

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 II

RECEIVED

JUL 18 2017

SC Court of Appeals

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d/b/a Carolina Truss Systems, Inc.

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STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Christopher Duvall and Natalie Duvall,)
Plaintiffs,)
v.)
The Ryland Group, Inc.)
Defendant.)
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)
Stark Truss Company of Summerville,)
Ltd. a/k/a Stark Truss, Inc. d/b/a)
Carolina Truss Systems, Inc.)
Third-Party Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C.A. NO.: 2015-CP-08

FILED
2015 JUN -8 PM 1:49
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

MOTION INFORMATION FORM
AND COVER SHEET

JR
12500

amb

Check box above indicating submitting party

<u>Name, SC Bar No. and address of Plaintiffs' attorney</u> James Taylor Anderson, III, Esquire Kernodle Root & Coleman PO Box 13897 Charleston, SC 29422-3897 Telephone: 843-795-7800 Facsimile: 843-795-3032 – fax Email: tanderson@kernodlelaw.com	<u>Name, SC Bar No. and address of attorney for Defendant Land Site Services, Inc.</u> John E. Rogers, II (S.C. Bar #72779) P.O. Box 5663 Spartanburg, SC 29304 Telephone: 864-591-2366 Facsimile: 864-585-3090 (fax) Email: jrogers@wardfirm.com <u>Name, SC Bar No. and address of attorney for Defendant A.C. Construction, Inc.</u> Kevin W. Mims, Esquire Carolina C. McIntosh, Esquire Luzuriga Mims, LLP 50 Immigration St., Ste. 200 Charleston, SC 29403 Telephone: 843-410-4713 Email: kmims@lmlawllp.com Email: cmcintosh@lmlawllp.com Patrick T. Morrissey, Esquire Clawson and Staubes, LLC 126 Seven Farms Drive, Ste. 200 Charleston, SC 29492 Email: pmorrissey@clawsonandstaubes.com <u>Please see attached Exhibit A</u>
---	---

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: **Motion to Compel**

Estimated Time Needed: 30 minutes

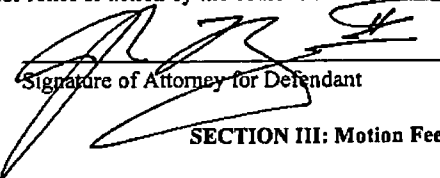
Court Reporter Needed: YES / NO

SECTION II: Motion Type

☒ Written motion attached

☐ Form Motion –

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


Signature of Attorney for Defendant

6/3/16
Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: \$25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

(check reason) ☐ 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:

X Other:

JUDGE'S SECTION

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

X Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

DATE FILED:

Collected by: K. Clark
(print name)

☒ MOTION FEE COLLECTED: \$25.00

☐ CONTESTED - AMOUNT DUE: _____
_____ SCCA/233 (1/2003)

Exhibit A

Attorney for The Ryland Group, Inc. – Defendant/3rd Party Plaintiff

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Attorney for Carolina Consulting Engineers, Inc.

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Email: chodge@ycrlaw.com

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Christopher Duvall and Natalie Duvall,)
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Plaintiffs,)
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v.)
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The Ryland Group, Inc.)
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Defendant.)
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The Ryland Group, Inc.,)
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Third-Party Plaintiff,)
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v.)
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Land Site Services, Inc., Carolina)
Consulting Services, 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.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

MOTION TO COMPEL

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2016 JUN -8 PM 1:49

FILED

C.A. NO.: 2015-CP-08-1213

TO: DEFENDANT A.C. CONSTRUCTION, INC. AND ITS ATTORNEYS
KEVIN W. MIMS AND CAROLINA C. MCINTOSH:

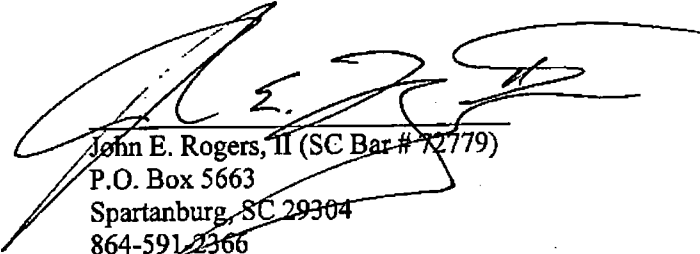
YOU WILL PLEASE TAKE NOTICE that Defendant, Land Site Services, Inc., by and through its undersigned attorney, will move before the resident or presiding judge of the Berkeley County Court of Common Pleas as soon hereafter as counsel may be heard, at such time and place as the Court may determine for an order compelling Defendant, A.C. Construction, Inc., to fully respond to Defendant, Land Site Services, Inc.'s, First Set of Interrogatories and First Requests for Production which were served on Defendant, A.C. Construction, Inc., on April 1, 2016 (See discovery requests and certificate of service attached

as Exhibit "1" and incorporated by reference.) Defendant, Land Site Services, Inc.'s, counsel also sent Defendant, A.C. Construction, Inc., a follow-up letter dated May 10, 2016 requesting that Defendant, A.C. Construction, Inc., fully respond to Defendant, Land Site Services, Inc.'s, First Set Interrogatories and First Requests for Production (See Exhibit "2" attached hereto and incorporated herein by reference). No discovery responses have been received by Defendant Land Site Services, Inc.

This motion is made pursuant to Rule 37 of the South Carolina Rules of Civil Procedure and is based upon the applicable Interrogatories and Requests for Production and the common and statutory laws of the State of South Carolina.

This Motion is also made upon the grounds that the interest of justice will not be served by requiring counsel to proceed to trial without receiving adequate discovery from Defendant A.C. Construction, Inc.

THE WARD LAW FIRM, P.A.
Attorneys for Defendant Land Site Services,
Inc.



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June 6, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Christopher Duvall and Natalie Duvall,)
Plaintiffs,)
v.)
The Ryland Group, Inc.)
Defendant.)
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)
Stark Truss Company of Summerville,)
Ltd. a/k/a Stark Truss, Inc. d/b/a)
Carolina Truss Systems, Inc.)
Third-Party Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

FILED
2016 JUN -8 PM 1:49
MARY B. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

C.A. NO.: 2015-CP-08-1213

The undersigned hereby certifies that Third-Party Defendant Land Site Services, Inc.'s Motion to Compel was served upon the following on June 4, 2016 via electronic transmission and/or via United States Postal Service, with proper postage affixed thereto to the following address(es):

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Via Email Only:

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Attorney for Carolina Consulting Engineers, Inc.



Kirby P. Keller
Paralegal to John E. Rogers, II

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Christopher Duvall and Natalie Duvall,)

Plaintiffs,)

v.)

The Ryland Group, Inc.)

Defendant.)

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
Stark Truss Company of Summerville,
Ltd. a/k/a Stark Truss, Inc. d/b/a
Carolina Truss Systems, Inc.)

Third-Party Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

THIRD-PARTY DEFENDANT LAND SITE
SERVICES, INC.'S FIRST SET OF
INTERROGATORIES TO THIRD-PARTY
DEFENDANT A.C. CONSTRUCTION, INC.

C.A. NO.: 2015-CP-08-1213

**TO: THIRD-PARTY DEFENDANT, A.C. CONSTRUCTION, INC. AND ITS
ATTORNEYS KEVIN W. MIMS, CAROLINA C. MCINTOSH AND PATRICK T.
MORRISSEY:**

Third-Party Defendant, Land Site Services, Inc. (hereinafter "Land Site") by and through its undersigned attorney, hereby submits its First Set of Interrogatories in accordance with South Carolina Rule of Civil Procedure 33, and commands Third-Party Defendant A.C. Construction, Inc. (hereinafter "A.C. Construction") provide answers within thirty (30) days of service hereof.

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

statements. For each person known to the party or counsel to be a potential witness concerning the facts of the case, set forth a summary sufficient to inform the other party of the important facts known to or observed by such witness and provide a copy of any written or recorded statement(s) taken from such witness.

2. Set forth a list of all photographs, plats, emails, faxes, sketches, notes, recordings, memoranda, diagrams, drawings, contracts, reports, or other documents or tangible things in possession of the party or counsel that relate to any claim or defense in this case.

3. Set forth the names and addresses of all insurance companies which may have insurance coverage related to this lawsuit and set forth the number of policies involved and the amount(s) of coverage provided by each policy.

4. List the name(s) and address(es) of each and every expert witness(es) whom the party proposes to use as a witness at the trial of this case. Also provide a summary of what the expert is expected to testify regarding.

5. Identify all materials, communications and documents provided to or made available to each expert named in your responses.

6. Identify all documents requested or received from third parties relating to claims or defenses in this case including, but not limited to, documents sought or obtained through subpoenas.

7. List the amount(s) of payment(s) received by you for all work done regarding subject property, including the date(s) of each such payment, the amount(s) of each such payment, and a description of the work and/or materials provided as consideration for each such payment.

8. If you have ever been a party to a lawsuit, for each lawsuit please set forth:

- a. The caption of the action including the name of the court in which the action was filed or pending along with all corresponding case or action numbers;
- b. The name and address of all Plaintiffs in each action and the attorneys for the Plaintiffs in each action;
- c. A summary of the facts alleged in the action whether by way of Complaint, Third-Party Complaint, Counterclaim or Reply;
- d. The manner in which you were brought into the action and the facts alleged by you in regard to your claims or against you in regard to your liability; and
- e. The outcome of each case by way of verdict, judgment, settlement, or otherwise, including monetary amounts, if any, therein.

9. Identify any inspections of subject property you made or another party made at your request. Describe in detail all findings from any such inspections and any and all action(s) taken by the party as a result of any and all such inspections. Identify the date(s) of each such inspection, the persons present during any and all such inspection(s) and describe in detail any recommendation(s) made after any and all such inspection(s).

10. Identify with specific detail any written or verbal warranties that you made concerning your work on subject property.

11. Identify all documents in your possession relating to your work on subject property and any follow-up inspection(s) conducted on subject property.

12. Set forth an accounting of all communications between A.C. Construction and any and all parties to this litigation regarding any alleged defects, deficiencies or other issues related to subject property. Your response to this Interrogatory should include, but is not limited to the following information: the entire substance of all such communication(s), the dates and times of all such communication(s), all witnesses to such communication(s), and any and all

actions taken by A.C. Construction or any other party to this litigation as a result of any such communication(s).

13. Set forth an accounting of all work that A.C. Construction performed with regard to the property at issue in this lawsuit. Your answer to this Interrogatory should include, but is not limited to, to the following information:

- a. A description of the scope of the work performed at subject property by the party(ies) and the materials provided by the party(ies) associated with said work;
- b. The date(s) that the work at subject property was performed by the party(ies);
- c. The amount(s) that the party(ies) was paid to perform any and all work performed by the party(ies) at subject property;
- d. Whether the party(ies) was paid in full for the work and services performed by the party(ies) at subject property;
- e. An accounting of any and all plans, designs and/or specifications provided to the party(ies) pertaining to the work performed by the party(ies) at subject property;
- f. Set forth the terms/provisions of any and all contracts entered into by the party(ies) pertaining to work performed by the party(ies) at subject property; and
- g. Set forth the name(s), address(es), and job title(s) of any and all employees, contractors, or agents working for or on behalf of the party(ies) at subject property at any time during the scope of the work performed by the party(ies) at subject property.

THE WARD LAW FIRM, P.A.
Attorneys for Third-Party Defendant Land
Site Service, Inc.



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Email: jrogers@wardfirm.com

March 28, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
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Christopher Duvall and Natalie Duvall,)
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Plaintiffs,)
)

v.)

The Ryland Group, Inc.)
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Defendant.)

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v.)

Land Site Services, Inc., Carolina)
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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.)
)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

THIRD-PARTY DEFENDANT LAND SITE
SERVICES, INC.'S FIRST REQUESTS FOR
PRODUCTION OF DOCUMENTS TO
THIRD-PARTY DEFENDANT
A.C. CONSTRUCTION, INC.

C.A. NO.: 2015-CP-08-1213

**TO: THIRD-PARTY DEFENDANT, A.C. CONSTRUCTION, INC. AND ITS
ATTORNEYS KEVIN W. MIMS, CAROLINA C. MCINTOSH AND PATRICK T.
MORRISSEY:**

Third-Party Defendant, Land Site Services, Inc. (hereinafter "Land Site"), by and through its undersigned attorney, hereby submit these Requests for Production of Documents in accordance with South Carolina Rule of Civil Procedure Rule 34, you are hereby requested to produce for inspection and copying within thirty (30) days of service hereof, the documents and other things specified below.

1. Copies of any and all documents, materials, or tangible things which substantiate or relate to any claim(s) or any defense(s) in this lawsuit.

2. For each person(s) identified as an expert witness(es) provide a complete statement of all opinion(s) to be expressed and the basis and the reason(s) therefore, including: the data or other information considered by the witness(es) informing the opinion(s); exhibit(s) to be used as a summary of or support for the opinion(s); the qualifications of the witness(es), a list(s) of publication(s) within the preceding ten (10) years; and a listing(s) of any other case(s) in which the witness(es) has testified has an expert in the proceeding ten (10) years. Also provide:

- a. All documents prepared by the expert;
- b. All documents sent to the expert(s) by Plaintiffs or Plaintiffs' counsel;
- c. All documents relied upon by the expert(s);
- d. All documents used, consulted, or reviewed by the expert(s);
- e. All documents setting forth the compensation agreement between Plaintiffs and the expert(s);
- f. All documents used, relied upon, consulted, or reviewed by the expert(s) in answering expert witness(es) Interrogatories;
- g. All documents that have been or will be shown to the expert(s) prior to trial testimony; and
- h. All documents, including a current curriculum vitae, used to establish the expert's qualifications for trial purposes.

3. All documents or tangible things which the party may attempt to use at trial or at a deposition for any purpose.

4. All documents obtained through the use of subpoena in this case.

5. Copies of any and all: contracts, letters, photographs, images, videos, emails, faxes, facsimile transmittal reports, documents, other form(s) of correspondence, financial records, notes, reports, records, photographs, evidences of payment, invoices, and other

documents and/or tangible things in the party's possession, custody or control that relate to any claim(s) or any defense(s) in this litigation.

6. Copies of any and all insurance policies of the party which provide coverage or that may provide coverage for any claim(s) in this litigation. Also produce copies of any and all insurance policy declaration page(s) associated with any and all such insurance policies.

7. Copies of any and all documents which substantiate or relate to any claims(s) that Third-Party Defendant Land Site was negligent in any manner relating to this lawsuit.

8. Copies of any and all contract(s) between A.C. Construction and any other party to this lawsuit or any other entity or person(s) relating in any manner to any and all work of A.C. Construction conducted upon subject property.

9. All non-privileged notes or correspondence by, to or from you concerning the subject matter of this lawsuit.

10. All correspondence by and between you and any party to this litigation, including all internal memos or communications of said entities and/or person(s) in your possession that relate to subject property.

