work and/or service work applicable for the warranty period.

(c) Subcontractor shall submit to Ryland with Subcontractor's request for payment, executed lien waivers in the form attached as Addendum 1 from Subcontractor and all persons and entities furnishing any labor, equipment, materials or services on the Project in any way concerning or relating to Subcontractor's Work, including, without limitation Subcontractor's employees, suppliers, subcontractors, agents and officers ("Subcontractor's Agents"). Upon completion of the Work on any Project Subcontractor shall deliver to Ryland a Final Waiver and Release of Liens in form attached as Addendum 2 executed by Subcontractor and each of Subcontractor's Agents. If any of Subcontractor's Agents files or maintains any such lien or claim after payment by Ryland to Subcontractor, Subcontractor agrees to cause such lien and claim to be satisfied, removed or discharged at its own expense by bond, payment or otherwise within ten (10) days from the day of filing thereof. Upon Subcontractor's failure to satisfy, remove or discharge the lien or claim, Ryland shall have the right, in addition to all other rights and remedies provided under the Agreement or by law, to cause such lien or claim to be satisfied, removed or discharged by whatever means Ryland chooses, at the entire cost and expense of the Subcontractor, including without limitation, legal fees. To the maximum extent permitted by law, Subcontractor agrees to indemnify, protect and save harmless Ryland from and against any and all such liens and claims and actions brought or judgments rendered thereon, and from and against any and all loss, damages, liability, costs and expenses, including legal fees, which Ryland may sustain or incur in connection therewith.

(d) Subcontractor shall be in default if any demand is made on Ryland for amounts due to Subcontractor's Agents, and Ryland shall have the right to withhold such amounts claimed out of any payments due to the Subcontractor.

5. INSURANCE.

(a) Ryland requires that Subcontractor maintain minimum insurance coverages as detailed on Addendum 3. All insurance policies required shall (i) not contain endorsements that restrict limits of liability to additional insureds; and (ii) have coverage forms acceptable to Ryland. If requested, Subcontractor shall provide certified copies of all such policies to Ryland within 30 days of such request.

(b) Subcontractor shall maintain all required insurance coverage in force until completion of Work. Subcontractor shall maintain Products and Completed Operations Insurance coverage, including required endorsements, in force until expiration of the applicable statute of limitations relating to latent defects in construction of or improvements to real property.

(c) The use of self-insured retentions or deductibles in excess of $5,000 is not allowed. Subcontractor is fully responsible for payment of any self-insured retentions or deductibles.

Subcontractor's Initials

(d) The insurance requirements shall not limit Subcontractor's obligations under this Agreement or Subcontractor's indemnification, warranty obligations or other liability in any manner. The requirements merely represent the minimum amounts of insurance coverage required to be maintained by Subcontractor.

(e) Subcontractor shall provide evidence of the renewal of policies required 30 days in advance of the expiration of any such policy.

(f) If Subcontractor fails to secure and maintain the required insurance, Ryland shall have the right (without any obligation to do so, however) to secure same in the name and for the account of the Subcontractor, in which event the Subcontractor shall pay the costs thereof and furnish upon demand all information that may be required in connection therewith.

6. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SUBCONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND RYLAND, ITS OFFICERS, DIRECTORS, EMPLOYEES, SUPPLIERS AND AGENTS ("RYLAND'S AGENTS") AND THE PROPERTY OF RYLAND, INCLUDING ANY PROJECT COVERED BY THIS AGREEMENT, FROM ANY AND ALL CLAIMS, COSTS, LOSSES, DAMAGES, FINES, PENALTIES, FEES AND OTHER COSTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND DISPUTE RELATED COSTS (COLLECTIVELY, "SUCH COSTS"), TO THE EXTENT THAT SUCH COSTS ARISE OUT OF, ARE INCIDENTAL TO OR RESULT FROM (A) THE PERFORMANCE OF THE WORK OR SUBCONTRACTOR'S FAILURE TO ENFORCE THE DRUG AND ALCOHOL ADDENDUM AND ARE ATTRIBUTABLE TO BODILY INJURY, PERSONAL INJURY, SICKNESS, DISEASE OR DEATH OF ANY PERSON, INCLUDING ANY INJURY OR DEATH OF AN EMPLOYEE OR OWNER OF SUBCONTRACTOR, OR INJURY TO, DEFECT IN, DAMAGE TO OR DESTRUCTION OF THE WORK OR OF ANY PROPERTY; OR (B) SUBCONTRACTOR'S OR SUBCONTRACTOR'S AGENTS FAILURE TO COMPLY WITH THE LEGAL REQUIREMENTS AND (A) OR (B) IS CAUSED BY ANY ACT OR OMISSION OF SUBCONTRACTOR OR ANYONE ACTING FOR, ON BEHALF OF OR THROUGH OR REPRESENTING SUBCONTRACTOR OR SUBCONTRACTOR'S AGENT. SUBCONTRACTOR SHALL SO INDEMNIFY, HOLD HARMLESS AND DEFEND RYLAND AND RYLAND'S AGENTS FROM SUCH COSTS AND EVEN THOUGH IT IS ALLEGED OR FOUND THAT ANY NEGLIGENT ACT OR OMISSION, OR WRONGFUL ACT OF RYLAND OR RYLAND'S AGENTS ALSO CAUSED OR CONTRIBUTED TO SUCH COSTS WITHOUT REGARD TO WHETHER THE EXTENT OF ANY SUCH ALLEGED NEGLIGENT ACT OR OMISSION, OR WRONGFUL ACT OF RYLAND OR RYLAND'S AGENTS IS GREATER OR LESSER THAN ANY ALLEGED NEGLIGENT ACT OR OMISSION, OR WRONGFUL ACT OF SUBCONTRACTOR OR SUBCONTRACTOR'S AGENTS. THIS INDEMNIFICATION IS NOT INTENDED TO COVER THE NEGLIGENCE OR WILLFUL MISCONDUCT OF RYLAND OR RYLAND'S AGENTS. SUBCONTRACTOR AGREES THAT A PORTION OF THE PRICE HAS BEEN PAID TO THE SUBCONTRACTOR AS SPECIFIC CONSIDERATION FOR THE INDEMNIFICATIONS REQUIRED OR GIVEN IN ACCORDANCE WITH THIS AGREEMENT AND THAT ALL INDEMNIFICATIONS, WARRANTIES, GUARANTEES AND OBLIGATIONS GIVEN IN ACCORDANCE WITH THIS AGREEMENT OR THE DOCUMENTS SHALL SURVIVE FINAL PAYMENT, COMPLETION AND ACCEPTANCE OF THE WORK AND TERMINATION OR COMPLETION OF THIS AGREEMENT. UNDER NO CIRCUMSTANCES SHALL THE INSURANCE REQUIREMENTS AND LIMITS SET FORTH IN THIS AGREEMENT BE CONSTRUED TO LIMIT SUBCONTRACTOR'S INDEMNIFICATION OBLIGATIONS OR OTHER LIABILITY HEREUNDER. SUBCONTRACTOR WAIVES ANY RIGHTS OF SUBROGATION AGAINST RYLAND AND SHALL REQUIRE SUBCONTRACTOR'S AGENTS TO WAIVE SUBROGATION RIGHTS AGAINST RYLAND.

7. Subcontractor warrants and represents that it is familiar with and covenants to comply with all laws, regulations and rulings of all federal, state, county and municipal jurisdictions and agencies applicable to this Agreement and to the Work, including, without limitation, OSHA, state occupational safety and health laws, workers' compensation laws, minimum wage and overtime laws, employment discrimination laws, building codes and all regulations and rules promulgated thereunder (collectively, the "Legal Requirements"). Subcontractor shall maintain all records required for compliance with the Legal Requirements and will indemnify and save Ryland harmless from any damage, fine or penalty which may be assessed against Ryland and any attorneys' fees and other costs incurred by Ryland by reason of the breach or alleged breach of this section by Subcontractor or Subcontractor's Agents.

(a) At all times, Subcontractor shall:

(1) conduct, operate and maintain a safe, clean and healthful workplace;

(2) provide to its employees the protective clothing, equipment, training and safety devices necessary to ensure compliance with relevant Legal Requirements; and

(3) abide by the Drug and Alcohol Addendum 4.

(b) To the maximum extent permitted by law, Ryland may withhold from payment to Subcontractor the full amount of any fine, damages or penalty assessed or proposed to be assessed against Ryland by local, state or federal authorities as well as a sum sufficient to cover any attorneys' fees and costs that are incurred by Ryland as a result of Subcontractor's or Subcontractor's Agents failure to comply with applicable Legal Requirements. When any such amounts are actually assessed and paid by Ryland, Ryland will release to Subcontractor any excess withheld.

(c) Either Subcontractor or Ryland may contest responsibility for Subcontractor's or Subcontractor's Agents failure to comply with applicable Legal Requirements. Subcontractor shall reimburse Ryland up to the full amount of any legal costs and expenses that Ryland may incur to contest responsibility which relates to Subcontractor's or Subcontractor's Agents failure or alleged failure to comply with applicable Legal Requirements.

(d) COMPLIANCE WITH APPLICABLE OCCUPATIONAL SAFETY AND HEALTH STANDARDS IS AN EXPRESS CONDITION OF WORK UNDER THIS AGREEMENT.

(e) Addendum 5 applies to all FHA approved Projects.

8. All Work shall be performed by qualified tradespersons. Ryland reserves the right to reject any materials or Work which do not, in Ryland's opinion, comply with the terms of this Agreement. All materials shall be installed in accordance with applicable Legal Requirements and manufacturer's specifications or recommendations.

9. Subcontractor agrees, at its expense, (a) to remedy any defect in the Work due to faulty or unacceptable material or workmanship, (b) to repair or replace any Work not in compliance with the Documents, and (c) to pay any expenses and costs, including legal fees and dispute resolution costs, incurred by Ryland as a result of (i) such defect or (ii) any personal injury or damage to other property caused by Subcontractor or Subcontractor's Agents. Subcontractor shall fully cooperate with Ryland in responding to any warranty claims. All warranties made by Ryland to its homebuyer, whether under the Ryland warranty or applicable law, are, to the extent applicable, deemed made by Subcontractor to Ryland.

10. Subcontractor agrees, at the request of Ryland, to take delivery or assume custody of materials purchased by Ryland from manufacturers. Risk of loss of all material and equipment supplied by, delivered to or under the custody of the Subcontractor shall be upon the Subcontractor until the Work reaches final completion and is accepted by Ryland.

Subcontractor's Initials

11. Subcontractor shall keep the jobsite free of accumulations of trash and debris. At the conclusion of daily work on any housing unit, Subcontractor shall remove all trash and debris caused by its operations and leave the site broom clean.

12. Subcontractor shall abide by all directives which Ryland may publish from time to time.

13. If Subcontractor fails to perform any of its obligations hereunder, Subcontractor shall be in default. If such default is not cured within two (2) days after oral or written notice, then Ryland may pursue any remedy or combination of remedies available at law or equity, including, without limitation: (a) terminating this Agreement; (b) applying any retainage or other amounts due to Subcontractor to cure Subcontractor's defaults or compensate Ryland for damages suffered; (c) taking any action necessary to perform the Work by other means, in which case Subcontractor shall upon demand reimburse Ryland for any amounts expended by Ryland to complete the Work in excess of the Price together with interest from the date paid by Ryland to the date reimbursed by Subcontractor at the rate of eighteen percent (18%) per annum or the maximum amount permitted under applicable law; and (d) pursuing an action for damages and recovery of all costs and expenses, including legal fees, incurred by Ryland in enforcing this Agreement. All remedies shall be cumulative and not exclusive.

14. Ryland may terminate Subcontractor's performance under this Agreement at any time, at the sole option of Ryland and for Ryland's own convenience. In such event, Subcontractor will turn over all equipment and materials ordered, purchased for, or delivered to the Project, and Ryland will pay the Subcontractor any amounts due based on the percentage of completion of the Subcontractor's Work that is in compliance with this Agreement and the Price for Work actually accomplished and equipment and materials supplied to the Project, excluding any payment for unearned profit and overhead. The payments for percentage completion shall be Subcontractor's sole remedy under this Agreement at law or in equity. Subcontractor will facilitate transfer of the Work to Ryland by assigning its rights under subcontracts and purchase orders.

15. Subcontractor shall fully cooperate and coordinate performance of the Work with the work of Ryland and other subcontractors of Ryland. Ryland may suspend or reschedule the Work in its discretion. Subcontractor shall not be entitled to any damages or additional compensation for any delay caused by rescheduling or suspension of the Work other than an equivalent extension of time to perform.

16. Except in the event that either party is sued by someone other than a party hereto or it would be appropriate for complete resolution of the issues for either party to cross-claim against the other party in a legal action not initiated by either of the parties hereto, any dispute arising out of or relating to this Agreement or the breach, termination or validity thereof shall be settled by binding arbitration conducted by a neutral arbitrator. If the parties do not mutually agree on an arbitrator, the arbitrator shall be selected by the American Arbitration Association at its offices closest to the construction site where the dispute arose. The arbitration shall be conducted according to the American Arbitration Association Construction Arbitration Rules unless other procedures are agreed upon by the parties. The parties agree to (a) allow to join into the arbitration proceeding hereunder or (b) join any other arbitration proceeding being conducted by, persons or entities related to the dispute whose involvement may be necessary to completely resolve the dispute, such as (1) a homeowner, (2) Ryland's home warranty corporation, (3) Ryland's or Subcontractor's insurers, and (4) Subcontractor's materialmen or subcontractors. The arbitration shall determine all rights and obligations under this Agreement and the award of the arbitrator shall be final, binding and enforceable. Subcontractor shall include a comparable arbitration provision in all of its subcontracts related to the Work.

17. (a) This Agreement (including all Documents incorporated herein) constitutes the entire Agreement between the parties, supersedes any prior negotiations, agreements or contracts, written or oral, between the parties and may not be amended without the written agreement of both parties.

(b) Subcontractor shall have no right to assign this Agreement or its right to payments hereunder.

(c) All plans, drawings, specifications and the subject matter contained therein and all other information given to Subcontractor in connection with the Work ("Proprietary Materials") shall remain the property of Ryland and shall not be used by or disclosed to anyone by Subcontractor for any purpose other than performance of the Work. Upon completion of the Work, Subcontractor shall return all Proprietary Materials to Ryland.

(d) If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall be construed as if the invalid, illegal or unenforceable portion of the provision had never been contained herein.

(e) This Agreement shall be governed by the laws of the state in which the Work is performed.

IN WITNESS WHEREOF, the parties have executed and sealed this Agreement as of the date set forth above.

THE RYLAND GROUP, INC.

By: _____ (SEAL)

Name: GAVIN GREEN

Title: Area Mgr.

(SUBCONTRACTOR)

License # 17456

Expiration Date 06

By: _____ (SEAL)

Name: Mark Hyden

Title: owner

Ryland shall retain 0 % retention until ____.

SUBCONTRACTOR AGREEMENT

THE RYLAND GROUP, INC.

ADDENDUM 1

RELEASE OF LIENS

OWNER: _____
SUBCONTRACTOR: _____
PROPERTY: _____
CONTRACT DATED: _____
FOR WORK AND MATERIALS FURNISHED THROUGH _____, 200_

The undersigned, which provided services, materials or equipment for the above Property in accordance with a contract with the Subcontractor identified above, for good and valuable consideration received by it, hereby waives and releases all claims for, liens and rights of lien now existing to the extent of $_____, which represents full payment received by the undersigned (exclusive of contractual retainage) for work, services, materials and/or equipment furnished in connection with the above Property to the date of this release.

This Release of Liens is executed and delivered simultaneously with or after payment has been received for the work, services, materials and/or equipment performed or provided to the date referenced above.

This Release of Liens may be relied upon by purchasers procuring improvements from Owner, by mortgagees making mortgage loans to said purchasers, and title insurance companies insuring titles for said purchasers and shall run to the benefit of any such persons/entities and their successors and assigns.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal [as the duly authorized officer/partner of the undersigned] this _____ day of _____, 200_.

_____ [Corporate or Partnership Name of Subcontractor/supplier]

By: _____
Name: _____
Title: _____

_____
[Individual Subcontractor/supplier]

Corporate/Partnership Acknowledgment

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 200_, before me, personally appeared _____, the _____ of _____ who I am satisfied is the person who signed the within Instrument and he/she did acknowledge that he/she signed and delivered this Instrument as the [officer] [partner] above stated, and that the foregoing instrument is the act and deed of said [Corporation] [Partnership].

_____
Notary Public

My commission expires: _____

Individual Acknowledgment

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 200_ before me personally appeared _____, who I am satisfied is the person who signed the within instrument and he/she did acknowledge that he/she signed and delivered this Instrument on his/her behalf and that the foregoing Instrument is his/her voluntary act and deed.

_____
Notary Public

My commission expires: _____

SUBCONTRACTOR AGREEMENT

THE RYLAND GROUP, INC.

ADDENDUM 2

FINAL WAIVER AND RELEASE OF LIENS

OWNER: ____
SUBCONTRACTOR: ____
PROPERTY: ____
CONTRACT DATED: ____
FOR WORK AND MATERIALS FURNISHED THROUGH ____, 200_

. The undersigned for itself, its successors and assigns and its subcontractors and suppliers, which/who has provided materials, work, services and/or equipment in connection with the Project on the Property for the Owner in consideration of the sum of $_____ paid [by Owner] which sum represents the final payment due pursuant to the Contract, together with any amendments or change orders related thereto (all of the foregoing being collectively referred to as the "Contract"):

1. Acknowledges that it has been paid in full for all materials, work, services and/or equipment furnished in connection with the performance of the Contract or otherwise in connection with the construction on the Property.

2. Waives and releases any and all construction lien claim(s) and/or Notices(s) of Unpaid Balance and Right to File Lien and the like ("Lien") which Subcontractor has had or currently has, against or upon any portion of the Project or Property for materials, work, services and/or equipment provided.

3. Agrees that if, after the date hereof, there shall be evidence of any lien filed (i) by the undersigned or (ii) any subcontractor or supplier of the undersigned for which, if established, Owner might become liable or which might encumber title to the Property or Project, the undersigned shall promptly discharge same and indemnify, hold harmless and defend Owner against any loss, damages or costs or expenses, including attorneys' fees, associated therewith.

4. The undersigned for itself, its successors and assigns, releases and forever discharges Owner (and its shareholders, directors, officers, employees, and agents) and their successors and assigns, from all claims, demands or causes of action which it has had, currently has, or may in the future have, arising from or in any way relating to the Contract or the Property.

5. Agrees that this Release may be relied upon by purchasers procuring improvements from Owner, by mortgagees making mortgage loans to said purchasers, and title insurance companies insuring titles for said purchasers and shall run to the benefit of any such persons/entities and their successors and assigns.

IN WITNESS WHEREOF, the undersigned has set his hand and seal [as the duly authorized officer/partner of the undersigned] on this _____ day of _____, 200_.

_____ [Corporate or Partnership Name of Subcontractor]

By: _____
Name: _____
Title: _____

_____
[Individual Subcontractor]

Corporate/Partnership Acknowledgment

STATE OF ____
COUNTY OF ____

On this _____ day of _____, 200_, before me, personally appeared _____, the _____ of _____ who, I am satisfied is the person who signed the within instrument and he/she did acknowledge that he/she signed and delivered this Instrument as the [officer] [partner] above stated, and that the foregoing instrument is the act and deed of said [Corporation] [Partnership].

_____
Notary Public

My commission expires: _____

Individual Acknowledgment

STATE OF ____
COUNTY OF ____

On this _____ day of _____, 200_ before me personally appeared _____, who I am satisfied is the person who signed the within instrumen did acknowledge that he/she signed and delivered this Instrument on his/her behalf and that the foregoing Instrument is his/her voluntary act and dee

_____
Notary Public

My commission expires: _____

SUBCONTRACTOR AGREEMENT

THE RYLAND GROUP, INC.

ADDENDUM 3

SUBCONTRACTOR INSURANCE REQUIREMENTS

CERTIFICATES OF INSURANCE, INCLUDING COPIES OF POLICY ENDORSEMENTS LISTED BELOW, EVIDENCING REQUIRED COVERAGE SHALL BE DELIVERED TO RYLAND PRIOR TO THE COMMENCEMENT OF ANY WORK (SAMPLE CERTIFICATES ATTACHED).

PLEASE DIRECT INSURANCE INQUIRIES TO _____ AT _____.

TYPE OF COVERAGE	AMOUNT OF COVERAGE
A. WORKER'S COMPENSATION – and Occupational Disease Coverage in accordance with the laws of the State within whose jurisdiction the work is performed. • Coverage to include all employees, agents, officers, partners, and proprietors/owners of Subcontractor. • The certificate should specify that the insurance company's A.M. Best Rating is at least A-/VIII. • If the services of a leasing company are used to insure its workers' compensation exposure, the following documents must be delivered to Ryland before any work can be performed on a Ryland job site: A. One certificate documenting workers' compensation insurance for Subcontractor's employees on Ryland's job sites covered through the leasing company. B. A second certificate of insurance evidencing that the Subcontractor has purchased its own separate workers' compensation insurance policy for any employees not covered by the leasing company's insurance. It is imperative that this second policy be insured through the same insurance company as the leasing company and that the second policy has a different policy number from that of the leasing company. C. A declaration sheet (the cover page of the insurance policy) from the Subcontractor's own policy. • The workers' compensation policy should be amended to include a 30-day cancellation notice provision in lieu of the standard 10-day cancellation notice provision. • Workers' compensation carrier shall waive subrogation against The Ryland Group, Inc. and its subsidiaries, affiliated and successor companies, officers, directors, agents, servants, employees, divisions, partners and shareholders.	Workers Compensation – Statutory
EMPLOYER'S LIABILITY	Employers Liability: $500,000. Ea. Bodily Injury by Accident $500,000. Bodily Injury by Disease, Ea. Employee
B. COMMERCIAL GENERAL LIABILITY – with the following minimum coverage: • Coverage for all residential building including both attached and unattached projects • Occurrence form not modified • Subsidence, no endorsements limiting coverage • Contractual liability coverage included • The Certificates of Insurance must state that "The Ryland Group, Inc. and its subsidiaries, affiliated and successor companies, officers, directors, agents, servants, employees, divisions, partners and shareholders" are named as Additional Insureds on the	$1,000,000. General Aggregate Limit (other than Products/Completed Operations) $1,000,000. Products/Completed Operations Aggregate Limit $1,000,000. Bodily Injury (Ea. Occurrence $1,000,000. Property Damage (Ea. Occurrence) $1,000,000. Personal Injury & Advertising Injury Limit $ 50,000. Fire Damage Limit (any one Fire)

Subcontractor's Initials

Subcontractors' general liability insurance policy. • The additional insured status must be provided only on a CG 2010 (11/85) Additional Insured Endorsement or on a CG 2026 (11/85) Additional Insured Endorsement, or their equivalent. • A copy of the correct Additional Insured Endorsement, as described above, must be attached to the certificate of insurance. • The Additional Insured status will be provided to Ryland on a blanket basis for all jobs performed for Ryland (not project specific). • The general liability insurance provided must be primary over Ryland's insurance and Ryland's insurance should not be called upon to contribute toward the payment of any claim arising out of the Subcontractor's work. The Certificate of Insurance must clearly state that the Subcontractor's insurance is "primary and non-contributory" over Ryland's insurance. • The Certificate of Insurance should specifically state that the Subcontractor's insurance company's A.M. Best Rating is at least A-/VIII. • The general liability policy should be amended to include a 30-day cancellation notice provision in lieu of the standard 10-day cancellation notice provision. The certificate of insurance should so state. There shall be no endorsements limiting coverage for explosion, collapse, or underground damage, Blanket contractual liability, or Broad Form property damage coverage. There shall be no limitation on the limits available to the additional insureds. Nor shall there be any limitation or exclusions as respects the additional insured coverage for claims involving Bodily Injury of a Subcontractor's employees or of any other third party.	
C. BUSINESS AUTO LIABILITY -- covering any automobile, including hired and non-owned autos • The certificates of insurance must evidence that "The Ryland Group, Inc. and its subsidiaries, affiliated and successor companies and their officers, directors, agents, servants, employees, divisions, partners and shareholders' are named as Additional Insureds on the auto liability insurance policy. • The certificate of insurance must reflect that the auto liability insurance insures any vehicle driven by the Subcontractor and its employees. • The certificate of insurance must specify that the Subcontractor's insurance company's A.M. Best rating is at least A-/VIII. • The Subcontractor's auto liability policy should be amended to include a 30-day cancellation notice provision in lieu of the standard 10-day cancellation notice provision.	$500,000. Combined Single Limit

SUBCONTRACTOR AGREEMENT

THE RYLAND GROUP, INC.

ADDENDUM 4

DRUG AND ALCOHOL ADDENDUM

FOR THE SAFETY AND WELL BEING OF ALL EMPLOYEES ON RYLAND CONSTRUCTION SITES, RYLAND HAS A POLICY THAT NEITHER CONTROLLED SUBSTANCES NOR ALCOHOL SHALL BE DISTRIBUTED, POSSESSED OR USED ON RYLAND CONSTRUCTION SITES. ANYONE FOUND TO BE IMPAIRED BY OR IN POSSESSION OF CONTROLLED SUBSTANCES OR ALCOHOL MUST IMMEDIATELY LEAVE THE RYLAND CONSTRUCTION SITE OR PROPERTY. To help ensure the safety of all workers, including a worker that may be impaired, Subcontractor agrees to adhere to the following procedures:

(1) If a Subcontractor suspects that one of Subcontractor's Agents is impaired by controlled substances or alcohol, Subcontractor is required to investigate and make inquiries of co-workers on the job site to confirm the suspected impairment. If Ryland becomes aware that one of Subcontractor's Agents has been impaired on the job, Ryland shall have the right, but not the duty, to request that Subcontractor's foreperson investigate. When such a request is given, orally or in writing, Subcontractor's foreperson shall immediately proceed with such investigation and shall thereafter promptly report the results to the Ryland Supervisor. Ryland may send formal written notification to the Subcontractor regarding any such situation, a copy of which will be placed in the Subcontractor's file.

(2) Any worker who is impaired or reasonably believed to be impaired must be immediately removed from the job site. The Subcontractor must provide transportation for the impaired worker and not allow the impaired worker to drive him/herself from the job and endanger the public.

(3) A repeated violation by Subcontractor or any of Subcontractor's Agents of this policy will be cause for immediate termination of this Agreement by Ryland, in Ryland's sole discretion.

Subcontractor's Signature _____ Date 7-24-05

SUBCONTRACTOR AGREEMENT

THE RYLAND GROUP, INC.

ADDENDUM 5

FOR ALL FHA APPROVED PROJECTS

During the performance of this Agreement, the Subcontractor agrees as follows:

(1) The Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The Subcontractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Subcontractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Subcontractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Subcontractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Subcontractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended, in whole or in part, and the Subcontractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Subcontractor will include the portion of the sentance immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor of Subcontractor. The Subcontractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* that in the event a Subcontractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor of Subcontractor as a result of such direction by the administering agency, the Subcontractor may request the United States to enter into such litigation to protect the interests of the United States.

THE RYLAND GROUP, INC.

RULES AND REGULATIONS FOR SUBCONTRACTORS

THIS DOCUMENT IS A PART OF AND INCORPORATED INTO THE SUBCONTRACTOR AGREEMENT DATED _____ BY AND BETWEEN THE RYLAND GROUP, INC. AND _____

The following rules and regulations apply to Subcontractors working on Ryland Homes Projects. The term "SUBCONTRACTOR" includes all of Subcontractor's Agents.

I. *General:*

A. License. At the request of Ryland, SUBCONTRACTOR shall submit evidence of city or county business licenses.

B. No Substitutions. There shall be no substitutions of materials or equipment specifications without written approval of Ryland's purchasing department. This policy shall include "or equal" determination.

C. Operation of Vehicles. The operation of vehicles in or about the Project Site by SUBCONTRACTOR (including material delivery vehicles operated by material suppliers of SUBCONTRACTOR) shall be as follows: (1) Use only the designated entries to enter the Project Site; (2) Use only established roadways and temporary roadways as authorized by RYLAND; (3) No crossing of curbs or sidewalks without prior approval by RYLAND; and (4) Observe speed limit of 15 miles per hour within the entire Project Site. SUBCONTRACTORS shall immediately reimburse RYLAND for any damage to curbs, sidewalks, landscaping, or concrete surfaces or any other damage to the Project Site caused by SUBCONTRACTOR.

D. Parking. SUBCONTRACTOR shall provide necessary parking areas for all workers in suitable locations as approved by RYLAND. In the event RYLAND has to tow vehicles owned by SUBCONTRACTOR, or SUBCONTRACTOR'S Agents, to maintain ingress and egress to the Project Site, all such towing charges will be backcharged to SUBCONTRACTOR. There shall be no parking in driveways, garages or carports of the housing units (whether completed or being constructed) or on sidewalks within the Project Site. RYLAND shall have the right to fine or backcharge SUBCONTRACTOR $100.00 per vehicle per day for violation of parking restrictions.

E. NO UNAUTHORIZED PERSONS. THE JOB SITE IS AN EXTREMELY DANGEROUS AREA, AND NO CHILDREN OR OTHER UNAUTHORIZED PERSONS ARE ALLOWED ON THE JOB SITE AT ANY TIME.

F. Toilet Facilities. RYLAND will provide portable toilet facilities within the Project for the use of SUBCONTRACTOR. SUBCONTRACTOR is not permitted to use the toilet facilities or bathrooms of any housing unit (completed or being constructed) within in the Project Site. RYLAND shall have the right to fine or backcharge SUBCONTRACTOR $100.00 per occurrence for any violation of these restrictions.

G. Food and Beverages. No food or drink shall be allowed within a completed housing unit. SUBCONTRACTOR shall be responsible for the cleanup of trash generated by any eating and drinking within the Project Site.

H. Counter-Tops. None of the finished counter-tops to be delivered with each housing unit in the Project Site shall be used for the placement of tools or for use as a work surface. The placing of tools or using of such counter-tops as a work surface by SUBCONTRACTOR shall give RYLAND the right to fine or backcharge SUBCONTRACTOR $100.00 per occurrence in addition to any costs incurred to repair or replace any damaged counter-top.

I. Pets. No pets (other than seeing-eye dogs) shall be brought to the Project Site by SUBCONTRACTOR. RYLAND shall have the right to fine or backcharge SUBCONTRACTOR $100.00 per occurrence for violations of the Pet policy.

J. Prior Work. SUBCONTRACTORS should inspect all previous Subcontractors' work and report any discrepancies that they notice to RYLAND'S Project Superintendent. DO NOT KNOWINGLY CONSTRUCT OVER FAULTY WORK.

K. Storage. If SUBCONTRACTORS require storage for material on the job site or an area for prefabrication, SUBCONTRACTOR and RYLAND'S Project Superintendent shall agree to a location for a storage area. SUBCONTRACTORS are solely responsible to provide their own controlled storage, i.e., bins, chain link fence, lighting, etc. SUBCONTRACTORS are responsible for cleaning the area on a regular basis. After the job is complete, SUBCONTRACTORS must clean the storage area and remove all containers and debris from the job site.

Subcontractor's Initials

THE RYLAND GROUP, INC.

RULES AND REGULATIONS FOR SUBCONTRACTORS

THIS DOCUMENT IS A PART OF AND INCORPORATED INTO THE SUBCONTRACTOR AGREEMENT DATED _____ BY AND BETWEEN THE RYLAND GROUP, INC. AND _____

II. *Scheduling:*

A. SUBCONTRACTORS must maintain a minimum schedule of one (1) unit per day or production rate as agreed upon by SUBCONTRACTOR and RYLAND'S Project Superintendent.

B. RYLAND'S Project Superintendent will give SUBCONTRACTOR a production schedule. SUBCONTRACTOR will be required to meet the production schedule even if it requires working six (6) days per week.

C. Commencement of work by SUBCONTRACTOR on any house or garage unit is indicative of SUBCONTRACTOR'S agreement to complete such building or unit of work in its entirety.

III. *Warranty:*

A. During the one-year warranty, SUBCONTRACTORS must respond to all customer service requests within 24 hours of receipt of request and must complete service within seven (7) calendar days of receipt of request.

B. Emergencies shall be corrected immediately. The following conditions are considered as customer service emergencies requiring immediate action and service may be requested during non-working hours:

1. Total stoppage of the complete plumbing system within a unit.

2. A water leak which requires the main water service to be shut off to avoid serious damage to the building and/or furnishings.

3. Complete loss of heat (when evening temperatures fall below 60 degrees). Complete loss of air conditioning in climate zones with temperatures greater than 90 degrees.

4. Total loss of electrical service.

5. Water penetration into the unit, threatening severe interior damage.

C. SUBCONTRACTORS must utilize adequate precautionary measures to protect both the work of other subcontractors, as well as the homeowners' personal belongings. In the event that the SUBCONTRACTOR causes damage to other work in the home or the personal belongings of that homeowner, RYLAND will repair or provide monetary compensation for damaged item(s) to the homeowner at the expense of the SUBCONTRACTOR.

D. SUBCONTRACTOR will provide neat, clean warranty service personnel for work appointments who will act professionally by appearing at the time of the scheduled appointment with the homeowner, and will treat both the homeowner and the home with respect.

E. After one (1) attempt to correct a warranty service issue, if the SUBCONTRACTOR fails to perform work satisfactorily, RYLAND has the right to take necessary steps to ensure the quality of warranty work at the expense of the SUBCONTRACTOR.

F. All areas in which warranty service work is performed shall be free from debris, dirt, stains, drips, droppings, and any other spills which may result from warranty service work. RYLAND will backcharge without notice if RYLAND must clean a residence because of SUBCONTRACTOR'S failure to leave the work area clean.

Subcontractor's Initials

THE RYLAND GROUP, INC.

RULES AND REGULATIONS FOR SUBCONTRACTORS

THIS DOCUMENT IS A PART OF AND INCORPORATED INTO THE SUBCONTRACTOR AGREEMENT DATED _____ BY AND BETWEEN THE RYLAND GROUP, INC. AND _____

IV. *Models only:*

A. Models will be constructed on an accelerated schedule. Failure of SUBCONTRACTORS to meet this schedule will be grounds for termination of contract of production work. Due to uncertain economic conditions, Phases may be delayed. SUBCONTRACTORS will not hold RYLAND responsible for extra costs which may be incurred as a result of Phases being delayed. Additional work may be required due to model changes or out-of-sequence installations to expedite construction of models.

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Subcontractor's Initials

RYLAND
HOMES

SCOPE OF WORK
RYLAND HOMES - CAROLINAS DIVISION
General Conditions To Job Specification

I. SPECIFIC REQUIREMENTS

A. OVERVIEW

Ryland's Responsibilities

1. To provide regular supervision and directions from the Ryland Home-Building Supervisor.

2. To supply the most timely and accurate scheduling information.

3. To provide all Pertinent Documents/Plans/Drawings/Details/Selection Sheets/Change Orders/Community Specifications/Site Plans/As-Builts/etc. as required by each subcontractor to perform and complete his/her job duties.

Subcontractor's Responsibilities

1. It is the responsibility of the Subcontractor to maintain current copies of all licenses and certificates of competency. If necessary copies of these documents are to be provided to Ryland Homes before commencement of the work.

2. It is the responsibility of the Subcontractor to have all required insurance and to provide certificates of insurance to Ryland Homes before commencement of the work. Ryland Homes shall be named as Additional Insured. Minimum notice of cancellation to be thirty (30) days.

3. To conform completely to all labor and material specifications per the plans, Ryland Homes specifications, FHA and VA Minimum Property Standards, and all laws and rules of the Federal, State, County, and City authorities having jurisdiction over all projects. In the event of any discrepancy between the laws, rules and codes governing this section and the specifications of this section, the Subcontractor shall use the greater of the requirements.

4. It is the responsibility of the Subcontractor to verify that the correct material, color, options, elevations and garage hands are being used.

5. Each Subcontractor and Supplier should be aware that the schedule is part of his/her contract. Time is of the essence. Subcontractors are to coordinate scheduling of all County or Municipality inspections relative to their own work with Ryland Homes or Municipality. Where applicable, all re-inspection fees or fees incurred due to inadequate pass/fail ratios will be paid by the Subcontractor. Inspections must be called in within 24 hrs of scheduled completion of contracted work. Each Subcontractor is expected to have the necessary personnel available to meet the schedule and to make up weather delay(s).

6. The Subcontractor must be prepared to provide the Supervisor with a timeline for job completion.

7. The Subcontractor and Supplier are to perform or deliver per Ryland Homes' schedule at minimum five (5) days per week. Without prior approval, no work should be performed in the community after 6:00 pm.

8. The Subcontractor is to coordinate his/her work with all other Subcontractors to allow the completion of all work. If this coordination hinders both parties from meeting the schedule, then a Ryland Supervisor must be notified as soon as possible.

9. Each Subcontractor shall have a qualified job supervisor on the job with responsibility toward his/her trade. Each Subcontractor is to furnish a representative for Subcontractor Meetings as scheduled by Ryland Homes.

10. It is the responsibility of the Subcontractor to inspect the project prior to beginning his/her work. If any problems or differences from the plans exist he/she should notify Ryland Homes so that these items are corrected. **Subcontractor will be responsible for any known deficiencies, which are covered over.**

11. The Subcontractor must notify the Ryland Supervisor of any missing material. Notification must be made as soon as possible so that materials may be ordered expeditiously.

12. It is each Subcontractor's obligation to check each job to see that the necessary materials to perform his/her work are on the job site. Subcontractor is responsible to carry an adequate supply of material to eliminate any delay in completion and scheduling. The subcontractor is required to immediately inform the Supervisor, prior to commencement of his/her work, of any delay that may result from lack of material, manpower, etc.

13. It is the responsibility of each Subcontractor to properly inspect their own work for quality and completion. All construction punch list items shall be completed within 48 hours of receiving notification.

14. The Subcontractor must notify the Ryland Supervisor of any defects or other conditions that would obstruct him/her from completing his/her work.

15. The Subcontractor must notify the Ryland Supervisor of any material substitutions and approval may be granted only if the quality is of equal or greater in grade level.

16. The Subcontractor must receive written approval from a Ryland Supervisor in the form of a purchase order before beginning any extra work.

17. The Subcontractor must be equipped, during normal business hours, to answer and respond to all phone calls within a two (2) hour period. This can be done through office personnel or by radio or mobile telephone.

18. Once the doors or windows have been installed, it is the responsibility of each Subcontractor to close them during inclement weather in an effort to minimize damage to the home.

19. It is the obligation of each Subcontractor to lock the home after 5:OO p.m. each day. This will include all exterior doors, garage doors, patio doors and windows.

20. **Subcontractors must clean up all Subcontractor related debris prior to leaving the home each day. Each Subcontractor is to broom sweep his or her work area upon completion of their individual job. All debris must be placed in the nearest trash bin or designated area, NOT in the garage. Daily cleaning includes:**

    a. **Removing any incidental trash resulting from his/her work on-site and placing in a designated area.**

b. Removing and cleaning any excess dirt or mud left on streets adjacent to the site as a result of his/her work. The Subcontractor will be liable to any future charges incurred to complete this work.

21. The Subcontractor shall take every precaution and provide suitable means to protect finished work from damage. Protection of countertops, bathtubs, sinks, toilets, floors, walls, etc. is the responsibility of all Subcontractors.

22. Subcontractor/Supplier must furnish appropriate manuals, written warranties and manufacturer supplied tools for all equipment.

23. Supplier is to furnish samples to sales offices, as required.

24. It is the responsibility of the owner or representative of all Subcontractors and Suppliers to make sure that anyone working on a Ryland Homes job site is aware of these specifications and quality requirements. Copies of these specifications and quality requirements should be distributed to and reviewed with all job supervisors. It is the responsibility of the Subcontractor to train their personnel on these job specifications.

25. Any violation or non-conformance to the above regulations may result in additional cost and/or termination of Subcontractor or Supplier.

26. First violation by any Subcontractors employee may result in a written or verbal warning, second violation can result in a minimum $50 fine, third violation can result in a minimum $100 fine and fourth violation can result in termination from the project.

27. Any Subcontractor of a Subcontractor must adhere to all guidelines referred to within this scope.

28. It is the responsibility of the Subcontractor to own a computer with access to email and the Internet. The subcontractor is also responsible for registering for and applying the Ryland Build Pro online system within its day-to-day operations. Any and all Build Pro questions should be directed to the Purchasing Manager.

B. JOB SITE CONDITIONS

No Drinking/Use of Drugs/Eating/Gambling/Pets

1. Ryland Homes' policy of no drinking of alcoholic beverages will be strictly enforced. Drinking on the job and/or the disposal of alcoholic beverage containers will not be tolerated and are subject to termination.

2. Ryland Homes' policy of no taking or possession of drugs will be strictly enforced. Taking or possessing drugs on the job will not be tolerated and is subject to termination.

3. Under no circumstances shall food be eaten or smoking be permitted in any home after drywall.

4. Gambling on the jobsite will not be tolerated and any offender is subject to termination.

5. No pets (other than seeing-eye dogs) will be allowed on the project site.

No Parking

1. There is no parking on finish grade lots, wet rough graded lots, driveways or sidewalks. Access to homes will be designated by a Ryland Homes representative. Violators can be subject to a fine. Vehicles are to be parked on one side of the street, leaving access to each construction site for deliveries. Whenever possible, do not park in front of occupied units or mailboxes.

2. Parking on driveways is subject to a minimum $200 fine. If approved by the supervisor, vehicles may be allowed on driveways for a short period of time for the sole purpose of loading and unloading tools, equipment, etc. Vehicles that leak fluids are never allowed on concrete and are responsible for major damages caused to the street.

Utilities/Storage

1. No one shall use any utilities except ones specifically provided or specified to them by Ryland Homes. Current homeowners' utilities should never be used without prior approval.

2. If properly informed by the Supervisor, the Subcontractor will be required to supply their own power/electricity when certain job conditions demand.

3. No main water supply is to be turned on by any unauthorized Subcontractor. If authorization to turn on the main water supply is granted by a Ryland Homes representative, the main water supply must be turned off prior to leaving the job site. Failure to do so will make the Subcontractor liable for any subsequent water damage.

4. No main panel box or temporary pole service cover is to be removed or tampered with by an unauthorized Subcontractor under any circumstances. The main power breaker can only be turned on by the electrical Subcontractor or a Ryland Homes representative. All work is to be done on a circuit protected by a ground fault circuit interrupter.

5. Prior to excavation or digging, the Subcontractor is to verify that there is no conflict with location of underground utilities, telephone, cable, electric, sewer, water, gas, landscape, etc. Subcontractor is responsible for having all existing underground utilities located prior to excavation or digging. Subcontractor is responsible for any damages and repairs incurred while digging or excavating.

6. All Subcontractors and Suppliers shall use the site portable toilets exclusively.

7. If Subcontractors require storage for material on the job site or an area for prefabrication, the Subcontractor and the Supervisor shall agree to a location for a temporary storage area. Subcontractors are solely responsible to provide their own controlled storage, ie., bins, chain link fence, lighting, etc. with approval from the Supervisor. The Subcontractors will be responsible for cleaning the area on a regular basis. When informed by the Supervisor to vacate, the Subcontractors must clean the storage area and remove all containers and debris from the job site.

General

1. No one shall use abusive or foul language, play loud music, or bring children or pets on any job site. Courtesy should be shown to all customers and potential customers.

2. Under no circumstances shall a Subcontractor take direction or make any changes on behalf of a Homebuyer or Salesperson. Only those documents issued by Ryland Homes, Plans, Selection or Change Orders shall be followed. Any communication with a customer is discouraged and all communication should flow through the Supervisor.

3. All deliveries will be placed in a designated area and checked in by a Ryland Homes representative. Suppliers are responsible to unload their own materials. Shipments are to be checked in and signed for by a Ryland Homes representative. If the Supervisor is out of the subdivision at the time of delivery, the ticket should be left in the construction office mailbox and the shipment should be checked within 24 hours.

4. Curbs, walks, drives and streets must be inspected prior to work. Any damage must be reported to Ryland Homes. Damage found later will be charged to the Subcontractor responsible for the damage.

5. Anyone found placing tools or materials on counter tops, vanity tops or finished floors, or removing protective floor or bathtub coverings at any time during construction can be subject to a fine and will be responsible for all damages..

6. The job site must be kept neat and clean at all times. Any scraps, paper, etc., must be picked up daily. Trash from lunch is not to be left on the job site.

7. The interior and exterior of all homes are to be broom clean at all times to allow each trade to do his work efficiently and safely and to make the job site appear more professional to our customers. All Subcontractors are required to leave proper access to the lot and not to leave any open holes, dirt piles, material piles or any other type of condition preventing safe accessibility. Crawl spaces must be free of all loose debris and trash upon completion of your work.

8. Trash dumpsters or designated areas will be provided and all trash or debris must be placed in these dumpsters or areas. All debris must be compacted and boxes broken down before disposal. All Subcontractors and suppliers must adhere to all environmental regulations regarding hazardous waste. The Subcontractor shall be responsible to properly store and dispose of all hazardous wastes and all spills resulting from his/her work immediately.

9. After carpet is laid in a home, all shoes must be removed at the door before entering. If the removal of protective footwear is a conflict with safety standards, Subcontractor will need to wear "shoe booties". Shoes may not be required on vinyl, tile and hardwoods that are covered with protective paper or cardboard unless designated by the Supervisor.

C. QUALITY OF WORK

1. All materials delivered to the job shall be new and in original condition and shall bear the name of the manufacturer and any required grade stamps.

2. It is the obligation of each Subcontractor to protect and respect the material or work of all other Subcontractors preceding him/her.

3. Subcontractor is responsible for the finished quality of his work. If Subcontractor proceeds to install his work over substandard work by others, it then becomes the responsibility of the Subcontractor to correct the substandard work, as well as his/her own, upon Ryland Homes' request.

4. Subcontractor will assume full responsibility for all materials, if applicable, until they are installed and accepted. If a scheduling error has occurred on the part of the Supervisor which delays timely installation, Ryland Homes will not hold the Subcontractor fully responsible for stolen or damaged material. Do not install damaged materials.

D. SAFETY

1. Hard hats must be worn at all times, off the curb, by all workers, managers and delivery personnel. Subcontractor is to provide his/her workers with all OSHA rules and regulations and is responsible for enforcement. Obey Ryland Safety Rules, regardless of lesser rules by OSHA.

2. No children under the age of 18 years old or other unauthorized persons are allowed on the job site at any time.

3. The Subcontractor is responsible for the assurance that their employees are fully trained in safety practices and have a full understanding of hazards involved in their job and surroundings. There should be procedures in place to control or eliminate these hazards.

4. All Subcontractors and their employees should understand the following:

   (a) Unsafe conditions, accidents, injuries and illness, no matter how minor, must be reported to a Ryland Homes Supervisor at once and an accident report filled out.

(b) Subcontractor and each employee shall provide for frequent and regular inspections of the job site, their materials and equipment. A Safety Manager will be designated by Ryland Homes for inspecting and assuring safe worksites for Subcontractors and Suppliers.

(c) No person is expected to undertake a job until they have received instructions on how to properly do it.

(d) No person should undertake a job that appears to be unsafe.

(e) Mechanical safeguards are to be in place and must be kept in place.

5. Subcontractor shall be responsible for maintaining and supervising all safety precautions and programs in connection with their work. Subcontractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, loss or injury to:

   (a) All employees on the job site and all other persons who may be affected thereby.

   (b) All the work, materials, and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Subcontractors.

6. The Subcontractor is required to operate all electrical equipment on a ground fault interrupted circuit (GFI).

7. Electric Heaters are NOT ALLOWED. (Propane Heaters may be supplied by the job site Supervisor.) Propane Tanks are NOT ALLOWED inside the home. The heaters are not allowed to sit on top of a wood deck floor unless 2 layers of drywall (approximately 2'x 2' larger in width than the heater itself) separate the heater and the sub-floor.

8. The speed limit in all construction areas is 15 miles per hour or as posted, whichever is lower. Driving on non-established roadways or non-established temporary roadways is prohibited.

9. The Subcontractor is to insure that back up alarms are installed and functioning on all cranes, forklifts, back hoes, bulldozers, rollers and other heavy equipment used on the job site. No equipment with tracks is allowed on streets or curbs, they must be off-loaded directly onto the site.

10. Subcontractor is to comply with all Hazardous Communication Material requirements as set forth by OSHA.

11. Subcontractor will provide Ryland Homes and their own work crews with all necessary Material Safety Data Sheets prior to any hazardous material arriving on the job site.

12. Subcontractor will insure that all containers of hazardous materials are labeled with the appropriate hazard and warning precautions. The Manufacturer's label can be used as the main source of hazard information. If the primary label is removed, becomes illegible or if hazardous material is transferred from a labeled container to an unlabeled container for storage (not immediate use), the container must then be labeled with a copy of the chemical MSDS or NFPA generic label. Subcontractors must inform Ryland Homes in writing of the type of alternative labeling they are using.

13. No flammable materials are to be stored on any job site.

14. No alcohol or non-prescription drugs are allowed on any Ryland Homes job site. Anyone found in violation of this is subject to immediate termination.

E. STANDARDS/WARRANTY

1. The Subcontractor shall guarantee all workmanship free of any defects for 13 months commencing with the Buyer Settlement date. Additional or longer warranty periods will apply if detailed by scope of specific trade of which the Subcontractor is working. Should field inspection warrant the acceptance of inferior workmanship, the subcontractor shall assume liability for any future charges incurred in the correction of this work.

2. Per law, "Latent Defects" have a seven (7) and thirteen (13) year statute of limitations, in the states of North Carolina and South Carolina respectively, and will be warranted for that time frame. Latent Defect is defined as "A construction flaw, related to either a product or workmanship, that can not be seen or is not evident until some manifestation brings notice to the flaw".

3. Each Subcontractor is to supply a professional representative who is a qualified knowledgeable tradesman and professionally dressed, for all contacts with Ryland Homes' customers. This person must be instructed not to discuss other Subcontractors workmanship, or the materials and products chosen by Ryland Homes.

4. All pre-settlement and buyer orientation repairs shall be completed within two (2) working days of receiving notification of the repairs. Time is of the essence. Subcontractor will be financially responsible for any costs incurred due to the delay.

5. All non-emergency customer service work is to be completed within 5 working days after notification from the Ryland Homes Warranty Department or the homeowner. Phone calls must be returned, with appointments scheduled, within 48 hours of a request. Subcontractor will be financially responsible for any costs incurred, such as loss of wages to the homeowner, due to the delay.

6. All service work completed must have two signatures that the work was completed, the person who did the work and the customer, and must be returned to the Warranty Department or Construction Office.

7. Subcontractor's failure to complete warranty work and Ryland Homes' prior notification of non-compliance will result in the selection of others to complete the Subcontractor's work. Should Ryland Homes thereby incur any additional costs, such costs will be passed on to the Subcontractor.

8. All Subcontractors must respond within three (3) hours and complete all Emergency warranty work within twenty-four (24) hours of notification.

9. Suppliers are responsible to furnish material for touch-up work on all materials furnished to Ryland Homes. Replacement parts must be kept in stock for delivery within two (2) days of placing the order.

F. PAYMENT

1. Because Ryland Homes wishes to pay in a timely fashion, all invoices must be submitted within ninety (90) days of the completion of the work or delivery of materials, otherwise payments are forfeited. Rejected invoices due to Subcontractor errors must be resolved within 90 days from the date that the Subcontractor was notified of the error.

2. Ryland Homes reserves the right to hold payment until 100% work completion and applicable county or city inspections are passed.

3. Payment shall be based upon the contract price at the time the home is sold. Upon notification of a price change by the Subcontractor, Ryland Homes may furnish in writing a list of units to be completed at the original contract price. Price changes require at least a 120 day written notification to the Purchasing Manager.

4. Ryland Homes reserves the right to issue joint checks to a subcontractor and his supplier.

5. Subcontractor is responsible to follow all invoicing, verification, and payment procedures.

6. Ryland Homes reserves the right to hold appropriate monies from a subcontractor's payment based on untimely response(s) to warranty work by the Subcontractor. Related moneys may be held until such outstanding or overdue Warranty requests have been honored and satisfied.

7. For any work to be performed, or materials supplied beyond the scope of the contract, there must be a purchase order signed with a fixed dollar amount by a Ryland Homes representative.

8. Ryland Homes reserves the right to debit (back charge) a subcontractor for untimely, incomplete or inferior work. No debits will be issued without prior notification to the Subcontractor. Subcontractors will given proper time to correct &/or respond prior to a back charge. Time is of the essence with regards to response time. Back charges are not encouraged and if necessary are to be for costs only.

9. Subcontractors are expected to coordinate and respect all other Subcontractors' work and work together to eliminate any costs due to deficiencies.

10. All items of deficiency or improperly installed items noted on any superintendent or manager punch list, items appearing on any quality assurance or buyer walk-through list, will be the responsibility of each Subcontractor or Supplier to repair or replace at no cost to Ryland Homes.

11. Subcontractors' bids are to include transportation and trip charges. Ryland Homes will not pay any additional trip charges for any reason.

12. Fines can be incurred for not adhering to any rules and regulations stated within this general scope or detailed by scope of specific trade of which the Subcontractor is working at the discretion of a Ryland Homes Representative.

G. INSURANCE REQUIREMENTS – SEE ATTACHED ADDENDUM

X

Subcontractor Date

6/28/06

Ryland Homebuilding/Purchasing Manager Date

RYLAND
HOMES

SCOPE OF WORK
RYLAND HOMES - CAROLINAS DIVISION
MONOLITHIC/STEM-WALL/ GARAGE SLABS

COST CODES: 46110 & 46770

The Subcontractor or Supplier, (hereinafter referred to as the Subcontractor), will adhere to all City, County, State and Federal building regulations, codes and licensing in all areas where work is to be performed.

This document defines both Ryland Homes' and the Subcontractors' responsibilities in this phase of construction. It is intended as a checklist that will define the work to be done, the level of quality and any timing that is required when performing said work. The Concrete Slab Subcontractor's work will not be considered complete until all specifications are fully met.

I. Specific Requirements

A. Overview

The Concrete Slab Subcontractor must supply all labor, materials, supervision, tools and equipment as required by plans and the Customer Selection Sheet. This construction must be done in conformance with all specifications. Subcontractor will receive 4 corner pins from the surveyor and will be required to layout all building lines.

B. Codes & Standards

1. The Subcontractor is required to verify that the plot plan matches the start package information prior to forming the slab. Work shall comply with, or exceed the most restrictive requirements of this specification or the standards of the following publications, which form a part of this specification. Refer to design drawings for additional specifications.

   (IRC 2003) International Residential Code
   (LCO) Local Code and Ordinances
   (ACI 318) Building Code Requirements for Reinforced Concrete
   (ACI 531) Building Code Requitements for Concrete Masonry Structures
   (ASTM) American Society for Testing and Materials
   (MPS) Manufacturer's Printed Specifications

2. SOIL TESTS (supplied by others): Subcontractor shall comply with all soil test recommendations from geo-technical engineering for each particular pad or phase of construction. Ryland Homes' engineering firm shall provide a copy of all written geo-technical engineering recommendations at building site for field information.

3. MATERIAL TESTS: Material evaluation test may be requested at the discretion of Ryland Homes at any time. Expense of such test shall be the responsibility of Ryland

Homes. Compressive strength test will be conducted randomly at the direction of Ryland Homes. Failed tests will result in subsequent back charges for costs incurred for rework.

C. Materials

1. MATERALS PROVIDED BY SUBCONTRACTOR: Subcontractor shall provide all forming material, rebar chairs, wire ties, concrete, reinforcing steel, welded wire fabric, vapor barrier, foundations anchors, J-bolts with washers and nuts, foundation straps, nails, string, and any other materials required to layout, form, and finish concrete work. Work shall comply with, or exceed the most restrictive requirements of this specification.

2. VAPOR BARRIER: Minimum six (10) mil industrial strength vapor barrier sheet over rock base material where indicated below slabs on grade. Vapor barrier to extend under steel reinforcement for full width of footing. Provide 12-inch minimum end overlap. Radon requirements include taping of vapor barrier joints and seams.

3. STEEL REINFORCEMENT: As per (APPROVED PLANS) in conformance with ASTM A-615 and /or ASTM A185-790 except where more explicit or stringent requirements are written into the approved plans. With permission from the Purchasing Manager, welded wire fabric can be replaced with approved fiber mesh concrete.

4. CONCRETE: As per APPROVED PLANS in conformance with below specifications except were more explicit or stringent requirements are written into the plans.

   A. Strength: Slabs: 3000 psi 28, day compressive strength.

   B. Slump: Design mix to result in slump at point of discharge from truck as follows: 4-inch +/- 1 ½ inch.

   C. Water: Water addition permitted at job site to reach specified slump range only if Purchasing Manager grants permission. No water addition permitted after proper slump has been reached, slump test complete or concrete placement has begun. No water shall be added to a 6" slump. No re-tampering permitted.

   D. Admixtures: Calcium: admixtures will be allowed if the daytime temperature will not exceed 45 degrees or if freezing temperatures are expected before concrete will set. Mixtures are not exceed 2% Calcium.

   E. Temperature: Temperature of concrete at time of placement shall not exceed the following range. Maximum Temperature = 75 degrees F. Minimum Temperature = 35 degrees F. and rising without additive mixtures to compensate.

   F. Batch Time: Concrete placement must be complete within 90 minutes or 300 revolutions of batching. Concrete placed in excess of 90-minute batch time will be considered unacceptable.

   G. Mixing Time: Concrete shall be mixed at high speed a minimum of three (3) minutes prior to placement or transfer into concrete pump.

   H. Substandard Concrete: Concrete not meeting any of the above standards shall be deemed substandard and shall be rejected immediately

5. FOUNDATION ANCHORS: As required per plans, specifications and local building codes; all anchors/straps will be spaced and installed per engineering specifications.

D. **Execution**

1. GENERAL: Area of construction shall be clean of sod and organic material and shall be compacted to 95 percent standard proctor in fill over 24". Footings shall be clean and shaped as indicated on PLANS and specifications. Slabs shall be free of wood, organic material, debris and objects penetrating into concrete level. In cases of impending inclement weather, the final decision to install concrete shall be made by the Subcontractor. **Damage to concrete surfaces caused by weather is the sole responsibility of the Subcontractor.**

2. FORMS – Formwork must adhere to the following guidelines:

   A. Set Foundation in accordance with plot plan and surveyor's stakes. Slab elevation shall be per plan or taken from referenced benchmark. Any inconsistencies between plan and/or plot plan must be reviewed with Supervisor and/or resurveyed before pour.

   B. Excavations: Footing excavation (machine or hand) to be provided by Subcontractor. Excavated trenches shall be of uniform depth, straight alignment and cut to size, shape and dimension as shown on plans. Required backfill shall be compact to 95 % standard proctor in 12- inch maximum lifts. Water in footings shall not be allowed to mix with concrete during placement. Subcontractor shall dig a tail ditch to adequately drain water from footing. See Soil Report for additional requirements.

   C. Monolithic Slab: Construct forms to size, shapes and dimensions shown and provide for other features required in work. Perimeter slab-on-grade forms shall extend a minimum (16) sixteen inches below finished floor elevation. Forms will be squared diagonally, horizontally and vertically to within ¼ inch. Maximum spacing between kickers shall be (30) inches. Additional lateral bracing to be installed as required.

   D. Grade and compact sub-grade to ensure uniform and accurate slab thickness. Upon request, Ryland Homes will provide pit gravel to be used as compacted fill as required to maintain specified slab thickness. Subcontractor shall grade pad to 1/10 of one (1) foot accuracy. Fill must be grade to ensure thickness of not more than 4 ½" and not less than 3 ½". No concrete shall be installed prior to compaction test. Subcontractor or Supervisor shall schedule compaction/density tests with a Ryland Homes approved soils engineer. In the event of failed compaction tests, the Subcontractor shall be responsible for all costs associated with retesting.

   E. Verify critical dimensions: A minimum of THREE (3) times prior to concrete placement. Any layout errors will be at the expense of the Subcontractor.

   F. Vapor Barrier Installation: Install 10 mil industrial strength (minimum) vapor barrier sheet over prepared base material as indicated on plans. Vapor barrier to extend under steel reinforcement for full width of footing. Provide 12-inch minimum overlap. Cut plastic to form a tight fit around all plumbing pipes. Subcontractor is required to patch all tears or penetrations prior to placement of concrete. Vapor barrier must be installed after termite spray.

   G. The Subcontractor is liable for all damage/disturbance to plumbing pipes and/or electrical conduits.

3. REINFORCEMENTS – Placement of reinforcements must adhere to the following guidelines:

   A. Clean reinforcement bars, which may be detrimental to proper concrete bond.

   B. Reinforcement Installation: Install reinforcement steel (GRADE 60 # 4) as indicated on plans and specifications. Rebar shall be positioned, supported and wired to metal chairs to properly position the steel to protect it from displacement at time of concrete placement. Chair placement shall be 6 foot O.C. maximum. Steel shall be securely tied to support members at all locations and lapped 32 times the diameter. As per drawings, required steel of 2 #4's must be positioned in the middle 3rd of the footing depth.

   C. Concrete Coverage: Provide (3") THREE INCHES minimum coverage from bottom and sides of footing. Spacing between bars shall be 12 inches.

   D. Welded Wire Fabric: Install per codes, plans, (minimum 6-6-10-10 size) lap 6 inch and tie as required to unify each lap. Note: Welded wire can be replaced with SBCCI approved fiber mesh concrete.

   E. Control Joints: Control Joints must be installed as per plans indicate. Control Joints must be a minimum depth of ¾ inch. Expansion joints shall be placed as shown on plans or as stated in general notes.

4. SOIL TREATMENT: Sub-grade preparation to be completed prior to soil treatment. Treated soil shall be protected with a 10-mil industrial strength vapor barrier immediately flowing spray and shall remain undisturbed.

E. Concrete Placement/Completion

1. INSPECTION: **Subcontractor shall be responsible for verifying that the soil treatment is complete and the foundation / slab inspection has been approved by local authority before placing concrete.** Subcontractor must be able to provide written verification of the inspection, i.e. Building Inspection Sticker or Engineer's Certificate. The Subcontractor shall be responsible for ordering and ensuring that slabs have been treated for termites prior to pouring.

2. GRADE STAKES: Subcontractor shall install grade stakes every 10 ft. within the slab and are to be removed once the concrete is placed.

3. PLACEMENT: Place concrete in a continuous operation to avoid formation of cold joints. Maintain steel and embedded items in proper position during placement. The following guidelines will be enforced:

   A. Floors shall have a level variance within 1/4 inch in 48 inches and no more than ½" out of level over the entire length.

   B. Proper finish.

   C. Proper slope on garage floor.

   D. Be free of mud clots or debris embedded in concrete.

   E. Concrete cannot be used when frozen or freezing.

F. Must maintain the minimum thickness throughout.

G. Expansion and control joints placed as specified.

4. CONCRETE TRUCKS: Truck drivers must adhere to all rules and guidelines. Washout of concrete trucks will be permitted only in areas posted, or agreed upon by the Supervisor, for that purpose. Subcontractor is responsible for clean up of mud/debris left by concrete trucks in community streets.

5. COLD JOINTS: Cold joints are not allowed.

6. GARAGE FLOORS: The Subcontractor shall pitch the garage floor elevation a minimum of 2inches, (Ryland Homes recommends 3 inches) from rear to front. A weather lip ¾ deep and 7 inches back at garage doors. The Subcontractor shall provide and install a 4" x 4" or 4" diameter steel bollard, filled with concrete, at water heaters per plan.

7. SURFACE FINISHES: Floor Slabs: Medium steel trowel, slick finish hand trowel around all plumbing. 1 Car Garage Slabs: Slab shall be divided into (2) two sections with tooled control joints, the curbs will be rubbed with a ¾ inch radius. 2 Car Garage Slabs: Slab shall be divided into (4) four sections with tooled control joints, the curbs will be rubbed with a ¾ inch radius. 3 Car Garage Slabs: Slab shall be divided into (6) six sections with tooled control joints, the curbs will be rubbed with a ¾ inch radius. All surfaces shall be left clean and free of concrete. Nails/ties protruding out from the slab are to be neatly removed. Any "honeycomb" areas must be patched with approved non-shrink grout or as per the requirements of the Supervisor.

8. PROTECTION: Protect freshly placed concrete from premature drying, excessive loss of moisture and inclement weather. Subcontractor, if required, will provide straw and visqueen as needed. Subcontractor will carefully install visqueen on top of concrete as to not damage the finish of the concrete. Straw supplied by Ryland can then be placed on top of the visqueen to keep the concrete warm. Subcontractor shall install driveway and walkway barricades.

9. REMOVAL OF FORMS: Forms must be removed 48 hours after concrete placement provided concrete is sufficiently hard to resist damage from form removal. No forms will be allowed to be set on top of the freshly poured concrete! Forms shall be moved within 24 hours to an on site storage area. Monolithic forms shall be removed prior to final set to allow proper finish of foundation wall.

