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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No. 2020-CP-10-02398
Appellate Case No. 2021-000779

Whitesides Park Townhomes Property Owners Association, Inc., Respondent,

v.

CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc. f/k/a Standard Pacific Corp. and also d/b/a Calatlantic Homes; Lennar Carolinas, LLC; Southend Exteriors, Inc.; Alpha Omega Construction Group, Inc.; and Fogel Services, Inc., Defendants,

Of whom CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc. f/k/a Standard Pacific Corp. And also d/b/a Calatlantic Homes; and Lennar Carolinas, LLC; are the Appellants.

AMENDED RECORD ON APPEAL
VOL. II

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CAROLINA", dated January 7, 2016 and recorded in the RMC Office for Charleston County on January 15, 2016, in Plat Cabinet L16, at Page 0022 (the "***2016 Adjustment Plat***").

and

"SUBDIVISION PLAT SHOWING THE SUBDIVISION OF TMS NO. 532-08-00-040 TO CREATE LOTS 1 THROUGH 6 – MYRICK ROAD TOWNHOMES AND TO CREATE A NEW 10'X7' MPW EASEMENT OWNED BY CALATLANTIC GROUP, INC. LOCATED IN THE TOWN OF MOUNT PLEASANT CHARLESTON COUNTY, SOUTH CAROLINA", dated January 25, 2016 and recorded in the RMC Office for Charleston County on March 7, 2016, in Plat Cabinet S16, at Page 0050 (the "***2016 Subdivision Plat***").

SECTION 1.19. "***Property***" shall initially mean and refer to the approximately thirteen (13) Lots, the Common Area and other property, if any, described on Exhibit A, and such other property as may hereafter be made subject to this Declaration.

SECTION 1.20. "***Record,***" "***Recording***" and/or "***Recorded***" shall mean and refer to the appropriate recordation or filing of any document in the Register of Mesne Conveyances ("***RMC***") Office for Charleston County, South Carolina, or such other place which is designated as the official location for recording deeds and similar documents affecting title to real estate. The date of Recording shall refer to that time at which a document, map or plat is Recorded.

SECTION 1.21. "***Recreational Facilities***" shall mean and refer to such recreational facilities and improvements designated for, and dedicated to, the common use and enjoyment of the Owners of Lots in the Community, whether or not reserved for the exclusive use of the Owners of Lots in the Community, whether or not owned by Declarant and whether or not located within the Community or located within or dedicated to the Common Area, including without limitation, playground areas, picnic areas, ponds and any clubhouse, changing area, pool or other recreational facilities and improvements, if any. NO REPRESENTATION OR WARRANTY IS MADE BY DECLARANT THAT ANY OR ALL OF THESE RECREATIONAL FACILITIES WILL BE CREATED OR BUILT.

SECTION 1.22. "***Special Assessment***" shall mean and refer to assessments levied in accordance with Section 4.4 hereto.

SECTION 1.23. "***Specific Assessment***" shall mean and refer to assessments levied in accordance with Section 4.5 hereto.

SECTION 1.24. "***Supplemental Declaration***" shall mean and refer to a Recorded instrument which subjects Additional Property to this Declaration pursuant to Article XI and/or imposes additional restrictions and obligations on the land described in such instrument or removes any portion of the Property from the coverage of this Declaration.

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SECTION 1.25. "***Townhouse***" and/or "***Home***" shall mean and refer to each dwelling unit developed as an attached, single-family townhouse situate on the Property and shall include the Lot of and on which said Townhouse is situate if title to said Lot is held by the owner of the Townhouse.

ARTICLE II
PROPERTY RIGHTS

SECTION 2.1. OWNERS' EASEMENTS OF ENJOYMENT. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to permit the use of and to charge reasonable admission and other fees, including any applicable penalties, for the use of any Recreational Facilities and to impose reasonable limits upon the number of guests who may use these facilities;

(b) the right of the Association to suspend the voting rights and right to use of the Recreational Facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations;

(c) the right of the Association and/or Declarant to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer is signed by two-thirds (2/3) of each class of Members and has been Recorded;

(d) the right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area;

(e) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities thereon. No such mortgage of the Common Area shall be effective unless an instrument agreeing to such mortgage of Common Area is signed by three-fifths (3/5) of each class of Members. Also, so long as there are Class B Members, the mortgaging of any Common Area must also be approved by the U.S. Department of Veterans Affairs, if applicable;

(f) the right of the Association to exchange portions of the Common Area with the Declarant for substantially equal areas of the Property for the purpose of eliminating unintentional encroachments of improvements onto portions of the Common Area or any other purpose or reason. As long as there is Class B Members, no such exchange of portions of Common Area with the Declarant shall be effective unless an instrument agreeing to such exchange has been approved by the U.S. Department of Veterans Affairs, if applicable;

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(g) the right of the Association to grant easements for adjacent property owners, as set forth in Article VIII;

(h) the right of the Association to enter any Home or Lot in order to perform any maintenance, alteration, or repair required herein to be performed by the Association and the Owner of such Home shall permit the Association or its representatives to enter for such purpose at reasonable times and with reasonable notice;

(i) the right of the Association or its representatives to enter any Home or Lot in the case of any emergency threatening such Home or Lot or any other Home or Lot for the purpose of remedying or abating the cause of such emergency. Such right of entry shall be immediate;

(j) the easement rights of the Declarant reserved in Article VIII and Article IX of this Declaration;

(k) notwithstanding anything to the contrary herein, the right of the Declarant and/or the Association to grant to any natural gas utility company an easement or license that is reasonably necessary for the purpose of placing, operating, maintaining, repairing and using any equipment, lines, pipes and/or tanks that directly services any Home or Lot located within the Property;

(l) the right of the Declarant and/or the Association to grant any easement, reasonable in size, that is necessary for the construction, placement and/or maintenance of any sidewalks or other such pathways, which the Declarant or Association, in its sole discretion, deems to be in the best interest of the overall Community;

(m) the right of the Declarant and/or the Association to grant any easement or license, reasonable in size and scope, for any purpose that is reasonably necessary, in the opinion of the Declarant or Association, for the betterment of the Community as a whole; and

(n) the right and authority of the Declarant and/or the Association, hereby reserved, to grant to any Owner of a Home an easement that is reasonably necessary for the purpose of placing, operating, maintaining, repairing and using the air conditioning unit that services such Home. It is understood, for purposes of this paragraph, that if an air conditioning unit cannot otherwise be reasonably placed on a Home Owner's Lot due to circumstances beyond the control of such Home Owner, then it shall be deemed to be reasonably necessary for the Association to grant such Home Owner the easement described in this paragraph. Any easement granted by the Association pursuant to this paragraph shall be located on the Common Area that is immediately adjacent to the Owner's Unit, shall only be for the specific use described above, and shall only be of a size reasonably necessary to operate, place, maintain, repair and use the air conditioning unit.

SECTION 2.2. DELEGATION OF USE. Any Owner may delegate, in accordance with the Bylaws, his rights of enjoyment of the Common Area to the members of his family, his tenants or contract purchasers who reside on the Lot of such Owner.

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SECTION 2.3. LEASES OF HOMES AND LOTS. Any Lease shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration, the Articles and the Bylaws of the Association and that any failure by the lessee to comply with the terms of such documents shall be a default under the terms of the Lease. All Leases shall be in writing, and upon request of the Board, a copy of any Lease shall be delivered by the Owner to the Board within five (5) days of such request. The minimum term of any Lease shall be twelve (12) months and shall be for residential purposes only. In addition to the foregoing, each tenant under any Lease must acknowledge receipt of this Declaration. Other than the foregoing, there are no restrictions on the right of any Owner to lease his Home or Lot.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION POWERS

SECTION 3.1. MEMBERSHIP. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

SECTION 3.2. VOTING. The Association shall have two classes of voting membership:

Class "A". Class "A" Members shall be all Owners other than the Declarant. Class "A" Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class "B". The Class "B" Member shall be the Declarant and shall be entitled to forty (40) votes for each Lot it owns that is subject to this Declaration. The Class "B" membership shall cease and be converted to Class "A" membership on the happening of any of the following events, whichever occurs earlier:

(a) the date on which all of the Townhouses have certificates of occupancy issued thereon and have been conveyed to Owners other than Declarant; or

(b) on December 31, 2035; or

(c) when Declarant elects by written notice to the Association to terminate its Class B membership.

SECTION 3.3. ACTION WHEN CLASS "B" MEMBERSHIP CEASES. At such time as the Class "B" membership ceases to exist on the happening of any of the events listed in Section 3.2 above, the Class "B" Member shall have no further liability for the action or inaction of the Association, and the existing Class "A" Members shall, in accordance with this Declaration and the Bylaws, promptly (1) notify all Members entitled to notice of a meeting of the Members, (2) hold a meeting to elect new directors, if necessary, and (3) make sure that the

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directors appoint corporate officers.

SECTION 3.4. PURPOSE OF ASSOCIATION. The Declarant has established the Association for the purpose of exercising powers of (i) owning, maintaining and/or administering the Common Area, the Recreational Facilities and common facilities; (ii) providing common services; (iii) administering and enforcing the covenants, conditions and restrictions contained herein; and (iv) levying, collecting and disbursing assessments and charges herein created. Further, the Declarant reserves the right to convey to the Association and the Association agrees to accept any or all of its rights and obligations set forth herein. With the exception of any and all roads, real property or other areas of responsibility which the Declarant dedicates in writing to the public, Charleston County or another appropriate governmental body or entity which formally accepts the maintenance of such roads, real property or other area of responsibility, the Association shall be authorized (but not required) to provide the following services:

(a) clean-up, maintenance, and landscaping of the Area of Common Responsibility, to include all open spaces and the Common Area within the Community;

(b) insect and pest control of the Common Area to the extent that it is necessary or desirable in the judgment of the Board of Directors of the Association to supplement the service provided by the state and local governments;

(c) construction, maintenance, landscaping and reconstruction of Recreational Facilities and other improvements within the Common Area;

(d) to set up and operate the Architectural Control Committee as provided herein;

(e) to construct improvements on open spaces and the Common Area and maintain the same;

(f) to provide administrative services including, but not limited to, legal accounting, financial and communication services informing members of activities, notice of meetings, referendums, etc., incident to the above listed services;

(g) to provide liability and hazard insurance covering improvements and activities on the open spaces and the Common Area, independently or in collaboration with the Declarant;

(h) to provide directors and officers liability insurance for the Association and its duly elected directors and officers;

(i) landscaping of common roads and parkways, sidewalks and walking paths within the Community and any common properties or spaces located therein;

(j) to take any and all actions necessary to enforce all covenants and restrictions affecting the Community and to perform any of the functions or services delegated to the Association in any covenants or restrictions applicable to the

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Community;

(k) to collect from the Owners, if appropriate, and to assume and pay any expenses, costs or assessments pursuant to any other covenants, instruments and/or agreements to which the Property is subject;

(l) to exercise such voting or other rights assigned to the Property subject to this Declaration as set forth in any other covenants, instruments and/or other agreements to which the Property is subject;

(m) to provide any and all services necessary or desirable (in the judgment of the Board of Directors of the Association) to carry out the Association's obligation and business under the terms of this Declaration.

ARTICLE IV
COVENANT FOR MAINTENANCE AND ASSESSMENTS

SECTION 4.1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner for any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay (a) to the Association: (i) Annual Assessments or charges; and (ii) Special Assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and (iii) Specific Assessments; and (b) to the appropriate governmental taxing authority: (i) a pro rata share of ad valorem taxes levied against the Common Area; and (ii) a pro rata share of user fees and assessments for public improvements to or for the benefit of the Common Area if the Association shall default in the payment of either or both for a period of six (6) months as hereinafter provided. The Annual Assessments, Special Assessments and Specific Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the joint and several obligation of each Owner of such property at the time when the assessment fell due and upon such Owner's successor in title if unpaid on the date of the conveyance of such property. Provided, however, that, with respect to the Additional Property, if any, Declarant is exempt from the assessment, charge and lien created herein until all or any portion of such Additional Property is added to the Community and subjected to this Declaration, and then only with respect to the portion or portions added to the Community and/or subjected to this Declaration.

SECTION 4.2. PURPOSE OF ASSESSMENTS.

(a) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Property and in particular for the acquisition, improvement and maintenance of property, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, including but

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not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area; the maintenance of water and sewer mains and lines and storm drains and storm water facilities in and upon the Common Area; the maintenance of open spaces, roads and streets which have not been accepted for dedication by a public authority, signage, roadway medians and islands (including signage, medians and islands located in dedicated rights-of way), drives and parking areas within the Common Area, the procurement and maintenance of insurance in accordance with the Bylaws; the maintenance of any "sign easement" and/or "landscape easement" areas located on any lot, as shown on a recorded plat, including the Plat; the maintenance of the Open Space Easement area; the maintenance of entranceways, landscaping and lighting of the Common Area, road medians and islands and entranceways, the lighting of streets (whether public or private); the payment of charges for garbage collection and municipal water and sewer services furnished to the Common Area, if any; the costs associated with duties of the Architectural Control Committee; the employment of attorneys and other agents to represent the Association when necessary; the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, paving, and any other major expense for which the Association is responsible; and such other needs as may arise. The obligation of each Owner of a Lot to pay assessments may not be amended to relieve any Lot Owners or the Association of their obligation to maintain any roads or rights-of-way so long as such roads and rights-of-way remain privately owned.

(b) If deemed necessary by the Board, the Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area and those other portions of the Property which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense.

(c) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Property, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles and the Bylaws of the Association. As monies for any assessment are paid to the Association by any Lot Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When a Lot Owner shall cease to be a Member of the Association by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Property.

SECTION 4.3. ANNUAL ASSESSMENT. The annual assessment (the ***"Annual Assessment")*** shall established by the Board of Directors by preparation of a budget and

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assessment of the charges based upon each Lot's pro rata portion of this budget, except as otherwise provided herein. The budget shall include the cost of providing all services described in Section 4.2 above; provided, however, that only non-Declarant owned Lots shall be responsible for payment of the Annual Assessment. The Board may increase or decrease the Annual Assessment from calendar year to calendar year without approval by the Members. At the Board's option, the Annual Assessment may be collected monthly, quarterly, semi-annually or annually. The Annual Assessment shall be in addition to Special Assessments levied in accordance with Sections 4.4 below, if any. Notwithstanding anything contained herein to the contrary, for so long as Declarant owns Lots within the Community, the assessments due and owing from such Declarant-owned Lots shall not include Annual Assessments. As a result, Annual Assessments shall be greater on Lots owned by Owners other than the Declarant.

SECTION 4.4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the Annual Assessments authorized above, the Association may levy, in any calendar year, a special assessment (the "***Special Assessment***") for the purpose of defraying in whole or in part the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or to make up any shortfall on the current year's budget, provided that any such assessment shall have the assent of two-thirds (2/3) of the aggregate votes of Class "A" and Class "B" Members who are voting in person or by proxy at a meeting duly called for this purpose. All Special Assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, semiannual, or annual basis.

SECTION 4.5. SPECIFIC ASSESSMENTS. The Association shall have the power to levy Specific Assessments against a particular Townhouse to cover the costs incurred in bringing the Townhouse into compliance with the terms of these Covenants and other governing documents of the Association, including the Bylaws, or costs incurred as a consequence of the conduct of the Owner or occupants of the Townhouse, their agents, contractors, employees, licensees, invitees or guests. In addition, fines levied by the Association shall constitute Specific Assessments.

SECTION 4.6 NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 4.3 AND 4.4. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.3 or Section 4.4 shall be sent to all Members not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all the votes of each class of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. If the required quorum is not present at the second meeting, a third meeting may be called subject to the same notice requirements, and all those present at the third meeting shall constitute a quorum.

SECTION 4.7. RATE OF ASSESSMENTS. Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots to which they apply and may be

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collected on a monthly, quarterly, semiannual or annual basis at the Board's option.

SECTION 4.8. DATE AND COMMENCEMENT OF ASSESSMENTS & DUE DATES. The Annual Assessments provided for herein shall commence as to a Lot at such time as it is conveyed to an Owner, pro-rated from January 1 in the year of the date of the sale. Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Townhouse and impose special requirements for Owners with a history of delinquent payment. Provided, however, notwithstanding anything herein to the contrary, Declarant shall have the option each year of either (i) paying one hundred percent (100%) of the aggregate sum of the Annual Assessment and Special Assessment, as applicable, levied against all Lots owned by Declarant during each calendar year (which Annual Assessment shall be prorated for the period of time during which calendar year the Declarant is Owner of said Lot) or (ii) paying the greater amount of (a) twenty-five percent (25%) of the aggregate sum of the Annual Assessment and Special Assessment, as applicable, levied against all Lots owned by Declarant during each calendar year (which Annual Assessment shall be prorated for the period of time during which calendar year the Declarant is Owner of said Lot), or (b) such amount necessary to fund any difference between the Association's operating expenses and the Annual Assessments collected from Owners other than Declarant. If no operating deficit as described above exists for the current year, the Declarant shall not be required to pay any assessments. The Declarant's obligation to pay assessments as stated herein shall create a lien against the Declarant's Lots within the Property. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days in advance of each Annual Assessment period, the Board of Directors shall fix the amount of the Annual Assessment and promptly thereafter the Board of Directors shall cause written notice thereof to be sent to every Owner subject thereto. In the event the Board of Directors shall fail to fix the amount of Annual Assessments as described above, the assessment fixed for the immediately preceding year shall continue in effect until a new assessment amount is fixed. The due dates shall be established by the Board of Directors. The Association or their designee (e.g., a property management company) shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

SECTION 4.9. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall become delinquent and shall be subject to a late payment penalty of ten percent (10%) of the amount due and owing for each month such installment is delinquent, or any portion of any month, from the date each such installment is due until such payment is received by the Association, not to exceed One Hundred and No/100 Dollars ($100.00) per month, and in addition thereto shall bear interest from the due date at the rate of twelve percent (12%) per annum or the highest rate allowed by law, whichever is lower. The Association may undertake reasonable collection efforts and may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of South Carolina for the foreclosures of mortgages, and interest, costs and reasonable attorney's fees for representation of the Association

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in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein. The remedies herein provided shall not be exclusive, and the Association may enforce any other remedies to collect delinquent assessments as may be provided by law.

SECTION 4.10. EFFECT OF DEFAULT IN PAYMENT OF AD VALOREM TAXES OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY ASSOCIATION. Upon default by the Association in the payment to the governmental authority entitled thereto of any *ad valorem* taxes levied against the Common Area, user fees, or assessments for public improvements to the Common Area, which default shall continue for a period of six (6) months, each Owner of a Lot within the Property shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes, user fees, or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner. This Section 4.10 shall not become applicable until Class "B" Membership ceases to exist.

SECTION 4.11. SUBORDINATION OF THE LIEN TO MORTGAGES. The liens provided for herein shall be subordinate to the lien of any first mortgage encumbering a Lot. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in Section 4.10 above. However, the sale or transfer of any Lot which is subject to any such first mortgage pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage.

SECTION 4.12. NOTICE OF LIEN. Recordation of this Declaration constitutes Record notice and perfection of any claim of lien for assessment(s), and such lien relates back to the date of filing of this Declaration. No further recordation of any claim of lien is required.

SECTION 4.13. EXEMPT PROPERTY. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of South Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

SECTION 4.14. CAPITAL CONTRIBUTION. Notwithstanding any other provisions of this Declaration, during the time in which the Declarant is a Member (Class "A" or Class "B") of the Association pursuant to this Declaration and the Bylaws, the Declarant (a) may levy against

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each Lot, upon acquisition of record title by each Owner thereof other than Declarant, a one-time contribution to the working capital of the Association in an amount equal to one-third (1/3) of the Annual Assessment in effect as of the date of acquisition and (b) shall not be required to prepare a capital budget, set any other capital contribution, or otherwise collect or contribute any amounts for capital reserves. Any capital contribution collected by the Declarant shall not be collected against a mortgagee which takes title to a Lot pursuant to foreclosure.

SECTION 4.15. OTHER ASSESSMENTS. Each Owner, by acceptance of a deed to a Lot, acknowledges and agrees that the assessments and other charges provided for herein are in addition to, and not in lieu of, assessments and other charges that may be provided for in other covenants and/or declarations that may encumber the Lot. Unless otherwise agreed to in writing by the Association, the Association shall not be responsible for collecting such other assessments and charges on behalf of Owners of Lots within the Community.

ARTICLE V
MAINTENANCE AND INSURANCE

SECTION 5.1 TOWNHOUSE. The vertical boundaries of each Townhouse are as shown on the applicable subdivision plat Recorded in the RMC Office for Charleston County, South Carolina. Each plot of land constituting a Townhouse will consist of the land under the footprint of the Townhouse and the front, back and side yards, if any. All property within the Community not a part of a Townhouse or Lot will be Common Area maintained by the Association, with the exception of any and all roads which the Declarant dedicates in writing to the public, Charleston County or another appropriate governmental body which formally accepts the maintenance of such roads.

SECTION 5.2 MAINTENANCE – ASSOCIATION'S RESPONSIBILITY.

(a) The Association shall maintain and keep in good condition, order and repair the Area of Common Responsibility, which shall include, but need not be limited to:

(i) all Common Area, including the Open Space Easement;

(ii) all landscaping and other flora, structures, and improvements, including any entry features, sidewalks, and bike and pedestrian pathways, if any, situated upon the Common Area;

(iii) any furnishings, equipment or other personal property of the Association;

(iv) any irrigation system situated upon the Common Area;

(v) any landscaping and other flora, sidewalks, bike and pedestrian pathways/trails, if any, buffers, entry features, structures and improvements within public rights of-way within or abutting the Property or upon such other public land adjacent to the Property as deemed necessary in the discretion of the Board; and

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(vi) such additional portions of any property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association.

(b) The Area of Common Responsibility shall also include certain portions of the Townhouses and the improvements thereon, including:

(i) exterior maintenance of all dwellings including, but not limited to, painting, repairing, replacing and caring for the following:

(1) roofs (including the roof joists and trusses, crossbeams, roof decking and underlaying, and shingles or other covering and surface materials);

(2) gutters and downspouts;

(3) exterior walls and surfaces, including the brick, siding, or other building material forming the exterior walls of any dwelling and/or garage (but not including the wood, drywall, plaster or other building material on the inside of any dwelling or garage, and not including foundations and footings below any dwelling or garage);

(4) exterior stoops, landings, railings and steps;

(5) projecting cornices and copings; and

(6) shutters.

(ii) all landscaping and other flora originally installed on a Lot by the Declarant; provided however, that the Association shall not be responsible for maintaining any improvements made to the landscaping by or on behalf of any Owner;

(iii) all grass located in the front, rear and side yards of each Townhouse; provided however, that the Association shall only be responsible for mowing and edging the grass and further provided that the Association shall not be responsible for maintaining any portion of an Owner's rear yard if the Owner encloses such area with a fence or other enclosure;

(iv) any irrigation system situated upon any portion of a Lot;

(v) all walkways, driveways, and other paved areas; and

(vi) all mailboxes serving Townhouses.

The Association may, as a common expense, maintain other property and improvements which it does not own, including, without limitation, property dedicated to the public, or provide maintenance or services related to such property over and above the level being provided by the property owner, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community Wide Standards.

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(c) The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to an Owner, or (ii) such property is dedicated to any local, state, or federal government or quasi-governmental entity; provided, however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community Wide Standards.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means without the consent of Declarant so long as Declarant owns one or more Lots within the Property.

(d) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a common expense to be allocated among all Townhouses as part of the Annual Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, any recorded covenants, or any agreements with the owner(s) thereof. Notwithstanding the foregoing, the Board may, within its sole discretion, allocate the expense of maintenance, repair, and replacement which benefits one (1) or more, but less than all Townhouses, as a Specific Assessment in accordance with the benefit so received by such Townhouses, pursuant to Section 4.5.

(e) As a matter of information to future Members of the Association, the Declarant desires to make it known that due to differing amounts of exposure to the elements and other factors, some Townhouses may require more maintenance than others and that it is in the best interest of the entire Association that all Townhouses be properly maintained and that the Association shall be required to provide such maintenance provided for herein and make a uniform charge without regard to the actual cost of maintenance of each dwelling.

(f) The Association, its successors and assigns agents, members, officers, directors, and employees of any of the foregoing, shall not be liable in any manner to the Owners or any other party for any type of injury to person or property, including death, arising from action taken or failure to act within the scope of this Declaration or by law, including its own negligence, unless caused by the wanton and willful misconduct or gross negligence of Association.

SECTION 5.3 MAINTENANCE – OWNER'S RESPONSIBILITY. Each Owner shall maintain his or her Townhouse and all structures, landscaping and other flora, and other improvements comprising the Townhouse in a manner consistent with the Community Wide Standards and this Declaration, except to the extent that such maintenance responsibility is assigned to the Association.

For instance, the responsibility of the Owner shall include the maintenance and repair of the wood, drywall, plaster, or other building material on the inside of the exterior walls and

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ceilings forming the boundaries of the dwelling. Owners shall also be responsible for the maintenance, repair and replacement of the windows, window casings, window shutters, exterior doors and door frames (including any and all front doors, back doors, sliding glass doors, and garage doors); and all hardware which is part of any window or door; and screens and exterior lights, if any, serving the Owner's Townhouse. Further, the maintenance and repair of those portions of the heating and air conditioning systems serving a Townhouse, including the air conditioning compressor and condenser located outside a dwelling, shall be the responsibility of the Owner of such Townhouse.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association plus a ten percent (10%) administrative fee against the Townhouse and the Owner in accordance with Section 4.5. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

All maintenance required by this Section shall be performed in a manner consistent with the Community Wide Standards. In the event that an Owner neglects or fails to maintain his Lot and/or his Townhouse in a manner consistent with the Community Wide Standards, the Association shall have the absolute right to contract for and to perform maintenance as shall be prescribed by the Board of Directors, and for this purpose, the Owner grants unto the Board of Directors, its agents, employees, and all others designated by the Board of Directors, the right to enter upon the property of the Owner for the purpose of completing such maintenance work, all without liability or responsibility, criminal or civil, for trespass or any other action. Provided, however, the Association shall first give written notice to the Owner of the specific items of exterior maintenance or repair the Association intends to perform, and the Owner shall have twenty (20) days from the date of mailing of said notice within which to perform such exterior maintenance. The determination as to whether an Owner has neglected or failed to maintain his Lot and/or Townhouse in a manner consistent with the Community Wide Standards shall be made by the Board of Directors of the Association, in its sole discretion. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in this Article V. Advance notice shall not be required if the Association determines an emergency condition exists. The cost of such work required by the Board of Directors to cure maintenance deficiencies (together with an administrative surcharge equal to ten percent (10%) of such cost) shall be assessed against the Owner and his Lot as a Specific Assessment and shall be subject to all lien rights provided herein.

In the event a Townhouse constructed on a Lot is going to be unoccupied for a consecutive period of one (1) month or longer, the Association may require the Owner to designate a responsible firm or individual to undertake his general maintenance responsibilities, which responsibilities shall include, at a minimum, maintaining exterior appearance, safeguarding the property to prepare for severe weather and repairing the property in the event of any damage therefrom. At the request of the Association, the name(s) and address of such firm or individual must be furnished to the Association.

SECTION 5.4 ASSOCIATION INSURANCE.

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(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance on any Area of Common Responsibility; provided, however, that the Townhouse Owners shall be responsible for maintaining property insurance for all portions of their Townhouses, notwithstanding the inclusion of certain portions of the Townhouses within the Area of Common Responsibility, as set forth in Section 5.6 below;

(ii) Commercial general liability insurance on the Area of Common Responsibility, provided, however, that the Association shall not be responsible for maintaining commercial general liability on any Townhouse or portion thereof, notwithstanding the inclusion of certain portions of the Townhouses within the Area of Common Responsibility;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds;

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable.