11. Records of all payments, requisitions or invoices concerning any work performed upon the subject property with an itemized breakdown of amount(s).

12. All documents regarding any inspection(s) made of any work performed upon the subject property.

13. All documents related to any test, study, or analysis conducted which reflects any problems, difficulties or deficiencies related to the subject property.

14. All documents generated by you or any other person or entity which in any way relate to any and all parties to this litigation or the subject property.

15. Any and all documents concerning written or verbal warranties made concerning

the subject property by you or any related entity.

16. Any and all contracts, verbal or written agreements and/or any other associated documents between you and any other party to this litigation or any third party concerning the subject property.

17. Any and all documents concerning inspections, sight visits, engineering analysis, or other trips to the subject property made by any person, including the names of any other persons present, the date and any documentation of what transpired.

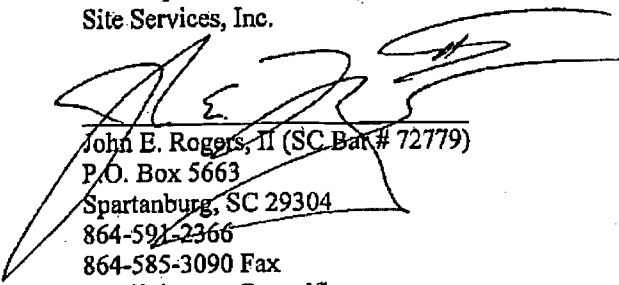
18. Any and all documents relating to any engineering work/analysis performed regarding the subject property.

19. Any and all documents relating to any communications from any governmental entity concerning the subject property.

20. Any and all documents relating to any work performed at the subject property or services provided at subject property.

21. All documents related to any conversation(s) or other form(s) of communication between you and any officer, employee or agent of any other party(ies) to this litigation or any third-party concerning the subject property, including, but not limited to, the problems, defects and/or deficiencies relating to subject property alleged in Plaintiffs' Complaint in this litigation.

THE WARD LAW FIRM, P.A.
Attorneys for Third-Party Defendant Land
Site Services, Inc.



John E. Rogers, II (SC Bar # 72779)
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March 28, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Christopher Duvall and Natalie Duvall,)
Plaintiffs,)
v.)
The Ryland Group, Inc.)
Defendant.)
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)
Stark Truss Company of Summerville,)
Ltd. a/k/a Stark Truss, Inc. d/b/a)
Carolina Truss Systems, Inc.)
Third-Party Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

C.A. NO.: 2015-CP-08-1213

The undersigned hereby certifies that Third-Party Defendant Land Site Services, Inc.'s First Set of Interrogatories and First Requests for Production of Documents to Third-Party Defendant A.C. Construction, Inc. were served upon the following on April 1, 2016 via electronic transmission and/or via United States Postal Service, with proper postage affixed thereto to the following address(es):

Via Email and US Mail:

Kevin W. Mims, Esquire
Carolina C. McIntosh, Esquire
Luzurigal Mims, LLP
50 Immigration St., Ste. 200
Charleston, SC 29403
kmims@lmlawllp.com

cmcintosh@lmjlawllp.com

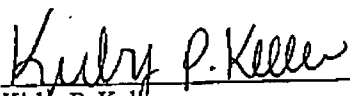
AND

Patrick T. Morrissey, Esquire
Clawson and Staubes, LLC
126 Seven Farms Drive, Ste. 200
Charleston, SC 29492
pmorrissey@clawsonandstaubes.com
Attorneys for AC Construction

Via Email Only:

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Kernodle Root & Coleman
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Attorney for Plaintiffs

Thomas C. Hildebrand, Jr., Esquire
Olesya V. Vaskevich, Esquire
Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Ste. 301
Charleston, SC 29401
tomhildebrand@parkerpoe.com
olesyavaskevich@parkerpoe.com
Attorney for The Ryland Group, Inc.


Kirby P. Keller
Paralegal to John E. Rogers, II

THE WARD LAW FIRM, P.A.

ATTORNEYS AT LAW
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SPARTANBURG, SOUTH CAROLINA 29304

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GINGER D. GOFORTH
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* RETIRED
* CERTIFIED MEDIATOR
* ALSO MEMBER NORTH CAROLINA BAR

RUFUS M. WARD (1908-1986)
L. PAUL BARNES (1931-1986)

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E-mail: jrogers@wardfirm.com
Direct No. 864-591-2556

May 10, 2016

Kevin W. Mims, Esquire
Carolina C. McIntosh, Esquire
Luzurigal Mims, LLP 126
50 Immigration St., Ste. 200
Charleston, SC 29403

Patrick T. Morrissey, Esquire
Clawson and Staubes, LLC
Seven Farms Drive, Ste. 200
Charleston, SC 29492

Re: Christopher Duvall and Natalie Duvall v. The Ryland Group, Inc. 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/l/a Stark Truss, Inc., d/b/a Carolina Truss Systems, Inc.
CA No.: 2015-CP-08-1213

Dear Mr. Mims, Ms. McIntosh and Mr. Morrissey:

My client, Land Site Services, Inc., served its First Set of Interrogatories and First Requests for Production of Documents upon your client, A.C. Construction, Inc., over thirty (30) days ago. I have yet to receive responses to my discovery requests to your client. Please provide full responses to said discovery requests or contact me within the next fourteen (14) days, or my client will be inclined to file a Motion to Compel regarding these discovery requests.

If you have any questions, please give me a call.

Sincerely,

John E. Rogers, II

John E. Rogers, II

JERII/kpk

THE WARD LAW FIRM, P.A.

ATTORNEYS AT LAW
POST OFFICE BOX 5663
SPARTANBURG, SOUTH CAROLINA 29304

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E-mail: jrogers@wardfirm.com
Direct No. 864-591-2366

June 3, 2016

The Honorable Mary P. Brown
Berkeley County Clerk of Court
PO Box 219
Moncks Corner, SC 29461-0219

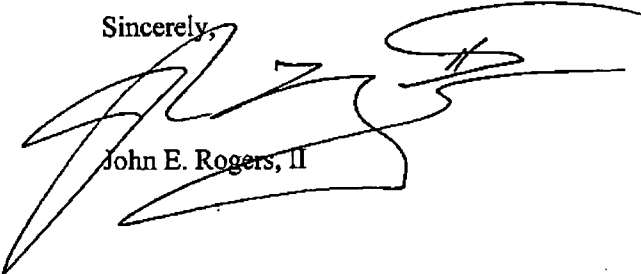
RE: Christopher Duvall and Natalie Duvall v. The Ryland Group, Inc. v. Land Site Services, Inc., Carolina Consulting Engineers, Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc., d/b/a Carolina Truss Systems, Inc.
CA No.: 2015-CP-08-1213

Dear Ms. Brown:

Enclosed please find one (1) original and one (1) copy of Defendant, Land Site Services, Inc.'s, Motion to Compel, Motion Cover Sheet, a check for \$25.00 for filing fees, and Certificate of Service in the above-referenced case. Please file the originals and mail the file-stamped copies back to me in the enclosed postage-paid, self-addressed envelope.

If you have any questions, or if you need any further information, please give me a call.

Sincerely,


John E. Rogers, II

JERII/kpk
Enclosures

cc: James Taylor Anderson, III, Esquire
Thomas C. Hildebrand, Jr., Esquire
Olesya V. Vaskevich, Esquire
Kevin W. Mims, Esquire
Carolina C. McIntosh, Esquire
Mark S. Barrow, Esquire
Christy E. Mahon, Esquire
James E. Scott, IV, Esquire
Perry Buckner, Esquire
Camden Hodge, Esquire
Mr. Byron Braddy

Common Pleas

Clerk : Mary P. Brown
300 B California Avenue
Moncks Corner, SC 29461
Phone:(843) 719-4400 Fax:(843) 719-4509

Received From: Rogers, John Elliott II
The Ward Law Firm, P.A.
Spartanburg, SC 29304
Paying for: Land Site Services Inc.,
Transaction Type: Payment
Payment Type: Check
Total Paid:

Date: 6/ 8/2016
Receipt #: 6068577
Clerk: c08kclarke

Reference #: 59504
Comment:
Non-Refundable

\$25.00
\$25.00

You may check the status of your Berkeley case at:
<http://www.sccourts.org/caseSearch/>

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) THE NINTH JUDICIAL CIRCUIT

Christopher Duvall and Natalie Duvall,) Civil Action No.: 2015-CP-08-01213
)

Plaintiffs,)

v.)

The Ryland Group, Inc.,)

Defendant.)

AFFIDAVIT OF MIKE DYER

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.)

FILED
16 JUN 22 AM 10:25
CLERK OF COURT
BERKELEY COUNTY, S.C.

PERSONALLY APPEARED BEFORE ME, the undersigned, Mike Dyer, who after being duly sworn, deposes and says:

1. I am Mike Dyer, Risk Manager for Stark Truss Co., Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, incorrectly referred to as 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.
2. Upon information and belief, Stark Truss Company, Inc. purchased the assets only of Carolina Truss Systems, Inc. effective July 31, 2002. The business and plant was located in Summerville, South Carolina. Stark initially operated the business under the name of Stark Truss Company of Summerville, LTD dba Carolina Truss Systems.

CM

Upon information and belief, Stark changed the name to Carolina Total Supply around perhaps 2006 and it operated under that name for approximately one (1) year. Then the name was changed to Stark Truss Company, Inc. permanently. Regardless of the name, the business and plant were located in Summerville, South Carolina.

3. Throughout this affidavit for ease of reference all of the Stark entities that it has ever owned or names it has worked under are referred to as Carolina Truss Systems or as "we." The use of the name Carolina Truss and "we" throughout specifically encompasses all of the entities connected to Stark Truss Company, Inc. as named in the lawsuit for ease of reference only and shall not be construed to mean that the Defendant is properly named in the lawsuit.
4. We have searched the records for Carolina Truss Systems which includes all of Stark's records.
5. We located an electronic record for Order # 0602179-T.
6. The "T" stands for Truss.
7. The Job name was Lot 74 The Reserve with a delivery address of 1502 Marsh Reed Court, Goose Creek, SC in Berkeley County.
8. The order was for roof trusses only.
9. The roof trusses would have been built in the Summerville, South Carolina Plant.
10. The roof trusses at issue would have been manufactured within the State of South Carolina.
11. The alleged contract attached as Exhibit G to Ryland's Memorandum is with Carolina Truss with an address of PO Box 1049, Summerville, SC with a phone number of 843-875-0550.
12. The alleged contract is signed by Michael Redman, a then employee of Carolina Truss, who was located within South Carolina and never worked at any other location and had no responsibilities at any other location other than in the State of South Carolina.
13. The trusses were quoted, ordered, sold, designed, manufactured, and delivered in the State of South Carolina.
14. The only involvement of the company outside the State of South Carolina was the accounting performed by the corporate headquarters in Ohio. This accounting process in no way had any involvement in the transaction which included the customer relations, communication, fulfillment and manufacturing related to the job which all occurred in the State of South Carolina.
15. All of Ryland's communications with the sales, design and manufacturing for the products in question would have been conducted entirely within the State of South Carolina.
16. Although Ryland may have sent a check to Canton, Ohio, all of the manufacturing, delivery, and supply of any materials were solely within the State of South Carolina.
17. Exhibit H to Ryland's Memorandum clearly lists the address for Carolina Truss Systems in Summerville, South Carolina with delivery in South Carolina from South Carolina with a sold to as Ryland Homes in South Carolina.

18. In summary, this order was made in South Carolina and fulfilled in South Carolina.

FURTHER AFFIANT SAYETH NOT.

Mike Dyer - Risk Mgt.
Mike Dyer

SWORN TO and subscribed before me
this 20th day of June, 2016

Steph Benson
Notary Public for Ohio
My Commission Expires: 09-16-2018



Stephanie Benson
Notary Public, State of Ohio
My Commission Expires 09-16-2018



SWEENY WINGATE & BARROW P.A.
June 21, 2016

Reply to: Main Office

Christy E. Mahon
(803) 256-2233 x7157
cem@swblaw.com

VIA OVERNIGHT DELIVERY

The Honorable Mary P. Brown
Berkeley County Clerk of Court
300-B California Avenue
Post Office Box 219
Moncks Corner, SC 29461

RE: Christopher Duvall and Natalie Duvall v. Stark Truss Company, et al.
Civil Action No.: 2015-CP-08-01213
Our File: 1395-10140

Dear Ms. Brown:

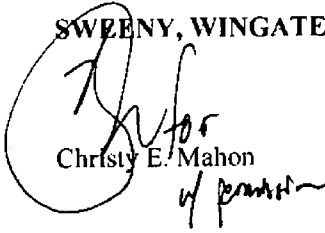
Enclosed please find the original and one (1) copy the Affidavit of Mike Dyer in the above-referenced matter. I would appreciate your filing the original and returning the remaining clocked copy to me in the envelope provided.

By copy of this to all counsel of record, I am serving them with the same.

Should you have any questions, please do not hesitate to contact me.

Yours truly,

SWEENY, WINGATE & BARROW, P.A.


Christy E. Mahon

CEM/mha
Enclosures

VIA OVERNIGHT DELIVERY AND ELECTRONIC TRANSMISSION

cc: Thomas C. Hildebrand, Jr., Esquire

VIA ELECTRONIC TRANSMISSION AND FIRST CLASS MAIL

cc: All counsel of record

MAIN OFFICE: T • 803-256-2233 F • 803-256-0177 1515 LADY ST. (20300) • Post Office Box 12120 • COVINGTON, SC 29024
PHELPS OFFICE: T • 813-878-0190 F • 844-878-0103 115 CARGILL WAY • Suite B • Post Office Box 88 • HARTSVILLE, SC 29351

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) THE NINTH JUDICIAL CIRCUIT

Christopher Duvall and Natalie Duvall) Civil Action No.: 2015-CP-08-01213

Plaintiff,

v.

The Ryland Group, Inc.

Defendant.

The Ryland Group, Inc.

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 LAND SITE
SERVICES' MEMORANDUM OF LAW IN
OPPOSITION TO THE RYLAND GROUP'S
MOTION TO COMPEL ARBITRATION

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.

COMES NOW Third Party Defendants Land Site Services, Inc. ("Land Site") 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") submitting this Memorandum of Law in Support of their Opposition to The Ryland Group's ("Ryland") Motion to Compel Arbitration.

FACTS

The subject home was completed on September 18, 2006. Ryland thereafter sold it to the original purchasers. Plaintiffs purchased the home on December 31, 2008 from the original purchasers. Plaintiffs brought the instant suit against Ryland on May 20, 2015, alleging numerous structural defects, including, but not limited to, cracking in the home's foundation. Ryland brought a Third-Party Complaint against three of its subcontractors, including Land Site and Stark, based on their alleged respective work done and/or materials provided for the job.