10. ~~EXCESS CONCRETE: The Subcontractor shall be responsible for the disposal, on a timely basis, of any excess concrete pours, damaged concrete, and/or any incidental trash resulting from his work on site.~~

WB

II. Warranty Standards

A. A crack in the slab that exceeds 1/4" in width will be repaired as per the recommendations of Ryland Homes' structural engineer. If within the first year of warranty, this situation causes removal or replacement of floor coverings, it will be at the expense of the Subcontractor.

B. Vertical or Horizontal separation of the slab that exceeds 1/4" will be repaired as per the recommendation of Ryland Homes.

C. An uneven area or slope in the slab that exceeds 1/4" in a 48" measurement will be repaired as per the recommendation of Ryland Homes.

D. Powdering, scaling or pitting due to Subcontractor poor workmanship shall be warranted and the deterioration will be repaired as per the recommendation of Ryland Homes.

E. The Subcontractor shall guarantee the structural integrity of the monolithic slab and/or stem-wall slab from defects for a ten (10) year minimum period commencing with the Buyer Settlement date. If field inspection warrants the acceptance of inferior workmanship, the Subcontractor must assume liability for any future charges incurred for the correction of this work.

As a representative of Higdon Concrete
(COMPANY NAME)

I have read and fully understand the content of the job scopes and I agree to comply with all of the aforementioned terms. Furthermore, I understand that all of my personnel performing work on Ryland job sites will be given a copy of this job scope and are expected to read, understand and comply with the written responsibilities. Also, they are expected to have the job scope in their possession when on a Ryland job site.

Subcontractor Date

Ryland Homebuilding/Purchasing Manager Date 6/29/06

RYLAND
HOMES

SCOPE OF WORK
RYLAND HOMES - CAROLINAS DIVISION
EXTERIOR FLATWORK/DRIVEWAY

COST CODES: 48260, 49190

The Subcontractor or Supplier, (hereinafter referred to as the Subcontractor), will adhere to all City, County, State and Federal building regulations, codes and licensing in all areas where work is to be performed.

This document defines both Ryland Homes' and the Subcontractors' responsibilities in this phase of construction. It is intended as a checklist that will define the work to be done, the level of quality and any timing that is required when performing said work. The Flatwork Subcontractor's work will not be considered complete until all specifications are fully met.

I. Specific Requirements

A. Overview

The Flatwork Subcontractor must supply all labor, materials, supervision, tools and equipment as required by plans and the Customer Selection Sheet. This construction must be done in conformance with all specifications.

B. Material Specifications

1. Specified mixture will be 3000 psi air entrained concrete ordered by the Subcontractor. Load tickets will be turned in to the Ryland Homebuilding Supervisor upon request. Concrete is to be poured with a maximum 6" slump. Calcium chloride shall be used at the discretion of the Subcontractor. All concrete will be placed utilizing maximum loads from the supplier. Water added at the jobsite shall not exceed 1 gallon per yard and only with a Supervisor's approval. No water shall be added to a 6" slump.

2. MATERIAL TESTS: Material evaluation test may be requested at the discretion of Ryland Homes at any time. Expense of such test shall be the responsibility of Ryland Homes. Compressive strength test will be conducted randomly at the direction of Ryland Homes.

3. CONCRETE: As per APPROVED PLANS in conformance with below specifications except were more explicit or stringent requirements are written into the plans.

   A. Exterior flatwork: 3000 psi 28 day compressive strength.

   B. Strength: Slabs: 3000 psi 28, day compressive strength.

   C. Water: Water addition permitted at job site to reach specified slump range. No water addition permitted after proper slump has been reached, slump test complete or concrete placement has begun. No re-tampering permitted.

D. Temperature: Temperature of concrete at time of placement shall not exceed the following range. Maximum Temperature = 75 degrees F. Minimum Temperature = 35 degrees F. and rising.

E. Batch Time: Concrete placement must be complete within 90 minutes of batching. Concrete placed in excess of 90-minute batch time will be considered unacceptable.

F. Mixing Time: Concrete shall be mixed at high speed a minimum of three (3) minutes prior to placement or transfer into concrete pump.

G. Substandard Concrete: Concrete not meeting any of the above standards shall be deemed substandard and shall be rejected immediately.

C. **Form Boards**

1. The Subcontractor must supply all forms.

2. All forms are to be straight, free from warp and of sufficient strength to resist lateral pressure.

3. Dampen all forms with water or oil prior to pour for easier removal.

4. Forms must be removed 48 hours after concrete placement provided concrete is sufficiently hard to resist damage from form removal. No forms will be allowed to be set on top of the freshly poured concrete! Forms shall be moved within 24 hours to an on site storage area.

D. **Soil Conditions**

1. The sub-grade must be firm, properly compacted, contain sound sub-soil, and be free of all foreign matter and well drained at time of pour.

2. The sub-grade should be uniformly dampened by spraying it with water, however there should be no water standing on the sub-grade, nor should there be any soft spots when concrete is being placed.

E. **Concrete Finishes/Thickness**

1. Driveways, porches, patios, service walks and steps will have a non-slip broom finish surface with control joints and edges finished with a round edging tool with a ¼" or ½" radius. Exterior Flatwork: Non-slip broom finish with edges tooled.

2. Driveway aprons will be 4" or 6" thick as determined by local codes. (See Addendum)

3. Driveway wings shall be no less than 12" in depth. Subcontractor shall be responsible for any work that does not meet these guidelines.

4. When wire mesh or rebar is required, it shall be pulled up into the center of the concrete at time of pouring.

F. **Control Joints**

1. Control joints must be hand-tooled a minimum depth of ¾ inch.

2. All joints must be straight and continuous, not staggered or offset.

3. Control Joints must be installed in all flatwork not to exceed a maximum area of approximately 100 square feet.

4. Spacing between joints must not exceed 10' (vertical and horizontal) for 4" thick slabs. Joints in sidewalks will have a maximum spacing of 5'.

5. All control joints for long porch concrete slabs must be perpendicular to the house.

G. <u>Expansion Joints</u>

1. Joints are not to exceed 3/4" in thickness.

2. Expansion joints must be installed when freshly placed concrete is to join or abut existing concrete.

3. Expansion joints are required at points of potential restraint to movement, for example, service walk abutting to drive.

4. Expansion joints shall be flush with the surface or about 1/4" below.

5. Expansion joints shall be placed as shown on plans or as stated in general notes.

H. <u>Driveways, Patios, Porches, Stoops, Sidewalks and Steps</u>

1. Driveways to slope three (3) inches from side to side away from the house to allow for <u>positive drainage.</u> Driveway with shall be 17' wide for a two car garage and 10' wide for a single car garage. Driveways shall be tapered as shown on plans attached to window in houses and called out on selection sheet also in window. All corners of driveways where approach meets curb line shall have corners cut on a 45-degree angle for a length of 48". The driveways shall be divided every ten-(10) feet using tooled joints.

2. All flatwork shall have 4" perimeter picture frame, or finish approved by Ryland Homes.

3. All lead walks shall be divided at (4) foot intervals. The walk will be 36" wide at the front of the house.

4. All community sidewalks must be located as per plot plans and surveys. Wheel chair ramps must be installed as per community specifications.

5. Form all porch stoops and slabs for a pour 4" in thickness and with steps faced 12" on all sides to ensure proper grade depth or as per grade conditions as directed by the Ryland Homes Supervisor. As front porches meet lead walks, there must be at least 3 ½" between lead walk to top of porch stoop.;

6. Porches must bear directly on footing, ledge or piers. If piers are not properly in place, notify the Ryland Homes Supervisor.

7. In a basement application, all stoops/porches must have a minimum of 2 pieces of #4 re-bar tied into the lead walk.

8. Steps must be formed with a 7- ½" maximum rise and 12" tread placing steel and expansion joints, supplied by Subcontractor, where necessary.

9. Steps must conform to site plan. The Subcontractor must notify the Ryland Homes Supervisor before any field change is implemented.

10. Place concrete from bottom step upward, carefully spading or vibrating each step along the inside edge to ensure the step face is free of voids and honeycomb.

11. After concrete is partially hardened, each tread will be hand floated and edged with a ½" to ¾" radius tool.

12. Each tread shall have a ¼" fall for drainage.

13. The Subcontractor is responsible for wiping down any splashed concrete.

14. The Subcontractor shall be responsible for parging or patching where forms are applied to foundation walls.

15. The Subcontractor shall be responsible for the disposal, on a timely basis, of any excess concrete pours, damaged concrete, and/or any incidental trash resulting from his work on site.

I. **Drainage**

1. No pockets are to be left in concrete. A minimum slope of 1/8" per foot is required.

2. Flatwork shall set so that it slopes away from the house to allow positive drainage Patio surfaces will be a minimum of (6) inches below the top of the threshold. Standing Water will not be permitted.

J. **Concrete Protection**

1. It is the responsibility of the Subcontractor to protect freshly poured concrete from premature drying, excessive loss of moisture and inclement weather.

2. In freezing weather, it is the Subcontractor's responsibility to protect freshly poured concrete from freezing. Concrete must never be poured over frost or frozen ground. Subcontractor, if required, will provide straw and visqueen as needed. Subcontractor will carefully install visqueen on top of concrete as to not damage the finish of the concrete. Straw supplied by the Supervisor can then be placed on top of the visqueen to keep the concrete warm.

3. Subcontractor shall install driveway and walkway barricades.

II. Warranty Standards

A. A crack in the concrete that exceeds 1/4" in width will be replaced by the Subcontractor.

B. Vertical or Horizontal separation of the concrete that exceeds 1/4" will be replaced by the Subcontractor.

C. An uneven area or slope in the concrete that exceeds 1/4" in a 32" measurement will be replaced by the Subcontractor.

D. Powdering, scaling or pitting of the concrete shall be warranted and the deterioration will be replaced by the Subcontractor.

As a representative of Higdon Concrete
(COMPANY NAME)

I have read and fully understand the content of the job scopes and I agree to comply with all of the aforementioned terms. Furthermore, I understand that all of my personnel performing work on Ryland job sites will be given a copy of this job scope and are expected to read, understand and comply with the written responsibilities. Also, they are expected to have the job scope in their possession when on a Ryland job site.

Subcontractor Date

Ryland Homebuilding/Purchasing Manager Date 6/29/06

EXHIBIT

E

PROFESSIONAL SERVICES AGREEMENT

This Agreement is entered into between CAROLINA CONSULTING ENGINEERS, INC. (the "Consultant") and The Ryland Group, Inc. or one of its affiliates as indicated (the "Owner"), acting by and through their duly authorized representatives, to be effective the ____ day of _____, _____.

WHEREAS, the Owner intends to create a residential development on land located at _____ (the "Project"); and

WHEREAS, Owner desires to employ Consultant to provide certain professional services (the "Services") in connection with the Project;

NOW THEREFORE, for and in consideration of the mutual agreements, promises, and undertakings herein set forth, the parties hereby agree as follows:

1. **Contractual Relationship**

a. The Owner agrees to employ the Consultant, and the Consultant agrees to perform as an independent contractor, the Services as specified herein in connection with the Project; and for having rendered such Services, the Owner shall pay to the Consultant compensation as stated in the sections to follow.

b. Consultant is an independent contractor and not an employee of Owner. Consultant is responsible for the manner and means of accomplishing the Services as well as the hiring, training, disciplining and scheduling of Consultant's employees. Owner is not liable in any manner to Consultant's employees. Consultant shall pay for all materials, equipment, labor, overhead and any other costs or expenses associated or connected with or used in the performance of the Services.

c. Consultant recognizes that due to the nature of the Services, the Consultant will have access to confidential and proprietary information of Owner. Consultant acknowledges that such information is of central importance to Owner's business and that disclosure of it can cause substantial loss and harm to Owner. Consultant will not communicate any confidential or proprietary information and shall not at any time disclose any such information or use the same in any way other than in connection with this Agreement and the Services.

2. **The Consultant's Obligations**

a. The Consultant shall provide to the Owner the professional services and incidental materials specified in Exhibit A, Scope of Services, attached hereto and made a part hereof.

b. No services shall be undertaken by the Consultant until a written notice to proceed with such services has been issued by the Owner.

c. All Services shall be performed in a professional manner. The standard of care for all professional services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of Consultant's profession practicing under similar conditions at the same time and in the same locality. Consultant will re-perform any Services not meeting this standard without additional compensation. Consultant makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with Consultant's Services except as set forth in this Agreement.

d. Consultant shall comply with all laws, regulations and rulings of governmental agencies applicable to this Agreement and the Services (the "Legal Requirements"). Consultant is familiar with and will at all times be in compliance with applicable laws relating to Workers' Compensation. Consultant will indemnify Ryland from any damage, fine or penalty, which results from Consultant's failure to comply with or breach of the Legal Requirements.

e. Consultant shall perform the Services in a timely fashion so as to comply with the Owner's requirements and in accordance with schedules to be mutually agreed upon by Consultant and Owner. Both parties recognize that the overall project schedule is dependent upon actions of others outside the control of the Consultant.

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3. The Owner's Responsibilities

a. Owner shall provide to Consultant all its criteria and requirements for the Project and all available information pertinent to the Project including previous reports. Consultant may reasonably rely upon such information.

b. Owner shall arrange for access to and make all provisions for Consultant to enter upon public and private property as required for Consultant to perform Services under this Agreement.

c. Owner will obtain, arrange, and pay for all advertisements for bids; for permits and licenses required for the Project; and for land, easements, rights-of-way and access necessary for the Consultant's Services under this Agreement or for construction of the Project.

d. Owner will examine Consultant's studies, reports, sketches, drawings, specifications, proposals, and other information submitted by Consultant, consult with others as Owner deems appropriate, and render timely written approvals and decisions to Consultant.

e. Owner shall give prompt written notice to Consultant whenever Owner becomes aware of any development that affects the scope or timing of Consultant's Services, or of any defect or nonconformance in the Services of the Consultant or work of the Contractor.

4. Consultant's Compensation

a. In complete compensation for the Services, the Owner shall pay to the Consultant the compensation set forth in Exhibit B within 30 days after receipt of Consultant's invoice.

b. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. No interest will accrue on any contested portion of the billing until mutually resolved. Owner will exercise reasonableness in contesting any billing or portion thereof.

c. Owner may make changes within the general Scope of Services in this Agreement. If such changes affect the Consultant's cost of or time required for performance of the Services, an equitable adjustment will be made through an amendment to this Agreement.

5. Indemnification

a. With respect to claims brought by third parties against either Consultant or Owner relating to the Project or the Services, Consultant and Owner agree as follows:

(i) Consultant shall, to the fullest extent permitted by law, defend all claims at Consultant's sole cost and expense through legal counsel acceptable to the Owner and indemnify and hold harmless Owner, its subsidiaries and affiliated entities, and their directors, officers, shareholders, consultants, agents, employees, successors and assigns from all claims, liability, damage, demands, losses and expenses, including reasonable attorney's fees, arising out of or resulting from the Services, the Consultant's performance or failure to perform in accordance with this Agreement or which is alleged to be caused by any act or omission of the Consultant or anyone acting for or on behalf of the Consultant. Consultant will indemnify Owner from any damage, loss or obligation which results from Consultant's or the Services' failure to comply with or breach of any Legal Requirements.

(ii) Consultant shall secure any applicable waivers and releases from anyone employed by Consultant to do any part of the Services and shall indemnify and hold Owner harmless from any liability and expense in connection with claims or liens arising out of any subconsultant's negligent performance of the Services.

(iii) Owner will indemnify and hold harmless Consultant, its directors, officers, agents, employees and subcontractors against any and all claims, demands or causes or action, and all costs, losses, liabilities, expenses and judgments incurred in connection therewith, including attorneys' fees and court costs, brought by any of Owner's employees or representatives, by any governmental entity, or by any third party, resulting from or arising out of the sole negligence of the Owner; however, Owner's contractual

obligation of indemnification shall not extend to the consequences of Consultant's negligence or other fault or to strict liability imposed upon Consultant as a matter of law.

(iv) In the event that both Owner and Consultant are adjudicated partially negligent or otherwise at fault or strictly liable without fault with respect to damage or injuries sustained by the claimant, each shall be responsible for its own costs of litigation and pro-rata share of damages as determined by the proceedings, except that if Owner is adjudged less than ten percent (10%) at fault, Consultant shall indemnify Owner for Owner's legal costs including attorneys' fees.

b. It is a condition precedent to the indemnitor's contractual obligation of indemnification under this Agreement that the party seeking indemnity shall provide written notice of the third party claim, demand or cause of action within sixty (60) days after Owner becomes reasonably aware that Consultant may be liable for such third party claim, demand or cause of action. It is a further condition precedent to the indemnitor's contractual obligation of indemnification under this Agreement that the indemnitor shall thereafter have the right to participate in the investigation, defense and resolution of such third party claim.

6. Insurance

a. The Consultant shall obtain and maintain throughout the term of the Agreement, and a minimum of five years after completion of the Services, insurance of the types and in the minimum amounts set forth on Exhibit C.

b. All coverage forms of the insurance must be acceptable to Owner. If requested, Consultant shall provide certified copies of all such policies to Owner within 30 days of such request.

c. Owner reserves the right, but shall have no obligation, to procure the insurance, or any portion thereof, for which Consultant is responsible. Owner shall notify Consultant if Owner exercises its right, whereupon Consultant's responsibility to carry such insurance shall cease and Consultant shall pay to Owner all the premiums and other charges associated with such insurance and furnish upon demand all information that may be required in connection therewith. Owner further reserves the right at any time, with thirty (30) days written notice to Consultant, to require that Consultant resume the procurement and maintenance of any insurance for which Owner has elected to become responsible pursuant to this subsection; in such event, the sums paid to Consultant by Owner shall increase to the extent of any previously agreed and implemented reduction (as noted above) attributable to Owner's prior assumption of the particular insurance coverages. Such refund shall be equitably pro-rated based upon Consultant's completed work at the time of such adjustment.

d. Owner reserves the right, in its sole discretion, to require higher limits of liability coverage if, in Owner's opinion, operations by or on behalf of Consultant create higher than normal hazards and, to require Consultant to name additional parties in interest to be Additional Insureds.

e. In the event that rental of equipment is undertaken to complete and/or perform the work, Consultant agrees that it shall be solely responsible for such rental equipment. Such responsibility shall include, but not be limited to, theft, fire, vandalism and use by unauthorized persons.

f. CONSULTANT AGREES THAT 1% OF THE PRICE REPRESENTS SPECIFIC CONSIDERATION TO THE CONSULTANT FOR THE INDEMNIFICATIONS SET FORTH IN THIS AGREEMENT. UNDER NO CIRCUMSTANCES SHALL THE INSURANCE REQUIREMENTS AND LIMITS SET FORTH IN THIS AGREEMENT BE CONSTRUED TO LIMIT CONSULTANT'S INDEMNIFICATION OBLIGATIONS OR OTHER LIABILITY HEREUNDER.

7. Arbitration

THE PARTIES AGREE THAT ANY CONTROVERSY, CLAIM OR DISPUTE ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT, OR CONSULTANT'S WORK UNDER THIS AGREEMENT SHALL BE SETTLED BY BINDING ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT WITH AN INDEPENDENT THIRD-PARTY ARBITRATOR MUTUALLY SELECTED BY THE PARTIES OR AN ARBITRATOR FROM THE AMERICAN ARBITRATION ASSOCIATION (AAA) IF THE PARTIES CANNOT AGREE. THE ARBITRATION WILL BE CONDUCTED IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF AAA. THE DECISION OF THE ARBITRATOR SHALL BE FINAL AND BINDING AND JUDGMENT UPON THE AWARD MAY BE ENFORCED IN ANY COURT HAVING JURISDICTION. THIS SECTION ELIMINATES YOUR RIGHT

TO A TRIAL. THE NON-PREVAILING PARTY IN THE ARBITRATION SHALL PAY THE COSTS OF ARBITRATION INCLUDING THE PREVAILING PARTY'S REASONABLE ATTORNEYS' FEES AND COSTS. THE ARBITRATOR SHALL BE REQUIRED TO RENDER A DECISION BASED ON APPLICABLE LAW.

8. Termination

a. This Agreement may be terminated by either party for convenience upon 30 days' written notice, or for cause if either party fails substantially to perform through no fault of the other and does not commence correction of such nonperformance within 5 days of written notice and diligently complete the correction thereafter.

b. Upon delivery of such notice, the Consultant shall, unless the notice states otherwise, immediately discontinue all Services, proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to the Services, and deliver to the Owner all work products produced under this Agreement. Upon termination, the Owner will owe the Consultant for all compensation earned under this Agreement to date of termination.

9. Inspections and Audits

The Owner shall have the right to perform, or cause to be performed, audits of the books and records of the Consultant as necessary to verify the accuracy of Consultant's billings and inspections of all places where Services are undertaken, provided that the Consultant shall not be required to keep such books and records longer than three years after the termination of this Agreement.

10. Documents

a. Consultant acknowledges that any documents prepared or created under this Agreement shall be considered "work for hire" and the exclusive property of Owner. To the extent such work may not be deemed "work for hire" under applicable law, Consultant assigns to Owner all right, title and interest in and to Consultant's copyrights for such work. Consultant agrees to execute and deliver to Owner any assignments or instruments of transfer and take any action that Owner may request for the protection of Owner's rights hereunder, including the protection of the copyrights of Owner related to the Services.

b. Notwithstanding the above, all documents including but not limited to reports, drawings and specifications provided or furnished by Consultant pursuant to this Agreement are instruments of service in respect of the Project, whether or not the Project is completed, and are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any such reuse without written verification or adaptation by Consultant for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Consultant, and Owner shall indemnify and hold harmless Consultant and its officers, employees, agents and subcontractors from all claims, damages, losses and expenses, including attorneys' fees, arising out of or related to such unauthorized reuse.

c. If the Project is sold by Owner prior to the completion of the Project, Owner shall have the right to assign to the transferee all such documents and work product created in connection with the Services for use with the Project.

11. Limitations on Rights and Remedies

Consultant and Owner agree that neither of them shall be responsible or liable to the other for the consequences of events that are beyond the reasonable control of the other party, including but not limited to, interference by third parties, changed conditions, labor strikes, thefts or other losses, or acts of God.

12. No Third Party Rights

The services to be performed by the Consultant under this Agreement are solely for the benefit of the Owner. This Agreement shall not be construed as creating any contractual relationship of any kind between the Consultant and any third party. It is the intent of the Parties that there are no third party beneficiaries of this Agreement. The fact that the Owner may enter into other agreements with third parties that provide the Consultant the authority to observe the work being performed by the third party shall not give rise to any duty or responsibility on the part of the Consultant in favor of such third party.

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13. Miscellaneous

a. This Agreement shall be effective upon its execution by the Consultant and the Owner, subject to the notice to proceed, and shall remain in force until all obligations under this Agreement have been fulfilled, unless sooner terminated as provided herein.

b. All obligations, rights, indemnifications and warranties made in or related to this Agreement or the Services shall survive final payment, completion and acceptance of the Services, and termination or completion of this Agreement.

c. This Agreement shall be construed and enforced for all purposes pursuant to the laws of the state where the Services are performed.

d. The Consultant may not assign or transfer its interest in this Agreement without the prior written consent of the Owner.

e. This Agreement (including all documents incorporated by reference or attached as exhibits hereto) represents the entire agreement between the Consultant and other Owner with respect to the subject matter hereof and supersedes and merges all prior negotiations, representations, discussions, or agreements, either written or oral, with respect to the subject matter hereof.

f. This Agreement may be amended only by written instrument signed by duly authorized representatives of both the Consultant and the Owner.

g. If a provision of this Agreement, or the application thereof to any person or circumstances is rendered or declared illegal for any reason or shall be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law. The parties agree to negotiate in good faith for a proper amendment to this Agreement in the event any provision hereof is declared illegal, invalid, or unenforceable.

14. Notices.

Any notice, statement or demand required or permitted to be given under this Agreement shall be in writing. Notice shall be personally delivered; sent by mail, telegram or receipted overnight delivery service, addressed to the party in the manner and at the address shown below, or at such other address as the party shall have designated in writing to the other party:

To Ryland: _____

To Consultant: _____

IN WITNESS WHEREOF, this Agreement is hereby executed as of the date first above set forth.

CONSULTANT: CAROLINA CONSULTING ENGINEERS, INC

BY: _____

RYLAND: RYLAND HOMES CHARLESTON DIVISION [INSERT NAME OF RYLAND ENTITY]

BY: _____

EXHIBIT A

EXAMPLE OF
ENGINEER'S SCOPE OF SERVICES

I. The Engineer shall render professional services necessary for the development of the Project including the following:

A. Paving Design Phase

1. Compute the final subdivision plat including public streets, lots and reserves based on the approved preliminary plat.

2. Establish the scope of any soil investigations required for design and arrange for such work to be done for the Owner's account.

3. Prepare detailed plans, specifications and contract drawings for the project.

4. Preparation of lot slope layout showing percent slope on individual lots. (Slope based on rear lot elevation to top of curb elevation in front of lot.)

5. Preparation of pollution prevention plan and documents relating to NPDES permits for construction activities.

6. Submit the final plat to the City/County for approval.

7. Obtain necessary approvals from the appropriate city or county agencies for the paving plans.

8. Coordinate the recordation of the subdivision plat(s).

B. Paving Construction Phase Services

1. Assist Owner in soliciting bids for the project, including preparation of notices, invitation, and bidding documents and plans.

2. Assist Owner in the opening and tabulation of bids for construction and consult with Owner as to proper action to be taken based on the engineering considerations involved.

3. Prepare and assist in the execution of formal construction contract documents.

4. Perform control staking for construction to be used by contractor to perform full construction staking.

5. The Engineer will make visits to the site to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents. During visits to the construction site, and on the basis of the Engineer's on-site observations as an experienced and qualified design professional, Engineer will keep the Owner informed of the extent of the progress of the work and advise the Owner of material and substantial defects and deficiencies in the work of contractors that Engineer discovers or are otherwise brought to the Engineer's attention in the course of construction.

6. Consult with and advise the Owner, attend meetings with the Owner, issue all instructions to contractors requested by the Owner.

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7. Review samples, catalog data, schedules, shop drawings, and laboratory, shop, and mill tests of material and equipment, and other data which the contractor submits. This review is for the benefit of the Owner and requires only general conformance with the design concept of the Project and general compliance with the information given by the Contract Documents. It does not relieve contractors of any responsibilities such as dimensions to be confirmed and correlated at the job site, appropriate safety measures to protect workers and the public, or the necessity of constructing a complete and workable facility in accordance with the construction contract documents.

8. Based on on-site observations and review of contractor's application for payment accompanied by date and schedules, prepare monthly and final estimates for payments to such.

9. Conduct, in company with the Owner, a final inspection of the Project for general conformance with the design concept of the Project and general compliance with the construction Contract Documents; approve, in writing, final payments to the contractors.

10. Revise contract drawings, based on as-built information provided by the contractor, to show the work as actually constructed. Furnish a set of prints of these revised drawings to the Owner.

11. On the basis of construction observed by Engineer, issue certification to the Owner that the Project has been completed in substantial accordance with the construction contract documents.

12. Stake final block and lot corners.

13. Thirty (30) days prior to the expiration of the maintenance period required by the County, the Engineer shall request an inspection of the paving improvements in order to release the Owner's maintenance bond. Upon receipt of a listing of any deficiencies in the project paving improvements, the Engineer will then notify the contractor responsible for constructing such paving improvements of said deficiencies and verify that such contractor has corrected the deficiencies to the satisfaction of the County authorities having jurisdiction.

C. Design Phase

1. Prepare preliminary information and one-lines for the project and review with the Owner.

2. Establish the scope of any soil investigations required for design and arrange for such work to be done for the Owner's account.

3. Prepare detailed plans, specifications and contract drawings for the Project. If record drawings are, with the Parties mutual consent, based on information furnished by Contractor to Engineer showing changes made during construction, Engineer shall not be responsible for any errors or omissions based on the information provided by Contractor that is incorporated into the record drawings.

4. Prepare pollution prevention plan and documents relating to NPDES permits for construction activities.

5. Obtain necessary approvals from the appropriate city, county, and state agencies for the plans.

D. Construction Phase Services

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1. Assist the Owner in the advertisement of the project for bid, including preparation and distribution of notices, invitation, and bidding documents and plans. (Cost of advertisement will be paid by Owner)

2. Assist Owner in the opening and tabulation of bids for construction and consult with Owner as to proper action to be taken based on the engineering considerations involved.

3. Prepare and assist in the execution of formal construction contract documents.

4. Perform control staking for construction to be used by contractor to perform full construction staking.

5. The Engineer will make visits to the site to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents. During visits to the construction site, and on the basis of the Engineer's on-site observations as an experienced and qualified design professional, Engineer will keep the Owner informed of the extent of the progress of the work and advise the Owner of material and substantial defects and deficiencies in the work of contractors that Engineer discovers or are otherwise brought to the Engineer's attention in the course of construction.

6. Consult with and advise Owner, attend meetings with Owner, issue all instructions to contractors requested by Owner.

7. Review samples, catalog data, schedules, shop drawings, and laboratory, shop, and mill tests of material and equipment, and other data that the contractor submits. This review is for the benefit of the Owner and requires only general conformance with the design concept of the Project and general compliance with the information given by the Contract Documents. It does not relieve contractor(s) of any responsibilities, such as dimensions to be confirmed and correlated at the job site, appropriate safety measures to protect workers and the public, or the necessity of constructing a complete and workable facility in accordance with the construction Contract Documents.

8. Based on on-site observations and review of contractor's application for payment accompanied by data and schedules, prepare monthly and final estimates for payments to such.

9. Conduct, in company with the Owner, a final inspection of the Project for general conformance with the design concept of the Project and general compliance with the construction Contract Documents; approve, in writing, final payments to the contractor(s).

10. Revise contract drawings based on as-built information provided by the contractor to show the work as actually constructed. Furnish a set of prints of these revised drawings to the Owner.

11. On the basis of construction observed by the Engineer, issue certification to the Owner that the Project has been completed in substantial accordance with the construction Contract Documents.

II. A. <u>Contractor is Responsible for Construction Work</u>

1. Consultant shall make visits to the site at intervals appropriate to the various stages of construction as Consultant deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of the work of the construction contractor (the "Contractor").

2. Consultant shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor or the safety precautions and

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programs incident to the work of the Contractor. Consultant shall not be deemed to guarantee the performance of the Contractor nor be responsible for the acts, errors or omissions or the failure of the Contractor to perform the construction work in accordance with the Contract Documents.

3. Owner shall use its best efforts to include in all construction contracts provisions providing for Contractor indemnification of Owner and Consultant for Contractor's negligence.

B. Construction Progress Payments

Recommendations by the Consultant to the Owner of periodic construction progress payments to the Contractor will be based on the Consultant's knowledge, information and belief from selective observation and sampling that the Work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by the Consultant to ascertain that the Contractor has completed the work in exact accordance with the Contract Documents; that the final work will be acceptable in all respects; that the Consultant has made an examination to ascertain how or for what purpose the Contractor has used the moneys paid; that title to any of the work, materials, or equipment has passed to Owner free and clear of all liens, claims, security interests or encumbrances; or that there are not other matters at issue between Owner or Contractor that affect the amount that should be paid.

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EXHIBIT B

COMPENSATION OF CONSULTANT

SEE ATTACHED PROPOSAL FOR CONSTRUCTION MATERIALS TESTING PREPARED BY CAROLINA CONSULTING ENGINEERS, INC. (PROPOSAL 03-1001 DATED APRIL 8, 2003).

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RYLAND HOMES

SCOPE OF WORK
RYLAND HOMES - CAROLINAS DIVISION
General Conditions To Job Specification

I. SPECIFIC REQUIREMENTS

A. OVERVIEW

Ryland's Responsibilities

1. To provide regular supervision and directions from the Ryland Home-Building Supervisor.

2. To supply the most timely and accurate scheduling information.

3. To provide all Pertinent Documents/Plans/Drawings/Details/Selection Sheets/Change Orders/Community Specifications/Site Plans/As-Builts/etc. as required by each subcontractor to perform and complete his/her job duties.

Subcontractor's Responsibilities

1. It is the responsibility of the Subcontractor to maintain current copies of all licenses and certificates of competency. If necessary copies of these documents are to be provided to Ryland Homes before commencement of the work.

2. It is the responsibility of the Subcontractor to have all required insurance and to provide certificates of insurance to Ryland Homes before commencement of the work. Ryland Homes shall be named as Additional Insured. Minimum notice of cancellation to be thirty (30) days.

3. To conform completely to all labor and material specifications per the plans, Ryland Homes specifications, FHA and VA Minimum Property Standards, and all laws and rules of the Federal, State, County, and City authorities having jurisdiction over all projects. In the event of any discrepancy between the laws, rules and codes governing this section and the specifications of this section, the Subcontractor shall use the greater of the requirements.

4. It is the responsibility of the Subcontractor to verify that the correct material, color, options, elevations and garage hands are being used.

5. Each Subcontractor and Supplier should be aware that the schedule is part of his/her contract. Time is of the essence. Subcontractors are to coordinate scheduling of all County or Municipality inspections relative to their own work with Ryland Homes or Municipality. Where applicable, all re-inspection fees or fees incurred due to inadequate pass/fail ratios will be paid by the Subcontractor. Inspections must be called in within 24 hrs of scheduled completion of contracted work. Each Subcontractor is expected to have the necessary personnel available to meet the schedule and to make up weather delay(s).

6. The Subcontractor must be prepared to provide the Supervisor with a timeline for job completion.

7. The Subcontractor and Supplier are to perform or deliver per Ryland Homes' schedule at minimum five (5) days per week. Without prior approval, no work should be performed in the community after 6:00 pm.

8. The Subcontractor is to coordinate his/her work with all other Subcontractors to allow the completion of all work. If this coordination hinders both parties from meeting the schedule, then a Ryland Supervisor must be notified as soon as possible.

9. Each Subcontractor shall have a qualified job supervisor on the job with responsibility toward his/her trade. Each Subcontractor is to furnish a representative for Subcontractor Meetings as scheduled by Ryland Homes.

10. It is the responsibility of the Subcontractor to inspect the project prior to beginning his/her work. If any problems or differences from the plans exist he/she should notify Ryland Homes so that these items are corrected. Subcontractor will be responsible for any known deficiencies, which are covered over.

11. The Subcontractor must notify the Ryland Supervisor of any missing material. Notification must be made as soon as possible so that materials may be ordered expeditiously.

12. It is each Subcontractor's obligation to check each job to see that the necessary materials to perform his/her work are on the job site. Subcontractor is responsible to carry an adequate supply of material to eliminate any delay in completion and scheduling. The subcontractor is required to immediately inform the Supervisor, prior to commencement of his/her work, of any delay that may result from lack of material, manpower, etc.

13. It is the responsibility of each Subcontractor to properly inspect their own work for quality and completion. All construction punch list items shall be completed within 48 hours of receiving notification.

14. The Subcontractor must notify the Ryland Supervisor of any defects or other conditions that would obstruct him/her from completing his/her work.

15. The Subcontractor must notify the Ryland Supervisor of any material substitutions and approval may be granted only if the quality is of equal or greater in grade level.

16. The Subcontractor must receive written approval from a Ryland Supervisor in the form of a purchase order before beginning any extra work.

17. The Subcontractor must be equipped, during normal business hours, to answer and respond to all phone calls within a two (2) hour period. This can be done through office personnel or by radio or mobile telephone.

18. Once the doors or windows have been installed, it is the responsibility of each Subcontractor to close them during inclement weather in an effort to minimize damage to the home.

19. It is the obligation of each Subcontractor to lock the home after 5:00 p.m. each day. This will include all exterior doors, garage doors, patio doors and windows.

20. **Subcontractors must clean up all Subcontractor related debris prior to leaving the home each day. Each Subcontractor is to broom sweep his or her work area upon completion of their individual job. All debris must be placed in the nearest trash bin or designated area, NOT in the garage. Daily cleaning includes:**

    a. Removing any incidental trash resulting from his/her work on-site and placing in a designated area.

b. Removing and cleaning any excess dirt or mud left on streets adjacent to the site as a result of his/her work. The Subcontractor will be liable to any future charges incurred to complete this work.

21. The Subcontractor shall take every precaution and provide suitable means to protect finished work from damage. Protection of countertops, bathtubs, sinks, toilets, floors, walls, etc. is the responsibility of all Subcontractors.

22. Subcontractor/Supplier must furnish appropriate manuals, written warranties and manufacturer supplied tools for all equipment.

23. Supplier is to furnish samples to sales offices, as required.

24. It is the responsibility of the owner or representative of all Subcontractors and Suppliers to make sure that anyone working on a Ryland Homes job site is aware of these specifications and quality requirements. Copies of these specifications and quality requirements should be distributed to and reviewed with all job supervisors. It is the responsibility of the Subcontractor to train their personnel on these job specifications.

25. Any violation or non-conformance to the above regulations may result in additional cost and/or termination of Subcontractor or Supplier.

26. First violation by any Subcontractors employee may result in a written or verbal warning, second violation can result in a minimum $50 fine, third violation can result in a minimum $100 fine and fourth violation can result in termination from the project.

27. Any Subcontractor of a Subcontractor must adhere to all guidelines referred to within this scope.

28. It is the responsibility of the Subcontractor to own a computer with access to email and the Internet. The subcontractor is also responsible for registering for and applying the Ryland Build Pro online system within its day-to-day operations. Any and all Build Pro questions should be directed to the Purchasing Manager.

B. JOB SITE CONDITIONS

No Drinking/Use of Drugs/Eating/Gambling/Pets

1. Ryland Homes' policy of no drinking of alcoholic beverages will be strictly enforced. Drinking on the job and/or the disposal of alcoholic beverage containers will not be tolerated and are subject to termination.

2. Ryland Homes' policy of no taking or possession of drugs will be strictly enforced. Taking or possessing drugs on the job will not be tolerated and is subject to termination.

3. Under no circumstances shall food be eaten or smoking be permitted in any home after drywall.

4. Gambling on the jobsite will not be tolerated and any offender is subject to termination.

5. No pets (other than seeing-eye dogs) will be allowed on the project site.

No Parking

1. There is no parking on finish grade lots, wet rough graded lots, driveways or sidewalks. Access to homes will be designated by a Ryland Homes representative. Violators can be subject to a fine. Vehicles are to be parked on one side of the street, leaving access to each construction site for deliveries. Whenever possible, do not park in front of occupied units or mailboxes.

2. Parking on driveways is subject to a minimum $200 fine. If approved by the supervisor, vehicles may be allowed on driveways for a short period of time for the sole purpose of loading and unloading tools, equipment, etc. Vehicles that leak fluids are never allowed on concrete and are responsible for major damages caused to the street.

Utilities/Storage

1. No one shall use any utilities except ones specifically provided or specified to them by Ryland Homes. Current homeowners' utilities should never be used without prior approval.

2. If properly informed by the Supervisor, the Subcontractor will be required to supply their own power/electricity when certain job conditions demand.

3. No main water supply is to be turned on by any unauthorized Subcontractor. If authorization to turn on the main water supply is granted by a Ryland Homes representative, the main water supply must be turned off prior to leaving the job site. Failure to do so will make the Subcontractor liable for any subsequent water damage.

4. No main panel box or temporary pole service cover is to be removed or tampered with by an unauthorized Subcontractor under any circumstances. The main power breaker can only be turned on by the electrical Subcontractor or a Ryland Homes representative. All work is to be done on a circuit protected by a ground fault circuit interrupter.

5. Prior to excavation or digging, the Subcontractor is to verify that there is no conflict with location of underground utilities, telephone, cable, electric, sewer, water, gas, landscape, etc. Subcontractor is responsible for having all existing underground utilities located prior to excavation or digging. Subcontractor is responsible for any damages and repairs incurred while digging or excavating.

6. All Subcontractors and Suppliers shall use the site portable toilets exclusively.

7. If Subcontractors require storage for material on the job site or an area for prefabrication, the Subcontractor and the Supervisor shall agree to a location for a temporary storage area. Subcontractors are solely responsible to provide their own controlled storage, i.e., bins, chain link fence, lighting, etc. with approval from the Supervisor. The Subcontractors will be responsible for cleaning the area on a regular basis. When informed by the Supervisor to vacate, the Subcontractors must clean the storage area and remove all containers and debris from the job site.

General

1. No one shall use abusive or foul language, play loud music, or bring children or pets on any job site. Courtesy should be shown to all customers and potential customers.

2. Under no circumstances shall a Subcontractor take direction or make any changes on behalf of a Homebuyer or Salesperson. Only those documents issued by Ryland Homes, Plans, Selection or Change Orders shall be followed. Any communication with a customer is discouraged and all communication should flow through the Supervisor.

3. All deliveries will be placed in a designated area and checked in by a Ryland Homes representative. Suppliers are responsible to unload their own materials. Shipments are to be checked in and signed for by a Ryland Homes representative. If the Supervisor is out of the subdivision at the time of delivery, the ticket should be left in the construction office mailbox and the shipment should be checked within 24 hours.

4. Curbs, walks, drives and streets must be inspected prior to work. Any damage must be reported to Ryland Homes. Damage found later will be charged to the Subcontractor responsible for the damage.

5. Anyone found placing tools or materials on counter tops, vanity tops or finished floors, or removing protective floor or bathtub coverings at any time during construction can be subject to a fine and will be responsible for all damages.

6. The job site must be kept neat and clean at all times. Any scraps, paper, etc., must be picked up daily. Trash from lunch is not to be left on the job site.

7. The interior and exterior of all homes are to be broom clean at all times to allow each trade to do his work efficiently and safely and to make the job site appear more professional to our customers. All Subcontractors are required to leave proper access to the lot and not to leave any open holes, dirt piles, material piles or any other type of condition preventing safe accessibility. Crawl spaces must be free of all loose debris and trash upon completion of your work.

8. Trash dumpsters or designated areas will be provided and all trash or debris must be placed in these dumpsters or areas. All debris must be compacted and boxes broken down before disposal. All Subcontractors and suppliers must adhere to all environmental regulations regarding hazardous waste. The Subcontractor shall be responsible to properly store and dispose of all hazardous wastes and all spills resulting from his/her work immediately.

9. After carpet is laid in a home, all shoes must be removed at the door before entering. If the removal of protective footwear is a conflict with safety standards, Subcontractor will need to wear "shoe booties". Shoes may not be required on vinyl, tile and hardwoods that are covered with protective paper or cardboard unless designated by the Supervisor.

C. QUALITY OF WORK

1. All materials delivered to the job shall be new and in original condition and shall bear the name of the manufacturer and any required grade stamps.

2. It is the obligation of each Subcontractor to protect and respect the material or work of all other Subcontractors preceding him/her.

3. Subcontractor is responsible for the finished quality of his work. If Subcontractor proceeds to install his work over substandard work by others, it then becomes the responsibility of the Subcontractor to correct the substandard work, as well as his/her own, upon Ryland Homes' request.

4. Subcontractor will assume full responsibility for all materials, if applicable, until they are installed and accepted. If a scheduling error has occurred on the part of the Supervisor which delays timely installation, Ryland Homes will not hold the Subcontractor fully responsible for stolen or damaged material. Do not install damaged materials.

D. SAFETY

1. Hard hats must be worn at all times, off the curb, by all workers, managers and delivery personnel. Subcontractor is to provide his/her workers with all OSHA rules and regulations and is responsible for enforcement. Obey Ryland Safety Rules, regardless of lesser rules by OSHA.

2. No children under the age of 18 years old or other unauthorized persons are allowed on the job site at any time.

3. The Subcontractor is responsible for the assurance that their employees are fully trained in safety practices and have a full understanding of hazards involved in their job and surroundings. There should be procedures in place to control or eliminate these hazards.

4. All Subcontractors and their employees should understand the following:

   (a) Unsafe conditions, accidents, injuries and illness, no matter how minor, must be reported to a Ryland Homes Supervisor at once and an incident report filled out.

(b) Subcontractor and each employee shall provide for frequent and regular inspections of the job site, their materials and equipment. A Safety Manager will be designated by Ryland Homes for inspecting and assuring safe worksites for Subcontractors and Suppliers.

(c) No person is expected to undertake a job until they have received instructions on how to properly do it.

(d) No person should undertake a job that appears to be unsafe.

(e) Mechanical safeguards are to be in place and must be kept in place.

5. Subcontractor shall be responsible for maintaining and supervising all safety precautions and programs in connection with their work. Subcontractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, loss or injury to:

(a). All employees on the job site and all other persons who may be affected thereby.

(b) All the work, materials, and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Subcontractors.

6. The Subcontractor is required to operate all electrical equipment on a ground fault interrupted circuit (GFI).

7 Electric Heaters are NOT ALLOWED. (Propane Heaters may be supplied by the job site Supervisor.) Propane Tanks are NOT ALLOWED inside the home. The heaters are not allowed to sit on top of a wood deck floor unless 2 layers of drywall (approximately 2'x 2' larger in width than the heater itself) separate the heater and the sub-floor.

8. The speed limit in all construction areas is 15 miles per hour or as posted, whichever is lower. Driving on non-established roadways or non-established temporary roadways is prohibited.

9. The Subcontractor is to insure that back up alarms are installed and functioning on all cranes, forklifts, back hoes, bulldozers, rollers and other heavy equipment used on the job site. No equipment with tracks is allowed on streets or curbs, they must be off-loaded directly onto the site.

10. Subcontractor is to comply with all Hazardous Communication Material requirements as set forth by OSHA.

11. Subcontractor will provide Ryland Homes and their own work crews with all necessary Material Safety Data Sheets prior to any hazardous material arriving on the job site.

12. Subcontractor will insure that all containers of hazardous materials are labeled with the appropriate hazard and warning precautions. The Manufacturer's label can be used as the main source of hazard information. If the primary label is removed, becomes illegible or if hazardous material is transferred from a labeled container to an unlabeled container for storage (not immediate use), the container must then be labeled with a copy of the chemical MSDS or NFPA generic label. Subcontractors must inform Ryland Homes in writing of the type of alternative labeling they are using.

13. No flammable materials are to be stored on any job site.

14. No alcohol or non-prescription drugs are allowed on any Ryland Homes job site. Anyone found in violation of this is subject to immediate termination.

E. STANDARDS/WARRANTY

1. The Subcontractor shall guarantee all workmanship free of any defects for 13 months commencing with the Buyer Settlement date. Additional or longer warranty periods will apply if detailed by scope of specific trade of which the Subcontractor is working. Should field inspection warrant the acceptance of inferior workmanship, the subcontractor shall assume liability for any future charges incurred in the correction of this work.

2. Per law, "Latent Defects" have a seven (7) and thirteen (13) year statute of limitations, in the states of North Carolina and South Carolina respectively, and will be warranted for that time frame. Latent Defect is defined as "A construction flaw, related to either a product or workmanship, that can not be seen or is not evident until some manifestation brings notice to the flaw".

3. Each Subcontractor is to supply a professional representative who is a qualified knowledgeable tradesman and professionally dressed, for all contacts with Ryland Homes' customers. This person must be instructed not to discuss other Subcontractors workmanship, or the materials and products chosen by Ryland Homes.

4. All pre-settlement and buyer orientation repairs shall be completed within two (2) working days of receiving notification of the repairs. Time is of the essence. Subcontractor will be financially responsible for any costs incurred due to the delay.

5. All non-emergency customer service work is to be completed within 5 working days after notification from the Ryland Homes Warranty Department or the homeowner. Phone calls must be returned, with appointments scheduled, within 48 hours of a request. Subcontractor will be financially responsible for any costs incurred, such as loss of wages to the homeowner, due to the delay.

6. All service work completed must have two signatures that the work was completed, the person who did the work and the customer, and must be returned to the Warranty Department or Construction Office.

7. Subcontractor's failure to complete warranty work and Ryland Homes' prior notification of non-compliance will result in the selection of others to complete the Subcontractor's work. Should Ryland Homes thereby incur any additional costs, such costs will be passed on to the Subcontractor.

8. All Subcontractors must respond within three (3) hours and complete all Emergency warranty work within twenty-four (24) hours of notification.

9. Suppliers are responsible to furnish material for touch-up work on all materials furnished to Ryland Homes. Replacement parts must be kept in stock for delivery within two (2) days of placing the order.

F. PAYMENT

1. Because Ryland Homes wishes to pay in a timely fashion, all invoices must be submitted within ninety (90) days of the completion of the work or delivery of materials, otherwise payments are forfeited. Rejected Invoices due to Subcontractor errors must be resolved within 90 days from the date that the Subcontractor was notified of the error.

2. Ryland Homes reserves the right to hold payment until 100% work completion and applicable county or city inspections are passed.

3. Payment shall be based upon the contract price at the time the home is sold. Upon notification of a price change by the Subcontractor, Ryland Homes may furnish in writing a list of units to be completed at the original contract price. Price changes require at least a 120 day written notification to the Purchasing Manager.

4. Ryland Homes reserves the right to issue joint checks to a subcontractor and his supplier.

5. Subcontractor is responsible to follow all invoicing, verification, and payment procedures.

6. Ryland Homes reserves the right to hold appropriate monies from a subcontractor's payment based on untimely response(s) to warranty work by the Subcontractor. Related moneys may be held until such outstanding or overdue Warranty requests have been honored and satisfied.

7. For any work to be performed, or materials supplied beyond the scope of the contract, there must be a purchase order signed with a fixed dollar amount by a Ryland Homes representative.

8. Ryland Homes reserves the right to debit (back charge) a subcontractor for untimely, incomplete or inferior work. No debits will be issued without prior notification to the Subcontractor. Subcontractors will given proper time to correct &/or respond prior to a back charge. Time is of the essence with regards to response time. Back charges are not encouraged and if necessary are to be for costs only.

9. Subcontractors are expected to coordinate and respect all other Subcontractors' work and work together to eliminate any costs due to deficiencies

10. All items of deficiency or improperly installed items noted on any superintendent or manager punch list, items appearing on any quality assurance or buyer walk-through list, will be the responsibility of each Subcontractor or Supplier to repair or replace at no cost to Ryland Homes.

11. Subcontractors' bids are to include transportation and trip charges. Ryland Homes will not pay any additional trip charges for any reason.

12. Fines can be incurred for not adhering to any rules and regulations stated within this general scope or detailed by scope of specific trade of which the Subcontractor is working at the discretion of a Ryland Homes Representative.

G. INSURANCE REQUIREMENTS – SEE ATTACHED ADDENDUM

Subcontractor — Date 6/20/06

Ryland Homebuilding/Purchasing Manager — Date 6/20/06

RYLAND HOMES

SCOPE OF WORK
RYLAND HOMES - CAROLINAS DIVISION
Engineering & Environmental Services
COST CODE: UNALLOCATED

The Subcontractor or Supplier, (hereinafter referred to as the Subcontractor), will adhere to all City, County, State and Federal building regulations, codes and licensing in all areas where work is to be performed.

This document defines both Ryland Homes' and the Subcontractors' responsibilities in this phase of construction. It is intended as a checklist that will define the work to be done, the level of quality and any timing that is required when performing said work. The Engineering & Environmental Services Subcontractor's work will not be considered complete until all specifications are fully met.

I. Specific Requirements

A. Overview

The Engineering & Environmental Services Subcontractor must supply all labor, materials, supervision, tools and equipment as required. This construction must be done in conformance with all specifications.

B. Specifications

1. The Subcontractor shall provide sub-surface investigations and construction material testing for those specified communities.

2. The Subcontractor shall provide technical assistance and professional services based on need.

3. The Subcontractor shall conform to the schedule set by the foundation Supervisor or builder representative.

4. The Subcontractor shall perform four subsurface investigations per lot, utilizing a hand auger and penrometer, to determine the presence of suitable bearing material.

5. The Subcontractor shall hand auger each corner of the pre-dug footing to a maximum depth of five feet below the bottom of footing or to auger refusal.

6. The Subcontractor shall perform a soil density, field compaction test on fill material used to raise the interior sub-grade level for the slab.

7. The Subcontractor shall provide one test on the compacted material utilizing the sand cone or drive cylinder method. Dry density of the material will be verified using the check plug procedure.

8. The Subcontractor shall provide an on site Soils Verification Report upon completion of investigation and an additional report submitted to the Division office within three working days.

II. Standards/Warranty

The Subcontractor must guarantee that all work is free of defects. If field inspection warrants the acceptance of inferior workmanship, the Subcontractor must assume liability for any future charges incurred for the correction of his/her work.

As a representative of CAROLINA CONSULTING ENGINEERS, INC
(COMPANY NAME)

I have read and fully understand the content of the job scopes and I agree to comply with all of the aforementioned terms. Furthermore, I understand that all of my personnel performing work on Ryland job sites will be given a copy of this job scope and are expected to read, understand and comply with the written responsibilities. Also, they are expected to have the job scope in their possession when on a Ryland job site.

Subcontractor — Date 6/20/06

Ryland Homebuilding/Purchasing Manager — Date 6/20/06

EXHIBIT

THE RYLAND GROUP, INC.
SUBCONTRACTOR AGREEMENT
GENERAL TERMS

SUBCONTRACTOR: AC CONSTRUCTION
Address: 205 EN. JAMES AVE #317, GOOSE CK, SC, 29445
Phone No.: 843-200-2762
Effective Date: 11/14/02

RYLAND DIVISIONS: (insert all divisions for which work is performed under this contract)
443

This Subcontractor Agreement ("Agreement") shall govern the relationship between Subcontractor and THE RYLAND GROUP, INC. ("RYLAND") for any project ("Project") on which Subcontractor provides services to Ryland. The description of any work ("Work") to be performed on any Project, any specifics regarding the Work, rules and regulations regarding the Work and the price ("Price") shall be contained on bid sheets, proposals, drawings, specifications, scopes of work, site plans and other documentation governing the Work (collectively, the "Documents"). All Documents are incorporated herein by reference and made a part hereof. The Documents shall be identified as being subject to this Agreement.

Subcontractor and Ryland agree as follows:

1. (a) Subcontractor shall complete the Work in strict conformity with generally accepted building practices and the Documents. All materials incorporated into the Work shall be new, and the Work shall be completed in a good and workmanlike manner free from defects.

(b) Subcontractor has examined the Documents and is fully aware of their provisions.

(c) Subcontractor represents, warrants and covenants that the Documents are complete and sufficient to enable Subcontractor to determine the Price, to construct the Work and otherwise to fulfill its obligations hereunder. Subcontractor has visited the site and examined the conditions affecting the Work.

(d) Subcontractor has satisfied itself as to the location of all utilities that may affect or interfere with the Work and agrees to protect all utilities and keep them operational at all times.

2. Time is of the essence. Subcontractor shall begin the Work on the date designated by Ryland and shall proceed diligently to complete the Work in accordance with the schedule set by Ryland without delays to Ryland or to other subcontractors.

3. (a) Subcontractor is an independent contractor. Subcontractor is not an employee of Ryland for any purpose.

(b) Subcontractor is responsible for the manner, method and means of accomplishing the Work; hiring, training, disciplining, firing and scheduling its own employees; withholding appropriate amounts for federal, state and local taxes; and providing fringe benefits to employees, including, but not limited to, workers' compensation benefits. Ryland shall not be liable for any such items. Ryland does not have the right to cause Subcontractor to take any disciplinary action against its employees except as specifically provided in this Agreement or to assign work to any of Subcontractor's employees.

(c) Ryland reserves the right to (1) inspect all Work to determine, in good faith, whether the Work has been satisfactorily completed, (2) control access to each Ryland work site, (3) schedule Work in a logical sequence or to avoid disturbances, and (4) stop Work for safety reasons or to insure conformity of end product with contracted for results.

4. (a) Ryland shall pay Subcontractor [weekly] [biweekly] [monthly] [by autopay] so long as Subcontractor is not in default upon written certification by Ryland's Homebuilding Supervisor that the portion of the Work for which payment has been requested has been completed satisfactorily. Payment shall be in accordance with the Price set forth in the Documents. Subcontractor agrees to provide notice of price increases to Ryland for the longer of completion of current backlog or 120 days. Payment for additions or extra work will be made only pursuant to advance written change orders, which may include purchase orders, signed by the purchasing manager of Ryland.

(b) Ryland, in its sole discretion, may retain any payment or portion thereof and/or offset such amounts against future payments due to Subcontractor to assure satisfactory completion of the Work and all service work arising therefrom or to compensate Ryland for any damages Ryland suffers as a result of Subcontractor's default of this Agreement. Any retainage shall be paid to the Subcontractor upon satisfactory final completion of any Work and/or service work applicable for the warranty period.

(c) Subcontractor shall submit to Ryland with Subcontractor's request for payment, executed lien waivers in the form attached as Addendum 1 from Subcontractor and all persons and entities furnishing any labor, equipment, materials or services on the Project in any way concerning or relating to Subcontractor's Work, including, without limitation Subcontractor's employees, suppliers, subcontractors, agents and officers ("Subcontractor's Agents"). Upon completion of the Work on any Project Subcontractor shall deliver to Ryland a Final Waiver and Release of Liens in form attached as Addendum 2 executed by Subcontractor and each of Subcontractor's Agents. If any of Subcontractor's Agents files or maintains any such lien or claim after payment by Ryland to Subcontractor, Subcontractor agrees to cause such lien and claim to be satisfied, removed or discharged at its own expense by bond, payment or otherwise within ten (10) days from the day of filing thereof. Upon Subcontractor's failure to satisfy, remove or discharge the lien or claim, Ryland shall have the right, in addition to all other rights and remedies provided under the Agreement or by law, to cause such lien or claim to be satisfied, removed or discharged by whatever means Ryland chooses, at the entire cost and expense of the Subcontractor, including without limitation, legal fees. To the maximum extent permitted by law, Subcontractor agrees to indemnify, protect and save harmless Ryland from and against any and all such liens and claims and actions brought or judgments rendered thereon, and from and against any and all loss, damages, liability, costs and expenses, including legal fees, which Ryland may sustain or incur in connection therewith.

(d) Subcontractor shall be in default if any demand is made on Ryland for amounts due to Subcontractor's Agents, and Ryland shall have the right to withhold such amounts claimed out of any payments due to the Subcontractor.

5. INSURANCE.

(a) Ryland requires that Subcontractor maintain minimum insurance coverages as detailed on Addendum 3. All insurance policies required shall (i) not contain endorsements that restrict limits of liability to additional insureds; and (ii) have coverage forms acceptable to Ryland. If requested, Subcontractor shall provide certified copies of all such policies to Ryland within 30 days of such request.

(b) Subcontractor shall maintain all required insurance coverage in force until completion of Work. Subcontractor shall maintain Products and Completed Operations Insurance coverage, including required endorsements, in force until expiration of the applicable statute of limitations relating to latent defects in construction of or improvements to real property.

(c) The use of self-insured retentions or deductibles in excess of $5,000 is not allowed. Subcontractor is fully responsible for payment of any self-insured retentions or deductibles.

Subcontractor's Initials

(d) The insurance requirements shall not limit Subcontractor's obligations under this Agreement or Subcontractor's indemnification, warranty obligations or other liability in any manner. The requirements merely represent the minimum amounts of insurance coverage required to be maintained by Subcontractor.

(e) Subcontractor shall provide evidence of the renewal of policies required 30 days in advance of the expiration of any such policy.

(f) If Subcontractor fails to secure and maintain the required insurance, Ryland shall have the right (without any obligation to do so, however) to secure same in the name and for the account of the Subcontractor, in which event the Subcontractor shall pay the costs thereof and furnish upon demand all information that may be required in connection therewith.

6. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SUBCONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND RYLAND, ITS OFFICERS, DIRECTORS, EMPLOYEES, SUPPLIERS AND AGENTS ("RYLAND'S AGENTS") AND THE PROPERTY OF RYLAND, INCLUDING ANY PROJECT COVERED BY THIS AGREEMENT, FROM ANY AND ALL CLAIMS, COSTS, LOSSES, DAMAGES, FINES, PENALTIES, FEES AND OTHER COSTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND DISPUTE RELATED COSTS (COLLECTIVELY, "SUCH COSTS"), TO THE EXTENT THAT SUCH COSTS ARISE OUT OF, ARE INCIDENTAL TO OR RESULT FROM (A) THE PERFORMANCE OF THE WORK OR SUBCONTRACTOR'S FAILURE TO ENFORCE THE DRUG AND ALCOHOL ADDENDUM AND ARE ATTRIBUTABLE TO BODILY INJURY, PERSONAL INJURY, SICKNESS, DISEASE OR DEATH OF ANY PERSON, INCLUDING ANY INJURY OR DEATH OF AN EMPLOYEE OR OWNER OF SUBCONTRACTOR, OR INJURY TO, DEFECT IN, DAMAGE TO OR DESTRUCTION OF THE WORK OR OF ANY PROPERTY; OR (B) SUBCONTRACTOR'S OR SUBCONTRACTOR'S AGENTS FAILURE TO COMPLY WITH THE LEGAL REQUIREMENTS AND (A) OR (B) IS CAUSED BY ANY ACT OR OMISSION OF SUBCONTRACTOR OR ANYONE ACTING FOR, ON BEHALF OF OR THROUGH OR REPRESENTING SUBCONTRACTOR OR SUBCONTRACTOR'S AGENT. SUBCONTRACTOR SHALL SO INDEMNIFY, HOLD HARMLESS AND DEFEND RYLAND AND RYLAND'S AGENTS FROM SUCH COSTS AND EVEN THOUGH IT IS ALLEGED OR FOUND THAT ANY NEGLIGENT ACT OR OMISSION, OR WRONGFUL ACT OF RYLAND OR RYLAND'S AGENTS ALSO CAUSED OR CONTRIBUTED TO SUCH COSTS WITHOUT REGARD TO WHETHER THE EXTENT OF ANY SUCH ALLEGED NEGLIGENT ACT OR OMISSION, OR WRONGFUL ACT OF RYLAND OR RYLAND'S AGENTS IS GREATER OR LESSER THAN ANY ALLEGED NEGLIGENT ACT OR OMISSION, OR WRONGFUL ACT OF SUBCONTRACTOR OR SUBCONTRACTOR'S AGENTS. THIS INDEMNIFICATION IS NOT INTENDED TO COVER THE NEGLIGENCE OR WILLFUL MISCONDUCT OF RYLAND OR RYLAND'S AGENTS. SUBCONTRACTOR AGREES THAT A PORTION OF THE PRICE HAS BEEN PAID TO THE SUBCONTRACTOR AS SPECIFIC CONSIDERATION FOR THE INDEMNIFICATIONS REQUIRED OR GIVEN IN ACCORDANCE WITH THIS AGREEMENT AND THAT ALL INDEMNIFICATIONS, WARRANTIES, GUARANTEES AND OBLIGATIONS GIVEN IN ACCORDANCE WITH THIS AGREEMENT OR THE DOCUMENTS SHALL SURVIVE FINAL PAYMENT, COMPLETION AND ACCEPTANCE OF THE WORK AND TERMINATION OR COMPLETION OF THIS AGREEMENT. UNDER NO CIRCUMSTANCES SHALL THE INSURANCE REQUIREMENTS AND LIMITS SET FORTH IN THIS AGREEMENT BE CONSTRUED TO LIMIT SUBCONTRACTOR'S INDEMNIFICATION OBLIGATIONS OR OTHER LIABILITY HEREUNDER. SUBCONTRACTOR WAIVES ANY RIGHTS OF SUBROGATION AGAINST RYLAND AND SHALL REQUIRE SUBCONTRACTOR'S AGENTS TO WAIVE SUBROGATION RIGHTS AGAINST RYLAND.

7. Subcontractor warrants and represents that it is familiar with and covenants to comply with all laws, regulations and rulings of all federal, state, county and municipal jurisdictions and agencies applicable to this Agreement and to the Work, including, without limitation, OSHA, state occupational safety and health laws, workers' compensation laws, minimum wage and overtime laws, employment discrimination laws, building codes and all regulations and rules promulgated thereunder (collectively, the "Legal Requirements"). Subcontractor shall maintain all records required for compliance with the Legal Requirements and will indemnify and save Ryland harmless from any damage, fine or penalty which may be assessed against Ryland and any attorneys' fees and other costs incurred by Ryland by reason of the breach or alleged breach of this section by Subcontractor or Subcontractor's Agents.

(a) At all times, Subcontractor shall:

(1) conduct, operate and maintain a safe, clean and healthful workplace;

(2) provide to its employees the protective clothing, equipment, training and safety devices necessary to ensure compliance with relevant Legal Requirements; and

(3) abide by the Drug and Alcohol Addendum 4.

(b) To the maximum extent permitted by law, Ryland may withhold from payment to Subcontractor the full amount of any fine, damages or penalty assessed or proposed to be assessed against Ryland by local, state or federal authorities as well as a sum sufficient to cover any attorneys' fees and costs that are incurred by Ryland as a result of Subcontractor's or Subcontractor's Agents failure to comply with applicable Legal Requirements. When any such amounts are actually assessed and paid by Ryland, Ryland will release to Subcontractor any excess withheld.