(b) Flood Insurance. In the event that any portion of the Common Area is or shall become located in an area identified by the Federal Emergency Management Agency ("***FEMA***"), or its successor entity as an area having special flood hazards, the Board shall obtain a "blanket" policy of flood insurance on the Common Area in the amount of one hundred percent (100%) of current "replacement cost" of all affected improvements and other insurable property or the maximum limit of coverage available, whichever is less. Notwithstanding the foregoing, until such time as the value of the Common Area improvements exceeds $10,000.00, the Board shall not be obligated to obtain the flood insurance set forth above.

(c) Premiums. Premiums for all insurance on the Area of Common Responsibility shall be a common expense and shall be included in the Annual Assessment. In the event of an insured loss, the deductible shall be treated as a common expense and assessed against all Townhouses. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one (1) or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Townhouses pursuant to Section 4.5.

SECTION 5.5 DAMAGE AND DESTRUCTION. In the event of any loss covered by

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insurance or bond maintained by the Association, only the Board or its duly authorized agent may file and adjust insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this subsection, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage or destruction to the Area of Common Responsibility (for purposes of this Section, the term "Area of Common Responsibility" shall not include any portion of any Townhouse, notwithstanding the inclusion of certain portions of the Townhouse within the Area of Common Responsibility pursuant to Section 5.2), shall be repaired or reconstructed unless the Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association, and with the consent of Declarant so long as Declarant owns one or more Lots within the Property, decide within ninety (90) days after the loss not to repair or reconstruct. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Area of Common Responsibility shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Area of Common Responsibility shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared and maintained by the Association consistent with the Community Wide Standards.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of mortgagees and may be enforced by the mortgagee of any affected Townhouse.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 5.6.

SECTION 5.6 OWNERS' INSURANCE. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry (i) property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible, except to the extent that such coverage is maintained by the Association, and (ii) flood insurance for the full replacement cost of all insurable improvements on his or her Lot or the maximum limit of coverage available, whichever is less. Owners may, at their option, obtain insurance coverage, at their own expense, upon their own personal property and for their personal liability and living expense and such other coverage as they may desire. Owners acknowledge and agree that the Association is not purchasing and shall not be responsible for any insurance related to the Lots or the Units, it being the sole responsibility of the Owners of Lots and/or Units. Upon request by the Board, the Owner shall furnish a copy of such insurance policy or policies to the Association within thirty (30) days from the date of such request. In the event that any such Owner fails to obtain insurance or fails to provide the Association with a copy of such policy or policies as required by this Section, the Association may purchase such insurance on behalf of the Owner and specifically assess the cost thereof to the Owner, to be

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collected in the manner provided for collection of assessments under Article IV.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his or her Townhouse, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article VI. The Owner shall pay any costs which are not covered by insurance proceeds.

SECTION 5.7 PARTY WALLS.

(a) General Rules of Law to Apply. Each wall or fence which is built as a part of the original construction of the Townhouses upon the Property and placed on the dividing line which serves and/or separates any two adjoining Townhouses shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. No alterations may be made to any party wall other than alterations to the interior surfaces.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice; provided, however, any such Owner causing restoration to be made retains the right to call for a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provision of this Article V, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements and of repairing any damage resulting from such exposure.

(e) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article V shall be appurtenant to the land and shall pass to such Owner's successor in title.

ARTICLE VI
ARCHITECTURAL CONTROL

SECTION 6.1. IMPROVEMENTS. No building, fence, wall, post, patio, deck, lighting, walk, driveway, banners, flags, flag poles, signs, antenna or other structure or planting or landscaping shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein including without limitation any plantings or

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landscaping be made until the plans and specifications showing the nature, kind, shape, height, materials, colors, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural control committee composed of three (3) or more members to be initially appointed by the Declarant for a term not to exceed three (3) years (hereinafter referred to as the "***Architectural Control Committee***"). Refusal of approval of plans, location or specifications may be based upon any ground, including purely aesthetic conditions, which in the sole and uncontrolled discretion of the Architectural Control Committee shall seem sufficient. The above notwithstanding, the Declarant, its successors or assigns, shall have the right to appoint one (1) member of the Architectural Control Committee until it divests itself of all Lots in the Community (including Lots located on any Additional Property or annexed property). Upon the divestiture of all Lots, unless the Declarant shall elect to do so sooner, the Board of Directors or Architectural Control Committee of the Association shall assume sole responsibility of the rights of approval.

SECTION 6.2. PROCEDURES.

(a) Any person desiring to make any improvement, alteration or change described in Section 6.1 above shall submit two (2) copies of the plans and specifications therefor, showing the nature, kind, shape, height, materials and location of the same, to the Architectural Control Committee which shall evaluate such plans and specifications in light of the purpose of this Article VI.

(b) Upon approval, one (1) copy of all plans and related documents bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot of any plans and specifications shall not be deemed a waiver of the Architectural Control Committee's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot. Approval of such plans and specifications relating to any Lot, however, shall be final as to that Lot and such approval may not be reviewed or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

(c) Any approval granted by the Board of Directors, or by the Architectural Control Committee, shall not be construed to supersede the Owner's responsibility to acquire any necessary permits or approvals from any Governmental authority.

(d) Neither Declarant, nor any other member of the Architectural Control Committee, shall be responsible or liable in any way for any defects in any plans or specifications approved by the Architectural Control Committee, nor for any structural defects in any work done according to such plans and specifications approved by the Architectural Control Committee. FURTHER, NEITHER DECLARANT, NOR ANY MEMBER OF THE ARCHITECTURAL CONTROL COMMITTEE SHALL BE LIABLE IN DAMAGES TO ANYONE BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE, MISFEASANCE, MALFEASANCE OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR

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DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS OR THE EXERCISE OF ANY OTHER POWER OR RIGHT OF THE ARCHITECTURAL CONTROL COMMITTEE PROVIDED FOR IN THIS DECLARATION. EVERY PERSON WHO SUBMITS PLANS AND SPECIFICATIONS TO THE ARCHITECTURAL CONTROL COMMITTEE FOR APPROVAL AGREES, BY SUBMISSIONS OF SUCH PLANS AND SPECIFICATIONS, AND EVERY OWNER OF ANY LOT AGREES, THAT HE WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, THE ASSOCIATION, ITS BOARD MEMBERS OR OFFICERS, OR ANY MEMBER OF THE ARCHITECTURAL CONTROL COMMITTEE, TO RECOVER ANY SUCH DAMAGES AND HEREBY RELEASES, REMISES, QUITCLAIMS, AND COVENANTS NOT TO SUE FOR ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS, AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

ARTICLE VII
USE RESTRICTIONS

SECTION 7.1. RESIDENTIAL USE OF PROPERTY. All Lots shall be used for single-family, residential purposes only, and in accordance with all applicable zoning regulations, including but not limited to those of the Town of Mount Pleasant.

SECTION 7.2. SETBACKS AND BUILDING LINES. Each dwelling which shall be erected on any Lot shall be situated on such Lot in accordance with the building and setback lines required by the Town of Mount Pleasant and/or Charleston County and shown in more detail on the Plat. The specific placement of each dwelling on a Lot must be approved in writing by the Architectural Control Committee before commencement of lot clearing preparatory to construction unless either a variance shall have been granted by Declarant or Declarant shall have amended the Plat. In no event shall any dwelling be erected and located upon any such Lot in a manner which violates the requirements and provisions of any applicable Town of Mount Pleasant or Charleston County zoning ordinances and/or subdivision regulations. Unless written approval is granted by the Architectural Control Committee and any applicable governmental agencies, no building shall be located on any Lot within any setback area.

SECTION 7.3. RULES AND REGULATIONS. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the yard space of each Lot, the streets and the Common Area. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof or for the violation of any covenants and conditions contained in this Declaration.

SECTION 7.4. DELIVERY RECEPTACLES AND PROPERTY IDENTIFICATION MARKERS. The Architectural Control Committee shall have the right to approve the location, color, size, design, lettering and all other particulars of receptacles for the receipt of mail, newspapers or similarly delivered materials, and of name signs for such receptacles, as well as

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property identification markers.

SECTION 7.5. USE OF OUTBUILDINGS AND SIMILAR STRUCTURES. No structure of temporary nature (unless approved in writing by the Architectural Control Committee) shall be erected or allowed to remain on any Lot, and no trailer, utility shed, camper, shack, tent, garage, barn or other structure of a similar nature shall be used as a residence, either temporarily or permanently; provided, however, this Section shall not be construed to prevent the Declarant and those engaged in construction activities on the Lots from using sheds or other temporary structures during construction, Notwithstanding the above, party tents or similar temporary structures may be erected for special events with the prior written approval of the Board of Directors of the Association or the Declarant.

SECTION 7.6. COMPLETION OF CONSTRUCTION. The Association shall have the right to take appropriate legal action, whether at law or in equity, to compel the immediate completion of any residence not completed within six (6) months from the date of commencement of construction at any time, except with the written approval of the Architectural Control Committee; provided, however, nothing herein shall prevent Declarant or any builder of homes in the Community approved by Declarant from using any Lot owned by Declarant or such builder of homes for the purpose of carrying on business related to the development, improvement and sale of property in the Community; and provided further that, to the extent allowed by applicable zoning laws, private offices may be maintained in dwellings located on any of the Lots so long as such use is incidental to the primary residential use of the dwellings.

SECTION 7.7. LIVESTOCK AND POULTRY. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other small household pets, not to exceed a total of two (2) without the prior written consent of the Board of Directors of the Association or the Declarant, may be permitted in a Home, provided that they are not kept, bred, or maintained for any commercial purposes. However, those pets which are permitted to roam free or, in the sole discretion of the Association, endanger health, make offensive noise, cause unsanitary conditions, or constitute a nuisance or inconvenience to the Owners of other Homes or the owner of any portion of the Property shall be removed upon the written request of the Board of Directors. If the Owner fails to honor such request, the pet may be removed by the Board of Directors. Dogs shall be confined on a leash held by a responsible person at all times whenever they are outside a Home. No dog runs or animal pens of any kind shall be permitted on any Lot. All excrement from dogs, or other pets, must be cleaned up by the Owner of such dogs or pets promptly.

SECTION 7.8. OFFENSIVE ACTIVITIES; DISCLOSURES; ONGOING CONSTRUCTION.

(a) Subject to the terms of subsections (b) and (c) below, no noxious, offensive or illegal activities shall be carried on upon any Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to the Owners of other Lots in the Community. Neither the Declarant, nor the Association, nor any of their respective directors, officers, employees, contractors, consultants, shareholders, members, affiliates, assignees, successors, nominees, attorneys or agents, shall be liable to any Owner for any inconvenience or damage sustained by

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such Owner as a result of any noxious, offensive or illegal activities.

(b) Each Owner, by acceptance of a deed to a Lot, hereby acknowledges the following:

(i) The Property is located adjacent to a street thoroughfare that may result in traffic and noise from time to time by vehicular traffic thereon and the same may be a nuisance. Neither the Declarant, nor the Association, nor any of their respective directors, officers, employees, contractors, consultants, shareholders, members, affiliates, assignees, successors, nominees, attorneys or agents, shall be liable to any Owner for any inconvenience or damage sustained by such Owner as a result of any such noise emanating from or in proximity to such street thoroughfares, including, but not limited to, such noise as may emanate from persons using any roadways or walkways adjacent thereto;

(ii) The views from a Lot may change over time due to, among other things, additional development and the removal or addition of landscaping. No view easement, express or implied, will be granted to any Owner in connection with the conveyance of a Lot to such Owner;

(iii) No representations are made regarding the zoning of adjacent property, or that the category to which adjacent property is zoned may not change in the future;

(iv) No representations are made regarding the schools that currently, or which may in the future, serve the Property;

(v) Since, in every neighborhood, there are conditions which different people may find objectionable, it is acknowledged that there may be conditions outside of the Property which an Owner may find objectionable and that it shall be the sole responsibility of the Owners to become acquainted with neighborhood conditions which could affect the Lots and the Property; and

(vi) No representations are made regarding the availability of cable or internet service to the Property.

(c) In addition, each Owner acknowledges, understands, and covenants to inform its lessees that the Property, including the Lots, and the areas adjacent to the Property are subject to further development and expansion, and therefore, there may be certain inconveniences during any period of construction, and Owner waives all claims with respect thereto. Owner agrees that if Owner or Owner's employees, lessees, invitees, guests, contractors, or agents enter onto any area of construction, they do so at their own risk, and neither the Declarant, a Declarant-related entity, the Association, nor their respective contractors, agents or employees shall be liable for any damage, loss or injury to such persons.

SECTION 7.9. SIGNS. No advertising, signs or billboard shall be erected on any Lot or

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Townhouse. The Association shall be entitled to enter upon any Lot and remove any such advertising, signs or billboard in violation of this Declaration. This restriction shall not apply to signs used to identify and advertise the Community as a whole, nor to signs for selling Lots and/or Homes, provided such signs are approved by the Board of Directors and/or the Architectural Control Committee. Also, the provisions of this Article VII shall not apply to notices posted in connection with judicial or foreclosure sales conducted with respect to a mortgage.

SECTION 7.10. AESTHETICS, NATURAL GROWTH & SCREENING; UNDERGROUND UTILITY SERVICE. Trees and shrubs, or distinctive flora, shall not be intentionally destroyed or removed except with the prior approval, in writing, of the Architectural Control Committee. Clotheslines, garbage cans and equipment shall be screened to conceal them from view of neighboring Lots and streets. All residential utility services and lines to residences shall be underground.

SECTION 7.11. ANTENNAE. No radio or television transmission or reception towers or antennae shall be erected on any Home or within the Property without the prior written approval of the Architectural Control Committee. In no event shall free standing transmission or receiving towers be permitted. Satellite dishes having a diameter of eighteen inches (18") or less will be allowed with proper screening and prior written approval of the Architectural Control Committee. Notwithstanding the foregoing, no radio or television transmission or reception towers or antennae or satellite dishes shall be visible from the street.

SECTION 7.12. TRAILERS; TRUCKS; SCHOOL BUSES; BOATS; BOAT TRAILERS. No house trailers, mobile homes, school buses, trucks over one (1) ton capacity, commercial vehicles, boats or boat trailers, motor homes, motorcycles, campers, and vans or vehicles on blocks or other inoperable vehicles shall be kept, stored or parked overnight either on any street or on any Lot, and no vehicle with exterior commercial equipment, lettering or logos may be parked overnight either on any street or on any Lot, except within area(s) which may be specifically designated for such purposes by the Association; provided, however, temporary buildings and other structures shall be permitted during the construction period of the Townhouses or as a temporary real estate sales office of Declarant for the sale of Homes. In addition, vehicles without current registration may not be kept, stored or parked on any Lot, but may be kept in garages. Notwithstanding the foregoing, passenger automobiles may be parked in driveways. The foregoing will not be interpreted or construed or applied to prevent the temporary nonrecurring parking of any vehicle, boat or trailer for a period not to exceed twenty-four (24) hours upon any Lot, and service and delivery vehicles may be parked in the Property during the daylight hours for such period of time as is reasonably necessary to provide service or make a delivery to a Home or the Common Area. No garage, outbuilding or other appurtenant structure shall be used for residential purposes, either temporarily or permanently, nor shall any portion of the Property (except as expressly stated in this Section) be used except for residential purposes incidental or necessary thereto. For purposes of this Section, a vehicle shall be considered "stored" if it is put upon blocks or covered with a tarpaulin and remains on blocks or so covered for five (5) consecutive days without the prior approval of the Board.

If any vehicle is parked on any Lot, street or Common Area in violation of this Section,

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or in violation of the Association's rules and regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of the person or entity which will do the towing and the name and telephone number of a person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed in accordance with the notice without further notice to the Owner or user of the vehicle.

If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's Lot, is obstructing the flow of traffic, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance with this subsection, neither the Declarant, nor the Association, nor any of their respective directors, officers, employees, contractors, consultants, shareholders, members, affiliates, assignees, successors, nominees, attorneys or agents, shall be liable to any person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions rather than exercise its authority to tow.

SECTION 7.13. GARBAGE AND REFUSE DISPOSAL. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers designed for that purpose. All receptacles or other equipment for the storage or disposal of such waste material shall be kept in a clean and sanitary condition and shall always be stored in such a manner that they cannot be seen from the street or adjacent property. Such receptacles or other equipment for the storage or disposal of such waste material shall regularly be delivered by Lot owners to street side on the appropriate mornings for garbage and trash removal and said empty containers shall be retrieved from the street no later than 7:00 p.m. of the following day. If such litter or other materials is found on any Lot, the same will be removed by the Lot Owner of such Lot, at the Lot Owner's expense, upon written request of the Association. No trash, garbage or other waste may be placed within the Common Area, except in containers approved by the Board of Directors.

Such closed, sanitary trash and recycle containers. All such closed trash shall regularly be delivered by lot owners to street side on the appropriate mornings for garbage and trash removal and said empty containers shall be retrieved from the street no later than 7:00 p.m. of each such day.

SECTION 7.14. SEWAGE SYSTEM. Sewage disposal shall be through municipal system or type approved by appropriate state and local agencies.

SECTION 7.15. WATER SYSTEM. Water shall be supplied through municipal system or type approved by appropriate state and local agencies.

SECTION 7.16. UTILITY FACILITIES. Declarant reserves the right to approve the necessary construction, installation and maintenance of utility facilities, including but not limited to water, telephone and sewage systems, which may be in variance with these restrictions.

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SECTION 7.17. CHANGING ELEVATIONS. No Lot Owner shall excavate or extract earth for any business or commercial purpose. No elevation changes shall be permitted which materially affect surface grade of surrounding Lots, unless approved in writing by the Architectural Control Committee.

SECTION 7.18. MODEL TOWNHOUSES. Declarant, as well as any builder of Townhouses in the Community, shall have the right to construct and maintain model Townhouses on any of the Lots. "Model Townhouses" shall be defined as those Townhouses used for the purpose of inducing the sale of other Townhouses within the Community.

SECTION 7.19. QUIET ENJOYMENT. No obnoxious or offensive activity shall be carried on or upon the Property, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood.

SECTION 7.20. NUISANCE. No activity deemed noxious or offensive by the Board shall be carried on upon any Lot or within any Home or the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to Owners of Lots within the Community as determined by the Board. Examples of such offensive activities shall include, but not be limited to, the origination or emission of any loud or disturbing noise or vibrations, the maintenance of an auto repair site, the maintenance of unsightly outdoor storage or personal property (including toys, motorcycles, or other motor vehicles, tricycles, bicycles, wood piles or other miscellaneous items) on porches, patios, terraces, or yards, or similar unsightly activity not in keeping with the aesthetic character and high level of appearance of the Community.

SECTION 7.21. BUSINESS USE. No trade or business may be conducted in or from any Lot or Home, except that an Owner or occupant residing in a Home may conduct business activities within the Home so long as: (a) the existence or operation of the business activity is not apparent or detectible by sight, sound or smell from outside the Home; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve persons coming on the Property who do not reside in the Property or door to door solicitation of residents of the Property and does not constitute a nuisance or hazardous or offensive use or threaten the security or safety of other residents within the Property, as may be determined in the sole discretion of the Board. No garage sale, moving sale, rummage sale or similar activity shall be permitted without the prior written approval of the Board.

The terms "business" and "trade" as used in this Section shall be construed as having their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provisions of goods and services to persons other than the provider's family and for which the provider of services receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is full or part time; (ii) such activity is intended to or does generate a profit; and (iii) a license is required therefore. Notwithstanding the above, the leasing of a Home shall not be considered a trade or business within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or a builder approved by the Declarant with respect to its development and/or sale of the Property or Declarant's use of any if the Homes which it owns or may own within the Property, including the operation of a time share or similar program.

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SECTION 7.22. FIREARMS AND FIREWORKS. The discharge of firearms or fireworks within the Community is prohibited. The term "firearms" includes without limitation, B-B guns, pellet guns, paintball guns and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the Bylaws, the Association shall not be obligated to take action to enforce this Section.

SECTION 7.23. WAIVER OF SETBACKS. BUILDING LINES AND BUILDING REQUIREMENTS. The Architectural Control Committee may, for good cause and subject to appropriate waiver from the Town of Mount Pleasant and/or Charleston County, as applicable, waive violations of the setbacks and building lines provided for in Section 7.2. Such waiver shall be in writing and Recorded. A document executed by the Architectural Control Committee shall be, when Recorded, conclusive evidence that the requirements of Section 7.2 have been complied with. The Architectural Control Committee may also handle violations of setbacks and boundary lines by amending the Plat. Nothing contained herein shall be deemed to allow the Architectural Control Committee to waive violations which must be waived by an appropriate governmental authority.

SECTION 7.24. PORCHES AND PATIOS. No junk, bicycles or unsightly items shall be stored or left on a porch or patio. No towels, clothing, garments or other material is permitted to be hung or draped from a porch or patio. Nothing shall be thrown from porches or patios, especially cigarettes, matches, food, and children's toys.

SECTION 7.25. OCCUPANTS BOUND. All provisions of this Declaration, the Bylaws, and of any rules and regulations or use restrictions promulgated pursuant (t)hereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and/or invitees of any and all Homes. Every Owner shall cause all occupants of his/hers/its Home to comply with this Declarations, the Bylaws, and rules and regulations adopted pursuant (t)hereto, and shall be responsible for all violations and/or losses to the Common Area and/or property of other Owners caused by any such occupants, guests and/or invitees, notwithstanding the fact that such occupants, guests and/or invitees of such Home are fully liable and may be sanctioned for any violation of this Declarations, the Bylaws, and rules and regulations adopted pursuant (t)hereto.

SECTION 7.26. EASEMENTS, BUFFER AREAS AND RIGHTS OF WAY. Each Owner, by acceptance of a deed to a Lot, acknowledges that the Owner takes title subject to the buffer areas, easements, rights of way and all other matters shown on the Plat.

ARTICLE VIII
EASEMENTS

SECTION 8.1. GENERAL EASEMENTS RIGHTS. All of the Property, including Lots, Homes and Common Area, shall be subject to such easements for access, driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities and other purposes as shall be

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established by the Declarant or by its predecessors in title, prior to subjecting the Property to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and across the Area of Common Responsibility (including the Common Area conveyed to it or maintained by it), such further easements as are required for the convenient use and enjoyment of the Property. There is hereby reserved to the Association, its successors and assigns, and its agents and employees an easement and right of ingress, egress, and regress across the Area of Common Responsibility for the purpose of maintaining such Area of Common Responsibility pursuant to the provisions of this Declaration. In addition, there is hereby reserved to the Declarant, its successors and assigns, and its agents and employees an easement and right of ingress, egress, and regress across the Common Area, now or hereafter owned by the Association, for the purpose of construction of improvements within the Property, including the right of temporary storage of construction materials on said Common Area.

So long as the Declarant owns any of the Property, Declarant reserves blanket easements and the right to grant such specific easements over, under and through all Homes, Lots and Common Area, as may be necessary in conjunction with the orderly development of the Property or any adjacent property (including without limitation the planning, construction, marketing, leasing, management or maintenance of improvements) for access, construction and maintenance of public or private utilities and storm drainage (whether subsurface or surface).

All Homes shall be subject to easements for the encroachment of initial improvements constructed on adjacent Homes by the Declarant to the extent that such initial improvements actually encroach including, but not limited to, such items as overhanging eaves and walls.

Declarant reserves access easements over all Homes for construction, either for that Home or any adjacent property and easements for the installation of public or private utilities and storm drainage (whether subsurface or surface).

Declarant reserves access easements over all Townhouses for construction, either for that Townhouse or any adjacent property and easements for the installation of public or private utilities and storm drainage (whether subsurface or surface). There are reserved cross-easements in favor of Owners of Townhouses that comprise a building for access to and from each other Townhouse comprising the building and the Common Area adjacent to the Townhouse comprising the building, including, but not limited to, the transportation of garbage receptacles; however, this does not include access to approved decks, patios or areas with approved fences. All rights and easements reserved under this Declaration shall also be reserved to the assigns and successors in the interest of the Declarant.

SECTION 8.2. UTILITIES AND ROADS. Easements for installation and maintenance of utilities (including cable television service) and drainage facilities are reserved as indicated on Recorded plats. Within these easements (and associated swails or drainage ditches) no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the drainage easements, or which may obstruct or retard the flow of water through drainage channels in the easements. An easement is hereby established for the benefit of the Town of Mount Pleasant and Charleston County (and any other person or firm providing

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services to the Community under agreement with or at the direction of the Association) over all Common Area as may be reasonably necessary for the setting, removal and reading of water meters, and the maintenance and replacement of water, sewer and drainage facilities and for the fighting of fires and collection of garbage. The Association shall have the power and authority to grant and establish upon, over and across the Common Area such additional easements as are necessary or desirable for the providing of services or utilities to the Common Area. The Declarant shall have the power and authority to grant and establish upon, over and across the Lots such additional easements, and to expand, contract and/or reconfigure any existing easements, as are necessary or desirable for the providing of access, ingress, egress, services or utilities to the Lots.

As shown on the 2016 Adjustment Plat and the 2016 Subdivision Plat, certain "Variable Width MPW Easements" are located within the 15' and 10' "Buffer" areas. The Association acknowledges and agrees that should the Town of Mt. Pleasant be required to remove or destroy landscaped or improved areas within those Variable Width MPW Easements that are located within the Buffer areas in order to maintain the water lines, the Association will replace such landscaped or improved areas at the Association's sole cost and expense.

Unless and until such time as the Declarant dedicates the roads to the public and Charleston County or another appropriate governmental body formally accepts the maintenance of such roads in writing, all of the Owners shall have a non-exclusive appurtenant easement over and across the roads shown on the Plat, including without limitation Alagash Way, for access, ingress and egress to the Lots. Until said roads are dedicated to the public for public use and Charleston County or another appropriate governmental body formally accepts the maintenance of such roads in writing, the Declarant (or the Association if and when Declarant transfers title to such roads to the Association) shall maintain said roads and the associated drainage facilities.

The Declarant intends to install gang utility meters (including, but not limited to, water, electricity and gas) on the sides of buildings that contain more than one Townhouse and run utility lines on, under, over or through certain Townhouses in order to serve all of the Townhouses in a single building. In addition, the Declarant intends to install HVAC units and other mechanical systems on the sides of buildings that contain more than one Townhouse and run all necessary lines and equipment on, under, over or through certain Townhouses in order to serve all of the Townhouses in a single building. Accordingly, cross-easements for installation and maintenance of utilities and mechanical systems are hereby reserved in favor of Owners of Townhouses that comprise a building on, under, over and through the various Townhouses and Lots.

SECTION 8.3. SIGN AND LANDSCAPE EASEMENTS; OPEN SPACE EASEMENT. The Declarant reserves easements for the maintenance of Community signs and landscaping and lighting surrounding same within the Community. Declarant hereby grants, gives and conveys to the Association a perpetual, non-exclusive easement over any portions of the Lots designated as "sign easements" or "landscape easements" to maintain, repair and replace the Community signs which may be located thereon, as well as the lighting fixtures and any landscaping thereon.

In addition, the Declarant reserves easements for the maintenance of open space and park

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areas within the Community and the construction or placement of improvements thereon. Declarant hereby grants, gives and conveys to the Association a perpetual, non-exclusive easement over any portions of the Lots burdened by the Open Space Easement to maintain, repair and replace the open space and park areas within the Community and construct or place improvements within the Open Space Easement area.

The costs of all such maintenance, repair and replacement shall be part of the common expenses of the Association, payable by the Owners as set out in Article IV hereof. In addition to the easements granted above, Declarant hereby gives, grants and conveys to the Association the right of ingress, egress and regress over other portions of such Lots as shall be reasonably necessary to effectuate the purposes stated above. The easements hereby granted shall run with the land in perpetuity and be binding upon and inure to the benefit of all persons and entities now owning or subsequently acquiring all or part of the Property.