Ryland alleges that Land Site and Stark entered into identical Subcontractor Agreements with Ryland. (Alleged Subcontractor Agreement between Ryland and Stark, July 5, 2002, attached as Exhibit 1). Stark denies the applicability of the alleged contract. Ryland has produced in discovery and referenced in its supporting memorandum an alleged Subcontractor Agreement with Land Site dated June 19, 2002, and an alleged Subcontractor Agreement with Stark dated July 5, 2002 claiming that these alleged Subcontractor Agreements govern the parties' relationship with respect to Plaintiffs' house. (Alleged Subcontract Agreement between Ryland and Land Site, June 19, 2002, attached as Exhibit 2). There is no mention of Plaintiffs' house in these alleged Agreements, which predate construction of the home by four years. Ryland also produced and referenced a Scope of Work for Clearing, Grading, Backfill & Excavation executed on October 23, 2006, which postdates the subject home's completion. (Scope of Work between Ryland and Land Site, October 23, 2006, attached as Exhibit 3). Stark and Landsite therefore both take the position that the alleged Subcontractor Agreements do not apply, and Landsite further argues that the Scope of Work does not govern Ryland and Land

Site's relationship with respect to Plaintiffs' home, and therefore cannot serve as the basis for Ryland's motion to compel arbitration.

Assuming for purposes of this memorandum only, however, that these documents apply to Landsite and Stark, the arbitration language on which Ryland relies provides as follows:

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.

Id. ¶ 16.

ARGUMENT

When a party files a motion to compel arbitration, the Court must determine the applicability and enforceability of the arbitration clause at issue to the parties. *See BG Grp., PLC v. Republic of Argentina*, 134 S. Ct. 1198, 1206-07 (2014). Courts determine the existence and applicability of an arbitration agreement by applying ordinary principles that govern contract formulation. *See Arrants v. Buck*, 130 F.3d 636, 640 (4th Cir. 1997); *Towles v. United HealthCare Corp.*, 338 S.C. 29, 37, 524 S.E.2d 839, 844 (Ct. App. 1999). The arbitration clauses in Ryland's alleged Subcontractor Agreements with Land Site and Stark (1) are not applicable or enforceable against Land Site or Stark based upon their plain language; (2) are not governed by the Federal Arbitration Act (FAA), and (3) and are not in compliance with the South Carolina Uniform Arbitration Act (UAA).

I. THE PLAIN LANGUAGE OF THE ARBITRATION CLAUSE IN THE ALLEGED SUBCONTRACTOR AGREEMENTS EXPLICITLY EXCLUDES THE SUBJECT ACTION FROM ARBITRATION.

The plain and unambiguous language of the arbitration clauses in the alleged Subcontractor Agreements explicitly excludes Ryland's claims against Land Site and Stark from arbitration under the facts of this case.

Arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). General contract principles apply in evaluating the enforceability of an arbitration clause. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24, 644 S.E.2d 663, 668 (2007); *Carlson v. South Carolina State Plastering, LLC*, 404 S.C. 250, 258-59, 743 S.E.2d 868, 873 (Ct. App. 2013). If a contract's language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect. *Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 46, 747 S.E.2d 178, 184 (2013) (quoting *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004)).

The arbitration clause at issue begins as follows: **"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."** (Emphasis added). The arbitration clause contains two independent exclusions: (1) If either party has been sued by someone other than a party to the

Subcontract Agreement OR (2) if it would be appropriate for complete resolution for either party to file cross-claims in a legal action not initiated by either party to the Subcontractor Agreement.

The first exclusion precludes arbitration in this case. The homeowners filed this suit against Ryland. They did not sue Land Site or Stark. The homeowners are not parties to Ryland's alleged Subcontractor Agreements with Land Site and Stark. Because Ryland has been sued by someone other than a party to the alleged Subcontractor Agreements, the arbitration clause does not apply.

Ryland did not alter the character of the lawsuit by filing its Third-Party Complaint against Land Site and Stark. This action remain "a legal action not initiated by either of the parties" to the alleged Subcontractor Agreement. In addition, Ryland has asserted claims not just for breach of contract and contractual indemnity but also for equitable indemnity, breach of warranty, and negligence.

Therefore, the arbitration clause in the alleged Subcontractor Agreements plainly, clearly, and unambiguously excludes Ryland's claims from arbitration.

II. THE FEDERAL ARBITRATION ACT DOES NOT APPLY TO RYLAND'S ALLEGED SUBCONTRACTOR AGREEMENTS WITH LAND SITE AND STARK.

As discussed below, the alleged agreements with Land Site and Stark clearly do not meet the requirements of the South Carolina Uniform Arbitration Act (the "UAA"), and therefore the only way Ryland can compel arbitration is if the matter is subject to the FAA. Even if the alleged Subcontractor Agreements did not preclude arbitration based on their own unambiguous language, the FAA does not apply.

The applicability and enforcement section of the FAA provides:

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter

arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C.A. § 2 (emphasis added).

In order for the FAA to apply and govern, the alleged Subcontractor Agreement must evidence foreign or interstate commerce. *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 454, 730 S.E.2d 312, 315-16 (2012). “Despite [the] expansive interpretation of the FAA, the FAA does not reflect a congressional intent to occupy the entire field of arbitration.” *Zabinski v. Bright Acres Assocs.*, 346 S.C. at 591, 553 S.E.2d at 115-16. Further, the FAA does not require arbitration where the parties do not agree to do so, “nor does it prevent parties who do agree to arbitrate from excluding certain claims from the scope of their arbitration agreement.” *Id.* at 591-92, 553 S.E.2d at 116. In other words, the primary goal of the FAA is to ensure that private agreements to arbitrate are enforced according to their terms, and not to impose the terms of the FAA when the parties have agreed otherwise. *Id.* at 592, 553 S.E.2d at 116 (citations omitted).

Ryland agrees that they did not expressly state or agree that the construction and sale involved interstate commerce but Ryland makes the blanket statement that “South Carolina courts essentially accept it as a given that construction involves interstate commerce.” *See* Memorandum of Ryland p.8 (“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 a given that construction involves interstate commerce.”). This is not true. South Carolina Courts conduct a fact intensive inquiry to determine whether the construction involved interstate commerce. Ryland cites *Episcopal Housing Corp. v. Fed. Ins. Co.*, 269 S.C. 631, 239 S.E.2d 647 (1977), but that Court

held that in determining whether the FAA applied they must determine if there is a written provision for arbitration in the contract, if the contract evidences a transaction involving commerce, if the Court is satisfied that the issue involved in suit is referable to arbitration under the written agreement, and if the applicant for the stay is not in default in proceeding with such arbitration. *Episcopal Housing Corp. v. Fed. Ins. Co.*, 269 S.C. at 637, 239 S.E.2d at 650. The Court then went on to specifically examine whether or not the "contracts evidence a transaction involving commerce." *Id.*

The Court then went on to make that factual determination and found the following:

Initially, the specifications of Lafaye are replete with references to equipment and materials to be furnished from outside South Carolina. The following corporations and their locations are found at the designated pages of Lafaye's specifications:

1. Master Builders Co., Cleveland, Ohio p. 3-9
2. Finestone Corporation., Detroit, Michigan p. 7-5
3. Tnemec Co., Inc., North Kansas City, Missouri p. 9-16
4. L & M Surco, Atlanta, Georgia p. 9-13
5. Master Mechanics Co., Cleveland, Ohio p. 9-16
6. Desco Chemical Co., Inc., Buffalo, New York p. 9-16
7. Vitricon, Inc., Woodside, New York p. 9-16
8. Armstrong Cork Co., Lancaster, Pa. p. 2-4
9. W. S. Tyler Co., Cleveland, Ohio p. 14-10
10. Globe Van Dorn, Milwaukee, Wis. p. 19-10
11. Otis Elevator Co., New York, N.Y. p. 14-10
12. Danlstrom Metallic Door Co., Jamestown, N.Y. p. 14-13
13. Noonan-Laing, Inc., York, Pa. p. 3-1

Moreover, the following pages of the specifications refer to manufacturers, products and trade names which are certainly sufficient to put EHC on notice that materials and equipment from outside South Carolina would be used in the construction of the Finlay House: pp. 3-1, 3-10, 3-13, 3-15, 3-16, 4-2, 5-7, 5-9, 7-2, 7-3, 7-4, 8-2, 8-5, 9-8, 9-10, 9-19, 10-1, 10-5, 10-6, 11-1, 11-2, 12-2, 12-4, 14-5, 15A-5, 15A-6, 15A-7, 15A-9, 15A-10, 15A-13, 15A-15, 15A-16, 15B-9, 15B-11, 15B-12, 15B-13, 15B-15, 15B-16, 15B-19, 15B-24, 15B-25, 16-5, 16-7, 16-9. FHA Form 2328, dated July 22, 1971, is a part of the contract documents which lists the contractor's cost breakdown and names all subcontractors involved in the construction of the Finlay House. The following out-of-state subcontractors are listed on this document: Acoustics, Inc.; Truzillo Construction; Miles Plastering Co.; Westinghouse Electric Corp.

In light of the foregoing, the contract documents "evidence transactions in commerce" on their face. As an additional ground for holding that the contracts between the parties evidence transactions in commerce, one need only consider the nature of the project and the actual work performed in fulfillment of the contractual obligations. It would be virtually impossible to construct an eighteen (18) story apartment building between 1971 and 1973 with materials, equipment and supplies all produced and manufactured solely within the State of South Carolina. The affidavit of J. D. McCall, Jr., President of Lafaye indicates that shop drawings from all over the country were utilized by the architects to prepare the specifications prior to July 22, 1971. The affidavit of Robert L. Sumwalt, Jr., Senior Vice President of McCrory, indicates that labor, supplies and materials from all over the country were utilized in the construction of the Finlay House.

Episcopal Housing Corp. v. Fed. Ins. Co., 269 S.C. at 639-40, 239 S.E.2d at 651-51.

None of this is the case here. This case involves the clearing and preparation of land and the supplying of roof trusses for a single-family home in 2006, all of which occurred in South Carolina. The alleged agreements did not state that the arbitration was to be pursuant to the FAA and did not even mention the FAA at all.

Ryland asserts that the claims against the subcontractors "implicate" interstate commerce. Ryland then asserts that Ryland has provided specific instances of the involvement of interstate commerce in the construction of the subject residence and then refers to the affidavit of Michael Boyle. The only alleged "facts" by Ryland as to interstate commerce by Ryland are its allegations that 1) the Stark entities are Ohio corporations and the payment to Stark for its work and materials provided for the subject residence was acquired across state lines as payment was sent to Canton, Ohio; 2) The Ryland Group, Inc. who executed the agreement with the original purchasers is incorporated in Maryland (*see* Ryland's Exhibit A); 3) the Mortgage for the subject residence signed by the original purchasers was organized under the laws of Pennsylvania (*see* Ryland's Exhibit D); and 4) "interstate communications and products that were manufactured

outside the State of South Carolina were used relative to the construction and sale of the residence.”

None of the above either alone or taken together are sufficient to establish interstate commerce and are not sufficient to establish that the FAA would apply. *Bradley v. Brentwood Homes, Inc.*, 398 S.C. at 456, 730 S.E.2d at 317 (“adher[ing] to the view that the development of real estate is an inherently intrastate transaction”); *id.* at 458, 730 S.E.2d at 317–18 (noting the FAA generally does not apply to residential real estate transactions that have no substantial or direct connection to interstate commerce); *id.* at 459, 730 S.E.2d at 318 (stating if ancillary factors in the purchase agreement for a residential home, such as out-of-state financing or a national warranty, were enough to constitute interstate commerce, “then every transaction that involved these ancillary factors would be subject to the FAA”).

Although Ryland asserts that the Ryland Group, Inc. who executed the agreement with the original purchasers is incorporated in Maryland, Exhibit A to Ryland’s Memorandum clearly shows, the contract is with Ryland Homes Charleston Division with an address of 3955 Faber Place, Suite 100, North Charleston, SC 29405 as the Seller. Even Ryland cannot point out anything in the agreement which in any way references interstate commerce. The mortgage is not sufficient. *See Bradley v. Brentwood Homes, Inc.*, 398 S.C. at 318, 730 S.E.2d at 459 (Bradley’s use of a North Carolina branch of JPMorgan Chase Bank & Co., a national financial institution, also did not bring the sale of the home within interstate commerce as the use of this lender was tangential to the performance of the Agreement). And the blanket statement that interstate communications and products that were manufactured outside the State of South Carolina were used relative to the construction and sale of the residence is insufficient to establish anything without the requisite facts to establish such an assertion.

As to the allegations as to Stark, these are unfounded and provide no basis for the establishment of interstate commerce. *See* Affidavit of Mike Dyer attached as Exhibit 4. Upon information and belief, Stark Truss Company, Inc. purchased the assets only of Carolina Truss Systems, Inc. effective July 31, 2002. The business and plant was located in Summerville, South Carolina. Stark initially operated the business under the name of Stark Truss Company of Summerville, LTD dba Carolina Truss Systems. Upon information and belief, Stark changed the name to Carolina Total Supply around perhaps 2006 and it operated under that name for approximately one (1) year. Then the name was changed to Stark Truss Company, Inc. permanently. Regardless of the name, the business and plant were located in Summerville, South Carolina. The Job name was Lot 74 The Reserve with a delivery address of 1502 Marsh Reed Court, Goose Creek, SC in Berkeley County. The roof trusses would have been built in the Summerville, South Carolina Plant. The roof trusses at issue would have been manufactured within the State of South Carolina. The alleged contract attached as Exhibit G to Ryland's Memorandum is with Carolina Truss with an address of PO Box 1049, Summerville, SC with a phone number of 843-875-0550. The alleged contract is signed by Michael Redman, a then employee of Carolina Truss, who was located within South Carolina and never worked at any other location and had no responsibilities at any other location other than in the State of South Carolina. The trusses were quoted, ordered, sold, designed, manufactured, and delivered in the State of South Carolina. The only involvement of the company outside the State of South Carolina was the accounting performed by the corporate headquarters in Ohio. This accounting process in no way had any involvement in the transaction which included the customer relations, communication, fulfillment and manufacturing related to the job which all occurred in the State of South Carolina. All of Ryland's communications with the sales, design and manufacturing for

the products in question would have been conducted entirely within the State of South Carolina. Although Ryland may have sent a check to Canton, Ohio, all of the manufacturing, delivery, and supply of any materials were solely within the State of South Carolina. Exhibit H to Ryland's Memorandum clearly lists the address for Carolina Truss Systems in Summerville, South Carolina with delivery in South Carolina from South Carolina with a sold to as Ryland Homes in South Carolina. In summary, this order was made in South Carolina and fulfilled in South Carolina. Affidavit of Mike Dyer.