(c) Either Subcontractor or Ryland may contest responsibility for Subcontractor's or Subcontractor's Agents failure to comply with applicable Legal Requirements. Subcontractor shall reimburse Ryland up to the full amount of any legal costs and expenses that Ryland may incur to contest responsibility which relates to Subcontractor's or Subcontractor's Agents failure or alleged failure to comply with applicable Legal Requirements.

(d) COMPLIANCE WITH APPLICABLE OCCUPATIONAL SAFETY AND HEALTH STANDARDS IS AN EXPRESS CONDITION OF WORK UNDER THIS AGREEMENT.

(e) Addendum 5 applies to all FHA approved Projects.

8. All Work shall be performed by qualified tradespersons. Ryland reserves the right to reject any materials or Work which do not, in Ryland's opinion, comply with the terms of this Agreement. All materials shall be installed in accordance with applicable Legal Requirements and manufacturer's specifications or recommendations.

9. Subcontractor agrees, at its expense, (a) to remedy any defect in the Work due to faulty or unacceptable material or workmanship, (b) to repair or replace any Work not in compliance with the Documents, and (c) to pay any expenses and costs, including legal fees and dispute resolution costs, incurred by Ryland as a result of (i) such defect or (ii) any personal injury or damage to other property caused by Subcontractor or Subcontractor's Agents. Subcontractor shall fully cooperate with Ryland in responding to any warranty claims. All warranties made by Ryland to its homebuyer, whether under the Ryland warranty or applicable law, are, to the extent applicable, deemed made by Subcontractor to Ryland.

10. Subcontractor agrees, at the request of Ryland, to take delivery or assume custody of materials purchased by Ryland from manufacturers. Risk of loss of all material and equipment supplied by, delivered to or under the custody of the Subcontractor shall be upon the Subcontractor until the Work reaches final completion and is accepted by Ryland.

Subcontractor's Initials

11. Subcontractor shall keep the jobsite free of accumulations of trash and debris. At the conclusion of daily work on any housing unit, Subcontractor shall remove all trash and debris caused by its operations and leave the site broom clean.

12. Subcontractor shall abide by all directives which Ryland may publish from time to time.

13. If Subcontractor fails to perform any of its obligations hereunder, Subcontractor shall be in default. If such default is not cured within two (2) days after oral or written notice, then Ryland may pursue any remedy or combination of remedies available at law or equity, including, without limitation: (a) terminating this Agreement; (b) applying any retainage or other amounts due to Subcontractor to cure Subcontractor's defaults or compensate Ryland for damages suffered; (c) taking any action necessary to perform the Work by other means, in which case Subcontractor shall upon demand reimburse Ryland for any amounts expended by Ryland to complete the Work in excess of the Price together with interest from the date paid by Ryland to the date reimbursed by Subcontractor at the rate of eighteen percent (18%) per annum or the maximum amount permitted under applicable law; and (d) pursuing an action for damages and recovery of all costs and expenses, including legal fees, incurred by Ryland in enforcing this Agreement. All remedies shall be cumulative and not exclusive.

14. Ryland may terminate Subcontractor's performance under this Agreement at any time, at the sole option of Ryland and for Ryland's own convenience. In such event, Subcontractor will turn over all equipment and materials ordered, purchased for, or delivered to the Project, and Ryland will pay the Subcontractor any amounts due based on the percentage of completion of the Subcontractor's Work that is in compliance with this Agreement and the Price for Work actually accomplished and equipment and materials supplied to the Project, excluding any payment for unearned profit and overhead. The payments for percentage completion shall be Subcontractor's sole remedy under this Agreement at law or in equity. Subcontractor will facilitate transfer of the Work to Ryland by assigning its rights under subcontracts and purchase orders.

15. Subcontractor shall fully cooperate and coordinate performance of the Work with the work of Ryland and other subcontractors of Ryland. Ryland may suspend or reschedule the Work in its discretion. Subcontractor shall not be entitled to any damages or additional compensation for any delay caused by rescheduling or suspension of the Work other than an equivalent extension of time to perform.

16. Except in the event that either party is sued by someone other than a party hereto or it would be appropriate for complete resolution of the issues for either party to cross-claim against the other party in a legal action not initiated by either of the parties hereto, any dispute arising out of or relating to this Agreement or the breach, termination or validity thereof shall be settled by binding arbitration conducted by a neutral arbitrator. If the parties do not mutually agree on an arbitrator, the arbitrator shall be selected by the American Arbitration Association at its offices closest to the construction site where the dispute arose. The arbitration shall be conducted according to the American Arbitration Association Construction Arbitration Rules unless other procedures are agreed upon by the parties. The parties agree to (a) allow to join into the arbitration proceeding hereunder or (b) join any other arbitration proceeding being conducted by, persons or entities related to the dispute whose involvement may be necessary to completely resolve the dispute, such as (1) a homeowner, (2) Ryland's home warranty corporation, (3) Ryland's or Subcontractor's insurers, and (4) Subcontractor's materialmen or subcontractors. The arbitration shall determine all rights and obligations under this Agreement and the award of the arbitrator shall be final, binding and enforceable. Subcontractor shall include a comparable arbitration provision in all of its subcontracts related to the Work.

17. (a) This Agreement (including all Documents incorporated herein) constitutes the entire Agreement between the parties, supersedes any prior negotiations, agreements or contracts, written or oral, between the parties and may not be amended without the written agreement of both parties.

(b) Subcontractor shall have no right to assign this Agreement or its right to payments hereunder.

(c) All plans, drawings, specifications and the subject matter contained therein and all other information given to Subcontractor in connection with the Work ("Proprietary Materials") shall remain the property of Ryland and shall not be used by or disclosed to anyone by Subcontractor for any purpose other than performance of the Work. Upon completion of the Work, Subcontractor shall return all Proprietary Materials to Ryland.

(d) If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall be construed as if the invalid, illegal or unenforceable portion of the provision had never been contained herein.

(e) This Agreement shall be governed by the laws of the state in which the Work is performed.

IN WITNESS WHEREOF, the parties have executed and ensealed this Agreement as of the date set forth above.

THE RYLAND GROUP, INC.

By: _____ (SEAL)

Name: GAVIN GREEN

Title: PURCH. MGR.

____ (SUBCONTRACTOR)

License # ____

Expiration Date ____

By: _____ (SEAL)

Name: Cleybei X DoAmaral

Title: Owner

Ryland shall retain ____% retention until ____.

SUBCONTRACTOR AGREEMENT

THE RYLAND GROUP, INC.

ADDENDUM 1

RELEASE OF LIENS

OWNER: ____
SUBCONTRACTOR: ____
PROPERTY: ____
CONTRACT DATED: ____
FOR WORK AND MATERIALS FURNISHED THROUGH ____, 200_

The undersigned, which provided services, materials or equipment for the above Property in accordance with a contract with the Subcontractor identified above, for good and valuable consideration received by it, hereby waives and releases all claims for, liens and rights of lien now existing to the extent of $____, which represents full payment received by the undersigned (exclusive of contractual retainage) for work, services, materials and/or equipment furnished in connection with the above Property to the date of this release.

This Release of Liens is executed and delivered simultaneously with or after payment has been received for the work, services, materials and/or equipment performed or provided to the date referenced above.

This Release of Liens may be relied upon by purchasers procuring improvements from Owner, by mortgagees making mortgage loans to said purchasers, and title insurance companies insuring titles for said purchasers and shall run to the benefit of any such persons/entities and their successors and assigns.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal [as the duly authorized officer/partner of the undersigned] this ____ day of ____, 200_.

____ [Corporate or Partnership Name of Subcontractor/supplier]
By: AC Construction
Name: Cleyber & Damaral
Title: Owner

____
[Individual Subcontractor/supplier]

Corporate/Partnership Acknowledgment

STATE OF ____
COUNTY OF ____

On this ____ day of ____, 200_, before me, personally appeared ____, the ____ of ____ who I am satisfied is the person who signed the within Instrument and he/she did acknowledge that he/she signed and delivered this Instrument as the [officer] [partner] above stated, and that the foregoing instrument is the act and deed of said [Corporation] [Partnership].

____
Notary Public

My commission expires: ____

Individual Acknowledgment

STATE OF ____
COUNTY OF ____

On this ____ day of ____, 200_ before me personally appeared ____, who I am satisfied is the person who signed the within instrument and he/she did acknowledge that he/she signed and delivered this Instrument on his/her behalf and that the foregoing Instrument is his/her voluntary act and deed.

____
Notary Public

My commission expires: ____

SUBCONTRACTOR AGREEMENT

THE RYLAND GROUP, INC.

ADDENDUM 2

FINAL WAIVER AND RELEASE OF LIENS

OWNER: ____
SUBCONTRACTOR: ____
PROPERTY: ____
CONTRACT DATED: ____
FOR WORK AND MATERIALS FURNISHED THROUGH ____, 200_

The undersigned for itself, its successors and assigns and its subcontractors and suppliers, which/who has provided materials, work, services and/or equipment in connection with the Project on the Property for the Owner in consideration of the sum of $____ paid [by Owner] which sum represents the final payment due pursuant to the Contract, together with any amendments or change orders related thereto (all of the foregoing being collectively referred to as the "Contract"):

1. Acknowledges that it has been paid in full for all materials, work, services and/or equipment furnished in connection with the performance of the Contract or otherwise in connection with the construction on the Property.

2. Waives and releases any and all construction lien claim(s) and/or Notices(s) of Unpaid Balance and Right to File Lien and the like ("Lien") which Subcontractor has had or currently has, against or upon any portion of the Project or Property for materials, work, services and/or equipment provided.

3. Agrees that if, after the date hereof, there shall be evidence of any lien filed (i) by the undersigned or (ii) any subcontractor or supplier of the undersigned for which, if established, Owner might become liable or which might encumber title to the Property or Project, the undersigned shall promptly discharge same and indemnify, hold harmless and defend Owner against any loss, damages or costs or expenses, including attorneys' fees, associated therewith.

4. The undersigned for itself, its successors and assigns, releases and forever discharges Owner (and its shareholders, directors, officers, employees, and agents) and their successors and assigns, from all claims, demands or causes of action which it has had, currently has, or may in the future have, arising from or in any way relating to the Contract or the Property.

5. Agrees that this Release may be relied upon by purchasers procuring improvements from Owner, by mortgagees making mortgage loans to said purchasers, and title insurance companies insuring titles for said purchasers and shall run to the benefit of any such persons/entities and their successors and assigns.

IN WITNESS WHEREOF, the undersigned has set his hand and seal [as the duly authorized officer/partner of the undersigned] on this ____ day of ____, 200_.

____ [Corporate or Partnership Name of Subcontractor]

By: AC CONSTRUCTION
Name: Clay Ben X DORAMARAI
Title: Owner

____
[Individual Subcontractor]

Corporate/Partnership Acknowledgment

STATE OF ____
COUNTY OF ____

On this ____ day of ____, 200_, before me, personally appeared ____, the ____ of ____, who I am satisfied is the person who signed the within Instrument and he/she did acknowledge that he/she signed and delivered this Instrument as the [officer] [partner] above stated, and that the foregoing instrument is the act and deed of said [Corporation] [Partnership].

_____
Notary Public

My commission expires: _____

Individual Acknowledgment

STATE OF ____
COUNTY OF ____

On this ____ day of ____, 200_ before me personally appeared ____, who I am satisfied is the person who signed the within instrum did acknowledge that he/she signed and delivered this Instrument on his/her behalf and that the foregoing Instrument is his/her voluntary act and d

_____
Notary Public

My commission expires: _____

SUBCONTRACTOR AGREEMENT

THE RYLAND GROUP, INC.

ADDENDUM 3

SUBCONTRACTOR INSURANCE REQUIREMENTS

CERTIFICATES OF INSURANCE, INCLUDING COPIES OF POLICY ENDORSEMENTS LISTED BELOW, EVIDENCING REQUIRED COVERAGE SHALL BE DELIVERED TO RYLAND PRIOR TO THE COMMENCEMENT OF ANY WORK (SAMPLE CERTIFICATES ATTACHED).

PLEASE DIRECT INSURANCE INQUIRIES TO ____ AT ____.

TYPE OF COVERAGE	AMOUNT OF COVERAGE
A. WORKER'S COMPENSATION – and Occupational Disease Coverage in accordance with the laws of the State within whose jurisdiction the work is performed. • Coverage to include all employees, agents, officers, partners, and proprietors/owners of Subcontractor. • The certificate should specify that the insurance company's A.M. Best Rating is at least A-/VIII. • If the services of a leasing company are used to insure its workers' compensation exposure, the following documents must be delivered to Ryland before any work can be performed on a Ryland job site: A. One certificate documenting workers' compensation insurance for Subcontractor's employees on Ryland's job sites covered through the leasing company. B. A second certificate of insurance evidencing that the Subcontractor has purchased its own separate workers' compensation insurance policy for any employees not covered by the leasing company's insurance. It is imperative that this second policy be insured through the same insurance company as the leasing company and that the second policy has a different policy number from that of the leasing company. C. A declaration sheet (the cover page of the insurance policy) from the Subcontractor's own policy. • The workers' compensation policy should be amended to include a 30-day cancellation notice provision in lieu of the standard 10-day cancellation notice provision. • Workers' compensation carrier shall waive subrogation against The Ryland Group, Inc. and its subsidiaries, affiliated and successor companies, officers, directors, agents, servants, employees, divisions, partners and shareholders.	Workers Compensation – Statutory
EMPLOYER'S LIABILITY	Employers Liability: $500,000. Ea. Bodily Injury by Accident $500,000. Bodily Injury by Disease, Ea. Employee
B. COMMERCIAL GENERAL LIABILITY – with the following minimum coverage: • Coverage for all residential building including both attached and unattached projects • Occurrence form not modified • Subsidence, no endorsements limiting coverage • Contractual liability coverage included • The Certificates of Insurance must state that "The Ryland Group, Inc. and its subsidiaries, affiliated and successor companies, officers, directors, agents, servants, employees, divisions, partners and shareholders" are named as Additional Insureds on the	$1,000,000. General Aggregate Limit (other than Products/Completed Operations) $1,000,000. Products/Completed Operations Aggregate Limit $1,000,000. Bodily Injury (Ea. Occurrence $1,000,000. Property Damage (Ea. Occurrence) $1,000,000. Personal Injury & Advertising Injury Limit $ 50,000. Fire Damage Limit (any one Fire)

Subcontractor's Initials

Subcontractors' general liability insurance policy. • The additional insured status must be provided only on a CG 2010 (11/85) Additional Insured Endorsement or on a CG 2026 (11/85) Additional Insured Endorsement, or their equivalent. • A copy of the correct Additional Insured Endorsement, as described above, must be attached to the certificate of insurance. • The Additional Insured status will be provided to Ryland on a blanket basis for all jobs performed for Ryland (not project specific). • The general liability insurance provided must be primary over Ryland's insurance and Ryland's insurance should not be called upon to contribute toward the payment of any claim arising out of the Subcontractor's work. The Certificate of Insurance must clearly state that the Subcontractor's insurance is "primary and non-contributory" over Ryland's insurance. • The Certificate of Insurance should specifically state that the Subcontractor's insurance company's A.M. Best Rating is at least A-/VIII. • The general liability policy should be amended to include a 30-day cancellation notice provision in lieu of the standard 10-day cancellation notice provision. The certificate of insurance should so state. There shall be no endorsements limiting coverage for explosion, collapse, or underground damage, Blanket contractual liability, or Broad Form property damage coverage. There shall be no limitation on the limits available to the additional insureds. Nor shall there be any limitation or exclusions as respects the additional insured coverage for claims involving Bodily Injury of a Subcontractor's employees or of any other third party.	
C. <u>BUSINESS AUTO LIABILITY – covering any automobile, including hired and non-owned autos</u> • The certificates of insurance must evidence that "The Ryland Group, Inc. and its subsidiaries, affiliated and successor companies and their officers, directors, agents, servants, employees, divisions, partners and shareholders' are named as Additional Insureds on the auto liability insurance policy. • The certificate of insurance must reflect that the auto liability insurance insures any vehicle driven by the Subcontractor and its employees. • The certificate of insurance must specify that the Subcontractor's insurance company's A.M. Best rating is at least A-/VIII. • The Subcontractor's auto liability policy should be amended to include a 30-day cancellation notice provision in lieu of the standard 10-day cancellation notice provision.	$500,000. Combined Single Limit

CD
Subcontractor's Initials

SUBCONTRACTOR AGREEMENT

THE RYLAND GROUP, INC.

ADDENDUM 4

DRUG AND ALCOHOL ADDENDUM

FOR THE SAFETY AND WELL BEING OF ALL EMPLOYEES ON RYLAND CONSTRUCTION SITES, RYLAND HAS A POLICY THAT NEITHER CONTROLLED SUBSTANCES NOR ALCOHOL SHALL BE DISTRIBUTED, POSSESSED OR USED ON RYLAND CONSTRUCTION SITES. ANYONE FOUND TO BE IMPAIRED BY OR IN POSSESSION OF CONTROLLED SUBSTANCES OR ALCOHOL MUST IMMEDIATELY LEAVE THE RYLAND CONSTRUCTION SITE OR PROPERTY. To help ensure the safety of all workers, including a worker that may be impaired, Subcontractor agrees to adhere to the following procedures:

(1) If a Subcontractor suspects that one of Subcontractor's Agents is impaired by controlled substances or alcohol, Subcontractor is required to investigate and make inquiries of co-workers on the job site to confirm the suspected impairment. If Ryland becomes aware that one of Subcontractor's Agents has been impaired on the job, Ryland shall have the right, but not the duty, to request that Subcontractor's foreperson investigate. When such a request is given, orally or in writing, Subcontractor's foreperson shall immediately proceed with such investigation and shall thereafter promptly report the results to the Ryland Supervisor. Ryland may send formal written notification to the Subcontractor regarding any such situation, a copy of which will be placed in the Subcontractor's file.

(2) Any worker who is impaired or reasonably believed to be impaired must be immediately removed from the job site. The Subcontractor must provide transportation for the impaired worker and not allow the impaired worker to drive him/herself from the job and endanger the public.

(3) A repeated violation by Subcontractor or any of Subcontractor's Agents of this policy will be cause for immediate termination of this Agreement by Ryland, in Ryland's sole discretion.

Subcontractor's Signature 11-14-02 Date

SUBCONTRACTOR AGREEMENT

THE RYLAND GROUP, INC.

ADDENDUM 5

FOR ALL FHA APPROVED PROJECTS

During the performance of this Agreement, the Subcontractor agrees as follows:

(1) The Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subcontractor agrees to post in conspicuous places, available to employees, and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The Subcontractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Subcontractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Subcontractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Subcontractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Subcontractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended, in whole or in part, and the Subcontractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Subcontractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor of Subcontractor. The Subcontractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* that in the event a Subcontractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor of Subcontractor as a result of such direction by the administering agency, the Subcontractor may request the United States to enter into such litigation to protect the interests of the United States.

THE RYLAND GROUP, INC.

RULES AND REGULATIONS FOR SUBCONTRACTORS

THIS DOCUMENT IS A PART OF AND INCORPORATED INTO THE SUBCONTRACTOR AGREEMENT DATED 11-14-02 BY AND BETWEEN THE RYLAND GROUP, INC. AND AC CONSTRUCTION

The following rules and regulations apply to Subcontractors working on Ryland Homes Projects. The term "SUBCONTRACTOR" includes all of Subcontractor's Agents.

I. *General*

A. License. At the request of Ryland, SUBCONTRACTOR shall submit evidence of city or county business licenses.

B. No Substitutions. There shall be no substitutions of materials or equipment specifications without written approval of Ryland's purchasing department. This policy shall include "or equal" determination.

C. Operation of Vehicles. The operation of vehicles in or about the Project Site by SUBCONTRACTOR (including material delivery vehicles operated by material suppliers of SUBCONTRACTOR) shall be as follows: (1) Use only the designated entries to enter the Project Site; (2) Use only established roadways and temporary roadways as authorized by RYLAND; (3) No crossing of curbs or sidewalks without prior approval by RYLAND; and (4) Observe speed limit of 15 miles per hour within the entire Project Site. SUBCONTRACTORS shall immediately reimburse RYLAND for any damage to curbs, sidewalks, landscaping, or concrete surfaces or any other damage to the Project Site caused by SUBCONTRACTOR.

D. Parking. SUBCONTRACTOR shall provide necessary parking areas for all workers in suitable locations as approved by RYLAND. In the event RYLAND has to tow vehicles owned by SUBCONTRACTOR, or SUBCONTRACTOR'S Agents, to maintain ingress and egress to the Project Site, all such towing charges will be backcharged to SUBCONTRACTOR. There shall be no parking in driveways, garages or carports of the housing units (whether completed or being constructed) or on sidewalks within the Project Site. RYLAND shall have the right to fine or backcharge SUBCONTRACTOR $100.00 per vehicle per day for violation of parking restrictions.

E. NO UNAUTHORIZED PERSONS. THE JOB SITE IS AN EXTREMELY DANGEROUS AREA, AND NO CHILDREN OR OTHER UNAUTHORIZED PERSONS ARE ALLOWED ON THE JOB SITE AT ANY TIME.

F. Toilet Facilities. RYLAND will provide portable toilet facilities within the Project for the use of SUBCONTRACTOR. SUBCONTRACTOR is not permitted to use the toilet facilities or bathrooms of any housing unit (completed or being constructed) within in the Project Site. RYLAND shall have the right to fine or backcharge SUBCONTRACTOR $100.00 per occurrence for any violation of these restrictions.

G. Food and Beverages. No food or drink shall be allowed within a completed housing unit. SUBCONTRACTOR shall be responsible for the cleanup of trash generated by any eating and drinking within the Project Site.

H. Counter-Tops. None of the finished counter-tops to be delivered with each housing unit in the Project Site shall be used for the placement of tools or for use as a work surface. The placing of tools or using of such counter-tops as a work surface by SUBCONTRACTOR shall give RYLAND the right to fine or backcharge SUBCONTRACTOR. $100.00 per occurrence in addition to any costs incurred to repair or replace any damaged counter-top.

I. Pets. No pets (other than seeing-eye dogs) shall be brought to the Project Site by SUBCONTRACTOR. RYLAND shall have the right to fine or backcharge SUBCONTRACTOR $100.00 per occurrence for violations of the Pet policy.

J. Prior Work. SUBCONTRACTORS should inspect all previous Subcontractors' work and report any discrepancies that they notice to RYLAND'S Project Superintendent. DO NOT KNOWINGLY CONSTRUCT OVER FAULTY WORK.

K. Storage. If SUBCONTRACTORS require storage for material on the job site or an area for prefabrication, SUBCONTRACTOR and RYLAND'S Project Superintendent shall agree to a location for a storage area. SUBCONTRACTORS are solely responsible to provide their own controlled storage, i.e., bins, chain link fence, lighting, etc. SUBCONTRACTORS are responsible for cleaning the area on a regular basis. After the job is complete, SUBCONTRACTORS must clean the storage area and remove all containers and debris from the job site.

CA
Subcontractor's Initials

THE RYLAND GROUP, INC.

RULES AND REGULATIONS FOR SUBCONTRACTORS

THIS DOCUMENT IS A PART OF AND INCORPORATED INTO THE SUBCONTRACTOR AGREEMENT DATED 11-14-02 BY AND BETWEEN THE RYLAND GROUP, INC. AND AC CONSTRUCTION

II. *Scheduling:*

A. SUBCONTRACTORS must maintain a minimum schedule of one (1) unit per day or production rate as agreed upon by SUBCONTRACTOR and RYLAND'S Project Superintendent.

B. RYLAND'S Project Superintendent will give SUBCONTRACTOR a production schedule. SUBCONTRACTOR will be required to meet the production schedule even if it requires working six (6) days per week.

C. Commencement of work by SUBCONTRACTOR on any house or garage unit is indicative of SUBCONTRACTOR'S agreement to complete such building or unit of work in its entirety.

III. *Warranty:*

A. During the one-year warranty, SUBCONTRACTORS must respond to all customer service requests within 24 hours of receipt of request and must complete service within seven (7) calendar days of receipt of request.

B. Emergencies shall be corrected immediately. The following conditions are considered as customer service emergencies requiring immediate action and service may be requested during non-working hours:

1. Total stoppage of the complete plumbing system within a unit.

2. A water leak which requires the main water service to be shut off to avoid serious damage to the building and/or furnishings.

3. Complete loss of heat (when evening temperatures fall below 60 degrees). Complete loss of air conditioning in climate zones with temperatures greater than 90 degrees.

4. Total loss of electrical service.

5. Water penetration into the unit, threatening severe interior damage.

C. SUBCONTRACTORS must utilize adequate preconditionary measures to protect both the work of other subcontractors, as well as the homeowners' personal belongings. In the event that the SUBCONTRACTOR causes damage to other work in the home or the personal belongings of that homeowner, RYLAND will repair or provide monetary compensation for damaged item(s) to the homeowner at the expense of the SUBCONTRACTOR.

D. SUBCONTRACTOR will provide neat, clean warranty service personnel for work appointments who will act professionally by appearing at the time of the scheduled appointment with the homeowner, and will treat both the homeowner and the home with respect.

E. After one (1) attempt to correct a warranty service issue, if the SUBCONTRACTOR fails to perform work satisfactorily, RYLAND has the right to take necessary steps to ensure the quality of warranty work at the expense of the SUBCONTRACTOR.

F. All areas in which warranty service work is performed shall be free from debris, dirt, stains, drips, droppings, and any other spills which may result from warranty service work. RYLAND will backcharge without notice if RYLAND must clean a residence because of SUBCONTRACTOR'S failure to leave the work area clean.

Subcontractor's Initials

THE RYLAND GROUP, INC.

RULES AND REGULATIONS FOR SUBCONTRACTORS

THIS DOCUMENT IS A PART OF AND INCORPORATED INTO THE SUBCONTRACTOR AGREEMENT DATED 11-14-02 BY AND BETWEEN THE RYLAND GROUP, INC. AND AC CONSTRUCTION

IV. *Models only:*

A. Models will be constructed on an accelerated schedule. Failure of SUBCONTRACTORS to meet this schedule will be grounds for termination of contract of production work. Due to uncertain economic conditions, Phases may be delayed. SUBCONTRACTORS will not hold RYLAND responsible for extra costs which may be incurred as a result of Phases being delayed. Additional work may be required due to model changes or out-of-sequence installations to expedite construction of models.

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Subcontractor's Initials

RYLAND HOMES

SCOPE OF WORK
RYLAND HOMES - CAROLINAS DIVISION
General Conditions To Job Specification

I. SPECIFIC REQUIREMENTS

A. OVERVIEW

Ryland's Responsibilities

1. To provide regular supervision and directions from the Ryland Home-Building Supervisor.

2. To supply the most timely and accurate scheduling information.

3. To provide all Pertinent Documents/Plans/Drawings/Details/Selection Sheets/Change Orders/Community Specifications/Site Plans/As-Builts/etc. as required by each subcontractor to perform and complete his/her job duties.

Subcontractor's Responsibilities

1. It is the responsibility of the Subcontractor to maintain current copies of all licenses and certificates of competency. If necessary copies of these documents are to be provided to Ryland Homes before commencement of the work.

2. It is the responsibility of the Subcontractor to have all required insurance and to provide certificates of insurance to Ryland Homes before commencement of the work. Ryland Homes shall be named as Additional Insured. Minimum notice of cancellation to be thirty (30) days.

3. To conform completely to all labor and material specifications per the plans, Ryland Homes specifications, FHA and VA Minimum Property Standards, and all laws and rules of the Federal, State, County, and City authorities having jurisdiction over all projects. In the event of any discrepancy between the laws, rules and codes governing this section and the specifications of this section, the Subcontractor shall use the greater of the requirements.

4. It is the responsibility of the Subcontractor to verify that the correct material, color, options, elevations and garage hands are being used.

5. Each Subcontractor and Supplier should be aware that the schedule is part of his/her contract. Time is of the essence. Subcontractors are to coordinate scheduling of all County or Municipality inspections relative to their own work with Ryland Homes or Municipality. Where applicable, all re-inspection fees or fees incurred due to inadequate pass/fail ratios will be paid by the Subcontractor. Inspections must be called in within 24 hrs of scheduled completion of contracted work. Each Subcontractor is expected to have the necessary personnel available to meet the schedule and to make up weather delay(s).

6. The Subcontractor must be prepared to provide the Supervisor with a timeline for job completion.

7. The Subcontractor and Supplier are to perform or deliver per Ryland Homes' schedule at minimum five (5) days per week. Without prior approval, no work should be performed in the community after 6:00 pm.

8. The Subcontractor is to coordinate his/her work with all other Subcontractors to allow the completion of all work. If this coordination hinders both parties from meeting the schedule, then a Ryland Supervisor must be notified as soon as possible.

9. Each Subcontractor shall have a qualified job supervisor on the job with responsibility toward his/her trade. Each Subcontractor is to furnish a representative for Subcontractor Meetings as scheduled by Ryland Homes.

10. It is the responsibility of the Subcontractor to inspect the project prior to beginning his/her work. If any problems or differences from the plans exist he/she should notify Ryland Homes so that these items are corrected. Subcontractor will be responsible for any known deficiencies, which are covered over.

11. The Subcontractor must notify the Ryland Supervisor of any missing material. Notification must be made as soon as possible so that materials may be ordered expeditiously.

12. It is each Subcontractor's obligation to check each job to see that the necessary materials to perform his/her work are on the job site. Subcontractor is responsible to carry an adequate supply of material to eliminate any delay in completion and scheduling. The subcontractor is required to immediately inform the Supervisor, prior to commencement of his/her work, of any delay that may result from lack of material, manpower, etc.

13. It is the responsibility of each Subcontractor to properly inspect their own work for quality and completion. All construction punch list items shall be completed within 48 hours of receiving notification.

14. The Subcontractor must notify the Ryland Supervisor of any defects or other conditions that would obstruct him/her from completing his/her work.

15. The Subcontractor must notify the Ryland Supervisor of any material substitutions and approval may be granted only if the quality is of equal or greater in grade level.

16. The Subcontractor must receive written approval from a Ryland Supervisor in the form of a purchase order before beginning any extra work.

17. The Subcontractor must be equipped, during normal business hours, to answer and respond to all phone calls within a two (2) hour period. This can be done through office personnel or by radio or mobile telephone.

18. Once the doors or windows have been installed, it is the responsibility of each Subcontractor to close them during inclement weather in an effort to minimize damage to the home.

19. It is the obligation of each Subcontractor to lock the home after 5:00 p.m. each day. This will include all exterior doors, garage doors, patio doors and windows.

20. Subcontractors must clean up all Subcontractor related debris prior to leaving the home each day. Each Subcontractor is to broom sweep his or her work area upon completion of their individual job. All debris must be placed in the nearest trash bin or designated area, NOT in the garage. Daily cleaning includes:

    a. Removing any incidental trash resulting from his/her work on-site and placing in a designated area.

    b. Removing and cleaning any excess dirt or mud left on streets adjacent to the site as a result of his/her work. The Subcontractor will be liable to any future charges incurred to complete this work.

21. The Subcontractor shall take every precaution and provide suitable means to protect finished work from damage. Protection of countertops, bathtubs, sinks, toilets, floors, walls, etc. is the responsibility of all Subcontractors.

22. Subcontractor/Suppli[illegible]st furnish appropriate manuals, written wa[illegible]s and manufacturer supplied tools for all equipment.

23. Supplier is to furnish samples to sales offices, as required.

24. It is the responsibility of the owner or representative of all Subcontractors and Suppliers to make sure that anyone working on a Ryland Homes job site is aware of these specifications and quality requirements. Copies of these specifications and quality requirements should be distributed to and reviewed with all job supervisors. It is the responsibility of the Subcontractor to train their personnel on these job specifications.

25. Any violation or non-conformance to the above regulations may result in additional cost and/or termination of Subcontractor or Supplier.

26. First violation by any Subcontractors employee may result in a written or verbal warning, second violation can result in a minimum $50 fine, third violation can result in a minimum $100 fine and fourth violation can result in termination from the project.

27. Any Subcontractor of a Subcontractor must adhere to all guidelines referred to within this scope.

28. It is the responsibility of the Subcontractor to own a computer with access to email and the Internet. The subcontractor is also responsible for registering for and applying the Ryland Build Pro online system within its day-to-day operations. Any and all Build Pro questions should be directed to the Purchasing Manager.

B. JOB SITE CONDITIONS

<u>No Drinking/Use of Drugs/Eating/Gambling/Pets</u>

1. Ryland Homes' policy of no drinking of alcoholic beverages will be strictly enforced. Drinking on the job and/or the disposal of alcoholic beverage containers will not be tolerated and are subject to termination.

2. Ryland Homes' policy of no taking or possession of drugs will be strictly enforced. Taking or possessing drugs on the job will not be tolerated and is subject to termination.

3. Under no circumstances shall food be eaten or smoking be permitted in any home after drywall.

4. Gambling on the jobsite will not be tolerated and any offender is subject to termination.

5. No pets (other than seeing-eye dogs) will be allowed on the project site.

<u>No Parking</u>

1. There is no parking on finish grade lots, wet rough graded lots, driveways or sidewalks. Access to homes will be designated by a Ryland Homes representative. Violators can be subject to a fine. Vehicles are to be parked on one side of the street, leaving access to each construction site for deliveries. Whenever possible, do not park in front of occupied units or mailboxes.

2. Parking on driveways is subject to a minimum $200 fine. If approved by the supervisor, vehicles may be allowed on driveways for a short period of time for the sole purpose of loading and unloading tools, equipment, etc. Vehicles that leak fluids are never allowed on concrete and are responsible for major damages caused to the street.

<u>Utilities/Storage</u>

1. No one shall use any utilities except ones specifically provided or specified to them by Ryland Homes. Current homeowners' utilities should never be used without prior approval.

2. If properly informed by the Supervisor, the Subcontractor will be required to supply their own power/electricity when certain job conditions demand.

CXA

3. No main water supply be turned on by any unauthorized Subcontr f authorization to turn on the main water supply is granted by a Ryland Homes representative, the main water supply must be turned off prior to leaving the job site. Failure to do so will make the Subcontractor liable for any subsequent water damage.

4. No main panel box or temporary pole service cover is to be removed or tampered with by an unauthorized Subcontractor under any circumstances. The main power breaker can only be turned on by the electrical Subcontractor or a Ryland Homes representative. All work is to be done on a circuit protected by a ground fault circuit interrupter.

5. Prior to excavation or digging, the Subcontractor is to verify that there is no conflict with location of underground utilities, telephone, cable, electric, sewer, water, gas, landscape, etc. Subcontractor is responsible for having all existing underground utilities located prior to excavation or digging. Subcontractor is responsible for any damages and repairs incurred while digging or excavating.

6. All Subcontractors and Suppliers shall use the site portable toilets exclusively.

7. If Subcontractors require storage for material on the job site or an area for prefabrication, the Subcontractor and the Supervisor shall agree to a location for a temporary storage area. Subcontractors are solely responsible to provide their own controlled storage, ie., bins, chain link fence, lighting, etc. with approval from the Supervisor. The Subcontractors will be responsible for cleaning the area on a regular basis. When informed by the Supervisor to vacate, the Subcontractors must clean the storage area and remove all containers and debris from the job site.

General

1. No one shall use abusive or foul language, play loud music, or bring children or pets on any job site. Courtesy should be shown to all customers and potential customers.

2. Under no circumstances shall a Subcontractor take direction or make any changes on behalf of a Homebuyer or Salesperson. Only those documents issued by Ryland Homes, Plans, Selection or Change Orders shall be followed. Any communication with a customer is discouraged and all communication should flow through the Supervisor.

3. All deliveries will be placed in a designated area and checked in by a Ryland Homes representative. Suppliers are responsible to unload their own materials. Shipments are to be checked in and signed for by a Ryland Homes representative. If the Supervisor is out of the subdivision at the time of delivery, the ticket should be left in the construction office mailbox and the shipment should be checked within 24 hours.

4. Curbs, walks, drives and streets must be inspected prior to work. Any damage must be reported to Ryland Homes. Damage found later will be charged to the Subcontractor responsible for the damage.

5. Anyone found placing tools or materials on counter tops, vanity tops or finished floors, or removing protective floor or bathtub coverings at any time during construction can be subject to a fine and will be responsible for all damages..

6. The job site must be kept neat and clean at all times. Any scraps, paper, etc., must be picked up daily. Trash from lunch is not to be left on the job site.

7. The interior and exterior of all homes are to be broom clean at all times to allow each trade to do his work efficiently and safely and to make the job site appear more professional to our customers. All Subcontractors are required to leave proper access to the lot and not to leave any open holes, dirt piles, material piles or any other type of condition preventing safe accessibility. Crawl spaces must be free of all loose debris and trash upon completion of your work.

8. Trash dumpsters or designated areas will be provided and all trash or debris must be placed in these dumpsters or areas. All debris must be compacted and boxes broken down before disposal. All Subcontractors and suppliers must adhere to all environmental regulations regarding hazardous waste. The Subcontractor shall be responsible to properly store and dispose of all hazardous wastes and all spills resulting from his/her work immediately.

9. After carpet is laid [illegible] home, all shoes must be removed at the d[illegible] before entering. If the removal of protective footwear is a conflict with safety standards, Subcontractor will need to wear "shoe booties". Shoes may not be required on vinyl, tile and hardwoods that are covered with protective paper or cardboard unless designated by the Supervisor.

C. QUALITY OF WORK

1. All materials delivered to the job shall be new and in original condition and shall bear the name of the manufacturer and any required grade stamps.

2. It is the obligation of each Subcontractor to protect and respect the material or work of all other Subcontractors preceding him/her.

3. Subcontractor is responsible for the finished quality of his work. If Subcontractor proceeds to install his work over substandard work by others, it then becomes the responsibility of the Subcontractor to correct the substandard work, as well as his/her own, upon Ryland Homes' request.

4. Subcontractor will assume full responsibility for all materials, if applicable, until they are installed and accepted. If a scheduling error has occurred on the part of the Supervisor which delays timely installation, Ryland Homes will not hold the Subcontractor fully responsible for stolen or damaged material. Do not install damaged materials.

D. SAFETY

1. Hard hats must be worn at all times, off the curb, by all workers, managers and delivery personnel. Subcontractor is to provide his/her workers with all OSHA rules and regulations and is responsible for enforcement. Obey Ryland Safety Rules, regardless of lesser rules by OSHA.

2. No children under the age of 18 years old or other unauthorized persons are allowed on the job site at any time.

3. The Subcontractor is responsible for the assurance that their employees are fully trained in safety practices and have a full understanding of hazards involved in their job and surroundings. There should be procedures in place to control or eliminate these hazards.

4. All Subcontractors and their employees should understand the following:

   (a) Unsafe conditions, accidents, injuries and illness, no matter how minor, must be reported to a Ryland Homes Supervisor at once and an accident report filled out.

   (b) Subcontractor and each employee shall provide for frequent and regular inspections of the job site, their materials and equipment. A Safety Manager will be designated by Ryland Homes for inspecting and assuring safe worksites for Subcontractors and Suppliers.

   (c) No person is expected to undertake a job until they have received instructions on how to properly do it.

   (d) No person should undertake a job that appears to be unsafe.

   (e) Mechanical safeguards are to be in place and must be kept in place.

5. Subcontractor shall be responsible for maintaining and supervising all safety precautions and programs in connection with their work. Subcontractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, loss or injury to:

   (a) All employees on the job site and all other persons who may be affected thereby.

   (b) All the work, materials, and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Subcontractors.

6. The Subcontractor is required to operate all electrical equipment on a ground fault interrupted circuit (GFI).

7. Electric Heaters are NOT ALLOWED. (Propane Heaters may be supplied by the job site Supervisor.) Propane Tanks are NOT ALLOWED inside the home. The heaters are not allowed to sit on top of a wood deck floor unless 2 layers of drywall (approximately 2'x 2' larger in width than the heater itself) separate the heater and the sub-floor.

8. The speed limit in all construction areas is 15 miles per hour or as posted, whichever is lower. Driving on non-established roadways or non-established temporary roadways is prohibited.

9. The Subcontractor is to insure that back up alarms are installed and functioning on all cranes, forklifts, back hoes, bulldozers, rollers and other heavy equipment used on the job site. No equipment with tracks is allowed on streets or curbs, they must be off-loaded directly onto the site.

10. Subcontractor is to comply with all Hazardous Communication Material requirements as set forth by OSHA.

11. Subcontractor will provide Ryland Homes and their own work crews with all necessary Material Safety Data Sheets prior to any hazardous material arriving on the job site.

12. Subcontractor will insure that all containers of hazardous materials are labeled with the appropriate hazard and warning precautions. The Manufacturer's label can be used as the main source of hazard information. If the primary label is removed, becomes illegible or if hazardous material is transferred from a labeled container to an unlabeled container for storage (not immediate use), the container must then be labeled with a copy of the chemical MSDS or NFPA generic label. Subcontractors must inform Ryland Homes in writing of the type of alternative labeling they are using.

13. No flammable materials are to be stored on any job site.

14. No alcohol or non-prescription drugs are allowed on any Ryland Homes job site. Anyone found in violation of this is subject to immediate termination.

E. STANDARDS/WARRANTY

1. The Subcontractor shall guarantee all workmanship free of any defects for 13 months commencing with the Buyer Settlement date. Additional or longer warranty periods will apply if detailed by scope of specific trade of which the Subcontractor is working. Should field inspection warrant the acceptance of inferior workmanship, the subcontractor shall assume liability for any future charges incurred in the correction of this work.

2. Per law, "Latent Defects" have a seven (7) and thirteen (13) year statute of limitations, in the states of North Carolina and South Carolina respectively, and will be warranted for that time frame. Latent Defect is defined as "A construction flaw, related to either a product or workmanship, that can not be seen or is not evident until some manifestation brings notice to the flaw".

3. Each Subcontractor is to supply a professional representative who is a qualified knowledgeable tradesman and professionally dressed, for all contacts with Ryland Homes' customers. This person must be instructed not to discuss other Subcontractors workmanship, or the materials and products chosen by Ryland Homes.

4. All pre-settlement and buyer orientation repairs shall be completed within two (2) working days of receiving notification of the repairs. Time is of the essence. Subcontractor will be financially responsible for any costs incurred due to the delay.

5. All non-emergency customer service work is to be completed within 5 working days after notification from the Ryland Homes Warranty Department or the homeowner. Phone calls must be returned, with appointments scheduled, within 48 hours of a request. Subcontractor will be financially responsible for any costs incurred, such as loss of wages to the homeowner, due to the delay.

6. All service work completed must have two signatures that the work was completed, the person who did the work and the customer, and must be returned to the Warranty Department or Construction Office.

7. Subcontractor's failur(mplete warranty work and Ryland Homes' (otification of non-compliance will result in the selection of others to complete the Subcontractor's work. Should Ryland Homes thereby incur any additional costs, such costs will be passed on to the Subcontractor.

8. All Subcontractors must respond within three (3) hours and complete all Emergency warranty work within twenty-four (24) hours of notification.

9. Suppliers are responsible to furnish material for touch-up work on all materials furnished to Ryland Homes. Replacement parts must be kept in stock for delivery within two (2) days of placing the order.

F. PAYMENT

1. Because Ryland Homes wishes to pay in a timely fashion, all invoices must be submitted within ninety (90) days of the completion of the work or delivery of materials, otherwise payments are forfeited. Rejected invoices due to Subcontractor errors must be resolved within 90 days from the date that the Subcontractor was notified of the error.

2. Ryland Homes reserves the right to hold payment until 100% work completion and applicable county or city inspections are passed.

3. Payment shall be based upon the contract price at the time the home is sold. Upon notification of a price change by the Subcontractor, Ryland Homes may furnish in writing a list of units to be completed at the original contract price. Price changes require at least a 120 day written notification to the Purchasing Manager.

4. Ryland Homes reserves the right to issue joint checks to a subcontractor and his supplier.

5. Subcontractor is responsible to follow all invoicing, verification, and payment procedures.

6. Ryland Homes reserves the right to hold appropriate monies from a subcontractor's payment based on untimely response(s) to warranty work by the Subcontractor. Related moneys may be held until such outstanding or overdue Warranty requests have been honored and satisfied.

7. For any work to be performed, or materials supplied beyond the scope of the contract, there must be a purchase order signed with a fixed dollar amount by a Ryland Homes representative.

8. Ryland Homes reserves the right to debit (back charge) a subcontractor for untimely, incomplete or inferior work. No debits will be issued without prior notification to the Subcontractor. Subcontractors will given proper time to correct &/or respond prior to a back charge. Time is of the essence with regards to response time. Back charges are not encouraged and if necessary are to be for costs only.

9. Subcontractors are expected to coordinate and respect all other Subcontractors' work and work together to eliminate any costs due to deficiencies.

10. All items of deficiency or improperly installed items noted on any superintendent or manager punch list, items appearing on any quality assurance or buyer walk-through list, will be the responsibility of each Subcontractor or Supplier to repair or replace at no cost to Ryland Homes.

11. Subcontractors' bids are to include transportation and trip charges. Ryland Homes will not pay any additional trip charges for any reason.

12. Fines can be incurred for not adhering to any rules and regulations stated within this general scope or detailed by scope of specific trade of which the Subcontractor is working at the discretion of a Ryland Homes Representative.

G. INSURANCE REQUIREMENTS – SEE ATTACHED ADDENDUM

Subcontractor Date

4/19/06

Ryland Homebuilding/Purchasing Manager Date

ATTN: Will Beatis

RYLAND HOMES

SCOPE OF WORK
RYLAND HOMES - CAROLINAS DIVISION
Rough Framing

COST CODE: 51280, 51456, 51690, 51695, 51640, 51650, 51700

The Subcontractor or Supplier, (hereinafter referred to as the Subcontractor), will adhere to all City, County, State and Federal building regulations, codes and licensing in all areas where work is to be performed.

This document defines both Ryland Homes' and the Subcontractors' responsibilities in this phase of construction. It is intended as a checklist that will define the work to be done, the level of quality and any timing that is required when performing said work. The Framing Subcontractor's work will not be considered complete until all specifications are fully met.

I. Specific Requirements

A. Overview

The Framing Subcontractor must supply all labor, materials, supervision, tools and equipment as required by plans and the Customer Selection Sheet. This construction must be done in conformance with all specifications.

B. Nails

The Subcontractor shall supply all nails as specified. Nailing schedules must conform to both the specifications noted in this document and those of all local building codes. Any nail penetrating ACQ treated lumber must be "hot dipped" galvanized

Nail Type	Use
16d common	General framing
"Teco" Nails	Hangers
16d hot dipped galvanized	Decks and dimensional
8d Ring Shank	Roof sheathing & sub-floor
1" galvanized roofing or staple	Thermoply Sheathing
4d-galvanized	Soffit
2 3/4" cut nails	Plate on grade
1 1/2" Roofing	Vinyl Windows
8d galvanized finish nail	Exterior Trim

C. Beams, Stanchions and Bearing Walls

1. Beams must be installed with a center crown of 3/16" and shimmed to correct for beam pocket imperfections, if necessary. Only steel or solid masonry materials may be used for shims. Do not use wood shims.

2. Beams must bear fully, without voids, on piers or pockets.

3. Stanchions (when used) must be plumb and set on solid bearing, as per drawings.

D. Framing on Slabs

1. Ryland Homes is responsible to provide a square and plumb slab and/or foundation built with quality construction methods and materials. Subcontractor is responsible for properly inspecting the slab or foundation prior to starting construction.

2. All dimensions are to be pulled or laid out from the rear, on the non-garage corner.

3. Plate insulation (sill sealer) must be installed along the entire perimeter of the foundation with no voids using staples or nails. Glue or other adhesives shall not be used to secure sill seal. Sill seal shall be applied to bottom of sill plate prior to standing walls.

4. Plates must be installed, per plan and must be anchored to the foundation, in accordance with both the plans and local codes. In no case shall the frequency of the anchor exceeded 6' O.C. and anchors must be located within one foot on each side of an exterior opening. Anchor straps shall be nailed two on top, one on side and three on the side when nailed to a stud or column. All holes in the T-Ply must be filled at anchor straps when possible.

E. Floor Systems (For Wood Truss Floors)

1. Plate insulation (sill sealer) must be installed along the entire perimeter of the foundation with no voids.

2. Plates must be installed, per plan. Plates must be anchored to the foundation with straps or bolts at intervals not to exceeded 6' O.C. and anchors must be located within one foot on each side of an exterior opening. Plate/foundation attachments must conform to all local codes.

3. TJI layout shall not be altered. TJI's and hangers are to be installed per manufacturer's specifications, layouts and specific details. Hangers must be nailed completely.

4. Sub-flooring is to be installed per plan and the following specifications.

   a. Adhesive is to be applied to the joist at the rate of one 32 ounce tube per two and one-half sheets of plywood and/or OSB Standard floor sheets are to be glued and placed one at a time; surfaces to be glued must be cleaned; all joints (T&G and butt), must be glued; sub floor shall be nailed completely at time of installation.
   b. Glue should have a continuous bead and not be allowed to dry or skin over prior to sheathing.
   c. 1/8" spacing must be provided for expansion at all joints.
   d. Each sheet must be nailed at 6" O.C. at edge and 8" O.C. in field, all nails that miss joists are to be removed and replaced. 8d ring shank nail shall be used to install sub floor.
   e. All broken T&G joints are to be blocked.

5. Sub-flooring must be installed per plan and per the specifications for sub-floor installation in section III-B-4 of this document.

F. Wall Systems

1. Intersections of interior and all exterior walls and partitions are to be set and plumbed, per plan. Intersections of interior and exterior wall shall be ladder blocked. All holes in exterior sheathing must be repaired. For small holes, the edges must be trimmed and a neatly cut patch glued to the inside of the sheathing. For major damage, the entire framing bay must be replaced. T-ply sheathing is to be installed right side up displaying the Ryland name.

2. All bearing walls must be temporarily braced with 2x4's until placement of the floor or roof above. The 2x4's used in bracing must be re-used as deadwood for drywall backers.

3. Blocking must be installed at all roof rakes and elevation changes shall be fire stopped per local building codes. Blocking panels will be required at 2nd floor joists between garage and heated living areas per details.

4. Framer shall be responsible for ensuring that balloon framed walls are plumb without excessive bows. Bowed studs may be repaired by one of the following two methods: 1) Notch out the bowed stud 3 ½" and install a 2x4 brace flush to stud face and nail to the adjoining studs. 2) Cut the stud face horizontally and install an additional stud, nailing it directly to the bowed stud removing the bow.

5. King studs, jacks and blocking shall be installed per plan. All bearing members must be supported all of the way down to the foundation.

6. All jacks with voids shall be shimmed.

7. Framing Subcontractor is responsible for selecting studs used in wall system. Culled material should be used for blocking deadwood, bracing, etc.

8. The Framing Subcontractor shall place all onsite fiberglass bathtubs in bathrooms during the framing phase. If tubs are not delivered in time, it will not be the framer's responsibility to install them.

9. The Subcontractor must ensure that the routered box stairs are stored on edge to prevent water accumulation inside stair voids.

   a. Interior stairs must be shimmed and nailed, through the underside of the stringer to the adjacent wall. Stringer and shim shall be nailed to each stud in the adjacent wall.
   b. All single-family interior basement stairs must be nailed to the joist at the top riser.
   c. No pre-fab stair shall be altered without the consent of the Supervisor.

G. Blocking Nailers

1. All blocking must be installed per plan and local codes. 2 X 4 blocking must be installed for handrails, shower doors, corners, kitchen cabinets, single door jack and tub surrounds.

2. All nailers must be installed per plan and local codes. Culled materials shall be used for blocking and nailers. 2 X 4 cross blocks must be installed on top of interior walls running parallel to truss or joist bays. 2 X 4 continuous ceiling

nailers must be installed at tops of all gable walls and rake nailers to walls adjacent to truss bays.

3. The Subcontractor must install 2 X 4 ridge blocks under edge of plywood, each side leaving 4" of space between blocks at ridge vents.

H. Roof System

1. Trusses must be erected and installed at manufacturer's specification and layouts, with the top cord up. Excessively crowned trusses (max: 3/8") or damaged trusses must not be used without specific consent of the Ryland Production Supervisor. Trusses must not be cut or drilled nor remanufactured without prior written approval from the Ryland Supervisor.

2. All trusses must be handle and installed in accordance with Standard Truss Plate Institute Procedures.

3. The Framing Subcontractor must supply a crane, if necessary, for truss erection. Temporary bracing must be installed per Truss Plate Institute recommendations.

4. 7/16" OSB must be installed with nails placed 6" O.C. on the perimeter and 8" O.C. in the field. Continuous 2x4 blocking must support all plywood less than 24" in width.

5. Clips must be installed at rate of one per 24" bay. The plywood must not have more than ¼ ridge or depression within any 32" measurement. Plywood must be cut back 2" at ridge for ventilation. Plywood shall not be cut less than 3' from the edge of the roof ridge.

6. Roof ties and truss braces must be installed, per plan.

7. The Framing Subcontractor shall store and handle trusses appropriately.

   a. Careful handling must be exercised to prevent excessive lateral bending that could cause the plate to sheer or pop off.
   b. Trusses cannot be modified without assistance and written guidelines from the Ryland Supervisor and the Truss Manufacturer.
   c. Trusses must be stored in a level place, elevated from the ground to prevent trusses from warping.
   d. All multi-ply girder trusses must be nailed per supplied engineering sheets. All roof trusses shall be braced to manufacturer's truss drawings.
   e. Truss tails must be nailed per local building codes. (Minimum of 3 nails; 2 and 1)
   f. HVAC platforms and catwalks must be installed per provided plans.
   g. All roof tie-off brackets will be provided by Ryland and must be installed per manufacturer's specifications.

I. Exteriors

1. The Framing Subcontractor must install all fascia and sub-fascia per plan (sizes and locations).

2. All loose sheathing must be secured at the plates. All sheathing shall be attached per manufacturer's specifications.

3. Sheathing board must be installed to cover all exposed ring joints. Structural Energy

Brace Sheathing shall cover all wood on the exterior.

4. Exterior decks and porches must be temporarily braced until permanent columns are installed. Framer must install all interior details including roof return, bay roofs, etc.

5. The Subcontractor shall construct walk boards to provide a safe and dry path from curb to front door. Walk boards shall be framed of 2x4's and be 8' x 16". The top surface shall be 1/2" OSB.

J. Exterior Doors

Installation shall be as followed.

a. Door is to be set plumb and square. Subcontractor shall apply a bead of novagard caulk and install the flashing on the sill (aluminum flashing only on wood sub-floor). Flashing shall extend ¼" past the inside of the door sill. Slabs are to be caulked directly to the concrete. Subcontractor shall apply a double bead of novagard caulk to the flashing/concrete and set the unit in place.

b. If the floor is more than 1/8" out of level in the 3-foot rough opening, Subcontractor shall level the sill with shims. Shims are to be installed to provide consistent support under the sill to avoid flexing of the threshold. Subcontractor shall caulk between jamb and cracks at bottom plate.

c. Subcontractor shall adjust the door as needed for consistent reveal on the inside and nail off the brickmould. The bottom and sides of threshold shall be caulked to slab or sub-floor and to return studs.

d. Subcontractor shall shim the door at the top and bottom hinge. Nails are to penetrate through the jamb and shims into the framing on the strike side with galvanized finish nails (top, center, bottom). Door is to be installed using galvanized finish nails through brickmould. Nails shall be counter-sunk and putty shall be applied to fill the nail holes. Nailing pattern also applies to both sides of an entry door with sidelites.

e. The Subcontractor shall apply long screws to the top and bottom hinge to secure side jamb to the jack-studs.

f. The Subcontractor shall apply vinyl flashing to the head jamb exterior brickmould on any exposed elevation.

K. Return Trip

1. The Subcontractor shall, when applicable, install doors, stairs and partitions.

2. The Subcontractor shall complete punch-out list for local framing inspector, Supervisor and Structural inspector.

3. Framer must complete punch list within 48 hours of notification.

II. Standards/Warranty

1. Subcontractor shall warrant, for a period of 10 years, all load bearing components against structural failure. (Structural failure and load bearing components as defined in the Ryland Homes Warranty Manual.)

2. Subcontractor shall repair walls that bulge or bow in excess of ¼" within a 32" measurement (floor to ceiling wall to wall) and walls that are out plumb in excess of ½" within a vertical measurement of eight feet.

2. Subcontractor shall repair high or low areas that exceed a ¼" within a 32" distance, measuring perpendicular to the high or low area or if floor slopes exceed 1/240 of the width or length within a room, measured in the direction of the slope.

As a representative of AC Construction
(COMPANY NAME)

I have read and fully understand the content of the job scopes and I agree to comply with all of the aforementioned terms. Furthermore, I understand that all of my personnel performing work on Ryland job sites will be given a copy of this job scope and are expected to read, understand and comply with the written responsibilities. Also, they are expected to have the job scope in their possession when on a Ryland job site.

Subcontractor Date

Ryland Homebuilding/Purchasing Manager 4/19/06
Date

EXHIBIT

G

THE RYLAND GROUP, INC.
SUBCONTRACTOR AGREEMENT
GENERAL TERMS

SUBCONTRACTOR: Carolina Truss
Address: PO Box 1049 Summerville SC 29484
Phone No.: 843 875 0550
Effective Date: ____

RYLAND DIVISIONS: 443
(Insert all divisions for which work is performed under this contract)

This Subcontractor Agreement ("Agreement") shall govern the relationship between Subcontractor and THE RYLAND GROUP, INC. ("RYLAND") for any project ("Project") on which Subcontractor provides services to Ryland. The description of any work ("Work") to be performed on any Project, any specifics regarding the Work, rules and regulations regarding the Work and the price ("Price") shall be contained on bid sheets, proposals, drawings, specifications, scopes of work, site plans and other documentation governing the Work (collectively, the "Documents"). All Documents are incorporated herein by reference and made a part hereof. The Documents shall be identified as being subject to this Agreement.

Subcontractor and Ryland agree as follows:

1. (a) Subcontractor shall complete the Work in strict conformity with generally accepted building practices and the Documents. All materials incorporated into the Work shall be new, and the Work shall be completed in a good and workmanlike manner free from defects.

(b) Subcontractor has examined the Documents and is fully aware of their provisions.

(c) Subcontractor represents, warrants and covenants that the Documents are complete and sufficient to enable Subcontractor to determine the Price, to construct the Work and otherwise to fulfill its obligations hereunder. Subcontractor has visited the site and examined the conditions affecting the Work.

(d) Subcontractor has satisfied itself as to the location of all utilities that may affect or interfere with the Work and agrees to protect all utilities and keep them operational at all times.

2. Time is of the essence. Subcontractor shall begin the Work on the date designated by Ryland and shall proceed diligently to complete the Work in accordance with the schedule set by Ryland without delays to Ryland or to other subcontractors.

3. (a) Subcontractor is an independent contractor. Subcontractor is not an employee of Ryland for any purpose.

(b) Subcontractor is responsible for the manner, method and means of accomplishing the Work; hiring, training, disciplining, firing and scheduling its own employees; withholding appropriate amounts for federal, state and local taxes; and providing fringe benefits to employees, including, but not limited to, workers' compensation benefits. Ryland shall not be liable for any such items. Ryland does not have the right to cause Subcontractor to take any disciplinary action against its employees except as specifically provided in this Agreement or to assign work to any of Subcontractor's employees.

(c) Ryland reserves the right to (1) inspect all Work to determine, in good faith, whether the Work has been satisfactorily completed, (2) control access to each Ryland work site, (3) schedule Work in a logical sequence or to avoid disturbances, and (4) stop Work for safety reasons or to insure conformity of end product with contracted for results.

4. (a) Ryland shall pay Subcontractor [weekly] [biweekly] [monthly] [by autopay] so long as Subcontractor is not in default,upon written certification by Ryland's Homebuilding Supervisor that the portion of the Work for which payment has been requested has been completed satisfactorily. Payment shall be in accordance with the Price set forth in the Documents. Subcontractor agrees to provide notice of price increases to Ryland for the longer of completion of current backlog or 120 days. Payment for additions or extra work will be made only pursuant to advance written change orders, which may include purchase orders, signed by the purchasing manager of Ryland.

(b) Ryland, in its sole discretion, may retain any payment or portion thereof and/or offset such amounts against future payments due to Subcontractor to assure satisfactory completion of the Work and all service work arising therefrom or to compensate Ryland for any damages Ryland suffers as a result of Subcontractor's default of this Agreement. Any retainage shall be paid to the Subcontractor upon satisfactory final completion of any Work and/or service work applicable for the warranty period.

(c) Subcontractor shall submit to Ryland with Subcontractor's request for payment, executed lien waivers in the form attached as Addendum 1 from Subcontractor and all persons and entities furnishing any labor, equipment, materials or services on the Project in any way concerning or relating to Subcontractor's Work, including, without limitation Subcontractor's employees, suppliers, subcontractors, agents and officers ("Subcontractor's Agents"). Upon completion of the Work on any Project Subcontractor shall deliver to Ryland a Final Waiver and Release of Liens in form attached as Addendum 2 executed by Subcontractor and each of Subcontractor's Agents. If any of Subcontractor's Agents files or maintains any such lien or claim after payment by Ryland to Subcontractor, Subcontractor agrees to cause such lien and claim to be satisfied, removed or discharged at its own expense by bond, payment or otherwise within ten (10) days from the day of filing thereof. Upon Subcontractor's failure to satisfy, remove or discharge the lien or claim, Ryland shall have the right, in addition to all other rights and remedies provided under the Agreement or by law, to cause such lien or claim to be satisfied, removed or discharged by whatever means Ryland chooses, at the entire cost and expense of the Subcontractor, including without limitation, legal fees. To the maximum extent permitted by law, Subcontractor agrees to indemnify, protect and save harmless Ryland from and against any and all such liens and claims and actions brought or judgments rendered thereon, and from and against any and all loss, damages, liability, costs and expenses, including legal fees, which Ryland may sustain or incur in connection therewith.

(d) Subcontractor shall be in default if any demand is made on Ryland for amounts due to Subcontractor's Agents, and Ryland shall have the right to withhold such amounts claimed out of any payments due to the Subcontractor.

5. INSURANCE.

(a) Ryland requires that Subcontractor maintain minimum insurance coverages as detailed on Addendum 3. All insurance policies required shall (i) not contain endorsements that restrict limits of liability to additional insureds; and (ii) have coverage forms acceptable to Ryland. If requested, Subcontractor shall provide certified copies of all such policies to Ryland within 30 days of such request.

(b) Subcontractor shall maintain all required insurance coverage in force until completion of Work. Subcontractor shall maintain Products and Completed Operations Insurance coverage, including required endorsements, in force until expiration of the applicable statute of limitations relating to latent defects in construction of or improvements to real property.

(c) The use of self-insured retentions or deductibles in excess of $5,000 is not allowed. Subcontractor is fully responsible for payment of any self-insured retentions or deductibles.

CTS / MSV
Subcontractor's Initials

(d) The insurance requirements shall not limit Subcontractor's obligations under this Agreement or Subcontractor's indemnification, warranty obligations or other liability in any manner. The requirements merely represent the minimum amounts of insurance coverage required to be maintained by Subcontractor.

(e) Subcontractor shall provide evidence of the renewal of policies required 30 days in advance of the expiration of any such policy.

(f) If Subcontractor fails to secure and maintain the required insurance, Ryland shall have the right (without any obligation to do so, however) to secure same in the name and for the account of the Subcontractor, in which event the Subcontractor shall pay the costs thereof and furnish upon demand all information that may be required in connection therewith.

6. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SUBCONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND RYLAND, ITS OFFICERS, DIRECTORS, EMPLOYEES, SUPPLIERS AND AGENTS ("RYLAND'S AGENTS") AND THE PROPERTY OF RYLAND, INCLUDING ANY PROJECT COVERED BY THIS AGREEMENT, FROM ANY AND ALL CLAIMS, COSTS, LOSSES, DAMAGES, FINES, PENALTIES, FEES AND OTHER COSTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND DISPUTE RELATED COSTS (COLLECTIVELY, "SUCH COSTS"), TO THE EXTENT THAT SUCH COSTS ARISE OUT OF, ARE INCIDENTAL TO OR RESULT FROM (A) THE PERFORMANCE OF THE WORK OR SUBCONTRACTOR'S FAILURE TO ENFORCE THE DRUG AND ALCOHOL ADDENDUM AND ARE ATTRIBUTABLE TO BODILY INJURY, PERSONAL INJURY, SICKNESS, DISEASE OR DEATH OF ANY PERSON, INCLUDING ANY INJURY OR DEATH OF AN EMPLOYEE OR OWNER OF SUBCONTRACTOR, OR INJURY TO, DEFECT IN, DAMAGE TO OR DESTRUCTION OF THE WORK OR OF ANY PROPERTY; OR (B) SUBCONTRACTOR'S OR SUBCONTRACTOR'S AGENTS FAILURE TO COMPLY WITH THE LEGAL REQUIREMENTS AND (A) OR (B) IS CAUSED BY ANY ACT OR OMISSION OF SUBCONTRACTOR OR ANYONE ACTING FOR, ON BEHALF OF OR THROUGH OR REPRESENTING SUBCONTRACTOR OR SUBCONTRACTOR'S AGENT. SUBCONTRACTOR SHALL SO INDEMNIFY, HOLD HARMLESS AND DEFEND RYLAND AND RYLAND'S AGENTS FROM SUCH COSTS AND EVEN THOUGH IT IS ALLEGED OR FOUND THAT ANY NEGLIGENT ACT OR OMISSION, OR WRONGFUL ACT OF RYLAND OR RYLAND'S AGENTS ALSO CAUSED OR CONTRIBUTED TO SUCH COSTS WITHOUT REGARD TO WHETHER THE EXTENT OF ANY SUCH ALLEGED NEGLIGENT ACT OR OMISSION, OR WRONGFUL ACT OF RYLAND OR RYLAND'S AGENTS IS GREATER OR LESSER THAN ANY ALLEGED NEGLIGENT ACT OR OMISSION, OR WRONGFUL ACT OF SUBCONTRACTOR OR SUBCONTRACTOR'S AGENTS. THIS INDEMNIFICATION IS NOT INTENDED TO COVER THE NEGLIGENCE OR WILLFUL MISCONDUCT OF RYLAND OR RYLAND'S AGENTS. SUBCONTRACTOR AGREES THAT A PORTION OF THE PRICE HAS BEEN PAID TO THE SUBCONTRACTOR AS SPECIFIC CONSIDERATION FOR THE INDEMNIFICATIONS REQUIRED OR GIVEN IN ACCORDANCE WITH THIS AGREEMENT AND THAT ALL INDEMNIFICATIONS, WARRANTIES, GUARANTEES AND OBLIGATIONS GIVEN IN ACCORDANCE WITH THIS AGREEMENT OR THE DOCUMENTS SHALL SURVIVE FINAL PAYMENT, COMPLETION AND ACCEPTANCE OF THE WORK AND TERMINATION OR COMPLETION OF THIS AGREEMENT. UNDER NO CIRCUMSTANCES SHALL THE INSURANCE REQUIREMENTS AND LIMITS SET FORTH IN THIS AGREEMENT BE CONSTRUED TO LIMIT SUBCONTRACTOR'S INDEMNIFICATION OBLIGATIONS OR OTHER LIABILITY HEREUNDER. SUBCONTRACTOR WAIVES ANY RIGHTS OF SUBROGATION AGAINST RYLAND AND SHALL REQUIRE SUBCONTRACTOR'S AGENTS TO WAIVE SUBROGATION RIGHTS AGAINST RYLAND.

7. Subcontractor warrants and represents that it is familiar with and covenants to comply with all laws, regulations and rulings of all federal, state, county and municipal jurisdictions and agencies applicable to this Agreement and to the Work, including, without limitation, OSHA, state occupational safety and health laws, workers' compensation laws, minimum wage and overtime laws, employment discrimination laws, building codes and all regulations and rules promulgated thereunder (collectively, the "Legal Requirements"). Subcontractor shall maintain all records required for compliance with the Legal Requirements and will indemnify and save Ryland harmless from any damage, fine or penalty which may be assessed against Ryland and any attorneys' fees and other costs incurred by Ryland by reason of the breach or alleged breach of this section by Subcontractor or Subcontractor's Agents.

(a) At all times, Subcontractor shall:

(1) conduct, operate and maintain a safe, clean and healthful workplace;

(2) provide to its employees the protective clothing, equipment, training and safety devices necessary to ensure compliance with relevant Legal Requirements; and

(3) abide by the Drug and Alcohol Addendum 4.

(b) To the maximum extent permitted by law, Ryland may withhold from payment to Subcontractor the full amount of any fine, damages or penalty assessed or proposed to be assessed against Ryland by local, state or federal authorities as well as a sum sufficient to cover any attorneys' fees and costs that are incurred by Ryland as a result of Subcontractor's or Subcontractor's Agents failure to comply with applicable Legal Requirements. When any such amounts are actually assessed and paid by Ryland, Ryland will release to Subcontractor any excess withheld.

(c) Either Subcontractor or Ryland may contest responsibility for Subcontractor's or Subcontractor's Agents failure to comply with applicable Legal Requirements. Subcontractor shall reimburse Ryland up to the full amount of any legal costs and expenses that Ryland may incur to contest responsibility which relates to Subcontractor's or Subcontractor's Agents failure or alleged failure to comply with applicable Legal Requirements.

(d) COMPLIANCE WITH APPLICABLE OCCUPATIONAL SAFETY AND HEALTH STANDARDS IS AN EXPRESS CONDITION OF WORK UNDER THIS AGREEMENT.

(e) Addendum 5 applies to all FHA approved Projects.

8. All Work shall be performed by qualified tradespersons. Ryland reserves the right to reject any materials or Work which do not, in Ryland's opinion, comply with the terms of this Agreement. All materials shall be installed in accordance with applicable Legal Requirements and manufacturer's specifications or recommendations.

9. Subcontractor agrees, at its expense, (a) to remedy any defect in the Work due to faulty or unacceptable material or workmanship, (b) to repair or replace any Work not in compliance with the Documents, and (c) to pay any expenses and costs, including legal fees and dispute resolution costs, incurred by Ryland as a result of (i) such defect or (ii) any personal injury or damage to other property caused by Subcontractor or Subcontractor's Agents. Subcontractor shall fully cooperate with Ryland in responding to any warranty claims. All warranties made by Ryland to its homebuyer, whether under the Ryland warranty or applicable law, are, to the extent applicable, deemed made by Subcontractor to Ryland.

10. Subcontractor agrees, at the request of Ryland, to take delivery or assume custody of materials purchased by Ryland from manufacturers. Risk of loss of all material and equipment supplied by, delivered to or under the custody of the Subcontractor shall be upon the Subcontractor until the Work reaches final completion and is accepted by Ryland.

CTS/MR

Subcontractor's Initials

11. Subcontractor shall keep the jobsite free of accumulations of trash and debris. At the conclusion of daily work on any housing unit, Subcontractor shall remove all trash and debris caused by its operations and leave the site broom clean.

12. Subcontractor shall abide by all directives which Ryland may publish from time to time.

13. If Subcontractor fails to perform any of its obligations hereunder, Subcontractor shall be in default. If such default is not cured within two (2) days after oral or written notice, then Ryland may pursue any remedy or combination of remedies available at law or equity, including, without limitation: (a) terminating this Agreement; (b) applying any retainage or other amounts due to Subcontractor to cure Subcontractor's defaults or compensate Ryland for damages suffered; (c) taking any action necessary to perform the Work by other means, in which case Subcontractor shall upon demand reimburse Ryland for any amounts expended by Ryland to complete the Work in excess of the Price together with interest from the date paid by Ryland to the date reimbursed by Subcontractor at the rate of eighteen percent (18%) per annum or the maximum amount permitted under applicable law; and (d) pursuing an action for damages and recovery of all costs and expenses, including legal fees, incurred by Ryland in enforcing this Agreement. All remedies shall be cumulative and not exclusive.

14. Ryland may terminate Subcontractor's performance under this Agreement at any time, at the sole option of Ryland and for Ryland's own convenience. In such event, Subcontractor will turn over all equipment and materials ordered, purchased for, or delivered to the Project, and Ryland will pay the Subcontractor any amounts due based on the percentage of completion of the Subcontractor's Work that is in compliance with this Agreement and the Price for Work actually accomplished and equipment and materials supplied to the Project, excluding any payment for unearned profit and overhead. The payments for percentage completion shall be Subcontractor's sole remedy under this Agreement at law or in equity. Subcontractor will facilitate transfer of the Work to Ryland by assigning its rights under subcontracts and purchase orders.

15. Subcontractor shall fully cooperate and coordinate performance of the Work with the work of Ryland and other subcontractors of Ryland. Ryland may suspend or reschedule the Work in its discretion. Subcontractor shall not be entitled to any damages or additional compensation for any delay caused by rescheduling or suspension of the Work other than an equivalent extension of time to perform.

16. Except in the event that either party is sued by someone other than a party hereto or it would be appropriate for complete resolution of the issues for either party to cross-claim against the other party in a legal action not initiated by either of the parties hereto, any dispute arising out of or relating to this Agreement or the breach, termination or validity thereof shall be settled by binding arbitration conducted by a neutral arbitrator. If the parties do not mutually agree on an arbitrator, the arbitrator shall be selected by the American Arbitration Association at its offices closest to the construction site where the dispute arose. The arbitration shall be conducted according to the American Arbitration Association Construction Arbitration Rules unless other procedures are agreed upon by the parties. The parties agree to (a) allow to join into the arbitration proceeding hereunder or (b) join any other arbitration proceeding being conducted by, persons or entities related to the dispute whose involvement may be necessary to completely resolve the dispute, such as (1) a homeowner, (2) Ryland's home warranty corporation, (3) Ryland's or Subcontractor's insurers, and (4) Subcontractor's materialmen or subcontractors. The arbitration shall determine all rights and obligations under this Agreement and the award of the arbitrator shall be final, binding and enforceable. Subcontractor shall include a comparable arbitration provision in all of its subcontracts related to the Work.

17. (a) This Agreement (including all Documents incorporated herein) constitutes the entire Agreement between the parties, supersedes any prior negotiations, agreements or contracts, written or oral, between the parties and may not be amended without the written agreement of both parties.

(b) Subcontractor shall have no right to assign this Agreement or its right to payments hereunder.

(c) All plans, drawings, specifications and the subject matter contained therein and all other information given to Subcontractor in connection with the Work ("Proprietary Materials") shall remain the property of Ryland and shall not be used by or disclosed to anyone by Subcontractor for any purpose other than performance of the Work. Upon completion of the Work, Subcontractor shall return all Proprietary Materials to Ryland.

(d) If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall be construed as if the invalid, illegal or unenforceable portion of the provision had never been contained herein.

(e) This Agreement shall be governed by the laws of the state in which the Work is performed.

IN WITNESS WHEREOF, the parties have executed and ensealed this Agreement as of the date set forth above.

THE RYLAND GROUP, INC.	____ (SUBCONTRACTOR)
	License # ____
	Expiration Date ____
By: _____ (SEAL)	By: _____ (SEAL)
Name: GAVIN GREEN	Name: Michael Rodman
Title: PURCHASING MANAGER	Title: GM

Ryland shall retain 0 % retention until ____.

SUBCONTRACTOR AGREEMENT

THE RYLAND GROUP, INC.

ADDENDUM 1

RELEASE OF LIENS

OWNER: ____
SUBCONTRACTOR: ____
PROPERTY: ____
CONTRACT DATED: ____
FOR WORK AND MATERIALS FURNISHED THROUGH ____, 200_

The undersigned, which provided services, materials or equipment for the above Property in accordance with a contract with the Subcontractor identified above, for good and valuable consideration received by it, hereby waives and releases all claims for, liens and rights of lien now existing to the extent of $_____, which represents full payment received by the undersigned (exclusive of contractual retainage) for work, services, materials and/or equipment furnished in connection with the above Property to the date of this release.

This Release of Liens is executed and delivered simultaneously with or after payment has been received for the work, services, materials and/or equipment performed or provided to the date referenced above.

This Release of Liens may be relied upon by purchasers procuring improvements from Owner, by mortgagees making mortgage loans to said purchasers, and title insurance companies insuring titles for said purchasers and shall run to the benefit of any such persons/entities and their successors and assigns.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal [as the duly authorized officer/partner of the undersigned] this _____ day of _____, 200_.

_____ [Corporate or Partnership Name of Subcontractor/supplier]

By: _____
Name: _____
Title: _____

_____
[Individual Subcontractor/supplier]

Corporate/Partnership Acknowledgment

STATE OF ____
COUNTY OF ____

On this _____ day of _____, 200_, before me, personally appeared _____, the _____ of _____ who I am satisfied is the person who signed the within Instrument and he/she did acknowledge that he/she signed and delivered this Instrument as the [officer] [partner] above stated, and that the foregoing instrument is the act and deed of said [Corporation] [Partnership].

_____
Notary Public

My commission expires: _____

Individual Acknowledgment

STATE OF ____
COUNTY OF ____

On this _____ day of _____, 200_ before me personally appeared _____, who I am satisfied is the person who signed the within instrument and he/she did acknowledge that he/she signed and delivered this Instrument on his/her behalf and that the foregoing Instrument is his/her voluntary act and deed.

_____
Notary Public

My commission expires: _____

SUBCONTRACTOR AGREEMENT

THE RYLAND GROUP, INC.

ADDENDUM 2

FINAL WAIVER AND RELEASE OF LIENS

OWNER: ____
SUBCONTRACTOR: ____
PROPERTY: ____
CONTRACT DATED: ____
FOR WORK AND MATERIALS FURNISHED THROUGH ____, 200_

The undersigned for itself, its successors and assigns and its subcontractors and suppliers, which/who has provided materials, work, services and/or equipment in connection with the Project on the Property for the Owner in consideration of the sum of $____ paid [by Owner] which sum represents the final payment due pursuant to the Contract, together with any amendments or change orders related thereto (all of the foregoing being collectively referred to as the "Contract"):

1. Acknowledges that it has been paid in full for all materials, work, services and/or equipment furnished in connection with the performance of the Contract or otherwise in connection with the construction on the Property.

2. Waives and releases any and all construction lien claim(s) and/or Notices(s) of Unpaid Balance and Right to File Lien and the like ("Lien") which Subcontractor has had or currently has, against or upon any portion of the Project or Property for materials, work, services and/or equipment provided.

3. Agrees that if, after the date hereof, there shall be evidence of any lien filed (i) by the undersigned or (ii) any subcontractor or supplier of the undersigned for which, if established, Owner might become liable or which might encumber title to the Property or Project, the undersigned shall promptly discharge same and indemnify, hold harmless and defend Owner against any loss, damages or costs or expenses, including attorneys' fees, associated therewith.

4. The undersigned for itself, its successors and assigns, releases and forever discharges Owner (and its shareholders, directors, officers, employees, and agents) and their successors and assigns, from all claims, demands or causes of action which it has had, currently has, or may in the future have, arising from or in any way relating to the Contract or the Property.

5. Agrees that this Release may be relied upon by purchasers procuring improvements from Owner, by mortgagees making mortgage loans to said purchasers, and title insurance companies insuring titles for said purchasers and shall run to the benefit of any such persons/entities and their successors and assigns.

IN WITNESS WHEREOF, the undersigned has set his hand and seal [as the duly authorized officer/partner of the undersigned] on this ____ day of ____, 200_.

____ [Corporate or Partnership Name of Subcontractor]

By: _____
Name: ____
Title: ____

____
[Individual Subcontractor]

Corporate/Partnership Acknowledgment

STATE OF ____
COUNTY OF ____

On this ____ day of ____, 200_, before me, personally appeared ____, the ____ of ____ who I am satisfied is the person who signed the within Instrument and he/she did acknowledge that he/she signed and delivered this Instrument as the [officer] [partner] above stated, and that the foregoing instrument is the act and deed of said [Corporation] [Partnership].

_____
Notary Public

My commission expires: _____

Individual Acknowledgment

STATE OF ____
COUNTY OF ____

On this ____ day of ____, 200_ before me personally appeared ____, who I am satisfied is the person who signed the within instrumer did acknowledge that he/she signed and delivered this Instrument on his/her behalf and that the foregoing Instrument is his/her voluntary act and dee

_____
Notary Public

My commission expires: _____

SUBCONTRACTOR AGREEMENT

THE RYLAND GROUP, INC.

ADDENDUM 3

SUBCONTRACTOR INSURANCE REQUIREMENTS

CERTIFICATES OF INSURANCE, INCLUDING COPIES OF POLICY ENDORSEMENTS LISTED BELOW, EVIDENCING REQUIRED COVERAGE SHALL BE DELIVERED TO RYLAND PRIOR TO THE COMMENCEMENT OF ANY WORK (SAMPLE CERTIFICATES ATTACHED).

PLEASE DIRECT INSURANCE INQUIRIES TO _____ AT _____.

TYPE OF COVERAGE	AMOUNT OF COVERAGE
A. WORKER'S COMPENSATION -- and Occupational Disease Coverage in accordance with the laws of the State within whose jurisdiction the work is performed. • Coverage to include all employees, agents, officers, partners, and proprietors/owners of Subcontractor. • The certificate should specify that the insurance company's A.M. Best Rating is at least A-/VIII. • If the services of a leasing company are used to insure its workers' compensation exposure, the following documents must be delivered to Ryland before any work can be performed on a Ryland job site: A. One certificate documenting workers' compensation insurance for Subcontractor's employees on Ryland's job sites covered through the leasing company. B. A second certificate of insurance evidencing that the Subcontractor has purchased its own separate workers' compensation insurance policy for any employees not covered by the leasing company's insurance. It is imperative that this second policy be insured through the same insurance company as the leasing company and that the second policy has a different policy number from that of the leasing company. C. A declaration sheet (the cover page of the insurance policy) from the Subcontractor's own policy. • The workers' compensation policy should be amended to include a 30-day cancellation notice provision in lieu of the standard 10-day cancellation notice provision. • Workers' compensation carrier shall waive subrogation against The Ryland Group, Inc. and its subsidiaries; affiliated and successor companies, officers, directors, agents, servants, employees, divisions, partners and shareholders.	Workers Compensation – Statutory
EMPLOYER'S LIABILITY	Employers Liability: $500,000. Ea. Bodily Injury by Accident $500,000. Bodily Injury by Disease, Ea. Employee
B. COMMERCIAL GENERAL LIABILITY – with the following minimum coverage: • Coverage for all residential building including both attached and unattached projects • Occurrence form not modified • Subsidence, no endorsements limiting coverage • Contractual liability coverage included • The Certificates of Insurance must state that "The Ryland Group, Inc. and its subsidiaries, affiliated and successor companies, officers, directors, agents, servants, employees, divisions, partners and shareholders" are named as Additional Insureds on the	$1,000,000. General Aggregate Limit (other than Products/Completed Operations) $1,000,000. Products/Completed Operations Aggregate Limit $1,000,000. Bodily Injury (Ea. Occurrence $1,000,000. Property Damage (Ea. Occurrence) $1,000,000. Personal Injury & Advertising Injury Limit $ 50,000. Fire Damage Limit (any one Fire)

CR/MR
Subcontractor's Initials

Subcontractors' general liability insurance policy. • The additional insured status must be provided only on a CG 2010 (11/85) Additional Insured Endorsement or on a CG 2026 (11/85) Additional Insured Endorsement, or their equivalent. • A copy of the correct Additional Insured Endorsement, as described above, must be attached to the certificate of insurance. • The Additional Insured status will be provided to Ryland on a blanket basis for all jobs performed for Ryland (not project specific). • The general liability insurance provided must be primary over Ryland's insurance and Ryland's insurance should not be called upon to contribute toward the payment of any claim arising out of the Subcontractor's work. The Certificate of Insurance must clearly state that the Subcontractor's insurance is "primary and non-contributory" over Ryland's insurance. • The Certificate of Insurance should specifically state that the Subcontractor's insurance company's A.M. Best Rating is at least A-/VIII. • The general liability policy should be amended to include a 30-day cancellation notice provision in lieu of the standard 10-day cancellation notice provision. The certificate of insurance should so state. There shall be no endorsements limiting coverage for explosion, collapse, or underground damage, Blanket contractual liability, or Broad Form property damage coverage. There shall be no limitation on the limits available to the additional insureds. Nor shall there be any limitation or exclusions as respects the additional insured coverage for claims involving Bodily Injury of a Subcontractor's employees or of any other third party.	
C. <u>BUSINESS AUTO LIABILITY – covering any automobile, including hired and non-owned autos</u> • The certificates of insurance must evidence that "The Ryland Group, Inc. and its subsidiaries, affiliated and successor companies and their officers, directors, agents, servants, employees, divisions, partners and shareholders' are named as Additional Insureds on the auto liability insurance policy. • The certificate of insurance must reflect that the auto liability insurance insures any vehicle driven by the Subcontractor and its employees. • The certificate of insurance must specify that the Subcontractor's insurance company's A.M. Best rating is at least A-/VIII. • The Subcontractor's auto liability policy should be amended to include a 30-day cancellation notice provision in lieu of the standard 10-day cancellation notice provision.	$500,000. Combined Single Limit

CB/MR
Subcontractor's Initials

SUBCONTRACTOR AGREEMENT

THE RYLAND GROUP, INC.

ADDENDUM 4

DRUG AND ALCOHOL ADDENDUM

FOR THE SAFETY AND WELL BEING OF ALL EMPLOYEES ON RYLAND CONSTRUCTION SITES, RYLAND HAS A POLICY THAT NEITHER CONTROLLED SUBSTANCES NOR ALCOHOL SHALL BE DISTRIBUTED, POSSESSED OR USED ON RYLAND CONSTRUCTION SITES. ANYONE FOUND TO BE IMPAIRED BY OR IN POSSESSION OF CONTROLLED SUBSTANCES OR ALCOHOL MUST IMMEDIATELY LEAVE THE RYLAND CONSTRUCTION SITE OR PROPERTY. To help ensure the safety of all workers, including a worker that may be impaired, Subcontractor agrees to adhere to the following procedures:

(1) If a Subcontractor suspects that one of Subcontractor's Agents is impaired by controlled substances or alcohol, Subcontractor is required to investigate and make inquiries of co-workers on the job site to confirm the suspected impairment. If Ryland becomes aware that one of Subcontractor's Agents has been impaired on the job, Ryland shall have the right, but not the duty, to request that Subcontractor's foreperson investigate. When such a request is given, orally or in writing, Subcontractor's foreperson shall immediately proceed with such investigation and shall thereafter promptly report the results to the Ryland Supervisor. Ryland may send formal written notification to the Subcontractor regarding any such situation, a copy of which will be placed in the Subcontractor's file.

(2) Any worker who is impaired or reasonably believed to be impaired must be immediately removed from the job site. The Subcontractor must provide transportation for the impaired worker and not allow the impaired worker to drive him/herself from the job and endanger the public.

(3) A repeated violation by Subcontractor or any of Subcontractor's Agents of this policy will be cause for immediate termination of this Agreement by Ryland, in Ryland's sole discretion.

Subcontractor's Signature _____ Date 3/12/07

SUBCONTRACTOR AGREEMENT

THE RYLAND GROUP, INC.

ADDENDUM 5

FOR ALL FHA APPROVED PROJECTS

During the performance of this Agreement, the Subcontractor agrees as follows:

(1) The Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The Subcontractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Subcontractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Subcontractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Subcontractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Subcontractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended, in whole or in part, and the Subcontractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Subcontractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor of Subcontractor. The Subcontractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* that in the event a Subcontractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor of Subcontractor as a result of such direction by the administering agency, the Subcontractor may request the United States to enter into such litigation to protect the interests of the United States.

Supply Agreement

Buyer: Ryland Homes, _____ Division
Address: _____

Seller: C.J.S.
Address: _____

Period: From 7/1, 2002 to 12/31, 2002.

Product(s), Quantities: Buyer's requirements for N/A, which are estimated to total N/A (quantity) N/A (units) at its Division operations or other locations specified by Buyer.

Specifications: Product shall meet or exceed the specifications in Exhibit A. N/A

Price: $ N/A / N/A or as detailed in Exhibit B, F.O.B. delivered to Buyer's construction sites in the Divisions listed above or to other delivery points designated by Buyer.

Payment Terms: Net 30 F.O.B jobsite

Accepted and Agreed:

By Seller:		By Buyer:	
Signature:	[signature]	Signature:	[signature]
Name:	Michael J. Redman	Name:	GAVIN GREEN
Title:	General Manager	Title:	PURCHASING MANAGER
Date:	7/5/02	Date:	7/5/02

Special Terms and Conditions: The Special Terms and Conditions on the reverse side of this form are incorporated in and a part of this Agreement.

TERMS AND CONDITIONS

1. PRODUCT CHANGES - Seller shall provide notice of any change in Product (s). Any changes must be approved by Buyer. Buyer may terminate this Agreement without liability if Seller fails to obtain prior approval of Buyer to changes in the Product.

2. PAYMENTS – Seller shall mail invoices to the appropriate Division office unless Seller has arranged to use Ryland's autopay process. Payment is deemed subject to loss, rejection or adjustment for any shortage, deficiency in quality, failure to make specified delivery, defects, failure to comply with specifications or breach of any warranty or this Agreement, provided that such loss, rejection or adjustment shall not be an exclusive remedy of Buyer and Buyer's use of such remedy shall not constitute a waiver of any other right, remedy or privilege Buyer may have hereunder or otherwise.

3. ORDERS, DELIVERIES - Buyer shall order Product for delivery as required from time to time during the term of this Agreement. Seller shall deliver to the construction sites or other destinations specified by Buyer to an area where there is no encroachment in the public right of way. Delivery shall be made on the date specified on each order provided that Buyer places orders by phone or other means not later than seven (7) days in advance of the specified delivery date. Time is of the essence. Seller understands that Buyer's maintenance of its construction schedules depends upon timely receipt of the Products. Seller must notify Buyer in writing immediately of any delays or shortages in delivery of the Products. Seller agrees to reimburse and indemnify Buyer from any loss, damage, cost or other result occurring because of any delays or shortages in receipt of the Products.

4. INSPECTION & REJECTIONS - Buyer may inspect, count and test all Product(s) under this Agreement upon arrival at the final destination. To the extent Buyer rejects Product(s) as nonconforming, the quantities under this Agreement will automatically be reduced unless Buyer otherwise notifies Seller. Duplicated shipments or overages may be returned to Seller freight collected with no prior notice. Buyer may replace at Seller's cost any shortages in deliveries.

5. PACKING & CARTAGE – No charge shall be allowed for packing, boxing, or cartage. Packages and invoices must show Buyer's purchase order number, gross, tare and net weights and/or quantities, and (where applicable) lot number and package number, and must be accompanied by packing list or weight sheet.

6. PLANS AND DRAWINGS, ETC. - All drawings, jigs, tools, art work and related material or equipment furnished to Seller by Buyer or specifically paid for by Buyer shall remain the property of Buyer, and Seller shall have no right, legal or equitable, in such property. Seller shall return same to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted, upon Buyer's written request, without penalty to Buyer.

7. COMPLIANCE WITH LAWS - Seller will comply with all foreign, federal, state and local laws, orders, rules and regulations which may affect or be applicable to this Agreement, the Product(s), or the Seller, including, without limitation, (a) those applying to the prices charged by Seller, (b) those applying to the payments to be made by Buyer, (c) those applying to labor, including, without limitation, the Fair Labor Standards Act and federal, state and local laws and orders regarding equal opportunity, handicapped workers, affirmative action, disabled veterans and small and disadvantaged businesses.

8. TITLE - Title to, risk of loss of and liability for goods shall pass to Buyer only upon delivery of the goods to Buyer's construction sites or to other locations as designated by Buyer.

9. SHIPMENT OF HAZARDOUS MATERIALS - All hazardous articles must be clearly marked by Seller and Seller shall comply with federal, state and local laws and regulations applicable to shipment of hazardous materials or substances.

10. INSURANCE - Seller shall maintain adequate and commercially reasonable insurance coverage for all Products purchased hereunder. Seller shall maintain in force insurance described on Exhibit C attached. Seller shall furnish a Certificate of Insurance satisfactory to Buyer, showing all required insurance to be in force and stating that the insurance will not be canceled or changed except upon at least thirty (30) days written notice to Buyer.

11. INFORMATION DISCLOSED TO BUYER - Any knowledge or information which Seller shall disclose to Buyer in connection with the purchase of the goods or services covered by this Agreement shall not, unless otherwise specifically agreed upon in writing by Buyer, be deemed to be confidential or proprietary information and shall be acquired free from any restrictions as part of the consideration for this Agreement.

12. INFORMATION DISCLOSED TO SELLER – All forecasts, estimates, specifications, drawings, technical information and data (collectively, the "Information") furnished by Buyer to Seller in connection with the purchase of the goods or services covered by this Agreement shall remain the property of Buyer. Seller shall not use the Information in any manner, nor shall extracts be taken therefrom, for a purpose or use unrelated to work performed by Seller for Buyer without Buyer's prior written consent. The Information shall be used only in the manufacture, production, or supply of goods, equipment, or services for Buyer and shall be returned to Buyer whenever requested and, in any event, at the conclusion of this Agreement. No information relating to this Agreement, including specifically the pricing and other terms of this Agreement, shall be released or disclosed, other than to Seller's employees immediately concerned with the work hereunder, who shall be instructed to comply with this Paragraph 12, without the advance written approval of Buyer.

13. LOWER COMPETITIVE PRICE – If Buyer is offered goods of equal or better quality, as reasonably determined by Buyer, than those sold hereunder at a lower price (after all allowances and discounts) or upon better terms and conditions than then in effect under this Agreement, as reasonably determined by Buyer, then within ten (10) days of Buyer notifying Seller, Seller shall elect either that (x) the price or terms and conditions, as the case may be, under this Agreement with respect to all goods shipped by Seller to Buyer, after receiving the notice, shall be changed to those of such offer or (y) Buyer shall be released from its purchase obligation under this Agreement to the extent Buyer so elects. Seller's failure to notify Buyer in writing within such ten (10) day period shall be deemed an election of Clause (x).

14. MOST FAVORED NATION – If, at any time during the period of this Agreement, Seller or any of its affiliates shall sell goods of equal or better quality than the goods covered hereunder, or any substantially similar goods, at a lower price (after all allowances and discounts) or upon better terms and conditions (collectively the "Price") than the price or terms and conditions hereunder (collectively "Buyer's Price"), Seller, with respect to all goods shipped to Buyer after any such sale, shall change Buyer's Price to the Price. Buyer shall have the right, from time to time, to take such action as required in Buyer's reasonable judgment to verify Seller's compliance with this Section 14.

15. FREIGHT - Shipments will be F.O.B. Buyer's Facilities or such other location designated by Buyer. Seller will pay all shipping costs.

16. WARRANTY - Seller warrants that it has good and marketable title to all goods delivered to Buyer hereunder, free and clear of all liens and encumbrances. Seller warrants that the goods, equipment and/or services furnished hereunder conform strictly to the Buyer's specifications, the terms of this Agreement, and all applicable codes and standards and are of good and merchantable quality, free of all faults and defects and fit for the particular purpose intended and shall be properly contained, packaged and labeled. Seller warrants that the use or sale of the goods delivered hereunder will not infringe any patent. Seller shall indemnify and defend Buyer against any claim or liability for infringement of any patent relating to the sale or use of the goods furnished hereunder or the intended use thereof and shall defend any suit for such infringement.

17. REMEDIES - In the event Seller breaches any of its obligations to Buyer, in addition to any rights, remedies or privileges contained herein or otherwise, Buyer shall be entitled to whatever rights, remedies or privileges that may be available to it at law or in equity, including all remedies provided under the Uniform Commercial Code, notwithstanding any provision in Seller's invoice or other form relating to this transaction which seeks to limit Seller's liability. Buyer shall be entitled to recover any expenses (including reasonable attorney's fees) incurred by it in enforcing its rights hereunder. In addition to any other remedies available to Buyer, Seller agrees, at Seller's expense and at the convenience of and the direction of the Buyer, to repair, replace, or promptly otherwise correct any defective or nonconforming Product(s) discovered within the maximum time permitted by law. Any claim made by Buyer under this Agreement for indemnification or warranties as provided in this Agreement shall survive termination of this Agreement.

18. INDEMNITY - Seller agrees to defend, indemnify and save Buyer harmless from any loss, cost, damage, expense, or liability, including attorneys' fees, caused by, resulting from, or connected with the Product or Seller's negligent actions or failure to act pursuant to this Agreement.

19. CONTINGENCIES - The parties specifically agree that an increase in price of raw materials, or the unavailability of raw materials, shall not constitute either a contingency or an event of commercial impracticality.

20. DELAYS

a. When Seller can not perform in accordance with Section 3 of this Agreement, Seller will provide upgraded Products acceptable to Buyer without delay at the Prices specified in this Agreement for the ordered Product.

b. Seller shall be liable for any and all damages incurred by Buyer by reason of delays in Seller's performance, unless such delays result from an act of God or the active interference of Buyer. If Seller for any reason, other than the fault or neglect of Buyer, fails to perform, or it becomes apparent that Seller will fail or be unable to perform as required hereunder, Buyer, without limiting its other remedies, may upon 24 hours notice to Seller, obtain substituted Products or performance and offset or recover against Seller the cost thereof.

c. If Seller is unable to supply goods the same as or similar to the ones covered herein in the quantities contracted for, Seller shall allocate its actual production in such a manner as is fair and reasonable within the meaning of Section 2-615 of the Uniform Commercial Code then in effect. Deliveries omitted due to any excused contingency shall, without liability, reduce by an equivalent quantity the quantity of the goods to be sold, delivered and purchased during the term of this Agreement.

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TERMS AND CONDITIONS

21. TAXES – If this purchase is subject to State and/or Local sales or use tax, Seller shall set forth separately the amount of such taxes on the face of the invoice and Buyer shall pay the same. Buyer shall not be responsible for such taxes nor shall Buyer pay such taxes unless set forth in such manner; provided, however, Buyer shall not be responsible for such taxes if Buyer indicates that the purchase is not subject to any tax. In no case will Buyer be responsible for use tax as a result of Seller's tax presence, or lack thereof, in any State in which a transaction under this Agreement is deemed to have occurred. In those states in which Seller installs the purchased product, the Seller shall pay any applicable use tax. Seller shall clearly denote on the face of all invoices if the product was purchased installed or not installed.

22. APPLICABLE LAW - The validity, interpretation and performance of this Agreement shall be governed by the laws of the state in which the Product(s) is to be delivered (the "State") without giving effect to its conflicts of laws. Seller and Buyer agree that any disputes arising hereunder or related hereto shall be resolved by binding arbitration with a mutually acceptable third party arbitrator or with an arbitrator selected by the American Arbitration Association (AAA) in the State if the parties cannot agree within 15 days. The arbitration shall be conducted pursuant to the AAA's Commercial Rules.

23. NON-WAIVER - A waiver by either party of any breach, or failure to enforce any of the terms or conditions of this Agreement, shall not in any way affect, limit, or waive such party's right at any time to enforce strict compliance with such term or condition or any other term or condition herein.

24. ENTIRE UNDERSTANDING - This Agreement sets forth the entire understanding of the parties and supersedes all prior understandings, negotiations, and dealings between the parties with respect to purchase and sale of the goods or services covered herein. No agreement or understanding, oral or written, in any way purporting to modify the terms hereof, or changes in or addition to, any of the terms hereof, irrespective of the wording of Seller's acceptance or trade custom, shall be binding upon either party unless contained in a writing expressly described as an amendment to or extension of this Agreement and signed by both parties.

25. ASSIGNMENT - No assignment by Seller of any right hereunder shall be effective and any such attempt shall be null and void.

EXHIBIT A
TO SUPPLY AGREEMENT

PRODUCT SPECIFICATIONS

EXHIBIT B
TO SUPPLY AGREEMENT

PRICING

EXHIBIT C
TO SUPPLY AGREEMENT

The following insurance is required:

Workers' Compensation
Statutory Limits

Employers' Liability
$500,000 Each Bodily Injury by Accident
$500,000 Each Bodily Injury by Disease, Each Employee

Commercial Liability

General Aggregate Limit per Location (other than Products/Completed Operations)	$1,000,000
Personal Injury & Advertising	$1,000,000
Injury Limit	$1,000,000
Bodily Injury	$1,000,000 (Each Occurrence)
Property Damage	$1,000,000 (Each Occurrence)
Fire Damage Limit (any one fire)	$50,000

Auto Liability

Bodily Injury Each Person	$500,000
Bodily Injury Each Accident	Combined Single Limit
Property Damage Each Accident	

ALL CERTIFICATES OF INSURANCE MUST SPECIFY THAT THE INSURANCE COMPANY'S A.M. BEST RATING IS AT LEAST A-/VIII.

Att: Will Bettis
746-4325 fax
746-4200 phone

Carolina Truss DONE

RYLAND HOMES

SCOPE OF WORK
RYLAND HOMES - CAROLINAS DIVISION
General Conditions To Job Specification

I. SPECIFIC REQUIREMENTS

A. OVERVIEW

Ryland's Responsibilities

1. To provide regular supervision and directions from the Ryland Home-Building Supervisor.
2. To supply the most timely and accurate scheduling information.
3. To provide all Pertinent Documents/Plans/Drawings/Details/Selection Sheets/Change Orders/Community Specifications/Site Plans/As-Builts/etc. as required by each subcontractor to perform and complete his/her job duties.

Subcontractor's Responsibilities

1. It is the responsibility of the Subcontractor to maintain current copies of all licenses and certificates of competency. If necessary copies of these documents are to be provided to Ryland Homes before commencement of the work.
2. It is the responsibility of the Subcontractor to have all required insurance and to provide certificates of insurance to Ryland Homes before commencement of the work. Ryland Homes shall be named as Additional Insured. Minimum notice of cancellation to be thirty (30) days.
3. To conform completely to all labor and material specifications per the plans, Ryland Homes specifications, FHA and VA Minimum Property Standards, and all laws and rules of the Federal, State, County, and City authorities having jurisdiction over all projects. In the event of any discrepancy between the laws, rules and codes governing this section and the specifications of this section, the Subcontractor shall use the greater of the requirements.
4. It is the responsibility of the Subcontractor to verify that the correct material, color, options, elevations and garage hands are being used.
5. Each Subcontractor and Supplier should be aware that the schedule is part of his/her contract. Time is of the essence. Subcontractors are to coordinate scheduling of all County or Municipality inspections relative to their own work with Ryland Homes or Municipality. Where applicable, all re-inspection fees or fees incurred due to inadequate pass/fail ratios will be paid by the Subcontractor. Inspections must be called in within 24 hrs of scheduled completion of contracted work. Each Subcontractor is expected to have the necessary personnel available to meet the schedule and to make up weather delay(s).
6. The Subcontractor must be prepared to provide the Supervisor with a timeline for job completion.

7. The Subcontractor and Supplier are to perform or deliver per Ryland Homes' schedule at minimum five (5) days per week. Without prior approval, no work should be performed in the community after 6:00 pm.

8. The Subcontractor is to coordinate his/her work with all other Subcontractors to allow the completion of all work. If this coordination hinders both parties from meeting the schedule, then a Ryland Supervisor must be notified as soon as possible.

9. Each Subcontractor shall have a qualified job supervisor on the job with responsibility toward his/her trade. Each Subcontractor is to furnish a representative for Subcontractor Meetings as scheduled by Ryland Homes.

10. It is the responsibility of the Subcontractor to inspect the project prior to beginning his/her work. If any problems or differences from the plans exist he/she should notify Ryland Homes so that these items are corrected. Subcontractor will be responsible for any known deficiencies, which are covered over.

11. The Subcontractor must notify the Ryland Supervisor of any missing material. Notification must be made as soon as possible so that materials may be ordered expeditiously.

12. It is each Subcontractor's obligation to check each job to see that the necessary materials to perform his/her work are on the job site. Subcontractor is responsible to carry an adequate supply of material to eliminate any delay in completion and scheduling. The subcontractor is required to immediately inform the Supervisor, prior to commencement of his/her work, of any delay that may result from lack of material, manpower, etc.

13. It is the responsibility of each Subcontractor to properly inspect their own work for quality and completion. All construction punch list items shall be completed within 48 hours of receiving notification.

14. The Subcontractor must notify the Ryland Supervisor of any defects or other conditions that would obstruct him/her from completing his/her work.

15. The Subcontractor must notify the Ryland Supervisor of any material substitutions and approval may be granted only if the quality is of equal or greater in grade level.

16. The Subcontractor must receive written approval from a Ryland Supervisor in the form of a purchase order before beginning any extra work.

17. The Subcontractor must be equipped, during normal business hours, to answer and respond to all phone calls within a two (2) hour period. This can be done through office personnel or by radio or mobile telephone.

18. Once the doors or windows have been installed, it is the responsibility of each Subcontractor to close them during inclement weather in an effort to minimize damage to the home.

19. It is the obligation of each Subcontractor to lock the home after 5:00 p.m. each day. This will include all exterior doors, garage doors, patio doors and windows.

20. **Subcontractors must clean up all Subcontractor related debris prior to leaving the home each day. Each Subcontractor is to broom sweep his or her work area upon completion of their individual job. All debris must be placed in the nearest trash bin or designated area, NOT in the garage. Daily cleaning includes:**

    a. **Removing any incidental trash resulting from his/her work on-site and placing in a designated area.**

    b. **Removing and cleaning any excess dirt or mud left on streets adjacent to the site as a result of his/her work. The Subcontractor will be liable to any future charges incurred to complete this work.**

21. **The Subcontractor shall take every precaution and provide suitable means to protect finished work from damage. Protection of countertops, bathtubs, sinks, toilets, floors, walls, etc. is the responsibility of all Subcontractors.**

22. Subcontractor/Supplier m. furnish appropriate manuals, written warran ind manufacturer supplied tools for all equipment.

23. Supplier is to furnish samples to sales offices, as required.

24. It is the responsibility of the owner or representative of all Subcontractors and Suppliers to make sure that anyone working on a Ryland Homes job site is aware of these specifications and quality requirements. Copies of these specifications and quality requirements should be distributed to and reviewed with all job supervisors. It is the responsibility of the Subcontractor to train their personnel on these job specifications.

25. Any violation or non-conformance to the above regulations may result in additional cost and/or termination of Subcontractor or Supplier.

26. First violation by any Subcontractors employee may result in a written or verbal warning, second violation can result in a minimum $50 fine, third violation can result in a minimum $100 fine and fourth violation can result in termination from the project.

27. Any Subcontractor of a Subcontractor must adhere to all guidelines referred to within this scope.

28. It is the responsibility of the Subcontractor to own a computer with access to email and the Internet. The subcontractor is also responsible for registering for and applying the Ryland Build Pro online system within its day-to-day operations. Any and all Build Pro questions should be directed to the Purchasing Manager.

B. JOB SITE CONDITIONS

No Drinking/Use of Drugs/Eating/Gambling/Pets

1. Ryland Homes' policy of no drinking of alcoholic beverages will be strictly enforced. Drinking on the job and/or the disposal of alcoholic beverage containers will not be tolerated and are subject to termination.

2. Ryland Homes' policy of no taking or possession of drugs will be strictly enforced. Taking or possessing drugs on the job will not be tolerated and is subject to termination.

3. Under no circumstances shall food be eaten or smoking be permitted in any home after drywall.

4. Gambling on the jobsite will not be tolerated and any offender is subject to termination.

5. No pets (other than seeing-eye dogs) will be allowed on the project site.

No Parking

1. There is no parking on finish grade lots, wet rough graded lots, driveways or sidewalks. Access to homes will be designated by a Ryland Homes representative. Violators can be subject to a fine. Vehicles are to be parked on one side of the street, leaving access to each construction site for deliveries. Whenever possible, do not park in front of occupied units or mailboxes.

2. Parking on driveways is subject to a minimum $200 fine. If approved by the supervisor, vehicles may be allowed on driveways for a short period of time for the sole purpose of loading and unloading tools, equipment, etc. Vehicles that leak fluids are never allowed on concrete and are responsible for major damages caused to the street.

Utilities/Storage

1. No one shall use any utilities except ones specifically provided or specified to them by Ryland Homes. Current homeowners' utilities should never be used without prior approval.

2. If properly informed by the Supervisor, the Subcontractor will be required to supply their own power/electricity when certain job conditions demand.

3. No main water supply be turned on by any unauthorized Subcontrac If authorization to turn on the main water supply is granted by a Ryland Homes representative, the main water supply must be turned off prior to leaving the job site. Failure to do so will make the Subcontractor liable for any subsequent water damage.

4. No main panel box or temporary pole service cover is to be removed or tampered with by an unauthorized Subcontractor under any circumstances. The main power breaker can only be turned on by the electrical Subcontractor or a Ryland Homes representative. All work is to be done on a circuit protected by a ground fault circuit interrupter.

5. Prior to excavation or digging, the Subcontractor is to verify that there is no conflict with location of underground utilities, telephone, cable, electric, sewer, water, gas, landscape, etc. Subcontractor is responsible for having all existing underground utilities located prior to excavation or digging. Subcontractor is responsible for any damages and repairs incurred while digging or excavating.

6. All Subcontractors and Suppliers shall use the site portable toilets exclusively.

7. If Subcontractors require storage for material on the job site or an area for prefabrication, the Subcontractor and the Supervisor shall agree to a location for a temporary storage area. Subcontractors are solely responsible to provide their own controlled storage, ie., bins, chain link fence, lighting, etc. with approval from the Supervisor. The Subcontractors will be responsible for cleaning the area on a regular basis. When informed by the Supervisor to vacate, the Subcontractors must clean the storage area and remove all containers and debris from the job site.

General

1. No one shall use abusive or foul language, play loud music, or bring children or pets on any job site. Courtesy should be shown to all customers and potential customers.

2. Under no circumstances shall a Subcontractor take direction or make any changes on behalf of a Homebuyer or Salesperson. Only those documents issued by Ryland Homes, Plans, Selection or Change Orders shall be followed. Any communication with a customer is discouraged and all communication should flow through the Supervisor.

3. All deliveries will be placed in a designated area and checked in by a Ryland Homes representative. Suppliers are responsible to unload their own materials. Shipments are to be checked in and signed for by a Ryland Homes representative. If the Supervisor is out of the subdivision at the time of delivery, the ticket should be left in the construction office mailbox and the shipment should be checked within 24 hours.

4. Curbs, walks, drives and streets must be inspected prior to work. Any damage must be reported to Ryland Homes. Damage found later will be charged to the Subcontractor responsible for the damage.

5. Anyone found placing tools or materials on counter tops, vanity tops or finished floors, or removing protective floor or bathtub coverings at any time during construction can be subject to a fine and will be responsible for all damages..

6. The job site must be kept neat and clean at all times. Any scraps, paper, etc., must be picked up daily. Trash from lunch is not to be left on the job site.

7. The interior and exterior of all homes are to be broom clean at all times to allow each trade to do his work efficiently and safely and to make the job site appear more professional to our customers. All Subcontractors are required to leave proper access to the lot and not to leave any open holes, dirt piles, material piles or any other type of condition preventing safe accessibility. Crawl spaces must be free of all loose debris and trash upon completion of your work.

8. Trash dumpsters or designated areas will be provided and all trash or debris must be placed in these dumpsters or areas. All debris must be compacted and boxes broken down before disposal. All Subcontractors and suppliers must adhere to all environmental regulations regarding hazardous waste. The Subcontractor shall be responsible to properly store and dispose of all hazardous wastes and all spills resulting from his/her work immediately.

9. After carpet is laid in a[illegible]me, all shoes must be removed at the door[illegible]ore entering. If the removal of protective footwear is a conflict with safety standards, Subcontractor will need to wear "shoe booties". Shoes may not be required on vinyl, tile and hardwoods that are covered with protective paper or cardboard unless designated by the Supervisor.

C. QUALITY OF WORK

1. All materials delivered to the job shall be new and in original condition and shall bear the name of the manufacturer and any required grade stamps.

2. It is the obligation of each Subcontractor to protect and respect the material or work of all other Subcontractors preceding him/her.

3. Subcontractor is responsible for the finished quality of his work. If Subcontractor proceeds to install his work over substandard work by others, it then becomes the responsibility of the Subcontractor to correct the substandard work, as well as his/her own, upon Ryland Homes' request.

4. Subcontractor will assume full responsibility for all materials, if applicable, until they are installed and accepted. If a scheduling error has occurred on the part of the Supervisor which delays timely installation, Ryland Homes will not hold the Subcontractor fully responsible for stolen or damaged material. Do not install damaged materials.

D. SAFETY

1. Hard hats must be worn at all times, off the curb, by all workers, managers and delivery personnel. Subcontractor is to provide his/her workers with all OSHA rules and regulations and is responsible for enforcement. Obey Ryland Safety Rules, regardless of lesser rules by OSHA.

2. No children under the age of 18 years old or other unauthorized persons are allowed on the job site at any time.

3. The Subcontractor is responsible for the assurance that their employees are fully trained in safety practices and have a full understanding of hazards involved in their job and surroundings. There should be procedures in place to control or eliminate those hazards.

4. All Subcontractors and their employees should understand the following:

   (a) Unsafe conditions, accidents, injuries and illness, no matter how minor, must be reported to a Ryland Homes Supervisor at once and an accident report filled out.

   (b) Subcontractor and each employee shall provide for frequent and regular inspections of the job site, their materials and equipment. A Safety Manager will be designated by Ryland Homes for inspecting and assuring safe worksites for Subcontractors and Suppliers.

   (c) No person is expected to undertake a job until they have received instructions on how to properly do it.

   (d) No person should undertake a job that appears to be unsafe.

   (e) Mechanical safeguards are to be in place and must be kept in place.

5. Subcontractor shall be responsible for maintaining and supervising all safety precautions and programs in connection with their work. Subcontractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, loss or injury to:

   (a) All employees on the job site and all other persons who may be affected thereby.

   (b) All the work, materials, and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Subcontractors.

6. The Subcontractor is required to operate all electrical equipment on a ground fault interrupted circuit (GFI).

7. Electric Heaters are NOT ALLOWED. (Propane Heaters may be supplied by the job site Supervisor.) Propane Tanks are NOT ALLOWED inside the home. The heaters are not allowed to sit on top of a wood deck floor unless 2 layers of drywall (approximately 2'x 2' larger in width than the heater itself) separate the heater and the sub-floor.

8. The speed limit in all construction areas is **15 miles per hour or as posted**, whichever is lower. Driving on non-established roadways or non-established temporary roadways is prohibited.

9. The Subcontractor is to insure that back up alarms are installed and functioning on all cranes, forklifts, back hoes, bulldozers, rollers and other heavy equipment used on the job site. No equipment with tracks is allowed on streets or curbs, they must be off-loaded directly onto the site.

10. Subcontractor is to comply with all Hazardous Communication Material requirements as set forth by OSHA.

11. Subcontractor will provide Ryland Homes and their own work crews with all necessary Material Safety Data Sheets prior to any hazardous material arriving on the job site.

12. Subcontractor will insure that all containers of hazardous materials are labeled with the appropriate hazard and warning precautions. The Manufacturer's label can be used as the main source of hazard information. If the primary label is removed, becomes illegible or if hazardous material is transferred from a labeled container to an unlabeled container for storage (not immediate use), the container must then be labeled with a copy of the chemical MSDS or NFPA generic label. Subcontractors must inform Ryland Homes in writing of the type of alternative labeling they are using.

13. No flammable materials are to be stored on any job site.

14. No alcohol or non-prescription drugs are allowed on any Ryland Homes job site. Anyone found in violation of this is subject to immediate termination.

E. STANDARDS/WARRANTY

1. The Subcontractor shall guarantee all workmanship free of any defects for 13 months commencing with the Buyer Settlement date. Additional or longer warranty periods will apply if detailed by scope of specific trade of which the Subcontractor is working. Should field inspection warrant the acceptance of inferior workmanship, the subcontractor shall assume liability for any future charges incurred in the correction of this work.

2. Per law, "Latent Defects" have a seven (7) and thirteen (13) year statute of limitations, in the states of North Carolina and South Carolina respectively, and will be warranted for that time frame. Latent Defect is defined as "A construction flaw, related to either a product or workmanship, that can not be seen or is not evident until some manifestation brings notice to the flaw".

3. Each Subcontractor is to supply a professional representative who is a qualified knowledgeable tradesman and professionally dressed, for all contacts with Ryland Homes' customers. This person must be instructed not to discuss other Subcontractors workmanship, or the materials and products chosen by Ryland Homes.

4. All pre-settlement and buyer orientation repairs shall be completed within two (2) working days of receiving notification of the repairs. Time is of the essence. Subcontractor will be financially responsible for any costs incurred due to the delay.

5. All non-emergency customer service work is to be completed within 5 working days after notification from the Ryland Homes Warranty Department or the homeowner. Phone calls must be returned, with appointments scheduled, within 48 hours of a request. Subcontractor will be financially responsible for any costs incurred, such as loss of wages to the homeowner, due to the delay.

6. All service work completed must have two signatures that the work was completed, the person who did the work and the customer, and must be returned to the Warranty Department or Construction Office.

7. Subcontractor's failure (mplete warranty work and Ryland Homes' p(notification of non-compliance will result in the selection of others to complete the Subcontractor's work. Should Ryland Homes thereby incur any additional costs, such costs will be passed on to the Subcontractor.

8. All Subcontractors must respond within three (3) hours and complete all Emergency warranty work within twenty-four (24) hours of notification.

9. Suppliers are responsible to furnish material for touch-up work on all materials furnished to Ryland Homes. Replacement parts must be kept in stock for delivery within two (2) days of placing the order.

F. PAYMENT

1. Because Ryland Homes wishes to pay in a timely fashion, all invoices must be submitted within ninety (90) days of the completion of the work or delivery of materials, otherwise payments are forfeited. Rejected invoices due to Subcontractor errors must be resolved within 90 days from the date that the Subcontractor was notified of the error.

2. Ryland Homes reserves the right to hold payment until 100% work completion and applicable county or city inspections are passed.

3. Payment shall be based upon the contract price at the time the home is sold. Upon notification of a price change by the Subcontractor, Ryland Homes may furnish in writing a list of units to be completed at the original contract price. Price changes require at least a 120 day written notification to the Purchasing Manager.

4. Ryland Homes reserves the right to issue joint checks to a subcontractor and his supplier.

5. Subcontractor is responsible to follow all invoicing, verification, and payment procedures.

6. Ryland Homes reserves the right to hold appropriate monies from a subcontractor's payment based on untimely response(s) to warranty work by the Subcontractor. Related moneys may be held until such outstanding or overdue Warranty requests have been honored and satisfied.

7. For any work to be performed, or materials supplied beyond the scope of the contract, there must be a purchase order signed with a fixed dollar amount by a Ryland Homes representative.

8. Ryland Homes reserves the right to debit (back charge) a subcontractor for untimely, incomplete or inferior work. No debits will be issued without prior notification to the Subcontractor. Subcontractors will given proper time to correct &/or respond prior to a back charge. Time is of the essence with regards to response time. Back charges are not encouraged and if necessary are to be for costs only.

9. Subcontractors are expected to coordinate and respect all other Subcontractors' work and work together to eliminate any costs due to deficiencies.

10. All items of deficiency or improperly installed items noted on any superintendent or manager punch list, items appearing on any quality assurance or buyer walk-through list, will be the responsibility of each Subcontractor or Supplier to repair or replace at no cost to Ryland Homes.

11. Subcontractors' bids are to include transportation and trip charges. Ryland Homes will not pay any additional trip charges for any reason.

12. Fines can be incurred for not adhering to any rules and regulations stated within this general scope or detailed by scope of specific trade of which the Subcontractor is working at the discretion of a Ryland Homes Representative.

G. INSURANCE REQUIREMENTS – SEE ATTACHED ADDENDUM

Subcontractor 5/3/06 Date

Ryland Homebuilding/Purchasing Manager 5/4/06 Date

RYLAND HOMES

SCOPE OF WORK
RYLAND HOMES - CAROLINAS DIVISION
Roof Trusses
COST CODE: 5170

The Subcontractor or Supplier, (hereinafter referred to as the Subcontractor), will adhere to all City, County, State and Federal building regulations, codes and licensing in all areas where work is to be performed.

This document defines both Ryland Homes' and the Lumber Subcontractors' responsibilities in this phase of construction. It is intended as a checklist that will define the work to be done, the level of quality and any timing that is required when performing said work. The Truss Subcontractor's work will not be considered complete until all specifications are fully met.

I. Specific Requirements

A. Overview

The Subcontractor must supply all labor, materials, supervision, tools and equipment as required by plans and the Customer Selection Sheet. This construction must be done in conformance with all specifications.

B. Specifications

1. The Subcontractor shall furnish all necessary labor, materials, tools, equipment, transportation and incidentals to fabricate and deliver roof trusses. Truss spans and configuration shall conform to roof and ceiling designs shown on the plans for individual structures or as otherwise designated by the Supervisor.

2. All trusses shall be designed in accordance with the current adopted building codes of the governmental jurisdiction, where the structure is to be located. Trusses shall be in accordance with the latest edition of Design Specifications for Metal Plate Connected Wood Trusses and Design Specification for Wood Construction and Quality Standards for Metal Plate Connected Wood Trusses.

3. Truss engineering design shall include reference to the design criteria used, lumber requirements, plating requirements, design loading, adjustments to design values and engineer's registered seal.

4. Truss lumber shall be grade, size and species specified by the design engineer or better. Design values for the lumber shall be in accordance with the standards published by the National Forest Products Association. All lumber, including pressure treated lumber shall have moisture content of no more than 20% at the time of manufacturing. Lumber shall not have characteristics that would interfere with the proper placement of connector plates, or the fabrication of uniformly consistent trusses.

MR

5. All trusses having bearing locations other than the end or heel shall have bearing points clearly marked to permit verification during and after installation. All truss chords and web members that require special lateral bracing shall be clearly shown on the truss drawing.

6. The connector plates used in the fabrication of wood trusses shall be of the gauge, type and minimum size specified by the truss design engineer and shall conform to all applicable manufacturing standard of the Truss Plate Institute. Connector plates shall be protected from damage during storage, delivery and use. All trusses shall have fully embedded connector plates at every joint.

7. All trusses shall have wood members that are accurately cut so that assembly into the design configuration will result in wood bearing between truss members at their interface. All trusses shall have embedded connector plates at every joint.

8. Trusses shall not be subject to any stresses during fabrication storage or delivery, which may impair their structural integrity.

9. The Subcontractor shall provide all necessary documentation, engineering, erection placement plans and truss engineering details. Truss engineering details signed and sealed by an engineer registered in the State of North Carolina and/or South Carolina, shall be provided, to adequately describe bearing conditions, permanent bracing and orientation of trusses that may be necessary for the securing of governmental permits and inspections and for use during the erection and installation process. A complete set of the above shall be furnished to the Supervisor.

10. The Subcontractor shall furnish to Ryland a complete set of engineering design for all trusses, gables and valley sets shipped to the Subdivision at the time of delivery.

11. All material and parts used in assembling each truss unit must meet all engineering specifications. The trusses must arrive on the job site assembled in a quality and workmanship like manner 100% of the time.

12. Where possible, the trusses should be stacked completely on the ground. Whenever possible, trusses shall be delivered with the gable ends on top of the load followed by girders and then hip packages. Ryland shall provide a safe and suitable access for on-site storage.

13. Any damage from improper loading or unloading will be the responsibility of the Subcontractor.

14. The Subcontractor will provide all required truss repair details within 2 business days after notification from Supervisor.

15. All gable end truss drawings will indicate which vertical members require lateral wind bracing.

16. All shop drawings and erection drawings provided by the Subcontractor will include connections and bearing details, bridging and bracing details, nominal dimensions, truss configurations, lumber grade and species.

17. The Subcontractor shall provide all structural hanger and hurricane straps as required by the engineering. The Subcontractor shall furnish all structural hangers required to complete the roof assembly.

18. All roof truss drawings will indicate location and size of lateral or bracing.

19. All gable trusses shall be marked for location of internal bearing points.

20. All gable trusses will be studded sixteen (16) inches on center unless otherwise specified by Ryland.

II. Standards/Warranty

The Subcontractor must guarantee that all work is free of defects. If field inspection warrants the acceptance of inferior workmanship, the Subcontractor must assume liability for any future charges incurred for the correction of his/her work.

As a representative of Carolina Truss
(COMPANY NAME)

I have read and fully understand the content of the job scopes and I agree to comply with all of the aforementioned terms. Furthermore, I understand that all of my personnel performing work on Ryland job sites will be given a copy of this job scope and are expected to read, understand and comply with the written responsibilities. Also, they are expected to have the job scope in their possession when on a Ryland job site.

Subcontractor — Date: 5/3/06

Ryland Homebuilding/Purchasing Manager — Date: 5/4/06

The Ryland Group, Inc.
00143

Bank of America Customer Connection

Stub 1 of 1
Check Date: 07/11/06

NO. 00064259

INVOICE NO.	DATE	PAYMENT ADVICE	GROSS	DISCOUNT	NET
		* See Attachment *			

EXHIBIT
1

Vendor No.	Name
7265634	CAROLINA TRUSS SYSTEMS

RYLAND

Bank of America Customer Connection
Bank of America, N.A.
Atlanta, Dekalb County, Georgia

NO. 00064259

DATE 07/11/06

AMOUNT ****193,609.91

PAY ONE HUNDRED NINETY-THREE THOUSAND SIX HUNDRED NINE AND 91/100 DOLLARS

TO THE ORDER OF
STARK TRUSS, INC.
dba CAROLINA TRUSS SYSTEMS, INC.
PO BOX 80465
CANTON OH 44708

REQUIRES TWO SIGNATURES FOR $50,000 OR GREATER.
SIGNATURE AREA. DO NOT ALTER, WRITE OR STAMP IN THIS AREA.

⑈00064259⑈ ⑆061112788⑆ 329 902 4747⑈

Carolina Truss Systems
INCORPORATED
351 International Circle
Summerville, South Carolina 29483
(843)875-0550 Fax (843)871-0603 1-800-868-4912
WWW.CAROLINATRUSS.COM

ORDER #	0602179-T
DATE OF INVOICE	06/15/06
CUSTOMER ACCT #	004573
CUSTOMER PO #	36714-155
ADDITIONAL PO #	
DATE DELIVERED	06/15/06
ORDERED BY	
SALES REP	JOE RILEY

INVOICE #0602179-T

DELIVERY ADDRESS:
LOT 74 THE RESERVE
1502 MARSH REED COURT
GOOSE CREEK, SC BERK

SOLD TO:
RYLAND HOMES
3955 FABER PLACE
SUITE 100
NORTH CHARLESTON, SC 29405
(843) 746-4300

JOB NAME: LOT 74 THE RESERVE
MODEL: BRUNSWICK C
LOT #: 74
SUBDIV: THE RESERVE

ROOF TRUSSES

PROFILE	QTY PLY	PITCH TOP	PITCH BOT	TYPE ID	BASE SPAN	O/A SPAN	LUMBER TOP	LUMBER BOT	OVERHANG LEFT	OVERHANG RIGHT	CANTILEVER LEFT	CANTILEVER RIGHT	STUB LEFT	STUB RIGHT
	1	7.00	0.00	GABLE A01	51-10-12	51-10-12	2 X 4	2 X 6		00-10-08				
	5	7.00	0.00	SPECIAL A02	51-10-12	51-10-12	2 X 4	2 X 6		00-10-08				
	2	7.00	0.00	SPECIAL A03	51-10-12	51-10-12	2 X 4	2 X 6		00-10-08				
	1	7.00	0.00	SPECIAL A04	51-10-12	51-10-12	2 X 4	2 X 6	00-10-08	00-10-08				
	6	7.00	0.00	SPECIAL A05	51-10-12	51-10-12	2 X 4	2 X 6	00-10-08	00-10-08				
	1	7.00	0.00	SPECIAL A06	46-02-00	40-11-08	2 X 4	2 X 6	00-10-08			00-01-12		05-02-08
	4	7.00	0.00	SPECIAL A07	46-02-00	40-11-08	2 X 4	2 X 6	00-10-08			00-01-12		05-02-08
	5	7.00	0.00	SPECIAL A08	46-02-00	40-11-08	2 X 4	2 X 6	00-10-08					05-02-08
	1	7.00	0.00	GABLE A09	46-02-00	40-11-08	2 X 4	2 X 4	00-10-08					05-02-08
	1	8.00	0.00	ATTIC B01	20-07-00	20-07-00	2 X 4	2 X 6	00-10-08	00-10-08				
	9	8.00	0.00	ATTIC B02	20-07-00	20-07-00	2 X 4	2 X 6	00-10-08	00-10-08				
	1 2 Ply	8.00	0.00	ATTIC B04	20-07-00	20-07-00	2 X 6	2 X 10	00-10-08	00-10-08				
	1	8.00	0.00	GABLE C01	13-07-00	13-07-00	2 X 4	2 X 4	00-10-08	00-10-08				
	1	8.00	0.00	QUEEN POST C02	13-07-00	13-07-00	2 X 4	2 X 4	00-10-08	00-10-08				
	1 2 Ply	8.00	0.00	GIRDER C03	13-07-00	13-07-00	2 X 4	2 X 6						
	26	7.00	0.00	PIGGYBACK P01	02-03-04	02-03-04	2 X 4	2 X 4	02-00-00	02-00-00				

ITEMS

QTY	ITEM TYPE	SIZE	LENGTH FT-IN-16	PART NUMBER	NOTES
8	Hangers	HUS 26			

SUBDIVISION
LOT
JUN 26 2006
CODE
APPROVAL

TERMS OF SALE: Net 30 Days
FROM DATE OF INVOICE

Make Check Payable To:
Carolina Truss Systems, Inc.