SECTION 8.4. DRAINAGE AND ACCESS EASEMENTS. Easements for the construction and maintenance of drainage and Owner access to the Common Areas are reserved as indicated on recorded plats, including without limitation areas designated as "drainage easements". Within these easements no construction, structures, planting or other material shall be placed or permitted to remain which may obstruct or interfere with the maintenance of drainage and access to the Common Areas. Declarant reserves a perpetual, non-exclusive easement over any portions of Lots designated as "drainage easements" on the Plat, to effectuate the purposes stated above. The costs of all such maintenance, repair and replacement shall be part of the common expenses of the Association, payable by the Owners as set out in Article IV hereof. In addition to the easement granted above as to the portion of Lots designated "drainage easements", Declarant hereby reserves the right of ingress, egress and regress over other portions of such Lots as shall be reasonably necessary to effectuate the purposes stated above. The easements hereby granted shall run with the land in perpetuity and be binding upon and inure to the benefit of all persons and entities now owning or subsequently acquiring all or part of the Property.

SECTION 8.5. EASEMENTS FOR ADDITIONAL PROPERTY. There is hereby reserved in the Declarant, its successors, assigns and successors in title to the Additional Property, for the benefit of and as an appurtenance to the Additional Property and as a burden upon the Property, perpetual, non-exclusive rights and easements for: (i) pedestrian and vehicular access, ingress, egress and parking over, across, within and on all sidewalks, streets, trails and parking facilities from time to time located on or within the Common Area or within easements serving the Common Area; (ii) the installation, maintenance, repair, replacement and use of security systems and utility facilities and distribution lines, including without limitation drainage systems, storm sewers and electrical, gas, telephone, water, sewer and cable system lines; and (iii) drainage and discharge of surface water onto and across the Property, provided that such drainage and discharge shall not materially damage or affect the Property or any improvements from time to time located thereon.

Declarant and Declarant's agents may be developing the Additional Property and engaging in other construction activities related thereto. Such construction activities may, from time to time, produce certain conditions on the Property, including, without limitation: (i) noise or sound that is

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objectionable because of its volume, duration, frequency or shrillness; (ii) smoke; (iii) noxious, toxic, or corrosive fumes or gases; (iv) obnoxious odors; (v) dust, dirt or flying ash; (vi) unusual fire or explosion hazards; (vii) temporary interruption of utilities; and/or (viii) other conditions that may threaten the security or safety of persons within the Property. Notwithstanding the foregoing, the Owners agree that such conditions within the Property resulting from construction activities shall not be deemed a nuisance or discomfort to the Owners and shall not cause Declarant and its agents to be deemed in violation of any provision of this Declaration.

ARTICLE IX
DECLARANT'S RIGHTS

The right is hereby reserved by Declarant, or its agents, to place and maintain on the Property all Model Homes, sales offices, advertising signs and banners and lighting in connection therewith and other promotional facilities at such locations and in such forms as shall be determined by Declarant. There is also reserved unto Declarant, its agents and prospective purchasers and tenants, the right of ingress, egress and transient parking in and through the Property for such sales purposes. Declarant also reserves the right to maintain on the Property without charge (a) a general construction office for Declarant's contractors and (b) appropriate parking facilities for the employees of Declarant's agents and contractors. Declarant's aforesaid reserved rights shall exist at any time Declarant is engaged in the construction, sale or leasing of residences on any portion of the Property or on any land adjacent to the Property and no charge shall be made with respect thereto. Notwithstanding any provision herein to the contrary, the rights and easements created under this Declaration are subject to the right of Declarant to execute all documents and do all other acts and things affecting the Property, which in the Declarant's opinion are required to implement any right of Declarant set forth in this Declaration (including the making of any dedication or conveyance to public use), provided any such document or act is not inconsistent with then existing property rights of any Owner. All rights and easements reserved under this Declaration shall also be reserved to the assigns and successors in interest of the Declarant.

ARTICLE X
DISPUTE RESOLUTION AND LIMITATIONS ON LITIGATION

SECTION 10.1. AGREEMENT TO AVOID COSTS OF LITIGATION AND TO LIMIT RIGHTS TO LITIGATE DISPUTES. The Association, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article X (collectively, the "***Bound Parties***") agree to encourage the amicable resolution of disputes involving the Property in order to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Property, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, the Association rules, or the Articles (collectively and singularly, "***Claim(s)***"), except for those Claims authorized in Section 10.2 below, shall be resolved using the procedures set forth in Section 10.3 below, in lieu of filing suit

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in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

SECTION 10.2. EXEMPT CLAIMS. The following Claims ("***Exempt Claims***") shall be exempt from the provisions of Section 10.3 herein below:

(a) Any suit by the Association against any Bound Party to enforce the provisions of Article IV;

(b) Any suit by the Association to obtain a restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article VI and Article VII;

(c) Any suit between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under federal law or the laws of the State of South Carolina in the absence of a claim based on the Declaration, Bylaws, Articles or rules if the Association, if the amount in controversy exceeds Five Thousand and No/100 Dollars($5,000.00);

(d) Any suit arising out of any written contract between Owners or between the Declarant and any builder, which would constitute a cause of action under the laws of the State of South Carolina in the absence of a claim based on the Declaration, Bylaws, Articles or rules if the Association; and

(e) Any suit in which all parties are not Bound Parties.

Any Bound Parties having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 10.3 below, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 10.3 below shall require the approval of the Association.

SECTION 10.3. MANDATORY PROCEDURES FOR ALL OTHER CLAIMS. All claims other than Exempt Claims shall be resolved using the following procedures:

(a) Notice. Any Bound Party having a Claim ("***Claimant***") against any other Bound Party ("***Respondent***"), other than an Exempt Claim, shall notify each respondent in writing of the Claim (the "***Notice***"), stating plainly and concisely:

i. The nature of the Claim, including date, time, location, persons involved and Respondent's role in the Claim;

ii. The basis for the Claim (i.e. the provisions of this Declaration, the Bylaws, the Articles or rules or other authority out of which the Claim arise);

iii. What Claimant wants Respondent to do or not to resolve the Claim; and

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iv. That Claimant wished to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation.

i. Each Claimant and Respondent (each, a "***Party***", and collectively the "***Parties***") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

ii. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the Community.

(c) Mediation.

i. If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspice of any dispute resolution center or other such independent agency providing similar services in Charleston County, specifically including, but not limited to the National Association of Realtors Alternative Dispute Resolution System (NAR ADR) and in accordance with generally accepted mediation procedures.

ii. ***If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim***; provided, however, nothing herein shall release or discharge Respondent from any liability to persons not a Party to the foregoing proceedings.

iii. If the Parties do not settle the Claim within (30) days after submission of the matter to the mediation process or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("***Termination of Mediation***"). The Termination of Mediation notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

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iv. Each Party shall, within ten (10) days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("***Settlement Demand***") to the Respondent. The Respondent shall make a final written settlement offer ("***Settlement Offer***") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(d) Final and Binding Arbitration.

i. If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within fifteen (15) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in the S.C. Arbitration Statute or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, however, nothing herein shall release or discharge Respondent from any liability to persons not a Party to the foregoing proceedings.

ii. This Subsection (d) is an agreement of the Bound Parties to arbitrate all Claims, except Exempt Claims and is specifically enforceable under the applicable arbitration laws of the State of South Carolina. The arbitration award (the "Award") shall be final an binding, and judgment may be entered upon in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of South Carolina.

SECTION 10.4. ALLOCATION OF COSTS OF RESOLVING CLAIMS.

(a) Each Party shall bear its own cost incurred prior to and during the proceedings described in Section 10.3(a), 10.3(b) and 10.3(c) above, including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 10.3(c) above.

(b) Each Party shall bear its own costs (including attorney's fees or other representation) incurred after the Termination of Mediation under Section 10.3(c) above and shall share equally in the costs of conducting the arbitration proceeding (collectively, the "***Post Mediation Costs***"), except as otherwise provided in Section 10.4(c) below.

(c) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add such Claimant's Post Mediation Costs to the Award, such Costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than Respondent's Settlement Offer to that Claimant shall award to such Respondent its Post

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Mediation Costs, such Costs to be borne equally by all such Claimants.

SECTION 10.5. ENFORCEMENT OF RESOLUTION. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 10.3 above and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with the terms of any Award following arbitration, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award, without the need to again comply with the procedures set forth in Section 10.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorney fees and court costs.

SECTION 10.6. COMMENCEMENT OF LITIGATION. Any litigation by the Association other than Exempt Claims shall require an affirmative vote of two-thirds (2/3) of the Members of the Association prior to the institution of such litigation.

ARTICLE XI
GENERAL PROVISIONS

SECTION 11.1. ENFORCEMENT. The Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration, the Articles or Bylaws of the Association. Failure by the Declarant, Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Declarant or the Association shall have the right to request that law enforcement, public safety and animal control officers come on the Property to facilitate the enforcement of the laws, codes and ordinances of any governmental authority.

In addition to the rights and remedies hereinabove enumerated, and not as any limitation thereof, if the Association or the Declarant determines that any provision of this Declaration has been violated, the Association or the Declarant may, in its discretion, seek appropriate relief at law or equity to assure that the purposes of this Declaration are fulfilled. After having given fifteen (15) days written notice to the Owner of any Lot involved, setting forth the specific violation or breach of this Declaration and the action required to be taken by the Owner to remedy such violation or breach and if, at the end of such time, reasonable steps to accomplish such action have not been taken by the Owner, the Association or the Declarant can enforce this Declaration by entering upon a Lot to abate or remove any violation, and any such entry shall not be deemed a trespass. Failure to enforce any provision of this Declaration shall not be deemed a waiver of the right to do so.

The Declarant and the Association, as the case may be, shall have the right to establish, assess and collect reasonable fines and penalties for violations of this Declaration, which may be enforced by the filing of liens against Lots as provided herein. Such fines shall not exceed $50.00 per violation per day for first time violators, and up to $100.00 per violation per day for

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repeated violations. All fines shall be the personal obligation of the Lot Owner.

SECTION 11.2. SEVERABILITY. Invalidation of any one of the covenants or restrictions contained herein by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

SECTION 11.3. AMENDMENT.

(a) So long as Declarant owns property subject to this Declaration, or has the right to annex property pursuant to this Declaration, and for a period of twenty (20) years thereafter, Declarant hereby reserves and shall have the sole right to:

i) amend this Declaration or any Supplemental Declaration for the purpose of curing any ambiguity or any inconsistency among the provisions contained herein;

ii) include in any contract or Deed or other instrument hereafter made any additional covenants and restrictions, including restrictions on use, applicable to any Lot which do not lower the standards of the covenants and restrictions herein contained;

iii) release any Lot from any part of the covenants and restrictions contained herein which have been violated if the Declarant, in its sole judgment, determines such violation to be a minor or insubstantial violation;

iv) amend this Declaration or any Supplemental Declaration in any manner if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, to make, purchase, insure or guarantee mortgage loans on the Lots; (d) to enable any reputable private insurance company to insure mortgage loans on the Lots; and (e) to satisfy the requirements of any local, state or federal governmental agency;

v) amend this Declaration or any Supplemental Declaration for the purpose of annexing all or any portion of the Additional Property to the terms and conditions of this Declaration;

vi) amend this Declaration for the purpose of removing any portion of the Property from the coverage of this Declaration. Such amendment shall not require the consent of any person other than the Owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal. Removal or withdrawal of all or any portion of the Property shall be accomplished by Recording a Supplemental Declaration and shall be effective upon the Recording of the Supplemental Declaration unless otherwise provided therein; and

vii) amend this Declaration or any Supplemental Declaration without vote or consent of the Owners for any other purpose.

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Except as provided therein, the foregoing amendments may be made without the joinder or approval of any Owner, mortgagee, or the Association.

(b) Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners, representing at least sixty-seven percent (67%) of the total Class "A" votes in the Association, and the consent of the Declarant, so long as the Declarant has an option to subject Additional Property to this Declaration pursuant to Section 11.5.

SECTION 11.4. FEDERAL LENDING REQUIREMENTS. Notwithstanding Section 11.3 above, Declarant may (at Declarant's option) amend and modify this Declaration without obtaining the consent or approval of the Owners if such amendment or modification is necessary to cause this Declaration to comply with the requirements of the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or other similar agency.

Any such amendment must be with the consent and approval of such agency and must be properly Recorded.

SECTION 11.5. ANNEXATION OF ADDITIONAL PROPERTY AND WITHDRAWAL OF PROPERTY.

(a) Declarant hereby reserves the option, to be exercised in its sole discretion, to unilaterally annex, subject and submit, at any time, or from time to time, the Additional Property, or a portion or portions thereof, to the provisions of this Declaration and thereby to cause the Additional Property or a portion or portions thereof to become part of the Property and part of the plan and operation of this Declaration, regardless of whether or not such Property is owned by Declarant, its successors and assigns. Declarant reserves the right to plan, design, develop, construct, maintain and manage the Common Area, the Additional Property, and any unsold Lot as Declarant deems necessary or convenient for its purposes, except as otherwise expressly stated in this Declaration, including without limitation, the right to expand the number, size and density of the unsold Lots, the Common Area, and the Additional Property. This option may be exercised by Declarant in accordance with the following rights, conditions and limitations, which are the only conditions and limitations on such option to add all or any portion of the Additional Property to the Community.

This option to add Additional Property/phase(s) may be exercised from time to time from the date of recordation of this Declaration until December 31, 2035 ("***Option Expiration Date***"); provided, however, that Declarant reserves the right to terminate such option at any time prior to the Option Expiration Date by executing and Recording an agreement evidencing such termination in the Office of the RMC Office for Charleston County, South Carolina, and, except for such termination by Declarant, no other circumstances will terminate such option prior to the Option Expiration Date.

The additions authorized under this Section 5 shall be made by filing of Record a

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Supplemental Declaration or amendment to this Declaration with respect to the Additional Property which shall expressly extend the operation and effect of the covenants and restrictions of this Declaration to such Additional Property. The Supplemental Declaration or amendment may contain such additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Declarant, to reflect the different character, if any, of the Additional Property.

The Additional Property is located adjacent to, or in the vicinity of, the Property described on Exhibit A; portions of the Additional Property may be added to the Community at different times, and there are no limitations fixing the boundaries of those portions or regulating the order, sequence or location in which any of such portions may be added to the Community. The exercise of the option to submit a portion of the Additional Property to the Declaration shall not bar the further exercise of this option as to other portions or the balance of the Additional Property.

If the Additional Property or any portion thereof is added to the Community, any improvements developed therein and any dwellings constructed thereon will be subject to the standards and restrictions set forth herein, including all assessments set forth herein.

If the Additional Property or any portion thereof is added to the Community, Declarant reserves the right to designate and restrict the boundaries of the Lots to be added to the Community in connection therewith.

Should the option to add the Additional Property or any portion of it not be exercised prior to the Option Expiration Date or earlier termination thereof by Declarant, such option shall in all respects expire and be of no further force and effect. DECLARANT SHALL NOT BE OBLIGATED TO IMPOSE ON THE ADDITIONAL PROPERTY OR ANY PORTION OF IT ANY COVENANTS, CONDITIONS, OR RESTRICTIONS SIMILAR TO THOSE CONTAINED HEREIN, AND THAT PROPERTY NOT SUBMITTED TO THIS DECLARATION WILL BE FREE OF ANY COVENANT OR CONDITIONS WHATSOEVER UNLESS OTHERWISE AFFIRMATIVELY IMPOSED.

The option reserved by Declarant to cause all or any portion of the Additional Property to become part of the Community shall in no way be construed to impose upon Declarant any obligation to add all or any portion of the Additional Property to the Community or to construct thereon any improvements of any nature whatsoever or to restrict or limit its use in any manner.

The option reserved under this Section 5 may be exercised by Declarant only by the execution of an amendment to this Declaration which shall be filed in the RMC Office for Charleston County, South Carolina, together with a revision of or an addition to the Community Plat showing the Additional Property or such portion or portions thereof as are being added to the Community by such amendment, as well as the Lots, Common Area, or other types of property located within the Community.

SUBSEQUENT TO INCLUSION AND/OR RESTRICTION AND IN ITS SOLE DISCRETION, DECLARANT MAY CONVEY TO THE ASSOCIATION THE COMMON

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AREA DESIGNATED BY DECLARANT OR ANY OTHER PROPERTY OWNED BY THE DECLARANT CONTAINED WITHIN THE PROPERTY OR THE ADDITIONAL PROPERTY OR SUCH PORTION OR PORTIONS OF ANY, EITHER, OR ALL OF THEM, ANY SUCH CONVEYANCE TO BE SUBJECT TO THE LIEN OF TAXES NOT YET DUE AND PAYABLE, ALL EASEMENTS AND RESTRICTIONS OF RECORD, UTILITY EASEMENTS SERVING OR OTHERWISE ENCUMBERING THE PROPERTY, AND/OR THE ADDITIONAL PROPERTY, AND ANY EXCEPTIONS WHICH WOULD BE DISCLOSED BY AN ACCURATE SURVEY OR PHYSICAL INSPECTION OF SUCH PARCEL(S).

Any such amendment shall expressly submit the Additional Property or such portion of it to all the provisions of this Declaration, and upon the exercise, if any, of such option or options, the provisions of this Declaration shall then be construed as embracing the real property described in Exhibit A and the Additional Property or such portion or portions thereof so submitted to the terms hereof, together with all improvements thereon. If the Additional Property or any portion or portions of it is added to the Community, then from and after the addition to the Community of the Additional Property or such portion or portions by such amendment to this Declaration, the number of votes in the Association shall be modified to include the Lots to be located on the Additional Property or such portion or portions of it as are added, so that there shall continue to be one vote in the Association per Lot owned by a Class "A" Member in the Community and twenty (20) votes in the Association per Lot owned by a Class "B" Member in the Community, and the total number of votes in the Association shall be increased by the number of Lots added as determined by the formula provided in this document for the voting rights for any Lot or Declarant-owned property located on the Additional Property or such portion or portions thereof as are added.

(b) With the exception of the Additional Property, which may be annexed in the Declarant's sole discretion, the Association may annex any other real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members representing a majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 11.3.

Such annexation shall be accomplished by Recording a Supplemental Declaration describing the property being annexed in the RMC Office for Charleston County. Any such Supplemental Declaration shall be signed by the president or secretary of the Association, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

(c) This Article XI shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property described in Exhibit A or has the right to annex property pursuant to this Section 11.5.

SECTION 11.6. AMPLIFICATION. The provisions of this Declaration are amplified by the Articles and Bylaws; but no amplification shall alter or amend any of the rights or obligations

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of the Owners set forth in this Declaration. Declarant intends that the provisions of this Declaration, the Articles and the Bylaws to be interpreted, construed, and applied to avoid inconsistencies and conflicting results. If such conflict necessarily results, however, Declarant intends that the provisions of this Declaration control anything in the Articles or Bylaws to the contrary.

SECTION 11.7. TOTAL OR PARTIAL DESTRUCTION OF IMPROVEMENTS. In the event of a total or partial destruction of any improvements on the Common Area, and if available proceeds of insurance carried pursuant to this Declaration are sufficient to cover eighty-five percent (85%) of the repair or reconstruction, the Common Area shall be promptly repaired and rebuilt unless within one hundred twenty (120) days from the date of such destruction, seventy-five percent (75%) or more of the Owners entitled to vote at a duly called meeting, determine that such reconstruction shall not take place. If the insurance proceeds are less than eighty-five percent (85%) of the cost of reconstruction, reconstruction may nevertheless take place if, within one hundred twenty (120) days from the date of destruction, the Owners of seventy-five percent (75%) of the Lots elect to rebuild.

SECTION 11.8. FHA/VA APPROVAL. If applicable, so long as there is Class B Membership, the following actions require the prior approval of the Federal Housing Administration or the Veterans Administration: (a) annexation of Additional Property, (b) dedication of Common Area, and (c) amendment of this Declaration.

SECTION 11.9. DOCUMENTS. All papers and instruments required to be filed with or submitted to the Declarant, the Association, or the Architectural Control Committee shall initially be delivered personally or be sent by Certified or Registered Mail Return Receipt Requested to the Declarant, CalAtlantic Group, Inc., c/o Don McDonough, Operational Vice President, 216 Seven Farms Drive, Suite 200, Charleston, South Carolina 29492, or at such other address as the Declarant or the Association may specify.

SECTION 11.10. REGISTRATION OF MAILING ADDRESS. Each Member shall register his mailing address with the secretary of the Association from time to time, and notices or demands intended to be served upon or given to a Member shall be personally delivered to or sent by mail, postage prepaid, addressed in the name of the Member at such registered mailing address. If a Member does not reside within the Community, such Member shall register his or her address of residence or the address where such Member receives mail on a regular basis.

SECTION 11.11. NOTICE. All notices or requests required shall be in writing. Notice to any Member shall be considered delivered and effective upon personal delivery, or three (3) days after posting, when sent by Certified Mail, return receipt requested, to the address of such Member on file in the records of the Association at the time of such mailing. Notice to the Board, the Association, the Architectural Control Committee, or the Manager, if any, shall be considered delivered and effective upon personal delivery, or three (3) days after posting, when sent by Certified Mail, return receipt requested, to the Association, the Board, or the Architectural Control Committee, at such address as shall be established by the Association from time to time by notice to the Members and if to the Manager, if any, at its principal place of business. General notices to all Members or any classification thereof need not be Certified, but

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may be sent regular first class mail or electronic mail.

SECTION 11.12. LIMITATION OF LIABILITY. Neither the Association, the Architectural Control Committee, nor any officer or member of the Board shall be liable to any party for any action or for any failure to act with respect to any matter arising by, through, or under this Declaration if the action or failure to act was made in good faith. The Association shall indemnify all of the Committee members and officers and Board members with respect to any act taken in their official capacity to the extent provided in this Declaration and by law and in the Articles and Bylaws of the Association.

SECTION 11.13. ASSIGNMENT. Declarant may assign all or any part of its rights and reservations hereunder to any successor. Such successor shall be identified and the particular rights being assigned shall be specified in a written instrument duly Recorded.

SECTION 11.14. REFERENCES TO GENDER AND NUMBER TERMS. In construing this Declaration, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context so requires.

ARTICLE XII
OTHER COVENANTS AND AGREEMENTS

In addition to the covenants and easements contained herein and any other covenants, easements, instruments, agreements and/or other matters to which the Property is subject (some or all of which may be shown and/or referenced on the Plat), including without limitation any prohibition against locating a house trailer or mobile home on the Property, all of the Property described herein shall be held, sold and conveyed subject to all matters shown on the Plat, including without limitation the following:

(a) that certain "14' Private Access Easement" area shown as "Alagash Way" on the 2016 Subdivision Plat (the "***Access Easement***");
(b) those certain "Variable Width MPW Easement" areas;
(c) those certain "5' MPW Easement" areas;
(d) those certain "15' Type D Buffer" areas;
(e) those certain "10' Type B Buffer" areas;
(f) that certain "5' Private G.U.E." area;
(g) that certain "5' Private Utility Easement" area;
(h) that certain Open Space Easement;
(i) those certain "Variable Width Public Access Easement" areas;
(j) that certain "10' Private G.U.E." area; and
(k) that certain "10'x7' MPW Easement" area.

*****Remainder of Page Intentionally Left Blank*****
[Signatures on Following Page]

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed in its company name by its member thereunto duly authorized on this the 8 day September, 2016.

IN WITNESS WHEREOF:

CalAtlantic Group, Inc.,
a Delaware corporation,
successor by merger to
The Ryland Group, Inc.,
a Maryland corporation

By _____

Its: Operational VP

STATE OF SOUTH CAROLINA)
)
COUNTY OF Berkeley)

ACKNOWLEDGMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Dan McDonough [the person signing the above instrument], the Operational VP of CalAtlantic Group, Inc., a Delaware corporation, successor by merger to The Ryland Group, Inc., a Maryland corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 8 day of September, 2016.

_____ (SEAL)
Notary Public, State of South Carolina
Notary Name Printed: Adrienne Leino
My Commission Expires: 2/19/2024

ADRIENNE LEINO
NOTARY PUBLIC
SOUTH CAROLINA
My Comm. Exp.
Feb. 19, 2024

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JOINDER OF ASSOCIATION

The undersigned hereby joins in this Declaration this 8 day of September, 2016.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

ASSOCIATION:

Whitesides Park Townhomes Property Owners Association, Inc.,
a South Carolina nonprofit corporation

By: _____

Its: President

STATE OF SOUTH CAROLINA)
)
COUNTY OF Berkeley)

ACKNOWLEDGMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Don McDonough [the person signing the above instrument], the President of Whitesides Park Townhomes Property Owners Association, Inc., a South Carolina nonprofit corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 8 day of September, 2016.

_____ (SEAL)
Notary Public, State of South Carolina
Notary Name Printed: Adrienne Leino
My Commission Expires: 2/19/24

ADRIENNE LEINO
NOTARY PUBLIC
My Comm. Exp. Feb. 19, 2024
SOUTH CAROLINA

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EXHIBIT A
TO DECLARATION FOR WHITESIDES PARK
(Description of Property)

ALL those certain pieces, parcels or lots of land situate, lying and being in the Town of Mount Pleasant, Charleston County, South Carolina, known and designated as Lots 7, 8, 9, 10, 11, 12 and 13, all as more particularly shown on a plat entitled "ADJUSTMENT PLAT SHOWING THE ADJUSTMENT OF THE PROPERTY LINES BETWEEN LOTS 7, 8, 9, 10 AND RESIDUAL, THE CREATION OF NEW MPW EASEMENTS, NEW PRIVATE GENERAL UTILITY EASWEMENTS, A NEW PUBLIC ACCESS EASEMENT AND THE ABANDONMENT OF A PORTION OF AN EXISTING MPW EASEMENT MYRICK ROAD TOWNHOMES - OWNED BY CALATLANTIC GROUP, INC. LOCATED IN THE TOWN OF MOUNT PLEASANT CHARLESTON COUNTY, SOUTH CAROLINA", dated January 7, 2016 and recorded in the RMC Office for Charleston County on January 15, 2016, in Plat Cabinet L16, at Page 0022. aid lots of land having such size, shape, buttings and boundings as will by reference to said plat more fully appear.

and

ALL that certain piece, parcel or lot of land situate, lying and being in the Town of Mount Pleasant, Charleston County, South Carolina, known and designated as "HOA", as more particularly shown on a plat entitled "RECOMBINATION AND SUBDIVISION PLAT SHOWING THE ABANDONMENT OF THE PROPERTY LINES BETWEEN TMS NO. 532-08-00-040 & 169 AND THE SUBSEQUENT SUBDIVISION TO CREATE LOTS 7 THROUGH 13, HOA AND RESIDUAL OWNED BY THE RYLAND GROUP, INC. LOCATED IN THE TOWN OF MOUNT PLEASANT CHARLESTON COUNTY, SOUTH CAROLINA", dated April 6, 2015 and recorded in the RMC Office for Charleston County on June 1, 2015, in Plat Cabinet L15, at Page 0234. Said lots of land having such size, shape, buttings and boundings as will by reference to said plat more fully appear.

and

ALL those certain pieces, parcels or lots of land situate, lying and being in the Town of Mount Pleasant, Charleston County, South Carolina, known and designated as Lots 1, 2, 3, 4, 5, and 6, all as more particularly shown on a plat entitled "SUBDIVISION PLAT SHOWING THE SUBDIVISION OF TMS NO. 532-08-00-040 TO CREATE LOTS 1 THROUGH 6 – MYRICK ROAD TOWNHOMES AND TO CREATE A NEW 10'X7' MPW EASEMENT OWNED BY CALATLANTIC GROUP, INC. LOCATED IN

THE TOWN OF MOUNT PLEASANT CHARLESTON COUNTY, SOUTH CAROLINA", dated January 25, 2016, and recorded in the RMC Office for Charleston County on March 7, 2016, in Plat Cabinet S16, at Page 0050. Said lots of land having such size, shape, buttings and boundings as will by reference to said plat more fully appear.