Therefore, there is no factual basis to find that the transactions involving this single family residence involve interstate commerce such that the FAA applies. Ryland asserts that "South Carolina courts essentially accept it as given that construction involves interstate commerce" under *Episcopal Housing Corp. v. Fed. Ins. Co.*, 269 S.C. 631, 640, 239 S.E.2d 647, 652 (1977).¹ However, the court in *Episcopal* recognized that specific documents in that case showed transactions involving interstate commerce on their face. *Id.* at 638, 239 S.E.2d at 650. The court noted over 40 specific references in the contract to out-of-state equipment, materials, manufacturers, subcontractors, and products. *Id.* at 639-40, 239 S.E.2d at 651. "The contract documents 'evidence transactions in commerce' on their face." *Id.* at 640, 239 S.E.2d at 652.

The alleged Subcontractor Agreements at issue in this case do not evidence interstate commerce. The alleged contracts contain no mention of any out-of-state equipment, materials, manufacturers, or products. Therefore, the FAA does not apply.

¹ Ryland also asserts that the FAA is binding in state courts and supersedes inconsistent state law under *Toler's Cove Homeowners Ass'n, Inc. v. Trident Constr. Co., Inc.*, 355 S.C. 605, 611, 586 S.E.2d 571, 584 (2003). *Toler's* held the FAA applied and the contract evidenced interstate commerce in the construction of a condominium complex when the lower court took judicial notice of the fact the agreement involved interstate commerce and neither party took issue with that finding. *Id.* It was therefore the law of the case and not examined by the Court.

Moreover, the Supreme Court of South Carolina “has continued to adhere to the view that the development of real estate is an *inherently intrastate transaction*.” *Bradley v. Brentwood Homes, Inc.*, 398 S.C. at 456, 730 S.E.2d at 317; *Zabinski v. Bright Acres Assocs.*, 346 S.C. at 595, 553 S.E.2d at 117-18 (2001) (emphasis added). The court in *Bradley* held that the sale of a home does not involve interstate, but intrastate commerce. *Bradley v. Brentwood Homes, Inc.*, 398 S.C. at 459-60, 730 S.E.2d at 317-18. The court arrived at this conclusion even though: (1) the terms of the agreement specified that any warranty claim be submitted to a national warranty office in Georgia; (2) the house was constructed using materials, subcontractors, and suppliers from outside of South Carolina; and (3) the home buyer was financed by a North Carolina lender. *Id.* at 456, 730 S.E.2d at 316.

In *Bradley v. Brentwood Homes, Inc.*, *supra*, Bradley and Brentwood Homes entered into a Home Purchase Agreement (the “Agreement”) for the purchase of a home located in North Myrtle Beach, South Carolina. In the Agreement, Bradley and his wife were designated as the purchasers and Brentwood Homes was designated as the seller. Pursuant to the Agreement, Bradley agreed to purchase a completed dwelling wherein Brentwood Homes acted as a seller of the completed dwelling rather than as a contractor for the construction of the dwelling. The closing of the home took place on March 2, 2007. On July 31, 2009, Bradley initiated a lawsuit against Brentwood Homes in which he alleged numerous **construction defects** in the dwelling.

In his Complaint, Bradley identified causes of action for fraud, negligence, and breach of implied warranty. Brentwood Homes moved to compel arbitration. Brentwood Homes claimed the Agreement “on its face involves interstate commerce” as it provides that the Seller will purchase a warranty from 2-10 HBW Warranty, or such other national warranty, and that claims would be submitted to the East Region of 2-10 HBW, which is located in Tucker,

Georgia. Additionally, Brentwood Homes supplemented its motion with affidavits to establish that the home purchase was financed by a North Carolina branch of JPMorgan Chase Bank & Co., and that Brentwood Homes “used subcontractors, materials and suppliers from outside of the State of South Carolina” in the construction of Bradley's home.

The Court held that to ascertain whether an arbitration agreement implicates interstate commerce and the FAA, “the court must examine the agreement, the complaint, and the surrounding facts.” *Bradley v. Brentwood Homes, Inc.*, 398 S.C. at 455, 730 S.E.2d at 316. The Court found that there was insufficient evidence to establish interstate commerce and the FAA did not apply.

This Court must determine whether the alleged Subcontractor Agreements evidence transactions involving interstate commerce. This question is answered by looking at the essential character of the alleged Subcontractor Agreement. *Bradley*, 398 S.C. at 455, 730 S.E.2d at 316. Here, Ryland has failed to reference in any part of the alleged Subcontractor Agreements with Land Site and Stark any information that evidences a transaction involving interstate commerce. The alleged contracts between Land Site and Ryland and Stark and Ryland do not in any way evidence interstate commerce, and Ryland cannot try to use any of its own dealings with other parties to establish that these alleged contracts involve interstate commerce.

Ryland relies only on its conclusory allegations that the alleged 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.”²

² The quoted text Ryland relies on in its assertion comes from *Blanton v. Stathos*, 351 S.C. 534, 541, 570 S.E.2d 565, 569 (Ct. App. 2002), and not from the alleged Subcontractor Agreements. There is no provision in the alleged Subcontractor Agreements stating that the parties’ work could not be completed without materials from interstate commerce.

However, Ryland has not identified any specific materials in the alleged Subcontractor Agreements or any reference in the alleged Agreements evidencing interstate commerce.

In addition, for the contract at issue between Ryland and the Plaintiffs, the FAA still would not apply because that suit centers on the purchase of the house which is exactly analogous to *Bradley v. Brentwood Homes, Inc., supra*. The Plaintiff's claims against Ryland are exactly on point with *Bradley*. The Plaintiffs have sued Ryland in regard to claims arising from the warranty that springs from the sale of the residence and therefore the FAA would not apply to those claims or any alleged subcontractor agreements. *Bradley v. Brentwood Homes, Inc., supra* (a builder-vendor's contract solely for the sale of a single-family house does not involve interstate commerce even if out-of-state materials, subcontractors and financing was used; hence, the FAA does not apply).

Accordingly, the FAA does not apply, and the Court should deny Ryland's Motion to Compel Arbitration.

III. THE ARBITRATION CLAUSE FROM THE ALLEGED SUBCONTRACTOR AGREEMENTS IS UNENFORCEABLE BECAUSE IT IS NOT IN COMPLIANCE WITH THE SOUTH CAROLINA UNIFORM ARBITRATION ACT.

South Carolina's Uniform Arbitration Act (UAA) requires:

(a) A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. 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.*

S.C. Code Ann. § 15-48-10 (emphasis added).

These elements are to be strictly adhered to in order to satisfy the notice requirements. *Zabinski v. Bright Acres Assocs.*, 346 S.C. at 589, 553 S.E.2d at 114. No other variation is acceptable. *See Zabinski v. Bright Acres Assocs., supra.*

Ryland's alleged Subcontractor Agreements with Land Site and Stark do not meet the requirements of the UAA. The arbitration clauses in the respective alleged Subcontractor Agreements are not capitalized, bolded, underlined, or rubber stamped. Moreover, the arbitration clauses are buried on the third page of the alleged agreement. These arbitration clauses do not comply with the explicit requirements of the UAA. Accordingly, the alleged Subcontractor Agreements identified by Ryland are not subject to arbitration.

IV. RYLAND HAS WAIVED ANY ALLEGED RIGHT TO COMPEL ARBITRATION.

Land Site and Stark join in the arguments by Plaintiffs that Ryland has waived any alleged right to arbitration.

V. RYLAND'S DISPUTE RESOLUTION PROCEDURE ALLEGEDLY WITH THE HOMEOWNER IS UNCONSCIONABLE.

Land Site and Stark join in the arguments by Plaintiffs that the dispute resolution procedure in Ryland's Home Warranty Program Insured Limited Warranty is unconscionable.

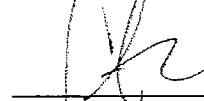
CONCLUSION

The arbitration clauses in Ryland's alleged Subcontractor Agreements with Land Site and Stark are not applicable or enforceable against Land Site or Stark based upon their plain language. The provision in the alleged contracts simply does not provide for arbitration in this matter. The FAA is not applicable because the alleged agreements did not involve interstate commerce. Finally, the arbitration provision in the alleged agreements is not in compliance with the South Carolina Uniform Arbitration Act, and therefore is not enforceable under the Act.

For the aforementioned reasons, Third-Party Defendants Land Site and Stark respectfully request that this Court deny Ryland's Motion to Compel Arbitration.

Respectfully submitted,

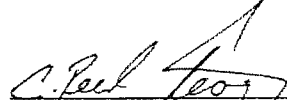
SWEENEY, WINGATE & BARROW, P.A.



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Post Office Box 12129
Columbia, SC 29211

**ATTORNEYS FOR THIRD-PARTY
DEFENDANTS 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.**

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Spartanburg, SC 29304

**ATTORNEYS FOR THIRD-PARTY
DEFENDANT LAND SITE SERVICES, INC.**

Columbia, South Carolina

June 26, 2016

EXHIBIT 1



THE RYLAND GROUP, INC.
SUBCONTRACTOR AGREEMENT
GENERAL TERMS

SUBCONTRACTOR: Carolyn Trues RYLAND DIVISIONS: 443
Address: PO Box 1049 Greenville SC (Insert all divisions for which work
Phone No: 843 875 8550 24989 is performed under this contract)
Effective Date: _____

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 contract 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 Lien 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.

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Subcontractor's Initials

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Revised 7/25/01

(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 NEGLIGENCE 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 NEGLIGENCE ACT OR OMISSION, OR WRONGFUL ACT OF RYLAND OR RYLAND'S AGENTS IS GREATER OR LESSER THAN ANY ALLEGED NEGLIGENCE 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 FIA 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 homeowner, 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.

CJS/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-sue 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, superseding 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 confined 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.

____ (SUBCONTRACTOR)

License # _____

Expiration Date _____

By: _____ (SEAL)

By: _____ (SEAL)

Name: Garvin Garza

Name: Patricia Rodriguez

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 rolled upon by purchasers procuring improvements from Owner, by mortgagees making mortgage loans to said purchasers, and title insurance companies insuring title 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 KYLAND 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 processors 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 Notice(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 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 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-/VII. - 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. <i>It is imperative that this second policy be issued 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.</i> 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, Bx. Bodily Injury by Accident \$500,000, Bodily Injury by Disease, Bx. 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 - Subsistence, 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 (Bx. Occurrences) \$1,000,000. Property Damage (Bx. Occurrences) \$1,000,000. Personal Injury & Advertising Injury Limit \$ 50,000. Fire Damage Limit (any one Fire)

CIC/MD
Subcontractor's Initials

RYTPBSub.400

Revised 7/25/01

Subcontractors' general liability insurance policy. - The additional insured status must be provided only on a CG 2010 (11/83) Additional Insured Endorsement or on a CG 2026 (11/83) 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.	
<u>C.</u> <u>BUSINESS AUTO LIABILITY</u> — covering any automobile, including hired and non-owned autos - The certificate 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

C13/APR
Subcontractor's Initials
7

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

3/11/93
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 this 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.T.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: [Signature]
Signature: _____
Name: Michael B. Redman
Title: General Manager
Date: 7/5/02

By Buyer: [Signature]
Signature: _____
Name: GAVIN GREEN
Title: PURCHASING MANAGER
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 (b). 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 bill for the appropriate Division office unless Seller has arranged to use Buyer's shipping process. Payment is deemed subject to four, 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 destination sites or other destinations specified by Buyer in an order which there is no encumbrance 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 Products under this Agreement up to arrival at the final destination. To the extent Buyer rejects Products 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 collect with no prior notice. Buyer may replace at Seller's cost any shortages in delivery.
5. **PACKING & CANTAGE** - No charge shall be allowed for packing, loading, or cartage. Packages and loadings must show Buyer's purchase order number, gross, tare and net weight under separate, 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, logs, logs, set 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 Products 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 site 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 required 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 extend it to any third party, 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 its 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. **LOWEST 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 those in effect under this Agreement, as reasonably determined by Buyer, then within ten (10) days of Buyer notifying Seller, Seller shall effect either that (a) 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 (b) 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 (a).
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 date, shall change Buyer's Price to the Price. Buyer shall have the right, from time to time, to take such action as is 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, 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 completed, 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 use 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 invoices or other documents relating to this transaction which purports 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 deficiencies or nonconformities (Products) discovered within the maximum time permitted by law. Any claim made by Buyer under this Agreement for indemnification or warranty 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 attorney's fees, caused by, resulting from, or connected with the Product or Seller's negligent seller 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 impracticability.
20. **DELAYS**
 - a. When Seller can not perform in accordance with Section 3 of this Agreement, Seller will provide updated Products acceptable to Buyer without delay at the Price specified in this Agreement for the ordered Product.
 - b. Seller shall be liable for any and all damages incurred by Buyer by reason of delay 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 either, 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 total production in such a manner as it fits and responsible within the meaning of Section 2-615 of the Uniform Commercial Code then in effect. Deliveries omitted due to any agreed 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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7/7/2001

mya CTC

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. Buyer shall 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 each 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 purchases 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 otherwise in or addition to, any of the terms hereof, irrespective of the timing 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

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Exhibit A

7/23/01

EC 802

EXHIBIT B
TO SUPPLY AGREEMENT

PRICING

Microsoft supply agreement.doc

Exhibit B

7/25/01

085 002

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

Injury Limit

Bodily Injury

Property Damage

Fire Damage Limit (any one fire)

\$1,000,000

\$1,000,000

\$1,000,000

\$1,000,000 (Each Coincurrence)

\$1,000,000 (Each Occurrence)

\$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-/VII.

EXHIBIT 2

THE RYLAND GROUP, INC.
SUBCONTRACTOR AGREEMENT
GENERAL TERMS

SUBCONTRACTOR: LOWE SATE SERVICES RYLAND DIVISIONS: 443
 Address: 1580 PINEHURST BLVD RD (Insert all divisions for which work
 Phone No.: 813-24-6810 is performed under this contract)
 Effective Date: 1/18/02

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 bld 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 amount 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 retainer 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 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.

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Subcontractor's Initials

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(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 DISPUTES 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.

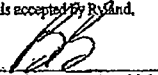
(d) COMPLIANCE WITH APPLICABLE OCCUPATIONAL SAFETY AND HEALTH STANDARDS IS AN EXPRESS CONDITION OF WORK UNDER THIS AGREEMENT.

(e) Addendum 5 applies to all FFA 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 home buyer, 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

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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.

____ (SUBCONTRACTOR)

License # _____

Expiration Date _____

By: _____ (SEAL)

By: _____ (SEAL)

Name: GAVIN GREEN

Name: LAND SITE SERVICES

Title: DEVELOPER

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 instrument 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 INQUIRES TO ____ AT ____.