Send Remittance To:
STARK TRUSS, INC.
PO Box 80469
Canton, Ohio 44708

SUB-TOTAL	$5,318.00
SALES TAX %	$319.08
GRAND TOTAL	$5,637.08

DELIVERY FEE: may include fuel surcharges, multiple delivery attempts, distance traveled or minimum order total not met, etc.

Stark Truss Company of Summerville LTD, dba Carolina Truss Systems

RYLAND HOMES
The Ryland Group Inc.
CHARLESTON Division
3955 Faber Place
Suite 101

CHG # 155

PURCHASE ORDER NO.
36714 OS
Show this # on all invoices, packing lists, delivery receipts, etc.

VENDOR	DELIVER TO
CAROLINA TRUSS SYSTEMS (443) 7265634 dba CAROLINA TRUSS SYSTEMS, INC. PO BOX 80469	1502 Marsh Reed Court THE RESERVE Goose Creek, SC 29445 Berkley

DATE	JOB NO.	PLAN NO	MATERIAL DESCRIPTION
5/17/2006	08786010074	3361 30	CARTRUSS-TrussAmer 6% tax

Lot # / Cost Code / Option Number	Lot Address / Cost Code Description / Option Description	Plan	Elev.	Quantity	Measure	Unit Price	Amount
08786010074 51700	1502 Marsh Reed Court Del Trusses	3361	30	1	LS	$4998.9600	$4,998.96
08786010074 51700 A115050	1502 Marsh Reed Court Del Trusses BONUS ROOM	3361	30	1	LS	$638.1200	$638.12
						Subtotal	$5,637.08
						Tax	$0.00
						Total	$5,637.08

8437119

WORK COMPLETION CERTIFICATION

The subcontractor has inspected his work and hereby warrants completion of the work described in the aforementioned job description which was authorized by a Ryland Homes Superintendent on the aforementioned address. Contractor also certifies that all work has been done in compliance with the terms and conditions of the Contractor Base Agreement, and requests payment of the consideration expressed therein in the amount stated above. Upon receipt of payment by Contractor or his agent, Contractor hereby waives and releases all actions, debts, claims and demands against Ryland Homes on account of all work, services, equipment and materials performed or furnished by him in connection with the work performed, and, Contractor hereby waives any mechanic's, materialman's or like liens and all rights to file any such liens in the future against the real property on account of the work, services, equipment and materials performed or furnished by the Contractor, and Contractor hereby agrees to promptly pay and release of record all mechanic's, materialman's, and like liens filed by other in connection with work covered by the contract, which may now or in the future affect the real property and to defend and indemnify and save Ryland Homes harmless from any liability or expense because of any liens or the enforcement thereof. Contractor agrees to that he's solely responsible for withholding taxes, social security taxes, and unemployment for employees of Contractor.

PAYMENT OF THIS REQUEST SHALL NOT BE CONSTUED AS A WAIVER BY RYLAND HOMES AS TO WORK LATER FOUND DEFECTIVE AND SHALL NOT RELEASE THE CONTRACTOR FROM HIS LIABILITY FOR WARRANTEES AND WARRANTEE SERVICE AND/OR DEFECTIVE WORK. PAYMENT SHALL NOT BE MADE UNLESS THE CHECK REQUEST ON THIS CERTIFICATE IS SIGNED BY AN AUTHORIZED AGENT OF RYLAND HOMES.
INVOICE TO BE ATTACHED – AMOUNT MUST AGREE OR INVOICE WILL NOT BE PROCESSED.

Superintendent's Approval	Office Approval
By Date	By Date

CONTRACTOR _____ . DATE _____

Payment Attachment

Check No. - 64259
Check Date - 07/11/06

7265634 CAROLINA TRUSS SYSTEMS (443)

Invoice Number	Date	Remark	Gross	Deductions	Amount Paid
0602178-T	06/14	08786010082 51700	3,396.24		3,396.24
0602178-T	06/14	08786010082 51700 A115050	623.28		623.28
0602178-T	06/14	08786010082 51700 A140062	152.64		152.64
0600963-E	06/14	08789010100 51695	3,310.02		3,310.02
0600963-E	06/14	08789010100 51695 A114274	1,771.10		1,771.10
0602462-T	06/15	08790010058 51700	2,452.84		2,452.84
0602244-T	06/08	08783010055 51700	4,598.67		4,598.67
0602244-T	06/08	08783010055 51700 A114273	553.80		553.80
0602244-T	06/08	08783010055 51700 A119228	372.75		372.75
0602628-E	06/13	08792010054 51695	4,359.74		4,359.74
0602257-T	06/07	08791010146 51700	4,825.12		4,825.12
0602257-T	06/07	08791010146 51700 A114292	371.00		371.00
0602257-T	06/07	08791010146 51700 A121354	143.10		143.10
0602367-T	06/09	08789010093 51700	5,791.47		5,791.47
0602367-T	06/09	08789010093 51700 A119228	372.75		372.75
0602247-T	06/14	08783010053 51700	3,074.66		3,074.66
0602247-T	06/14	08783010053 51700 A114293	372.75		372.75
0602247-T	06/14	08783010053 51700 A115050	1,107.60		1,107.60
0602365-T	06/08	08789010103 51700	3,131.10		3,131.10
0602365-T	06/08	08789010103 51700 A115050	193.83-		193.83-
0602365-T	06/08	08789010103 51700 A119228	372.75		372.75
0602361-T	06/08	08792010037 51700	2,840.80		2,840.80
0602361-T	06/08	08792010037 51700 A114292	371.00		371.00
0602361-T	06/08	08792010037 51700 A116073	132.50		132.50
0602179-T	06/15	08786010074 51700	4,998.96		4,998.96
0602179-T	06/15	08786010074 51700 A115050	638.12		638.12
0602364-E	06/08	08789010103 51695	3,310.02		3,310.02
0602364-E	06/08	08789010103 51695 A115050	1,771.10		1,771.10
0602366-E	06/09	08789010093 51695 A114274	683.73		683.73
0602249-T	06/16	08786010072 51700	4,547.40		4,547.40
0602249-T	06/16	08786010072 51700 A114292	371.00		371.00
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0602245-E	06/12	08783010053 51690 A111072	2,904.37		2,904.37
0602245-E	06/12	08783010053 51690 A114293	237.69		237.69
0602245-E	06/12	08783010053 51690 A155067	191.79		191.79
0602246-E	06/12	08783010053 51695	1,827.61		1,827.61
0602246-E	06/12	08783010053 51695 A115050	1,022.86		1,022.86
0602466-T	06/16	08792010011 51700	4,722.30		4,722.30
0602466-T	06/16	08792010011 51700 A114292	371.00		371.00
0602466-T	06/16	08792010011 51700 A115050	113.42		113.42
0602461-E	06/15	08790010058 51695	4,359.74		4,359.74
0601664-E	06/19	08786010113 51690 A111072	5,002.96		5,002.96
0602248-E	06/16	08786010072 51695	1,588.22		1,588.22
0602359-E	06/09	08799010047 51695	4,155.57		4,155.57
0602359-E	06/09	08799010047 51695 A114274	688.17		688.17
0602363-T	06/09	08792010010 51700	2,452.84		2,452.84
0602363-T	06/09	08792010010 51700 A114292	371.00		371.00
0602368-T	06/16	08786010073 51700	4,723.36		4,723.36
0602368-T	06/16	08786010073 51700 A114274	638.12		638.12
0602357-E	06/08	08792010006 51695	4,170.57		4,170.57

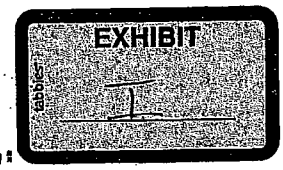
Payment Attachment

Check No. - 64259
Check Date - 07/11/06

7265634 CAROLINA TRUSS SYSTEMS (443)

Invoice Number	Date	Remark	Gross	Deductions	Amount Paid
0601339/340-E TAX	07/07	08783010051 51695	506.56		506.56
0602591-E	06/20	08790010073 51695	3,969.59		3,969.59
0602460-T	06/15	08789010091 51700	4,143.92		4,143.92
0602460-T	06/15	08789010091 51700 A114292	299.27		299.27
0602460-T	06/15	08789010091 51700 A115050	12.78		12.78
0602460-T	06/15	08789010091 51700 A119228	372.75		372.75
0601665-T	06/19	08786010113 51700	4,723.36		4,723.36
0601665-T	06/19	08786010113 51700 A114274	638.12		638.12
0601665-T	06/19	08786010113 51700 A119228	.01		.01
0602172-T	06/07	08783010059 51700	2,792.43		2,792.43
0602172-T	06/07	08783010059 51700 A114293	372.75		372.75
0602172-T	06/07	08783010059 51700 A121354	122.48		122.48
0602172-T	06/07	08783010059 51700 A121362	266.25		266.25
0602358-T	06/08	08792010006 51700	2,992.42		2,992.42
0602358-T	06/08	08792010006 51700 A119229	371.00		371.00
0602630-T	06/13	08792010054 51700	2,452.84		2,452.84
0602177-T	06/07	08783010078 51700	1,719.63		1,719.63
0602177-T	06/07	08783010078 51700 A115050	1,107.60		1,107.60
0602177-T	06/07	08783010078 51700 A119228	372.75		372.75
0602256-E	06/07	08791010146 51695	1,684.29		1,684.29
0602360-T	06/09	08799010047 51700	3,119.62		3,119.62
0602360-T	06/09	08799010047 51700 A114274	289.38		289.38
0602242-E	06/06	08783010055 51690 A111072	4,329.61		4,329.61
0602242-E	06/06	08783010055 51690 A155061	94.01		94.01
0602463-T	06/16	08790010035 51700	4,352.36		4,352.36
0602464-T	06/16	08791010160 51700	4,723.36		4,723.36
0602464-T	06/16	08791010160 51700 A115050	638.12		638.12
0602464-T	06/16	08791010160 51700 A119229	.01		.01
0602465-T	06/19	08791010141 51700	4,723.36		4,723.36
0602465-T	06/19	08791010141 51700 A114274	638.12		638.12
0602465-T	06/19	08791010141 51700 A119229	.01		.01
0602592-T	06/20	08790010073 51700	2,070.18		2,070.18
0602592-T	06/20	08790010073 51700 A114292	371.00		371.00
0602611-T	06/28	08790010079 51700	5,130.40		5,130.40
0902621-T	06/28	08792010021 51700	4,514.54		4,514.54
0602614-T	06/22	08791010155 51700	4,723.36		4,723.36
0602614-T	06/22	08791010155 51700 A115050	638.12		638.12
0602615-T	06/26	08791010142 51700	3,953.80		3,953.80
0602615-T	06/26	08791010142 51700 A114274	623.28		623.28
0602613-T	06/22	08790010042 51700	3,857.38		3,857.38
0602613-T	06/22	08790010042 51700 A119229	371.00		371.00
0602175-E	06/07	08783010078 51690 A111072	2,904.37		2,904.37
0602175-E	06/07	08783010078 51690 A155067	191.79		191.79
0602176-E	06/07	08783010078 51695	1,827.61		1,827.61
0602176-E	06/07	08783010078 51695 A115050	1,022.86		1,022.86
0602362-E	06/09	08792010010 51695	4,359.74		4,359.74
0602459-E	06/15	08789010091 51695	3,154.53		3,154.53
0602459-E	06/15	08789010091 51695 A115050	1,758.32		1,758.32
			193,609.91		193,609.91

Recorded On-2006-Sep-25 As-78330



Berkeley County
Cynthia B. Forte
Register of Deeds
Moncks Corner 294616120

00078330 Vol: 5985 Pg:

Instrument Number: 2006- 00078330
As
Mortgage

Recorded On: September 25, 2006

Parties: CZAJKOWSKI THOMAS
To
GMAC MORTGAGE CORPORATION

Billable Pages: 24

Recorded By: DODDS & HENNESSY

Num Of Pages: 29

Comment:

**** Examined and Charged as Follows: ****

Mortgage	34.00
Recording Charge:	**34.00**

**** THIS PAGE IS PART OF THE INSTRUMENT ****

I hereby certify that the within and foregoing was recorded in the Clerk's Office For: Berkeley County, SC

File Information:

Document Number: 2006- 00078330
Receipt Number: 78122
Recorded Date/Time: September 25, 2006 03:26:20P
Book-Vol/Pg: Bk-R Vl-5985 Pg-48
Cashier / Station: J Pearson / Cash Station 3

Record and Return To:

DODDS & HENNESSY
P.O. BOX 298
CHARLESTON SC 29402

Cynthia B. Forte

Cynthia B Forte - Register of Deeds

After Recording Return To:

GMAC Mortgage Corp.
100 Witmer Road
Horsham, PA 19044-0963
ATTN: Records Management

[Space Above This Line For Recording Data]

Loan No. 595403601
MIN 1000375-0595403601-1

MORTGAGE

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated September 22, 2006, together with all Riders to this document.

(B) "Borrower" is

Thomas Czajkowski and Ginger Czajkowski

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is
GMAC Mortgage Corporation

Lender is a Corporation organized and existing under the laws of Pennsylvania . Lender's address is 100 Witmer Road, P.O. Box 963, Horsham, PA 19044

(E) "Note" means the promissory note signed by Borrower and dated September 22, 2006 . The Note states that Borrower owes Lender
Two Hundred Thirteen Thousand Four Hundred and 00/100

Dollars (U.S. $ 213,400.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than
October 1, 2036 .

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

[XX]	Adjustable Rate Rider	[ ]	Condominium Rider	[ ]	Second Home Rider
[ ]	Balloon Rider	[ ]	Biweekly Payment Rider	[ ]	1-4 Family Rider
[ ]	Other(s) [specify]	[XX]	Planned Unit Development Rider		

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) **"Mortgage Insurance"** means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) **"Periodic Payment"** means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) **"RESPA"** means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) **"Successor in Interest of Borrower"** means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the

County

[Type of Recording Jurisdiction]

of Berkeley ;

[Name of Recording Jurisdiction]

see attached legal description

which currently has the address of

1502 Marsh Reed Ct,

[Street]

Goose Creek , South Carolina 29445 ("Property Address"):

[City] *[Zip Code]*

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees and Assessments, if any, be escrowed by Borrower, and such dues, fees, and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts

(including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters,

or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in

connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the

amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until the Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All Notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a

prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer.

Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that

adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Homestead Waiver. Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

25. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in § 12-37-250 of the South Carolina Code of Laws.

26. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to one hundred and fifty percent (150%) of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

[THIS SPACE LEFT INTENTIONALLY BLANK]

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Thomas Czajkowski _____ (Seal) -Borrower

Ginger Czajkowski _____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

Signed, sealed and delivered in the presence of:

_____ _____

_____

LOAN NO: 595403601
SOUTH CAROLINA -- Single Family -- Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3041 1/01
GMACM - CMS.0034.SC (0001) *(Page 18 of 19)*

INDIVIDUAL ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA,

COUNTY OF Charleston } SS

Before me personally appeared the undersigned witness

and made oath that s/he saw the within named Borrower sign, seal and as their act and deed, deliver the within written Mortgage; and that s/he with the other witness

witnessed the execution thereof.

Sworn before me this 22nd day of September, 2006.

My Commission Expires: 8/1/2012

Notary Public for South Carolina

(Seal)

LOAN NO: 595403601

SOUTH CAROLINA -- Single Family -- Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3041 1/01

GMACM - CMS.0034.SC (0001) *(Page 19 of 19)* Initials: GC

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 22nd day of September, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to

GMAC Mortgage Corporation

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

1502 Marsh Reed Ct
Goose Creek, SC 29445
[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in

(the "Declaration"). The Property is a part of a planned unit development known as

The Reserve
[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the: (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then:

(i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and

(ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to:

(i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender;

(iii) termination of professional management and assumption of self-management of the Owners Association; or

(iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.

Thomas Czajkowski _____ (Seal)
-Borrower

Ginger Czajkowski _____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

LOAN NO: 595403601
MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac Uniform Instrument Form 3150 1/01
GMACM - CRM.0044.PUD (0411) Page 3 of 3

FIXED/ADJUSTABLE RATE RIDER

(LIBOR One-Year Index (As Published In *The Wall Street Journal*) - Rate Caps)

THIS FIXED/ADJUSTABLE RATE RIDER is made this 22nd day of September, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to

GMAC Mortgage Corporation

("Lender") of the same date and covering the property described in the Security Instrument and located at:

1502 Marsh Reed Ct
Goose Creek, SC 29445
[Property Address]

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE THE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of 5.875 %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of October, 2011, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

Initials: R GC

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Two and 75/100 percentage points (2.750 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.875 % or less than 2.750 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 10.875 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

THIS SPACE LEFT INTENTIONALLY BLANK

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.

_____ (Seal)
Thomas Czajkowski -Borrower

_____ (Seal)
Ginger Czajkowski -Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

LOAN NO: 595403601

MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One Year LIBOR -- Single Family -- Fannie Mae UNIFORM INSTRUMENT Form 3187 6/01

GMACM-CRM,1380 (0505) (Page 5 of 5)

EXHIBIT "A"

ALL that certain piece, parcel, lot or tract of land, situate, lying and being in The Reserve at Foster Creek, City of Hanahan, Berkeley County, South Carolina, and being shown and designated as **Lot 74, Phase 2B** on a plat by Trico Engineering Consultants, Inc. dated November 7, 2004 entitled "SUBDIVISION PLAT SHOWING PHASE 2B, (THE RESERVE) A 2.205 ACRE TRACT OF LAND, A PORTION OF TRACT 2, PARCEL A, PROPERTY OF FOSTER CREEK, LLC LOCATED IN THE CITY OF HANAHAN, BERKELEY COUNTY, SOUTH CAROLINA", and recorded in Plat Cabinet M, Pages 194-H and 195-H, Berkeley County RMC Office, and having such size, shape, buttings, boundings, dimensions and location as will appear by reference to said plat which is incorporated herein by reference, be all the dimensions and measurements shown thereon a little more or less.

SAID lot, piece, or parcel of land having such size, shape, location, dimensions, buttings and boundings, courses and distances, as will by reference to said plat more fully and at large appear.

BEING the same property conveyed to the Mortgagors herein by deed of The Ryland Group, Inc. dated 22nd day of September, 2006 and recorded in the RMC Office for Berkeley County simultaneously herewith.

TMS # 259-03-01-135

GC

RY-2167

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2015-CP-08-1213

Christopher Duvall and Natalie Duvall,)
)
☒ Plaintiffs,)
)
vs.)
)
The Ryland Group, Inc.)
)
☐ Defendant.)

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

check box above indicating submitting party

Plaintiff's Attorney:	Defendant's Attorney:
James Taylor Anderson, III, Esquire (SC Bar #77217)	Thomas C. Hildebrand, Jr., Esquire
Address:	Olesya V. Vaskevich, Esquire
Kernodle Coleman	Address:
P.O. Box 13897	200 Meeting St., Ste 301
Charleston, SC 29422-3897	Phone: (843) 727-2653 Fax:
Phone: (843) 795-7800 Fax: (843) 795-3032	Email:tomhildebrand@parkerpoe.com
Email: tanderson@kernodlelaw.com Other:	Other: olesyavaskevich@perkerpoe.com

☒MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Compel
Estimated Time Needed: 15 minutes Court Reporter Needed: ☒YES/☐NO

SECTION II: Motion/Order Type

☐Written motion attached
☐Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff /☐ Defendant Date submitted

2016 MAR 31 PM 2:51
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

SECTION III: Motion Fee

☒PAID – AMOUNT: $ 25.00
☐EXEMPT:
(check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or Reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other:

JUDGE'S SECTION

☐Motion Fee to be paid upon filing of the attached order.
☐Other:

JUDGE _____
CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by: TSM Date Filed: _____
☐MOTION FEE COLLECTED: $ 25.00
☐CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

25.00 JTA

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)))	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO. 2015-CP-08-1213
CHRIS DUVALL and NATALIE , DUVALL Plaintiffs, v. THE RYLAND GROUP, INC., Defendant.	)	**PLAINTIFFS' MOTION TO COMPEL DEFENDANT TO RESPOND TO DISCOVERY** **[RULE 40 (a) (2)PRIORITY MATTER]**
THE RYLAND GROUP, INC., Third-Party Plaintiff, v. LAND SITE SERVICES, INC., CAROLINA CONSULTING SERVICES, INC., HIGDON CONCRETE, LLC, A.C. CONSTRUCTION, INC., and STARK TRUSS COMPANY, INC. a/k/a STARL TRUSS COMPANY OF SUMMERVILLE, LTD. a/k/a STARL TRUSS, INC. d/b/a CAROLINA TRUSS SYSTEMS, INC. Third-Party Defendants.	)	

FILED
2016 MAR 31 PM 2:51
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

PLEASE TAKE NOTICE that Plaintiffs, Chris Duvall and Natalie Duvall ("Plaintiffs") will move, pursuant to Rule 37 of the South Carolina Rules of Civil Procedure, for an Order compelling Defendant, The Ryland Group (Ryland), to fully respond to Plaintiffs' First Set of Interrogatories and First Set of Requests for Production, heretofore served on October 6, 2015, (attached as Exhibit A and Exhibit B, respectfully), and for an award of all attorney's fees and costs incurred in connection with this motion, and such other relief as the Court made deem

appropriate, on the grounds that Ryland's responses to Plaintiffs dated December 4, 2015 failed to fully respond to the aforesaid discovery as required by the South Carolina Rules of Civil Procedure.

The undersigned hereby certifies and affirms in accordance with Rule 11 of the South Carolina Rules of Civil Procedure that prior to filing the instant motion, he consulted with opposing counsel and attempted in good faith to resolve the matter contained in said motion as evidenced by the correspondence attached as Exhibit C. This Motion is supported by South Carolina statutory and case law and the South Carolina Rules of Civil Procedure, along with any memoranda, affidavits, deposition testimony, and documentary evidence submitted prior to the hearing on this matter.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.

KERNODLE COLEMAN

By: _____

James Taylor Anderson, III
914 Folly Road, Suite 2 (29412)
P. O. Box 13897
Charleston, SC 29422
(843) 795-7800
(843) 795-3032 Fax
tanderson@kernodlelaw.com

ATTORNEYS FOR PLAINTIFFS

March 28, 2016

Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, ***Plaintiffs' Motion to Compel*** was sent via facsimile, hand-delivery, e-mail and/or by depositing a copy in the United States Mail, First Class to:

Thomas C. Hildebrand, Jr., Esquire
Olesya V. Vaskevich, Esquire
Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
ATTORNEY FOR DEFENDANT/3rd PARTY PLAINTIFF THE RYLAND GROUP

John E. Rogers, II, Esquire
C. Reed Teague, Esquire
The Ward Law Firm, PA
P.O. Box 5663
Spartanburg, SC 29304
ATTORNEYS FOR 3rd-PARTY DEFENDANT LAND SITE SERVICES, INC.

James E. Scott, IV, Esquire
Perry Buckner, Esquire
Camden Hodge, Esquire
Young Clement Rivers, LLP
P.O. Box 993
Charleston, SC 29402
ATTORNEYS FOR 3rd PARTY DEFENDANT CAROLINA CONSULTING ENGINEERS, INC.

Mark S. Barrow, Esquire
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ATTORNEYS FOR 3RD PARTY DEFENDANT STARK TRUSS COMPANY, INC. a/k/a STARK TRUSS COMPANY OF SUMMERVILLE, LTD. a/k/a STARK TRUSS, INC. d/b/a CAROLINA TRUSS SYSTEMS, INC.

Kevin W. Mims, Esquire
Caroline C. McIntosh, Esquire
Luzuriaga Mims, LLP
50 Immigration St., Suite 200
Charleston, SC 29403
ATTORNEYS FOR 3RD PARTY DEFENDANT AC CONSTRUCTION, INC.

KERNODLE COLEMAN

Michelle L. Justman

Michelle L. Justman

March 28, 2016
Charleston, South Carolina

FILED
2016 MAR 31 PM 2:51
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

TOM

EXHIBIT A

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY CHRISTOPHER DUVALL and NATALIE DUVALL Plaintiffs, v. THE RYLAND GROUP, INC., Defendant.	))))))))))))))	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO. 2015-CP-08- 1213 **PLAINTIFFS' FIRST SET OF INTERROGATORIES TO DEFENDANT**

Plaintiffs Christopher and Natalie Duvall ("Homeowners"), herewith requests that Defendant The Ryland Group, Inc. ("Ryland") answer the following Interrogatories, under oath, pursuant to the South Carolina Rules of Civil Procedure within thirty (30) days:

INSTRUCTIONS

1. You are under a continuing duty to correct any response to any Interrogatory, either incorrect or incomplete at the time it was made, as soon as the fact that the response was incorrect or incomplete is learned.

2. If you refuse to answer or object to any Interrogatory, in whole or in part, state clearly the basis for such refusal or objection. If a privilege or objection is claimed, identify the privilege or objection and state the specific basis under which the privilege or objection is claimed. If you withhold otherwise responsive documents from production under claim of privilege or objection, please identify any withheld documents in a privilege log by title or description, author, recipient(s), date, and state the specific basis for your claim of privilege or objection.

3. If any document that is responsive to an Interrogatory was, but is no longer, in existence or in your possession or control, state whether it:

(a) is missing or lost;

(b) has been destroyed;

(c) has been transferred, voluntarily or involuntarily, to others; or

(d) has been otherwise disposed of.

For each instance, explain the circumstances surrounding such disposition, including the identity of the person(s) who authorized and/or effected the destruction, transfer or disposition of the document(s), the approximate date of disposition, and, if known, the present location and custodian of the document(s).

DEFINITIONS

1. Unless indicated otherwise, "you," or "your," or "party," when used herein, refers to Defendant Ryland, above named, and anyone acting on its behalf, including counsel.

2. The term "person," when used herein, means any natural person, individual, corporation, partnership or association, firm, bank, savings and loan association, and all other business or governmental entities.

3. The term "communication," when used herein, means any statement or utterance, whether written or oral, made by any means by one person to another or in the presence of another, or any document delivered or sent from one person to another.

4. The term "relating to" or "referring to," when used herein, means consisting of, regarding, relevant to, reflecting, describing, concerning, or factually connected with the matter discussed.

5. The term "document," when used herein, means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control regardless of where located.

6. Whenever these interrogatories request Ryland to "identify" a natural person, Ryland shall specify:

(a) the person's full name;

(b) his/her present employer and position or title; and

(c) present business and home address and telephone numbers.

If the current business or home address and telephone numbers are unknown, Ryland shall furnish the last known business or home address and telephone numbers.

7. Whenever these Interrogatories request Ryland to "identify" an entity other than a natural person, Ryland shall specify:

(a) the name of the entity, and

(b) its present business address.

8. Whenever these Interrogatories request Ryland to "identify" documents, Ryland shall state:

(a) the type of document (e.g., letter, memorandum, telegram);

(b) its author and originators;

(c) its date or dates;

(d) all addressees and recipients;

(e) its present location or custodian; and

(f) its subject matter or topic.

Also state whether such documents are in Ryland's possession, and when, how, and from whom Ryland initially obtained the documents. In lieu of a full identification of any document, the document may be furnished to Plaintiff, clearly specifying to which Interrogatory that document is responsive. Documents to be identified and/or produced shall include those in the possession, custody, and control of Ryland and all other documents of which Ryland has knowledge.

9. Whenever these Interrogatories request Ryland to "identify" a communication, Ryland shall indicate:

(a) the date and place where they were made;

(b) identify the person or persons who participated in the communication, in addition to all the persons present;

(c) the nature and substance of the communication; and

(d) indicate the medium of communication.

If the communication was written, reported, or referred to in any document, identify or produce the document.

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to have knowledge 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.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

5. If you identified an expert witness in response to the above interrogatory, please state whether or not any of these expert witnesses has provided a written report. If so, please attach a copy of any such report.

6. For each person known to the parties or counsel to have knowledge concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witnesses, or provide a copy of any written or recorded statements taken from such witnesses.

7. If the defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

8. Describe in detail any inspections, investigations, testing and/or other analysis performed by you or at your behest with respect to any alleged construction defects or foundation issues at 1502 Marsh Reed Court, Hanahan, Berkeley County, South Carolina (the "Home"), or any other matters alleged in the Complaint and/or other pleadings in this matter, and with respect to each such inspection, investigation, testing, and/or analysis, state who performed such inspection, investigation, testing, and/or analysis; when such inspection, investigation, testing, and/or analysis was performed; at whose request or direction such inspection, investigation, testing, and/or analysis was performed; and the result or findings of such inspection, investigation, testing, and/or analysis.

9. Provide a detailed account of any complaints, formal or informal, received by Ryland, regarding any alleged construction issue, construction defect, punch list item, or warranty item at

the Home. As part of your Answer please provide the dates of all such complaints, identify the person making each complaint, and identify any and all records associated with each said complaint.

10. For the past ten ("10") years, provide a detailed account of any complaints, formal or informal, received by Ryland in connection with foundation problems, ground settlement problems, or cracks in concrete foundations at The Reserve at Tanner Plantation.

11. For the past ten ("10") years, provide a detailed account of any complaints, formal or informal, received by Ryland in connection with foundation problems, ground settlement problems, or cracks in concrete foundations within 1 mile of the Home.

12. Do you contend that any person or entity other than you, is, or may be, liable in whole or in part for the claims asserted against you in this lawsuit? If so, state the full name and address of each person or entity, the legal basis for your contention, the facts or evidence upon which your contention is based, and whether or not you have notified each such person or entity of your contention.

13. Please list the names, addresses and telephone numbers of any expert witnesses whom you propose to use in the trial of this case and provide the following information:

a. The subject matter as to which each such person has been retained or specifically employed by you;

b. The expert's profession, occupation, employer, and field of expertise;

c. The substance of the facts and opinions about which each alleged expert is expected to testify and a summary of the grounds for each opinion (attach to your answers to these Interrogatories a report of the experts listed above which contains the information sought by this request);

d. The dates and location of each test, analysis or examination relating to this litigation conducted by each person or persons listed above and the examiner's conclusion as to the results of the test, analysis, or examination; and

e. Whether you have ever employed the alleged expert or experts listed above as expert witnesses or as litigation consultants in other matters. If so, indicate the dates, the name of each case, the court, and the term number where appropriate.

14. State the date(s) when Ryland first became aware of any cracking in the concrete foundation and/or sheetrock at the Home.

15. Give a detailed description of the analysis and/or investigation conducted by Ryland and/or Billy Barnes in connection with Homeowners' September 2013, warranty request and Billy Barnes' September 2013 visit to the Home. As part of your Answer please give a detailed description of the results of any such analysis and/or investigation.

16. Identify each and every lawsuit or other legal action in which Ryland has been involved or is currently involved as a plaintiff, defendant, or witness, involving any property located in Hanahan, South Carolina. For each such lawsuit, identify the role of Ryland, whether plaintiff, defendant, witness, or deponent, and identify the court, jurisdiction, case number, final disposition (if the case has concluded), and nature of the case.

17. Identify all subcontractors used by Ryland in the construction of the Home. For each such subcontractor please provide the name, address, telephone number and scope of work performed.

18. Identify with specificity any and all industry standards you contend are applicable to this matter.

19. Please give a detailed description of Ryland's policies concerning when a homeowner, rather than Ryland, should incur the cost of investigating construction issues/defects discovered during the Ryland warranty period.

20. Please give a detailed description of why Ryland requested that the Homeowners hire an engineer to investigate the construction issues/defects at the Home. As part of your Answer, please

identify each and every person involved in Ryland's decision to request that Homeowner's hire an engineer to investigate the construction issues/defects at the Home.

21. Has Ryland observed any condition at the Home that it believes constitutes a construction defect and/or a condition that should be repaired? If your Answer is "yes," please list each such construction defect and/or a condition.

22. For any affirmative defense you raise in your defensive pleadings, please state fully and with specificity the factual basis for each such defense and identify by name, address, and phone number all persons who have knowledge or information that supports each such defense.

23. Do you contend that there has been an insufficiency of service of process upon you in this case? If so, give a detailed explanation of how you were served and how that service was insufficient.

The foregoing Interrogatories are to be regarded as continuing and you are requested to provide promptly, by way of supplemental answers thereto, such additional information as may hereafter be obtained by you or any person or organization on your behalf, which will augment or otherwise modify any answers now given to the foregoing Interrogatories.

KERNODLE ROOT + COLEMAN

By: _____

James Taylor Anderson, III
914 Folly Road, Suite 2 (29412)
P. O. Box 13897
Charleston, SC 29422
(843) 795-7800
(843) 795-3032 Fax
tanderson@kernodlelaw.com

ATTORNEYS FOR PLAINTIFFS

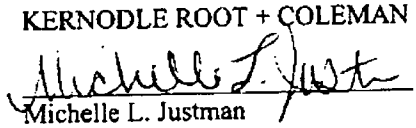
October 6, 2015
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, ***Plaintiffs' First Set of Interrogatories to Defendant*** was sent via facsimile, hand-delivery, e-mail and/or by depositing a copy in the United States Mail, First Class to:

Thomas C. Hildebrand, Jr., Esquire
Olesya V. Vaskevich, Esquire
Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
ATTORNEY FOR DEFENDANT

KERNODLE ROOT + COLEMAN



Michelle L. Justman

October 16, 2015
Charleston, South Carolina

EXHIBIT B

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY CHRISTOPHER DUVALL and NATALIE DUVALL Plaintiffs, v. THE RYLAND GROUP, INC., Defendant.	))))))))))))))	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO. 2015-CP-08- 1213 **PLAINTIFFS' FIRST REQUESTS FOR PRODUCTION TO DEFENDANT**

Plaintiffs Christopher and Natalie Duvall ("Homeowners") pursuant to South Carolina Rule of Civil Procedure 34, hereby requests that Defendant The Ryland Group, Inc. ("Ryland") produce for inspection and copying, within thirty (30) days from the date of this request, at the offices of Kernodle, Root & Coleman, 914 Folly Road, Suite 2, Charleston, South Carolina 29412, and permit the attorneys for Homeowners to inspect, copy or photograph the following documents or things which may be in the possession, custody or control of Ryland or its attorneys.

If in responding to these Requests for Production, Ryland withholds production of any document on the ground that it is privileged, please state with respect to each such document:

(a) the type of document involved, and a general description of its contents;

(b) the name, business and residence addresses, telephone numbers, and position of the individual from whom the document emanated;

(c) the name, business and residence addresses, telephone numbers, and position of each individual to whom the document or a copy thereof was sent;

(d) the date of the document;

(e) the privilege upon which Ryland relies in withholding the document;

(f) the facts upon which Ryland relies in support of its claim that the document is privileged; and

(g) the names, business and residence addresses, telephone numbers, and positions or occupations of individuals known or believed by Ryland to have knowledge concerning the factual basis for Ryland's assertion of privilege with regard to the document.

REQUEST FOR PRODUCTION

1. All documents and statements identified in Ryland's response to Homeowners' First Set of Interrogatories to Ryland.

2. All photographs, emails, motion pictures, videotapes, audio cassettes, drawings, plats, sketches, diagrams, specifications, details, reports, statements, affidavits, records, forms, writings, notes, memoranda, written messages, contracts, blueprints, or other documents or tangible things in possession, custody or control of Ryland or its agents, employees or managers that relate to any claim or defense in this case.

3. All plans, drawings, or blue prints for 1502 Marsh Reed Court, Hanahan, Berkeley County, South Carolina (the "Home").

4. Copies of any correspondence or communications between Ryland and Homeowners.

5. Copies of any correspondence or communications between Ryland and any previous owner of the Home.

6. All documents provided to Volkmar Consulting Services, LLC, or mentioned in Volkmar Consulting Services, LLC's August 6, 2015, "Report of Site Visit."

7. Copies of any correspondence or communication between Ryland and any other entity related to the matters at issue in this suit.

8. All documents generated as part of Homeowners' September 2013, warranty request and/or Billy Barnes' September 2013 visit to the Home.

9. All written policies or procedures concerning when a homeowner, rather than Ryland, should incur the cost of investigating construction issues/defects discovered during the Ryland warranty period.

10. All emails between or amongst any Ryland employees mentioning the House, Homeowner's 2013 warranty request, or any other matter relevant to the allegations of the Complaint.

11. All written policies or procedures concerning Ryland's handling of warranty claims.

12. All written policies, procedures or documents concerning Ryland's responsibility for warranty claims made by homeowners during the warranty period, when suit is not filed until after the warranty period.

13. All statements of witnesses or other persons, whether written, oral, taped, summarized or otherwise reproduced in any manner, relating to the events alleged in the Complaint.

14. All documents, statements, reports, summaries, letters, memoranda or other information provided, reviewed or prepared by any expert witnesses or investigator retained or consulted by you in connection with this matter, whether or not you intend to call the expert or investigator as a witness.

15. All advertisements, brochures, informational or promotional materials, whether stored electronically or in hard copy, related to the Home.

16. For the past ten ("10") years, provide a copy of all documents associated with any complaints, formal or informal, received by Ryland in connection with foundation problems, ground settlement problems, or cracks in concrete foundations at The Reserve at Tanner Plantation.

17. For the past ten ("10") years, provide a copy of all documents associated with any complaints, formal or informal, received by Ryland in connection with foundation problems, ground settlement problems, or cracks in concrete foundations within 1 mile of the Home.

18. A copy of any insurance policies potentially providing coverage for Homeowners' claims.

19. Produce the complete construction file for the Home.

20. Produce the complete warranty file for the Home.

KERNODLE ROOT + COLEMAN

By: _____

James Taylor Anderson, III
914 Folly Road, Suite 2 (29412)
P. O. Box 13897
Charleston, SC 29422
(843) 795-7800
(843) 795-3032 Fax
tanderson@kernodlelaw.com

ATTORNEYS FOR PLAINTIFFS

October 6, 2015

Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, ***Plaintiffs' First Requests for Production to Defendant*** was sent via facsimile, hand-delivery, e-mail and/or by depositing a copy in the United States Mail, First Class to:

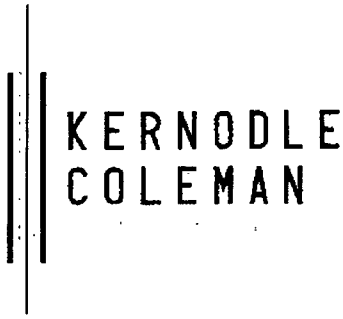
Thomas C. Hildebrand, Jr., Esquire
Olesya V. Vaskevich, Esquire
Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
ATTORNEY FOR DEFENDANT

KERNODLE ROOT + COLEMAN

Michelle L. Justman

October 6, 2015
Charleston, South Carolina

EXHIBIT C



James Taylor Anderson, III
tanderson@kernodlelaw.com

March 14, 2016

VIA EMAIL AND US MAIL
Thomas C. Hildebrand, Jr., Esquire
Olesya V. Vaskevich, Esquire
Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

RE: Christopher Duvall and Natalie Duvall v. The Ryland Group, Inc., *et al*
Berkeley County / Case No.: 2015- CP-08- 1213
Our File No. 77-35

Dear Thomas and Olesya:

I am in receipt of Defendant The Ryland Group, Inc.'s Answers to Plaintiffs' Interrogatories and Defendant the Ryland Group, Inc.'s Responses to Plaintiffs' Request for Production. I am writing to point out major deficiencies with Ryland's discovery responses.

DEFICIENCIES WITH DEFENDANT THE RYLAND GROUP, INC.'S RESPONSES TO PLAINTIFFS' REQUEST FOR PRODUCTION

In September of 2013, Plaintiffs made a warranty claim relating to cracking in the foundation and walls at their home. Plaintiffs had extensive email correspondence with Billy Barnes, of Ryland, and provided Mr. Barnes with a report from Hawk Construction. Mr. Barnes indicated that the Hawk Construction report was provided to Ryland's "Main Office," for evaluation. Additionally, Mr. Barnes indicated that he had "ordered the file" for the Duvalls' home from "offsite" to check "compaction issues."

Unless I have overlooked something, Ryland has produced no emails at all between Mr. Barnes and the Duvalls, or between Mr. Barnes and any other Ryland personnel. Ryland did not produce the Hawk Construction report which was provided to Ryland by the Duvalls. According to Mr. Barnes the Hawk Construction report was provided to "Ryland management," but no email transmitting that report to "Ryland Management" has been produced, and no internal emails regarding Ryland's evaluation of that report have been produced. No correspondence has been produced regarding Mr. Barnes' "ordering" the construction file for the Duvalls' home and his "checking" the soil compaction at the Duvalls' home. All of these documents are responsive to Plaintiffs' First Requests for Production to Defendant.

Please immediately produce all emails sent by, or received by, bbarnes@ryland.com, for September and October of 2013. Additionally, please immediately produce all

correspondence, reports, analysis or communications of any kind related to the Hawk Construction report or Billy Barnes' request for soil compaction data related to the Duvalls' home.

After reviewing Ryland's document production, I have also seen no photographs, measurements, notes, reports or communications of any kind related to the Duvalls' 2013 warranty claim or Billy Barnes' 2013, inspection of the Duvalls' home. **Please immediately produce all such documentation. To the extent Ryland is withholding any documentation (including electronic documentation), please immediately produce a detailed privilege log.**[1]

The Duvalls' Request for Production No. 11 requests "All written policies or procedures concerning Ryland's handling of warranty claims." No such documents have been produced. **Please produce all Ryland policies, procedures, handbooks, memorandum, or directives relating to how Ryland personnel are to handle warranty claims from homeowners.**

DEFICIENCIES WITH DEFENDANT THE RYLAND GROUP, INC.'S ANSWERS TO PLAINTIFFS' INTERROGATORIES

Turning to The Ryland Group, Inc.'s Answers to Plaintiffs' Interrogatories, Ryland's answer to Interrogatory No. 1 does not even list Billy Barnes, the only Ryland employee who visited the home prior to this lawsuit, as a witness. **Please immediately provide all current contact information for Billy Barnes.**

Next, Interrogatory No. 10, requests, for the past 10 years, any complaints related to foundation problems in Tanner Plantation. This is a narrowly tailored interrogatory limited to the at-issue neighborhood and the at-issue construction defect. The conditions in the area are an important issue in this suit and other foundation issues in the area are obviously reasonably calculated to lead to the discovery of admissible evidence. **Please immediately and fully answer Interrogatory No. 10.**

Interrogatory No. 15, asks for a detailed description of Ryland's investigation of the Duvalls' 2013, warranty request and Billy Barnes' 2013, visit to the home. Ryland's answer directs the Duvalls' to Ryland's document production. However, Ryland's documents do not contain any description of the investigation conducted in response to the Duvalls' warranty claim and do not contain any description of Billy Barnes' investigation. **Please immediately and fully answer Interrogatory No. 15.**

---

[1]No documents or information related to the Duvalls' 2013, warranty claim are privileged so I trust Ryland is not claiming a privilege related to what should have been a routine warranty investigation performed years prior to litigation. However, given Ryland's complete failure to produce documents related to its 2013 warranty investigation, and out of an abundance of caution, please immediately produce a detailed and complete privilege log.

RYLAND'S PERIODIC SITE VISITS

Per Judge Nicholson's order, Ryland conducted a site visit on March 7, 2016. Ryland's engineering expert took multiple measurements at the home. My understanding is that Ryland will continue to make these periodic visits. **Please supplement Ryland's discovery responses after each such visit so that the Duvalls will have the measurements taken by Ryland's experts**.

COLUMBIA NATIONAL RISK RETENTION GROUP, INC.

Please confirm that Ryland does not consider Columbia National Risk Retention Group, Inc., as an appropriate party to this case and that Ryland will not raise any defense to liability based on Columbia National Risk Retention Group, Inc.'s absence from the case. If Ryland intends to raise any defense to liability based on Columbia National Risk Retention Group, Inc.'s being the appropriate defendant I need to amend the complaint to add that entity.

Please accept this letter as the Duvalls' attempt, pursuant to SCRCP 11, to resolve this matter prior to filing a Motion to Compel. In order to avoid a Motion to Compel please provide the requested information within ten (10) days of your receipt fo this letter. Please feel free to call me with any questions or concerns.

KERNODLE COLEMAN

James Taylor Anderson, III

JTAIII/mlj

KERNODLE
COLEMAN

James Taylor Anderson, III
tanderson@kernodlelaw.com

March 28, 2016

The Honorable Mary P. Brown
Berkeley County Clerk of Court
300 California Avenue
Moncks Corner, SC 29461

RE: Chris Duvall and Natalie Duvall v. The Ryland Group, Inc. AND The Ryland Group, Inc. v. Land Site Services, Inc., Carolina Consulting Services, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc. ak/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc.
Berkeley County / Case No.: 2015-CP-08-1213
KC File No.: 77-35

Dear Ms. Brown:

Enclosed for filing please find an original and one (1) copy of Plaintiffs' Motion to Compel against Defendant, The Ryland Group, Inc. in the above referenced matter. Also enclosed is a Motion and Order Information Form and Cover Sheet, together with our firm check in the amount of $25.00 in payment of the required fee. Upon filing, please return date-stamped copy of the Motion to me in the envelope provided for your convenience.

Thank you for your assistance in this matter. Should you have questions or require additional information, please don't hesitate to contact me.

KERNODLE COLEMAN

James Taylor Anderson, III

JTAIII/mlj
Enclosures

cc: Thomas C. Hildebrand, Jr., Esquire / Olesya V. Vaskevich, Esquire
John E. Rogers, II, Esquire / C. Reed Teague, Esquire
Mark S. Barrow, Esquire / Christy E. Mahon, Esquire
James E. Scott, IV, Esquire / Perry Buckner, Esquire / Camden Hodge, Esquire
Kevin W. Mims, Esquire / Caroline C. McIntosh, Esquire

Common Pleas

Clerk : Mary P. Brown
300 B California Avenue
Moncks Corner, SC 29461
(843) 719-4400

Received From:	Anderson, James Taylor III 914 Folly Road, Suite 2 Charleston, SC 29412			Date: 3/31/2016 Receipt #: 6067247 Clerk: c08tmurphy
Paying for:	Duvall, Christopher			
Transaction Type:	Payment		Reference #: 21837	
Payment Type:	Check	$25.00	Comment:	
Total Paid:		$25.00	Non-Refundable	

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2015CP0801213	Christopher Duvall , plaintiff, et al VS The Ryland Group, Inc , defendant, et al	**$25.00**	**$25.00**	**$0.00**
Total Cases: 1		**$25.00**	**$25.00**	**$0.00**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	CASE NO.: 2015-CP-08-01213
Christopher Duvall and Natalie Duvall,	)	
Plaintiffs,	)	
vs.	)	
The Ryland Group, Inc.	)	
Defendant.	)	
The Ryland Group, Inc.,	)	**CHRISTOPHER AND NATALIE DUVALL'S MEMORANDUM IN OPPOSITION TO THE RYLAND GROUP, INC.'S MOTION TO COMPEL ARBITRATION**
Third-Party Plaintiff,	)	
vs.	)	
Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc.,	)	
Third-Party Defendants.	)	

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MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

Plaintiffs Christopher and Natalie Duvall (the "Duvalls") respectfully submit by their undersigned attorneys, the following Memorandum in Opposition to The Ryland Group, Inc.'s Motion to Compel Arbitration, and show this Court that Defendant The Ryland Group, Inc., has waived any right to compel arbitration by conducting extensive discovery, including ongoing Court Ordered discovery. Further, even absent waiver, the at-issue arbitration provision does not comply with the South Carolina Arbitration Act, is unconscionable and unenforceable.

I. INTRODUCTION:

The Ryland Group, Inc. ("Ryland") constructed 1502 Marsh Reed Court, Hanahan, South Carolina, (the "Home") in 2006. Ryland provided a ten year transferrable written warranty (the "Warranty") to the original purchasers of the Home. In 2008 the Duvalls purchased the Home and the Warranty transferred to the Duvalls.

The Duvalls did not purchase the Home from Ryland and were not parties to the "Agreement of Sale dated February 12, 2006," attached as Exhibit "A" to the Affidavit of Michael Boyle[1]. There is no colorable argument that the Duvalls are bound by any arbitration agreement contained in the February 12, 2006, "Agreement of Sale." The February 12, 2006, Agreement of Sale is irrelevant to the issues before this Court.

The Duvalls also did not sign the Warranty attached as Exhibit "B" to the Affidavit of Michael Boyle. Indeed, the Warranty Enrollment Form that Ryland contends was signed by the *original purchasers* does not even mention arbitration. (See Exhibit "B" to Affidavit of Michael Boyle). The arbitration provisions in the Warranty are not signed by the Duvalls *or the original purchasers.* Ryland contends that principles of equitable estoppel require the Duvalls to arbitrate their claims against Ryland.[2]

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[1] The Affidavit of Michael Boyle was filed by Ryland on March 17, 2016. For purposes of this memo the Duvalls will cite to the Warranty attached as Exhibit B to said Affidavit. However, that copy of the Warranty contains some addendum that were not included in the Warranty provided to the Duvalls.

[2] While the end result is the same no matter what law applies, it is worth noting that it is well established in South Carolina that residential real estate sales do not involve interstate commerce and are not governed by the Federal Arbitration Act. *See Bradley v. Brentwood Homes, Inc.* 398 S.C. 447 (2012)(recognizing "intrastate nature of the sale and purchase of residential real estate" and "well-established real estate exception to the FAA"). The arbitration provisions at-issue in this case are not mentioned on the first page of the Warranty and are therefore invalid under South Carolina law. See S.C. Code Ann. § 15-48-10(a) ("Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration.")

In October of 2013, the Duvalls made a warranty claim based on extensive cracking in the foundation and walls at the Home. Ryland sent a representative to the Home who fraudulently represented to the Duvalls that the problems were merely "cosmetic" in nature. Ryland denied the Duvalls' warranty claim.

On May 20, 2015, the Duvalls filed this action against Ryland. After the case was filed Ryland's counsel requested and received an expert report detailing the problems at the Home. On July 9, 2015, Ryland conducted an extensive investigation of the Home for the purposes of discovery. This site visit involved the Duvalls allowing Ryland's expert engineers, Mr. Thomas E. Vokmar, P.E., Mr. Robert C. Young, Jr., P.E., and Mr. Tyler Armentrout, all of Volkmar Consulting Services, LLC, onto the property, along with Ryland representative Mr. Mike Boyle and counsel for Ryland. During this July 9, 2015, discovery visit, Ryland conducted a walk through investigation, spoke with Christopher Duvall regarding the problems with the Home, obtained photographs, used a level to take measurements of the floors at the Home, and conducted a survey of the lot "to determine relative ground surface elevations" at the Home. Additionally, Ryland "performed five (5) hand auger borings with DCP testing to determine the soil consistency at one foot intervals." (See Exhibit 1).

On November 12, 2015, Ryland filed a Motion to Amend The Ryland Group, Inc.'s Answer to Plaintiff's Complaint, and sought to assert claims in this Court against Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company (hereinafter collectively the "Third-Party Defendants"). Based on representations made by Ryland's counsel that Ryland would not seek to compel arbitration, the Duvalls consented to Ryland's asserting claims against

the Third-Parties. On December 4, 2015, a Consent Order Allowing the Amended Answer of the Ryland Group, Inc., was entered and on December 10, 2015, Ryland filed The Ryland Group, Inc.'s Amended Answer to Plaintiffs' Complaint and Third-Party Complaint whereby it asserted claims against the Third-Party Defendants.

The Third-Party Defendants added to this case by Ryland have filed answers, have served interrogatories and requests for production on the Duvalls (which the Duvalls have answered), and have served 6 subpoenas on non-parties. Ryland has not objected to the Third-Parties' conduct of discovery and has received 108 pages of documents from the Duvalls through discovery. On December 4, 2015, Ryland served Defendant the Ryland Group, Inc.'s Answers to Plaintiffs' Interrogatories and Defendant the Ryland Group, Inc.'s Responses to Plaintiffs' Request for Production.

On December 14, 2015, Ryland served the Duvalls with Defendant The Ryland Group, Inc.'s Request for Production to the Plaintiffs. (Exhibit 2). Said Request for Production sought "authorization to place crack monitors into the cracks in the masonry on the home and to then leave them in place and undisturbed for the remainder of this litigation." (See Exhibit 2). The Duvalls objected to Ryland's request to affix "crack monitors" to the Home. (See Exhibit 3).

On December 31, 2015, Ryland filed The Ryland Group, Inc.'s Motion to Compel Against Plaintiffs, affirmatively availing itself of the judicial power of this Court. (Exhibit 4). Said Motion to Compel sought "an Order compelling Plaintiffs to allow Ryland's request for authorization to install crack monitors at the residence which is the subject of this litigation." The Motion to Compel came on for a hearing before the

Honorable Judge J.C. Nicholson on January 11, 2016. On that date Ryland, through counsel, requested that this Court order the Duvalls to allow Ryland to place measuring devices on the Home.[3] Given Ryland's representations that "crack monitors" were necessary for it to properly defend this matter, Judge Nicholson ordered that Ryland "should be, and hereby is, authorized to place a reasonable number of monitors at any exterior cracks in the residence. Plaintiffs shall provide Defendant Ryland with reasonable access and with 24 hours notice to check the crack monitors on a reasonably periodic basis, but no more than 45 days between visits and also within one month of trial." (See Exhibit 5).[4]

Pursuant to the Order Granting Motion to Compel Ryland visited the home on January 28, 2016, and had its engineers affix monitors to the Home. On March 7, 2016, Ryland availed itself of the Court ordered opportunity to visit the Home and access its "crack monitors." On March 16, 2016, nine days after a Court ordered visit to the Home to retrieve data from its "crack monitors," Ryland filed the instant The Ryland Group, Inc.'s Notice of Motion and Motion to Compel Arbitration. Apparently, based on information Ryland gained during Court ordered discovery, Ryland has made a strategic decision to seek to compel arbitration.

Although Ryland refuses to provide the Duvalls with the data gathered from the Court Ordered crack monitors installed at the Home, Ryland has not removed the Court

[3] Significantly, the discovery sought by Ryland is not available under the American Arbitration Association Consumer Rules, which would likely be applicable to any arbitration in this matter. *See Evans v. Accent Manufactured Homes, Inc.*, 352 S.C. 544, 551 (Ct. App. 2003)(Upholding trial court's denial of motion to compel arbitration when evidence indicated that defendant "availed itself of discovery tools unavailable in arbitration, thereby prejudicing [plaintiff] by obtaining information . . . it might not have been able to otherwise obtain).

[4] Ryland actually attempted to obtain a court order allowing it to place crack monitors throughout the *interior* of Plaintiffs' home but the Court refused to grant such an order.

Ordered crack monitors. Rather, while attempting to force the Duvalls to arbitrate, Ryland continues to conduct discovery via the Court Ordered crack monitors affixed to the Duvalls' home.

II. RYLAND HAS WAIVED ARBITRATION.

Ryland has taken advantage of the opportunity to conduct extensive discovery in this matter. Most importantly, Ryland has affirmatively sought and received the Court's assistance in obtaining discovery. Ryland sought - and received - a Court Order requiring the Duvalls to allow it to affix "crack monitors" to the Home, and requiring the Duvalls to allow Ryland access to those "crack monitors" at least every 45 days and within 1 month of trial. Nine days after collecting data from the Court Ordered "crack monitors," and after evaluating that data, Ryland has now decided that a jury should not hear this matter.

Having affirmatively taken advantage of the judicial systems' power to compel discovery, Ryland cannot now have the Court order Plaintiffs to arbitration. *See Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 127 (Ct. App. 2007)("To ascertain whether the non-moving party was prejudiced, our courts often examine whether the party requesting arbitration took 'advantage of the judicial system by engaging in discovery.'"); *Evans v. Accent Manufactured Homes, Inc.*, 352 S.C. 544, 551 (Ct. App. 2003)(Upholding trial court's denial of motion to compel discovery when evidence indicated that defendant "availed itself of discovery tools unavailable in arbitration, thereby prejudicing [plaintiff] by obtaining information . . . it might not have been able to otherwise obtain).

Legal Standards

"It is generally held that the right to enforce an arbitration clause may be waived." *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 665 (Ct. App. 1999). "Determining whether a party waived its right to arbitrate is a legal conclusion subject to de novo review; nevertheless, the circuit judge's factual findings underlying that conclusion will not be overruled if there is any evidence reasonably supporting them." *Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 125-126 (Ct. App. 2007).

"In order to establish waiver, a party must show prejudice through an undue burden caused by delay in demanding arbitration. There is no set rule as to what constitutes a waiver of the right to arbitrate; the question depends on the facts of each case." *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 665 (Ct. App. 1999).

> Generally, the factors our courts consider to determine if a party waived its right to compel arbitration are: (1) whether a substantial length of time transpired between the commencement of the action and the commencement of the motion to compel arbitration; (2) whether the party requesting arbitration engaged in extensive discovery before moving to compel arbitration; and (3) whether the non-moving party was prejudiced by the delay in seeking arbitration. These factors, of course, are not mutually exclusive, as one factor may be inextricably connected to, and influenced by, the others.

Rhodes v. Benson Chrysler-Plymouth, Inc., 374 S.C. 122, 126 (Ct. App. 2007).

a. Whether a substantial length of time transpired between the commencement of the action and the commencement of the motion to compel arbitration.

With regard to the first factor, "what is 'a substantial length of time' varies from one case to the next, depending on the extent of discovery conducted and the corresponding presence or absence of prejudice to the party opposing arbitration." *Rhodes*, supra at 126. Here, Ryland waited nearly ten months after this action was filed to move to compel arbitration. Delays of less than a year give rise to waiver when accompanied by

substantial discovery. *See Rhodes* supra, (ten month delay between initiation of action and motion to compel arbitration resulted in waiver when extensive discovery conducted.).

b. Whether the party requesting arbitration engaged in extensive discovery before moving to compel arbitration.

Ryland conducted substantial discovery prior to seeking to compel arbitration. Perhaps most importantly, Ryland obtained Court ordered discovery prior to deciding it would move to compel arbitration. *Compare Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 125 (Ct. App. 2007) (refusing to compel arbitration when moving party "sought the circuit court's assistance in executing out-of-state subpoenas . . ."), with *Toler's Cove Homeowners Ass'n, Inc. v. Trident Constr. Co.*, 355 S.C. 605, 612 (2003)(upholding trial court's grant of motion to compel arbitration when the "parties had not availed themselves of the court's assistance.").

Since the Duvalls initiated this action Ryland has conducted three site inspections (one pursuant to a request by Ryland's counsel and two pursuant to Court Order); has taken extensive measurements of the Home, has conducted soil borings and taken soil samples from the property, has sought and received an order compelling discovery, and has affixed and monitored "crack monitors" at the House. While Ryland continues to keep the results of its Court Ordered site inspections secret, counsel for the Duvalls was also informed by Ryland's engineer that he used a "Swiss Hammer" to obtain data regarding the Duvalls' home during the Court Ordered March 7, 2016, site inspection.

Additionally, Ryland is responsible for the Third-Parties' presence in this litigation and has, without objection, benefited from the discovery conducted by the Third-Parties.

The Third-Parties have served discovery on the Duvalls and the Duvalls have answered and produced 108 pages of documents - to all parties - in response to said discovery. Rather than objecting to the Third-Parties' discovery to the Duvalls, Ryland has received the Duvalls' answers and document production. The Third-Parties have also served 6 subpoenas on non-parties.

c. Whether the non-moving party was prejudiced by the delay in seeking arbitration.

This factor overwhelmingly establishes that Ryland has waived its right to compel arbitration.

> To ascertain whether the non-moving party was prejudiced, our courts often examine whether the party requesting arbitration took advantage of the judicial system by engaging in discovery. This inquiry, however, is just part of a broader, common sense approach our courts take to determine whether a motion to compel arbitration should be granted or denied: (1) if the parties conduct little or no discovery, then the party seeking arbitration has not taken advantage of the judicial system, prejudice will likely not exist, and the law would favor arbitration; (2) if the parties conduct significant discovery, then the party seeking arbitration has taken advantage of the judicial system, prejudice will likely exist, and the law would disfavor arbitration. Of course, cases do not always fit neatly into clearly defined categories, which is why our law resists a formulaic approach and motions to compel arbitration are resolved only after a fact-intensive inquiry. Accordingly, each case turns on its particular facts.

Under this analysis, it is difficult to conceive of how a party more "significantly" participates in discovery than by seeking, and receiving, a Court Order requiring physical attachment of monitoring devices to the Home of a litigant. Not only was this discovery order sought by Ryland, Ryland actually did affix monitoring devices to the Duvalls' home and has visited the Home for the purpose of monitoring the devices. Now, apparently concerned with the results of its Court ordered monitoring program, Ryland has belatedly decided it should move to compel arbitration.

The South Carolina Courts have declined to compel arbitration when a party delays filing a motion to compel in order to gather information it may not be able to gather in arbitration. *See Evans v. Accent Manufactured Homes, Inc.*, 352 S.C. 544, 551 (Ct. App. 2003)(Upholding trial court's denial of motion to compel arbitration when evidence indicated that defendant "availed itself of discovery tools unavailable in arbitration, thereby prejudicing [plaintiff] by obtaining information . . . it might not have been able to otherwise obtain).

Here, Ryland has sought, and obtained, discovery unavailable in arbitration. Ryland seeks to compel arbitration before the American Arbitration Association. This case, which involves a home warranty, would be subject to the American Arbitration Association's Consumer Arbitration Rules. (See AAA Consumer Arbitration Rules, R-1, attached hereto as Exhibit 6, stating that AAA Consumer Arbitration Rules are applied to cases involving "**Warranties (home**, automobile, product)). Under the AAA Consumer Arbitration Rules, discovery is limited to the exchange of documents. (See AAA Consumer Arbitration Rules, R-22 Exchange of Information between the Parties, stating that the AAA Consumer Arbitration Rules ordinarily only allow for the exchange of documents and information and the identification of witnesses).

Ryland requested that this Court order the Duvalls to conduct discovery that would not be available in arbitration. That is an unequivocal waiver. Ryland cannot "have its cake and eat it to," by being allowed to take advantage of Court ordered discovery and then nonetheless have the case compelled to arbitration.

III. The Dispute Resolution Procedure in the Ryland Home Warranty Program Insured Limited Warranty is Unconscionable.[5]

The Warranty is a somewhat confusing document. It purports to be "insured" and administered by a "Claims Administrator," "Columbia National Risk Retention Group, Inc." (hereinafter "CN"). Pursuant to the dispute resolution procedure CN will "review and mediate" any claims under the Warranty. (See Warranty at Section B-5(c)). Although the Warranty portrays CN as a third-party "Claims administrator," who will mediate disputes between homeowners and Ryland, upon information and belief, CN is a division of Ryland. The first mention of arbitration in the Warranty appears on the 4th page where it states "This agreement includes procedures for ***informal settlement of disputes***, including mediation and binding arbitration . . ." (emphasis added). The actual dispute resolution procedures begin at Section B-5 and cover 3 type written pages.

Under South Carolina law, the dispute resolution procedures in the Warranty are unconscionable. South Carolina Courts will not enforce arbitration agreements that are part of an unconscionable dispute resolution procedure. *See Smith v. D.R. Horton, Inc.* 403 S.C. 10 (2013).

The Warranty is a contract of adhesion. "[U]nder general principles of state contract law, an adhesion contract is a standard form contract offered on a 'take-it-or

[5] Importantly, regardless of whether the arbitration procedure in the Warranty is unconscionable, it is not binding on the Duvalls. Not only did the Duvalls not sign any arbitration agreement applicable to the Warranty, *neither did the original purchasers*. The Warranty Enrollment Form, which Ryland contends was signed by the original purchasers, does not mention arbitration. With regard to the Warranty, Ryland does not even have a valid signed arbitration agreement with the original purchasers, much less a basis to require the Duvalls to arbitrate through "equitable estoppel."

leave-it' basis with terms that are not negotiable." *Simpson v. MSA of Myrtle Bach, Inc.*, 373 S.C. 14, 26-27 (2007).

In South Carolina, when an arbitration clause in a contract of adhesion attempts to waive important rights, the arbitration clause is unenforceable. *See Smith v. D.R. Horton, Inc.*, 403 S.C. 10, 15 (2013)(upholding trial court's finding that arbitration clause was unconscionable when home warranty attempted to "disclaim implied warranties" and waive "important remedies," and limit monetary damages.). Here, the first page of the Warranty purports to disclaim liability for consequential and incidental damages. The first page of the Warranty also disclaims the "housing merchant implied warranty or any other warranties, express or implied . . ." Section B-3(a) of the Warranty gives Ryland the unilateral right to eliminate liability for monetary damages altogether by unilaterally electing to repair the Home. Under South Carolina law, a homebuilders attempt to completely shield itself from monetary damages is unconscionable. *See Smith v. D.R. Horton, Inc.*, 403 S.C. 10, 15 (2013) (finding arbitration provision unconscionable when homebuilder "claimed it could not be liable for monetary damages of any kind."). The Warranty prohibits compensation for "costs of shelter, transportation, food, moving and storage" and "other incidental expenses related to relocation during repairs."