See Tax Map Numbers (TMS's) on the attached list.

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Whitesides Park (Lots per plat recorded in Plat Cabinet L16, at Page 0022)

TMS	Lot	
532-08-00-236	7	
532-08-00-237	8	
532-08-00-238	9	
532-08-00-239	10	
532-08-00-240	11	
532-08-00-241	12	
532-08-00-242	13	

Whitesides Park (HOA per plat recorded in Plat Cabinet L15, at Page 0234)

TMS	Common Area
532-08-00-169	HOA

Whitesides Park (Lots per plat recorded in Plat Cabinet S16, at Page 0050)

TMS	Lot	
532-08-00-040	1	
532-08-00-043	2	
532-08-00-044	3	
532-08-00-045	4	
532-08-00-046	5	
532-08-00-047	6	

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EXHIBIT B
TO DECLARATION FOR WHITESIDES PARK

(Articles of Incorporation – Whitesides Park Townhomes Property Owners Association, Inc.)

SEE ATTACHED

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CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

AUG 29 2016

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

NONPROFIT CORPORATION
ARTICLES OF INCORPORATION

TYPE OR PRINT CLEARLY IN BLACK INK

1. The name of the proposed corporation is Whitesides Park Townhomes Property Owners Association, Inc.

2. The initial registered office of the nonprofit corporation is 2 Office Park Court, Suite 103, Columbia, South Carolina 29223.

   The name of the registered agent of the nonprofit corporation at that office is: CT Corporation System

   I hereby consent to the appointment as registered agent of the corporation.

   CT Corporation System

   By: _____
   Terence Hardley Asst. Secretary
   Name and Title (Print)

3. Check "a", "b" or "c", whichever is applicable. Check only one box:

   ☞ [ ] The nonprofit corporation is a public benefit corporation.

   ☞ [ ] The nonprofit corporation is a religious corporation.

   ☞ [x] The nonprofit corporation is a mutual benefit corporation.

4. Check "a" or "b", whichever is applicable:

   ☞ [x] This corporation will have members.

   ☞ [ ] This corporation will not have members.

5. The address of the principal office of the nonprofit corporation is 216 Seven Farms Drive, Suite 200, Charleston, South Carolina 29492.

6. If this nonprofit corporation is either a public benefit or religious corporation (when box "a" or "b" of

160829-0172 FILED: 08/29/2016
WHITESIDES PARK TOWNHOMES PROPERTY OWNERS ASS
Filing Fee: $25.00 ORIG
Mark Hammond South Carolina Secretary of State

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paragraph #3 is checked), complete either "a" or "b", whichever is applicable to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation.

a)

☞ [ ] Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code or the corresponding section of any future federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

b)

☞ [ ] Upon dissolution of the corporation, consistent with the law, the remaining assets of the corporation shall be distributed to:

_____

7. If the corporation is a mutual benefit corporation (when box "c" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the (remaining) assets of the corporation will be distributed upon dissolution of the corporation.

a)

☞ [ ] Upon dissolution of the mutual benefit corporation, the (remaining) assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefiting or serving.

b)

☞ [x] Upon dissolution of the mutual benefit corporation, the (remaining) assets, consistent with the law, shall be distributed to:

(1) a prorata individual interest to each lot owner in Whitesides Park subdivision, or

(2) in the Board of Director's discretion, to a successor corporation or other organization with a similar or related purpose.

8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows (See Section 33-31-202(b) through 33-31-201(e) of the 1976 South Carolina Code of Laws, as amended, the applicable comments thereto, and the instruction to this form).

The purpose for which this corporation is organized are to serve as a property owners association for Whitesides Park subdivision in Charleston County, South Carolina and to conduct any lawful activities related to the subdivision.

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9. The name and address of the incorporator is as follows:

CALATLANTIC GROUP, INC., a Delaware corporation
c/o Don McDonough, its Operational Vice President
216 Seven Farms Drive, Suite 200
Charleston, SC 29492

10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles:

NOT APPLICABLE

11. The following is the name and signature of the incorporator:

CALATLANTIC GROUP, INC.,
a Delaware corporation

August 12, 2016

By: _____

Its: Operational VP

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EXHIBIT C
TO DECLARATION FOR WHITESIDES PARK

(Bylaws of Whitesides Park Townhomes
Property Owners Association, Inc.)

SEE ATTACHED

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****

BYLAWS

OF

WHITESIDES PARK TOWNHOMES PROPERTY OWNERS ASSOCIATION, INC.

****

August 12, 2016

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****

BYLAWS

****

ARTICLE I
COVENANTS AND DEFINITIONS

Section 1.1. Covenants. In the event of any conflict between the terms and provisions of these Bylaws and the Declaration of Covenants, Conditions, Restrictions and Easements for Whitesides Park Townhomes recorded in the Register Mesne Conveyance Office for Charleston County, as amended and/or supplemented from time to time (the "***Covenants***"), the terms and provisions of the Covenants shall control.

Section 1.2. Definitions. All terms not otherwise defined herein shall have the meaning ascribed to them in the Covenants.

Section 1.3. Name. The name of the corporation is **Whitesides Park Townhomes Property Owners Association, Inc.** ("***Association***" or "***Corporation***")

Section 1.4. Nonprofit Status. The Corporation is organized as a nonprofit corporation under the South Carolina Nonprofit Corporation Act. The Corporation is a mutual benefit corporation and shall have perpetual duration and succession.

Section 1.5. Purposes. The purpose for which the Corporation is organized, as stated in its Articles of Incorporation, is to serve as a property owners association for the Property located within a community known as Whitesides Park in Charleston County, South Carolina and to conduct any lawful activities related to such association.

ARTICLE II
OFFICES AND POWERS

Section 2.1. Registered Agent and Office. The initial registered agent of the Corporation shall be C T Corporation System and the initial registered office of the Corporation is 2 Office Park Court, Suite 103, Columbia, SC 29223.

Section 2.2. Additional Offices. The Corporation may also have offices at such other places, both within and without the State of South Carolina, as the Board of Directors may from time to time determine or as the business of the Corporation may required.

Section 2.3. Corporate Powers. In furtherance of the purposes of the Corporation, it shall possess all powers and authority granted to corporations under Title 33 of the Code of Laws of South Carolina, 1976, as amended, the Covenants and these Bylaws.

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ARTICLE III
MEMBERS

Section 3.1. Membership. The Association shall have the following two (2) classes of membership: Class "A" Members and Class "B" Members, as described in the Covenants. The terms of the membership described in the Covenants, including, without limitation, voting rights and rights to use the Common Area, are incorporated herein by reference.

Section 3.2. Meetings of Members. Subject to Article IV, an annual meeting for the election of directors and for the transaction of such other business as may properly come before such meeting shall be held in the month of October in each year, or in such other month as may be designated by the Board of Directors, at such date and hour as may be fixed from time to time by the Board of Directors and stated in the notice of such meeting, unless such notice is waived as provided by law, the Articles of Incorporation or these Bylaws. If such annual meeting is not held as herein provided for, it may be held as soon thereafter as may be convenient. Such subsequent meetings shall be called in the same manner as hereinafter provided for special meetings of Members. Meetings of the Members may be called by the president or a majority of the directors and, after Turnover (as hereinafter defined), shall be called by the president or secretary at the request in writing of Members holding at least ten percent (10%) of the voting power. Such request shall state the purpose or purposes of the proposed meeting. The initial annual meeting of the Members may be called by the incorporator.

Section 3.3. Notice of Meetings. Written notice of the place, date and hour of the annual and any special meetings shall be given personally or by mail to each Member entitled to vote thereat not less than ten (10) nor more than thirty (30) days prior to the meeting. The notice shall state the purpose or purposes for which the meeting is called and by or at whose direction it is being issued. Members may waive notice of meetings.

Section 3.4. Quorum. Unless otherwise provided in the Covenants, Members who hold in aggregate thirty percent (30%) of the total vote of the membership, present in person or represented by proxy, shall be necessary to have, and shall constitute, a quorum for the transaction of business at all meetings of the Members. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. If the required quorum is not present at the second meeting, a third meeting may be called subject to the same notice requirements, and all those present at the third meeting shall constitute a quorum.

Section 3.5. Voting. Unless otherwise provided herein, in the Articles of Incorporation or in the Covenants, when a quorum is present, a majority of the total of votes cast in person or by proxy at a duly called meeting of the Corporation shall be the vote required to adopt and make decisions. The Board of Directors shall have the authority to decide all matters related to the number of votes that Members are entitled to cast.

Section 3.6. Proxies. Members may vote by limited proxy, but not by general proxy. Every proxy must be executed in writing and dated by the Member or by the Member's attorney-

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in-fact. A proxy shall be valid for eleven (11) months from the date thereof, unless otherwise expressly stated in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it.

Section 3.7. Action by Written Consent. Whenever by any provision of law the vote of the Members at a meeting thereof is required or permitted to be taken in connection with any corporate action, the meeting and vote of Members may be dispensed with if Members holding eighty percent (80%) of the voting power consent to the action in writing and written notice of such Member approval is delivered to the Members (if any) who did not consent to such action. If written notice is required, Member approval is effective ten (10) days after such written notice is given.

Section 3.8. Meetings by Telephone or Similar. The Members may participate in a meeting by means of conference telephone or similar communications equipment by means of which all Members participating in the meeting can hear each other, and participation in such meeting shall constitute presence in person by such Member at such meeting.

Section 3.9. Turnover. In accordance with these Bylaws and the Covenants, the Declarant shall turn over control of the Association to the Members at the appropriate time (the "***Turnover***"). The Turnover shall occur on the earliest of the following conditions:

(a) Three (3) months after the Class "B" membership shall cease and be converted to Class "A" membership; or

(b) such earlier date as determined by the Class "B" Member, in its sole and absolute discretion.

The Declarant shall continue to be able to appoint one (1) member of the Board of Directors as long as the Declarant holds for sale in the ordinary course of business at least one (1) Lot within the Property. After the Declarant relinquishes control of the Association, the Declarant may exercise the right to vote all of its voting interests in the same manner as any other Member, except for purposes of reacquiring control of the Association, or selecting the majority of the members of the Board of Directors.

Section 3.10. Conduct of Meetings. The president shall preside over all meetings of the Association and the secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

Section 3.11. Majority. As used in these Bylaws, the term "majority" shall mean those votes, Owners, Members or other group as the context may indicate totaling more than fifty percent (50%) of the total eligible number.

ARTICLE IV
BOARD OF DIRECTORS

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Section 4.1. General Powers. Except as otherwise provided by law or in the Articles of Incorporation, the property, affairs and business of the Corporation shall be managed by or under the direction of the Board of Directors. The number of directors of the Corporation shall be not less than three (3) nor more than five (5).

Section 4.2. Election or Appointment of Directors; Nomination.

(a) Election or Appointment. Until Turnover, the Declarant shall have the right to appoint all of the members of the Board of Directors. The Incorporator shall initially appoint three (3) persons who shall serve as the initial Board of Directors. The Declarant shall continue to be able to appoint one (1) member of the Board of Directors as long as the Declarant holds for sale in the ordinary course of business at least one (1) Lot within the Property. After Turnover, except as provided above or otherwise provided herein, all of the elected directors shall be elected by the Class "A" Members at-large. Except with respect to appointed directors, all directors shall be Members.

In order to effectuate the Turnover, the Declarant shall call for an election which shall be held within the timeframe set forth in Section 3.9. On the date specified by the Declarant, the following shall occur: (a) the existing directors shall resign; and (b) five (5) directors elected by the Members shall take office. The Declarant may, in its sole and absolute discretion, permit the Members to elect a portion of the directors earlier than the Turnover.

After Turnover, the Board shall consist of a total of five (5) directors. At the Turnover meeting, the five (5) nominees receiving the most votes will be elected to serve on the Board of Directors until the expiration of their term. The three (3) nominees receiving the most votes will serve for a three (3) year term, and the last two (2) nominees with the most votes will serve for a two (2) year term. Except for the first elected Board of Directors, the term for all Board of Directors will be three (3) years. Elections by Members shall be by sealed ballot in accordance with policies and procedures adopted by the Board of Directors. After Turnover, ballots shall be tallied at the annual meeting.

(b) Nomination of Directors. Immediately prior to the Turnover and each year thereafter, the Board of Directors will appoint a nominating committee consisting of three (3) Members who are not on the Board (the "***Nominating Committee***"). The Nominating Committee will review and approve candidates for inclusion on the ballot to be mailed to Members. A Member may nominate himself as a candidate for the Board at a meeting where the election is to be held.

The names of any nominees approved by the Nominating Committee, after having been certified by the secretary, or any other officer, that they are qualified for election and have been nominated in accordance with the provisions of these Bylaws and the policies adopted by the Nominating Committee, shall be included in any ballot mailing to the Members. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members through inclusion of a brief resume with the ballot package. The Nominating Committee may develop a standard resume form and dictate maximum resume length, which shall be uniform for all candidates.

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Family members or persons residing in the same household of candidates seeking nomination may not sit on the Nominating Committee. The Nominating Committee shall approve, if sufficient candidates are available, a minimum of two candidates for each position on the Board. Write in candidates are also permitted.

Section 4.3. Resignation. Any director may resign at any time by giving written notice of such resignation to the president or the secretary. Unless otherwise specified therein, such resignation shall take effect on receipt thereof by any such officer.

Section 4.4. Removal of Directors. Any director appointed may be removed, either with or without cause, only by the party entitled to appoint the director. Any director elected by the Members may be removed at any time, either with or without cause, by the affirmative vote of a majority of the Members then entitled to vote. Any vacancy on the Board of Directors resulting from any such removal may be filled in the manner provided in Section 4.5 of this Article IV.

Section 4.5. Vacancies. If any vacancy shall occur on the Board of Directors with respect to an elected director by reason of death, resignation, removal or otherwise, a successor shall be elected by the Board to fill the vacancy for the remainder of the term of such director. If any vacancy shall occur on the Board of Directors with respect to an appointed director by reason of death, resignation, removal or otherwise, a successor shall be appointed by the party entitled to appoint the director to fill the vacancy for the remainder of the term of such director.

Section 4.6. Annual and Regular Meetings. As soon as practicable after the annual meeting of Members in each year, an annual meeting of the Board of Directors shall be held for the appointment of officers and for the transaction of such other business as may properly come before the meeting. No notice shall be required for any such meeting if held immediately after the adjournment and at the site of the meeting of Members. If not so held, notice shall be given in the same manner as required for special meetings of the Board of Directors. Additional regular meetings of the Board of Directors may be held without notice at such times and places as the Board may from time to time determine by resolution duly adopted at any meeting of the Board.

Section 4.7. Special Meetings. A special meeting of the Board of Directors may be called at any time by the president and shall be called by the president or the secretary on the written request of at least one-half of the directors then in office, and shall be held at such time and place as may be fixed by the president or such directors in such request, as the case may be, provided that the time so fixed shall permit the giving of notice as provided in Section 4.8 of this Article IV.

Section 4.8. Notice of Special Meetings. Notice of the time and place of each special meeting of the Board of Directors shall be sent to each director by mail, facsimile, electronic mail or telephone, addressed to the director at his address as it appears on the records of the Corporation, or telephoned or delivered to the director personally, at least two (2) days before the day on which the meeting is to be held, and the method used for notice of such special meeting need not be the same for each director being notified. Unless otherwise provided by law, the

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Articles of Incorporation or these Bylaws, such notice need not state the purposes of the meeting.

Section 4.9. Presiding Officer and Secretary. Each meeting of the Board of Directors shall be presided over by the president or, in his absence or disability, by such person as may be designated from time to time by the Board of Directors. The secretary, or in his absence or disability, an assistant secretary, or in his absence or disability, such other person selected by the Board of Directors, shall act as secretary of each meeting of the Board of Directors.

Section 4.10. Quorum. At all meetings of the Board of Directors, the presence in person or by conference telephone of a majority of the total number of directors constituting the entire Board, whether then in office or not, shall be necessary and sufficient to constitute a quorum for the transaction of any business by the Board of Directors at such meeting, except as otherwise provided by law, by the Articles of Incorporation or by these Bylaws. At any meeting of the Board of Directors, no action shall be taken (except adjournment, in the manner provided below) until after a quorum has been established, except as otherwise provided by law, the Articles of Incorporation or these Bylaws. Except as otherwise provided by law, the Articles of Incorporation or these Bylaws, the act of a majority of directors who are present at a meeting at which a quorum previously has been established, or at any adjournment of such meeting (provided that a quorum previously shall have been established at such adjourned meeting) shall be the act of the Board of Directors, regardless of whether or not a quorum is present at the time such action is taken. In determining the number of directors who are present at the time any such action is taken, any director who is in attendance at such meeting but who, for just cause, is disqualified to vote on such matter, shall not be considered as being present at the time of such action for the purpose of establishing the number of votes required to take action on any matter submitted to the Board of Directors, but shall be considered as being present for purposes of determining the existence of a quorum.

In the event a quorum cannot be established at the beginning of a meeting, a majority of the directors present at the meeting, or the secretary of the Corporation, if there be no director present, may adjourn the meeting from time to time until a quorum be present. Notice of such adjournment need be given only as the Board of Directors may from time to time prescribe.

Section 4.11. Regulations. The Board of Directors shall adopt such rules and regulations for the conduct of its meetings and for the management of the property, affairs and business of the Corporation as it may deem proper and consistent with law, the Articles of Incorporation, these Bylaws and the Covenants.

Section 4.12. Compensation. Directors shall not receive compensation for their services.

Section 4.13. Participation in Meeting by Conference Telephone. Any and all members of the Board of Directors may participate in a meeting of the Board by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section 4.13 shall constitute presence in person at such meeting.

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Section 4.14. Written Consent in Lieu of Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if a written consent or consents thereto shall be signed by all members of the Board then in office.

Section 4.15. Waiver of Notice by Directors. Whenever any notice is required to be given by law, the Articles of Incorporation or these Bylaws to a member of the Board of Directors, a written waiver thereof signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to such notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in any written waiver of notice unless so required by law, the Articles of Incorporation or these Bylaws. A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting, or promptly upon his arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Section 4.16. Assessments. The Board of Directors shall, on an annual basis, levy assessments against all of the Members in accordance with the Covenants. Assessments shall be levied for the purposes set forth in the Covenants. Assessments shall be binding legal obligations on Members and shall be enforceable by the Association as provided in the Covenants.

ARTICLE V
NOTICES

Section 5.1. Form; Delivery. Whenever, under the provision of law, the Articles of Incorporation or these Bylaws, notice is required to be given to any Member, personal notice shall not be required unless specifically provided. All notices or requests required shall be in writing. Notice to any Member shall be considered delivered and effective upon personal delivery, or three (3) days after posting, when sent by Certified Mail, return receipt requested, to the address of such Member on file in the records of the Association at the time of such mailing. Notice to the Board of Directors, the Association, the Architectural Control Committee, or the manager, if any, shall be considered delivered and effective upon personal delivery, or three (3) days after posting, when sent by Certified Mail, return receipt requested, to the Association, the Board of Directors, or the Architectural Control Committee, at such address as shall be established by the Association from time to time by notice to the Members and if to the manager, if any, at its principal place of business. General notices to all Members or any classification thereof need not be Certified, but may be sent regular first class mail or electronic mail.

ARTICLE VI
OFFICERS

Section 6.1. Designations. The officers of the Corporation shall be chosen by the Board of Directors. The Board of Directors shall appoint a president, a vice president, a secretary, a treasurer and such other officers as are appointed by the Board of Directors from

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time to time.. All officers of the Corporation shall exercise the powers and perform the duties as shall from time to time be determined by the Board of Directors. Any number of offices may be held by the same person.

Section 6.2. Term of Office; Removal. Each officer of the Corporation shall hold office until his successor is chosen and shall qualify. Any officer elected or appointed by the Board of Directors may be removed, with or without cause, at any time by the affirmative vote of a majority of the Board of Directors. Removal from office shall not prejudice the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights. Any vacancy occurring in any office of the Corporation may be filled for the unexpired portion of the term by the Board of Directors.

Section 6.3. Compensation. No officers of the Corporation shall be compensated for their services as such.

Section 6.4. President. The president, subject to the direction of the Board of Directors, shall have general charge of the business affairs and property of the Corporation and general supervision over its other officers and agents. In general, he shall perform all duties incident to the office of president and shall see that all orders and resolutions of the Board of Directors are carried into effect. The president may sign, with the secretary or any other proper officer of the Corporation authorized by the Board of Directors, any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors have authorized to be executed, except in cases where the signing and executing thereof shall be expressly delegated by the Members or by these Bylaws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed.

Section 6.5. Vice Presidents. In the event that the Board of Directors appoint a vice president, or vice presidents, then the vice president, or the vice presidents in the order designated or appointed, shall, in the absence of the president or in the event of his disability or refusal to act, perform the duties and exercise the powers of the president, and shall generally assist the president and perform such other duties and have such other powers as may from time to time be prescribed by the Board of Directors.

Section 6.6. Secretary. The secretary shall attend all meetings of the Board of Directors and of the Members and shall record all the votes and proceedings of the meetings in a book to be kept for that purpose. The secretary shall give, or cause to be given, notice of all meetings of the Board of Directors and of the Members and shall keep a register of the post office address of each director and each Member. The secretary shall have custody of the seal of the Corporation, and he, or an assistant secretary, shall have authority to affix the same to any instrument requiring it. When so affixed, the seal may be attested by the secretary's signature or by the signature of such assistant secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing of it by their signature.

Section 6.7. Assistant Secretary. The assistant secretary, if any (or the assistant secretaries, in the order designated or appointed) shall, in the absence of the secretary or in the event of his disability, perform the duties and exercise the powers of the secretary, and shall

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perform such other duties and have such other powers as may from time to time be prescribed by the Board of Directors.

Section 6.8. Treasurer. The treasurer shall have the custody of the corporate funds and other valuable effects, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation. The treasurer shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may from time to time be designated by the president or Board of Directors. The treasurer shall disburse the funds of the Corporation as may be ordered by the Members, taking proper vouchers for such disbursements, and shall render to the president and the Board of Directors, whenever they may require it, an account of all transactions he made as treasurer and the financial condition of the Corporation.

Section 6.9. Assistant Treasurer. The assistant treasurer, if any (or the assistant treasurers, in the order designated or elected) shall, in the absence of the treasurer or in the event of his disability, perform, the duties and exercise the powers of the treasurer, and shall perform such other duties and have such other powers as may from time to time be prescribed by the Board of Directors.

ARTICLE VII
INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 7.1. Statutory Indemnification. The Corporation shall indemnify any director or officer of the Corporation to the fullest extent permitted by law.

ARTICLE VIII
COMMITTEES

Section 8.1. Ad Hoc Committees. The president, subject to the approval of the Board of Directors, may, from time to time, appoint such ad hoc committees, with such powers and composition as the president, with the approval of the Board of Directors, shall determine.

Section 8.2. Powers of Committees. The several committees shall act only as committees and the individual members thereof shall have no power or authority to act on behalf of the Board of Directors or the Association. All committees shall be advisory only and shall report to and be under the supervision of the Board of Directors. Committee members may be removed, with or without cause, upon majority vote of the Board of Directors.

Section 8.3. Committee Meetings. All meetings of any committee of the Association shall be open to all Members. A Member's participation in a committee meeting may be limited by the chair of the meeting.

Section 8.4. Architectural Control Committee. The Architectural Control Committee shall be organized and governed by the Covenants. The Association does not have the right to appoint the Architectural Control Committee prior to the closing of the initial retail sale of all Lots to be developed within the Property to persons other than Declarant.

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ARTICLE IX
DISCIPLINE

Section 9.1. Enforcement. The Board of Directors or its delegate shall have the power to: (a) impose reasonable fines, not to exceed the maximum amount permitted by law per violation, which shall constitute an automatic and continuing lien upon the Lot of the violating Owner; (b) preclude contractors, subcontractors, agents and other invitees of an Owner or occupant, to the extent permitted by law, from working within the Property for violation of any duty imposed under the Covenants, these Bylaws or the rules and regulations; (c) suspend an Owner's use of the Common Areas and use by his family or guests; provided, however, nothing herein or in the Covenants shall authorize the Association or the Board of Directors to limit an Owner's or occupant's ingress and egress to or from the Owner's Lot; and (d) suspend the vote allocated to a Class "A" Member. In the event that any occupant of a Lot violates the Covenants, these Bylaws or the rules and regulations, and a fine is imposed, the fine shall first be assessed against the occupant residing therein; provided, however, if the fine is not paid by the occupant within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association. Fines may be levied on a daily or periodic basis for continuing violations, each such day or period being deemed a separate violation. To the extent authorized by law, fines shall be considered benefit assessments. The failure of the Board of Directors to enforce any provision of the Covenants or Bylaws shall not be deemed a waiver of the right of the Board of Directors to do so thereafter.

Section 9.2. Notice. Prior to imposition of any sanction hereunder which involves a fine or exclusion from access to use of any portion of the Property for a period in excess of fourteen (14) days, the Board of Directors or its delegate shall serve the accused with written notice describing (a) the general nature of the alleged violation, (b) the proposed sanction to be imposed, (c) a period of not less than fourteen (14) days within which the alleged violator may present a written request to the Board of Directors for a hearing, and (d) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge has been requested within the fourteen (14) day notice. A hearing shall not be required for suspension for failure to pay amounts owed to the Association in a timely manner.

Section 9.3. Hearing. If a hearing is requested within the allotted fourteen (14) day period, the sanction shall, unless the Board determines otherwise for health, safety or welfare, be stayed pending the hearing, which shall be held before a committee comprised of at least three (3) members appointed by the Board who are not officers, directors or employees of the Association, or the spouse, parent, child, brother or sister of an officer, director or employee of the Association. The committee shall set the date and time of the hearing which shall be within ten (10) days of the receipt of the notice requesting a hearing. Hearings shall be informal and provide the accused an opportunity to explain or resolve his acts or omissions. The Association shall not be required to provide any evidence or testimony at a hearing. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. Proof of proper notice shall be placed in the records of the Association. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the accused appears at the hearing. The minutes of any meeting shall

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contain a written statement of the results of the hearing and the sanction, if any, imposed.

Section 9.4. Additional Enforcement Rights. Notwithstanding anything to the contrary contained herein, the Association may elect to enforce any provisions of the Covenants, these Bylaws or the rules and regulations by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the violator shall pay all costs, including reasonable attorneys' and paralegals' fees actually incurred by the Association.

ARTICLE X
MISCELLANEOUS

Section 10.1. Fiscal Year. The fiscal year of the Corporation shall be the calendar year, beginning on January 1 and ending on December 31 of each year.

Section 10.2. Contracts, Checks, Bank Accounts, Etc. The Board is authorized to select such banks or depositories as it shall deem proper for the assets of the Corporation. All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by the president or secretary or by such other members of the Board or officers of the Association as may be designated by resolution of the Board of Directors.

Section 10.3. Corporate Seal. The Corporation may have a corporate seal in such form as the Board of Directors may from time to time determine.

Section 10.4. Amendments. Until the Turnover, the Declarant may amend these Bylaws in its sole and absolute discretion. Prior to Turnover, Members shall have no right to amend these Bylaws. After the Turnover, amendments to these Bylaws shall require the affirmative vote of a majority of the Board of Directors and a majority of the Members; provided, however, the percentage of votes necessary to amend a specific clause shall be not less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Amendments to the Bylaws shall be effective upon adoption and recordation in the Register Mesne Conveyance Office for Charleston County, South Carolina.

No amendment may remove, revoke or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

Section 10.5. Investments. The Corporation shall have the right to retain all or any part of any securities or property acquired by it in whatever manner, and to invest and reinvest any funds held by it, according to the judgment of the Board of Directors, without being restricted to the class of investments which a director or trustee is or may hereafter be permitted by law to make or any similar restriction.