TYPE OF COVERAGE	AMOUNT OF COVERAGE
A. WORKER'S COMPENSATION - and Occupational Disease <u>Coverage in accordance with the laws of the State within whose jurisdiction the work is performed.</u> - 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. <u>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.</u> 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 90-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	<u>Employers Liability:</u> \$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

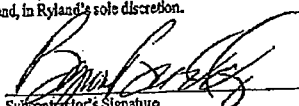
THE RYLAND GROUP, INC.

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

- (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. Included, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or retention; 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 consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The Subcontractor will send to each labor union or representatives 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 paragraph (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 subcontract 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.

During the performance of this Agreement, the Subcontractor agrees as follows:

FOR ALL FBA APPROVED PROJECTS

ADDENDUM 5

THE RYLAND GROUP, INC.

SUBCONTRACTOR AGREEMENT

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 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 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 01/10/77 BY AND BETWEEN THE RYLAND GROUP, INC. AND
LAND 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

EXHIBIT 3

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/Compliance 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 doors 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).

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- a. Removing any incidental trash resulting from his/her work on-site and placing in a designated area.

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- D. 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, 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.

IA Purchasing Department Scopes - Revised '06 General Conditions '06.DOC
Revised: 9/13/2006

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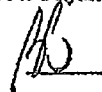
6. The job site must be kept neat and clean at all times. Any scraps, paper, etc., must be picked up daily. Trash from lunch is not to be left on the job site.
7. The interior and exterior of all homes are to be broom clean at all times to allow each trade to do his work efficiently and safely and to 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 work sites 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 12 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.

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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 monies 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

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Revised: 9/13/2006

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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.

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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. Backfill

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 backfill.
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.

Revised: 9/13/2006
Purchasing Department Scopes - Revised '06 GRADING '06.DOC

Page 2 of 3

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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 conform 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
(CONTRACTOR 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

Revised: 9/13/2006
Purchasing Department Scopes - Revised '06 GRADING '06.DOC

Page 3 of 3

EXHIBIT 4

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) THE NINTH JUDICIAL CIRCUIT

Christopher Duvall and Natalie Duvall,) Civil Action No.: 2015-CP-08-01213

Plaintiffs,)

v.)

The Ryland Group, Inc.,)

Defendant.)

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.)

AFFIDAVIT OF MIKE DYER

PERSONALLY APPEARED BEFORE ME, the undersigned, Mike Dyer, who after being duly sworn, deposes and says:

1. I am Mike Dyer, Risk Manager for Stark Truss Co., Inc. a/k/a Stark Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina Truss Systems, incorrectly referred to as 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.
2. Upon information and belief, Stark Truss Company, Inc. purchased the assets only of Carolina Truss Systems, Inc. effective July 31, 2002. The business and plant was located in Summerville, South Carolina. Stark initially operated the business under the name of Stark Truss Company of Summerville, LTD dba Carolina Truss Systems.

Upon information and belief, Stark changed the name to Carolina Total Supply around perhaps 2006 and it operated under that name for approximately one (1) year. Then the name was changed to Stark Truss Company, Inc. permanently. Regardless of the name, the business and plant were located in Summerville, South Carolina.

3. Throughout this affidavit for ease of reference all of the Stark entities that it has ever owned or names it has worked under are referred to as Carolina Truss Systems or as "we." The use of the name Carolina Truss and "we" throughout specifically encompasses all of the entities connected to Stark Truss Company, Inc. as named in the lawsuit for ease of reference only and shall not be construed to mean that the Defendant is properly named in the lawsuit.
4. We have searched the records for Carolina Truss Systems which includes all of Stark's records.
5. We located an electronic record for Order # 0602179-T.
6. The "T" stands for Truss.
7. The Job name was Lot 74 The Reserve with a delivery address of 1502 Marsh Reed Court, Goose Creek, SC in Berkeley County.
8. The order was for roof trusses only.
9. The roof trusses would have been built in the Summerville, South Carolina Plant.
10. The roof trusses at issue would have been manufactured within the State of South Carolina.
11. The alleged contract attached as Exhibit G to Ryland's Memorandum is with Carolina Truss with an address of PO Box 1049, Summerville, SC with a phone number of 843-875-0550.
12. The alleged contract is signed by Michael Redman, a then employee of Carolina Truss, who was located within South Carolina and never worked at any other location and had no responsibilities at any other location other than in the State of South Carolina.
13. The trusses were quoted, ordered, sold, designed, manufactured, and delivered in the State of South Carolina.
14. The only involvement of the company outside the State of South Carolina was the accounting performed by the corporate headquarters in Ohio. This accounting process in no way had any involvement in the transaction which included the customer relations, communication, fulfillment and manufacturing related to the job which all occurred in the State of South Carolina.
15. All of Ryland's communications with the sales, design and manufacturing for the products in question would have been conducted entirely within the State of South Carolina.
16. Although Ryland may have sent a check to Canton, Ohio, all of the manufacturing, delivery, and supply of any materials were solely within the State of South Carolina.
17. Exhibit H to Ryland's Memorandum clearly lists the address for Carolina Truss Systems in Summerville, South Carolina with delivery in South Carolina from South Carolina with a sold to as Ryland Homes in South Carolina.

18. In summary, this order was made in South Carolina and fulfilled in South Carolina.

FURTHER AFFIANT SAYETH NOT.

Mike Dyer - Risk Mgr.
Mike Dyer

SWORN TO and subscribed before me
this 20th day of June, 2016

Stephanie Benson
Notary Public for Ohio
My Commission Expires: 09-16-2018



Stephanie Benson
Notary Public, State of Ohio
My Commission Expires 09-16-2018

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF Berkeley

Christopher Duvall and Natalie Duvall
☐ Plaintiff

CASE NO.

2015-CP-08-1213

v.

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

The Ryland Group, Inc.
☒ Defendant.

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: Thomas C. Hildebrand, Jr.
Bar No. 2501
Address: 200 Meeting Street, Ste 301
Charleston, SC 29401
phone: 843.727.2653 fax:
email: tomhildebrand@parkerpoe.com. other:

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

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider, Amend and/or Alter Order Denying its Motion to Compel Arbitration
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.

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, SCRPC)
☐ 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)

MAILED
JUL - 8 AM 9:21
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY

) IN THE COURT OF COMMON PLEAS

) CASE NO.: 2015-CP-08-01213

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MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

590

The bases for this Motion are that, among other things, in denying Ryland's Motion to Compel Arbitration, the Court failed to properly apply the Federal Arbitration Act and the federal and South Carolina policies favoring arbitration. Review of the record indicates that Ryland met its burden, and the Court should have entered an order compelling arbitration as requested by Ryland. Because the law favors arbitration and the facts presented to the Court reflect that enforceable arbitration provisions do exist in the relevant contracts between Ryland and the parties Ryland seeks to have participate in arbitration¹, Ryland respectfully submits that the Court should reconsider its prior decision and alter and/or amend its prior Order and instead compel the parties to arbitrate all claims in the above-captioned action.

Further, Ryland seeks reconsideration of the Order pursuant to the law set forth in, among other things, Wilson v. Willis, No. 2014-000946, 2016 WL 806063, at *8-9 (S.C. Ct. App. Mar. 2, 2016) (holding that 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."), and incorporates the arguments set forth therein.

In addition, Ryland seeks reconsideration of the Order because Ryland did not waive its right to arbitrate by engaging in limited discovery pursuant to the law set forth in, among other things, Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371,

¹ See Ryland's Motion to Compel Arbitration, Ryland's Memorandum in Support of Its Motion to Compel Arbitration, and Affidavit of Michael Boyle all filed on March 17, 2016, copies of which are on file with the Berkeley County Clerk of Court, and which materials and the arguments set forth therein are incorporated herein by reference.

388, 759 S.E.2d 727, 736 (2014) ("[T]here is a presumption against finding a party has waived its right to compel arbitration, and a party seeking to prove a waiver of a right to arbitrate carries a heavy burden."); Rich v. Walsh, 357 S.C. 64, 67, 590 S.E.2d 506, 507 (Ct. App. 2003) (a thirteenth month period with limited discovery and one deposition did not demonstrate waiver); General Equip. & Supply Co., Inc. v. Keller Rigging & Constr., SC, Inc., 344 S.C. 553, 557, 544 S.E.2d 643, 645 (Ct. App. 2001) (no waiver where parties availed themselves of court's assistance only twice and only for standard procedures), and incorporates the arguments set forth therein.

In light of the foregoing, Ryland respectfully requests that the Court reconsider its prior decision and alter and/or amend its prior Order and instead compel the parties to arbitrate all claims in this action.

This Motion is supported by the pleadings, the applicable law, any additional affidavits and/or memoranda, and any such other materials as may be served before or at the hearing of the Motion.

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

By: Thomas C. Hildebrand, Jr. / by OVV
Thomas C. Hildebrand, Jr.
843.727.2653 (direct dial)
tomhildebrand@parkerpoe.com
with permission

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

July 8, 2016

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-08-1213

Christopher Duvall, et al

The Ryland Group, Inc., et al

PLAINTIFF(S)

16 JUN 30 PM 1:31

DEFENDANT(S)

Submitted by:	PATRICIA BROWN 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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion to Compel Arbitration, filed on 3/17/16, is DENIED.

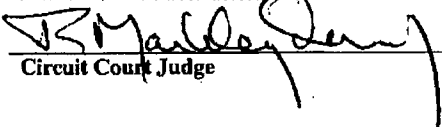
ORDER INFORMATION

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

CERTIFICATE OF SERVICE

This is to certify that a copy of The Ryland Group, Inc.'s Notice of Motion and Motion to Reconsider, Amend and/or Alter Order Denying 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 8th day of July, 2016.

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

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Attorney for A.C. Construction, Inc.

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Sweeny Wingate & Barrow
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Columbia, SC 29211
CEM@swblaw.com

*Attorney for 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.*

John E. Rogers, II, Esq.
The Ward Law Firm, P.A.
233 S. Pine Street
Spartanburg, SC 29302
jrogers@wardfirm.com

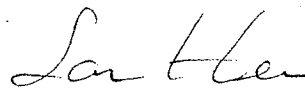
Attorney for Land Site Services, Inc

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Attorneys for Carolina Consulting Engineers, Inc.



Lauren Heuss, Legal Professional Assistant
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FILED
2016 JUL -8 AM 9:21
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

) IN THE COURT OF COMMON PLEAS

) THE NINTH JUDICIAL CIRCUIT

Christopher Duvall and Natalie Duvall

Plaintiff,

v.

The Ryland Group, Inc.

Defendant.

The Ryland Group, Inc.

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 LAND SITE
SERVICES' RESPONSE TO THE RYLAND
GROUP'S MOTION TO ALTER OR
AMEND THE COURT'S ORDER DENYING
RYLAND'S MOTION TO COMPEL
ARBITRATION

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.

Following a hearing, the Court denied Ryland's Motion to Compel Arbitration. Ryland Group, Inc. ("Ryland") filed a Motion to Reconsider, Amend and/or Alter Order Denying its

2016 JUL 13 AM 11:22
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.
KDC

DEM

Motion to Compel Arbitration dated July 8, 2016. Third Party Defendants Land Site Services, Inc. ("Land Site") 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") are hereby responding to Ryland's Motion to Alter or Amend the Court's denial of Ryland's Motion to Compel Arbitration.

Ryland argues that the Court failed to properly apply the Federal Arbitration Act and erred in failing to compel arbitration. Land Site and Stark respectfully disagree with Ryland and believe the Court's ruling denying Ryland's Motion to Compel Arbitration was proper.

I. THE FEDERAL ARBITRATION ACT DOES NOT APPLY TO RYLAND'S ALLEGED SUBCONTRACTOR AGREEMENTS WITH LAND SITE AND STARK.

As discussed below, the alleged agreements with Land Site and Stark clearly do not meet the requirements of the South Carolina Uniform Arbitration Act (the "UAA"), and therefore the only way Ryland can compel arbitration is if the matter is subject to the FAA. First, Ryland failed to prove any applicable contracts with Land Site and Stark which contained an arbitration provision. Land Site and Stark incorporate the arguments they made in their Memorandum of Law in Opposition to Ryland's Motion to Compel Arbitration. Second, the plain and unambiguous language of the arbitration clauses in the alleged Subcontractor Agreements explicitly excludes Ryland's claims against Land Site and Stark from arbitration under the facts of this case. The alleged arbitration clause contains an exclusion from arbitration, if either party has been sued by someone other than a party to the Subcontract Agreement. That exclusion precludes arbitration in this case. The homeowners filed this suit against Ryland. They did not sue Land Site or Stark. The homeowners are not parties to Ryland's alleged Subcontractor Agreements with Land Site and Stark. Because Ryland has been sued by someone other than a

party to the alleged Subcontractor Agreements, the arbitration clause does not apply. Therefore, the arbitration clause in the alleged Subcontractor Agreements plainly, clearly, and unambiguously excludes Ryland's claims from arbitration against Land Site and Stark. See *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) (Arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit); *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24, 644 S.E.2d 663, 668 (2007) (General contract principles apply in evaluating the enforceability of an arbitration clause); *Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 46, 747 S.E.2d 178, 184 (2013) (quoting *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004)); (If a contract's language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect).

Even if the alleged Subcontractor Agreements did not preclude arbitration based on their own unambiguous language, the FAA does not apply.

In order for the FAA to apply and govern, the alleged Subcontractor Agreement must evidence foreign or interstate commerce. *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 454, 730 S.E.2d 312, 315-16 (2012).

This case involves the clearing and preparation of land and the supplying of roof trusses for a single-family home in 2006, all of which occurred in South Carolina. The alleged agreements did not state that the arbitration was to be pursuant to the FAA and did not even mention the FAA at all.

As discussed in Land Site and Stark's Memorandum of Law in Opposition to Ryland's Motion to Compel Arbitration none of the alleged "facts" are sufficient to implicate interstate

commerce in the construction of this single family residence, and are therefore insufficient to establish that the FAA would apply. *Bradley v. Brentwood Homes, Inc.*, 398 S.C. at 456, 730 S.E.2d at 317 (“adher[ing] to the view that the development of real estate is an inherently intrastate transaction”); *id.* at 458, 730 S.E.2d at 317–18 (noting the FAA generally does not apply to residential real estate transactions that have no substantial or direct connection to interstate commerce).

The alleged Subcontractor Agreements at issue in this case do not evidence interstate commerce. The alleged contracts contain no mention of any out-of-state equipment, materials, manufacturers, or products. Therefore, the FAA does not apply.

Land Site and Stark hereby incorporate their arguments made in their Memorandum of Law in Opposition to Ryland’s Motion to Compel Arbitration.