The most egregious provision in the Warranty is Section B-6, which reads as follows:

> If You institute arbitration proceedings or litigation against Us or CN for any obligation arising or claimed to have arisen under this Agreement before giving the proper notices and opportunities to cure warranty defects or before finishing the mediation process, as provided under this Agreement, You agree to indemnify US and CN, as appropriate, for all costs and expenses of such arbitration, including reasonable attorney's fees,

regardless of whether You have an otherwise legitimate claim under this Agreement.[6]

The Warranty seeks to discourage homeowners from making "otherwise legitimate" warranty claims by exposing them to financial devastation if they incorrectly navigate the complicated dispute resolution process outlined in the Warranty or fail to participate in the sham mediation procedure administered by CN. Under this procedure homeowners are prohibited from filing suit to challenge the validity of the arbitration procedure itself. If a homeowner does file a lawsuit and challenge the arbitration procedure, Ryland purports to have the right to force that homeowner to pay Ryland's attorneys' fees "regardless of whether" the homeowner has "an otherwise legitimate claim under" the Warranty. Ryland purports to have the right to financially destroy any homeowner who brings a lawsuit to determine the enforceability of the at-issue arbitration provision, *regardless of whether the homeowners' home is falling apart.* This provision prevents South Carolina homeowners from accessing the Courts to determine the validity of an arbitration provision, is unconscionable, and unenforceable.

Additionally, under Section B-5(g) of the Warranty the arbitrator has the ability to award attorney's fees and costs ***against the homeowner.*** There is no provision that the homeowner's warranty claim must be brought in bad faith or be frivolous in order to expose the homeowner to liability for attorney's fees and costs. If the homeowner makes a claim under the Warranty, and ultimately loses, the homeowner faces the prospect of being liable for tens of thousands (or more likely hundreds of thousands) of dollars in

[6] This provision likely violates S.C. Code Ann. § 32-2-10, "Hold harmless in certain construction contracts" as it purports to require a homeowner to indemnify a general contractor for the general contractor's negligent construction.

attorneys' fees and arbitration fees. A home is the biggest investment a family will likely ever make. It is inconceivable that Ryland puts homeowners in the position of facing financial devastation for attempting to address construction defects in their homes.

Courts from around the country have invalidated arbitration provisions requiring unsuccessful consumers to pay the prevailing corporation's attorney's fees. *See DeVito v. Autos Direct Online, Inc.*, 37 N.E.3d 194, 203-205 (2015-Ohio-3336)("Loser Pays" provision in consumer arbitration provision is unconscionable. "The prospect of incurring these onerous costs and fees has the chilling effect of stopping cold a substantial number of potential claimants from seeking to vindicate their statutory rights . . . for most persons who would utilize this disguised remedy, an adverse ruling could spell financial disaster. . . We further conclude the loser-pays provision, which requires the nonprevailing party to pay attorney fees even if the consumer has not filed the action in bad faith, is against public policy.") (Exhibit 8); *See also Gandee v. LDL Freedom Enterprises, Inc.*, 176 Wash.2d 598, 606, 293 P.3d 1197, 1201 (Wash. 2013)("Because the 'loser pays' provision serves to benefit only [Defendant] and, contrary to the legislature's intent, effectively chills [the consumer's] ability to bring suit . . . it is one-sided and overly harsh. Therefore, we hold it to be substantively unconscionable.").

The punitive nature of Section B-5(g) and Section B-6 would require homeowners to risk financial ruin in order to address construction defects in their homes. Ryland would be free to simply ignore all warranty requests (as they ignored the Duvalls) and dare homeowners to file suit. This is unconscionable and against public policy.

IV. CONCLUSION

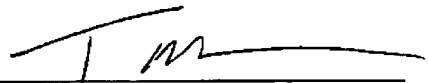
Ryland has participated in discovery, obtained a Court Order requiring the Duvalls to allow it to attach monitoring devises to the Home, conducted Court Ordered testing at the Home, and has filed multiple claims in this Court against the Third-Parties. Ryland has clearly waived arbitration.

Additionally, the only arbitration agreement that even arguably applies to this action is the Warranty that the Duvalls did not sign. The Warranty does not meet the requirements of S.C. Code Ann. § 15-48-10(a). The Warranty disclaims all implied Warranties; disclaims liability for consequential or incidental damages; allows Ryland to escape monetary damages all together by electing to attempt repair; requires a homeowner who fails to comply with the complicated dispute resolution scheme to indemnify Ryland for litigation and arbitration expenses; and requires the unsuccessful homeowner to pay Ryland's attorneys' fees and expenses of litigation. The dispute resolution provisions in the Warranty are unconscionable.

For all of the above reasons the Duvalls pray that this Court DENY Rylands' Motion to Compel Arbitration.

SIGNATURE ON FOLLOWING PAGE

KERNODLE COLEMAN

By: 

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ATTORNEYS FOR PLAINTIFFS

April 27, 2016

Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, ***Christopher and Natalie Duvall's Memorandum in Opposition to The Ryland Group, Inc.'s Motion to Compel Arbitration*** was sent via facsimile, hand-delivery, e-mail and/or by depositing a copy in the United States Mail, First Class to:

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MARY P. BROWN
CLERK OF COURT
CHARLESTON COUNTY, SC

KERNODLE COLEMAN

Michelle L. Justman

April 21, 2016
Charleston, South Carolina

EXHIBIT 1

VOLKMAR CONSULTING SERVICES, LLC
Environmental • Facilities • Materials

August 6, 2015

Mr. Thomas C. Hildebrand, Jr.
Partner

Parker Poe Attorneys & Counselors at Law
200 Meeting Street
Charleston, SC 29401-3156
Transmitted Via Email: tomhildebrand@parkerpoe.com

Subject: Report of Site Visit
1502 Marsh Reed Court
Hanahan, South Carolina
VCS Project Number 15-2333

Dear Mr. Hildebrand:

We are pleased to submit this report of our observations for the subject site. The purpose of this assessment was to document the conditions at 1502 Marsh Reed Court (herein referred to as 'subject site') relative to cracking in the concrete slab. This report presents our understanding of the project, a summary of our observations, an evaluation of the data, and our general recommendations.

PROJECT INFORMATION

Our understanding of the project is based on a brief telephone conversation with you, our recent site visit, and our experience with similar projects.

The subject site is a one-story, wood framed single family residential structure (with a finished room over the garage - F.R.O.G.). According to Ryland personnel, the home was purchased new by the original owners (Thomas & Ginger Czajkowski) and the construction was completed in approximately 2006. David C. & Natalie L. Duvall are listed as the current owners on the Berkeley County Property Card and reportedly purchased the home in January 2009 according to the Berkeley County Tax Assessor.

VCS understands that the current homeowners noticed cracking of the master bedroom drywall. located on the left side of the house (referenced as facing the house from the street), in approximately November 2013. The homeowners notified Ryland concerning the damage, which Ryland assessed as not warranty covered issues. Subsequently, the homeowners contracted Applied Building Sciences, Inc. (ABS) to perform a site visit concerning the cracking.

VCS has been provided with a copy of their report, titled 'Duval Residence'; dated April 27, 2015. The ABS report states that the cracking in the slab and master bedroom drywall exceed the *South Carolina Residential Construction Standards* (SCRCS); specifically the *Drywall and Plaster Standards* (which allow for cracks up to 1/16" in width) and the *Masonry & Concrete*

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Standards (which allow for cracks up to 5/16-inch wide with vertical differences across the crack edges of 5/16-inch). The ABS report concluded that 'the observed cracking of the drywall and slab on-grade are structurally significant. The 1-1/2" floor elevation difference across the master bedroom is excessive and is out of tolerance for slab construction as set forth by typical construction standards[1]. Based on the preliminary information collected, the observed cracking and nail pops in the drywall, the cracking of the slab on-grade, and the excessive floor slope in the master bedroom, are all most likely caused by foundation differential settlement..... If left unmitigated, further differential settlement of the slab will negatively affect the serviceability (i.e. comfort of the occupants) of the building and could eventually cause the home to be uninhabitable.' The construction standard referenced in the text quoted above is '*ACI 117 specifications for Tolerance for Concrete Construction Materials, and ACI 302.1R Guide for Concrete Floor and Slab Construction.*'

VCS has also been provided with the following information from Ryland Homes:

- Copy of the 'Certificate of Occupancy' dated September 18, 2006 and the 'Letter of Acceptance for HUD Approved 10-Year Warranty', assigned to Thomas and Ginger Czajkowski; dated September 22, 2006;
- House Plans titled 'Ryland Homes-Brunswick Americana Series', prepared by R-K Engineers, and dated March 1, 2005. These drawings have been marked in handwriting as 'The Reserve-Lot 74-1502 Marsh Reed Court', presumably by Ryland personnel during the process of choosing options with the original buyer. The drawings state the foundation have been designed with an allowable soils bearing capacity of 2000 pounds per square foot (psf);
- A copy of a 'Pre-start Conference Checklist' dated May 22, 2006 and a copy of a 'Pre-Settlement Checklist', dated September 14, 2006. Each of these documents is signed by Rob Perrill from Ryland and the buyer, Ginger Czajkowski;
- A copy of an 'Original Trades List' for Chris Duvall, dated June 3, 2015;
- Copies of a 'Final Survey', prepared by Trico Engineering; dated September 19, 2006; a 'Foundation Survey showing Lot 74'; also prepared by Trico Engineering; dated June 20, 2006; and, a copy of a /Plot Plan'; prepared by Trico Engineering, dated December 1, 2006; revised February 21, 2006.
- Copies of testing reports as follows, each prepared by Carolina Consulting Engineers Inc. (CCE): 'Report of Subgrade Observation', dated February 22, 2006, documenting the subgrade elevation observed was 36 inches below the finished soil subgrade elevation. The report further states the exposed soils were tan, brown, slightly silty sandy soils; 'Report of Field Density Testing', dated March, 14, 2006, documenting the test results at the 'front left residence corner', and 'back right residence corner', were compacted to 95 and 98 percent of the modified proctor, respectively; and 'Report of Hand Auger Borings', dated April 28, 2006, documenting the 'front right residence corner' testing encountered sandy soils and clayey sand soils with dynamic cone penetrometer (DCP) values (average of the last two readings) ranging from 7 to 11.5; and the 'back left residence corner' testing encountered the same soil types with average DCP values ranging from 6 to 11. The report conclude that the foundation soil are capable of supporting a net bearing pressure of 2500 psf;
- Copies of 'Service Requests' listed in the order they were supplied to VCS:
    - November 27, 2006, 4 pages (for Czajkowski);
    - December 12, 2006 (for Czajkowski);
    - March 12, 2007, 2 pages (for Czajkowski);
    - August 3, 2007 (for Czajkowski);

- November 5, 2013 (for Duvall)-which is noted as follows-'Inspect crack in control joint, drywall cracks and crown molding separations all in the master bedroom to determine warrantability.' No additional information concerning the inspection was noted on the form. This is the first mention of cracking in this area on any of the forms; and,
- A copy of 'Warranty Service Request Form for Tom & Ginger Czajkowski', dated November 1, 2006.

PROCEDURES

The purpose of this assessment was to document the conditions around the subject site relative to the cracking and provide our recommendations/conclusions concerning the likely cause/origin of the cracking. Additionally, VCS was asked to review the aforementioned ABS report.

Mr. Thomas E. Volkmar, P.E.; Mr. Robert C. Young, Jr., P.E.; and, Mr. Tyler Armentrout; of Volkmar Consulting Services, LLC (VCS) visited the site on July 9, 2015. Mr. Mike Boyle with Ryland and Mr. Tom Hildebrand were present; as was Mr. Duvall (with legal representation) and provided access to the home.

During the site visit, VCS personnel conducted a walk through, and obtained photographs of noteworthy observations. VCS personnel used a 6-foot level for use on the floors and walls; an acrylic, translucent crack width gauge measured in millimeters (1-inch equals approximately 25.4-mm; 0.5-inch equals approximately 12.7-mm; 5/16-inch equals approximately 7.9-mm); and, a Stanley FatMax® survey level and rod to determine relative ground surface elevations along the left side of the house and a portion of the rear.

FIELD WORK/OBSERVATIONS

The directions (left, right) used throughout this report are referenced as facing the building/subject site from the front. Below are noteworthy observations and a summary of data obtained:

- VCS personnel performed five (5) hand auger borings with DCP testing to determine the soil consistency at one foot intervals. The borings were positioned around the house as shown on the attached Figure 1, 'Site Plan'. The hand auger borings were advanced by manually twisting a bucket style auger into the soil to the test depth. The penetrometer's conical point was first seated 2-inches to penetrate loose cuttings and then driven two additional 1-3/4-inch increments with blows from a 15 pound hammer falling 20-inches. ASTM Special Publication #399 indicates the use of the DCP as follows: *"The dynamic penetrometer described in this paper was developed primarily as a verification or control penetrometer to check individual foundations during construction where a subsurface investigation has been made utilizing standard split spoon penetration methods, and laboratory shear strength and consolidation tests and analyses have been performed on undisturbed samples. A secondary use is the field investigation of subsurface conditions for lightly loaded structures where local experience from previous field investigations and laboratory analysis have established narrow limits of the strength parameters and consistencies; here again it is a verification tool to be used for an economical foundation analysis."*
- VCS also obtained selected bulk, grab sample from the auger borings and submitted them to our laboratory for classification testing. The testing included the natural moisture content, percent passing the #200 sieve; and Atterberg Limits.

- VCS used the Stanley FatMax® survey level and rod to determine relative ground surface elevations along the right side of the house, at 10-foot intervals outward for 15-feet, and a portion of the rear, from the left rear corner to the center of the patio. The data is depicted on the attached Figure 2.
- VCS personnel walked the master bedroom and bathroom, the living and dining rooms, the kitchen, and the attic. During our walkthrough, VCS observed cracking of the left wall of the master bedroom, and several joints of the wall to ceiling trim. VCS also noted an area in the kitchen linoleum that appeared to be reflecting a crack in the underlying concrete slab (the linoleum was not removed so no crack was observed). The cracks in the master bedroom were measured using the acrylic crack width gauge to be approximately 2-mm (approximately 3/32-inch). The 6-foot level indicated the floor in the master bedroom was slightly sloping towards the rear. However, the carpeting may cause the level reading to be erroneous. No cracking was noted in the den or living room.
- VCS noted the left side of the exterior slab contained a control joint with cracking 13-feet from the rear of the house; and approximately 18-feet from the front of the house. VCS measured the cracks to be about 4.0-mm (approximately 5/32-inch); and, 1.5 to 2.0-mm wide (approximately 1/16 to 3/32-inch and less), respectively.
- VCS also noted the rear screened porch contained cracking with measured widths of between 2.5 and 3.0- mm; (approx. 7/64 and 1/8-inch). There were no discernable vertical elevation differences between the crack edges.
- VCS noted the edge of the rear yard contained a retaining wall at the property line. The wall was measured to have a maximum height of approximately 3-feet and tapered at the ends.

PROFESSIONAL OPINIONS AND RECOMMENDATIONS

The following sections present our general recommendations for the subject site.

- The DCP values obtained during our site work ranged from 3 to 20 plus. The lowest values were encountered in Boring HA-3 with DCP values ranging from 3 to 7. VCS compared the DCP data from the CCE report to our current data and noted the left rear corner of the house contained slightly lower DCP values.
- The soil classification testing indicated the soils from the ground surface to approximately 3-feet below the ground surface (bgs) would be classified using the Unified Soils Classification System (USCS) as clayey sand (SC). Only Boring HA-1 encountered sandy clay soils, at 3-feet bgs to 5-feet, that would be classified using the USCS as CL. Groundwater was not encountered during our field work.
- Our survey data used an assumed elevation of 100.00 feet as a benchmark (storm sewer manhole in the driveway). VCS determined there is a maximum of 3-feet of topographic relief (1V:5H) from the edge of the house out 15-feet, at the rear left corner of the house. However, in this area, the data shows the majority of the elevation change occurs beyond 5-feet from the edge of the house.
- VCS reviewed the relevant ACI standards discussed in the ABS report and the only reference to specifications concerning floor levelness/flatness discussed are for concrete within the initial 72 hours after placement. There are no specifications or tolerances for cracking, except the language in ACI 332R-84, ***Guide to Residential Cast-in-Place Concrete***, Section 2.1, that states '....The required characteristics are governed by the intended use of the concrete, the conditions expected to be encountered at the time of placement, and the environmental factors affecting the use of the product.'
- VCS also reviewed the standards in the SCRCS and noted that Chapter I, Applicable Time Limits, assigns a 2-year time limit to the Drywall and Plaster standards, and an 8-year time

limit to the Masonry and Concrete standards. In regards to the Masonry and Concrete Standards, it should be noted they only apply to the following areas:

- The construction of a basement which may be either cast-in-place (poured) concrete or concrete block masonry installed on footings.
- The placing (pouring) of flat slab areas consisting of footings, basement and garage floors, stoops, patios, walks or drives.
- The veneering of the exterior of some structures with brick, stone or other masonry products.
- The construction of fireplaces and chimneys.

- As discussed in the ABS report, the SCRCS Masonry and Concrete Standards dictates that '*Cracks in garage slabs in excess of 5/16" in width or 5/16 " in vertical displacement shall be repaired.*' VCS did not measure any crack at the subject site to equal or exceed 5/16-inch (approximately 7.9-mm).
- Based on our observations at the time of our visit, the reported and observed cracking of the concrete slab in the master bedroom appears to be due to normal shrinkage cracking of the concrete slab exacerbated by an anomaly at the rear left corner of the house that may have caused slight differential movement.
- Slab movement is anticipated in the structural design and is typically a total of 1-inch with differential movement contributing approximately ½ of the total movement. As the original positions of the as-built conditions were not documented (and are not typically documented for residential construction), VCS has no methods for quantifying total nor differential movement. Movement in excess of the above design values would likely result in more severe cracking, window failures, door failures, etc. than observed during our site visit.
- In most cases, slight movement of the slab dissipates over time until the affected soils achieve significant consolidation, and in the predominately sandy soils, the time period is typical measured in months rather than years. It is likely the anomaly, discussed above, occurred relatively soon after construction and it is our preliminary opinion it will likely have no further impact on the house. To confirm this preliminary opinion, VCS recommends that a crack gauge be placed over the largest crack, along the exterior left side of the slab, located 13-feet from the left rear corner of the house. The crack gauge should be regularly monitored over a period of 6-months to verify that significant consolidation has occurred and provide VCS data to further evaluate our opinions.
- Shrinkage cracking occurs when excess water of convenience, not used to hydrate cement, evaporates resulting in the concrete shrinking slightly. Restraint to shrinking, provided by the subgrade, reinforcement, or other portions of the structure, causes tensile stresses to develop in the hardened concrete. In many situations, shrinkage cracking during curing is inevitable and control joints are routinely used to direct the locations of the shrinkage cracks. Occasionally, shrinkage cracks do not follow the control joints. ACI 302.1R-04 ***Guide for Concrete Floor Slab and Slab Construction*** indicates that "some random cracking should be expected; a reasonable level might be random visible cracks to occur in 0 to 3% of the floor slab".
- VCS reviewed the provided structural drawings and noted the drywall distresses in the left wall of the master bedroom are positioned where a structural loading point is located. The associated drywall distresses may be related to the position of fasteners with particular structural elements of the loading point.
- If additional settlement or conditions different from those contained within this report are encountered, please contact VCS to evaluate.
- VCS should be present to document any remedial activities.

SUMMARY

- Based on our observations at the time of our visit, the areas of reported and observed cracking (which are within the recognized tolerances), likely resulted from the anomaly that we believe has reached significant consolidation, is likely caused by normal shrinkage cracking of the concrete slab and not of structural concern. To confirm this preliminary opinion, VCS recommends a crack gauge be installed across the cracking at the left rear corner, as discussed within the report.

REPORT QUALIFICATION

Our evaluation of the conditions is based on our understanding of the site and project information and the data obtained in our assessment, on the date of our visit. In evaluating the field and laboratory data, we examined previous correlations between data in building conditions similar to those at this site. The discovery of any differing conditions at the subject site, which deviate from the data outlined in this assessment, should be reported to us for our evaluation.

This report and all information attached is intended for use by our Client and is not intended to be used for any purpose by others unless specifically agreed to by VCS in writing. This assessment was performed using the degree of skill and care ordinarily exercised under similar conditions by reputable members of VCS's profession practicing in the same or similar locality at the time of performance. No other warranty, express or implied, is made or intended and the same are specifically disclaimed.

CLOSING

We appreciate the opportunity to be of service. If you have any questions concerning this report, please contact us at (843) 718-1032.

Sincerely,
VOLKMAR CONSULTING SERVICES, LLC

Robert C. Young Jr.

Robert C. Young Jr., P.E.
Operations Manager/Senior Engineer
SC Registration Number 17664

Thomas E. Volkmar, PE
President/Principal Engineer
SC Registration Number 27827

Attachments: Photographs
Figures 1 and 2
Auger Boring Logs with Laboratory Results

ATTACHMENTS

1502 Marsh Reed Court	PHOTOGRAPH SHEET #1	PROJECT #: 15-2333

Photograph #1	Description
	Typical view of the front of the house. **Photograph Taken:** July 9, 2015

Photograph #2	Description
	Typical view of the rear of the house, from the left rear property corner. Note the retaining wall (red arrow). **Photograph Taken:** July 9, 2015

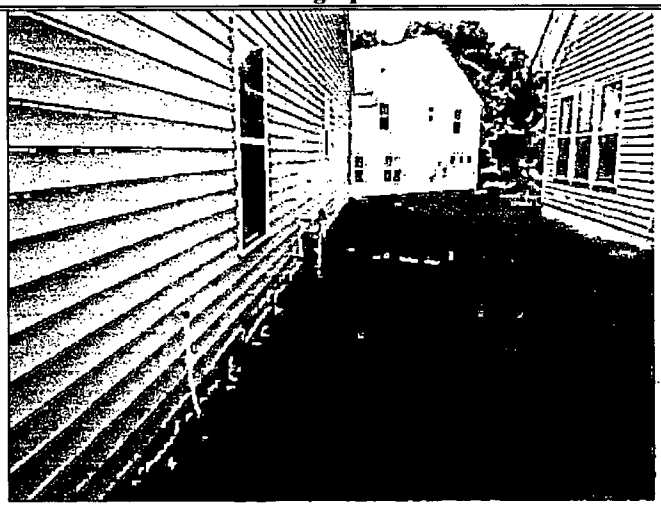
1502 Marsh Reed Court	PHOTOGRAPH SHEET #2	PROJECT #: 15-2333

Photograph #3	Description
	Typical view of the rear of the house, from the right rear property corner. Note the retaining wall (red arrow).
	Photograph Taken: July 9, 2015

Photograph #4	Description
	Typical view of the left side of the house/site from the front left property corner.
	Photograph Taken: July 9, 2015

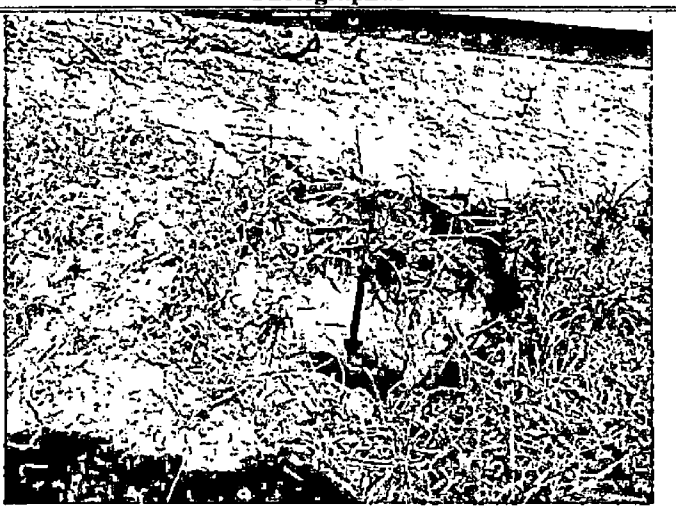
1502 Marsh Reed Court	PHOTOGRAPH SHEET #3	PROJECT #: 15-2333

Photograph #5	Description
	Typical view of the right side of the house/site from the front right property corner. **Photograph Taken:** July 9, 2015

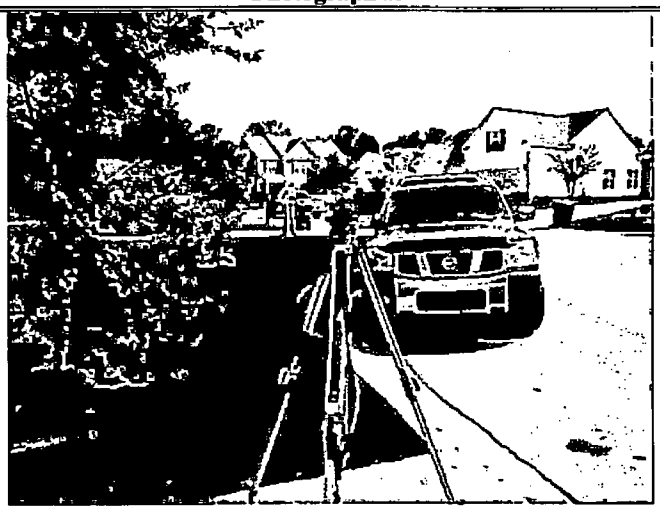
Photograph #6	Description
	A view of the right side of the subject site. **Photograph Taken:** July 9, 2015

1502 Marsh Reed Court	PHOTOGRAPH SHEET #4	PROJECT #: 15-2333

Photograph #7	Description
	A view of the auger borings with DCP testing. This is HA-3, located at the left rear corner of the house. **Photograph Taken:** July 9, 2015

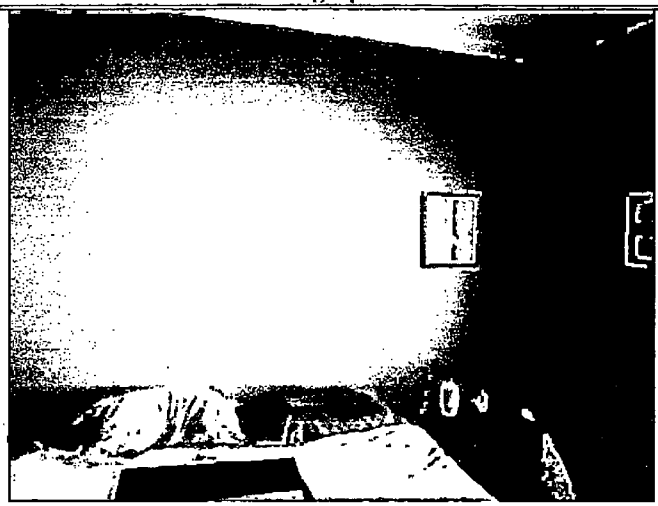
Photograph #8	Description
	A view of the test hole excavated along the left side of the house to determine the thickness of the footing. The measurement of the red arrow was approximately 2-feet. **Photograph Taken:** July 9, 2015

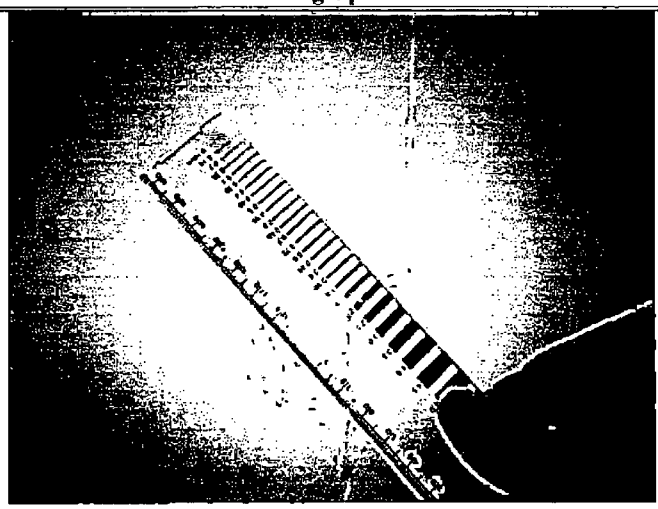
1502 Marsh Reed Court	PHOTOGRAPH SHEET #5	PROJECT #: 15-2333

Photograph #9	Description
	A view of the survey instrument setup and temporary benchmark used (manhole in the driveway (background).
	Photograph Taken: July 9, 2015

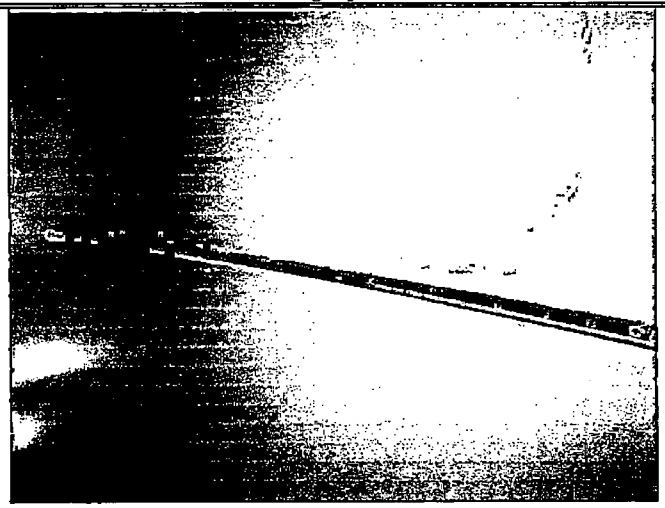
Photograph #10	Description
	A view of the survey underway along the left side of the house. Elevations were obtained at the edge of the house, at 10-foot intervals, and outward every 10-feet to 15-feet.
	Photograph Taken: July 9, 2015

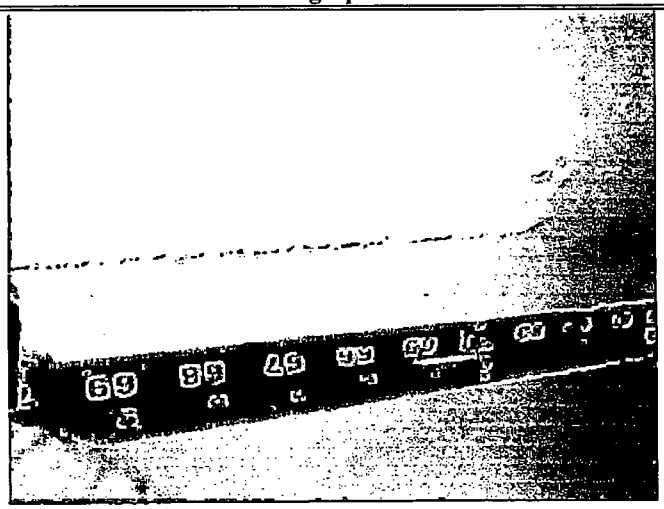
1502 Marsh Reed Court	PHOTOGRAPH SHEET #6	PROJECT #: 15-2333

Photograph #11	Description
	A view of the master bedroom, right side wall, where cracking is occurring. **Photograph Taken:** July 9, 2015

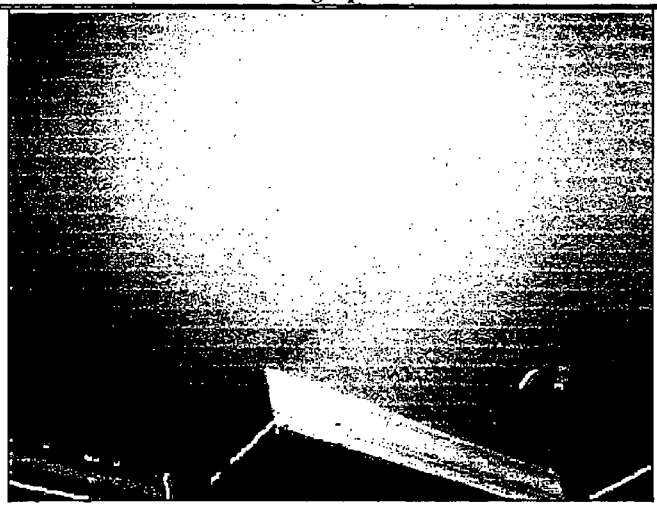
Photograph #12	Description
	A close-up view of the previous photo. A view of cracking of the left side wall in the master bedroom. The measured width is 2.0-mm (approximately 3/32-inch) **Photograph Taken:** July 9, 2015

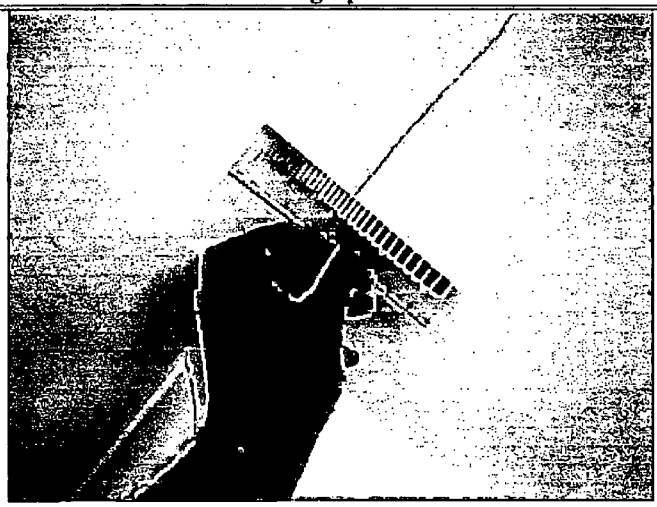
1502 Marsh Reed Court	PHOTOGRAPH SHEET #7	PROJECT #: 15-2333

Photograph #13	Description
	Another view of the cracking in the master bedroom right side wall. **Photograph Taken:** July 9, 2015

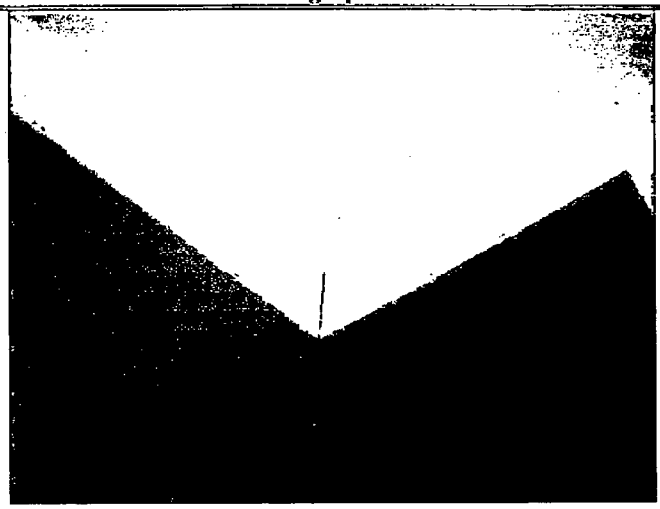
Photograph #14	Description
	A close-up view of the previous photo. The cracking starts approximately 5-feet from the rear wall of the house. **Photograph Taken:** July 9, 2015

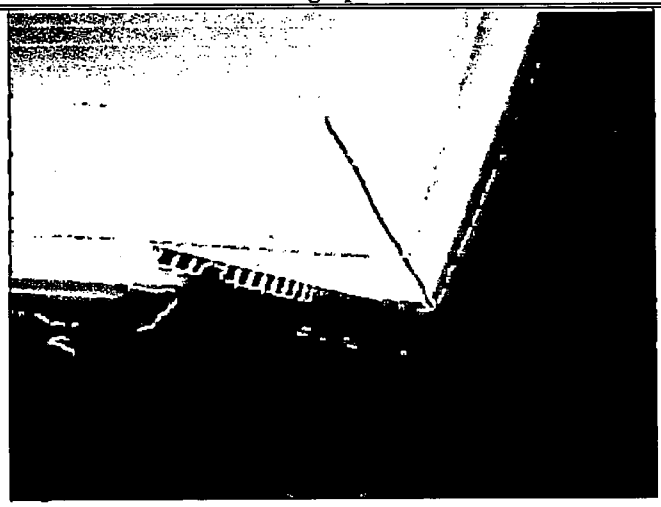
1502 Marsh Reed Court	PHOTOGRAPH SHEET #8	PROJECT #: 15-2333

Photograph #15	Description
	A view of the ceiling crack in the master bedroom. **Photograph Taken:** July 9, 2015

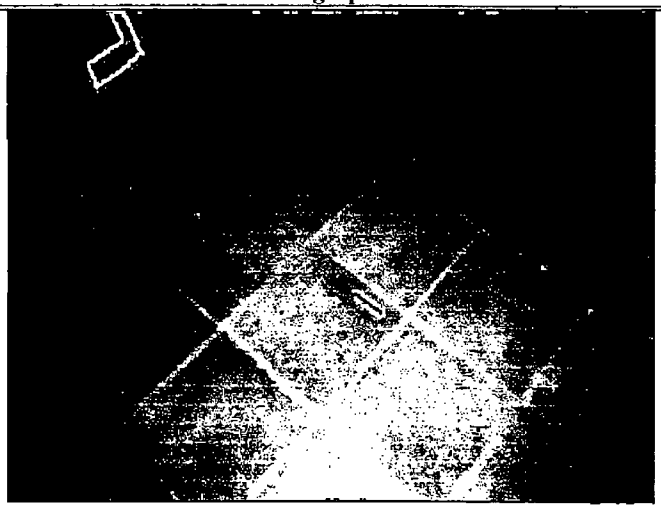
Photograph #16	Description
	A view of cracking on the ceiling in the master bedroom. The measured width is 0.95 mm (approximately 3/64") **Photograph Taken:** July 9, 2015

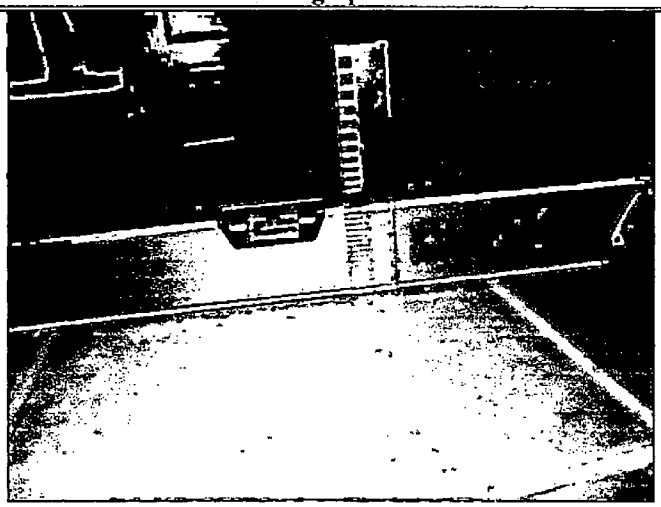
1502 Marsh Reed Court	PHOTOGRAPH SHEET #9	PROJECT #: 15-2333

Photograph #17	Description
	A view of the crown molding joint separation in the master bedroom. **Photograph Taken:** July 9, 2015

Photograph #18	Description
	Another view of the crown molding joint separation in the master bedroom. **Photograph Taken:** July 9, 2015

1502 Marsh Reed Court	PHOTOGRAPH SHEET #10	PROJECT #: 15-2333

Photograph #19	Description
	A view of the approximate area in the kitchen where the linoleum covers an apparent slab crack. **Photograph Taken:** February 10, 2014

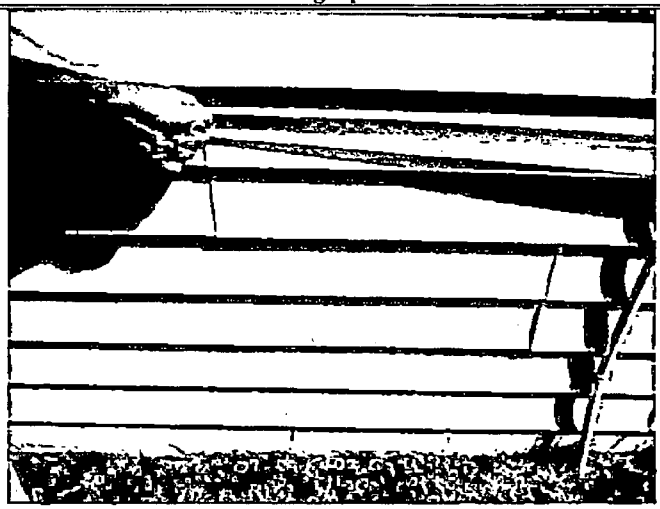
Photograph #20	Description
	Another view of the approximate area in the kitchen where the linoleum covers an apparent slab crack. **Photograph Taken:** February 10, 2014

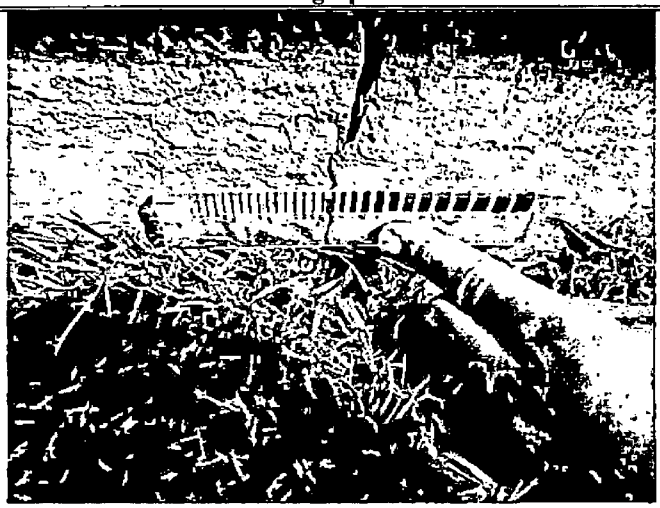
1502 Marsh Reed Court	PHOTOGRAPH SHEET #11	PROJECT #: 15-2333

Photograph #21	Description
	A view of the roof trusses in the attic, over the master bedroom. **Photograph Taken:** July 9, 2015

Photograph #22	Description
	Another view of the roof trusses in the attic, over the master bedroom. **Photograph Taken:** July 9, 2015

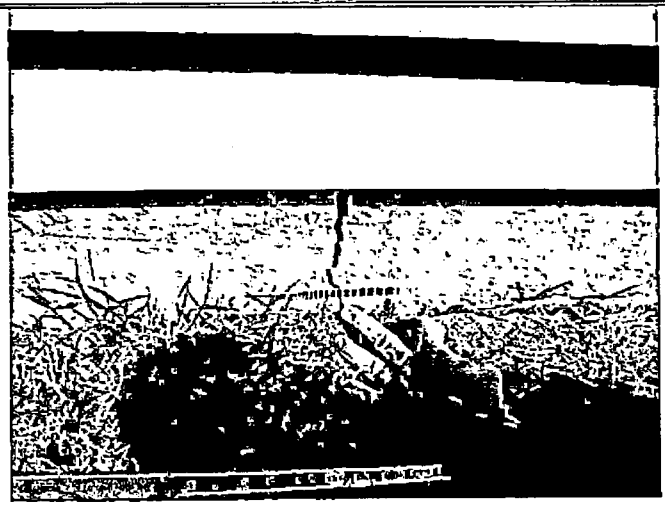
1502 Marsh Reed Court	PHOTOGRAPH SHEET #12	PROJECT #: 15-2333

Photograph #23	Description
	A view of the control joint and cracking on the exterior 18-feet from the left front corner. **Photograph Taken:** July 9, 2015

Photograph #24	Description
	Close-up of the previous photo. A view of the control joint and cracking on the exterior 18-feet from the left front corner (measured at 1.5 to 2.0- mm wide; approximately 1/16 to 3/32-inch). **Photograph Taken:** July 9, 2015

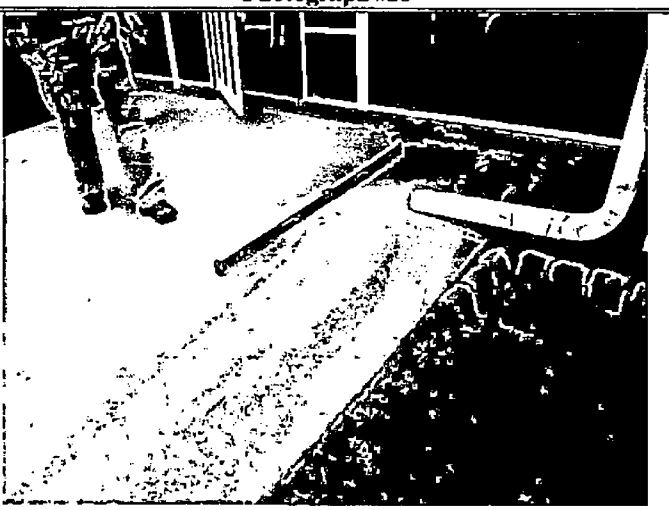
1502 Marsh Reed Court	PHOTOGRAPH SHEET #13	PROJECT #: 15-2333

Photograph #25	Description
	A view of the control joint and cracking on the exterior 13-feet from the left rear corner. **Photograph Taken:** July 9, 2015

Photograph #26	Description
	Close-up of the previous photo. A view of the control joint and cracking on the exterior 13-feet from the left rear corner (measured at 4.0 mm; approximately 5/32" wide). **Photograph Taken:** July 9, 2015

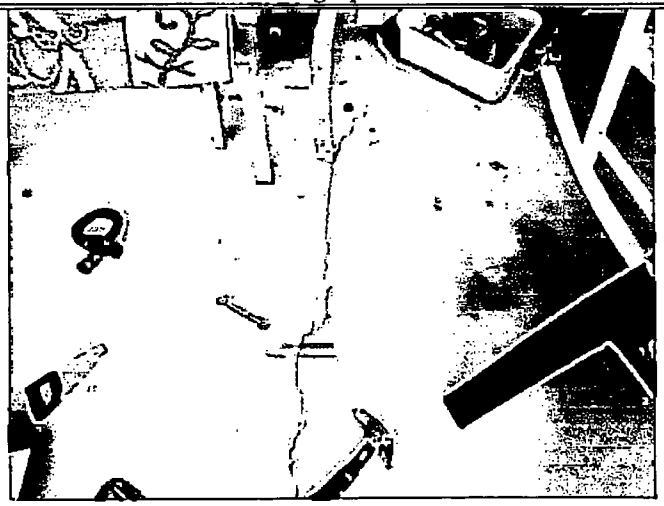
1502 Marsh Reed Court	PHOTOGRAPH SHEET #14	PROJECT #: 15-2333

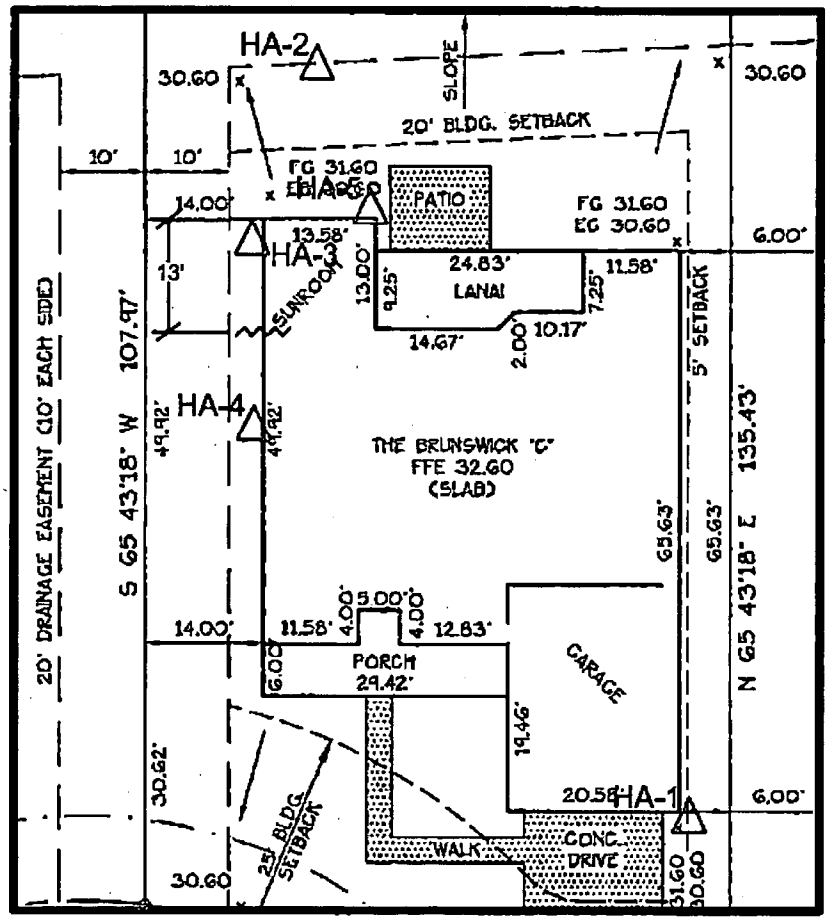
Photograph #27	Description
Photo 8 – The crack extending from the control joint has widened significantly.	A photo from the ABS report dated April 27, 2015. The report states this crack is 5/16" (approximately 7.9 mm) or greater. This same crack is shown in Photo 26, it is located on the exterior, 13-feet from the left rear corner. **Photograph Taken:** April 16, 2015 by ABS

Photograph #28	Description
	A view of the rear patio. **Photograph Taken:** July 9, 2015

1502 Marsh Reed Court	PHOTOGRAPH SHEET #15	PROJECT #: 15-2333

Photograph #29	Description
	A view of the cracking on the rear porch. **Photograph Taken:** July 9, 2015

Photograph 30	Description
	A view of the cracking on the rear porch (measured at between 2.5 and 3.0-mm; approximately 7/64 and 1/8-inch) wide. **Photograph Taken:** July 9, 2015



Legend

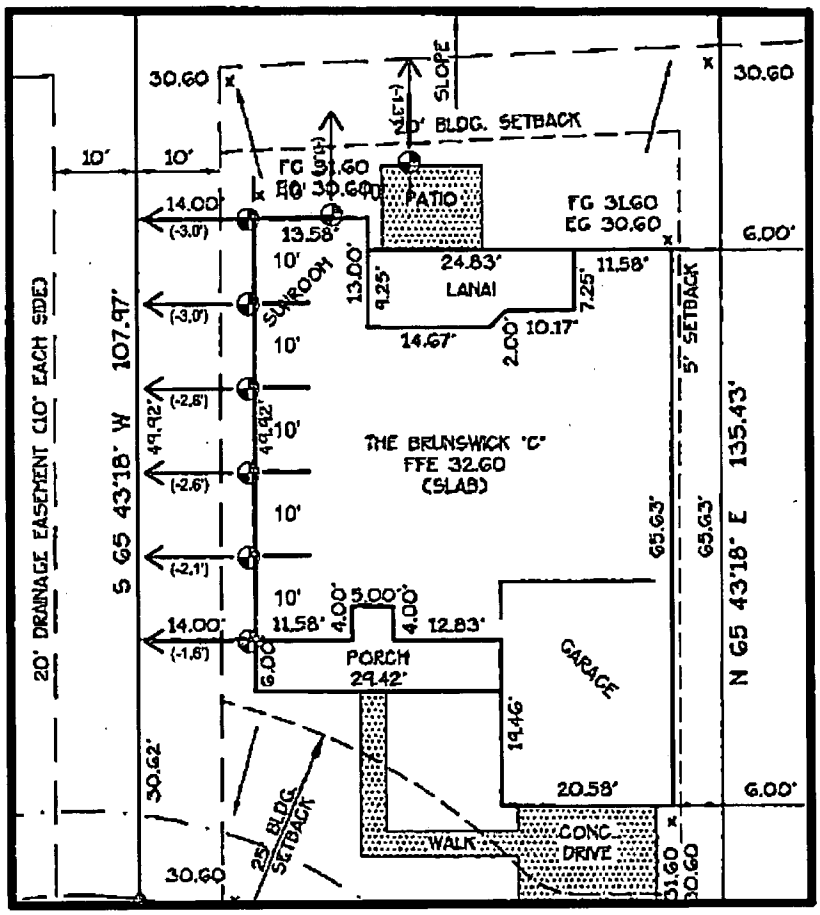
HA-1 △ Approximate Locations of Hand Auger Borings w/ DCP Testing

〰 Approximate Location of Slab Crack in Control Joint

Drawing referenced from a plot plan produced by Trico Engineering Consultants, Inc. titled 'Plot Plan Showing Lot 74 The Reserve Subdivision, Phase 2B', dated December 1, 2015, Revised February 21, 2006.
Drawing not to scale.

1502 Marsh Reed Court Hanahan, South Carolina	Volkmar Consulting Services, LLC Environmental Facilities Materials	Figure 1 Site Plan
Prepared By: DVW Date: 7/16/2015	VCS Project No. 15-2333	Checked By: RCY Date: 7/16/2015

Ryland 00161



Legend

Approximate Locations where Survey Data was Obtained

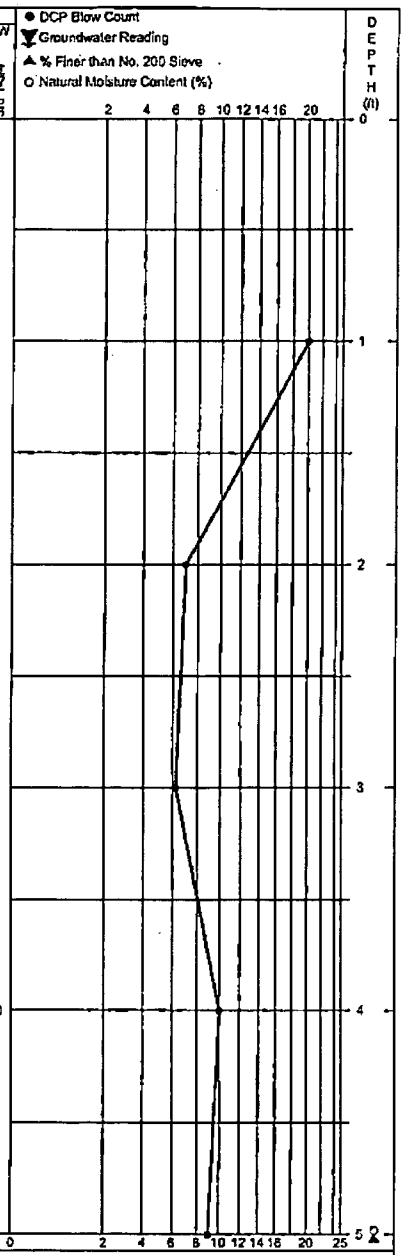
(-1.6') Denotes Approximate Fall (in Feet) from the Edge of the House Outward 15'.

Drawing referenced from a plot plan produced by Trico Engineering Consultants, Inc. titled 'Plot Plan Showing Lot 74 The Reserve Subdivision, Phase 2B', dated December 1, 2015, Revised February 21, 2006. Drawing not to scale.

1502 Marsh Reed Court Hanahan, South Carolina	Volkmar Consulting Services, LLC Environmental Facilities Materials	Figure 2 Survey Data
Prepared By: DVW Date: 7/16/2015	VCS Project No. 15-2333	Checked By: RCY Date: 7/16/2015

Ryland 00162

DEPTH (ft)	SOIL CLASSIFICATION AND OBSERVATIONS	SAMPLE No.	SAMPLE TYPE	DCP BLOW COUNT 1st 2" / 2nd 1-3/4" / 3rd 1-3/4"
	Moist, Very Firm to Loose, Brown, Clayey SAND (SC)	1-1	Grab	
1				20+
2				7 - 7 - 7
3	Moist, Firm to Stiff, Orange and Red, Sandy CLAY (CL) %200 = 66.1% MC = 22.2% PI = 27 PL = 23 LL = 50	1-2	Grab	6 - 7 - 8
4				15 - 10 - 10
5	Boring terminated at 5.0 feet below the ground surface.			10 - 10 - 8



Volkmar Consulting Services, LLC
Environmental•Facilities•Materials

Field Personnel: TJA/RCY
Equipment: Hand Auger & Dynamic Cone Penetrometer
Hole Dia.: 3-1/4 inches
Remarks: Sample type (Grab) indicates grab sample from auger bucket.
Groundwater was not encountered at the time of boring.

HAND AUGER BORING RECORD

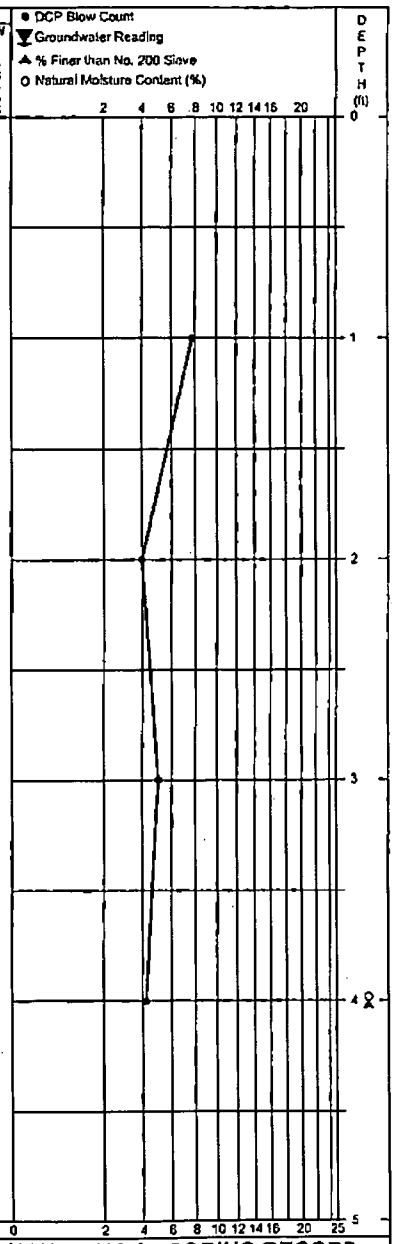
Project : 1502 Marsh Reed Court

Drilled: 7/9/2015
Project No. 15-2333
Page 1 of 1

Front Right Corner - See Figure 1

BORING: HA-1

DEPTH (ft)	SOIL CLASSIFICATION AND OBSERVATIONS	SAMPLE No.	SAMPLE TYPE	DCP BLOW COUNT 1st 2" / 2nd 1-3/4" / 3rd 1-3/4"
	Moist, Loose to Very Loose, Brown, Clayey SAND (SC) %200 = 44.1% MC = 19.9%	2-1	Grab	
1				2-5-10
2				5-3-5
3				5-5-5
4				7-5-4
	Boring terminated at 4.5 feet below the ground surface due to refusal - possible root.			
5				



Volkmar Consulting Services, LLC
Environmental•Facilities•Materials

Field Personnel: TJA/RCY
Equipment: Hand Auger & Dynamic Cone Penetrometer
Hole Dia.: 3-1/4 Inches
Remarks: Sample type (Grab) indicates grab sample from auger bucket.
Groundwater was not encountered at the time of boring.

HAND AUGER BORING RECORD

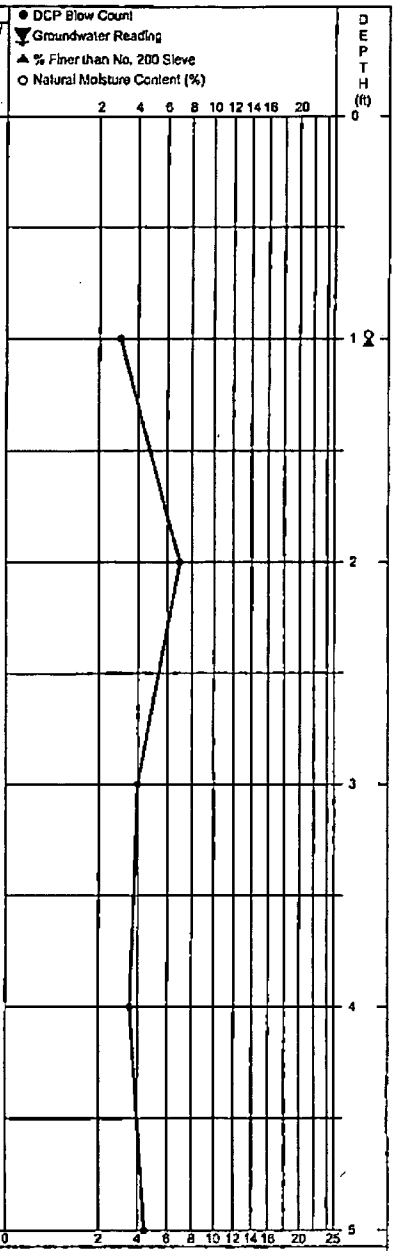
Project : 1502 Marsh Reed Court

Drilled: 7/9/2015
Project No. 15-2333
Page 1 of 1

Rear Yard - See Figure 1

BORING: HA-2

DEPTH (ft)	SOIL CLASSIFICATION AND OBSERVATIONS	SAMPLE No.	SAMPLE TYPE	DCP BLOW COUNT 1st 2" / 2nd 1-3/4" / 3rd 1-3/4"
	Moist, Very Loose to Loose, Brown and Orange, Clayey SAND (SC) %200 = 38.6% MC = 18.3%	3-1	Grab	
1				3-3-3
2				4-7-7
3				4-5-3
4				3-3-4
5	Boring terminated at 5.0 feet below the ground surface.			4-5-4



Volkmar Consulting Services, LLC
Environmental •Facilities •Materials

Field Personnel: TJ/RCY
Equipment: Hand Auger & Dynamic Cone Penetrometer
Hole Dia.: 3-1/4 inches
Remarks: Sample type (Grab) indicates grab sample from auger bucket.
Groundwater was not encountered at the time of boring.

HAND AUGER BORING RECORD

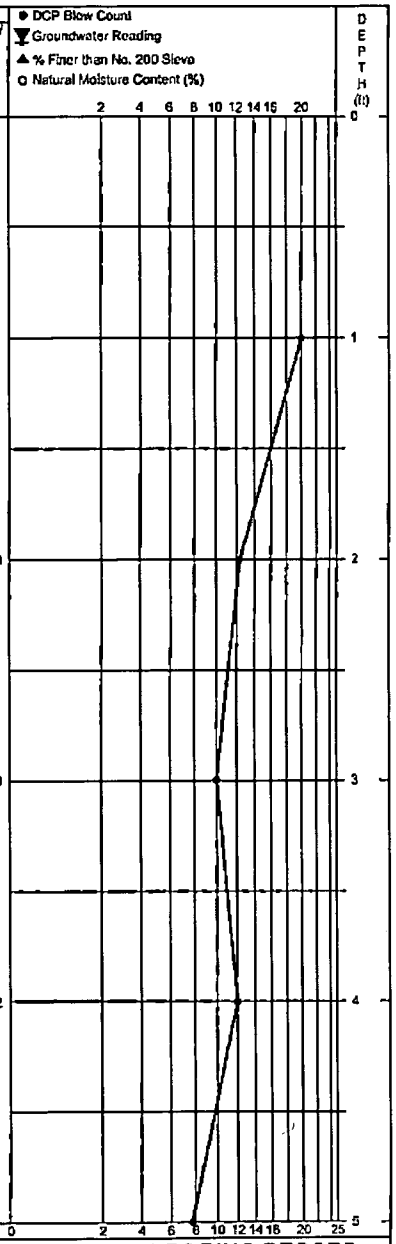
Project : 1502 Marsh Reed Court

Drilled: 7/8/2015
Project No. 15-2333
Page 1 of 1

Rear Left Corner - See Figure 1

BORING: HA-3

DEPTH (ft)	SOIL CLASSIFICATION AND OBSERVATIONS	SAMPLE No.	SAMPLE TYPE	DCP BLOW COUNT 1st 2" / 2nd 1-3/4" / 3rd 1-3/4"
	Moist, Very Firm to Loose, Brown, Clayey SAND (SC)	4-1	Grab	
1				20+
2				12 - 12 - 13
3				11 - 10 - 10
4				12 - 12 - 12
5	Boring terminated at 5.0 feet below the ground surface.			12 - 8 - 7



Volkmar Consulting Services, LLC
Environmental•Facilities•Materials

Field Personnel: TJA/RCY
Equipment: Hand Auger & Dynamic Cone Penetrometer
Hole Dia.: 3-1/4 inches
Remarks: Sample type (Grab) indicates grab sample from auger bucket.
Groundwater was not encountered at the time of boring.