Section 10.6. References to Gender and Number Terms. In construing these Bylaws, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the

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context so requires.

Section 10.7. Headings. The Article and Section headings in these Bylaws are inserted for convenience only and are not part of these Bylaws.

* * *

I, Frank Finlaw, Secretary of Whitesides Park Townhomes Property Owners Association, Inc., (the "***Association***" or "***Corporation***"), do hereby certify that the foregoing is a true and correct copy of the Association's Bylaws as adopted by the Incorporator on August 12, 2016, and ratified by the Board of Directors of the Corporation on August 12, 2016.

IN WITNESS WHEREOF I have set my hand and affixed the Corporate Seal of the Association, this the 18 day of August, 2016.

Frank Finlaw, Secretary

[CORPORATE SEAL]

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

HAYNSWORTH SINKLER BOYD PA

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) TITLE TO REAL ESTATE
COUNTY OF CHARLESTON)

KNOW ALL MEN BY THESE PRESENTS, THAT, **CALATLANTIC GROUP, INC., A DELAWARE CORPORATION, AS SUCCESSOR BY MERGER TO THE RYLAND GROUP, INC., A MARYLAND CORPORATION (hereinafter referred to as Grantor),** in the State aforesaid for and in consideration of the sum of FOUR HUNDRED EIGHTY-EIGHT THOUSAND EIGHT HUNDRED NINETY-NINE AND NO/100 ($488,899.00) DOLLARS, to it in hand paid at and before the sealing of these presents by **KELLY F. FOWLER and JUDGE W. FOWLER**, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, subject to those matters set forth on Exhibit "A", unto the said **KELLY F. FOWLER and JUDGE W. FOWLER (hereinafter referred to as "Grantees"), as joint tenants with rights-of-survivorship, and not as tenants-in-common,** their heirs and assigns forever, the following described real property, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned, subject to those matters set forth on Exhibit "A", unto the Grantees, as joint tenants with rights-of-survivorship, and not as tenants-in-common, and the Grantees' heirs and assigns, forever.

AND subject to those matters set forth on Exhibit "A", Grantor does hereby bind Grantor and Grantor's successors and assigns, to warrant and forever defend, all and singular, the said Premises unto the said Grantees and the Grantees' heirs and assigns, against Grantor and Grantor's successors and assigns, and all persons whomsoever shall be lawfully claiming or to claim the same, or any part thereof.

DODDS HENNESSY & STITH, LLP
ATTORNEYS AT LAW
973 HOUSTON NORTHCUTT BLVD.
SUITE 101
MOUNT PLEASANT, SC 29464

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WITNESS Grantor's Hand and Seal, this 15th day of December, 2016.

SIGNED, SEALED AND DELIVERED
IN PRESENCE OF:

CALATLANTIC GROUP, INC., A DELAWARE CORPORATION, AS SUCCESSOR BY MERGER TO THE RYLAND GROUP, INC., A MARYLAND CORPORATION

By: Don McDonough, Division President

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 15th day of December, 2016, by Don McDonough, Division President of CalAtlantic Group, Inc., a Delaware corporation, as successor by merger to The Ryland Group, Inc., a Maryland corporation, on behalf of the corporation.

Notary Public for South Carolina
My Comm. Expires: 6/17/2025

SOUTH CAROLINA NOTARY PUBLIC LORAN BLACKMON COM. EXP. 6/17/2025

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EXHIBIT "A"

ALL that certain lot, piece or parcel of land, together with any improvements thereon, situate, lying and being in the Town of Mount Pleasant, County of Charleston, State of South Carolina, being known and designated as **LOT 9**, as shown on that certain plat prepared by GPA Professional Land Surveyors, entitled, "ADJUSTMENT PLAT SHOWING THE ADJUSTMENT OF THE PROPERTY LINES BETWEEN LOTS 7, 8, 9, 10 AND RESIDUAL, THE CREATION OF NEW MPW EASEMENTS, NEW PRIVATE GENERAL UTILITY EASEMENTS, A NEW PUBLIC ACCESS EASEMENT AND THE ABANDONMENT OF A PORTION OF AN EXISTING MPW EASEMENT, MYRICK ROAD TOWNHOMES - OWNED BY CALATLANTIC GROUP, INC., LOCATED IN THE TOWN OF MOUNT PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA," dated January 7, 2016 and recorded January 15, 2016 in the RMC Office for Charleston County in Plat Book L16 at Page 0022. Said lot having such size, shape, dimensions, buttings and boundings as will, by reference to said plat, more fully appear.

SUBJECT TO any and all easements, restrictions and reservations of record including, but not limited to, the following:

1. Title to Water and Wastewater Systems and Grants of Easement from CalAtlantic Group, Inc. to the Commissions of Public Works of the Town of Mount Pleasant, South Carolina, dated November 12, 2015 and recorded November 17, 2015 in the RMC Office for Charleston County in Book 0517 at Page 699.
2. Easement from CalAtlantic Group, Inc to South Carolina Electric and Gas Company, dated February 3, 2016 and recorded February 29, 2016 in the RMC Office for Charleston County in Book 0537 at Page 586.
3. Encroachment Permit and Hold Harmless Agreement by and between CalAtlantic Group, Inc. and Mount Pleasant Waterworks, dated May 9, 2016 and recorded June 21, 2016 in the RMC Office for Charleston County in Book 0562 at Page 694.
4. Declaration of Covenants, Conditions, Restrictions and Easements for Whitesides Park, dated September 8, 2016 and recorded September 9, 2016 in the RMC Office for charleston County in Book 0582 at Page 098, and as may be amended from time to time, but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that the said covenant or restrictions is permitted by applicable law.
5. All those easements, conditions, restrictions, wetlands, and other matters as shown on that certain plat prepared by GPA Professional Land Surveyors, entitled, "SUBDIVISION PLAT SHOWING THE SUBDIVISION OF TMS NO. 532-08-00-040 TO CREATE LOTS 1 THROUGH 6 - MYRICK ROAD TOWNHOMES AND TO CREATE A NEW 10'X7' MPW EASEMENT OWNED BY CALATLANTIC GROUP, INC. LOCATED IN THE TOWN OF MOUNT PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA," dated January 25, 2016 and recorded March 7, 2016 in the RMC Office for Charleston County in Plat Book S16 at Page 0050.
6. All those easements, conditions, restrictions, wetlands, and other matters as shown on that certain plat prepared by GPA Professional Land Surveyors, entitled, "ADJUSTMENT PLAT SHOWING THE ADJUSTMENT OF THE PROPERTY LINES BETWEEN LOTS 7, 8, 9, 10 AND RESIDUAL, THE CREATION OF NEW MPW EASEMENTS, NEW PRIVATE GENERAL UTILITY EASEMENTS, A NEW PUBLIC ACCESS EASEMENT AND THE ABANDONMENT OF A PORTION OF AN EXISTING MPW EASEMENT, MYRICK ROAD TOWNHOMES - OWNED BY CALATLANTIC GROUP, INC., LOCATED IN THE TOWN OF MOUNT PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA," dated January 7, 2016 and recorded January 15, 2016 in the RMC Office for Charleston County in Plat Book L16 at Page 0022.

BEING a portion of the property conveyed to the Grantor herein by deed of Sea Island of Charleston, LLC dated January 27, 2015, and recorded in the RMC Office for Charleston County, in Book 0454, at Page 052, on January 27, 2015; and by deed of Piper Davis, dated January 27, 2015, and recorded in the RMC Office for Charleston County, in Book 0454, at Page 051, on January 27, 2015; and by Quit Claim Deed of Piper Davis, dated January 27, 2015, and recorded in the RMC Office for Charleston County, in Book 0454, at Page 050, on January 27, 2015.

TMS No. 532-08-00-238

GRANTEES' ADDRESS: 1335 MYRICK ROAD, MOUNT PLEASANT, SC 29464

STATE OF SOUTH CAROLINA } AFFIDAVIT { Date of Transfer of Title
COUNTY OF CHARLESTON } { Closing Date 12/15, 2016

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:
1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred by CALATLANTIC GROUP, INC., A DELAWARE CORPORATION, AS SUCCESSOR BY MERGER TO THE RYLAND GROUP, INC., A MARYLAND CORPORATION to KELLY F. FOWLER and JUDGE W. FOWLER on December 15, 2016.

3. The DEED is (check one of the following)
(A) _**__ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(B) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity , or is a transfer to a trust or as distribution to a trust beneficiary.
(C) _____ EXEMPT from the deed recording fee because (Exemption # _____). (Explanation If required) _____
(If exempt, please skip items 4-6, and go to item 7 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
(A) _***_ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $ 488,899.00.
(B) _____The fee is computed on the fair market value of the realty which is $_____.
(C) _____The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES ___ or NO _*_ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is $ _____.

6. The DEED Recording Fee is computed as follows:
(A) $ 488,899.00 the amount listed in item 4 above
(B) _____the amount listed in item 5 above (no amount place zero)
(C) $ 488,899.00 Subtract Line 6(b) from Line 6(a) and place the result.

7. As required by Code Section '12-24-70, I state that I am a responsible person who was connected with the transaction as:
GRANTOR .

8. Check if Property other than Real Property is being transferred on this Deed.
(A) _____Mobile Home
(B) _____Other

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Sworn this 15th day of Dec., 2016
Loran Blackmon
Notary Public for SC
My Commission Expires: 6/17, 2025

Signed _____
CalAtlantic Group, Inc., a Delaware corporation, as successor by merger to The Ryland Group, Inc., a Maryland corporation, GRANTOR
by Don McDonough, Division President

LORAN BLACKMON COM. EXP. NOTARY PUBLIC 6/17/2025 SOUTH CAROLINA

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NOTE: This page MUST remain with the original document

Filed By:

DODDS HENNESSY & STITH LLP
ATTORNEYS AT LAW
973 HOUSTON NORTHCUTT BLVD STE 101
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Date:	December 16, 2016
Time:	3:51:59 PM

Book	Page	DocType
0604	363	Deed

Charlie Lybrand, Register
Charleston County, SC

MAKER:
CALATLANTIC GROUP INC ETC

RECIPIENT:
FOWLER KELLY F AL

Original Book:

Original Page:

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# of Pages: 5

Recording Fee	$	10.00
State Fee	$	1,271.40
County Fee	$	537.90
Extra Pages	$	-
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Chattel	$	-
TOTAL	$	1,819.30

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Charleston County Auditor

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363 — Page
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RTM ENGINEERING, LLC
PO Box 676 ▪ Ravenel, SC 29470 ▪ p – 843-564-1785 ▪ rtmease@gmail.com

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CONSTRUCTION DEFICIENCIES INVESTIGATION
Whiteside Park Townhomes



Prepared for:
Whiteside Park Townhome HOA

Prepared by:
Russell T. Mease, P.E.

March 16, 2020

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March 16, 2020
2019-133

Amanda Blundy, Esquire
Blundy Law Firm, LLC
234 Seven Farms Drive, Suite 111-A
Charleston, SC 29492

RE: Construction Deficiencies Investigation
Whiteside Park Townhome Community
Mt. Pleasant, SC

Dear Mrs. Blundy,

As requested, the initial investigation of the referenced community has been completed. The following engineering report is based on the results of the construction deficiencies investigation performed on November 20-22, 2019. The purpose of the investigation was to identify and document deficiencies in construction of townhomes in the community. This includes construction deficiencies that result in improper installation, improper performance and/or damage in the building. Construction deficiencies were identified in several components including but not limited to the exterior cladding components, flashings, shingle installations, and exterior decks. In general, the deficiencies are violations of the applicable International Residential Code (IRC), manufacturer's installation requirements, and/or industry standards of care. The report also delineates recommendations for repair of the deterioration and deficiencies.

DESCRIPTION

In order to properly identify deficiencies and the extent of damages, a description of the community and the homes is necessary. The community consists of 4 buildings with a total of 13 townhomes. The general style of construction of the buildings is similar, with the only variation is that one building has 4 units versus the other three with 3 units each. Typically, the units are 3 story wood-frame townhomes installed on a slab on grade foundation. A park under garage has been installed below the second-floor footprint at the rear of each of the homes. The exterior of the townhomes are clad with a combination of Hardiplank horizontal fiber cement siding on the upper floors, and brick veneer installed at the first floor. The roof construction is typically a traditional hip configuration with parapets on the perimeter of each building. The roofs are primarily covered with architectural asphalt composition shingles, with a small amount of 5-V metal crimp roofing on first floor shed roofs over the entrances on the front elevations. Exterior decks are typically located at the rear of the second floor of the homes on the ends of the buildings, which provide a roof for the garage area below. Small exterior decks are located at the front of the interior units on the second floor. The windows are Plygem 100% vinyl single hung windows. For orientation purposes it will be assumed that Rifle Range road boarders the south edge of the property.

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BACKGROUND

Review of the construction documents for the buildings indicates that the plans were reviews in late 2015 through early 2016. Consequently, the construction of the community has been designed and constructed under the requirements of the IRC 2012 Edition.

OBSERVATIONS

Visual and intrusive observations were conducted on the exterior of selected buildings throughout the community, and evidence of construction deficiencies were observed at each building. Intrusive observations were conducted in multiple locations to identify the method of installation and the extent of any damages. These deficiencies are in violation of the Code, industry standards of care, and/or manufacturer's installation requirements and will require significant repairs. Selection of the units for observation was based upon the need for an adequate representative sample, availability, accessibility, and evidence of deficiencies and/or damage.

The typical deficiencies observed has been documented, and the investigation involved various levels of investigation of all 4 buildings in the community. Construction deficiencies exist within the homes, but are not limited to the deficiencies identified in this report and supporting documentation. Moreover, the construction deficiencies identified at this time are not limited to homes identified in this report. The documented pattern of deficiencies reveals that consistencies exist in the deficiencies in the homes throughout the community. Not all houses were checked for all conditions as the typical nature of the deficiencies would have made such an attempt unnecessary and cost prohibitive to the owners.

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CONSTRUCTION DEFICIENCIES

I. Exterior Second-floor Decks

A. The second-floor rear decks are covered with tile installed over a liquid applied membrane application for waterproofing. The rear decks terminate above a brick rowlock that is located above the garage door opening on the rear of the homes. Evidence of improper installation was observed that has led to water intrusion and water intrusion damage. The following conditions were observed.

1. Visual and intrusive observations were performed at the rear second floor tile deck of unit 1110. Evidence of improper installation, water intrusion and water intrusion damage were found in violation of the Code. The following conditions were observed. (See Photo 1)



Photo 1

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a. Observations in the garage ceiling of unit 1110 revealed evidence of water intrusion staining and microbial growth on the interior drywall. The staining is concentrated along the exterior edge of the garage below the tile deck installation. This is evidence of water intrusion in violation of the IRC, Section R703.8. (See Photo 2 through 5)



Photo 2

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Photo 3



Photo 4



Photo 5

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b. An intrusive observation was conducted at the corner column and right center column on the rear deck. Evidence of improper installation of the deck waterproofing materials was observed at each location that has directly led to water intrusion in violation of the Code. The following conditions were observed.

i. Measurement of the slope of the tile adjacent to the column revealed a slight negative slope on both sides. Evidence of compression cracking was also observed in the tile application and exterior aluminum deck trim. The lack of proper slope is a violation of the IRC, Section R905.15.1. (See Photo 6 through 9)



Photo 6

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Photo 7



Photo 8



Photo 9

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ii. Removal of the column trim revealed unacceptable and saturated moisture content in the preservative treated lumber. Corrosion was observed in the fasteners indicative that the fasteners do not have proper corrosion protection for installation into preservative treated wood. This is a violation of the IRC, Section R317.3.1. Additionally, the back, ends and edges of the wood trim has not been primed or painted in violation of the industry standard of care as defined by the US Forest Product Laboratory's Encyclopedia of Wood. (See Photo 10 through 15)



Photo 10

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Photo 11



Photo 12

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Photo 13



Photo 14



Photo 15

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iii. Removal of the trim revealed a black liquid applied membrane on the face of the column. Measurements of the moisture content in the column bases beneath the membrane revealed unacceptable moisture content. Additionally, the membrane application only extends vertically on the column approximately 1-3/4" and has fish mouth openings along the top edge. The evidence of water intrusion is a violation of the IRC, Section R703.1.1, and the short membrane application with voids is a violation of typical manufacturer's installation requirements. (See Photo 16 through 21)



Photo 16

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Photo 17



Photo 18

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Photo 19



Photo 20



Photo 21

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iv. Removal of the tile reveals that the installation consists of plywood sheathing, a gypsum based backerboard, the liquid applied membrane, thinset mortar and tile. An aluminum drip edge has been installed along the edge of the deck, but it has been installed on top of the water proofing membrane rendering it ineffective. Furthermore, the membrane stops at the edge of the deck and does not turn down to protect the base materials. The gypsum backerboard exhibited 100% relative moisture content, and the plywood sheathing exhibited saturated moisture content and evidence of cohesive failure of the layers due to water intrusion. These conditions are in violation of the IRC, Section R903.1. (See Photo 22 through 30)



Photo 22

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Photo 23



Photo 24

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Photo 25



Photo 26

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Photo 27



Photo 28

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Photo 29



Photo 30

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v. A section of the column was removed in order to determine the method of installation. The columns have been installed on the surface of the plywood deck sheathing, and observations in the hollow column revealed evidence of water intrusion staining. Measurement of the plywood sheathing revealed an unacceptable 23% moisture content, evidence of water intrusion in violation of the IRC, Section R903.1. (See Photo 31, 32 and 33)



Photo 31

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Photo 32



Photo 33

c. An intrusive observation conducted in the brick veneer at the head of the garage door of unit 1110 revealed evidence of heavy water intrusion and water intrusion damage. (See Photo 34)



Photo 34

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i. Prior to brick removal, observations of the flashing at the transition of the deck trim to the brick revealed that it has been installed with negative slope, serving to collect water on the flashing. Additionally, the flashing joints are open and will allow water intrusion, and the interface with the brick rowlock is also open. This condition is further exacerbated by the lack of adequate slope on the rowlock. This condition is typical around the entire property on all buildings. These conditions are in violation of the IRC, Section R703.8 and Figure R703.7. (See Photo 35, 36 and 37)



Photo 35

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Photo 36



Photo 37

ii. Removal of the brick at the head of the garage door revealed vinyl weep flashing on the lintel that has been weather lapped with the building felt, however the flashing does not extend to the surface of the exterior wall finish as required by the IRC, Section R703.7.5. (See Photo 38, 39 and 40)



Photo 38

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Photo 39



Photo 40

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iii. Lifting of the building felt behind the brick veneer revealed that the woven house wrap weather resistant barrier (WRB) has not been installed in a shingle fashion rendering it ineffective. Active water was weeping from the weather barriers indicative of heavy active water intrusion. Removal of the WRB revealed saturated moisture content and microbial growth in the oriented strand board (OSB) wall sheathing. The OSB exhibited cohesive failure due to water intrusion and could be easily removed by hand. Removal of the OSB also revealed saturated moisture content and damage in the laminated veneer lumber (LVL) structural framing. These conditions are in violation of the IRC, Sections R703.8 and R703.1.1. (See Photo 41 through 46)



Photo 41

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Photo 42



Photo 43

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Photo 44



Photo 45



Photo 46

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2. Visual and intrusive observations were performed at the rear second floor tile deck of unit 1090. Evidence of improper installation, water intrusion and water intrusion damage were found in violation of the Code. The following conditions were observed. (See Photo 47)



Photo 47

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a. Observations in the garage ceiling of unit 1090 revealed evidence of water intrusion staining and microbial growth on the interior drywall. The staining is concentrated along the exterior edge of the garage below the tile deck installation. This is evidence of water intrusion in violation of the IRC, Section R903.1. (See Photo 48 and 49)



Photo 48



Photo 49

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b. An intrusive observation was conducted at the corner column on the rear deck. Evidence of improper installation of the deck waterproofing materials was observed that has directly led to water intrusion in violation of the Code. The following conditions were observed.

i. Prior to the intrusive observation, measurement revealed that the deck slopes 3/8" in 4-feet. This slope is in violation of the IRC, Section R905.15.1. Evidence of ponding, efflorescence and cracking in the tile were also observed. (See Photo 50 through 53)



Photo 50

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Photo 51



Photo 52



Photo 53

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ii. Measurement of the slope of the tile adjacent to the column revealed a slight negative slope. Evidence of compression cracking was also observed in the tile application and exterior aluminum deck trim. The lack of proper slope is a violation of the IRC, Section R905.15.1. (See Photo 54 through 57)



Photo 54

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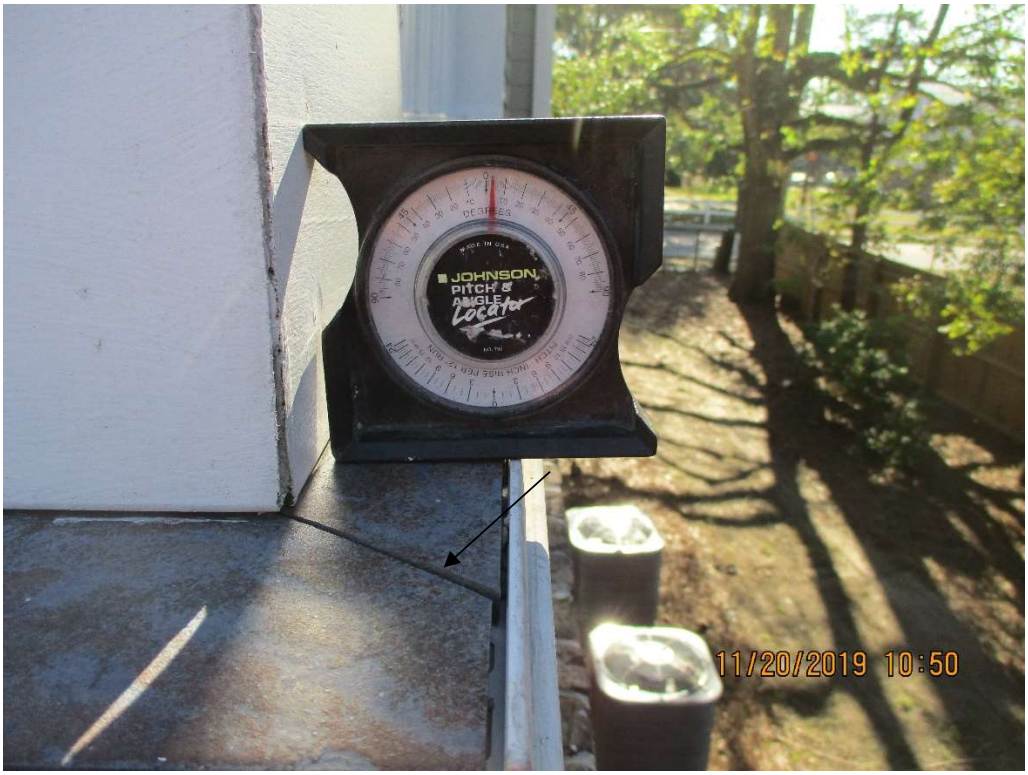


Photo 55

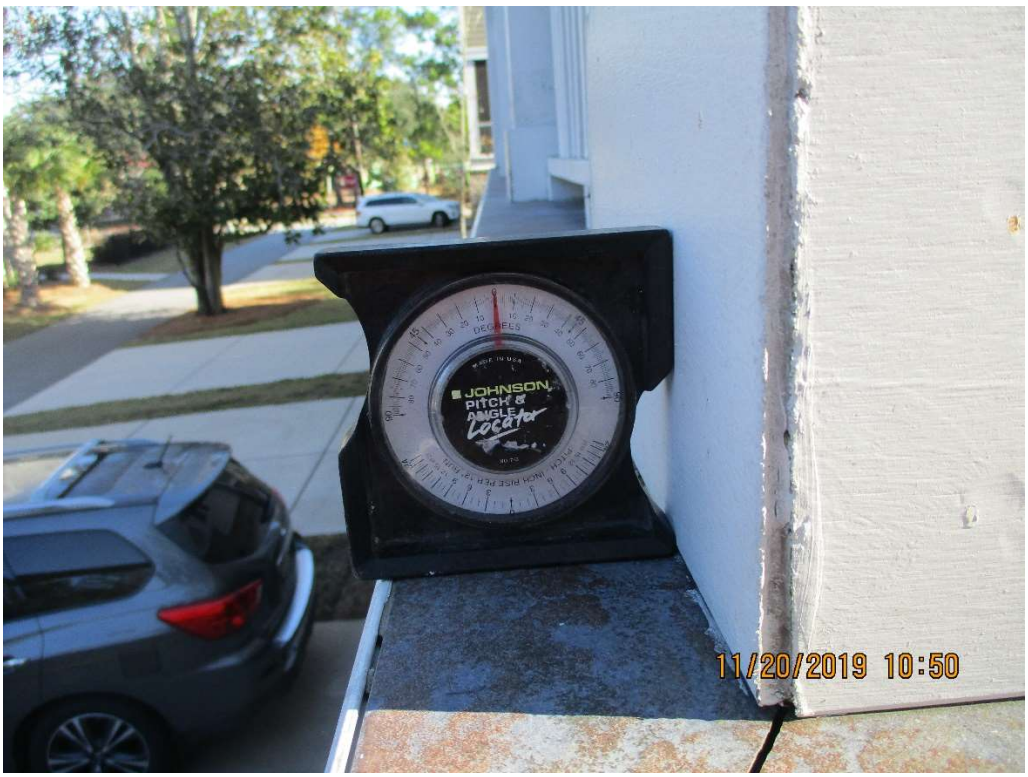


Photo 56



Photo 57

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iii. Removal of the fiber cement column trim revealed corrosion in the fasteners indicative that the fasteners do not have proper corrosion protection for installation into preservative treated wood. This is a violation of the IRC, Section R317.3.1. (See Photo 58)



Photo 58

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iv. Removal of the trim revealed a black liquid applied membrane on the face of the column. Measurements of the moisture content in the column base beneath the membrane revealed unacceptable moisture content. The membrane application exhibited wrinkling and voids in violation of typical manufacturer's installation requirements. (See Photo 59 through 63)



Photo 59

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Photo 60



Photo 61

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Photo 62



Photo 63

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v. Removal of the tile reveals that the installation consists of plywood sheathing, a gypsum based backerboard, the liquid applied membrane, thinset mortar and tile. An aluminum drip edge has been installed along the edge of the deck, but it has been installed on top of the water proofing membrane rendering it ineffective. Furthermore, the membrane stops short at the corner at the edge of the deck and does not turn down to protect the base materials. The gypsum backerboard exhibited 100% relative moisture content, and the plywood sheathing exhibited saturated moisture content and evidence of cohesive failure of the layers due to water intrusion. These conditions are in violation of the IRC, Section R903.1. (See Photo 64 through 72)



Photo 64

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Photo 65



Photo 66

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Photo 67



Photo 68

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Photo 69



Photo 70

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Photo 71



Photo 72

3. Visual and intrusive observations were performed at the rear second floor tile deck of unit 1343. Evidence of improper installation, water intrusion and water intrusion damage were found in violation of the Code. The following conditions were observed. (See Photo 73)



Photo 73

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a. An intrusive observation was conducted at the right center column on the rear deck. Evidence of improper installation of the deck waterproofing materials was observed that has directly led to water intrusion in violation of the Code. The following conditions were observed.

i. Measurement of the slope of the tile adjacent to the column revealed that it has been installed flat on all sides. The lack of proper slope is a violation of the IRC, Section R905.15.1. (See Photo 74, 75 and 76)



Photo 74

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Photo 75



Photo 76

ii. Removal of the fiber cement column trim revealed corrosion in the fasteners indicative that the fasteners do not have proper corrosion protection for installation into preservative treated wood. This is a violation of the IRC, Section R317.3.1. (See Photo 77)



Photo 77

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iii. Removal of the trim revealed a black liquid applied membrane on the face of the column. Measurements of the moisture content in the column base beneath the membrane revealed unacceptable moisture content. Additionally, the membrane has fish mouth openings along the top edge. The evidence of water intrusion is a violation of the IRC, Section R703.1.1, and the membrane application with voids is a violation of typical manufacturer's installation requirements. (See Photo 78, 79 and 80)



Photo 78

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Photo 79



Photo 80

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iv. Removal of the tile reveals that the installation consists of plywood sheathing, a gypsum based backerboard, the liquid applied membrane, thinset mortar and tile. An aluminum drip edge has been installed along the edge of the deck, but it has been installed on top of the water proofing membrane rendering it ineffective. Stored water was observed on the back of the removed tile and thinset, evidence of active water intrusion. Measurement of the moisture content in the plywood sheathing revealed saturated conditions in violation of the IRC, Section R903.1. (See Photo 81 through 86)



Photo 81

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Photo 82



Photo 83

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Photo 84



Photo 85



Photo 86

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v. A section of the column was removed in order to determine the method of installation. The columns have been installed on the surface of the plywood deck sheathing, with the plywood deck sheathing removed beneath the column to allow the installation of metal strapping. (See Photo 87 and 88)



Photo 87



Photo 88

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4. Measurements of the tile deck slopes at units 1343 and 1102 also revealed inadequate slope for drainage. The measured slopes were 3/8" and 7/16" in 4-feet respectfully. This is a violation of the IRC, Section R905.15.1. (See Photo 89 through 92)



Photo 89

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Photo 90



Photo 91



Photo 92

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5. Further evidence of water intrusion and water intrusion damage was observed at the heads of the garage doors below the improper deck installations. A fiber cement trim board has been installed below the header and lintel above the garage door, and evidence of separation and water intrusion staining was observed at multiple locations. The trim boards are very heavy and have been installed using wire finish nails along the inside edge of the boards only due to the steel lintel along the outside edge. This method of installation has caused the trim to pull away from the building due to gravity. Removal of several of the boards revealed water intrusion staining on the trim, water intrusion staining and unacceptable moisture content in the sheathing and/or header material. These conditions are evidence of active water intrusion in violation of the IRC, Section R703.1 and R903.1. Intrusive observations of this condition were observed at unit 1327 (See Photo 93 through 101) unit 1110 (See Photo through 102 through 108), and unit 1090 (See Photo 109 through 116).