In addition, for the contract at issue between Ryland and the Plaintiffs, the FAA still would not apply because that suit centers on the purchase of the house which is exactly analogous to *Bradley v. Brentwood Homes, Inc.*, *supra*. The Plaintiff’s claims against Ryland are exactly on point with *Bradley*. The Plaintiffs have sued Ryland in regard to claims arising from the warranty that springs from the sale of the residence and therefore the FAA would not apply to those claims or any alleged subcontractor agreements. *Bradley v. Brentwood Homes, Inc.*, *supra* (a builder-vendor’s contract solely for the sale of a single-family house does not involve interstate commerce even if out-of-state materials, subcontractors and financing was used; hence, the FAA does not apply).

Accordingly, the FAA does not apply, and the Court should deny Ryland’s Motion to Alter or Amend.

II. THE ARBITRATION CLAUSE FROM THE ALLEGED SUBCONTRACTOR AGREEMENTS IS UNENFORCEABLE BECAUSE IT IS NOT IN COMPLIANCE WITH THE SOUTH CAROLINA UNIFORM ARBITRATION ACT.

South Carolina's Uniform Arbitration Act (UAA) requires:

(a) A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. 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.*

S.C. Code Ann. § 15-48-10 (emphasis added).

These elements are to be strictly adhered to in order to satisfy the notice requirements.

Zabinski v. Bright Acres Assocs., 346 S.C. at 589, 553 S.E.2d at 114. No other variation is acceptable. See *Zabinski v. Bright Acres Assocs.*, *supra*.

Ryland's alleged Subcontractor Agreements with Land Site and Stark do not meet the requirements of the UAA. The arbitration clauses in the respective alleged Subcontractor Agreements are not capitalized, bolded, underlined, or rubber stamped. Moreover, the arbitration clauses are buried on the third page of the alleged agreement. These arbitration clauses do not comply with the explicit requirements of the UAA. Accordingly, the alleged Subcontractor Agreements identified by Ryland are not subject to arbitration.

III. RYLAND HAS WAIVED ANY ALLEGED RIGHT TO COMPEL ARBITRATION.

Land Site and Stark incorporate the arguments made by Plaintiffs in their submission and at the hearing that Ryland has waived any alleged right to arbitration.

IV. RYLAND'S DISPUTE RESOLUTION PROCEDURE ALLEGEDLY WITH THE HOMEOWNER IS UNCONSCIONABLE.

Land Site and Stark join in the arguments by Plaintiffs that the dispute resolution procedure in Ryland's Home Warranty Program Insured Limited Warranty is unconscionable. *See also Smith v. D.R. Horton*, Opinion No. 27645 (S.C. Sup. Ct. filed July 6, 2016).

CONCLUSION

The Court properly denied Ryland's Motion to Compel Arbitration and also properly found that Ryland had waived arbitration. In addition, the arbitration clauses in Ryland's alleged Subcontractor Agreements with Land Site and Stark are not applicable or enforceable against Land Site or Stark based upon their plain language. The provision in the alleged contracts simply does not provide for arbitration in this matter. The FAA is not applicable because the alleged agreements did not involve interstate commerce. Finally, the arbitration provision in the alleged agreements is not in compliance with the South Carolina Uniform Arbitration Act, and therefore is not enforceable under the Act.

Land Site and Stark incorporate all of their arguments made in their Memorandum of Law in Opposition to Ryland's Motion to Compel Arbitration.

-signature to follow-

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.


for Mark S. Barrow
Christy E. Mahon
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211

**ATTORNEYS FOR THIRD-PARTY
DEFENDANTS 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 WARD LAW FIRM, PA

 w/expressed
permission
John E. Rogers, II, Esquire
C. Reed Teague, Esquire
The Ward Law Firm, PA
P.O. Box 5663
Spartanburg, SC 29304

**ATTORNEYS FOR THIRD-PARTY
DEFENDANT LAND SITE SERVICES, INC.**

Columbia, South Carolina

July 11, 2016

CERTIFICATE OF SERVICE

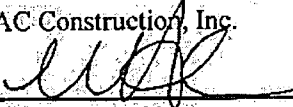
I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Third-Party Defendant, do hereby certify that I have served a copy of the foregoing Response to Ryland's Motion to Alter or Amend the Court's denial of Ryland's Motion to Compel Arbitration in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

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Charleston, SC 29403
Attorneys for Third-Party Defendant AC Construction, Inc.



Melissa H. Abbott

Columbia, South Carolina
July 11, 2016



SWEENEY WINGATE & BARROW P.A.

July 11, 2016

Reply to: Main Office

Christy E. Mahon
(803) 256-2233 x7157
cem@swblaw.com

The Honorable Mary P. Brown
Berkeley County Clerk of Court
300-B California Avenue
Post Office Box 219
Moncks Corner, SC 29461

RE: Christopher Duvall and Natalie Duvall v. Stark Truss Company, et al.
Civil Action No.: 2015-CP-08-01213
Our File: 1395-10140

Dear Ms. Brown:

Enclosed please find the original and one (1) copy 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 Land Site Services' Response To The Ryland Group's Motion To Alter Or Amend The Court's Order Denying Ryland's Motion To Compel Arbitration in the above-referenced matter. I would appreciate your filing the original and returning the remaining clocked copy to me in the envelope provided.

By copy of this to all counsel of record, I am serving them with the same.

Should you have any questions, please do not hesitate to contact me.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.


for Christy E. Mahon

CEM/mha
Enclosures

cc: All counsel of record

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
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.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2015-CP-08-01213

FILED
2016 AUG -3 AM 9:05
CLERK OF COURT
BERKELEY COUNTY, SC
KDC

CHRISTOPHER AND NATALIE DUVALL'S
MEMORANDUM IN OPPOSITION TO
THE RYLAND GROUP, INC.'S MOTION TO
RECONSIDER, AMEND AND/OR ALTER
ORDER DENYING ITS MOTION TO
COMPEL ARBITRATION

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 Reconsider, Amend and/or Alter Order Denying its Motion to Compel Arbitration, (filed July 8, 2016) and show this Court that Defendant The Ryland Group, Inc., has waived any right it may have had to have this case referred to binding arbitration by conducting extensive discovery, including Court Ordered discovery. Further, even absent waiver, the at-issue arbitration provision is unenforceable.

KDC

In support of this Memorandum, Plaintiffs incorporate by reference their Memorandum in Opposition to the Ryland Group, Inc.'s Motion to Compel Arbitration, filed April 29, 2016.

By way of further response:

1. WAIVER:

At the hearing of June 27, 2016, the Court properly found that Ryland's conduct of extensive discovery, including Court Ordered discovery, waived arbitration.¹ Despite Ryland's apparent disagreement with the Court's ruling that its conduct of discovery waived arbitration, Ryland continues to conduct discovery pursuant to Judge Nicholson's Order of January 11, 2016. Judge Nicholson's Order Granting [Ryland's] Motion to Compel allows Ryland to attach "crack monitors" to Plaintiffs' home, to access those crack monitors, and to leave the crack monitors in place at Plaintiffs' home through "trial."

Even after filing its Motion to Reconsider, Ryland continues to maintain its crack monitors at Plaintiffs' home. Ryland's continued conduct of Court Ordered discovery shows that it is not serious about its Motion to Reconsider and that its Motion to Reconsider is filed for purposes of delay.

The Court was correct in finding Ryland waived arbitration. See *Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 127 (Ct. App. 2007); *Evans v. Accent Manufactured Homes, Inc.*, 352 S.C. 544, 551 (Ct. App. 2003).

2. UNENFORCEABLE ARBITRATION PROVISION:

¹ Since Plaintiffs filed suit Ryland has requested expert reports from Plaintiffs, conducted site visits (2 pursuant to Court Order, one pursuant to request of counsel), performed soils samples, filed a Motion to Amend, filed a Motion to Compel, and received an Order compelling Plaintiffs' to place crack monitors on their home. Further, Ryland has served third-party complaints on its subcontractors and those subcontractors have served extensive discovery on Plaintiffs. Ryland has received 108 pages of documents from Plaintiffs and has received documents from multiple non-parties produced via subpoenas issued by the third-party defendants.

This case involves a warranty issued in connection with the purchase of a single family home located in South Carolina. Ryland's arbitration provision is 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).

At any rate, the dispute resolution procedure in the Ryland Home Warranty Program Insured Limited Warranty is Unconscionable. In an analogous case the South Carolina Supreme Court has recently reaffirmed that South Carolina will not enforce unconscionable arbitration provisions in residential home warranties. See *Smith v. D.R. Horton*, Opinion No. 27645 (S.C. Sup. Ct., July 6, 2016). The arbitration provision in this case – which purports to require homeowners whose warranty claims ultimately fail to pay Ryland's attorney's fees – is far worse than that involved in *Smith v. D.R. Horton*, Opinion No. 27645 (S.C. Sup. Ct., July 6, 2016).²

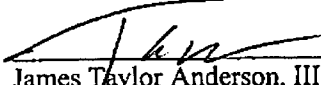
For all of the foregoing reasons, Plaintiffs respectfully request that this Court DENY The Ryland Group, Inc.'s Motion to Reconsider, Amend and/or Alter Order Denying its Motion to Compel Arbitration, (filed July 8, 2016).

[SIGNATURE PAGE TO FOLLOW]

² The unconscionable provisions are extensively discussed in Plaintiffs' Memorandum in Opposition to the Ryland Group, Inc.'s Motion to Compel Arbitration, filed April 29, 2016, and are incorporated herein by reference.

KERNODLE COLEMAN

By:


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tanderson@kernodlelaw.com

ATTORNEYS FOR PLAINTIFFS

July 27, 2016

Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, *Plaintiffs' Memorandum in Opposition to The Ryland Group, Inc.'s Motion to Reconsider, Amend and/or Alter Order Denying its 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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LAND SITE SERVICES, INC.**

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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.**

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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

July 27, 2016
Charleston, South Carolina

2016 AUG -3 AM 9:05
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

FILED



STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	DOCKET NO. 2015-CP-08-1213
	)	
	)	
CHRISTOPHER DUVALL, et al	)	
	)	
Plaintiffs	)	
	)	
vs.	)	
	)	
THE RYLAND GROUP, INC. et al	)	
	)	
Defendants	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

June 27, 2016
Moncks Corner, S. Carolina

B E F O R E:

THE HONORABLE R. MARKLEY DENNIS, JR., JUDGE

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

JAMES TAYLOR ANDERSON, ESQ.
Attorney for the Plaintiffs

THOMAS C. HILDEBRAND, JR., ESQ.
Attorney for the Defendant Ryland Group

CHRISTY MAHON, ESQ.
Attorney for Stark Trust

CAROLINE MCINTOSH, ESQ.
Attorney for A.C. Construction

REID TEAGUE, ESQ.
Attorney for Landsides Services

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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No exhibits were introduced

Christopher Duvall, et al v The Ryland Group, Inc., et al
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June 27, 2016

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PROCEEDINGS

THE COURT: The next one is Duvall v Ryland Group.
If you will identify yourselves and the party or parties
you represent please.

MR. HILDEBRAND: Hi, Your Honor, I'm Tom Hildebrand
and I represent Ryland Homes, Inc.

THE COURT: Okay.

MR. ANDERSON: Your Honor, Taylor Anderson. I'm
here for the homeowners plaintiffs Christopher Duvall and
Natalie Duvall.

THE COURT: Okay.

MS. MAHON: Christy Mahon, and that's actually
spelled M-A-H-O-N and I represent Stark Trust and the
other entities of Carolina Trust.

THE COURT: Okay.

MS. MCINTOSH: I'm Caroline McIntosh. I represent
A.C. Construction, Inc.

THE COURT: Okay.

MR. TEAGUE: Your Honor, Reid Teague. I'm here for
third party defendant Landsides Services.

THE COURT: Okay. Thank you. Okay, motion to
compel arbitration.

MR. HILDEBRAND: Thank you, Your Honor. Again, Tom
Hildebrand for Ryland Homes. This is a case, a
construction defect case involving a house that was

Christopher Duvall, et al v The Ryland Group, Inc., et al
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1 constructed. The claim is there are problems that have
2 caused it to settle. The house was built in 2006 and was
3 sold by my clients to an original purchaser. That
4 contract has an arbitration provision in it. The house
5 was then sold to the plaintiffs and they are the ones who
6 have filed this action.

7 And typically I would say that there is not any
8 claim to compel arbitration if they are a subsequent
9 purchaser. The reason that I believe that arbitration is
10 appropriate is that the plaintiff has specifically
11 alleged in their complaint that they are relying on a
12 warranty that we provided as part of the sale. And it is
13 a structural ten year warranty so they say we are
14 entitled to the benefits of this contract.

15 I think the case law is that if you claim that you
16 are a beneficiary of a document that requires arbitration
17 then you are likewise obligated to the restrictions or
18 the provisions in it. So we filed a motion for
19 arbitration against the plaintiffs under two grounds; one
20 is the front page under South Carolina law has the
21 appropriate language. There is interstate commerce. We
22 have introduced affidavits from our clients regarding the
23 interstate commerce involved. There is a memo that has
24 been filed in opposition. The plaintiff can address that
25 if you like or I can go ahead before he talks ---

Christopher Duvall, et al v The Ryland Group, Inc., et al
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June 27, 2016

1 THE COURT: --- I'll let you reply. Thank you.

2 MR. HILDEBRAND: Thank you, Your Honor.

3 THE COURT: Yes, sir? All memorandums incorporated
4 of course for purposes of review.

5 MR. ANDERSON: Yes sir, Your Honor. Taylor
6 Anderson again for the homeowner's plaintiffs. We
7 asserted a number of claims and we do in fact rely on the
8 written warranty as one of the claims in our lawsuit.
9 But there are multiple reasons that Ryland's motion to
10 compel arbitration should be denied; the most
11 straightforward of which is waiver.

12 This case was filed in May of 2015. Ryland's
13 counsel has requested and received our expert reports.
14 They did a home inspection; they did soil borings in July
15 of 2015. They did a property survey in July of 2015,
16 took photographs in July of 2015. November 2015 they
17 filed a motion to amend to add all these various third
18 parties.

19 We agreed to that partially upon the understanding
20 that there was not going to be an eventual motion to
21 compel arbitration. Your Honor signed an order on
22 December the 4th for Ryland allowing them to add these
23 third parties. On December 4th of 2015 Ryland answered
24 our discovery. They provided a thousand pages of
25 documents. Most importantly on December the 15th of 2015

Christopher Duvall, et al v The Ryland Group, Inc., et al
Motion to Compel Arbitration
June 27, 2016

1 Ryland filed or Ryland served the homeowners with a
2 request for production. And what the request for
3 production sought was authorization to place crack
4 monitors into the cracks in the masonry on the home and
5 then to leave them in place and undisturbed for the
6 remainder of this litigation. We objected to that.