HAND AUGER BORING RECORD

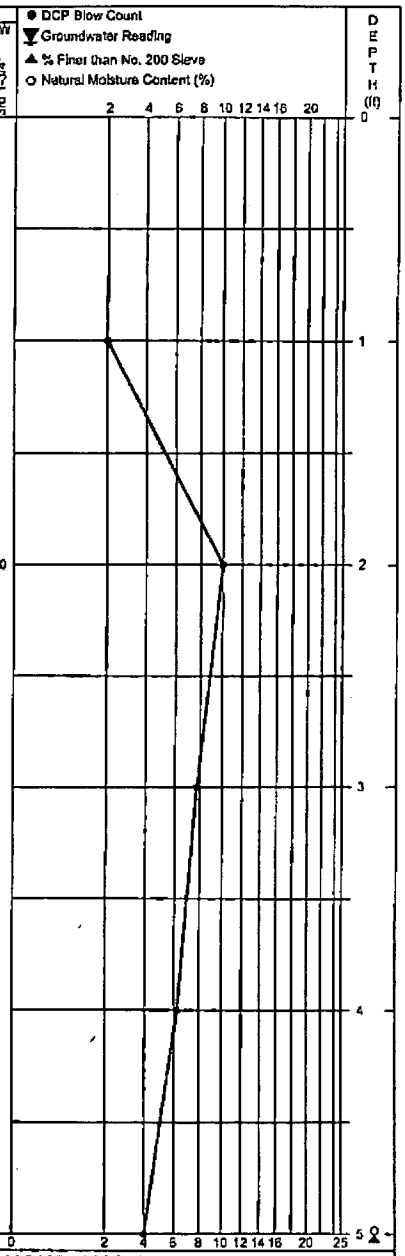
Project : 1502 Marsh Reed Court

Drilled: 7/9/2015
Project No. 15-2333
Page 1 of 1

Left Side of House - See Figure 1

BORING: HA-4

DEPTH (ft)	SOIL CLASSIFICATION AND OBSERVATIONS	SAMPLE No.	SAMPLE TYPE	DCP BLOW COUNT 1st 2nd 1-3/4" 3rd 1-3/4"
	Moist, Very Loose to Loose, Brown, Clayey SAND (SC) %200 = 15.1% MC = 12.2%	S-1	Grab	
1				1 - 2 - 2
2				10 - 10 - 10
3				8 - 8 - 7
4				7 - 7 - 6
5	Boring terminated at 5.0 feet below the ground surface.			3 - 4 - 4



Volkmar Consulting Services, LLC
Environmental•Facilities•Materials

Field Personnel: TJ/RCY
Equipment: Hand Auger & Dynamic Cone Penetrometer
Hole Dia.: 3-1/4 inches
Remarks: Sample type (Grab) indicates grab sample from auger bucket.
Groundwater was not encountered at the time of boring.

HAND AUGER BORING RECORD

Project : 1502 Marsh Reed Court

Drilled: 7/9/2015
Project No. 15-2333
Page 1 of 1

Rear of House - See Figure 1

BORING: HA-5

EXHIBIT 2

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY Christopher Duvall and Natalie Duvall, Plaintiffs, vs. The Ryland Group, Inc. Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL DISTRICT Case No.: 2015-CP-08-1213 DEFENDANT THE RYLAND GROUP, INC.'S REQUEST FOR PRODUCTION TO THE PLAINTIFFS

TO: THE PLAINTIFFS CHRISTOPHER DUVALL AND NATALIE DUVALL AND THEIR ATTORNEY JAMES TAYLOR ANDERSON, III, ESQUIRE:

Pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, the Defendant The Ryland Group, Inc. ("Ryland"), by and through its undersigned counsel, hereby serve upon counsel for Plaintiffs the following Requests for Production of materials and documents to be answered in the manner required under the South Carolina Rules of Civil Procedure within thirty (30) days of service, exclusive of the date of service, which responses are to be served upon the undersigned. These Requests shall be deemed continuing and to require supplemental responses if Plaintiffs obtain further documents or materials at any time between the date of production and the conclusion of trial.

1. Defendant requests authorization to place crack monitors into the cracks in the masonry on the home and to then leave them in place and undisturbed for the remainder of this litigation.

PPAB 3022929v1

PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

By:_____

Thomas C. Hildebrand, Jr.
843.727.2653 (direct dial)
tomhildebrand@parkerpoe.com

Olesya V. Vaskevich
843.727.2642 (direct dial)
olesyavaskevich@parkerpoe.com

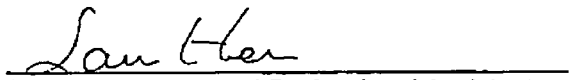
Attorneys for Defendant The Ryland Group, Inc.

December 14, 2015

CERTIFICATE OF SERVICE

This is to certify that a copy of Defendant The Ryland Group, Inc.'s Requests for Production to Plaintiffs has been served upon the following counsel of record by electronic mail and by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 14th day of December, 2015.

James Taylor Anderson, III, Esq.
Kernodle Root + Coleman
PO Box 13897
Charleston, SC 29422
tanderson@kernodlelaw.com



Lauren Heuss, Legal Professional Assistant
PARKER POE ADAMS & BERNSTEIN, LLC
200 Meeting Street, Suite 301
Charleston, SC 29401-2240

EXHIBIT 3

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	) IN THE COURT OF COMMON PLEAS) NINTH JUDICIAL CIRCUIT) CASE NO. 2015-CP-08-1213
CHRIS DUVALL and NATALIE , DUVALL Plaintiffs, v. THE RYLAND GROUP, INC., Defendant.	**AFFIDAVIT OF CHRIS DUVALL**
THE RYLAND GROUP, INC., Third-Party Plaintiff, v. LAND SITE SERVICES, INC., CAROLINA CONSULTING SERVICES, INC., HIGDON CONCRETE, LLC, A.C. CONSTRUCTION, INC., and STARK TRUSS COMPANY, INC. a/k/a STARL TRUSS COMPANY OF SUMMERVILLE, LTD. a/k/a STARL TRUSS, INC. d/b/a CAROLINA TRUSS SYSTEMS, INC. Third-Party Defendants.	

PERSONALLY APPEARED before me, Christopher Duvall, who first being duly sworn, deposes and says:

1. I am an adult and under no disability that would prevent me from giving truthful testimony.

2. I, along with my wife Natalie Duvall, own the home located at 1502 Marsh Reed Court, Hanahan, Berkeley County, South Carolina. Myself and my wife are the Plaintiffs in the above captioned case.

3. During the year 2013, I noticed cracking in the sheetrock and foundation of my home.

4. In September of 2013, Mr. Billy Barnes, of Ryland, visited my home and indicated that the cracking was "cosmetic" and did not need to be repaired.

5. Mr. Barnes was the only Ryland employee to visit my home in response to my concerns about cracking in the sheetrock and foundation of my home. He did not perform any testing at the home, did not install any "crack monitors," and did not conduct any soils sampling.

6. After myself and my wife filed this lawsuit in May of 2015, Ryland conducted a site visit that included multiple engineers, a lawyer, and a Ryland manager. At this site visit Ryland took soils samples from multiple locations, conducted a land survey, and took extensive measurements inside my home.

7. In November of 2015, Ryland requested that myself and my wife allow Ryland to place "crack monitors" at multiple locations around our home.

8. I did not agree to allow Ryland to install crack monitors around the home. Ryland had an ample opportunity to fully investigate this matter prior to my having to obtain an attorney and I did not want to have crack monitors installed on my home. I did not want my home to be known in the neighborhood as the home with crack monitors installed on a defective slab and I did not want the crack monitors to interfere with my family's full use and enjoyment of our home.

9. Ryland obtained a court order requiring me and my wife to allow Ryland to place multiple monitoring devices on my home.

10. Because I was compelled by Court Order, on January 28, 2016, I allowed Ryland access to my home for the purpose of installing crack monitors. Ryland did, in fact, install the Court Ordered crack monitors at 3 locations on my home.

11. One of the Court Ordered crack monitors is on my family's screened-in back porch, where my young children often play. Since the crack monitor has been installed on my family's screened-in back porch, if I allow my children on the back porch at all, I have to closely watch them and keep them away from the Court Ordered crack monitor. Absent a Court Order, I would not have allowed Ryland to place a crack monitor in this location.

12. Because I was compelled by Court Order, on Monday, March 7, 2016, I again allowed Ryland access to my home for purposes of conducting a Court Ordered inspection of the crack monitors Ryland had installed on my home.

13. As of the date of this Affidavit, I am under Court Order requiring myself and my wife to keep the crack monitors on our home for the purpose of allowing Ryland to collect data. Ryland continues to maintain crack monitors on my home and has not indicated that I should remove the crack monitors.FURTHER AFFIANT SAYETH NOT.

CHRIS DUVALL

SWORN to before me this 6 day
of April, 2016.

Alison D. Sessoms
Notary Public of South Carolina
My Commission Expires: 07/14/19

EXHIBIT 4

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	CASE NO.: 2015-CP-08-01213
Christopher Duvall and Natalie Duvall, Plaintiffs, vs. The Ryland Group, Inc. Defendant. The Ryland Group, Inc., Third-Party Plaintiff, vs. Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc., Third-Party Defendants.	**THE RYLAND GROUP, INC.'S MOTION TO COMPEL AGAINST PLAINTIFFS**

2015 DEC 31 PM 12: 08
MARY E. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

KDC

Pursuant to Rules 34 and 37 of the South Carolina Rules of Civil Procedure, the Defendant and Third-Party Plaintiff The Ryland Group, Inc. (hereinafter "Ryland"), by and through their undersigned counsel, respectfully moves the Court for an Order compelling the Plaintiffs Christopher Duvall and Natalie Duvall ("Plaintiffs") to allow Ryland's request for authorization to install crack monitors at the residence which is the subject of this litigation. In support of its Motion, Ryland shows the following:

1. By way of telephone communications with Plaintiffs' counsel, Ryland's counsel repeatedly has requested that Plaintiffs agree to the placement of the crack

PPAB 3022149v1

monitors at the subject residence. On December 1, 2015, Plaintiffs' counsel rejected Ryland's request to install crack monitors by way of electronic correspondence to Ryland's counsel. A copy of this electronic correspondence is attached hereto as Exhibit A.

2. Ryland served its Request for Production on Plaintiffs by U.S. Mail and by electronic mail on December 14, 2015. A copy of Ryland's Request for Production is attached hereto as Exhibit B.

3. Rules 26 and 34 of the South Carolina Rules of Civil Procedure allow Ryland to serve on Plaintiffs a request "to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b)."

4. On December 22, 2015, Plaintiffs' counsel responded to Ryland's Request for Production by way of electronic correspondence and again rejected Ryland's request to install crack monitors. A copy of this electronic correspondence is attached hereto as Exhibit C.

5. To date, Ryland has not received authorization to install crack monitors at the residence which is the subject of this litigation from Plaintiffs.

WHEREFORE, Ryland respectfully requests an Order compelling Plaintiffs to allow Ryland's request for authorization to install crack monitors at the residence which is the subject of this litigation.

PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

By: Olesya Vaskevich
Thomas C. Hildebrand, Jr.
843.727.2653 (direct dial)
tomhildebrand@parkerpoe.com

Olesya V. Vaskevich
843.727.2692 (direct dial)
olesyavaskevich@parkerpoe.com

Attorneys for Defendant and Third-Party Plaintiff The Ryland Group, Inc.

December 29, 2015

CERTIFICATE OF SERVICE

This is to certify that a copy of The Ryland Group, Inc.'s Motion to Compeel Against Plaintiffs has been served upon the following counsel of record by electronic mail and by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 29th day of December, 2015.

James Taylor Anderson, III, Esq.
Kernodle Root + Coleman
PO Box 13897
Charleston, SC 29422
tanderson@kernodlelaw.com

John E. Rogers, II
The Ward Law Firm
233 S. Pine Street
Spartanburg, SC 29302
jrogers@wardlawfirm.com

2015 DEC 31 PM 12: 06
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

Lauren Heuss, Legal Professional Assistant
PARKER POE ADAMS & BERNSTEIN, LLC
200 Meeting Street, Suite 301
Charleston, SC 29401-2240

EXHIBIT
A

Vaskevich, Olesya V.

From: Taylor Anderson <tanderson@kernodlelaw.com>
Sent: Tuesday, December 01, 2015 9:47 AM
To: Hildebrand, Jr., Thomas C.
Cc: Vaskevich, Olesya V.
Subject: Duvall v. Ryland

Tom, the Duvalls are not agreeable to Ryland installing crack monitors at their home. Ryland was afforded an opportunity, prior to any lawyer involvement, and during the warranty period, to fully investigate the foundation and wall cracking at the Duvalls' home. At that time Ryland determined that there were no warrantable problems at the home. Ryland did not ask to install any crack monitors at that time.

After suit was filed Ryland requested another visit to the home to investigate the foundation and wall cracking. On July 9, 2015, the Duvalls again made their home available for Ryland's inspection. Ryland personnel, accompanied by three professionals from Volkmar Consulting Services, LLC, performed an inspection of the Duvalls' home. The inspection included the cracked foundation, the drywall cracking in the master bedroom, the floor issues in the kitchen, and an investigation of the attic space. Ryland's engineers also dug holes at various locations around the home to collect soil samples.

The Duvalls have fulfilled their obligation to allow Ryland to inspect the home. Ryland has filed a Motion to Amend the Ryland Group, Inc.'s Answer to Plaintiff's Complaint in order to add Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company as Third-Party Defendants. These newly added Third-Party Defendants have a right to inspect the home and the Duvalls will make the home available for inspection. Ryland, of course, can also attend the Third-Party Defendants' site inspection. However, the Duvalls do not want Ryland to attach monitors to their home. The Duvalls' home will be stigmatized enough by having multiple site inspections and the neighbors watching engineers dig holes around the home. The Duvalls do not want monitors affixed to the home.

Ryland was told of the cracking in 2013, and has been afforded multiple opportunities to inspect. It should have a record of the width of the cracks from each inspection. Ryland can compare its previous measurements to any measurements at future inspections. Crack monitors should not be necessary.

Thank you and please feel free to let me know if you have any questions or concerns.

Taylor

Parker Poe

Thomas C. Hildebrand, Jr.
Partner
Telephone 843 727.2653
Direct Fax 843.727 2680
tomhildebrand@parkerpoe.com

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

December 14, 2015

VIA EMAIL AND US MAIL

James Taylor Anderson, III, Esq.
Kernodle Root & Coleman
PO Box 13897
Charleston, SC 29422-3897

Re: Christopher Duvall and Natalie Duvall v. The Ryland Group, Inc.
Case No.: 2015-CP-08-01213

Dear Taylor:

Enclosed please find Defendant The Ryland Group, Inc.'s Request for Production to the Plaintiffs in the above-referenced matter.

With best regards,

Yours very truly,

Tom

Thomas C. Hildebrand, Jr.

TCHJr/lah
Enclosure

PPAB 3015815v1

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY Christopher Duvall and Natalie Duvall, Plaintiffs, vs. The Ryland Group, Inc. Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL DISTRICT Case No.: 2015-CP-08-1213 DEFENDANT THE RYLAND GROUP, INC.'S REQUEST FOR PRODUCTION TO THE PLAINTIFFS

TO: THE PLAINTIFFS CHRISTOPHER DUVALL AND NATALIE DUVALL AND THEIR ATTORNEY JAMES TAYLOR ANDERSON, III, ESQUIRE:

Pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, the Defendant The Ryland Group, Inc. ("Ryland"), by and through its undersigned counsel, hereby serve upon counsel for Plaintiffs the following Requests for Production of materials and documents to be answered in the manner required under the South Carolina Rules of Civil Procedure within thirty (30) days of service, exclusive of the date of service, which responses are to be served upon the undersigned. These Requests shall be deemed continuing and to require supplemental responses if Plaintiffs obtain further documents or materials at any time between the date of production and the conclusion of trial.

1. Defendant requests authorization to place crack monitors into the cracks in the masonry on the home and to then leave them in place and undisturbed for the remainder of this litigation.

PPAB 3022929v1

PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

By:_____
Thomas C. Hildebrand, Jr.
843.727.2653 (direct dial)
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Olesya V. Vaskevich
843.727.2642 (direct dial)
olesyavaskevich@parkerpoe.com

Attorneys for Defendant The Ryland Group, Inc.

December 14, 2015

CERTIFICATE OF SERVICE

This is to certify that a copy of Defendant The Ryland Group, Inc.'s Requests for Production to Plaintiffs has been served upon the following counsel of record by electronic mail and by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 14th day of December, 2015.

James Taylor Anderson, III, Esq.
Kemodle Root + Coleman
PO Box 13897
Charleston, SC 29422
tanderson@kemodlelaw.com

Lauren Heuss, Legal Professional Assistant
PARKER POE ADAMS & BERNSTEIN, LLC
200 Meeting Street, Suite 301
Charleston, SC 29401-2240

EXHIBIT C

Vaskevich, Olesya V.

From: Taylor Anderson <tanderson@kernodlelaw.com>
Sent: Tuesday, December 22, 2015 3:45 PM
To: Hildebrand, Jr., Thomas C.
Cc: Heuss, Lauren A.; Gouin, Kelly J.; Vaskevich, Olesya V.
Subject: RE: Duvall v. The Ryland Group, Inc.

Hey Tom, sorry for the delayed response.

Our position is unchanged. The Duvalls do not authorize Ryland to place crack monitors on their home.

From: Hildebrand, Jr., Thomas C. [mailto:tomhildebrand@parkerpoe.com]
Sent: Monday, December 14, 2015 10:30 AM
To: 'tanderson@kernodlelaw.com' <tanderson@kernodlelaw.com>
Cc: Heuss, Lauren A. <laurenheuss@parkerpoe.com>; Gouin, Kelly J. <kellygouin@parkerpoe.com>; Vaskevich, Olesya V. <olesyavaskevich@parkerpoe.com>
Subject: Duvall v. The Ryland Group, Inc.

Taylor,

I have drafted the attached request to place crack monitors as a formality. You have already advised me of your position on this issue as noted in your email of December 1 (attached). If you simply want to respond to this email stating that your position is unchanged, that will be fine as your formal response and no other formality will be necessary. Thank you. Regards, Tom.

Thomas C. Hildebrand, Jr.
Partner

Parker Poe

200 Meeting Street | Suite 301 | Charleston, SC 29401-3156
Office: 843.727.2653 | Fax: 843.727.2680 | map

Visit our website at
www.parkerpoe.com

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EXHIBIT 5

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	CASE NO.: 2015-CP-08-01213
Christopher Duvall and Natalie Duvall, Plaintiffs, vs. The Ryland Group, Inc. Defendant. The Ryland Group, Inc., Third-Party Plaintiff, vs. Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc., Third-Party Defendants.	**ORDER GRANTING MOTION TO COMPEL**

FILED
16 JAN 21 AM 9:29
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

This matter comes before the Court by Motion to Compel filed by The Ryland Group, Inc. ("Ryland") on December 31, 2015. A hearing was held on Monday, January 11, 2016. Appearing for the Plaintiffs was their counsel, James Taylor Anderson, III. Appearing for the Defendant The Ryland Group, Inc. was its attorney Thomas C. Hildebrand, Jr.

Ryland moved to compel the Plaintiffs to allow Ryland to place crack monitors at the residence.. Plaintiffs claim that cracks have developed in the residence that have continued to expand, and will cause further damage if they expand in the future. I find

PPAB 3050309v1

that Defendant should be, and hereby is, authorized to place a reasonable number of monitors at any exterior cracks in the residence. Plaintiffs shall provide Defendant Ryland with reasonable access AND W/ 24 HRS. NOTICE TO, to check the crack monitors on a reasonably periodic basis, but no more than 45 days between visits and also within one month of trial.

AND IT IS SO ORDERED.

The Honorable Judge J.C. Nicholson, Jr.

1/19 ,2016

EXHIBIT 6

CONSUMER

Consumer Arbitration Rules

AMERICAN ARBITRATION ASSOCIATION®

Available online at **adr.org/consumer**

Rules Amended and Effective September 1, 2014
Cost of Arbitration Effective January 1, 2016

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Consumer Arbitration Rules

Introduction

Millions of consumer purchases take place each year. Occasionally, these transactions lead to disagreements between consumers and businesses. These disputes can be resolved by arbitration. Arbitration is usually faster and cheaper than going to court.

The American Arbitration Association® ("AAA®," "the Association") applies the *Consumer Arbitration Rules* ("Rules") to arbitration clauses in agreements between individual consumers and businesses where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use. The AAA has the discretion to apply or not to apply the *Consumer Arbitration Rule*, and the parties are able to bring any disputes concerning the application or non-application of the Rules to the attention of the arbitrator. Consumers and businesses are permitted to seek relief in a small claims court for disputes or claims within the scope of the small claims court's jurisdiction. These Rules were drafted and designed to be consistent with the minimum due process principles of the *Consumer Due Process Protocol.*

About the AAA

The administrator's role is to manage the administrative aspects of the arbitration, such as the appointment of the arbitrator, preliminary decisions about where hearings might take place, and handling the fees associated with the arbitration. As administrator, however, the AAA does not decide the merits of a case or make any rulings on issues such as what documents must be shared with each side. Because the AAA's role is only administrative, the AAA cannot overrule or change an arbitrator's decisions or rulings. The administrator will comply with any court orders issued from litigation involving the parties to the dispute.

The American Arbitration Association, founded in 1926, is a neutral, independent, and private not-for-profit organization. We offer a broad range of conflict management services to businesses, organizations, and individuals. We also provide education, training, and publications focused on methods for settling disputes out of court.

The Arbitrator

Except where the parties to a case reach their own settlement, the arbitrator will make the final, binding decision called the Award on the dispute and render it in writing. The Arbitrator makes all the procedural decisions on a case not made by the Administrator or not decided jointly by the parties. The arbitrator may grant any remedy, relief, or outcome that the parties could have received in court, including awards of attorney's fees and costs, in accordance with the law or laws that apply to the case.

Arbitrators are neutral and independent decision makers who are not employees of the AAA. Once appointed to a case, an arbitrator may not be removed by one party without the other party's consent or unless the Administrator determines an arbitrator should be removed and replaced by another arbitrator chosen by the Administrator in a manner described in these Rules.

The AAA's Consumer Arbitration Rules

The AAA has developed the *Consumer Arbitration Rules* for consumers and businesses that want to have their disagreements resolved through arbitration.

Availability of Mediation through Mediation.org

Mediation in consumer disputes is also available to help parties resolve their disputes. Parties interested in participating in mediation may find a mediator through **www.mediation.org.**

Administrative Fees

The Association charges a fee for its services under these Rules. A fee schedule is included at the end of these Rules in the Costs of Arbitration section.

Arbitrator's Fees

Arbitrators are paid for the time they spend resolving disputes. The business makes deposits as outlined in the fee schedule in the Costs of Arbitration section of these Rules. Unused deposits are refunded at the end of the case.

Notification

A business intending to incorporate these Rules or to refer to the dispute resolution services of the AAA in a consumer alternative dispute resolution ("ADR") plan should, at least 30 days prior to the planned effective date of the program,

- notify the Association of its intention to do so, and
- provide the Association with a copy of the consumer dispute resolution plan.

If a business does not comply with this requirement, the Association reserves the right to withhold its administrative services. For more information, please see R-12 below.

Filing a Case and Initial AAA Administrative Steps

R-1. Applicability (When the AAA Applies These Rules)

(a) The parties shall have made these *Consumer Arbitration Rules* ("Rules") a part of their arbitration agreement whenever they have provided for arbitration by the American Arbitration Association ("AAA"), and

1) have specified that these *Consumer Arbitration Rules* shall apply;

2) have specified that the *Supplementary Procedures for Consumer-Related Disputes* shall apply, which have been amended and renamed the *Consumer Arbitration Rules*;

3) the arbitration agreement is contained within a consumer agreement, as defined below, that does not specify a particular set of rules; or

4) the arbitration agreement is contained within a consumer agreement, as defined below, that specifies a particular set of rules other than the *Consumer Arbitration Rules*.

When parties have provided for the AAA's rules or AAA administration as part of their consumer agreement, they shall be deemed to have agreed that the application of the AAA's rules and AAA administration of the consumer arbitration shall be an essential term of their consumer agreement.

The AAA defines a consumer agreement as an agreement between an individual consumer and a business where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use.

Examples of contracts that typically meet the criteria for application of these Rules, if the contract is for personal or household goods or services and has an arbitration provision, include, but are not limited to the following:

- Credit card agreements
- Telecommunications (cell phone, ISP, cable TV) agreements
- Leases (residential, automobile)
- Automobile and manufactured home purchase contracts
- Finance agreements (car loans, mortgages, bank accounts)
- Home inspection contracts
- Pest control services

- Moving and storage contracts
- Warranties (home, automobile, product)
- Legal funding
- Health and fitness club membership agreements
- Travel services
- Insurance policies
- Private school enrollment agreements

Examples of contracts that typically do not meet the criteria for application of these Rules, should the contract contain an arbitration provision, include, but are not limited to the following:

- Home construction and remodeling contracts
- Real estate purchase and sale agreements
- Condominium or homeowner association by-laws
- Business insurance policies (including crop insurance)
- Commercial loan and lease agreements
- Commercial guaranty agreements

(b) When parties agree to arbitrate under these Rules, or when they provide for arbitration by the AAA and an arbitration is initiated under these Rules, they thereby authorize the AAA to administer the arbitration. The authority and duties of the AAA are prescribed in the agreement of the parties and in these Rules and may be carried out through such of the AAA's representatives as it may direct. The AAA may, in its discretion, assign the administration of an arbitration to any of its offices. Arbitrations administered under these Rules shall only be administered by the AAA or by an individual or organization authorized by the AAA to do so.

(c) The consumer and the business may agree to change these Rules. If they agree to change the Rules, they must agree in writing. If the consumer and the business want to change these Rules after the appointment of the arbitrator, any changes may be made only with the approval of the arbitrator.

(d) The AAA administers consumer disputes that meet the due process standards contained in the *Consumer Due Process Protocol* and the *Consumer Arbitration Rules*. The AAA will accept cases after the AAA reviews the parties' arbitration agreement and if the AAA determines the agreement substantially and materially complies with the due process standards of these Rules and the *Consumer Due Process Protocol*. Should the AAA decline to administer an arbitration, either party may choose to submit its dispute to the appropriate court for resolution.

(e) The AAA has the initial authority to apply or not to apply the *Consumer Arbitration Rules*. If either the consumer or the business disagrees with the AAA's decision, the objecting party must submit the objection by the due date for filing an answer to the demand for arbitration. If an objection is filed, the arbitrator shall have the authority to make the final decision on which AAA rules will apply.

(f) If, within 30 days after the AAA's commencement of administration, a party seeks judicial intervention with respect to a pending arbitration and provides the AAA with documentation that judicial intervention has been sought, the AAA will suspend administration for 30 days to permit the party to obtain a stay of arbitration from the court.

(g) Where no disclosed claims or counterclaims exceed $25,000, the dispute shall be resolved by the submission of documents only/desk arbitration (see R-29 and the *Procedures for the Resolution of Disputes through Document Submission* below). Any party, however, may ask for a hearing. The arbitrator also may decide that a hearing is necessary.

R-2. Starting Arbitration under an Arbitration Agreement in a Contract

(a) Arbitration filed under an arbitration agreement naming the AAA shall be started in the following manner:

(1) The party who starts the arbitration (referred to as the "claimant" throughout the arbitration) must contact, in writing, the party that the case is filed against (referred to as the "respondent" throughout the arbitration) that it wishes to arbitrate a dispute. This written contact is referred to as the Demand for Arbitration ("Demand"). The Demand must do the following:

- Briefly explain the dispute
- List the names and addresses of the consumer and the business, and, if known, the names of any representatives of the consumer and the business
- Specify the amount of money in dispute, if applicable
- Identify the requested location for the hearing if an in-person hearing is requested
- State what the claimant wants

(2) The claimant must also send one copy of the Demand to the AAA at the same time the demand is sent to the respondent. When sending a Demand to the AAA, the claimant must also send the following:

- A copy of the arbitration agreement contained in the contract and/or agreement and/or purchase document
- The proper filing fee; the amount of the filing fee can be found in the Costs of Arbitration section at the end of these Rules.

(3) If the arbitration is pursuant to a court order, the claimant must send one copy of the Demand to the AAA at the same time the Demand is sent to the respondent. When sending a demand to the AAA, the claimant must also send the following:

- A copy of the court order
- A copy of the arbitration agreement contained in the contract and/or agreement and/or purchase document
- The proper filing fee

The filing fee must be paid before a matter is considered properly filed. If the court order directs that a specific party is responsible for the filing fee, it is the responsibility of the filing party either to make such payment to the AAA and seek reimbursement as directed in the court order or to make other such arrangements so that the filing fee is submitted to the AAA with the Demand.

The claimant may file by mail. The mailing address of the AAA's Case Filing Services is:

American Arbitration Association
Case Filing Services
1101 Laurel Oak Road, Suite 100
Voorhees, NJ 08043

Or, the claimant may file online using AAA WebFile: **https://www.adr.org**

Or, the claimant may file at any of the AAA's offices.

(b) The AAA will send a written notice letting the consumer and the business know the Demand for Arbitration has been received.

(c) The respondent may submit a written response to the Demand, known as an "answer," which describes how the respondent responds to the claimant's claim. The answer must be sent to the AAA within 14 calendar days after the date the AAA notifies the parties that the Demand for Arbitration was received and all filing requirements were met. The answer must be

- in writing,
- sent to the AAA, and
- sent to the claimant at the same time.

(d) The respondent may also file a counterclaim, which is the respondent filing a Demand against the claimant. If the respondent has a counterclaim, the counterclaim must briefly explain the dispute, specify the amount of money involved, and state what the respondent wants.

(e) If no answer is filed within 14 calendar days, the AAA will assume that the respondent does not agree with the claim filed by the claimant. The case will move forward after 14 days regardless of whether an answer is filed.

(f) When sending a Demand or an answer, the consumer and the business are encouraged to provide enough details to make the dispute clear to the arbitrator.

R-3. Agreement to Arbitrate When There is No AAA Arbitration Clause

If the consumer and business do not have an arbitration agreement or their arbitration agreement does not name the AAA, the parties may agree to have the AAA arbitrate their dispute. To start the arbitration, the parties must send the AAA a submission agreement, which is an agreement to arbitrate their case with the AAA, signed by the consumer and the business (email communications between all parties to a dispute reflecting an agreement to arbitrate also is acceptable). The submission agreement must

- be in writing (electronic communication is acceptable);
- be signed by both parties;
- briefly explain the dispute;
- list the names and addresses of the consumer and the business;
- specify the amount of money involved;
- specify the requested location for the hearing if an in-person hearing is requested; and
- state the solution sought.

The parties should send one copy of the submission agreement to the AAA. They must also send the proper filing fees. A fee schedule can be found in the Costs of Arbitration section at the end of these Rules.

R-4. AAA Administrative Fees

As a not-for-profit organization, the AAA charges fees to compensate it for the cost of providing administrative services. The fee schedule in effect when the case is filed shall apply for all fees charged during the administration of the case. The AAA may, in the event of the consumer's extreme hardship, defer or reduce the consumer's administrative fees.

AAA fees shall be paid in accordance with the Costs of Arbitration section found at the end of these Rules.

R-5. Neutral Arbitrator's Compensation

(a) Arbitrators serving under these Rules shall be compensated at a rate established by the AAA.

(b) Any arrangement for the compensation of an arbitrator shall be made through the AAA and not directly between the parties and the arbitrator.

(c) Arbitrator compensation shall be paid in accordance with the Costs of Arbitration section found at the end of these Rules.

R-6. Depositing Neutral Arbitrator's Compensation with the AAA

The AAA may require the parties to deposit in advance of any hearings such sums of money as it decides are necessary to cover the expense of the arbitration, including the arbitrator's fee, and shall render an accounting to the parties and return any unused money at the conclusion of the case.

R-7. Expenses

Unless otherwise agreed by the parties or as provided under applicable law, the expenses of witnesses for either side shall be borne by the party producing such witnesses.

All expenses of the arbitrator, including required travel and other expenses, and any AAA expenses, as well as the costs relating to proof and witnesses produced at the direction of the arbitrator, shall be borne in accordance with the Costs of Arbitration section found at the end of these Rules.

R-8. Changes of Claim

Once a Demand has been filed, any new claims or counterclaims, or changes to the claim or counterclaim, must be made in writing and sent to the AAA. The party making the new or different claim or counterclaim shall send a copy to the opposing party. As with the original Demand or counterclaim, a party shall have 14 calendar days from the date the AAA notifies the parties it received the new or different claim or counterclaim to file an answering statement with the AAA.

If an arbitrator has already been appointed, a new or different claim or counterclaim may only be considered if the arbitrator allows it.

R-9. Small Claims Option for the Parties

If a party's claim is within the jurisdiction of a small claims court, either party may choose to take the claim to that court instead of arbitration as follows:

(a) The parties may take their claims to small claims court without first filing with the AAA.

(b) After a case is filed with the AAA, but before the arbitrator is formally appointed to the case by the AAA, a party can send a written notice to the opposing party and the AAA that it wants the case decided by a small claims court. After receiving this notice, the AAA will administratively close the case.

(c) After the arbitrator is appointed, if a party wants to take the case to small claims court and notifies the opposing party and the AAA, it is up to the arbitrator to determine if the case should be decided in arbitration or if the arbitration case should be closed and the dispute decided in small claims court.

R-10. Administrative Conference with the AAA

At the request of any party or if the AAA should so decide, the AAA may have a telephone conference with the parties and/or their representatives. The conference may address issues such as arbitrator selection, the possibility of a mediated settlement, exchange of information before the hearing, timing of the hearing, the type of hearing that will be held, and other administrative matters.

R-11. Fixing of Locale (the city, county, state, territory and/or country where the arbitration will take place)

If an in-person hearing is to be held and if the parties do not agree to the locale where the hearing is to be held, the AAA initially will determine the locale of the arbitration. If a party does not agree with the AAA's decision, that party can ask the arbitrator, once appointed, to make a final determination. The locale determination will be made after considering the positions of the parties, the circumstances of the parties and the dispute, and the *Consumer Due Process Protocol*.

R-12. Business Notification and Publicly-Accessible Consumer Clause Registry

Beginning September 1, 2014, a business that provides for or intends to provide for these Rules or another set of AAA Rules in a consumer contract (as defined in R-1) should

1. notify the AAA of the existence of such a consumer contract or of its intention to do so at least 30 days before the planned effective date of the contract.
2. provide the AAA a copy of the arbitration agreement.

Upon receiving the arbitration agreement, the AAA will review the agreement for material compliance with due process standards contained in the *Consumer Due Process Protocol* and the *Consumer Arbitration Rules* (see Rule 1(d)). There is a nonrefundable fee to conduct this initial review and maintain a publicly-available clause registry, which is detailed in the Costs of Arbitration section found at the end of these Rules. Any subsequent changes, additions, deletions, or amendments to a currently-registered arbitration agreement must be resubmitted for review and a review fee will be assessed at that time. The AAA will decline to administer consumer arbitrations arising out of that arbitration agreement where the business fails to pay the review fee.

If a business does not submit its arbitration agreement for review and a consumer arbitration then is filed with the AAA, the AAA will conduct an expedited review at that time. Along with any other filing fees that are owed for that case, the business also will be responsible for paying the nonrefundable review and Registry fee (including any fee for expedited review at the time of filing) for this initial review, which is detailed in the Costs of Arbitration section found at the end of these Rules. The AAA will decline to administer consumer arbitrations arising out of that arbitration agreement if the business declines to pay the review and Registry fee.

After the AAA reviews the submitted consumer clause, receives the annual consumer registry fee, and determines it will administer consumer-related disputes filed pursuant to the consumer clause, the business will be included on the publicly-accessible Consumer Clause Registry. This Consumer Clause Registry maintained by the AAA will contain the name of the business, the address, and the consumer arbitration clause, along with any related documents as deemed necessary by the AAA. The AAA's review of a consumer arbitration clause and determination whether or not to administer arbitrations pursuant to

that clause is only an administrative determination by the AAA and cannot be relied upon or construed as a legal opinion or advice regarding the enforceability of the arbitration clause. Consumer arbitration agreements may be registered at: **www.adr.org/consumerclauseregistry** or via email at **consumerreview@adr.org.**

For more information concerning the Consumer Clause Registry, please visit the AAA's website at **www.adr.org/consumerclauseregistry.**

The Registry fee to initially review a business's agreement and maintain the clause registry list is a yearly, non-refundable fee for the business's arbitration agreement. Any different arbitration agreements submitted by the same business or its subsidiaries must be submitted for review and are subject to the current review fee.

If the AAA declines to administer a case due to the business's non-compliance with this notification requirement, the parties may choose to submit their dispute to the appropriate court.

R-13. AAA and Delegation of Duties

When the consumer and the business agree to arbitrate under these Rules or other AAA rules, or when they provide for arbitration by the AAA and an arbitration is filed under these Rules, the parties also agree that the AAA will administer the arbitration. The AAA's administrative duties are set forth in the parties' arbitration agreement and in these Rules. The AAA will have the final decision on which office and which AAA staff members will administer the case. Arbitrations administered under these Rules shall only be administered by the AAA or by an individual or organization authorized by the AAA to do so.

R-14. Jurisdiction

(a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.

(b) The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.

(c) A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.

Appointing the Arbitrator

R-15. National Roster of Arbitrators

The AAA maintains a National Roster of Arbitrators ("National Roster") and shall appoint arbitrators from this National Roster to resolve the parties' dispute(s).

R-16. Appointment from National Roster

(a) If the parties have not appointed an arbitrator and have not agreed to a process for appointing the arbitrator, immediately after the filing of the submission agreement or the answer, or after the deadline for filing the answer, the AAA will administratively appoint an arbitrator from the National Roster.

(b) If the parties' arbitration agreement provides for three or more arbitrators and they have not appointed the arbitrators and have not agreed to a process for appointing the arbitrators, immediately after the filing of the submission agreement or the answer, or after the deadline for filing the answer, the AAA will administratively appoint the arbitrators from the National Roster. The AAA will appoint the chairperson.

(c) Arbitrator(s) serving under these Rules will be neutral and must meet the standards of R-19 with respect to being impartial and independent.

R-17. Number of Arbitrators

If the arbitration agreement does not specify the number of arbitrators and the parties do not agree on the number, the dispute shall be heard and decided by one arbitrator.

R-18. Disclosure

(a) Any person appointed or to be appointed as an arbitrator, as well as the parties and their representatives, must provide information to the AAA of any circumstances likely to raise justifiable doubt as to whether the arbitrator can remain impartial or independent. This disclosure of information would include

(1) any bias;

(2) any financial interest in the result of the arbitration;

(3) any personal interest in the result of the arbitration; or

(4) any past or present relationship with the parties or their representatives.

Such obligation to provide disclosure information remains in effect throughout the arbitration. A failure on the part of a party or a representative to comply with the

requirements of this rule may result in the waiver of the right to object to an arbitrator in accordance with Rule R-50.

(b) If the AAA receives such information from the arbitrator or another source, the AAA will communicate the information to the parties. If the AAA decides it is appropriate, it will also communicate the information to the arbitrator and others.

(c) In order to encourage disclosure by arbitrators, disclosing such information does not mean that the arbitrator considers the disclosed information will likely affect his or her ability to be impartial or independent.

R-19. Disqualification of Arbitrator

(a) Any arbitrator shall be impartial and independent and shall perform his or her duties carefully and in good faith. The AAA may disqualify an arbitrator who shows

(1) partiality or lack of independence;

(2) inability or refusal to perform his or her duties with diligence and in good faith; or

(3) any grounds for disqualification provided by applicable law.

(b) If a party objects to the continued service of an arbitrator, or if the AAA should so decide to raise the issue of whether the arbitrator should continue on the case, the AAA will decide if the arbitrator should be disqualified. After gathering the opinions of the parties, the AAA will decide and that decision shall be final and conclusive.

R-20. Vacancies

If for any reason an arbitrator cannot or is unwilling to perform the duties of the office, the AAA may declare the office vacant. Any vacancies shall be filled based on the original procedures used to appoint the arbitrator. If a substitute arbitrator is appointed, the substitute arbitrator will decide if it is necessary to repeat all or part of any prior ruling or hearing.

Pre-Hearing Preparation

R-21. Preliminary Management Hearing with the Arbitrator

(a) If any party asks for, or if the AAA or the arbitrator decides to hold one, the arbitrator will schedule a preliminary management hearing with the parties and/or their representatives as soon as possible. The preliminary management hearing will be conducted by telephone unless the arbitrator decides an in-person preliminary management hearing is necessary.

(b) During the preliminary management hearing, the parties and the arbitrator should discuss the future conduct of the case, including clarification of issues and claims, scheduling of the hearings, and any other preliminary matters.

(c) The arbitrator shall promptly issue written orders that state the arbitrator's decisions made during or as a result of the preliminary management hearing. The arbitrator may also conduct additional preliminary management hearings if the need arises.

R-22. Exchange of Information between the Parties

(a) If any party asks or if the arbitrator decides on his or her own, keeping in mind that arbitration must remain a fast and economical process, the arbitrator may direct

1) specific documents and other information to be shared between the consumer and business, and

2) that the consumer and business identify the witnesses, if any, they plan to have testify at the hearing.

(b) Any exhibits the parties plan to submit at the hearing need to be shared between the parties at least five business days before the hearing, unless the arbitrator sets a different exchange date.

(c) No other exchange of information beyond what is provided for in section (a) above is contemplated under these Rules, unless an arbitrator determines further information exchange is needed to provide for a fundamentally fair process.

(d) The arbitrator has authority to resolve any disputes between the parties about exchanging information.

R-23. Enforcement Powers of the Arbitrator

The arbitrator may issue any orders necessary to enforce the provisions of rules R-21 and R-22 and to otherwise achieve a fair, efficient, and economical resolution of the case, including, but not limited to:

(a) an order setting the conditions for any exchange or production of confidential documents and information, and the admission of confidential evidence at the hearing in order to preserve such confidentiality;

(b) to the extent the exchange of information takes place pursuant to R-22, imposing reasonable search limitations for electronic and other documents if the parties are unable to agree;

(c) allocating costs of producing documentation, including electronically-stored documentation;

(d) in the case of willful non-compliance with any order issued by the arbitrator, drawing adverse inferences, excluding evidence and other submissions, and/or making special allocations of costs or an interim award of costs arising from such non-compliance; and

(e) issuing any other enforcement orders that the arbitrator is empowered to issue under applicable law.

R-24. Written Motions (except for Dispositive Motions—see R-33)

The arbitrator may consider a party's request to file a written motion (except for Dispositive Motions— see R-33) only after the parties and the arbitrator conduct a conference call to attempt to resolve the issue that gives rise to the proposed motion. Only after the parties and the arbitrator hold the call may the arbitrator consider a party's request to file a written motion. The arbitrator has the sole discretion to allow or deny the filing of a written motion and his or her decision is final.

R-25. Representation of a Party

Any party may participate in the arbitration without representation, or may be represented by counsel or other authorized representative, unless such choice is prohibited by applicable law. A party intending to be represented shall give the opposing party and the AAA the name, address, and contact information of the representative at least three business days before the hearing where that representative will first appear in the case. It will be considered proper notice if a representative files the arbitration demand or answer or responds for a party during the course of the arbitration.

While parties do not need an attorney to participate in arbitration, arbitration is a final, legally-binding process that may impact a party's rights. As such, parties may want to consider consulting an attorney.

R-26. Setting the Date, Time, and Place (the physical site of the hearing within the designated locale) of Hearing

The arbitrator will set the date, time, and place for each hearing within the locale as determined in R-11. A hearing may be by telephone or in person. For their part, the parties commit to

(1) respond promptly to the arbitrator when he or she asks what dates the parties are available to have the hearings;

(2) cooperate in the scheduling of the hearing on the earliest possible date; and

(3) follow the hearing schedule set up by the arbitrator.

The AAA will send a notice of the hearing to the parties at least 10 days before the hearing date, unless the parties agree to a different time frame.

R-27. Written Record of Hearing

(a) If a party wants a written record of the hearing, that party must make such arrangement directly with a stenographer (court reporter) and notify the opposing parties, the AAA, and the arbitrator of these arrangements at least three business days before the hearing. The party or parties who request the written record shall pay the cost of the service.

(b) No other type of recording will be allowed unless the parties agree or the arbitrator directs a different form of recording.

(c) The arbitrator may resolve disputes between the parties over who will pay the costs of the written record or other type of recording.

(d) The parties can agree or the arbitrator may decide that the transcript (written record) is the official record of the hearing. If it is the official record of the hearing, the transcript must be given to the arbitrator and made available to all the parties so that it can be reviewed. The date, time, and place of the inspection will be decided by the arbitrator.

R-28. Interpreters

If a party wants an interpreter present for any part of the process, that party must make arrangements directly with the interpreter and shall pay for the costs of the service.

R-29. Documents-Only Procedure

Disputes may be resolved by submission of documents and without in-person or telephonic hearings. For cases being decided by the submission of documents only, the *Procedures for the Resolution of Disputes through Document Submission* (found at the end of these Rules) shall supplement these Rules. These Procedures will apply where no disclosed claims or counterclaims exceed $25,000 (see R-1(g)), unless any party requests an in-person or telephonic hearing or the arbitrator decides that a hearing is necessary.

Hearing Procedures

R-30. Attendance at Hearings

The arbitrator and the AAA will keep information about the arbitration private except to the extent that a law provides that such information shall be shared or made public. The parties and their representatives in the arbitration are entitled to attend the hearings. The arbitrator will determine any disputes over whether a non-party may attend the hearing.

R-31. Oaths

Before starting the hearing, each arbitrator may take an oath of office and, if required by law, shall do so. If the arbitrator determines that witnesses shall testify under oath, then the arbitrator will direct the oath be given by a duly-qualified person.

R-32. Conduct of Proceedings

(a) The claimant must present evidence to support its claim. The respondent must then present evidence to support its defense. Witnesses for each party also must answer questions from the arbitrator and the opposing party. The arbitrator may change this procedure, as long as each party has the right to be heard and is given a fair opportunity to present its case.

(b) When the arbitrator decides it is appropriate, the arbitrator may also allow the parties to present evidence in alternative ways, including web conferencing, Internet communication, and telephonic conferences. All procedures must provide the parties with a full and equal opportunity to present any evidence that the arbitrator decides is material and relevant to deciding the dispute. If the alternative ways to present evidence involve witnesses, those ways may include that the witness submit to direct and cross-examination questioning.

(c) The arbitrator will use his or her discretion to resolve the dispute as quickly as possible and may direct the parties to present the evidence in a certain order, or may split the proceedings into multiple parts and direct the parties in the presentation of evidence.

(d) The hearing generally will not exceed one day. However, if a party shows good cause, the arbitrator may schedule additional hearings within seven calendar days after the initial day of hearing.

(e) The parties may agree in writing to waive oral hearings.

R-33. Dispositive Motions

The arbitrator may allow the filing of a dispositive motion if the arbitrator determines that the moving party has shown substantial cause that the motion is likely to succeed and dispose of or narrow the issues in the case.

R-34. Evidence

(a) The parties may offer relevant and material evidence and must produce any evidence the arbitrator decides is necessary to understand and decide the dispute. Following the legal rules of evidence shall not be necessary. All evidence should be taken in the presence of the arbitrator and all of the parties, unless any of the parties is absent, in default, or has waived the right to be present.

(b) The arbitrator shall determine what evidence will be admitted, what evidence is relevant, and what evidence is material to the case. The arbitrator may also exclude evidence that the arbitrator decides is cumulative or not relevant.

(c) The arbitrator shall consider applicable principles of legal privilege, such as those that involve the confidentiality of communications between a lawyer and a client.

(d) An arbitrator or other person authorized by law to subpoena witnesses or documents may do so on the request of any party or on the arbitrator's own determination. If a party requests the arbitrator sign a subpoena, that party shall copy the request to the other parties in the arbitration at the same time it is provided to the arbitrator.

R-35. Evidence by Affidavit and Post-Hearing Filing of Documents or Other Evidence

(a) The arbitrator may receive and consider the evidence of witnesses by declaration or affidavit rather than in-person testimony but will give this evidence only such credence as the arbitrator decides is appropriate. The arbitrator will consider any objection to such evidence made by the opposing party.

(b) If the parties agree or the arbitrator decides that documents or other evidence need to be submitted to the arbitrator after the hearing, those documents or other evidence will be filed with the AAA so that they can be sent to the arbitrator. All parties will be given the opportunity to review and respond to these documents or other evidence.

R-36. Inspection or Investigation

An arbitrator finding it necessary to inspect property or conduct an investigation in connection with the arbitration will request that the AAA inform the parties. The arbitrator will set the date and time of the inspection and investigation, and

the AAA will notify the parties. Any party who would like to be present at the inspection or investigation may attend. If one or all parties are not present at the inspection or investigation, the arbitrator will make an oral or written report to the parties and allow them an opportunity to comment.

R-37. Interim Measures (a preliminary decision made by the arbitrator involving part or all of the issue(s) in dispute in the arbitration)

(a) The arbitrator may grant whatever interim measures he or she decides are necessary, including granting an injunction and ordering that property be protected.

(b) Such interim measures may take the form of an interim award, and the arbitrator may require a security payment for the costs of such measures.

(c) When making a decision on an interim measure, the arbitrator may grant any remedy, relief, or outcome that the parties could have received in court.

(d) A party to an arbitration agreement under these Rules may instead file in state or federal court for interim relief. Applying to the court for this type of relief, including temporary restraining orders, is consistent with the agreement to arbitrate and will not be considered a waiver of the right to arbitrate.

R-38. Postponements

The arbitrator may postpone any hearing

(a) if requested by a party, and the party shows good cause for the postponement;

(b) if all parties agree to a postponement;

(c) on his or her own decision.

R-39. Arbitration in the Absence of a Party or Representative

The arbitration may proceed even if any party or representative is absent, so long as proper notice was given and that party or representative fails to appear or obtain a postponement from the arbitrator. An award cannot be made only because of the default of a party. The arbitrator shall require the party who participates in the hearing to submit the evidence needed by the arbitrator to make an award.

Conclusion of the Hearing

R-40. Closing of Hearing

The arbitrator must specifically ask all parties whether they have any further proofs to offer or witnesses to be heard. When the arbitrator receives negative replies or he or she is satisfied that the record is complete, the arbitrator will declare the hearing closed.

If briefs or other written documentation are to be filed by the parties, the hearing shall be declared closed as of the final date set by the arbitrator. Absent agreement of the parties, the time that the arbitrator has to make the award begins upon the closing of the hearing. The AAA may extend the time limit for the rendering of the award only in unusual and extreme circumstances.

R-41. Reopening of Hearing

If a party requests, or if the arbitrator decides to do so, the hearing may be reopened at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed on by the parties in the contract(s) out of which the controversy has arisen, the matter may not be reopened unless the parties agree on an extension of time. If the arbitrator reopens the hearing, he or she shall have 30 days from the closing of the reopened hearing within which to make an award.

R-42. Time of Award

The award shall be issued promptly by the arbitrator and, unless the parties agree differently or the law indicates a different time frame, no later than 30 calendar days from the date the hearing is closed, or, if the case is a documents-only procedure, 14 calendar days from the date the arbitrator set for his or her receipt of the final statements and proofs. The AAA may extend the time limit for the rendering of the award only in unusual and extreme circumstances.

R-43. Form of Award

(a) Any award shall be in writing and executed in the form and manner required by law.

(b) The award shall provide the concise written reasons for the decision unless the parties all agree otherwise. Any disagreements over the form of the award shall be decided by the arbitrator.

(c) The AAA may choose to publish an award rendered under these Rules; however, the names of the parties and witnesses will be removed from awards that are published, unless a party agrees in writing to have its name included in the award.

R-44. Scope of Award

(a) The arbitrator may grant any remedy, relief, or outcome that the parties could have received in court, including awards of attorney's fees and costs, in accordance with the law(s) that applies to the case.

(b) In addition to a final award, the arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders, and awards. In any interim, interlocutory, or partial award, the arbitrator may assess and divide up the fees, expenses, and compensation related to such award as the arbitrator decides is appropriate, subject to the provisions and limitations contained in the Costs of Arbitration section.

(c) The arbitrator may also allocate compensation, expenses as defined in sections (v) and (vii) of the Costs of Arbitration section, and administrative fees (which include Filing and Hearing Fees) to any party upon the arbitrator's determination that the party's claim or counterclaim was filed for purposes of harassment or is patently frivolous.

(d) In the final award, the arbitrator shall assess the fees, expenses, and compensation provided in Sections R-4, R-5, and R-7 in favor of any party, subject to the provisions and limitations contained in the Costs of Arbitration section.

R-45. Award upon Settlement

If the parties settle their dispute at any point during the arbitration and at the parties' request, the arbitrator may lay out the terms of the settlement in a "consent award" (an award drafted and signed by the arbitrator that reflects the settlement terms of the parties). A consent award must include a division of the arbitration costs, including administrative fees and expenses as well as arbitrator fees and expenses. Consent awards will not be made available to the public per Rule 43(c) unless the parties agree otherwise.

R-46. Delivery of Award to Parties

Parties shall accept as notice and delivery of the award the placing of the award or a true copy thereof in the mail addressed to the parties or their representatives at the last known addresses, personal or electronic service of the award, or the filing of the award in any other manner that is permitted by law.

R-47. Modification of Award for Clerical, Typographical, or Mathematical Errors

(a) Within 20 days after the award is transmitted, any party, upon notice to the opposing parties, may contact the AAA and request that the arbitrator correct any clerical, typographical, or mathematical errors in the award. The arbitrator has no power to re-determine the merits of any claim already decided.

(b) The opposing parties shall be given 10 days to respond to the request. The arbitrator shall make a decision on the request within 20 days after the AAA transmits the request and any responses to the arbitrator.

(c) If applicable law provides a different procedural time frame, that procedure shall be followed.

Post Hearing

R-48. Release of Documents for Judicial Proceedings

The AAA shall give a party certified copies of any records in the AAA's possession that may be required in judicial proceedings relating to the arbitration, except for records determined by the AAA to be privileged or confidential. The party will have to pay a fee for this service.

R-49. Applications to Court and Exclusion of Liability

(a) No court or judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

(b) Neither the AAA nor any arbitrator in a proceeding under these Rules is a necessary or proper party in judicial proceedings relating to the arbitration.

(c) Parties to an arbitration under these Rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(d) Parties to an arbitration under these Rules shall be deemed to have consented that neither the AAA, AAA employees, nor any arbitrator shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any arbitration under these rules.

(e) Parties to an arbitration under these Rules may not call the arbitrator, the AAA, or any AAA employee as a witness in litigation or any other proceeding relating to the arbitration. The arbitrator, the AAA, and AAA employees are not competent to and may not testify as witnesses in any such proceeding.

General Procedural Rules

R-50. Waiver of Rules

If a party knows that any of these Rules have not been followed, it must object in writing before proceeding with arbitration or it will lose its right to object that the rule has not been followed.

R-51. Extensions of Time

The parties may agree to change any period of time provided for in the Rules, except that any such modification that negatively affects the efficient resolution of the dispute is subject to review and approval by the arbitrator. The AAA or the arbitrator may for good cause extend any period of time in these Rules, except as set forth in R-42. The AAA will notify the parties of any extension.

R-52. Serving of Notice and AAA and Arbitrator Communications

(a) Any papers or notices necessary for the initiation or continuation of an arbitration under these Rules, or for the entry of judgment on any award made under these Rules, may be served on a party by mail or email addressed to the party or its representative at the last-known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard to the dispute is or has been granted to the party.

(b) The AAA, the arbitrator, and the parties also may use overnight delivery, electronic facsimile transmission (fax), or electronic mail (email) to give the notices required by these rules. Where all parties and the arbitrator agree, notices may be sent by other methods of communication.

(c) Unless directed differently by the AAA or by the arbitrator, any documents and all written communications submitted by any party to the AAA or to the arbitrator also shall be sent at the same time to all parties to the arbitration.

(d) A failure to provide the other parties with copies of communications made to the AAA or to the arbitrator may prevent the AAA or the arbitrator from acting on any requests or objections contained within those communications.

(e) A party and/or someone acting on behalf of a party cannot have any communications with an arbitrator or a potential arbitrator about the arbitration outside of the presence of the opposing party. All such communications shall be conducted through the AAA.

(f) The AAA may direct that any oral or written communications that are sent by a party or their representative shall be sent in a particular manner. The failure of a party or its representative to do so may result in the AAA's refusal to consider the issue raised in the communication.

R-53. Interpretation and Application of Rules

The arbitrator shall interpret and apply these Rules as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these Rules, it shall be decided by a majority vote. If that is not possible, either an arbitrator or a party may refer the question to the AAA for final decision. All other Rules shall be interpreted and applied by the AAA.

R-54. Remedies for Nonpayment

(a) If arbitrator compensation or administrative charges have not been paid in full, the AAA may inform the parties so that one of them may forward the required payment.

(b) Once the AAA informs the parties that payments have not been received, a party may request an order from the arbitrator directing what measures might be taken in light of a party's nonpayment.

Such measures may include limiting a party's ability to assert or pursue its claim. However, a party shall never be precluded from defending a claim or counterclaim. The arbitrator must provide the party opposing a request for relief with the opportunity to respond prior to making any determination. In the event that the arbitrator grants any request for relief that limits any party's participation in the arbitration, the arbitrator will require the party who is making a claim and who has made appropriate payments to submit the evidence required to make an award.

(c) Upon receipt of information from the AAA that full payments have not been received, the arbitrator, on the arbitrator's own initiative, may order the suspension of the arbitration. If no arbitrator has yet been appointed, the AAA may suspend the proceedings.

(d) If arbitrator compensation or AAA administrative fees remain unpaid after a determination to suspend an arbitration due to nonpayment, the arbitrator has the authority to terminate the proceedings. Such an order shall be in writing and signed by the arbitrator. The impact of the termination for nonpayment of the Consumer Clause Registry fee is the removal from the "Registered" section of the Registry.

R-55. Declining or Ceasing Arbitration

The AAA in its sole discretion may decline to accept a Demand for Arbitration or stop the administration of an ongoing arbitration due to a party's improper conduct, including threatening or harassing behavior towards any AAA staff, an arbitrator, or a party or party's representative.

Costs of Arbitration (including AAA Administrative Fees)*

Arbitrator compensation is not included as part of the administrative fees charged by the AAA. Arbitrator compensation is based on a rate established by the AAA as set forth below. If a Preliminary Management Hearing is held by the arbitrator, the arbitrator is entitled to one-half the arbitration compensation rate for a full hearing day or a documents-only hearing. Once evidentiary hearings are held, the arbitrator is entitled to the full-day rate of compensation. The business shall pay the arbitrator's compensation unless the consumer, post dispute, voluntarily elects to pay a portion of the arbitrator's compensation. Arbitrator compensation, expenses as defined in sections (v) and (vii) below, and administrative fees (which include Filing and Hearing Fees) are not subject to reallocation by the arbitrator(s) except as may be required by applicable law or upon the arbitrator's determination that a claim or counterclaim was filed for purposes of harassment or is patently frivolous.

* *Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact the AAA at 1-800-778-7879, if you have any questions regarding the waiver of administrative fees. (Effective January 1, 2003)*

Party	Desk Arbitration	In-Person or Telephonic Hearing – Single Arbitrator	In-Person or Telephonic Hearing – Three Or More Arbitrators
Consumer	Filing Fee—$200 (nonrefundable)	Filing Fee—$200 (nonrefundable)	Filing Fee—$200 (nonrefundable)
Business	Filing Fee—$1,700 Arbitrator Compensation—$750 per case	Filing Fee—$1,700 Hearing Fee—$500 Arbitrator Compensation—$1,500 per hearing day	Filing Fee—$2,200 Hearing Fee—$500 Arbitrator Compensation—$1,500 per hearing day per arbitrator

(i) Filing Fees

In cases before a single arbitrator, a nonrefundable filing fee capped in the amount of $200 is payable in full by the consumer when a case is filed, unless the parties' agreement provides that the consumer pay less. A partially refundable fee in the amount of $1,700 is payable in full by the business, unless the parties' agreement provides that the business pay more. This fee is due from the business once the consumer has met the filing requirements.

In cases before three or more arbitrators, a nonrefundable filing fee capped in the amount of $200 is payable in full by the consumer when a case is filed, unless the parties' agreement provides that the consumer pay less. A partially refundable fee in the amount of $2,200 is payable in full by the business, unless the parties' agreement provides that the business pay more. This fee is due from the business once the consumer has met the filing requirements.

There shall be no filing fee charged for a counterclaim.

The AAA reserves the right to assess additional administrative fees for services performed by the AAA beyond those provided for in these Rules and which may be required by the parties' agreement or stipulation.

(ii) Neutral Arbitrator's Compensation

Arbitrators serving on a case with an in-person or telephonic hearing will receive compensation at a rate of **$1,500 per day.**

Arbitrators serving on a case with a desk arbitration/documents-only hearing will receive compensation at a rate of **$750 per case.**

The AAA reserves the right to raise the daily or per-case arbitrator compensation rate because of the complexity of the case or for processes and procedures beyond those provided for in these Rules and which may be required by the parties' requests, agreement, or stipulation (1) at the time of the AAA's initiation of the case; (2) upon the addition of a new party; (3) when a change of claim is made and, if necessary, approved by the arbitrator(s); (4) or if circumstances arise during the course of the case due to the complexity of issues and submissions by the parties. Any determination by the AAA on compensation rates is in the sole discretion of the AAA and such decision is final and binding on the parties and arbitrator.

(iii) Refund Schedule

Once the claimant has met the filing requirements, refunds to the business will be calculated as follows:

- if the case is settled or withdrawn within 30 calendar days, 50% of the filing fee will be refunded to the business.

However, no refund of the filing fee will be made once an arbitrator has been appointed and no refunds will be made on awarded cases. The date the claimant's filing requirements are met is the date used to calculate any refund of filing fees. If the matter is settled or withdrawn prior to receipt of filing fees from the business, the AAA will bill the business in accordance with this refund schedule.

(iv) Hearing Fees

For telephonic hearings or in-person hearings held, an additional administrative fee of $500 is payable by the business.

There is no AAA hearing fee for the initial Administrative Conference (see R-10).

(v) Hearing Room Rental

The hearing fees described above do not cover the rental of hearing rooms. The AAA maintains rental hearing rooms in most offices for the convenience of the parties. Check with the administrator for availability and rates. Hearing room rental fees will be borne by the business.

(vi) Abeyance Fee

Parties on cases held as inactive for one year will be assessed an annual abeyance fee of $300. If a party refuses to pay the assessed fee, the opposing party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be administratively closed. All filing requirements, including payment of filing fees, must be met before a matter may be placed in abeyance.

(vii) Expenses

All expenses of the arbitrator, including required travel and other expenses, and any AAA expenses, as well as the costs relating to proof and witnesses produced at the direction of the arbitrator, shall be borne by the business.

(viii) Consumer Clause Review and Registry Fee

Please note that all fees described below are **nonrefundable.**

For businesses submitting a clause, the cost of reviewing the clause and maintaining that clause on the Registry is $500. A yearly Registry fee of $500 will be charged to maintain each clause on the Registry for each calendar year thereafter.

If the AAA receives a demand for consumer arbitration from an arbitration clause that was not previously submitted to the AAA for review and placement on the Registry, the business will incur an additional $250 fee to conduct an expedited review of the clause.

Any subsequent changes, additions, deletions, or amendments to currently registered arbitration agreement must be resubmitted for review and a review fee of $500 will assessed at that time.

Procedures for the Resolution of Disputes through Document Submission

D-1. Applicability

(a) In any case, regardless of claim size, the parties may agree to waive in-person/telephonic hearings and resolve the dispute through submission of documents to one arbitrator. Such agreement should be confirmed in writing no later than the deadline for the filing of an answer.

(b) Where no disclosed claims or counterclaims exceed $25,000, the dispute shall be resolved by these Procedures, unless a party asks for a hearing or the arbitrator decides that a hearing is necessary.

(c) If one party makes a request to use the *Procedures for the Resolution of Disputes through Document Submission* (Procedures) and the opposing party is unresponsive, the arbitrator shall have the power to determine whether to proceed under the Procedures. If both parties seek to use the Procedures after the appointment of an arbitrator, the arbitrator must also consent to the process.

(d) When parties agree to these Procedures, the procedures in Sections D-1 through D-4 of these Rules shall supplement other portions of these rules which are not in conflict with the Procedures.

D-2. Preliminary Management Hearing

Within 14 calendar days of confirmation of the arbitrator's appointment, the arbitrator shall convene a preliminary management hearing, via conference call, video conference, or internet, to establish a fair and equitable procedure for the submission of documents, and, if the arbitrator deems appropriate, a schedule for one or more telephonic or electronic conferences.

D-3. Removal from the Procedures

(a) The arbitrator has the discretion to remove the case from the Procedures if the arbitrator determines that an in-person or telephonic hearing is necessary.

(b) If the parties agree to in-person or telephonic hearings after a previous agreement to proceed under the Procedures, the arbitrator shall conduct such hearings. If a party seeks to have in-person or telephonic hearings after agreeing to the Procedures, but there is not agreement among the parties to proceed with in-person or telephonic hearings, the arbitrator shall resolve the issue after the parties have been given the opportunity to provide their respective positions on the issue.

D-4. Time of Award

(a) The arbitrator shall establish the date for either final written submissions or a final telephonic or electronic conference. Such date shall operate to close the hearing, and the time for the rendering of the award shall commence on that day as well.

(b) The arbitrator shall render the award within 14 calendar days from the date the hearing is closed.

(c) The award is subject to all other provisions of these Rules that pertain to awards.