Photo 93

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Photo 94



Photo 95

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Photo 96



Photo 97

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Photo 98



Photo 99

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Photo 100



Photo 101

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Photo 102



Photo 103

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Photo 104



Photo 105

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Photo 106



Photo 107

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Photo 108



Photo 109

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Photo 110



Photo 111

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Photo 112



Photo 113

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Photo 114



Photo 115



Photo 116

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II. Interior Water Intrusion

A. Evidence of interior water intrusion damage was observed in the hardwood flooring installation inside the door to the front second floor deck of unit 1335. Observations of the door installation reveled no evidence that a pan or any other waterproofing was installed beneath the threshold of the door unit. This is a violation of the IRC, Section R703.8. (See Photo 117 through 121) Similar door installation was observed at the door unit to the rear second floor deck of unit 1343. (See Photo 122 and 123)



Photo 117

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Photo 118



Photo 119

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Photo 120



Photo 121

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Photo 122

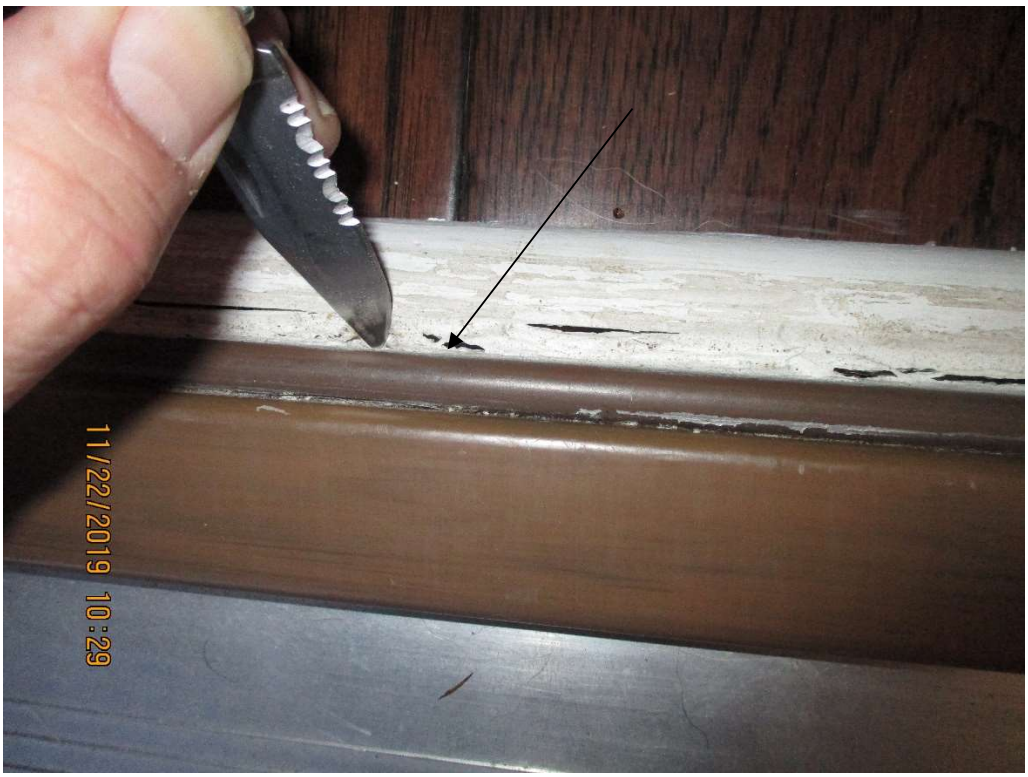


Photo 123

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B. It is my understanding that water intrusion was observed in the second-floor kitchen of unit 1331. Staining was observed in the corner wall above the cabinets, evidence of water intrusion in violation of the IRC, Section R703.1. (See Photo 124 and 125)



Photo 124



Photo 125

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III. Brick Veneer Cladding

A. Observations of the window sills throughout the community revealed no evidence of weepholes or weep flashing. Intrusive observation verified that no weep flashing has been installed below the rowlocks of the windows. This is a violation of the IRC, Section R703.7.5, R703.7.6 and Figure R703.7. (See Photo 126 through 129)



Photo 126

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Photo 127

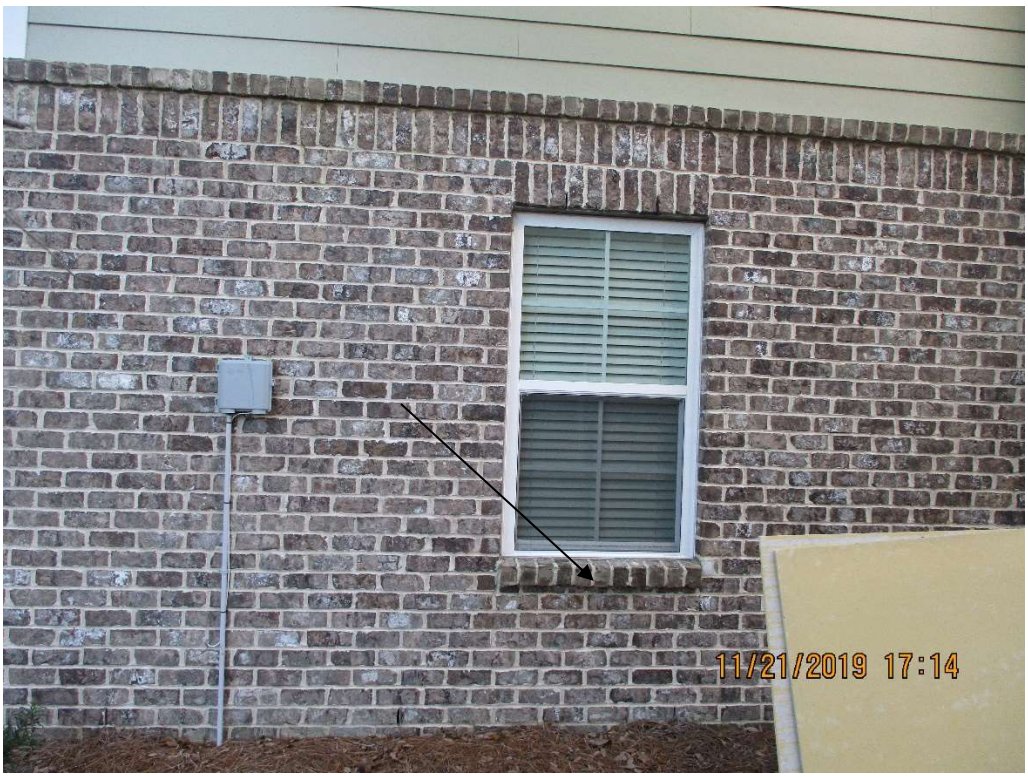


Photo 128



Photo 129

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B. Measurement of the rowlock installations at the top of the veneer and at the sill of the windows revealed that inadequate slope has been provided. Figure R703.7 of the IRC graphically depicts slope on the rowlocks, and this requirement is further defined by the BIA to be a minimum of 15° for proper installation. (See Photo 130 and 131)



Photo 130



Photo 131

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C. The brick veneer has been installed abutted to the windows and door units without a proper sealant joint. This is a violation of the window manufacturer's installation requirements, the industry standard of care as defined by the Brick Industry Association (BIA), Technical Notes 28 and ASTM C1193. Evidence of brick bind damage was observed in multiple windows due to the abutted condition. (See Photo 132 through 138)



Photo 132

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Photo 133



Photo 134

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Photo 135



Photo 136

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Photo 137



Photo 138

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D. Observations at the top of the brick veneer installation revealed evidence of improper installation of the transition flashing. The aluminum flashing has been installed with a negative slope in most areas where it is located above the rowlock at the top of the veneer. Additionally, the joints in the aluminum flashing are not sealed and water is being directed to the openings due to the negative slope condition. This condition is located throughout the community on all buildings and is a violation of the Code, Sections 703.1 and 703.8. (See Photo 139 through 143)



Photo 139

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Photo 140



Photo 141

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Photo 142



Photo 143

E. Intrusive observation in the brick veneer reveal that a single 4-1/2" x 3" x 7/16" steel lintel has been installed above the 16'-2" garage door openings. Evidence of deflection and cracking in the brick was observed above the garage door at 11 of the 13 units. This is a violation of the prescriptive requirements of the IRC, that specifies (2) 6" x 3-1/2" x 5/16" steel angles for the span of garage door opening at the community. (See Photo 144 through 150)



Photo 144

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Photo 145



Photo 146

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Photo 147



Photo 148

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Photo 149



Photo 150

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F. The weepholes, where present in the community, are varied. Many of the observed weepholes are "cosmetic" and do not function as weeps as described in the Code or industry standard of care. The improper weepholes include small round weepholes that do not occur directly above flashing and/or are angled upward in the mortar. Some weepholes are located in head joints but are blocked at the bottom with mortar rendering them ineffective. Visual and intrusive observations also revealed that each of the observed vinyl weep flashing has been installed short of the surface of the exterior wall finish as required by the Code. The observed conditions are in violation of the IRC, Section R703.7.5, R705.3.6, Figure R703.7 and R703.8. (See Photo 151 through 158)



Photo 151

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Photo 152



Photo 153

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Photo 154



Photo 155



Photo 156



Photo 157

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Photo 158

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IV. Horizontal Fiber Cement Siding

A. Intrusive observation revealed that 65% of fasteners have been improperly installed in an overdriven condition such that the head of the fastener penetrates the surface of the siding board. This is a violation of typical manufacturer's installation requirements and will negatively affect the siding's ability to resist wind loading. (See Photo 159 through 162)



Photo 159

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Photo 160



Photo 161



Photo 162

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B. Intrusive observation revealed that 49% of fasteners have not been installed into the stud framing. This is a violation of typical manufacturer's installation requirements and will negatively affect the siding's ability to resist wind loading. (See Photo 163 and 164)

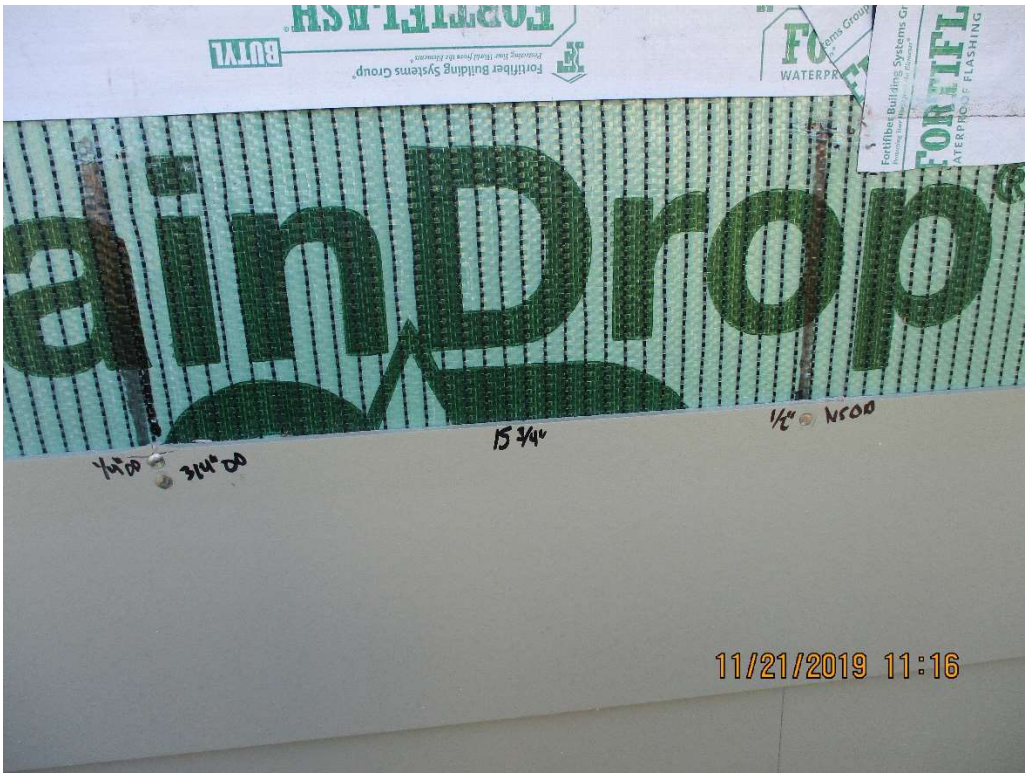


Photo 163

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Photo 164

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C. Measurement of the observed siding fasteners placement at the top of the board for the blind nailing installation revealed that 74% have been installed too close to the top of the board. This is a violation of typical manufacturer's installation requirements and will negatively affect the siding's ability to resist wind loading. (See Photo 165 and 166)



Photo 165

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Photo 166

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D. Observations of the fiber cement trim installations around the windows reveals that they have been typically installed abutted to the window frames with no sealant application. This is a violation of Ply Gem Window installation instructions, as well as the industry standard of care as defined by ASTM C1193. (See Photo 167 through 170)



Photo 167

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Photo 168



Photo 169



Photo 170

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E. Evidence of buckling of the sill frames of the Ply Gem 1500 Series vinyl windows was observed at multiple locations. The damage has been caused by the installation of the fiber cement trim abutted to the window frames in violation of the manufacturer's installation requirements. The windows exhibiting frame buckling must be replaced. (See Photo 171 through 176)



Photo 171

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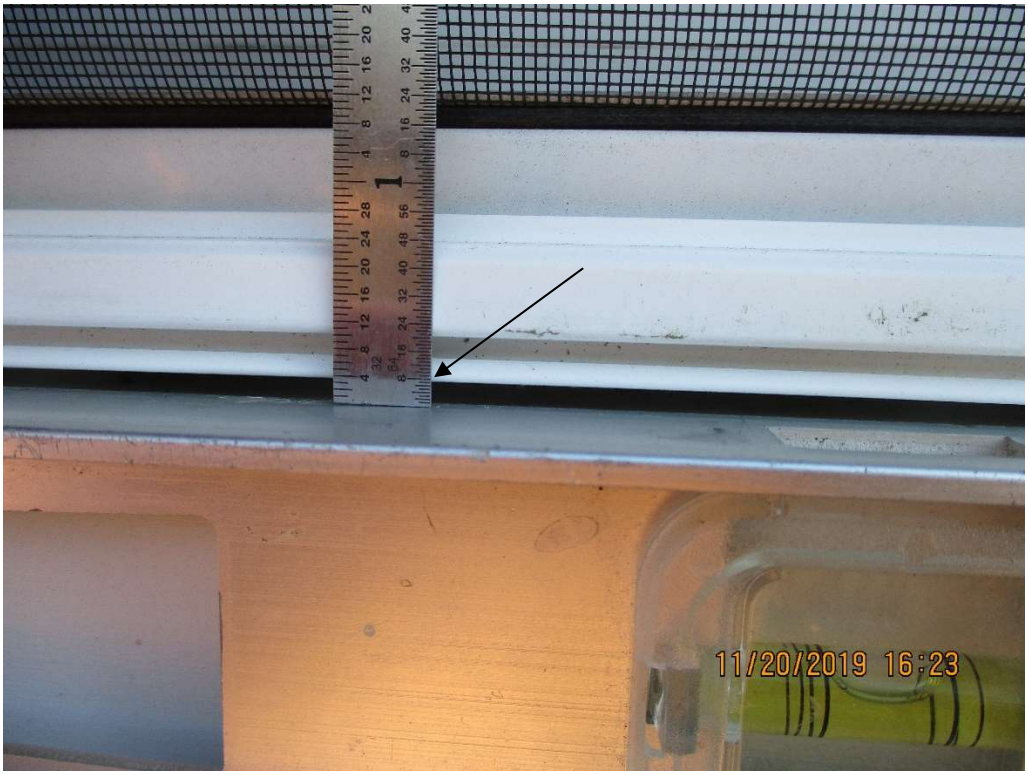


Photo 172



Photo 173

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Photo 174



Photo 175



Photo 176

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V. Architectural Shingle Installations

A. Observations of the shingle fastener installations revealed that nearly all (96%) of the fasteners are improperly installed. This includes fasteners that have been overdriven such that the nail head penetrates the surface of the shingle, fasteners that have been angle driven such that the head of the nail is not parallel to the surface of the shingle, or under-driven such that the fastener is not installed in contact with the surface of the shingle. These conditions are a violation of the manufacturer's installation requirements and will negatively affect the installation's ability to resist wind loading. (See Photo 177 through 180)



Photo 177

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Photo 178

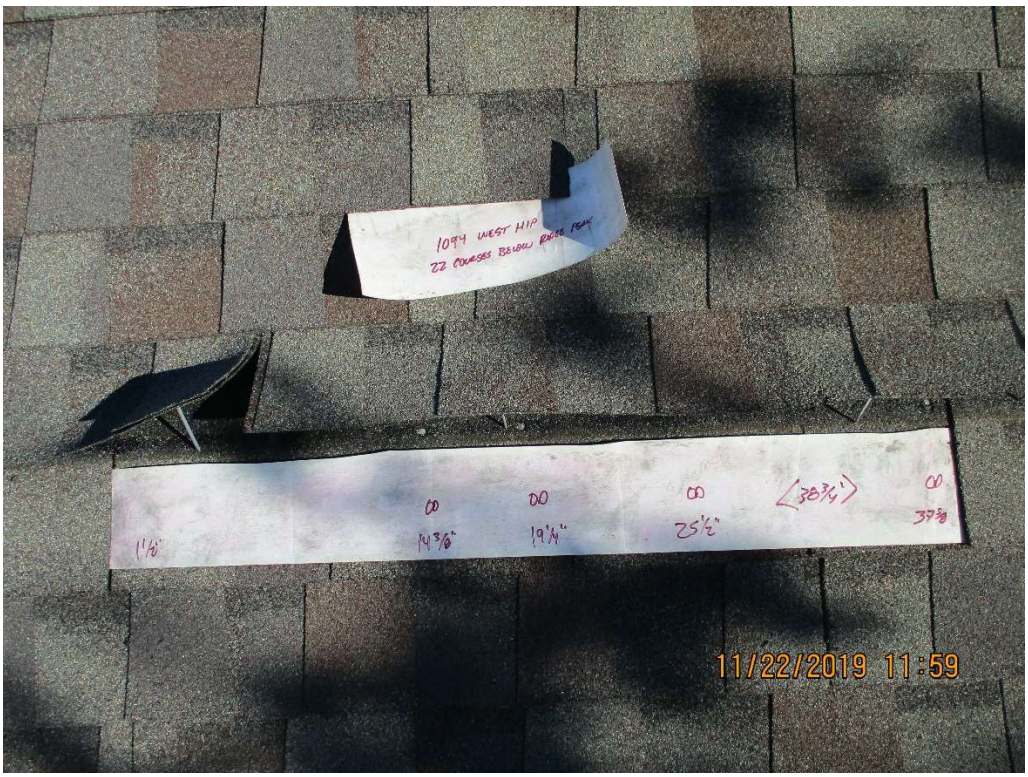


Photo 179



Photo 180

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B. Observations of the parapet termination flashings revealed that they have been fabricated with coil stock aluminum. The joints and seams in the flashings have not been sealed or soldered. Some of the flashings are hand bent pieces of aluminum and do not comply with a properly fabricated flashing. These conditions are in violation of the IRC, Section R703.8. (See Photo 181 through 187)



Photo 181

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Photo 182



Photo 183

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Photo 184



Photo 185

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Photo 186



Photo 187

VI. The asphalt driveway for the community exhibited damage from the construction project. It is my understanding that the driveway was to receive a final surface course of asphalt, which has not yet been applied. (See Photo 188 through 191)



Photo 188



Photo 189

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Photo 190



Photo 191

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CONCLUSION

Based on the results of the investigation it is evident that construction deficiencies exist in the townhomes that have directly led to damages to the buildings in the community. The methods and materials observed were consistent during visual and intrusive observations with limited variations across the buildings. Significant repairs will be necessary to bring the buildings in compliance with the Code.

RECOMMENDATIONS FOR REPAIRS

1. The second-floor rear exterior decks have been improperly installed which has led to damage to the buildings. The tile finishes must be removed to allow for re-framing of the decks to provide adequate slope for drainage. A new water proofing system and exterior finish must be selected and installed to properly manage water in accordance with the current South Carolina Residential Code (SCRC). The trim and brick veneer installations below the decks must be removed to allow for repair of water damaged framing and other materials. Additionally, the wood columns must be carefully inspected, and any column that is exhibiting damage must be replaced. Properly integrated water proofing elements must be designed and installed in accordance with the current IRC and all manufacturer's installation requirements and recommendations.

2. Due to evidence of improper installation and evidence of water intrusion, all of the brick veneer installations must be removed and replaced. The new brick veneer installation must be installed in accordance with the SCRC, the industry standard of care as defined by the BIA and all manufacturer installation requirements and recommendations.

3. Due to the evidence of improper installation of the horizontal fiber cement siding, it will be necessary to fully remove the installation. After siding removal the wall sheathing must be evaluated for any evidence of water intrusion damage. This evaluation will require the removal of the house wrap and flashing installations. Upon completion of all necessary repairs to the exterior walls a new exterior cladding system must be installed in accordance with the SCRC. The new cladding system installation must be accomplished in accordance with the requirements of the SCRC, and all manufacturer's installation requirements and recommendations.

4. Evidence of improper installation of the composition asphalt shingles was observed. Due to the evidence of improper installation it will be necessary to replace the entire shingle application on each building. During shingle replacement it will be necessary to replace the underlayment and all associated flashings. The new shingle installation is to be installed in accordance with the SCRC, and all manufacturer's installation requirements and recommendations. All flashings must be properly fabricated and be leakproof.

5. All of the flashing installations must be removed and replaced as part of the exterior cladding repair. Corrosion resistant flashing must be designed and installed to prevent water intrusion in accordance with the SCRC. All flashing must have positive slope for drainage. An appropriate weather barrier is to be installed and properly integrated with all flashings.

6. As a result of the observed damage to window units, and anticipated damage to windows during the repair project, the owners and home owners association should expect to replace approximately half of the installed windows for budgeting purposes. The new windows installed in the community must meet the requirements of the SCRC and International Energy Conservation Code (IECC); and be installed in accordance with the SCRC and all manufacturer's installation requirements and recommendations. All of the exterior door units must be removed and be reinstalled with proper rough opening flashings and pans that are properly integrated with other waterproofing elements.

7. The final surface coat asphalt application must be made on the community drive. Proper integration of the top coat is to be made with each driveway and the street.

8. Upon the completion of all repairs, all areas damaged as a result of the construction deficiencies and/or the repair process must be repaired to match the existing finishes in color and texture.

This report is based on information available at the time of the development of the report. If additional information becomes available which has a bearing on these conclusions then an addendum report will be provided. A review of the complete construction file, when made available, may provide additional insight. Photographs or additional status reports may document other deficiencies.

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

Sincerely,

3/16/20

Russell T. Mease, P.E.

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON WHITESIDES PARK TOWNHOMES PROPERTY OWNERS ASSOCIATION, INC. Plaintiff, vs. CALATLANTIC GROUP, INC. F/K/A THE RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES; LENNAR CAROLINAS, LLC, SOUTHEND EXTERIORS, INC., ALPHA OMEGA CONSTRUCTION GROUP, INC., FOGEL SERVICES, INC., Defendants.	IN THE COURT OF COMMON PLEAS 2020-CP-_____ **SUMMONS** **(Jury Trial Demanded)**

YOU ARE HEREBY SUMMONED and are required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers, at 234 Seven Farms Drive, Suite 111-A, South Carolina, 29492, within thirty (30) days after the service thereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

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June 1, 2020

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON WHITESIDES PARK TOWNHOMES PROPERTY OWNERS ASSOCIATION, INC. Plaintiff, vs. CALATLANTIC GROUP, INC. F/K/A THE RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES; LENNAR CAROLINAS, LLC, SOUTHEND EXTERIORS, INC., ALPHA OMEGA CONSTRUCTION GROUP, INC., FOGEL SERVICES, INC., Defendants.	IN THE COURT OF COMMON PLEAS 2020-CP-_____ **COMPLAINT** **(Jury Trial Demanded)**

The Plaintiff Whitesides Park Townhomes Property Owners Association, Inc., by and through their undersigned counsel, complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

PARTIES, CAPACITY, AND JURISDICTION

1. The Plaintiff, Whitesides Property Owners Association, Inc. (hereinafter "Whitesides POA") is a non-profit organization and existing under the laws of the State of South Carolina.

2. Whitesides POA is the property owners association for Whitesides Park Townhomes (hereinafter "Whitesides Park").

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3. Whitesides Park is comprised of thirteen (13) townhomes located in four (4) buildings and related common elements.

4. By virtue of governing documents, Whitesides POA is charged with certain duties, powers, rights and authority in connection with Whitesides Park.

5. Whitesides POA is charged with, *inter alia,* the management and administration of Whitesides Park, the investigation, maintenance and repair of Whitesides Park's common elements, and has the right and authority to bring this action on behalf of the Whitesides POA and its members and is also charged with pursuing claims enumerated hereafter by virtue of having been assigned individual claims by townhome owners at this project.

6. That, upon information and belief, Defendant, CalAtlantic Group, Inc., successor by merger to the former CalAtlantic Group, Inc., which was successor by merger to The Ryland Group, Inc., a Maryland corporation, f/k/a Standard Pacific Corp. and also, d/b/a CalAtlantic Homes (Together With Its Successors And Assigns "CalAtlantic") is a corporation, organized in the State of Delaware, conducting business in Charleston County, State of South Carolina, and at all times relevant hereto was engaged in the design, development, construction, repair and/or selling of the townhomes, known as Whitesides Park. Accordingly, jurisdiction over the Defendant is proper in this Court under South Carolina Code Ann. § 36-2-802 (1976).