7 Ryland then filed a motion to compel the homeowners
8 to allow Ryland to place these crack monitors on the
9 home. That motion to compel came before Judge Nicholson
10 for a hearing. There was no mention at that hearing of
11 any pending arbitration. Judge Nicholson heard the
12 arguments and entered an order that says Ryland is hereby
13 authorized to place a reasonable number of monitors at
14 any exterior cracks on the residence. Plaintiffs shall
15 provide the defendant Ryland with reasonable access and
16 with 24 hours notice to check the crack monitors on a
17 reasonably periodic basis but no more than 45 days
18 between visits and also within ---

19 THE COURT: --- I'm not going to -- for the simple
20 reason that you avail yourself of this court no way;
21 you've waived it. Thank you.

22 MR. ANDERSON: Thank you, Your Honor.

23 MS. MAHON: Your Honor, just very briefly he also
24 moved to compel arbitration against the subcontractors
25 and ---

Christopher Duvall, et al v The Ryland Group, Inc., et al
Motion to Compel Arbitration
June 27, 2016

1 MS. MAHON: --- I'm not compelling -- arbitration
2 is not -- I mean you can't claim -- you can't sit and
3 litigate something for a year and a half and then say oh
4 by the way we want to arbitrate. Thank you very much.
5 Motion is denied. Thank you.

6 MR. ANDERSON: Thank you, Your Honor.

7 MS. MAHON: Thank you, Your Honor.

8 THE COURT: If anybody else wants arbitration I
9 didn't mean to cut y'all off.

10 MS. MAHON: And Your Honor, if I may just to
11 incorporate for the record our memorandum ---

12 THE COURT: --- it is. Thank you so much.

13 MS. MAHON: Thank you, Your Honor.

14 MR. ANDERSON: Your Honor, will you just issue a
15 Form 4 or should I...

16 THE COURT: I'll do a Form 4 unless Mr. Hildebrand
17 needs something more specific.

18 MR. HILDEBRAND: That's fine, Your Honor.

19 THE COURT: Okay. Thank you so much. I
20 appreciate it.

21 MR. ANDERSON: Yes, sir.

22 *****END OF TRANSCRIPT OF RECORD*****
23
24
25

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Berkeley County, South
Carolina on the 27th day of June, 2016.

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

September 14, 2016


Joyce C. Rueger, CVR-M
Court Reporter

THE RYLAND GROUP, INC.
SUBCONTRACTOR AGREEMENT
GENERAL TERMS

SUBCONTRACTOR: LAND SITE SERVICES RYLAND DIVISIONS: 443
Address: 1800 PINEHURST BLVD. RD. (Insert all divisions for which work
Phone No.: 842-54-6490 is performed under this contract)
Effective Date: 1/19/02

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 anypay] 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 or of 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.

1ATYPERnub.doc

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 DISPUTES 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.

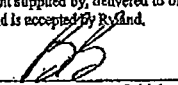
(d) COMPLIANCE WITH APPLICABLE OCCUPATIONAL SAFETY AND HEALTH STANDARDS IS AN EXPRESS CONDITION OF WORK UNDER THIS AGREEMENT.

(e) Addendum 5 applies to all PHA 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 home buyer, 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

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Revised 7/25/01

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.

____ (SUBCONTRACTOR)

License # _____

Expiration Date _____

By: _____ (SEAL)

By: _____ (SEAL)

Name: GAVIN GREEN

Name: LAND SITE SERVICES

Title: DEVELOPER

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 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

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 <u>Coverage in accordance with the laws of the State within whose jurisdiction the work is performed.</u> - 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. <u>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.</u> 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	<u>Employers Liability:</u> \$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

SUBCONTRACTOR AGREEMENT

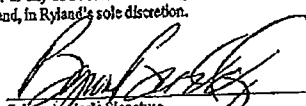
THE RYLAND GROUP, INC.

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

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 6/19/02 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. Licenses. 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 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 6/19/01 BY AND BETWEEN THE RYLAND GROUP, INC. AND
LAND STATE 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.

BB
Subcontractor's Initials

THE RYLAND GROUP, INC.

RULES AND REGULATIONS FOR SUBCONTRACTORS

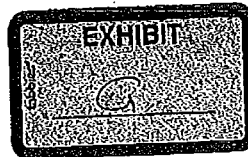
THIS DOCUMENT IS A PART OF AND INCORPORATED INTO THE SUBCONTRACTOR AGREEMENT
DATED 01/20/77 BY AND BETWEEN THE RYLAND GROUP, INC. AND
LAND SITE SERVICES

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



THE RYLAND GROUP, INC.
SUBCONTRACTOR AGREEMENT
GENERAL TERMS

SUBCONTRACTOR: Carolyn Truss RYLAND DIVISIONS: 443
Address: PO Box 1049 Summerville SC (Insert all divisions for which work
Phone No.: 843 875 2550 29484 is performed under this contract)
Effective Date: _____

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 hereto 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 contract for results.

4. (a) Ryland shall pay Subcontractor [weekly] [biweekly] [monthly] [by a/copy] 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.

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Subcontractor's Initials

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Revised 7/23/01

(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 NEGLIGENCE 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 NEGLIGENCE ACT OR OMISSION, OR WRONGFUL ACT OF RYLAND OR RYLAND'S AGENTS IS GREATER OR LESSER THAN ANY ALLEGED NEGLIGENCE 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 RHA 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.

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Subcontractor's Initials

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Revised 7/25/01

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, superseding 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.

____ (SUBCONTRACTOR)

License # _____

Expiration Date _____

By: _____ (SEAL)

By: _____ (SEAL)

Name: Garvin Carson

Name: Patricia Paulson

Title: ADMINISTRATIVE 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 Notice(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 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 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. <u>WORKER'S COMPENSATION - and Occupational Disease</u> <u>Coverage in accordance with the laws of the State within which jurisdiction the work is performed.</u> - 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. <u>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.</u> 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
<u>EMPLOYER'S LIABILITY</u>	<u>Employers Liability:</u> \$500,000. Bb. Bodily Injury by Accident \$500,000. Bodily Injury by Disease, Bb. Employee
B. <u>COMMERCIAL GENERAL LIABILITY - with the following minimum coverage:</u> - Coverage for all residential building including both attached and unattached projects - Occurrence form not modified - Subrogation, 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 (Bb. Occurrence) \$1,000,000. Property Damage (Bb. Occurrence) \$1,000,000. Personal Injury & Advertising Injury Limit \$ 50,000. Fire Damage Limit (any one Fire)

Subcontractor's Initials

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7
 Subcontractor's Limits
 C13/MS

Revised 7/25/01

provision. In lieu of the standard 10-day cancellation notice provision. The Subcontractor's auto liability policy should be amended to include a 30-day cancellation notice provision at least A-VIII. The Subcontractor's insurance company's A.M. Best rating is at least A-VIII. The certificate of insurance must specify that the Subcontractor and his employees. Liability insurance must reflect that the auto insurance policy. The certificate of insurance must reflect that the auto insurance policy. are insured as Additional Insureds on the auto liability insurance policy. Ryland Group, Inc., and its subsidiaries, affiliates and successor companies and their officers, directors, agents, accountants, employees, divisions, partners and shareholders. The certificate of insurance must evidence that "The	including third and non-owned auto. BUSINESS AUTO LIABILITY - covering any automobile. \$500,000. Combined Single Limit
There shall be no limitation on the limits available to the additional insureds. Not shall there be any limitation or exclusions as respects the additional insured coverage for status involving Bodily Injury of a Subcontractor's employees or of any other third party. There shall be no endorsement limiting coverage for explosion, collapse, or underground damage. Blanket contractual liability, or Broad Form property damage coverage. The certificate of insurance should state. The standard 10-day cancellation notice provision. The certificate of insurance should state. 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 state. Rating is at least A-VIII. The Subcontractor's insurance company's A.M. Best rating is at least A-VIII. The certificate of insurance should specify that the Subcontractor and his employees. Liability insurance must reflect that the auto insurance policy. The certificate of insurance must reflect that the auto insurance policy. are insured as Additional Insureds on the auto liability insurance policy. Ryland Group, Inc., and its subsidiaries, affiliates and successor companies and their officers, directors, agents, accountants, employees, divisions, partners and shareholders. The certificate of insurance must evidence that "The	Subcontractor's general liability insurance policy. CG 2010 (1/85) Additional Insured endorsement or on a CG 2026 (1/85) 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 (not on a blanket basis for all jobs performed for Ryland and 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-counterparty" over Ryland's insurance. The certificate of insurance should specify that the Subcontractor and his employees. Liability insurance must reflect that the auto insurance policy. The certificate of insurance must reflect that the auto insurance policy. are insured as Additional Insureds on the auto liability insurance policy. Ryland Group, Inc., and its subsidiaries, affiliates and successor companies and their officers, directors, agents, accountants, employees, divisions, partners and shareholders. The certificate of insurance must evidence that "The

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

3/1/93
Date

SUBCONTRACTOR AGREEMENT

THE RYLAND GROUT, 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 this 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.T.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: [Signature]
Signature: _____
Name: Michael S. Edmund
Title: General Manager
Date: 7/5/02

By Buyer: [Signature]
Signature: _____
Name: GAVIN GREEN
Title: PURCHASING MANAGER
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 submit invoices to the appropriate Division office unless Seller has arranged to use Buyer's shipping process. Payment is deemed subject to test, 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 destination (s) or other destinations specified by Buyer in an acceptable form with no encumbrance 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. Buyer understands that Buyer's maintenance of its construction schedules depends upon timely receipt of the Product. Seller must notify Buyer in writing immediately of any delay or shortfalls in delivery of the Product. Seller agrees to reimburse and indemnify Buyer from any loss, damage, cost or other result occurring because of any delay or shortfalls in receipt of the Product.

4. **INSPECTION & REJECTION** - 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 & CARRIAGE** - No charge shall be allowed for packing, boxing, or cartage. Packages and invoices must show Buyer's purchase order number, gross, tare and net weight and/or quantity, 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, logs, logs, 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, reasonably 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 Sales, 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 in, risk of loss of and liability for goods shall pass to Buyer only upon delivery of the goods to Buyer's construction site or to other locations as designated by Buyer.

9. **EQUIPMENT 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 required 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 Seller 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 those in effect under this Agreement, as reasonably determined by Buyer, then within ten (10) days of Buyer notifying Seller, Seller shall elect either that (a) 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 (b) 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 Option (a).

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 than those (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 is 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 packaged, 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 use or sale 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 documents relating to this transaction which purports 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 warranty 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 attorney's fees, caused by, resulting from, or connected with the Product or Seller's negligent action 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 impracticability.

20. **DELAYS**
a. When Seller can not perform in accordance with Section 3 of this Agreement, Seller will provide updated Product acceptable to Buyer without delay at the Price specified in this Agreement for the ordered Product.

b. Seller shall be liable for any and all damages incurred by Buyer by reason of delay in Seller's performance, unless such delay 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 elect to recover against Seller the past interest.

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 total production in such a manner as it deems and responsible within the meaning of Section 2-613 of the Uniform Commercial Code then to allot. Deliveries omitted due to any accused 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 the 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 treatment, 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 conflict 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 each term or condition or any other term or condition herein.
24. **FUTURE 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 otherwise 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

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Exhibit A

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EXHIBIT B
TO SUPPLY AGREEMENT
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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-/VII.

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 doors 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).

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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, 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 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 work sites 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 12 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 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.

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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 monies 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

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Revised: 9/13/2006

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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.

Revised: 9/13/2006

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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. Backfill

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 backfill.
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.

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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 conform 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 scopes in their possession when on a Ryland job site.

Subcontractor

9/20/06
Date

Ryland Homebuilding/Purchasing Manager

10/23/06
Date

Revised: 9/13/2006
Purchasing Department Scopes - Revised '06 GRADING '06.DOC

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Kevin W. Mims
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July 28, 2016

The Honorable R. Markley Dennis, Jr.
P O Box 1800
300 B California Avenue
Moncks Corner, SC 29461-1800

Re: *Christopher & Natalie Duvall v. The Ryland Group, Inc. v. AC Construction, Inc., et al.*
Case Number: 2015-CP-08-1213
Claim Number: CPP1026741
LM File Number: 114-20155109

Dear Judge Dennis:

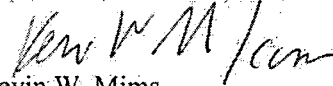
I, along with my co-counsel Patrick Morrissey, represent Third-Party Defendant AC Construction, Inc. in this matter, which was before you at a June 27, 2016 hearing on Defendant The Ryland Group, Inc.'s Motion to Compel Arbitration. Plaintiffs and all Third-Party Defendants opposed Ryland's motion for arbitration. Following oral arguments by Ryland and Plaintiffs, Your Honor denied Ryland's motion as to all direct claims and third-party claims, including those against our client.

We are in receipt of Ryland's Motion to Reconsider, Amend and/or Alter Order Denying its Motion to Compel Arbitration, and we are writing to advise the court of A.C. Construction's adoption of the position and arguments set forth in Stark Truss Company, Inc. and Land Site Services' Response to The Ryland Group's Motion to Alter or Amend the Court's Order Denying Ryland's Motion to Compel Arbitration sent to the Court for filing on July 11, 2016 (attached for your reference.) We likewise agree with the arguments set forth in Plaintiffs' memorandum in opposition to Ryland's pending Motion for Reconsideration sent to the Court for filing on July 27, 2016 (also attached). Our sole intention is to preserve our argument on the record should Ryland appeal your ruling on its Motion.

Thank you for your consideration of this matter. We respectfully request Your Honor to advise should any further steps needed to document AC's position for the record.

Sincerely,

LUZURIAGA MIMS, LLP


Kevin W. Mims

KWM/ccm
Enclosures

cc: The Honorable Mary P. Brown, Berkeley County Clerk of Court (w/encl.)
Patrick T. Morrissey, Clawson & Staubes, LLC (via e-mail w/encl.)
Thomas C. Hildebrand, Jr., Parker Poe Adams & Bernstein, LLP (via e-mail w/encl.)
Olesya Vaskevich, Parker Poe Adams & Bernstein, LLP (via e-mail w/encl.)
Mark S. Barrow, Sweeny, Wingate & Barrow, P.A. (via e-mail w/encl.)
Christy E. Mahon, Sweeny, Wingate & Barrow, P.A. (via e-mail w/encl.)
James Taylor Anderson III, Kernodle, Root & Coleman (via e-mail w/encl.)
John E. Rogers, II, The Ward Law Firm, PA (via e-mail w/encl.)



SWEENY WINGATE & BARROW P.A.
July 11, 2016

Reply to: Main Office

Christy E. Mahon
(803) 256-2233 x7157
cem@swblaw.com

The Honorable Mary P. Brown
Berkeley County Clerk of Court
300-B California Avenue
Post Office Box 219
Moncks Corner, SC 29461

RE: Christopher Duvall and Natalie Duvall v. Stark Truss Company, et al.
Civil Action No.: 2015-CP-08-01213
Our File: 1395-10140

Dear Ms. Brown:

Enclosed please find the original and one (1) copy 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 Land Site Services' Response To The Ryland Group's Motion To Alter Or Amend The Court's Order Denying Ryland's Motion To Compel Arbitration in the above-referenced matter. I would appreciate your filing the original and returning the remaining clocked copy to me in the envelope provided.