Glossary of Terms

Administrator

The Administrator's role is to manage the administrative aspects of the arbitration, such as the appointment of the arbitrator, to make preliminary decisions about where hearings might take place, and to handle the fees associated with the arbitration. As Administrator, however, the Administrator does not decide the merits of a case or make any rulings on issues such as what documents must be shared with each side. Because the Administrator's role is only administrative, the Administrator cannot overrule or change an arbitrator's decisions or rulings. The Administrator will comply with any court orders issued from litigation involving the parties to the dispute.

ADR Agreement

An ADR Agreement is an agreement between a business and a consumer to submit disputes to mediation, arbitration, or other ADR processes.

ADR Process

An ADR (Alternative Dispute Resolution) Process is a method of resolving a dispute other than by court litigation. Mediation and Arbitration are the most widely used ADR processes.

ADR Program

An ADR Program is any program or service set up or used by a business to resolve disputes out of court.

Arbitration

In arbitration, the parties submit disputes to an impartial person (the arbitrator) for a decision. Each party can present evidence to the arbitrator. Arbitrators do not have to follow the Rules of Evidence used in court.

Arbitrators decide cases with written decisions or "awards." An award is usually binding on the parties. A court may enforce an arbitration award and the court's review of arbitration awards is limited.

Arbitration Agreement

An arbitration agreement is a contract between parties to settle their disputes by binding arbitration. It is typically found in the parties' contract in a section entitled "Arbitration" or "Dispute Resolution." It gives the parties information about how they are choosing to settle any disputes that they might have.

Arbitrator

Arbitrators are neutral and independent decision makers who are not employees of the administrator. Except where the parties to a case reach their own settlement, the Arbitrator will make the final, binding decision on the dispute and render it in writing, called the Award. The Arbitrator makes all the procedural decisions on a case not made by the administrator or not decided jointly by the parties. The Arbitrator may grant any remedy, relief, or outcome that the parties could have received in court, including awards of attorney's fees and costs, in accordance with the law(s) that applies to the case.

Once appointed to a case, an Arbitrator may not be removed by one party without the other party's consent or unless the administrator determines an Arbitrator should be removed and replaced by another Arbitrator chosen by the administrator in a manner described in these Rules.

Case Administrator

The Case Administrator is the AAA's employee assigned to handle the administrative aspects of the case. He or she does not decide the case. He or she manages the case's administrative steps, such as exchanging documents, matching schedules, and setting up hearings. The Case Administrator is the parties' contact point for almost all aspects of the case outside of any hearings.

Claimant

A Claimant is the party who files the claim or starts the arbitration. Either the consumer or the business may be the Claimant.

Demand for Arbitration (also referred to as "Demand")

The written document created by the claimant that informs the respondent that it wishes to arbitrate a dispute. This document provides basic information about the dispute, the parties involved and what the claimant wants as a result of the arbitration.

Documents-Only Arbitration

In a Documents-Only Arbitration, the parties submit their arguments and evidence to the arbitrator in writing. The arbitrator then makes an award based only on the documents. No in-person or telephone hearing is held.

Independent ADR Institution

An Independent ADR Institution is an organization that provides independent and impartial administration of ADR programs for consumers and businesses. The American Arbitration Association is an Independent ADR Institution.

In-Person Hearing

During an In-Person Hearing, the parties and the arbitrator meet in a conference room or office and the parties present their evidence in a process that is similar to going to court. However, an In-Person Hearing is not as formal as going to court.

Mediation

In Mediation, an impartial person (the mediator) helps the parties try to settle their dispute by reaching an agreement together. A mediator's role is to help the parties come to an agreement. A mediator does not arbitrate or decide the outcome.

Neutral

A "Neutral" is a mediator, arbitrator, or other independent, impartial person selected to serve as the independent third party in an ADR process.

Party

The party is the person(s) or business that is involved in the dispute in the arbitration process. Usually, these are the people or businesses that have an arbitration agreement between them that specifies that a dispute should be resolved by arbitration.

Parties

Parties are all the separate individuals, businesses, or organizations involved in the arbitration.

Opposing Party

The opposing party is the other party that is on the opposite side of the arbitration from you. If you are the claimant, the Opposing Party is the respondent. If you are the respondent, the Opposing Party is the claimant. If you are the consumer, the Opposing Party is the business. If you are the business, the Opposing Party is the consumer.

Respondent

The respondent is the party against whom the claim is filed. If a Respondent states a claim in arbitration, it is called a counterclaim. Either the consumer or the business may be the Respondent.

Telephone Hearing

In a Telephone Hearing, the parties have the opportunity to tell the arbitrator about their case during a conference call. They also present their evidence to the arbitrator during the call. Often this is done after the parties have sent in documents for the arbitrator to review.

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EXHIBIT 7

37 N.E.3d 194
Court of Appeals of Ohio,
Eighth District, Cuyahoga County.

Laura DeVITO, Plaintiff–Appellant
v.
AUTOS DIRECT ONLINE, INC., Defendant–Appellee.

No. 100831.
|
Aug. 20, 2015.

Synopsis
Background: Automobile purchaser brought action against vendor alleging Consumer Sales Practices Act and fraud claims after vendor allegedly delivered automobile with mechanical problems it had represented would be repaired. The Court of Common Pleas, Cuyahoga County, No. CV–13–811164, granted vendor's motion to stay proceedings pending arbitration. Purchaser appealed.

Holdings: The Court of Appeals, en banc, Tim McCormack, J., held that:

[1] arbitration provision requiring non-prevailing party to pay costs was unconscionable;

[2] provision was against public policy; but

[3] the Court of Appeals would not invalidate entire arbitration agreement.

Affirmed as modified.

Eileen T. Gallagher and Melody J. Stewart, JJ., concurred in judgment only.

Mary J. Boyle, J., concurred in judgment only and filed opinion in which Frank D. Celebrezze, Jr., A.J., joined.

Mary Eileen Kilbane, J., dissented and filed opinion in which Larry A. Jones, Sr., Kathleen Ann Keough, Eileen A. Gallagher, and Anita Laster Mays, JJ. joined.

West Headnotes (26)

[1] **Alternative Dispute Resolution** ⇐ Arbitration favored; public policy
The arbitration process is a favored method to settle disputes. (Per McCormack, J., with two judges concurring and four judges concurring in result.)

Cases that cite this headnote

[2] **Alternative Dispute Resolution** ⚷ Contractual or consensual basis

Arbitration is a matter of contract. (Per McCormack, J., with two judges concurring and four judges concurring in result.)

Cases that cite this headnote

[3] **Contracts** ⚷ Unconscionable Contracts

When an agreement is made under circumstances or terms that are so one-sided that the exchange of promises is involuntary, the law regards it as unfair or unconscionable to enforce the contract. (Per McCormack, J., with two judges concurring and four judges concurring in result.)

Cases that cite this headnote

[4] **Contracts** ⚷ Unconscionable Contracts

The notion of unconscionability includes an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party. (Per McCormack, J., with two judges concurring and four judges concurring in result.)

Cases that cite this headnote

[5] **Contracts** ⚷ Procedural unconscionability

Contracts ⚷ Substantive unconscionability

The doctrine of unconscionability embodies two concepts: (1) "substantive unconscionability," which is unfair and unreasonable contract terms, and (2) "procedural unconscionability" or "bargaining naughtiness," which is individualized circumstances surrounding each of the parties to a contract such that no voluntary meeting of the minds was possible. (Per McCormack, J., with two judges concurring and four judges concurring in result.)

Cases that cite this headnote

[6] **Contracts** ⚷ Burden of proof; presumptions

The party claiming unconscionability of an agreement bears the burden of proving that the agreement is both substantively and procedurally unconscionable. (Per McCormack, J., with two judges concurring and four judges concurring in result.)

Cases that cite this headnote

[7] **Appeal and Error** ⚷ Cases Triable in Appellate Court

A determination of whether a written agreement is unconscionable is an issue of law, and is reviewed de novo. (Per McCormack, J., with two judges concurring and four judges concurring in result.)

Cases that cite this headnote

[8] **Contracts** ⚷ Substantive unconscionability

Substantive unconscionability involves those factors which relate to the contract terms themselves and whether they are commercially reasonable. (Per McCormack, J., with two judges concurring and four judges concurring in result.)

Cases that cite this headnote

[9] **Contracts** ⚷ Substantive unconscionability

When a contractual term is so one-sided as to oppress or unfairly surprise a party, the contractual term is said to be substantively unconscionable. (Per McCormack, J., with two judges concurring and four judges concurring in result.)

Cases that cite this headnote

[10] **Contracts** ⚷ Procedural unconscionability

Contracts ⚷ Substantive unconscionability

When a party has such superior bargaining power that the other party lacks a meaningful choice to enter into the contract, the contract is said to be procedurally unconscionable. (Per McCormack, J., with two judges concurring and four judges concurring in result.)

Cases that cite this headnote

[11] **Contracts** ⚷ Procedural unconscionability

Procedural unconscionability involves those factors bearing on the relative bargaining position of the contracting parties, including age, education, intelligence, business acumen and experience, relative bargaining power, who drafted the contract, whether the terms were explained to the weaker party, and whether alterations in the printed terms were possible. (Per McCormack, J., with two judges concurring and four judges concurring in result.)

Cases that cite this headnote

[12] **Contracts** ⚷ Procedural unconscionability

The crucial question for whether a contract is procedurally unconscionable is whether a party, considering his education or lack of it, had a reasonable opportunity to understand the terms of the contract, or were the important terms hidden in a maze of fine print. (Per McCormack, J., with two judges concurring and four judges concurring in result.)

Cases that cite this headnote

[13] **Contracts** ⚷ Procedural unconscionability

Contracts ⚷ Substantive unconscionability

Most cases of unconscionability in a contract involve a combination of procedural and substantive unconscionability, and if more of one is present, then less of the other is required. (Per McCormack, J., with two judges concurring and four judges concurring in result.)

Cases that cite this headnote

[14] **Alternative Dispute Resolution** ⚷ Evidence

A party who seeks to avoid enforcement of an arbitration provision in a contract on grounds that the provision is unconscionable bears the burden of demonstrating that the agreement is both procedurally and substantively unconscionable. (Per McCormack, J., with two judges concurring and four judges concurring in result.)

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Cases that cite this headnote

[15] **Alternative Dispute Resolution** ⚷ Unconscionability

Arbitration provision in contract between automobile vendor and purchaser requiring non-prevailing party to pay all arbitration costs and expenses, including reasonable attorney's fees, was unconscionable; provision was substantively unconscionable as costs of arbitration process were not disclosed and even most diligent consumers would have had difficult time accurately assessing their exposure, and provision was procedurally unconscionable as it was tucked into a take-it-or-leave-it, preprinted, boilerplate arbitration agreement sent in an e-mail to purchaser among a stack of documents. (Per McCormack, J., with two judges concurring and four judges concurring in result.) R.C. § 1345.01 et seq.

Cases that cite this headnote

[16] **Contracts** ⚷ Adhesion contracts; standardized contracts

An "adhesion contract" is a standardized form contract prepared by one party, and offered to the weaker party, usually a consumer, who has no realistic choice as to the contract terms. (Per McCormack, J., with two judges concurring and four judges concurring in result.)

Cases that cite this headnote

[17] **Contracts** ⚷ Signing in ignorance of contents in general

If a person can read and is not prevented from reading what he signs, he alone is responsible for reading what he signs. (Per McCormack, J., with two judges concurring and four judges concurring in result.)

Cases that cite this headnote

[18] **Contracts** ⚷ Signing in ignorance of contents in general

Generally a consumer who is competent to contract and signs a contract without reading it is bound by its terms. (Per McCormack, J., with two judges concurring and four judges concurring in result.)

Cases that cite this headnote

[19] **Alternative Dispute Resolution** ⚷ Validity

Arbitration provision in contract between automobile vendor and purchaser requiring non-prevailing party to pay all arbitration costs and expenses, including reasonable attorney's fees, even if purchaser had not filed an action against vendor in bad faith, was against public policy; provision attempted to modify or rewrite Consumer Sales Practices Act rule which allowed a prevailing defendant to obtain reasonable attorney fees only when a consumer's action was groundless and a consumer filed or maintained it in bad faith, statute reflected strong public policy that a consumer who brought a good faith claim against a supplier would not have to pay supplier's attorney fees even if consumer lost his or her claim, and provision nullified statutory protection to consumers. (Per McCormack, J., with two judges concurring and four judges concurring in result.) R.C. § 1345.09(F).

Cases that cite this headnote

[20] **Contracts** ⚷ Public Policy in General

A court may refuse to enforce a contract when it violates public policy. (Per McCormack, J., with two judges concurring and four judges concurring in result.)

Cases that cite this headnote

[21] **Contracts** ⚷ Public Policy in General

Analysis of whether a court should refuse to enforce a contract for violating public policy requires the court to consider the impact of such arrangements upon society as a whole. (Per McCormack, J., with two judges concurring and four judges concurring in result.)

Cases that cite this headnote

[22] **Contracts** ⚷ Public Policy in General

A contract injurious to the interests of the state will not be enforced. (Per McCormack, J., with two judges concurring and four judges concurring in result.)

Cases that cite this headnote

[23] **Alternative Dispute Resolution** ⚷ Impeachment or Vacation

Provision in arbitration clause of contract stating that the decision of the arbitrators shall be "final and binding" did not modify state law regarding vacating or modifying arbitration awards; the very definition of arbitration requires a final and binding agreement. (Per McCormack, J., with two judges concurring and four judges concurring in result.) R.C. §§ 2711.10, 2711.11.

Cases that cite this headnote

[24] **Alternative Dispute Resolution** ⚷ Severability

Court of Appeals would not invalidate entire arbitration agreement between automobile vendor and purchaser that contained provision, which was unconscionable and against public policy, requiring non-prevailing party to pay all arbitration costs and expenses including reasonable attorney's fees, but rather would strike provision and would allow the non-offending terms to remain enforceable; state policy encouraged arbitration, arbitration was openly agreed to by parties, and arbitration agreement was otherwise enforceable once noxious provision was eliminated. (Per McCormack, J., with two judges concurring and four judges concurring in result.) R.C. § 2711.01(A).

Cases that cite this headnote

[25] **Alternative Dispute Resolution** ⚷ Construction in favor of arbitration

Alternative Dispute Resolution ⚷ Evidence

A strong presumption exists in favor of utilizing legally-balanced arbitration when a claim falls within the scope of an arbitration provision; because of this strong presumption, all doubts should be resolved in its favor. (Per McCormack, J., with two judges concurring and four judges concurring in result.)

Cases that cite this headnote

[26] **Alternative Dispute Resolution** ⚷ Hearing and determination in general

While inherently unfair language in an arbitration agreement can and should be stricken, there is no authority inherent in the Court of Appeals to carte blanche strike down an otherwise valid arbitration agreement. (Per McCormack, J., with two judges concurring and four judges concurring in result.)

Cases that cite this headnote

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Before EN BANC Court.

Opinion

TIM McCORMACK, J.

{¶ 1} The heart of the matter that we decide in this en banc decision is a classic contract question: did the disputing parties herein have a meeting of the minds about each of the terms of the written agreement that is before us? Or conversely, is this a purported agreement that in part or full is no agreement at all because one party was incapable of agreeing to a key term? Were certain terms so egregiously hidden or purposefully obfuscated as to preclude mutual agreement? Further, we address whether all, part, or none of the purported agreement remains standing as a result of the relationship of its divisible sections.

{¶ 2} Guided by basic contract principles and Ohio's strong presumption in favor of arbitration, we determine in this conflict that the loser-pays provision of the subject arbitration agreement is unconscionable and against public policy. That provision is hereby excised from this arbitration agreement. The non-offending terms of the arbitration agreement remain enforceable.

{¶ 3} Plaintiff-appellant, Laura Devito, purchased a used 2008 Infiniti online from defendant-appellee, Autos Direct Online, Inc. ("ADO"). Devito alleged that when the vehicle was delivered to her, mechanical problems that were to be fixed had not been fixed as promised by ADO. She then brought Consumer Sales Practices Act ("CSPA") and fraud claims against ADO. The trial court granted ADO's motion to stay the proceedings pending arbitration. On appeal, Devito argues the arbitration agreement is invalid. A provision in the arbitration agreement of particular interest that she highlighted is the loser-pays provision. This provision mandates that the consumer pay all arbitration costs and expenses, including attorney fees, should the consumer fail to prevail.

{¶ 4} In a recent decision from this court, *Hedeen v. Autos Direct Online, Inc.*, 2014-Ohio-4200, 19 N.E.3d 957 (8th Dist.), which involved an identical arbitration agreement, the majority of the panel found the entire arbitration agreement invalid because of the inclusion of the loser-pays provision. The panel found the provision to be against public policy.

{¶ 5} Pursuant to App.R. 26 and Loc.App.R. 26(B), this court sua sponte considers the present appeal en banc. We conclude that the loser-pays provision is invalid because it is both unconscionable and against public policy. We do, however, agree with the dissent in *Hedeen* that, absent the offending loser-pays provision, the arbitration agreement is otherwise valid and enforceable. Therefore, we affirm the judgment of the trial court staying the proceedings pending arbitration. The loser-pays provision is stricken from the arbitration agreement.

I. Factual and Procedural Background

{¶ 6} In 2013, Devito purchased a 2008 Infiniti online. She alleged that before purchasing the vehicle, she had a mechanic inspect the vehicle, which inspection revealed several mechanical problems. She asserted that, as part of the deal, ADO agreed to have all the identified problems repaired. She alleged that, before the sale, ADO represented to her that all the problems had been repaired and she purchased the vehicle based on ADO's representation. However, when the vehicle was delivered to her in Massachusetts, some of the mechanical problems had not been fixed.

*199 {¶ 7} After being frustrated in her ability to resolve the issues with ADO, Devito brought Consumer Sales Practices Act and fraud claims, among other causes of action, against ADO. ADO moved the trial court to stay the proceedings and refer the matter to arbitration pursuant to the arbitration agreement signed by Devito.

{¶ 8} Before the sale was effectuated, ADO sales staff emailed Devito a stack of documents, among which was the arbitration agreement. According to Devito, she was unaware of the existence of the document; no one from ADO told her about arbitration or provided arbitration rules or procedures; and she was rushed through the sales paperwork under the impression the vehicle would be re-listed if the signed sales papers were not returned immediately.

{¶ 9} Devito opposed ADO's motion to stay pending arbitration. Of particular interest in this appeal is the following paragraph in the arbitration agreement:

> The arbitration shall be filed and held in the County of Cuyahoga, State of Ohio. The arbitration shall be through a panel of three (3) arbitrators; one appointed by us, one appointed by you and the third chosen from the AAA list of arbitrators by those two (2) appointed arbitrators. The arbitrators shall apply relevant law. The decision of the arbitrators shall be final and binding on all parties to the proceedings. *The non-prevailing party shall pay, and the arbitrators shall award the prevailing party's arbitration costs and expenses, including reasonable attorney's fees.*

(Emphasis added.)

{¶ 10} The trial court granted ADO's motion and stayed proceedings pending arbitration. On appeal, Devito claims the trial court abused its discretion by granting ADO's motion to stay proceedings. [1]

{¶ 11} We find the loser-pays provision unenforceable as it is substantively and procedurally unconscionable, and is further against public policy. With the removal of this offending provision, the arbitration agreement is otherwise enforceable. Therefore, we affirm the trial court's decision staying the proceedings pending arbitration, but excise the loser-pays provision from the arbitration agreement.

II. Arbitration as Favored Dispute Resolution Mechanism

[1] {¶ 12} It is well settled that the arbitration process is a favored method to settle disputes. Both the Ohio General Assembly and the courts have expressed a strong public policy favoring arbitration. *Hayes v. Oakridge Home*, 122 Ohio St.3d 63, 2009-Ohio-2054, 908 N.E.2d 408, ¶ 15. Arbitration is favored because it provides the parties " 'with a relatively expeditious and economical means of resolving a dispute.' *200 " *Id.*, quoting *Schaefer v. Allstate Ins. Co.*, 63 Ohio St.3d 708, 712, 590 N.E.2d 1242 (1992).

[2] {¶ 13} Arbitration is a matter of contract. *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960). The elements of a contract are voluntary offer and acceptance, supported by valid consideration. *Noroski v. Fallet*, 2 Ohio St.3d 77, 79, 442 N.E.2d 1302 (1982).

III. Unconscionability: Substantive and Procedural

[3] {¶ 14} When, however, an agreement is made under circumstances or terms that are so one-sided that the exchange of promises is involuntary, the law regards it as unfair or "unconscionable" to enforce the contract. The Supreme Court of the United States has defined an unconscionable agreement as one " 'such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other.' " *Thonen v. McNeil–Akron, Inc.*, 661 F.Supp. 1252 (N.D.Ohio 1986), quoting *Hume v. United States*, 132 U.S. 406, 411, 10 S.Ct. 134, 33 L.Ed. 393 (1889).

[4] [5] {¶ 15} The notion of unconscionability includes " 'an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party.' " *Taylor Bldg. Corp. of Am. v. Benfield*, 117 Ohio St.3d 352, 2008-Ohio-938, 884 N.E.2d 12, ¶ 33, quoting *Lake Ridge Academy v. Carney*, 66 Ohio St.3d 376, 383, 613 N.E.2d 183 (1993). The doctrine embodies two concepts:

> (1) unfair and unreasonable contract terms, i.e., "substantive unconscionability," and (2) individualized circumstances surrounding each of the parties to a contract such that no voluntary meeting of the minds was possible, i.e., "procedural unconscionability," or, * * * "bargaining naughtiness."

Collins v. Click Camera & Video, 86 Ohio App.3d 826, 834, 621 N.E.2d 1294 (2d Dist.1993).

[6] [7] {¶ 16} The party claiming unconscionability of an agreement bears the burden of proving that the agreement is both substantively and procedurally unconscionable. *Taylor Bldg.* at ¶ 33. A determination of whether a written agreement is unconscionable is an issue of law, and we review de novo. *Id.* at ¶ 34.

[8] [9] {¶ 17} Substantive unconscionability goes to the terms of the contract. *Ball v. Ohio State Home Servs., Inc.*, 168 Ohio App.3d 622, 2006-Ohio-4464, 861 N.E.2d 553, ¶ 7 (9th Dist.). "Substantive unconscionability involves those factors which relate to the contract terms themselves and whether they are commercially reasonable." *Collins* at 834, 621 N.E.2d 1294. When a contractual term is "so one-sided as to oppress or unfairly surprise" a party, the contractual term is said to be substantively unconscionable. *Neubrander v. Dean Witter Reynolds, Inc.*, 81 Ohio App.3d 308, 311–312, 610 N.E.2d 1089 (9th Dist.1992). Essentially, it goes to the unfairness or unreasonableness of the contractual terms. *Featherstone v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 159 Ohio App.3d 27, 2004-Ohio-5953, 822 N.E.2d 841, ¶ 13 (9th Dist.).

{¶ 18} For assessing substantive unconscionability, the courts have considered factors such as: "the fairness of the terms, the charge for the service rendered, the standard in the industry, and the ability to accurately predict the extent of future liability." *Collins*, 86 Ohio App.3d at 834, 621 N.E.2d 1294, citing *Fotomat Corp. of Florida v. Chanda*, 464 So.2d 626 (Fla.App.1985), and *Richard A. Berjian, D.O., Inc.* ***201** *v. Ohio Bell Tel. Co.*, 54 Ohio St.2d 147, 375 N.E.2d 410 (1978).

[10] [11] [12] {¶ 19} Regarding procedural unconscionability, when a party has such superior bargaining power that the other party lacks a "meaningful choice" to enter into the contract, the contract is said to be procedurally unconscionable. *Taylor Bldg.*, 117 Ohio St.3d 352, 2008-Ohio-938, 884 N.E.2d 12, at ¶ 33. The courts have also characterized it as a lack of voluntary meeting of the minds due to the circumstances surrounding the execution of the contract. *Collins* at 834, 621 N.E.2d 1294.

> Procedural unconscionability involves those factors bearing on the relative bargaining position of the contracting parties, e.g., "age, education, intelligence, business acumen and experience, relative bargaining power, who drafted the contract, whether the terms were explained to the weaker party, whether alterations in the printed terms were possible * * *."

Collins at 834, 621 N.E.2d 1294, quoting *Johnson v. Mobil Oil Corp.*, 415 F.Supp. 264 (E.D.Michigan 1976). The crucial question is whether a party, considering his education or lack of it, had a reasonable opportunity to understand the terms of the contract, or were the important terms hidden in a maze of fine print. *Lake Ridge Academy*, 66 Ohio St.3d at 383, 613 N.E.2d 183.

[13] [14] {¶ 20} A finding of unconscionability requires both procedural and substantive unconscionability, although procedural and substantive aspects of unconscionability are often integrally related. Most cases of unconscionability involve a combination of procedural and substantive unconscionability, and if more of one is present, then less of the other is required; "the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required." (Citation omitted.) 1 E. Allan Farnsworth, *Farnsworth on Contracts*, § 4.28, at 585 (3d Ed.2004). A party who seeks to avoid enforcement of an arbitration provision in a contract on grounds that the provision is unconscionable bears the burden of demonstrating that the agreement is both procedurally and substantively unconscionable. *Taylor Bldg.* at ¶ 33. Whether a written contract is unconscionable is an issue of law. *Id.* at ¶ 34. As such, we review the issue de novo. *Id.* at ¶ 36.

{¶ 21} Finally, reviewing the instant consumer dispute, we bear in mind that this dispute involves the purchase of a vehicle. The Ohio courts have acknowledged that consumer transactions involving modern day necessities such as automobiles deserve especially close scrutiny before an arbitration clause is enforced. *Eagle v. Fred Martin Motor Co.*, 157 Ohio App.3d 150, 2004-Ohio-829, 809 N.E.2d 1161, ¶ 44 (9th Dist.); *Battle v. Bill Swad Chevrolet, Inc.*, 140 Ohio App.3d 185, 192, 746 N.E.2d 1167 (10th Dist.2000).

The AAA Rules and Procedures

{¶ 22} The arbitration agreement does not set forth applicable rules or costs of arbitration but simply refers the consumer to the rules of the American Arbitration Association ("AAA"). We therefore find it necessary to delve deeply into the voluminous rules and procedure to discern the resultant costs governing the instant consumer dispute.

{¶ 23} Our review of the AAA rules reflects a set of elaborate rules and procedures ("Commercial Arbitration Rules and Mediation Procedures") for commercial arbitration,[2] and a separate set of streamlined *202 rules and procedures for consumer disputes ("Consumer–Related Disputes Supplementary Procedures"). Whereas commercial arbitration may use one or three arbitrators, consumer arbitration would typically utilize the expedited procedures and one arbitrator. AAA C–1(b) and E–4(a). The rules, however, permit three arbitrators to hear a consumer dispute; when three arbitrators are used, commercial rules and procedures govern the arbitration.[3]

{¶ 24} Furthermore, while in commercial arbitration the fees and expenses are borne equally by the parties (but subject to assessment by the arbitrator when appropriate),[4] in consumer arbitration the business pays the arbitrators' compensation and expenses, regardless of whether one or three arbitrators are involved; furthermore, the business's responsibility is not subject to reallocation by the arbitrator(s) (unless the consumer's claim is filed for harassment or is patently frivolous). AAA Consumer–Related Disputes Supplementary Procedures, p. 12.[5]

{¶ 25} The instant arbitration agreement requires three arbitrators. It would therefore be governed by commercial rules and procedures. Regardless, the business is required to pay for the fees and expenses of the arbitration.[6]

Inclusion of Loser–Pays Provision Renders the Arbitration Agreement Substantively and Procedurally Unconscionable

[15] {¶ 26} The loser-pays provision embedded in this arbitration agreement sharply departs from the established consumer-related disputes procedures as it shifts the financial burden to the consumer. A consumer who files a nonfrivolous but ultimately losing claim is only required to pay a $200 filing fee under the AAA rules. By contrast, such a consumer, under the offending loser-pays provision, bears the burden of paying all costs and expenses of arbitration.

{¶ 27} The undisclosed, unlisted costs of the process under the loser-pays provision would result in prohibitive assessed costs for almost all vehicle buyers, most certainly for an average consumer household—the filing and hearing fees and arbitrators'

compensations alone total $7,000 under the consumer fee schedule for a three-arbitrator panel. Beyond that, the consumer is also to pay for the attorney fees.

{¶ 28} Although the arbitration agreement refers to the rules of the AAA, even *203 the most diligent consumer who on his or her own initiative obtains the rules from the AAA and reads them would have a most difficult time accurately assessing his or her exposure. The AAA's rules include two sets of rules: the 50–page "Commercial Arbitration Rules and Mediation Procedures," and the 14–page "Consumer–Related Disputes Supplementary Procedures." The filing and arbitrator fees for a three-panel consumer arbitration are listed on the last page of the 64–page document.

{¶ 29} It is also notable that the loser-pays provision even disturbs the balance provided for in the AAA rules relative to assigning responsibility for attorney fees. Under the loser-pays provision, should the arbitrators find no merit to the consumer's claim, she must also pay ADO's attorney fees. Such an award is within the arbitrator's discretion under the AAA rules, but mandatory under the loser-pays provision. [7]

{¶ 30} For an especially aware consumer, the prospect of incurring these onerous costs and fees has the chilling effect of stopping cold a substantial number of potential claimants from seeking to vindicate their statutory rights under the CSPA. "[P]ractically speaking, a potential litigant, in making a decision on whether to bring a claim, 'will be inclined to err on the side of caution, especially when the worst-case scenario would mean not only losing on their substantive claims but also the imposition of the costs of the arbitration.' " *Eagle*, 157 Ohio App.3d 150, 2004-Ohio-829, 809 N.E.2d 1161, at ¶ 41, quoting *Morrison v. Circuit City Stores, Inc.*, 317 F.3d 646, 665 (6th Cir.2003). Under ADO's loser-pays term, the risk of financial blunt trauma to a consumer is real. A fair reading of this imbalanced loser-pays provision shows that it is intended to intimidate consumers away from pursuing their CSPA claims. Arbitration is a favored dispute resolution method because it provides the parties with "a relatively expeditious and economical means of resolving a dispute." *Hayes*, 122 Ohio St.3d 63, 2009-Ohio-2054, 908 N.E.2d 408, at ¶ 15. Ironically, for most persons who would utilize this disguised remedy, an adverse ruling could spell financial disaster.

{¶ 31} The built-in, grossly imbalanced unfairness of the loser-pays terms, the altering of the industry standard, the inability of a diligent consumer to readily discern the extent of potential future liability renders ADO's arbitration agreement substantively unconscionable, when the loser-pays provision is embedded.

[16] {¶ 32} This loser-pays provision, if included, rendered the agreement procedurally unconscionable as well. An adhesion contract is "a standardized form contract prepared by one party, and offered to the weaker party, usually a consumer, who has no realistic choice as to the contract terms." *Taylor Bldg.*, 117 Ohio St.3d 352, 2008-Ohio-938, 884 N.E.2d 12, at ¶ 48 (citing Black's Law Dictionary 342 (8th Ed.2004)). The loser-pays provision is tucked into a take-it-or-leave-it, preprinted, boilerplate arbitration agreement sent in an email to the vehicle purchaser among a stack of documents. As such, it is adhesive. There was little meaningful, face-to-face opportunity for understanding, negotiating, or altering the terms.

{¶ 33} The Supreme Court of Ohio has held that the presumption in favor of arbitration should be substantially weaker *204 when there are strong indications that an agreement appears to be adhesive in nature. *Williams v. Aetna Fin. Co.*, 83 Ohio St.3d 464, 473, 700 N.E.2d 859 (1998). Given the adhesive nature of this arbitration agreement and especially the undisclosed costs a consumer will incur for in good faith bringing a valid but losing claim, it is difficult to imagine or to conclude that a true voluntary meeting of the minds existed regarding the loser-pays provision.

[17] [18] {¶ 34} We are acutely aware of the principle that "[i]f a person can read and is not prevented from reading what he signs, he alone is responsible for reading what he signs." (Citation omitted.) *Haller v. Borror Corp.*, 50 Ohio St.3d 10, 14, 552 N.E.2d 207 (1990). We also recognize that generally a consumer who is competent to contract and signs a contract without reading it is bound by its terms. Here, however, a diligent reading of the loser-pays provision would not inform or illuminate the consumer as to its actual effect. The provision itself does not put the diligent, reading consumer on notice to the extent of the burdensome costs and fees of a three-arbitrator panel that the losing party will be assessed. It is simply unreasonable. It is

wrong to expect a consumer purchasing a vehicle online to research and decipher thoroughly the complex AAA commercial and consumer rules and procedures in order to know the potential costs of arbitration should she fail to prevail.

{¶ 35} The undisclosed costs and fees of the arbitration process imposed here by the loser-pays clause should the arbitrators rule in ADO's favor would likely exceed the cost of many of the vehicles subject to this form of arbitration, some modestly priced new vehicles, or many used vehicles. Can any fair reading of this loser-pays clause convince one that a purchaser could have known and intended to enter into such an onerous arrangement? The financial exposure set up by the clause would blindside most households. It is simply contrary to legal doctrine and precedent to hold out the loser-pays clause as a valid contractual obligation. Truly, there is not a meeting of the minds, when vital financial liability information is absent from the page. For these reasons, the inclusion of the subject loser-pays provision rendered this aspect of the arbitration agreement procedurally unconscionable as well.

Public Policy

[19] {¶ 36} We further conclude the loser-pays provision, which requires the nonprevailing party to pay attorney fees even if the consumer has not filed the action in bad faith, is against public policy.

[20] [21] [22] {¶ 37} A court may refuse to enforce a contract when it violates public policy. *Marsh v. Lampert*, 129 Ohio App.3d 685, 687, 718 N.E.2d 997 (12th Dist.1998), citing *Garretson v. S.D. Myers, Inc.*, 72 Ohio App.3d 785, 788, 596 N.E.2d 512 (9th Dist.1991). Unlike the unconscionability analysis, public policy analysis requires the court to consider the impact of such arrangements upon society as a whole. *Eagle*, 157 Ohio App.3d 150, 2004-Ohio-829, 809 N.E.2d 1161, at ¶ 63. A contract injurious to the interests of the state will not be enforced. *King v. King*, 63 Ohio St. 363, 372, 59 N.E. 111 (1900). As stated in 17 Ohio Jurisprudence 3d, Contracts, Section 94, at 528 (1980),

> Public policy is the community common sense and common conscience, extended and applied throughout the state to matters of public morals, health, safety, welfare, and the like. Again, public policy is that principle of law which holds that no one can lawfully do that which has a tendency to be injurious to the public or against the public good. Accordingly, ***205** contracts which bring about results which the law seeks to prevent are unenforceable as against public policy. Moreover, actual injury is never required to be shown; it is the tendency to the prejudice of the public's good which vitiates contractual relations.

(Footnote omitted.)

{¶ 38} Here, this pernicious form of the loser-pays provision, which mandates that the nonprevailing consumer pay attorney fees, attempts to modify or rewrite the rule for attorney fees under Chapter 1345, Ohio's CSPA. R.C. 1345.09(F) states:

> The court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed and limited pursuant to section 1345.092 of the Revised Code, if either of the following apply:
>
> (1) The consumer complaining of the act or practice that violated this chapter has brought or maintained an action that is groundless, and the consumer filed or maintained the action in bad faith;
>
> (2) The supplier has knowingly committed an act or practice that violates this chapter.

{¶ 39} Under the statute, when the plaintiff consumer prevails, he or she may obtain an award of reasonable attorney fees when the defendant knowingly violated the CSPA. When the defendant is the prevailing party, however, it may obtain an award of reasonable attorney fees only when the consumer's action is groundless and the consumer files or maintains it in bad faith.

{¶ 40} The CSPA reflects a strong public policy that consumers who bring good faith claims against suppliers will not have to pay the supplier's attorney fees, even if the consumer loses his or her claim against the supplier. ADO's loser-pays provision, requiring the consumer who brings a good-faith claim but fails to prevail to pay ADO's attorney fees, effectively nullifies this statutory protection provided to the consumers by the CSPA. It seeks to intimidate consumers from pursuing their statutory claims through arbitration. For these reasons, we find the loser-pays provision against the public policy embodied in the CSPA.

[23] {¶ 41} Based on the foregoing analysis, this court finds that the inclusion of the loser-pays provision rendered ADO's arbitration agreement unconscionable and also against public policy.[8]

Conclusion

[24] [25] {¶ 42} The consumer has appealed to this court to use the offending loser-pays language put forth by ADO to invalidate the entire arbitration agreement. We will not do so. A strong presumption exists in favor of utilizing legally-balanced arbitration when a claim falls within the scope of an arbitration provision. ***206** *Taylor v. Ernst & Young, L.L.P.*, 130 Ohio St.3d 411, 2011-Ohio-5262, 958 N.E.2d 1203. Because of this strong presumption, "all doubts should be resolved in its favor." *Hayes*, 122 Ohio St.3d 63, 2009-Ohio-2054, 908 N.E.2d 408, at ¶ 15, citing *Ignazio v. Clear Channel Broadcasting, Inc.*, 113 Ohio St.3d 276, 2007-Ohio-1947, 865 N.E.2d 18. Ohio's policy of encouraging arbitration is reflected in the Ohio Arbitration Act, codified in Chapter 2711 of the Ohio Revised Code. R.C. 2711.01(A) provides that an arbitration agreement in a written contract "shall be valid, irrevocable, and enforceable, except upon grounds that exist in law or equity for the revocation of any contract."

[26] {¶ 43} Ohio law establishes a balance for the parties as it relates to rights and responsibilities in the arbitration process. While inherently unfair language can and should be stricken, there is no authority inherent in this court to carte blanche strike down an otherwise valid arbitration agreement. Arbitration openly agreed to by the parties is strongly supported by statute and court precedent. The arbitration agreement is otherwise enforceable once the noxious provision is eliminated from the agreement. *See Eagle*, 157 Ohio App.3d 150, 2004-Ohio-829, 809 N.E.2d 1161, at ¶ 36. We will not overreach by attempting to invalidate the entire arbitration agreement when excision of the offending portion will suffice.

{¶ 44} We conclude that the loser-pays provision of the subject arbitration contract is unconscionable and against public policy. That provision is hereby excised from the arbitration contract. The non-offending terms of the contract remain enforceable.

{¶ 45} The judgment of the trial court staying proceedings pending arbitration is affirmed as modified.

SEAN C. GALLAGHER, J., and PATRICIA ANN BLACKMON, J., CONCUR.

EILEEN T. GALLAGHER, J., and MELODY J. STEWART, J., CONCUR IN JUDGMENT ONLY.

MARY J. BOYLE J., CONCURS IN JUDGMENT ONLY WITH SEPARATE OPINION with FRANK D. CELEBREZZE, JR., A.J., CONCURRING.

MARY EILEEN KILBANE, J., DISSENTS WITH SEPARATE OPINION with LARRY A. JONES, SR., J., KATHLEEN ANN KEOUGH, J., EILEEN A. GALLAGHER, J., and ANITA LASTER MAYS, J., CONCURRING.

MARY J. BOYLE, J., CONCURRING IN JUDGMENT ONLY.
{¶ 46} I agree with the majority of the en banc court that the loser-pays provision is against public policy and that by removing the offending loser-pays provision, the remaining arbitration agreement is valid and enforceable.

{¶ 47} I respectfully disagree, however, with the majority's conclusion that the loser-pays provision is unconscionable. This is because "a party challenging a contract as unconscionable must prove 'a quantum' of both procedural and substantive unconscionability." *Taylor Bldg.*, 117 Ohio St.3d 352, 2008-Ohio-938, 884 N.E.2d 12, at ¶ 52. As set forth in the following analysis, it is my view that the arbitration clause in this case was not procedurally unconscionable and, therefore, Devito's unconscionability argument fails.

{¶ 48} I further disagree with the dissenting opinion that the loser-pays provision renders the entire arbitration agreement unenforceable. Essentially, my view in this case is consistent with my dissenting *207 opinion in *Hedeen*, 2014-Ohio-4200, 19 N.E.3d 957. In *Hedeen*, I agreed with the majority that the loser-pays provision was not unconscionable because the plaintiff did not establish that the arbitration agreement was procedurally unconscionable, but that it was against public policy. But I disagreed with the majority that the loser-pays provision invalidated the entire arbitration agreement. It was my view in *Hedeen*, as it is now, that by removing the offending loser-pays provision, the remaining arbitration agreement is valid and enforceable.

{¶ 49} Therefore, I concur in judgment only with the majority opinion.

Procedural Unconscionability

{¶ 50} In *Taylor Bldg.*, the Supreme Court set forth the factors when determining whether a contract is procedurally unconscionable:

> Procedural unconscionability considers the circumstances surrounding the contracting parties' bargaining, such as the parties' " 'age, education, intelligence, business acumen and experience, * * * who drafted the contract, * * * whether alterations in the printed terms were possible, [and] whether there were alternative sources of supply for the goods in question.' " [*Collins v. Click Camera & Video, Inc.*, 86 Ohio App.3d 826, 834, 621 N.E.2d 1294 (2d Dist.1993)]. "Factors which may contribute to a finding of unconscionability in the bargaining process [i.e., procedural unconscionability] include the following: belief by the stronger party that there is no reasonable probability that the weaker party will fully perform the contract; knowledge of the stronger party that the weaker party will be unable to receive substantial benefits from the contract; knowledge of the stronger party that the weaker party is unable reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors." Restatement of the Law 2d, Contracts (1981), Section 208, Comment d.

Taylor Bldg., 117 Ohio St.3d 352, 2008-Ohio-938, 884 N.E.2d 12, at ¶ 43.

{¶ 51} The determination of whether a contractual provision is procedurally unconscionable is fact-dependant and requires an analysis of the circumstances of the particular case before the court. *Schaeffer v. Jim Brown, Inc.*, 11th Dist., 2015-Ohio-1994, 33 N.E.3d 96, ¶ 12, citing *Bayes v. Merle's Metro Builders*, 11th Dist. Lake No. 2007–L–067, 2007-Ohio-7125, 2007 WL 4564404, ¶ 6.

{¶ 52} In finding that procedural unconscionability exists in this case, the majority continually emphasizes factors that go to substantive unconscionability (the unfairness of the loser-pays provision), not procedural unconscionability. But the majority does not analyze the procedural unconscionability factors because it summarily finds that "a consumer" (meaning a consumer *in general*, rather than Devito) could never be expected to decipher the "complex AAA commercial and consumer rules and procedures in order to know the potential costs of arbitration should she fail to prevail." But procedural unconscionability is a fact-sensitive question, and thus, courts must look to the specific consumer entering into the contract, which in this case is Devito.

{¶ 53} In this case, Devito graduated from high school and had previously worked for many years as a real estate appraiser. For the previous 11 years (before the filing of her case), she had been homeschooling her son.

{¶ 54} The arbitration agreement in this case was set forth on a single full page; it *208 was not hidden in the middle of the contract, nor was it in fine print. Devito signed the arbitration agreement at the bottom of the page; she did not just initial it. At the top of the page, in all capital letters and in bold print, it states: "AGREEMENT TO ARBITRATE." At the end of the agreement, near the bottom of the page just above Devito's signature, it states in capital letters:

> BY SIGNING BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ THIS ARBITRATION AGREEMENT. THE PARTIES UNDERSTAND AND AGREE THAT THEY ARE GIVING UP THE RIGHT TO SEEK REMEDY IN A COURT OF LAW, INCLUDING FORGOING THE RIGHT TO A JURY TRIAL, AND THEY UNDERSTAND THAT THE RIGHTS TO APPEAL OR CHANGE AN ARBITRATION AWARD IN COURT ARE SIGNIFICANTLY LIMITED.

{¶ 55} Devito avers that when the documents were emailed to her, she felt as if she had to rush to sign them because ADO was "threatening to re-list the vehicle online." But receiving an email is not the same as someone standing over a person rushing him or her through the process. She was purchasing a $23,000 vehicle; she had a duty to read what she was signing.

{¶ 56} Devito further argues that her ADO salesperson did not explain the arbitration agreement to her. But the law does not require him to do so. *See ABM Farms v. Woods*, 81 Ohio St.3d 498, 503, 692 N.E.2d 574 (1998). In *ABM Farms*, the defendant argued that the terms of the arbitration agreement were not explained to her. The Supreme Court explained:

> At the center of [the defendant's] allegation of fraudulent inducement is the naked truth that she did not read the contract. It drives a stake into the heart of her claim. "A person of ordinary mind cannot be heard to say that he was misled into signing a paper which was different from what he intended, when he could have known the truth by merely looking when he signed." *McAdams v. McAdams*, 80 Ohio St. 232, 240–241, 88 N.E. 542, 544 (1909). *See, also, Upton v. Tribilcock*, 91 U.S. 45, 50, 23 L.Ed. 203, 205 (1875) ("It will not do for a man to enter into a contract, and, when called upon to respond to its obligations, to say that he did not read it when he signed it, or did not know what it contained. If this were permitted, contracts would not be worth the paper on which they are written"). The legal and common-sensical axiom that one must read what one signs survives this case. To find for [the defendant] would destroy that standard.

ABM Farms at 503, 692 N.E.2d 574.

{¶ 57} The majority asserts that "even the most diligent consumer who on his or her own initiative obtains the rules from the AAA and reads them would have a most difficult time accurately assessing his or her own exposure." I disagree. Devito was purchasing a vehicle online. She clearly had the wherewithal and know how to explore the internet. The AAA rules are readily accessible. And although the AAA rules may be "voluminous" and "elaborate" as the majority states, they are not complex.

{¶ 58} Devito further asserts that the contract is procedurally unconscionable because it was drafted by ADO, and she was not able to negotiate the terms of it. A contract of adhesion is one in a standardized form that is prepared by one party and offered to the weaker party, usually a consumer, who has no realistic choice as to the contract terms. *Taylor Bldg.*, 117 Ohio St.3d 352, 2008-Ohio-938, 884 N.E.2d 12, at ¶ 49. "To be sure, an arbitration *209 clause in a consumer contract with some characteristics of an adhesion contract 'necessarily engenders more reservations than an arbitration clause in a different setting,' such as a collective bargaining agreement or a commercial contract between two businesses." *Id.* at ¶ 49, quoting *Williams*, 83 Ohio St.3d 464, 472, 700 N.E.2d 859 (1998). But according to the Ohio Supreme Court:

> [E]ven a contract of adhesion is not in all instances unconscionable per se. As the Seventh Circuit recently observed in rejecting a claim that an arbitration clause was unconscionable, "few consumer contracts are negotiated one clause at a time." *Carbajal v. H & R Block Tax Servs., Inc.*, 372 F.3d 903, 906 (7th Cir.2004). Indeed, so-called "form contracts" can provide advantages to consumers. "Forms reduce transactions costs and benefit consumers because, in competition, reductions in the cost of doing business show up as lower prices[.]" *Id.*

Taylor Bldg. at ¶ 49.

{¶ 59} Devito claims that she "was given the impression" that if she wanted to purchase the vehicle, she had to sign all of the documents that were emailed to her "without making any changes." But there is no evidence that she attempted to negotiate or alter any of the terms of the agreement.

{¶ 60} After reviewing the arbitration agreement at issue, as well as Devito's affidavit, it is my view that Devito did not meet her burden of establishing that the arbitration agreement was procedurally unconscionable. There is simply no evidence in this case that the bargaining process was so oppressive as to remove meaningful choice on Devito's part.

{¶ 61} Moreover, there are many, many " 'alternative sources of supply' " when it comes to purchasing a vehicle. *Taylor Bldg.* at ¶ 43, quoting *Collins*, 86 Ohio App.3d at 834, 621 N.E.2d 1294 (one factor to consider in a procedural unconscionability analysis is "whether there were alternate sources of supply for the goods in question"). Indeed, car dealerships are ubiquitous.

Dissenting Opinion

{¶ 62} I also respectfully disagree with the dissenting opinion in this case that the loser-pays provision renders the entire arbitration agreement unenforceable. The dissent states that the arbitration agreement "improperly imposes" the AAA's commercial rules for a consumer dispute. But there is nothing improper about this under the AAA rules. Indeed, it is explicitly permissible. Specifically, the consumer rules state that for consumer disputes, "[t]he Expedited Procedures will be used unless there are three arbitrators. In such cases, the Commercial Dispute Resolution Procedures Apply." But this does not negatively impact Devito in any way. Under the commercial rules, that only means that the regular procedures would apply (because the rules for "large, complex cases" are only applicable when a claim over $500,000 is involved).[9] Thus, by requiring three arbitrators (and removing the loser-pays provision), it is only ADO that is negatively impacted, as further explained below.

{¶ 63} The dissent further states that "Devito is liable for the costs of commercial arbitration, which is ten times more than the cost of arbitration for consumer disputes." Without the loser-pays provision, however, this is simply not true.

*210 {¶ 64} In the "Administrative Fee Schedule" of the AAA's commercial rules, the fees and costs of commercial arbitration are set forth. This section specifically states, however, that "[i]n an effort to make arbitration costs reasonable for consumers, the AAA has a separate fee schedule for consumer-related disputes." This section then states, "[p]lease refer to "Section C–8 of the Supplementary Procedures for Consumer–Related Disputes when filing a consumer-related claim."

{¶ 65} "Section C–8" of the AAA's consumer rules sets forth the costs of arbitration for consumer-related disputes. Whether one or three arbitrators are used, the consumer pays the same—a $200 filing fee. It is the business that is responsible for the remaining costs, including a filing fee of $1,500 or $2,000 (depending on how many arbitrators are used), a $500 hearing fee, and the arbitrator or arbitrators' compensation.

{¶ 66} It is clear from reading the AAA commercial and consumer rules that the extensive fees and costs of commercial arbitration—that the dissent refers to—do not apply to consumers. Thus, by removing the loser-pays provision, Devito is only responsible for a $200 filing fee.

{¶ 67} Thus, I would hold that the loser-pays provision is against public policy and that by removing it from the arbitration agreement, the remaining arbitration agreement is enforceable.

MARY EILEEN KILBANE, J., DISSENTING:

{¶ 68} I respectfully dissent. For the reasons set forth below, I would find that the entire arbitration clause is unconscionable and, therefore, unenforceable.

{¶ 69} While arbitration is encouraged as a method of dispute resolution and a presumption favoring arbitration arises when the claim in dispute falls within the arbitration provision, the circumstances surrounding *Devito* and *Hedeen* [10] are unique in that they both involve the same unconscionable arbitration clause drafted by the same defendant—ADO. In both cases, ADO made material representations regarding the condition of the vehicles it had for sale. Devito and Hedeen relied on these representations to purchase their respective vehicles, only to later discover that ADO falsely represented the condition of the vehicles causing them thousands of dollars in repairs. Devito and Hedeen each filed complaints against ADO, alleging causes of action for breach of contract, violations of the Motor Vehicle Sales Rule and the Ohio CSPA, and fraud and deceit. After making these material misrepresentations to both Hedeen and Devito, ADO sought to tether each of them to the arbitration clause by moving to stay the proceedings at the trial court. To add insult to injury, ADO sought to enforce arbitration, relying on an arbitration clause the majority has found to be unconscionable and against public policy because of the terms of ADO's loser-pays provision, yet still enforceable.

{¶ 70} In November 2012, Hedeen purchased a used 2011 Mercedes–Benz online from ADO for $28,000. Prior to purchasing the vehicle, her ADO salesman represented to her that the vehicle had never been in an accident. Relying on ADO's representations, Hedeen purchased the vehicle. Upon receiving the vehicle, Hedeen discovered that it was in fact in a serious accident where it sustained over $20,000 in damages, and over $7,000 in damages of which had never been repaired.

{¶ 71} In May 2013, Devito purchased a used 2008 Infiniti QX56 online from ADO *211 for $22,100. Prior to her purchase, Devito had the vehicle inspected at an Infiniti car dealership. The inspection revealed that the vehicle needed several mechanical repairs. As part of the purchase agreement, ADO agreed to complete all of the necessary repairs of the vehicle. ADO further represented that it had in fact completed all of the repairs. When Devito received the vehicle, she discovered that the agreed-to repairs had not been completed as ADO represented. The estimated cost to repair Devito's vehicle was approximately $3,000. [11]

{¶ 72} In *Hedeen*, 2014-Ohio-4200, 19 N.E.3d 957, this court did not find the arbitration clause unconscionable, but rather found that the loser-pays provision is against public policy, which rendered the entire arbitration clause unenforceable. Whereas in the instant case, the majority has found that the arbitration clause is both procedurally and substantially unconscionable and violates public policy. A finding of this magnitude necessitates that the entire arbitration clause is rendered unenforceable. *See Post v. ProCare Auto. Serv. Solutions*, 8th Dist. Cuyahoga No. 87646, 2007-Ohio-2106, 2007 WL 1290091 (where this court stated "as a matter of law, an arbitration clause is not enforceable if it is found to be unconscionable"). *Id.* at ¶ 11, citing *Olah v. Ganley Chevrolet, Inc.*, 8th Dist. Cuyahoga No. 86132, 2006-Ohio-694, 2006 WL 350204, citing *Williams*, 83 Ohio St.3d at 471, 700 N.E.2d 859. Instead, the majority has chosen to retain part of the arbitration clause, but strike the offending portion —the loser-pays provision.

{¶ 73} In discussing the loser-pays provision of ADO's arbitration agreement, the majority acknowledges that the provision drafted by ADO imposes the AAA rules for a commercial dispute in a consumer transaction. Rather than using a single arbitrator as set forth in the AAA rules for consumer disputes, the commercial disputes rules require a panel of three arbitrators, with their fees totaling approximately $15,000. Whereas, the rules for consumer disputes typically require a single arbitrator, which may be paid $1,500 per day. Hedeen and Devito could be required to pay ten times more in fees under the agreement as written by ADO. This undisclosed disparity in cost is grossly significant and, in some cases, could result in the consumers paying more for arbitration than for their vehicle. Even more troubling, nothing in ADO's arbitration clause puts the consumer on notice of the extent of the potentially significant costs and fees of the arbitration process. The majority concludes there is no meeting of the minds as to the loser-pays provision because vital terms are missing from the arbitration clause. Yet, the majority's remedy is only to remove the offending portion—the loser-pays provision.

{¶ 74} In its analysis, the majority cites to and upholds ADO's arbitration clause without the offending loser-pays provision. In *Eagle*, the consumer purchased a used car from the defendant-car dealer. She was told by a salesperson, who had reviewed

her financial information, that she did not qualify for a purchase of a used car. The dealer informed her that she *212 would nevertheless be able to purchase a new car and represented to her that she would be better off purchasing the new car because it was a good automobile with an excellent warranty. After having serious problems with the car, until the point where the car stopped running altogether, the consumer filed suit. The car dealer moved to compel arbitration pursuant to the arbitration clause contained in the purchase agreement, stating that arbitration was to be conducted by the National Arbitration Forum ("NAF") in accordance with the NAF's Code of Procedure. The consumer challenged the validity of the arbitration clause, asserting that it was unconscionable and, thus, unenforceable. The Ninth District Court of Appeals agreed, finding several deficiencies within the clause and remanding the case to the trial court for a jury trial. *Eagle,* 157 Ohio App.3d 150, 2004-Ohio-829, 809 N.E.2d 1161, at ¶ 85.

{¶ 75} In looking at the arbitration clause, the *Eagle* court noted that R.C. 1302.15(A) permits courts to strike the offending portion of an unconscionable contract provision. *Id.* at ¶ 36, citing *Lightning Rod Mut. Ins. Co. v. Saffle,* 9th Dist. Summit No. 15134, 1991 WL 476511 (Nov. 6, 1991), citing the Restatement of the Law 2d, Contracts, Section 107 (1981). However, the *Eagle* court still found the arbitration clause was unenforceable in its entirety. *Id.* at ¶ 85. It did not choose to strike the offending portion.

{¶ 76} Likewise, in the instant case, I would find the circumstances compel a finding that unconscionability permeates the entire arbitration clause, rendering it unenforceable in its entirety. Devito bought a used vehicle from ADO that needed several mechanical repairs. As part of the purchase agreement, ADO agreed to complete all of the necessary repairs of the vehicle. ADO further represented that it in fact completed all of the repairs. When Devito received the vehicle, she discovered that the repairs had not been completed as ADO represented. The estimated cost to repair the vehicle was approximately $3,000. Now ADO wants to enforce arbitration relying on an unconscionable clause that improperly imposes the AAA rules for a commercial dispute in a consumer transaction, and possibly costing Devito ten times more in fees.

> [T]he presumption in favor of arbitration should be substantially weaker in a case * * * when there are strong indications that the contract at issue is an adhesion contract, and the arbitration clause itself appears to be adhesive in nature. In this situation, there arises considerable doubt that any true agreement ever existed to submit disputes to arbitration.

Williams, 83 Ohio St.3d at 473, 700 N.E.2d 859.

{¶ 77} Moreover, by removing only the offending portion of the unconscionable arbitration clause, the majority has effectively stripped away any redress consumers have in court and any rights consumers have to the remedies afforded in consumer protections statutes. By signing ADO's arbitration agreement, Devito waived the right to sue ADO in court. This agreement, however, is based on an unconscionable arbitration clause that was entered into with no meeting of the minds. As a result, enforcing this unconscionable provision against Devito would constitute a violation of her due process right to redress under Ohio Constitution, Article I, Section 16, which provides that "[a]ll courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay."

{¶ 78} In addition, consumer protections statutes were enacted to protect against *213 the commission of unfair, deceptive, or unconscionable acts or practices by sellers in the consumer transaction context. *Eagle,* 157 Ohio App.3d 150, 2004-Ohio-829, 809 N.E.2d 1161, at ¶ 24. The public policy behind consumer protection statutes is frustrated when a car dealer makes a material misrepresentation to the consumer, which the consumer relies upon. Then the car dealer binds the consumer to arbitration by using an unconscionable arbitration clause that prevents the consumer from exercising the remedies provided by these statutes. *See Schaefer v. Allstate Ins. Co.,* 10th Dist. Franklin No. 90 AP-178, 1991 WL 19175, *3 (Feb. 12, 1991). As this court stated in *Hedeen:*

> "Public policy is the community common sense and common conscience, extended and applied throughout the state to matters of public morals, health, safety, welfare, and the like. Again, public policy

> is that principle of law which holds that no one can lawfully do that which has a tendency to be injurious to the public or against the public good. Accordingly, contracts which bring about results which the law seeks to prevent are unenforceable as against public policy. Moreover, actual injury is never required to be shown; it is the tendency to the prejudice of the public's good which vitiates contractual relations. (Footnotes omitted.)"

Hedeen, 2014-Ohio-4200, 19 N.E.3d 957, at ¶ 45, quoting 17 Ohio Jurisprudence 3d, Contracts, Section 94 (1980). "When an arbitration clause vanquishes the remedial purpose of a statute by imposing arbitration costs and preventing actions from being brought by consumers, the arbitration clause should be held unenforceable." *Eagle* at ¶ 68.

{¶ 79} For the majority to conclude that there is no meeting of the minds and allow ADO to make material misrepresentations to these buyers and then tether the consumer to an unconscionable arbitration clause renders the arbitration clause wholly in ADO's favor. To add insult to injury, Devito is liable for the costs of commercial arbitration, which is ten times more than the cost of arbitration for consumer disputes. This inequity was not an intended consequence of the public policy in favor of arbitration. ADO's one-sided contract clause is injurious to the interests of the state, is against public policy, and prevents the consumer from exercising the constitutional right to redress in court. *See Hedeen* at ¶ 49, citing *Eagle* at ¶ 74.

{¶ 80} Accordingly, I would find that the arbitration clause is unenforceable in its entirety.

All Citations

37 N.E.3d 194, 2015 -Ohio- 3336

Footnotes

1 Appellant raises three issues for our review under her single assignment of error.
   1. Whether the trial court abused its discretion when it granted appellee's motion to stay proceedings pending arbitration where ADO's form arbitration clause is unconscionable and unenforceable.
   2. Whether the trial court abused its discretion when it granted appellee's motion to stay proceedings pending arbitration where ADO's form arbitration clause includes a "loser pay provision" which is illusory, attempts to modify the CSPA, violates public policy and the CSPA, and misrepresents to a consumer his or her rights under the CSPA.
   3. Whether the trial court abused its discretion when it granted appellee's motion to stay proceedings pending arbitration where ADO's form arbitration clause includes a "final and binding provision" which attempts to modify the Ohio arbitration rules, violates public policy and the CSPA, and misrepresents to a consumer his or her rights under Ohio law.

2 The AAA's Commercial Arbitration Rules and Mediation Procedures shows three tiers of procedures: regular, expedited, or complex. One or three arbitrators may be used for commercial litigation. AAA R–16(a); AAA E–4(a); and AAA L–2(a). The parties, however, are permitted to vary the applicable procedures by written agreement. AAA R–1(a).

3 Section C–1(b) of the "Supplementary Procedures for the Resolution of Consumer–Related disputes" states that, for consumer disputes, "[t]he Expedited Procedures will be used unless there are three arbitrators. In such cases, the Commercial Dispute Resolution Procedures shall apply."

4 AAA R–54 states: "All [expenses except for witnesses' fees] * * * shall be borne equally by the parties, unless they agree otherwise or unless the arbitrator in the award assesses such expenses or any part thereof against any specified party or parties."

5 In section (vii) of the "Consumer–Related Disputes Supplementary Procedures," a fee schedule shows that when three arbitrators are used in a consumer arbitration, the business will pay a filing fee of $2,000, a hearing fee of $500, and $1,500 per hearing day per arbitrator; the consumer's financial responsibility is limited to a $200 filing fee.

6 Devito, however, contends that if the commercial procedures apply, her costs, should she lose, would be the fees charged to commercial parties: an initial filing fee of $975, a final fee of $300, and the three arbitrators' fees estimated at $15,000 (based on 15 hours at a rate of $300 per hour).

7 Subsection (d) of R–47 of AAA Commercial Arbitration Rules and Mediation Procedures states: "The award of the arbitrator(s) *may* include: * * * an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement." (Emphasis added.)

8 Devito also claims the arbitration agreement is unenforceable because its "final and binding" provision attempts to modify Ohio law under R.C. 2711.10 and 2711.11. We find no merit to this claim. Those two statutes set forth when a court may vacate or modify an arbitration award, respectively. R.C. 2711.13 provides that after an award in an arbitration proceeding is made, either party may file a motion for an order vacating or modifying the award as prescribed in R.C. 2711.10 and 2711.11. In *Miller v. Gunckle*, 96 Ohio St.3d 359, 2002-Ohio-4932, 775 N.E.2d 475, the Ohio Supreme Court explained that " '[f]or a dispute resolution procedure to be classified as "arbitration," the decision rendered must be final, binding and without any qualification or condition as to the finality of an award.' " *Id.* at ¶ 10, quoting *Schaefer*, 63 Ohio St.3d at 711, 590 N.E.2d 1242. Therefore, the very definition of arbitration requires a "final and binding" award. The arbitration agreement does not modify R.C. 2711.10 or 2711.11.

9 As the majority points out, under the AAA commercial rules, there are three tiers of procedures: expedited, regular, or complex.

10 *Hedeen*, 2014-Ohio-4200, 19 N.E.3d 957.

11 Both purchase agreements contained an "AS IS" provision stating that the "dealer assumes no responsibility for any repairs to the vehicle regardless of any oral statements about the vehicle." While applicable in the context of home warranty claims, it is worth noting that an "as is" clause cannot be relied upon to bar a claim for fraudulent misrepresentation or fraudulent concealment. *Kern v. Buehrer*, 8th Dist. Cuyahoga No. 97836, 2012-Ohio-4057, 2012 WL 3862170, ¶ 5, citing *Brewer v. Brothers*, 82 Ohio App.3d 148, 151, 611 N.E.2d 492 (12th Dist.1992).

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James Taylor Anderson, III
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April 27, 2016

The Honorable Mary P. Brown
Berkeley County Clerk of Court
300 California Avenue
Moncks Corner, SC 29461

RE: Chris Duvall and Natalie Duvall v. The Ryland Group, Inc. AND The Ryland Group, Inc. v. Land Site Services, Inc., Carolina Consulting Services, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc. ak/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, Inc.
Berkeley County / Case No.: 2015-CP-08-1213
KC File No.: 77-35

Dear Ms. Brown:

Enclosed for filing, please find an original and one (1) copy of *Christopher and Natalie Duvall's Memorandum in Opposition to The Ryland Group, Inc.'s Motion to Compel Arbitration* in the above referenced matter. Kindly file the original and return a date-stamped copy of the Memorandum to me in the envelope provided for your convenience.

Thank you for your assistance in this matter. Should you have any questions or require additional information, please do not hesitate to contact me.

KERNODLE COLEMAN

James Taylor Anderson, III

JTAIII/mlj
Enclosures

cc: Thomas C. Hildebrand, Jr., Esquire / Olesya V. Vaskevich, Esquire
John E. Rogers, II, Esquire / C. Reed Teague, Esquire
Mark S. Barrow, Esquire / Christy E. Mahon, Esquire
James E. Scott, IV, Esquire / Perry Buckner, Esquire / Camden Hodge, Esquire
Kevin W. Mims, Esquire / Caroline C. McIntosh, Esquire