7. That, upon information and belief, Defendant, The Ryland Group, Inc. is a foreign corporation organized and existing under the laws of the State of Maryland. At all times relevant to this action, The Ryland Group, Inc. was engaged in the design, development, construction, repair and/or selling of the townhomes, known as Whitesides Park. Accordingly, jurisdiction over the Defendant is proper in this Court under South Carolina Code Ann. § 36-2-802 (1976).

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8. That, upon information and belief, Defendant, Lennar Carolinas, LLC, successor by merger to CalAtlantic Group, Inc., is a limited liability company organized in the State of Delaware, conducting business in Charleston County, State of South Carolina, and at all times relevant here to was engaged in the design, development, construction, repair, and selling of the townhomes, known as Whitesides Park. Accordingly, jurisdiction over the Defendant is proper in this Court under South Carolina Code Ann. § 36-2-802 (1976).

9. Each of the foregoing Defendants were amalgamated so that they in effect operated as one and the same entity. Hereinafter, these Defendants may be collectively referred to as "Lennar."

10. Each of the foregoing Defendants commingled their corporate and developer such that each should be liable for the acts of the other and they should collectively be held severally liable for the entirety of Plaintiff's damages.

11. Each of the foregoing Defendants developed and placed one or more of the Whitesides Park Townhomes into the stream of commerce.

12. That, upon information and belief, Defendant Southend Exteriors, Inc. is a company organized in the State of North Carolina, conducting business in Berkeley County, State of South Carolina, and at all times relevant hereto was engaged in the design, development, construction and/or repair of residential housing and specifically, installed the exterior siding, exterior trim, deck boards, house wrap and related flashing and components in and to the property known as Whitesides Park Townhomes, located in Mount Pleasant, South Carolina.

13. That, upon information and belief, Defendant Alpha Omega Construction Group, Inc. is a company organized in the State of North Carolina, conducting business in Berkeley

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County, State of South Carolina, and at all times relevant hereto was engaged in the design, development, construction and/or repair of residential housing and specifically, the roof and related flashings and components to the property known as Whitesides Park Townhomes, located in Mount Pleasant, South Carolina.

14. That, upon information and belief, Fogel Services, Inc. is a corporation organized in the State of South Carolina, conducting business in Berkeley County, State of South Carolina, and at all times relevant hereto was engaged in the construction and/or repair of the Plaintiffs' residence and specifically the design of the heating and air conditioning system, installed the heating and air conditioning system, ductwork, and all related components, in and to the property known as Whitesides Park Townhomes, located in Mount Pleasant, South Carolina.

15. The Court has jurisdiction over the parties and subject matters hereto and that the allegations out of which this action arises from the development, construction, repair and sale of units and management and maintenance of the buildings at issue in the County of Charleston, State of South Carolina.

FACTUAL BACKGROUND

16. Upon information and belief, CalAtlantic was the owner of real property located on Myrick Road by virtue of the deed recorded in the Register of Mesne Conveyance for Charleston County in Deed Book 0582 at Page 101 upon which Whitesides Park is located.

17. Each of the foregoing Defendants commingled their corporate and developer existence such that each should be liable for acts of the other and they should collectively be held joint and severely liable for the entirety of Plaintiff's damages.

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18. Each of the foregoing Defendants developed and placed one or more of the townhomes at Whitesides Park into the stream of commerce.

19. This matter arises out of the design, development, construction, repair and sale of the townhomes located at Whitesides Park.

20. At the time the Certificates of Occupancy were issued, Whitesides Park townhomes contained latent building defects.

21. Plaintiff, Whitesides POA, has previously put one or more of the Defendants on notice of one or more of the deficiencies. However, the Defendants have not rectified the problems.

22. Defendants had the duty to design, develop, construct, and repair the townhomes with the proper details and components so as to prevent water intrusion into the buildings in accordance with a good and workmanlike manner and free from all defects and additionally, gave implied warranties of habitability to the Plaintiff herein that the townhomes would be habitable and useful as dwelling units with reasonably long life span.

23. Defendants are charged with, among other things, the duty to repair and maintain the exterior of all townhomes and common areas of the project known as Whitesides Park, located in Charleston County, South Carolina.

24. The Defendants were under a duty to develop, construct and/or repair the townhomes and buildings known as Whitesides Park in accordance with the building code and construction industry standards.

25. The Defendants' acts and omissions have resulted in building deficiencies, consequential damages, and partial loss of use and enjoyment.

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26. Remedying the above-wrongs will result in additional consequential damages and loss of use.

27. As a direct and proximate result of Defendants' violation of their legal duties, Plaintiff has been proximately damaged in an amount to be determined by the trier of fact and have had to incur reasonable attorneys' fees and costs for the retention of experts to determine the damage and scope of work for repair.

28. Upon information and belief, the water intrusion and resulting consequential damages commenced shortly after completion and have occurred and have been occurring in each and every year since commencement and constitute "occurences" and "property damage" under the standard and/or typical commercial general liability policies.

29. By virtue of each Defendants' capacity as developer and steward of Whitesides Park and control over the Plaintiff, including the duty to act in utmost good faith, to not place Defendants' interest in front of the Plaintiff's interests, to properly maintain Whitesides Park and to property develop, maintain, and transfer the capital accounts.

30. The Defendants have breached the foregoing duties by placing their interests ahead of the Plaintiff's interests.

31. Further, in breach of their fiduciary duties to the ensuing POA, Whitesides Park townhomes, Plaintiff, and in violation of public policy, Defendants have attempted to eliminate all avenues for recourse for the Plaintiff and owners by the insertion of certain language into the Governing Documents and other transaction documents severely limiting or eliminating all judicial remedies and restricting Plaintiff's rights to a dispute resolution process, which is

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inherently unfair as it is without remedy. These anti-suit provisions should be stricken, reformed, or deemed of no force and effect and the Defendants held accountable.

32. That the Plaintiff recently became aware of defects and deficiencies at the units within the community.

33. This project was substantially completed within the past (8) eight years, but to the extent it was not and it was completed more than eight years ago, this action is not subject to the limitation set forth in Section 15-3-640, Code of Laws of South Carolina, 1976, as amended, because, *inter alla*:

a. Defendants are guilty of fraud, gross negligence, or recklessness in providing components, in furnishing and manufacturing materials, in performing or furnishing the supervision testing, or observation of construction, and/or in construction and/or development of the project, and/or

b. The damages claimed herein were by their nature not discoverable in the exercise of reasonable diligence at the time of their occurrence; and were the result of exposure to a harmful or injury producing substance, element or particle over a period of time.

34. As a result of preliminary forensic examinations and testing conducted, it has been discovered that there are significant water intrusion problems with the building envelope and upon information and belief there appears now and has been since inception, generalized water intrusion into the building components which will require wholesale forensic examination of the entire building envelope, and most probably will require a wholesale reconstruction of the building exterior.

35. That as a result of the various defects and deficiencies relative to the development, construction and repair of this project, the Plaintiff has been damaged and will be required to expend large sums of money to repair, correct and replace various parts and

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components of the townhomes and buildings and reconstruct major portions of the townhomes, have been exposed to and will be subject to loss of use, enjoyment and depreciation of the value of their property.

ESTOPPEL FROM PLEADING WARRANTY OBLIGATION

36. Defendants are also estopped from relying on any warranty obligation as a defense to Plaintiff's claims.

37. By virtue of Defendants' acts, the work performed and/or materials supplied at Whitesides Park have not lived up to Defendants' warranties and representations, and given the defective condition of Whitesides Park and the premature deterioration of the life expectancy of Whitesides Park building components that require unexpected maintenance, wear and/or replacement, the building components have not proven to be of value when compared to other building components.

38. Defendants, in the exercise of required diligence, which negligently failed to occur, should have known that Whitesides were defective in design, construction and/or repair, and its building components were not fit for their ordinary and intended use, were not merchantable, and failed to perform in accordance with the advertisements, marketing materials and warranties disseminated by Defendants or with the reasonable expectations of ordinary consumers such as Plaintiff. In fact, Defendants have previously seen other similar failures at other projects they have constructed.

39. Accordingly, any warranty provided by Defendants fails its essential purpose because its purpose to warrant that Whitesides Park and/or its building components will be free

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from defects for a limited period of time when in fact Whitesides Park and/or its building components fail far short of the expected life cycle of the townhomes.

40. Moreover, Defendants' warranties are woefully inadequate to repair and replace failed building components, let alone reimburse for any damage suffered to the undying structure. The remedies available under Defendants' warranties are limited to such an extent that they do not provide a minimum adequate remedy.

41. Moreover, given the comparative posture, resources, sophistication, and knowledge of the parties, the warranty limitations are procedurally unconscionable; and given Defendants knew or should have known that the defects existed at the time they issued the warranty, the limitations are substantively unconscionable.

42. As a result, any limitations on the remedies encompassed within the Defendants' warranties are unconscionable and unenforceable, and therefore, Defendants are estopped from relying on the same.

ESTOPPEL FOR PLEADING NOTICE OF OPPORTUNITY TO CURE

43. The Defendants are further estopped from relying on the Notice of Opportunity to Cure Act to stay the progression of Plaintiff's claims.

44. The Defendants were put on sufficient notice of Whitesides Park's defective condition within any statutory period prescribed by the Act.

45. In addition, the Defendants were provided opportunity to cure Whitesides Park's defective condition previously, but failed to adequately perform.

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ESTOPPEL FROM PLEADING ANY ANTI-SUIT PROVISIONS

46. The Defendants are estopped from relying on any anti-suit provisions contained in the Governing Documents and other transactional documents and contracts because such provisions do not apply to these claims, are void pursuant to public policy, and voidable as such constitute a breach of the Defendants' fiduciary duty to Plaintiff. Furthermore, said provisions are adhesive and one-sided in nature, and are therefore void as unconscionable.

FOR A FIRST CAUSE OF ACTION
(Negligence, Gross Negligence, Carelessness, Recklessness, Willfulness and Wantonness)
(AS TO ALL DEFENDANTS)

47. Plaintiff repeats and re-allege Paragraphs 1 through 46 above as if fully set forth verbatim.

48. The Defendants, by and through their agents, servants, employees, and subcontractors undertook and were under a duty to develop, construct and repair townhomes and buildings in accordance with the building code, construction industry standards and practices and in accordance with all requirements imposed by the laws and statutes of the State of South Carolina.

49. That Defendant Lennar was negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, supervising, and inspecting the work on the subject residence which was not built in accordance with the applicable building codes and not in conformance with accepted construction and industry standards, and in failing to construct and/ or repair said residence in accordance with applicable building codes, manufacturers' recommendations and in conformance with accepted construction and industry standards, all of which have directly and proximately caused damage to the Plaintiffs. The defects and

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deficiencies in and to the residence will need to be corrected, repaired, remediated and/or replaced. Such negligence, gross negligence, carelessness, recklessness, willfulness and wantonness includes, but is not limited to, the following particulars, to wit:

a. In failing to use due care in development, construction, repair and sale of the townhomes and buildings at issue;
b. In developing, constructing, and selling townhomes and/or buildings which fail to provide sufficient barriers against the intrusion of water into the wall system and an adequate avenue for exit of water that gets into the system resulting in damage to the units and buildings;
c. In failing to select proper building materials and building materials free from defect;
d. In developing, constructing and repairing the townhomes and buildings in violation of the applicable building codes, standard building practices and accepted construction industry standards and practices;
e. In failing to properly coordinate trades including subcontractors;
f. In failing to properly supervise construction;
g. In failing to act as a reasonable person would in circumstances then and there prevailing;
h. In failing to recognize and disclose the deficiencies, and failing to construct an adequate exterior building envelope free from defect;
i. In failing to make proper repairs;
j. in improperly installing the cementitious siding and related flashings;
k. in improperly installing the trim;
l. in improperly installing the windows, doors, and flashing;
m. in improperly installing the roof, membrane roofs related accessories, and related flashing;
n. in improperly installing tile components;
o. in improperly installing brick and stone veneer and related flashing;
p. in improper installation the heating and air conditioning system including duct lines and related components;
q. in improperly installing the framing;
r. in failing to properly install the secondary weather barrier and flashings;
s. in failing to properly integrate the secondary weather barrier and flashings;
t. in installing a home exterior which fails to provide a sufficient barrier against the intrusion of water into the wall system and adequate avenue for exit of water that gets into the wall system;
u. in improperly installing and/or failing to install the sealants, caulks, and waterproofings at dissimilar materials in violation of the building code, standard building practices and accepted construction industry standards and practices;

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v. in improperly installing the sheathing;
w. in improper installation the heating and air conditioning system including duct lines and related components;
x. in failing to properly install the paved driveways, roads, and common areas;
y. in improperly installing the decks and related components; and
z. Other deficiencies or failures as will be proven at trial.

50. That Defendant Southend Exteriors, Inc., was negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, supervising, and inspecting the work on the subject residence which was not built in accordance with the applicable building codes and not in conformance with accepted construction and industry standards, and in failing to construct and/or repair said residence in accordance with applicable building codes, manufacturers' recommendations and in conformance with accepted construction and industry standards, all of which have directly and proximately caused damage to the Plaintiffs. The defects and deficiencies in and to the residence will need to be corrected, repaired, remediated and/or replaced. Such negligence, gross negligence, carelessness, recklessness, willfulness and wantonness includes, but is not limited to, the following particulars, to wit:

a. in failing to use due care in construction and/or repair of the subject residence;
b. in failing to adequately supervise the construction, repair, and building of the subject residence;
c. in failing to hire competent subcontractors or specialty contractors or employees;
d. in failing to adequately and competently supervise and/or train said subcontractors or specialty contractors or employees;
e. in building, constructing and repairing the subject residence in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices;
f. in constructing a home which allowed water to intrude into the residence allowing deterioration of framing, sheathing, and other building components;
g. in improperly installing the cementitious siding and related flashings;

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h. in improperly installing the trim;
i. in improperly installing the windows, doors, and flashing;
j. in failing to properly install the secondary weather barrier and flashings;
k. in failing to properly integrate the secondary weather barrier and flashings;
l. in installing a home exterior which fails to provide a sufficient barrier against the intrusion of water into the wall system and adequate avenue for exit of water that gets into the wall system;
m. in improperly installing and/or failing to install the sealants, caulks, and waterproofings at dissimilar materials in violation of the building code, standard building practices and accepted construction industry standards and practices;
n. in improperly installing the sheathing;
o. in improperly installing the decks and related components; and
p. other deficiencies or failures will be proven at trial.

51. That Defendant Alpha Omega Construction Group, Inc., was negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, supervising, and inspecting the work on the subject residence which was not built in accordance with the applicable building codes and not in conformance with accepted construction and industry standards, and in failing to construct and/or repair said residence in accordance with applicable building codes, manufacturers' recommendations and in conformance with accepted construction and industry standards, all of which have directly and proximately caused damage to the Plaintiffs. The defects and deficiencies in and to the residence will need to be corrected, repaired, remediated and/or replaced. Such negligence, gross negligence, carelessness, recklessness, willfulness and wantonness includes, but is not limited to, the following particulars, to wit:

a. in failing to use due care in construction and/or repair of the subject residence;
b. in failing to adequately supervise the construction, repair, and building of the subject residence;
c. in failing to hire competent subcontractors or specialty contractors or employees;
d. in failing to adequately and competently supervise and/or train said subcontractors or specialty contractors or employees;

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e. in building, constructing and repairing the subject residence in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices;
f. in constructing a home which allowed water to intrude into the residence allowing deterioration of framing, sheathing, and other building components;
g. in improperly installing the roof, membrane roofs related accessories, and related flashing;
h. in installing a home exterior which fails to provide a sufficient barrier against the intrusion of water into the wall system and adequate avenue for exit of water that gets into the wall system; and
i. other deficiencies or failures will be proven at trial.

52. That Defendant Fogel Services, Inc. was negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, supervising, and inspecting the work on the subject residence which was not built in accordance with the applicable building codes and not in conformance with accepted construction and industry standards, and in failing to construct and/or repair said residence in accordance with applicable building codes, manufacturers' recommendations and in conformance with accepted construction and industry standards, all of which have directly and proximately caused damage to the Plaintiffs. The defects and deficiencies in and to the residence will need to be corrected, repaired, remediated and/or replaced. Such negligence, gross negligence, carelessness, recklessness, willfulness and wantonness includes, but is not limited to, the following particulars, to wit:

a. in failing to use due care in construction and/or repair of the subject residence;
b. in failing to adequately supervise the construction, repair, and building of the subject residence;
c. in failing to hire competent subcontractors or specialty contractors or employees;
d. in failing to adequately and competently supervise and/or train said subcontractors or specialty contractors or employees;

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e. in building, constructing and repairing the subject residence in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices;
f. in improper installation the heating and air conditioning system including duct lines and related components;
g. other deficiencies or failures will be proven at trial.

53. That as a direct and proximate result of the negligence, gross negligence, carelessness, willfulness, wantonness of these Defendants, the Plaintiff has suffered actual, incidental, consequential, and special damages including the expense of having to hire experts to investigate the causes of the water intrusion and construction defects and failures set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the townhomes, buildings at issue to make them safe and habitable. Additionally, the Plaintiff has been injured and otherwise damaged in that there has been a continuous exposure to moisture and water that intruded and continues to intrude into the subject townhomes and buildings causing and resulting in damage to walls, deterioration, and other damages to the finishes and structural elements of the townhomes and buildings. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including, but not limited to, the wall sheathing, windows, doors, structural framing, floors, and interior finishes. Each year since completion new areas of damage have occurred, separate and apart from any damage already in progress of occurring. All of which has or will require the Plaintiff to expend great amounts of money to correct and repair as well as suffer the loss of use and enjoyment of their property by virtue of the defects and damages aforesaid.

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FOR A SECOND CAUSE OF ACTION
(Breach of Warranty of Habitability, Breach of Warranty Against Latent Defects, Breach of Warranty of Workmanlike Services, Breach of Warranty for Fitness for a Particular Purpose and Breach of Warranty of Merchantability and Serviceability and Breach of Express Warranty)
(AS TO ALL DEFENDANTS)

54. Each and every allegation contained in Paragraphs 1 through 53 above are incorporated herein by express reference as though fully set forth.

55. That the Defendants, implicitly and/or expressly warranted and provided warranties that the subject townhomes, buildings and the building components manufactured, distributed and installed therein, and common areas would be habitable and fit for its intended uses, and that said townhomes, buildings and manufactured components would be developed, constructed, repaired, manufactured, distributed and installed in a fit, serviceable, good and workmanlike fashion in accordance with the applicable building codes, and accepted construction and product industry standards applicable thereto and that the subject townhomes, buildings, manufactured components, and common areas would be merchantable, free from latent defects and fit for the particular purpose for which the townhomes, buildings, and products were developed, constructed, built, manufactured, distributed and sold.

56. That the Defendants, breached said warranties by developing, constructing, supervising and/or failing to supervise, repairing, manufacturing and distributing products, and selling the subject townhomes and buildings in such manner as to be in violation of applicable building codes, not in conformance with accepted construction and product industry standards.

57. As a direct and proximate result of the Defendants' breach of these warranties, the Plaintiff has suffered actual, direct, incidental, consequential and special damages, including but

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not limited to the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the townhomes, buildings, building components, and common areas to make them safe and habitable. Additionally, the Plaintiff has been injured and otherwise damaged in that there has been a continuous exposure to moisture and water that intruded and continues to intrude into the subject townhomes and buildings causing and resulting in damage to walls, deterioration, and other damages to the finishes and structural elements of the townhomes and buildings. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including, but not limited to, the wall sheathing, windows, doors, structural framing, floors, and interior finishes. Each year since completion new areas of damage have occurred, separate and apart from any damage already in progress of occurring. All of which has or will require the Plaintiff to expend great amounts of money to correct and repair as well as suffer the loss of use and enjoyment of their property by virtue of the defects and damages aforesaid.

FOR A THIRD CAUSE OF ACTION
(Unfair Trade Practices)
(AS TO ALL DEFENDANTS)

58. Each and every allegation contained in Paragraphs 1 through 57 above are incorporated herein by express reference as though fully set forth.

59. The Defendants, are "persons" within the meaning of South Carolina Code § 39-5-10(a).

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60. The Defendants, by their actions in developing, constructing, repairing, supervising and overseeing construction activities are engaged in commerce within the meaning of South Carolina Code §39-5-10(b).

61. The Defendants, by their action(s) described hereinabove, constitute unfair and deceptive practices within the meaning of South Carolina Code §39-5-20(a).

62. The Defendants' act(s) are capable of repetition and, upon information and belief and in accord with the allegations herein, have been repeated.

63. The Defendants' conduct affects the public interest of the people of South Carolina.

64. The Defendants knew or should have reasonably known, that their conduct violated the Unfair Trade Practices Act.

65. As a direct, foreseeable and proximate result of the Defendants' unfair and deceptive practices, the Plaintiff has suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the townhomes, buildings, building components and common areas to make them safe and habitable. Additionally, the Plaintiff has been injured and otherwise damaged in that there has been a continuous exposure to moisture and water that intruded and continues to intrude into the subject townhomes and buildings causing and resulting in damage to walls, deterioration, and other damages to the finishes and structural elements of the townhomes and buildings. Each year since completion new areas of damage occurred, separate and apart from any damage already in progress of occurring. All of

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which has or will require the Plaintiff to expend great amounts of money to correct and repair as well as suffer the loss of use and enjoyment of their property by virtue of the defects and damages aforesaid.

FOR A FOURTH CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)
(AS TO CALATLANTIC GROUP, INC., RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. , D/B/A CALATLANTIC HOMES, AND LENNAR CAROLINAS, LLC)

66. Each and every allegation contained in Paragraphs 1 through 65 above are incorporated herein by express reference as though fully set forth.

67. The Defendants in their capacity as developer and seller of Whitesides Park owed fiduciary and fiduciary-like duties to the Plaintiff.

68. The Defendants were bound to act honestly and in good faith and with full disclosure with regards to all matters relating to the development and sale of the townhomes and buildings.

69. Given the existence of the Fiduciary and Fiduciary- like duties, the burden is on the Defendants to prove the appropriateness of their actions with and to the Plaintiff.

70. The Defendants attempted to circumvent their legal obligations and duties to the Plaintiff to benefit themselves at the Plaintiff's expense by, among other things, inserting anti-suit provisions in the Whitesides Park governing documents.

71. The Defendants breached their fiduciary duty owned to the Plaintiff by the following:

a. In failing to act in good faith and with due regard to the interests of the Plaintiff;
b. In failing to ensure that the buildings from which they profited complied with the applicable building code, industry standards, and state law;

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c. In failing to disclose that the buildings from which they profited were not constructed in compliance with the applicable building code, industry standards, and state law;
d. In attempting to circumvent their legal duties through an anti-suit provision;
e. In failing to provide the monies necessary to repair the common areas and limited common areas;
f. In failing to adequately perform its duties and responsibilities set forth in
g. the Governing Documents;
h. In making decisions for the Plaintiff that benefited their interests at the expense of the Plaintiff;
i. In negligently performing their duties; and
j. In such other acts which will be shown through the course of discovery and trial.

72. The Defendants, further breached their fiduciary duties to the Plaintiff by failing to take steps to remedy the foregoing wrongs while controlling the Association.

73. Plaintiff is informed and believes they is entitled to a judgment against Defendants for actual, consequential, incidental and punitive damages and the costs of this action in an amount of to be determined by the trier of fact.

FOR A FIFTH CAUSE OF ACTION
(DECLARATION ACTION/REFORMATION)
(AS TO CALATLANTIC GROUP, INC., RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. , D/B/A CALATLANTIC HOMES, AND LENNAR CAROLINAS, LLC)

74. Each and every allegation contained in Paragraphs 1 through 73 above are incorporated herein by express reference as though fully set forth.

75. Any anti-suit provisions, that may be alleged to apply, of Governing Documents for Whitesides Park are in violation of public policy, laws of this State and/or provisions of the Constitution, and these Defendants' fiduciary duties.

76. The Plaintiff is entitled to a declaration by this Court that the anti-suit provisions included within the Governing Documents by these Defendants do not apply to any of the claims

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brought by Plaintiff, are in violation of the laws of this State and/or provisions in the Constitution and therefore, inapplicable, void, and/or require reformation to eliminate the subject provisions.

77. As provisions in the Governing Documents are severable, the Plaintiff is entitled to a declaration by this Court that the anti-suit provisions are severable from the other terms of the Governing Documents.

78. The Plaintiff is also entitled to have ambiguous and contradictory provisions, as well as the anti-suit provisions in the Governing Documents and other transaction documents construed against the Defendants and/or reformed by the Court to more accurately reflect the reasonable expectations of the Plaintiff.

RELIEF REQUESTED

WHEREFORE, the Plaintiff respectfully prays that hold the Defendants, Calatlantic Group, Inc. f/k/a The Ryland Group, Inc. f/k/a Standard Pacific Corp. and also d/b/a Calatlantic Homes, Lennar Carolinas, LLC, Southend Exteriors, Inc., Alpha Omega Construction Group, Inc., Fogel Services, Inc., jointly and severally liable for the conduct complained of herein, enter a Judgment against the Defendants and in favor of the Plaintiff for the relief as requested in this Complaint, including actual and punitive damages and costs and attorney's fees, and for such other and further relief as may be deemed appropriate.

Plaintiff further demands a jury trial with respect to all issues so triable.

[signature page to follow]

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BLUNDY LAW FIRM, LLC

s:/ Amanda M. Blundy
Amanda M. Blundy
SC Bar No. 73069
234 Seven Farms Drive, Suite 111-A
Charleston, SC 29492
843.867.6050
ablundy@blundylawfirm.com

Charleston, South Carolina
June 1, 2020

Attorneys for Plaintiffs

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON WHITESIDES PARK TOWNHOMES PROPERTY OWNERS ASSOCIATION, INC. Plaintiff, vs. CALATLANTIC GROUP, INC. F/K/A THE RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES; LENNAR CAROLINAS, LLC, SOUTHEND EXTERIORS, INC., ALPHA OMEGA CONSTRUCTION GROUP, INC., FOGEL SERVICES, INC., Defendants.	IN THE COURT OF COMMON PLEAS 2020-CP-10-2398 **AFFIDAVIT OF ELIZABETH ALLEN SMITH**

PERSONALLY APPEARED before me, **ELIZABETH ALLEN SMITH**, who, having being duly sworn, deposes and states as follows:

1. I am over the age of eighteen (18) and am competent to make this affidavit.

2. I am the owner of a townhome located at 1327 Myrick Road, Mt. Pleasant, South Carolina located within the Whitesides Park Townhomes (hereinafter the "Townhome").

3. That on December 29, 2016 I purchased the above-referenced Townhome from CalAtlantic Group, Inc. I did not enter into any agreement with Lennar Carolinas, LLC.

4. That at the time of purchasing the above-referenced Townhome, I was a citizen and resident of Charleston County, South Carolina.

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5. I did not receive the CalAtlantic Homeowner Limited Warranty & Maintenance Manual (hereinafter "Limited Warranty") attached to CalAtlantic Group, Inc.'s Motion to Dismiss and Compel Arbitration at the time of closing on my Townhome.

6. As an owner of a Townhome at Whitesides Park, it is my understanding from the Declaration of Covenants, Conditions, Restrictions and Easements for Whitesides Park, which I received upon purchasing my Townhome, that the Property Owners' Association ("Association") shall maintain and keep in good condition all of the building components, including the roof shingles, brick, exterior siding, window trim, porches, heating and air conditioning system, and flashings, all of which are experiencing issues and investigated by the engineer Russell T. Mease, P.E. Following the discovery of such defects by a professional engineer, the Association brought a lawsuit against the Defendants due to defects of the aforementioned components.