By copy of this to all counsel of record, I am serving them with the same.

Should you have any questions, please do not hesitate to contact me.

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

for Christy E. Mahon

CEM/mha
Enclosures

cc: All counsel of record

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

) IN THE COURT OF COMMON PLEAS

) THE NINTH JUDICIAL CIRCUIT

Christopher Duvall and Natalie Duvall

) Civil Action No.: 2015-CP-08-01213

)
)
) Plaintiff,

)
)
) v.

)
)
) The Ryland Group, Inc.

)
)
)
) Defendant.

The Ryland Group, Inc.

) 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 LAND SITE
) SERVICES' RESPONSE TO THE RYLAND
) GROUP'S MOTION TO ALTER OR
) AMEND THE COURT'S ORDER DENYING
) RYLAND'S MOTION TO COMPEL
) ARBITRATION

)
)
) 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.

Following a hearing, the Court denied Ryland's Motion to Compel Arbitration. Ryland Group, Inc. ("Ryland") filed a Motion to Reconsider, Amend and/or Alter Order Denying its

Motion to Compel Arbitration dated July 8, 2016. Third Party Defendants Land Site Services, Inc. ("Land Site") 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") are hereby responding to Ryland's Motion to Alter or Amend the Court's denial of Ryland's Motion to Compel Arbitration.

Ryland argues that the Court failed to properly apply the Federal Arbitration Act and erred in failing to compel arbitration. Land Site and Stark respectfully disagree with Ryland and believe the Court's ruling denying Ryland's Motion to Compel Arbitration was proper.

I. THE FEDERAL ARBITRATION ACT DOES NOT APPLY TO RYLAND'S ALLEGED SUBCONTRACTOR AGREEMENTS WITH LAND SITE AND STARK.

As discussed below, the alleged agreements with Land Site and Stark clearly do not meet the requirements of the South Carolina Uniform Arbitration Act (the "UAA"), and therefore the only way Ryland can compel arbitration is if the matter is subject to the FAA. First, Ryland failed to prove any applicable contracts with Land Site and Stark which contained an arbitration provision. Land Site and Stark incorporate the arguments they made in their Memorandum of Law in Opposition to Ryland's Motion to Compel Arbitration. Second, the plain and unambiguous language of the arbitration clauses in the alleged Subcontractor Agreements explicitly excludes Ryland's claims against Land Site and Stark from arbitration under the facts of this case. The alleged arbitration clause contains an exclusion from arbitration, if either party has been sued by someone other than a party to the Subcontract Agreement. That exclusion precludes arbitration in this case. The homeowners filed this suit against Ryland. They did not sue Land Site or Stark. The homeowners are not parties to Ryland's alleged Subcontractor Agreements with Land Site and Stark. Because Ryland has been sued by someone other than a

party to the alleged Subcontractor Agreements, the arbitration clause does not apply. Therefore, the arbitration clause in the alleged Subcontractor Agreements plainly, clearly, and unambiguously excludes Ryland's claims from arbitration against Land Site and Stark. See *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) (Arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit); *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24, 644 S.E.2d 663, 668 (2007) (General contract principles apply in evaluating the enforceability of an arbitration clause); *Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 46, 747 S.E.2d 178, 184 (2013) (quoting *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App.2004)) (If a contract's language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect).

Even if the alleged Subcontractor Agreements did not preclude arbitration based on their own unambiguous language, the FAA does not apply.

In order for the FAA to apply and govern, the alleged Subcontractor Agreement must evidence foreign or interstate commerce. *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 454, 730 S.E.2d 312, 315-16 (2012).

This case involves the clearing and preparation of land and the supplying of roof trusses for a single-family home in 2006, all of which occurred in South Carolina. The alleged agreements did not state that the arbitration was to be pursuant to the FAA and did not even mention the FAA at all.

As discussed in Land Site and Stark's Memorandum of Law in Opposition to Ryland's Motion to Compel Arbitration none of the alleged "facts" are sufficient to implicate interstate

commerce in the construction of this single family residence, and are therefore insufficient to establish that the FAA would apply. *Bradley v. Brentwood Homes, Inc.*, 398 S.C. at 456, 730 S.E.2d at 317 ("adher[ing] to the view that the development of real estate is an inherently intrastate transaction"); *id.* at 458, 730 S.E.2d at 317-18 (noting the FAA generally does not apply to residential real estate transactions that have no substantial or direct connection to interstate commerce).

The alleged Subcontractor Agreements at issue in this case do not evidence interstate commerce. The alleged contracts contain no mention of any out-of-state equipment, materials, manufacturers, or products. Therefore, the FAA does not apply.

Land Site and Stark hereby incorporate their arguments made in their Memorandum of Law in Opposition to Ryland's Motion to Compel Arbitration.

In addition, for the contract at issue between Ryland and the Plaintiffs, the FAA still would not apply because that suit centers on the purchase of the house which is exactly analogous to *Bradley v. Brentwood Homes, Inc.*, *supra*. The Plaintiff's claims against Ryland are exactly on point with *Bradley*. The Plaintiffs have sued Ryland in regard to claims arising from the warranty that springs from the sale of the residence and therefore the FAA would not apply to those claims or any alleged subcontractor agreements. *Bradley v. Brentwood Homes, Inc.*, *supra* (a builder-vendor's contract solely for the sale of a single-family house does not involve interstate commerce even if out-of-state materials, subcontractors and financing was used; hence, the FAA does not apply).

Accordingly, the FAA does not apply, and the Court should deny Ryland's Motion to Alter or Amend.

II. THE ARBITRATION CLAUSE FROM THE ALLEGED SUBCONTRACTOR AGREEMENTS IS UNENFORCEABLE BECAUSE IT IS NOT IN COMPLIANCE WITH THE SOUTH CAROLINA UNIFORM ARBITRATION ACT.

South Carolina's Uniform Arbitration Act (UAA) requires:

(a) A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. 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.*

S.C. Code Ann. § 15-48-10 (emphasis added).

These elements are to be strictly adhered to in order to satisfy the notice requirements. *Zabinski v. Bright Acres Assocs.*, 346 S.C. at 589, 553 S.E.2d at 114. No other variation is acceptable. See *Zabinski v. Bright Acres Assocs.*, *supra*.

Ryland's alleged Subcontractor Agreements with Land Site and Stark do not meet the requirements of the UAA. The arbitration clauses in the respective alleged Subcontractor Agreements are not capitalized, bolded, underlined, or rubber stamped. Moreover, the arbitration clauses are buried on the third page of the alleged agreement. These arbitration clauses do not comply with the explicit requirements of the UAA. Accordingly, the alleged Subcontractor Agreements identified by Ryland are not subject to arbitration.

III. RYLAND HAS WAIVED ANY ALLEGED RIGHT TO COMPEL ARBITRATION.

Land Site and Stark incorporate the arguments made by Plaintiffs in their submission and at the hearing that Ryland has waived any alleged right to arbitration.

IV. RYLAND'S DISPUTE RESOLUTION PROCEDURE ALLEGEDLY WITH THE HOMEOWNER IS UNCONSCIONABLE.

Land Site and Stark join in the arguments by Plaintiffs that the dispute resolution procedure in Ryland's Home Warranty Program Insured Limited Warranty is unconscionable.

See also Smith v. D.R. Horton, Opinion No. 27645 (S.C. Sup. Ct. filed July 6, 2016).

CONCLUSION

The Court properly denied Ryland's Motion to Compel Arbitration and also properly found that Ryland had waived arbitration. In addition, the arbitration clauses in Ryland's alleged Subcontractor Agreements with Land Site and Stark are not applicable or enforceable against Land Site or Stark based upon their plain language. The provision in the alleged contracts simply does not provide for arbitration in this matter. The FAA is not applicable because the alleged agreements did not involve interstate commerce. Finally, the arbitration provision in the alleged agreements is not in compliance with the South Carolina Uniform Arbitration Act, and therefore is not enforceable under the Act.

Land Site and Stark incorporate all of their arguments made in their Memorandum of Law in Opposition to Ryland's Motion to Compel Arbitration.

-signature to follow-

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.


for Mark S. Barrow
Christy E. Mahon
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211

**ATTORNEYS FOR THIRD-PARTY
DEFENDANTS 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 WARD LAW FIRM, PA


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*w/expressed
permission*

**ATTORNEYS FOR THIRD-PARTY
DEFENDANT LAND SITE SERVICES, INC.**

Columbia, South Carolina

July 11, 2016

CERTIFICATE OF SERVICE

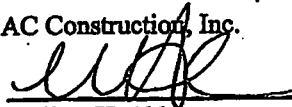
I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Third-Party Defendant, do hereby certify that I have served a copy of the foregoing Response to Ryland's Motion to Alter or Amend the Court's denial of Ryland's Motion to Compel Arbitration in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

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Olesya V. Vaskevich, Esquire
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Attorney for Defendant/Third Party Plaintiff The Ryland Group, Inc.

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Attorneys for Third-Party Defendant AC Construction, Inc.



Melissa H. Abbott

Columbia, South Carolina
July 11, 2016

KERNODLE
COLEMAN

James Taylor Anderson, III
tanderson@kernodlelaw.com

July 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, I.L.C., 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

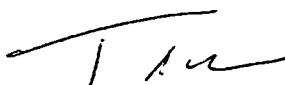
Dear Ms. Brown:

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 Reconsider, Amend and/or Alter Order Denying its 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.

Also 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 any questions or require additional information, please do not hesitate to contact me.

KERNODLE COLEMAN


James Taylor Anderson, III

JTAIII/mlj
Enclosures

Verand-Haw form

The Honorable Mary P. Brown

July 27, 2016

Page 2

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
Patrick T. Morrissey, Esquire

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
Third-Party Plaintiff,	)	MEMORANDUM IN OPPOSITION TO
vs.	)	THE RYLAND GROUP, INC.'S MOTION TO
	)	RECONSIDER, AMEND AND/OR ALTER
	)	ORDER DENYING ITS MOTION TO
	)	COMPEL ARBITRATION
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.	)	

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 Reconsider, Amend and/or Alter Order Denying its Motion to Compel Arbitration, (filed July 8, 2016) and show this Court that Defendant The Ryland Group, Inc., has waived any right it may have had to have this case referred to binding arbitration by conducting extensive discovery, including Court Ordered discovery. Further, even absent waiver, the at-issue arbitration provision is unenforceable.

In support of this Memorandum, Plaintiffs incorporate by reference their Memorandum in Opposition to the Ryland Group, Inc.'s Motion to Compel Arbitration, filed April 29, 2016.

By way of further response:

1. WAIVER:

At the hearing of June 27, 2016, the Court properly found that Ryland's conduct of extensive discovery, including Court Ordered discovery, waived arbitration.¹ Despite Ryland's apparent disagreement with the Court's ruling that its conduct of discovery waived arbitration, Ryland continues to conduct discovery pursuant to Judge Nicholson's Order of January 11, 2016. Judge Nicholson's Order Granting [Ryland's] Motion to Compel allows Ryland to attach "crack monitors" to Plaintiffs' home, to access those crack monitors, and to leave the crack monitors in place at Plaintiffs' home through "trial."

Even after filing its Motion to Reconsider, Ryland continues to maintain its crack monitors at Plaintiffs' home. Ryland's continued conduct of Court Ordered discovery shows that it is not serious about its Motion to Reconsider and that its Motion to Reconsider is filed for purposes of delay.

The Court was correct in finding Ryland waived arbitration. *See Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 127 (Ct. App. 2007); *Evans v. Accent Manufactured Homes, Inc.*, 352 S.C. 544, 551 (Ct. App. 2003).

2. UNENFORCEABLE ARBITRATION PROVISION:

¹ Since Plaintiffs filed suit Ryland has requested expert reports from Plaintiffs, conducted site visits (2 pursuant to Court Order, one pursuant to request of counsel), performed soils samples, filed a Motion to Amend, filed a Motion to Compel, and received an Order compelling Plaintiffs' to place crack monitors on their home. Further, Ryland has served third-party complaints on its subcontractors and those subcontractors have served extensive discovery on Plaintiffs. Ryland has received 108 pages of documents from Plaintiffs and has received documents from multiple non-parties produced via subpoenas issued by the third-party defendants.

This case involves a warranty issued in connection with the purchase of a single family home located in South Carolina. Ryland's arbitration provision is 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).

At any rate, the dispute resolution procedure in the Ryland Home Warranty Program Insured Limited Warranty is Unconscionable. In an analogous case the South Carolina Supreme Court has recently reaffirmed that South Carolina will not enforce unconscionable arbitration provisions in residential home warranties. See *Smith v. D.R. Horton*, Opinion No. 27645 (S.C. Sup. Ct., July 6, 2016). The arbitration provision in this case – which purports to require homeowners whose warranty claims ultimately fail to pay Ryland's attorney's fees – is far worse than that involved in *Smith v. D.R. Horton*, Opinion No. 27645 (S.C. Sup. Ct., July 6, 2016).²

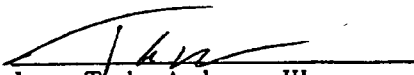
For all of the foregoing reasons, Plaintiffs respectfully request that this Court DENY The Ryland Group, Inc.'s Motion to Reconsider, Amend and/or Alter Order Denying its Motion to Compel Arbitration, (filed July 8, 2016).

[SIGNATURE PAGE TO FOLLOW]

² The unconscionable provisions are extensively discussed in Plaintiffs' Memorandum in Opposition to the Ryland Group, Inc.'s Motion to Compel Arbitration, filed April 29, 2016, and are incorporated herein by reference.

KERNODLE COLEMAN

By:


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ATTORNEYS FOR PLAINTIFFS

July 27, 2016

Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, *Plaintiffs' Memorandum in Opposition to The Ryland Group, Inc.'s Motion to Reconsider, Amend and/or Alter Order Denying its 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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Parker Poe Adams & Bernstein, L.L.P.
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TRUSS SYSTEMS, INC.**

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**ATTORNEYS FOR 3rd PARTY DEFENDANT AC
CONSTRUCTION, INC.**

KERNODLE COLEMAN


Michelle L. Justman

July 27, 2016
Charleston, South Carolina

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,

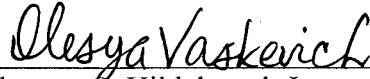
Of which The Ryland Group, Inc. is the Appellant,

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.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Thomas C. Hildebrand, Jr.

Olesya V. Vaskevich

PARKER POE ADAMS & BERNSTEIN LLP

200 Meeting Street, Suite 301

Charleston, SC 29401

(843) 727-2653

Attorneys for Appellant The Ryland Group, Inc.

RECEIVED

JUL 18 2017

SC Court of Appeals