7. Of the claims the Association has brought as part of this lawsuit, none of the building components are included in the limited warranty set forth by CalAtlantic/Ryland Homes.

8. The purchase contract I signed with CalAtlantic Group, Inc. did not include a Dispute Resolution Agreement Addendum and does not match the agreement produced with CalAtlantic Group, Inc.'s Motion to Dismiss and Compel Arbitration.

FURTHER AFFIANT SAYETH NOT.

[signature page to follow]

ELIZABETH ALLEN SMITH

SWORN TO AND SUBSCRIBED BEFORE ME THIS 19th DAY OF MARCH, 2021.

_____(Seal)

PRINTED NAME: Kristina L. Medlin

Notary Public for South Carolina

My Commission Expires: 4/9/29



ELECTRONICALLY FILED - 2021 Mar 22 1:39 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1002398

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON WHITESIDES PARK TOWNHOMES PROPERTY OWNERS ASSOCIATION, INC. Plaintiff, vs. CALATLANTIC GROUP, INC. F/K/A THE RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES; LENNAR CAROLINAS, LLC, SOUTHEND EXTERIORS, INC., ALPHA OMEGA CONSTRUCTION GROUP, INC., FOGEL SERVICES, INC., Defendants.	)	IN THE COURT OF COMMON PLEAS 2020-CP-10-2398 **AFFIDAVIT OF JEFFREY T. CAIN**

PERSONALLY APPEARED before me, **JEFFREY T. CAIN**, who, having being duly sworn, deposes and states as follows:

1. I am over the age of eighteen (18) and am competent to make this affidavit.

2. I am the owner of a townhome located at 1343 Myrick Road, Mt. Pleasant, South Carolina located within the Whitesides Park Townhomes (hereinafter the "Townhome").

3. That on December 22, 2016 I purchased the above-referenced Townhome from CalAtlantic Group, Inc. I did not enter into any agreement with Lennar Carolinas, LLC.

4. That at the time of purchasing the above-referenced Townhome, I was a citizen and resident of Charleston County, South Carolina.

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5. I did not receive the CalAtlantic Homeowner Limited Warranty & Maintenance Manual (hereinafter "Limited Warranty") attached to CalAtlantic Group, Inc.'s Motion to Dismiss and Compel Arbitration at the time of closing on my Townhome.

6. As an owner of a Townhome at Whitesides Park, it is my understanding from the Declaration of Covenants, Conditions, Restrictions and Easements for Whitesides Park, which I received upon purchasing my Townhome, that the Property Owners' Association ("Association") shall maintain and keep in good condition all of the building components, including the roof shingles, brick, exterior siding, window trim, porches, heating and air conditioning system, and flashings, all of which are experiencing issues and investigated by the engineer Russell T. Mease, P.E. Following the discovery of such defects by a professional engineer, the Association brought a lawsuit against the Defendants due to defects of the aforementioned components.

7. Of the claims the Association has brought as part of this lawsuit, none of the building components are included in the limited warranty set forth by CalAtlantic/Ryland Homes.

8. The purchase contract I signed with CalAtlantic Group, Inc. did not include a Dispute Resolution Agreement Addendum and does not match the agreement produced with CalAtlantic Group, Inc.'s Motion to Dismiss and Compel Arbitration.

FURTHER AFFIANT SAYETH NOT.

[signature page to follow]

JEFFREY T. CAIN

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 19th DAY OF MARCH, 2021.

Kristina L. Medlin (Seal)

PRINTED NAME: Kristina L. Medlin

Notary Public for South Carolina

My Commission Expires: 4/9/29



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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	
	)	2020-CP-10-2398
WHITESIDES PARK TOWNHOMES PROPERTY OWNERS ASSOCIATION, INC.	)	
	)	
Plaintiff,	)	
	)	**AFFIDAVIT OF SUSAN A. CUNARD**
vs.	)	
	)	
CALATLANTIC GROUP, INC. F/K/A THE RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES; LENNAR CAROLINAS, LLC, SOUTHEND EXTERIORS, INC., ALPHA OMEGA CONSTRUCTION GROUP, INC., FOGEL SERVICES, INC.,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED before me, **SUSAN A. CUNARD**, who, having being duly sworn, deposes and states as follows:

1. I am over the age of eighteen (18) and am competent to make this affidavit.

2. I am the owner of a townhome located at 1102 Rifle Range Road, Mt. Pleasant, South Carolina located within the Whitesides Park Townhomes (hereinafter the "Townhome").

3. That on March 23, 2017, I purchased the above-referenced Townhome from CalAtlantic Group, Inc. I did not enter into any agreement with Lennar Carolinas, LLC.

4. That at the time of purchasing the above-referenced Townhome, I was a citizen and resident of Charleston County, South Carolina.

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ELECTRONICALLY FILED - 2021 Mar 22 1:39 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1002398

5. I did not receive the CalAtlantic Homeowner Limited Warranty & Maintenance Manual (hereinafter "Limited Warranty") attached to CalAtlantic Group, Inc.'s Motion to Dismiss and Compel Arbitration at the time of closing on my Townhome.

6. As an owner of a Townhome at Whitesides Park, it is my understanding from the Declaration of Covenants, Conditions, Restrictions and Easements for Whitesides Park, which I received upon purchasing my Townhome, that the Property Owners' Association ("Association") shall maintain and keep in good condition all of the building components, including the roof shingles, brick, exterior siding, window trim, porches, heating and air conditioning system, and flashings, all of which are experiencing issues and investigated by the engineer Russell T. Mease, P.E. Following the discovery of such defects by a professional engineer, the Association brought a lawsuit against the Defendants due to defects of the aforementioned components.

7. Of the claims the Association has brought as part of this lawsuit, none of the building components are included in the Limited Warranty set forth by CalAtlantic/Ryland Homes.

8. The purchase contract I signed with CalAtlantic Group, Inc. did not include a Dispute Resolution Agreement Addendum and does not match the agreement produced with CalAtlantic Group, Inc.'s Motion to Dismiss and Compel Arbitration.

FURTHER AFFIANT SAYETH NOT.

[signature page to follow]

Susan A. Cunard

Susan A. Cunard

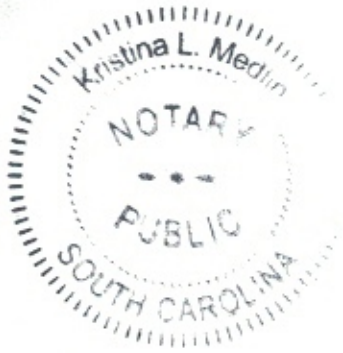
SWORN TO AND SUBSCRIBED BEFORE ME THIS 17th **DAY OF MARCH, 2021.**

Kristina L. Medlin (Seal)

PRINTED NAME: Kristina L. Medlin

Notary Public for South Carolina

My Commission Expires: 4/9/29



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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	
	)	2020-CP-10-2398
WHITESIDES PARK TOWNHOMES PROPERTY OWNERS ASSOCIATION, INC.	)	
	)	
Plaintiff,	)	
	)	**AFFIDAVIT OF JAMES ZADORA**
vs.	)	
	)	
CALATLANTIC GROUP, INC. F/K/A THE RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES; LENNAR CAROLINAS, LLC, SOUTHEND EXTERIORS, INC., ALPHA OMEGA CONSTRUCTION GROUP, INC., FOGEL SERVICES, INC.,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED before me, **JAMES ZADORA**, who, having being duly sworn, deposes and states as follows:

1. I am over the age of eighteen (18) and am competent to make this affidavit.

2. I am the owner of a townhome located at 1090 Rifle Range Road, Mt. Pleasant, South Carolina located within the Whitesides Park Townhomes (hereinafter the "Townhome").

3. That on November 13, 2018, Geoffrey Maxwell Smith and Lois Jones Smith signed a deed conveying the above-referenced Townhome to me. I did not enter into any agreement with Lennar Carolinas, LLC.

4. That at the time of purchasing the above-referenced Townhome, I was a citizen and resident of Berkeley County, South Carolina.

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5. I did not receive the CalAtlantic Homeowner Limited Warranty & Maintenance Manual (hereinafter "Limited Warranty") attached to CalAtlantic Group, Inc.'s Motion to Dismiss and Compel Arbitration at the time of closing on my Townhome.

6. As an owner of a Townhome at Whitesides Park, it is my understanding from the Declaration of Covenants, Conditions, Restrictions and Easements for Whitesides Park, which I received upon purchasing my Townhome, that the Property Owners' Association ("Association") shall maintain and keep in good condition all of the building components, including the roof shingles, brick, exterior siding, window trim, porches, heating and air conditioning system, and flashings, all of which are experiencing issues and investigated by the engineer Russell T. Mease, P.E. Following the discovery of such defects by a professional engineer, the Association brought a lawsuit against the Defendants due to defects of the aforementioned components.

7. Of the claims the Association has brought as part of this lawsuit, none of the building components are included in the Limited Warranty set forth by CalAtlantic/Ryland Homes.

8. I did not sign a Purchase Agreement with CalAtlantic Group, Inc.

9. In 2019 I filed a claim with Lennar Carolinas, LLC for damage in my garage stemming from a leak from the front porch. Lennar Carolinas, LLC rejected my claim, stating this was a maintenance issue and was not an item covered under the Limited Warranty.

FURTHER AFFIANT SAYETH NOT.

[signature page to follow]

JAMES ZADORA

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 18th DAY OF MARCH, 2021.

(Seal)

PRINTED NAME: Jennifer G. Hladek

Notary Public for South Carolina

My Commission Expires: June 17, 2025

JENNIFER G HLADEK NOTARY PUBLIC SOUTH CAROLINA

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON WHITESIDES PARK TOWNHOMES PROPERTY OWNERS ASSOCIATION, INC. Plaintiff, vs. CALATLANTIC GROUP, INC. F/K/A THE RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES; LENNAR CAROLINAS, LLC, SOUTHEND EXTERIORS, INC., ALPHA OMEGA CONSTRUCTION GROUP, INC., FOGEL SERVICES, INC., Defendants.	)	IN THE COURT OF COMMON PLEAS 2020-CP-10-2398 **AFFIDAVIT OF KELLY F. FOWLER**

PERSONALLY APPEARED before me, **KELLY F. FOWLER**, who, having being duly sworn, deposes and states as follows:

1. I am over the age of eighteen (18) and am competent to make this affidavit.

2. I am the owner of a townhome located at 1335 Myrick Road, Mt. Pleasant, South Carolina located within the Whitesides Park Townhomes (hereinafter the "Townhome").

3. That on December 15, 2016 I purchased the above-referenced Townhome from CalAtlantic Group, Inc. I did not enter into any agreement with Lennar Carolinas, LLC.

4. That at the time of purchasing the above-referenced Townhome, I was a citizen and resident of Charleston County, South Carolina.

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5. I did not receive the CalAtlantic Homeowner Limited Warranty & Maintenance Manual (hereinafter "Limited Warranty") attached to CalAtlantic Group, Inc.'s Motion to Dismiss and Compel Arbitration at the time of closing on my Townhome.

6. As an owner of a Townhome at Whitesides Park, it is my understanding from the Declaration of Covenants, Conditions, Restrictions and Easements for Whitesides Park, which I received upon purchasing my Townhome, that the Property Owners' Association ("Association") shall maintain and keep in good condition all of the building components, including the roof shingles, brick, exterior siding, window trim, porches, heating and air conditioning system, and flashings, all of which are experiencing issues and investigated by the engineer Russell T. Mease, P.E. Following the discovery of such defects by a professional engineer, the Association brought a lawsuit against the Defendants due to defects of the aforementioned components.

7. Of the claims the Association has brought as part of this lawsuit, none of the building components are included in the limited warranty set forth by CalAtlantic/Ryland Homes.

8. The purchase contract I signed with CalAtlantic Group, Inc. did not include a Dispute Resolution Agreement Addendum and does not match the agreement produced with CalAtlantic Group, Inc.'s Motion to Dismiss and Compel Arbitration.

FURTHER AFFIANT SAYETH NOT.

[signature page to follow]

Kelly F. Fowler

KELLY F. FOWLER

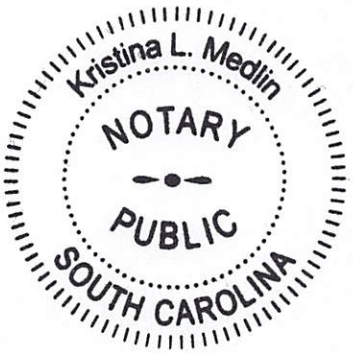
SWORN TO AND SUBSCRIBED BEFORE
ME THIS 22nd DAY OF MARCH, 2021.

Kristina L. Medlin (Seal)

PRINTED NAME: Kristina L. Medlin

Notary Public for South Carolina

My Commission Expires: 4/9/29



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VERMONT Secretary of State CORPORATIONS DIVISION

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Back

Business Information

Business Details

Business Name:	COLUMBIA NATIONAL RISK RETENTION GROUP, INC.	**Business ID:**	0115823
		File #:	V58055
Business Type:	Domestic Profit Corporation	**Business Status:**	Active
Date of Incorporation / Registration Date:	11/08/1996		
Business Description:	RISK INSURER	**Fiscal Year Month:**	12
Principal Office Business Address:	NONE	**Principal Office Mailing Address:**	NONE
Citizenship / Domestic Jurisdiction:	Domestic/VT		
Corporation Type:	Restricted		
Last Report Filed:	NONE	**Next Filing Due Date:**	01/01/1998

Principals Information

Name/Title:	Physical Address:
Jonathan M. Jaffe/President	25 Enterprise, Aliso Viejo, CA, 92656, USA
Diane Bessette/Treasurer	700 N.W. 107th Avenue, Suite 400, Miami, FL, 33172, USA
Mark Sustana/Secretary	700 N.W. 107th Avenue, Suite 400, Miami, FL, 33172, USA

View All Principals(5)

Registered Agent Information

Name: CORPORATE CREATIONS NETWORK, INC.

Physical Address: 1233 SHELBURNE ROAD, SUITE 400, SOUTH BURLINGTON, VT, 05403, USA

Mailing Address: 1233 SHELBURNE ROAD, SUITE 400, SOUTH BURLINGTON, VT, 05403, USA

Agent Type: Registered Entity

Assumed Business Name Information

Assumed Business Name	Business ID	Registration Status
LENNAR	0341509	Active

Back Filing History Name History Shares Return to Search

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON WHITESIDES PARK TOWNHOMES PROPERTY OWNERS ASSOCIATION, INC. Plaintiff, vs. CALATLANTIC GROUP, INC. F/K/A THE RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES; LENNAR CAROLINAS, LLC; SOUTHEND EXTERIORS, INC.; ALPHA OMEGA CONSTRUCTION GROUP, INC.; FOGEL SERVICES, INC. Defendants.	IN THE COURT OF COMMON PLEAS 2020-CP-10-2398 **PLAINTIFF'S MOTION TO STRIKE CALATLANTIC GROUP, INC. F/K/A THE RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES AND LENNAR CAROLINAS, LLC'S DECLARATION OF TRACEY ETHRIDGE**

COMES NOW Plaintiff Whitesides Park Townhomes Property Owners Association, Inc. (hereinafter "Plaintiff"), by and through their undersigned counsel, will move before the Court of Common Pleas, County of Charleston, at such time as the Court may appoint, requesting that this Court strike Defendants CalAtlantic Group, Inc. f/k/a The Ryland Group, Inc. f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes and Lennar Carolinas, LLC's Declaration of Tracey Ethridge.

In order to be considered by the Court, pursuant to Rule 11(c) of the South Carolina Rules of Civil Procedure, "affidavits or verifications authorized or permitted under these Rules shall be written statements or declarations by a party of his attorney of record or of a witness, sworn to or affirmed before and officer authorized to administer oaths, that the affiant knows the

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facts stated to be true of his own knowledge …" The South Carolina Court of Appeals has found that unsworn statements are not competent evidence. *Morris v. Jensen*, 309 S.C. 153, 157, 420 S.E.2d 710, 712 (Ct. App. 1992) (citing *Lineberger v. Colonial Life & Accident Insurance Company*, 12 N.C. App. 135, 182 S.E.2d 643 (1971) (unsworn allegations not evidence); *Bertha Mineral Co. v. Buie*, 27 Ga. App. 660, 109 S.E. 539 (1921) (unsworn affidavit not evidence); *Walters v. State, 128 Ga. App.*, 232, 196 S.E.2d 326 (1973) (defendant's unsworn statement not evidence)). South Carolina Rules of Evidence Rule 902 states that "Extrinsic evidence of authenticity as a condition precedent to admissibility is not required" in ten (10) different instances. SCRE 902. SCRE 902(e) states that Documents accompanied by a certificate of acknowledgement executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgements. 28 USCS §1746 states that "any matter is required or permitted to be supported . . . by the sworn declaration . . . in writing of the person making the same . . . with be supported . . . by the unsworn declaration . . . in writing of such person which is subscribed by him, as true under penalty of perjury, and dated . . ." South Carolina Rules of Evidence Rule 602 states that "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses".

For the reasons set forth above, Plaintiff respectfully requests this Court to GRANT Plaintiff's Motion to Strike Defendants CalAtlantic Group, Inc. f/k/a The Ryland Group, Inc.

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f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes and Lennar Carolinas, LLC's Declaration of Tracey Ethridge.

Plaintiff reserves the right to file and serve a memorandum of law in support of this motion to strike Defendants CalAtlantic Group, Inc. f/k/a The Ryland Group, Inc. f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes and Lennar Carolinas, LLC's Declaration of Tracey Ethridge.

BLUNDY LAW FIRM, LLC

s:/ Amanda M. Blundy
Amanda M. Blundy (SC Bar No. 73069)
English H. Maull (SC Bar No. 104321)
234 Seven Farms Drive, Suite 111-A
Charleston, SC 29492
843.867.6050
ablundy@blundylawfirm.com
emaull@blundylawfirm.com

Attorneys for Plaintiff

Charleston, South Carolina
March 22, 2021

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON WHITESIDES PARK TOWNHOMES PROPERTY OWNERS ASSOCIATION, INC. Plaintiff, vs. CALATLANTIC GROUP, INC. F/K/A THE RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES; LENNAR CAROLINAS, LLC; SOUTHEND EXTERIORS, INC.; ALPHA OMEGA CONSTRUCTION GROUP, INC.; FOGEL SERVICES, INC. Defendants.	IN THE COURT OF COMMON PLEAS 2020-CP-10-2398 **PLAINTIFF'S OBJECTIONS TO CALATLANTIC GROUP, INC. F/K/A THE RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES AND LENNAR CAROLINAS, LLC'S DECLARATION OF TRACEY ETHRIDGE**

Plaintiff Whitesides Park Townhomes Property Owners Association, Inc. (hereinafter "Plaintiff"), hereby submit the following objections to Defendants CalAtlantic Group, Inc. f/k/a The Ryland Group, Inc. f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes and Lennar Carolinas, LLC's Declaration of Tracey Ethridge.

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Defendants' Evidence	Objections
Declaration of Tracey Ethridge	In order to be considered by the Court, pursuant to Rule 11(c) of the South Carolina Rules of Civil Procedure, "affidavits or verifications authorized or permitted under these Rules shall be written statements or declarations by a party of his attorney of record or of a witness, sworn to or affirmed before and officer authorized to administer oaths, that the affiant knows the facts stated to be true of his own knowledge …" The South Carolina Court of Appeals has found that unsworn statements are not competent evidence. *Morris v. Jensen*, 309 S.C. 153, 157, 420 S.E.2d 710, 712 (Ct. App. 1992) (*citing Lineberger v. Colonial Life & Accident Insurance Company*, 12 N.C. App. 135, 182 S.E.2d 643 (1971) (unsworn allegations not evidence); *Bertha Mineral Co. v. Buie*, 27 Ga. App. 660, 109 S.E. 539 (1921) (unsworn affidavit not evidence); *Walters v. State*, 128 Ga. App. 232, 196 S.E.2d 326 (1973) (defendant's unsworn statement not evidence)).
Declaration of Tracey Ethridge	Additionally, to the extent the testimony is lay opinion, Declarant offers speculative lay testimony here. South Carolina Rules of Evidence Rule 602 states that "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony".
Declaration of Tracey Ethridge	Lastly, no personal knowledge. Witnesses are prohibited from testifying as to matters that they lack personal knowledge, pursuant to South Carolina Rules of Evidence Rule 602.

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For the reasons set forth above, Plaintiff respectfully requests this Court to GRANT Plaintiff's Motion to Strike Defendants CalAtlantic Group, Inc. f/k/a The Ryland Group, Inc. f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes and Lennar Carolinas, LLC's Declaration of Tracey Ethridge.

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON WHITESIDES PARK TOWNHOMES PROPERTY OWNERS ASSOCIATION, INC. Plaintiff, vs. CALATLANTIC GROUP, INC. F/K/A THE RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES; LENNAR CAROLINAS, LLC; SOUTHEND EXTERIORS, INC.; ALPHA OMEGA CONSTRUCTION GROUP, INC.; FOGEL SERVICES, INC. Defendants.	IN THE COURT OF COMMON PLEAS 2020-CP-10-2398 **PLAINTIFF'S OBJECTIONS TO CALATLANTIC GROUP, INC. F/K/A THE RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES AND LENNAR CAROLINAS, LLC'S DECLARATION OF TRACEY ETHRIDGE**

Plaintiff Whitesides Park Townhomes Property Owners Association, Inc. (hereinafter "Plaintiff"), hereby submit the following objections to Defendants CalAtlantic Group, Inc. f/k/a The Ryland Group, Inc. f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes and Lennar Carolinas, LLC's Declaration of Tracey Ethridge.

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Defendants' Evidence	Objections
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Declaration of Tracey Ethridge	Additionally, to the extent the testimony is lay opinion, Declarant offers speculative lay testimony here. South Carolina Rules of Evidence Rule 602 states that "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony".
Declaration of Tracey Ethridge	Lastly, no personal knowledge. Witnesses are prohibited from testifying as to matters that they lack personal knowledge, pursuant to South Carolina Rules of Evidence Rule 602.

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For the reasons set forth above, Plaintiff respectfully requests this Court to GRANT Plaintiff's Motion to Strike Defendants CalAtlantic Group, Inc. f/k/a The Ryland Group, Inc. f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes and Lennar Carolinas, LLC's Declaration of Tracey Ethridge.

BLUNDY LAW FIRM, LLC

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March 22, 2021

ELECTRONICALLY FILED - 2021 May 13 4:05 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1002398

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON WHITESIDES PARK TOWNHOMES PROPERTY OWNERS ASSOCIATION, INC. Plaintiff, vs. CALATLANTIC GROUP, INC. F/K/A THE RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES; LENNAR CAROLINAS, LLC, SOUTHEND EXTERIORS, INC., ALPHA OMEGA CONSTRUCTION GROUP, INC., FOGEL SERVICES, INC., Defendants.	IN THE COURT OF COMMON PLEAS 2020-CP-10-02398 **PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION TO STRIKE CALATLANTIC GROUP, INC. F/K/A THE RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLATIC HOMES AND LENNAR CAROLINAS, LLC'S DECLARATION OF TRACEY ETHRIDGE**

Plaintiff, Whitesides Park Townhomes Property Owners Associations, Inc. (hereinafter "Plaintiff") hereby submits this Memorandum of Law in Support of its Motion to Strike CalAtlantic Group, Inc. f/k/a The Ryland Group, Inc. f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes (hereinafter "CalAtlantic") and Lennar Carolinas, LLC's (hereinafter "Lennar") Declaration of Tracey Ethridge. Plaintiff respectfully requests that their Motion to Strike be Granted.

BACKGROUND

This construction defect case was filed on June 1, 2020, and involves allegations of multiple deficiencies arising out of the development, design, and construction of thirteen (13) townhomes located in Whitesides Park Townhomes in Charleston County, South Carolina (the "Project"). The Project is comprised of thirteen (13) townhomes located in four (4) buildings and

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related common elements. At issue in this case are claims against the entities who defectively installed various building components to the Project, along with allegations related to the development and turn over of the Property Owners Association. The general contractor against whom the Plaintiff has brought claims is CalAtlantic.

CalAtlantic and Lennar filed a Motion to Dismiss and Compel Arbitration on December 22, 2020. (attached as **Exhibit A**). Exhibit C to CalAtlantic and Lennar's Motion to Dismiss and Compel Arbitration was the Declaration of Tracey Ethridge (hereinafter the "Declaration"). (attached as **Exhibits B**). The Declaration states that Ms. Ethridge is the litigation paralegal for Lennar and also acts as "a records custodian for the Ryland Group, Inc. f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Group, Inc. and CalAtlantic Homes." The Declaration further states that Ms. Ethridge is "familiar with CalAtlantic's selected corporate documents and the document retention policies of Defendants, including CalAtlantic." Ms. Ethridge states in the Declaration that she is "aware CalAtlantic is indicated as the Seller and Grantor in certain documents establishing and selling individual residence located in Whitesides Park townhomes." Ms. Ethridge attaches to her Declaration the Homeowner's Limited Warranty & Maintenance Manual ("Manual") which she states is "a representative copy of such documents as provided to purchasers of homes from CalAtlantic from late 2016 through early to mid-2018 — the time period during which Whitesides Park townhomes were conveyed from CalAtalntic to original purchasers." Ms. Ethridge also attaches to her declaration "a sample copy of the limited warranty provided by CalAtlantic ("Limited Warranty") to those who purchased homes from that entity, including those who purchased townhomes in Whitesides Park development." Ms. Ethridge admits in her Declaration that "[d]ue to the passage of time and the merger of corporate entities,

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all documents relative to sale of the subject townhomes have not been located; however, it was the strict requirement and longstanding practice of CalAtlantic to provide the Manual and the Limited Warranty to its purchasers and for its purchasers to acknowledge receipt thereof, upon the closing on any sale of a residence."

CalAtlantic and Lennar's Motion to Dismiss and Compel Arbitration was placed on the Honorable Deadra L. Jefferson's motions roster for the week of March 22, 2021. Plaintiff filed a Memorandum in Opposition to CalAtlantic and Lennar's Motion to Dismiss and Compel Arbitration along with a written Objection to the Declaration of Tracey Ethridge on March 22, 2021. (attached respectively as **Exhibit C** and **Exhibit D**). CalAtlantic and Lennar's Motion to Dismiss and Compel Arbitration was Denied on May 7, 2021. (attached as **Exhibit E**).

LAW/ DISCUSSION

The Declaration of Tracey Ethridge submitted to the Court by CalAtlantic and Lennar contains declarations that were not sworn to or affirmed before an officer, thus the Declaration of Tracey Ethridge is not permitted under the South Carolina Rules of Civil Procedure or the South Carolina Rules of Evidence.

I. THE DECLARATION OF TRACEY ETHRIDGE IS NOT PERMITTED UNDER THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE, THEREFORE THIS COURT SHOULD GRANT PLAINTIFF'S MOTION TO STRIKE.

The Declaration of Tracey Ethridge contains declarations by an individual who is not a party, attorney, or witness that is not sworn to or affirmed before an officer authorized to administer oaths. In order to be considered by the Court, pursuant to Rule 11(c) of the South Carolina Rules of Civil Procedure, "affidavits or verifications authorized or permitted under these Rules shall be written statements or declarations by a party or his attorney of record or of a

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witness, sworn to or affirmed before an officer authorized to administer oaths, that the affiant knows the facts stated to be true of his own knowledge …" The South Carolina Court of Appeals has found that unsworn statements are not competent evidence. *Morris v. Jensen*, 309 S.C. 153, 157, 420 S.E.2d 710, 712 (Ct. App. 1992) (citing *Lineberger v. Colonial Life & Accident Insurance Company*, 12 N.C. App. 135, 182 S.E.2d 643 (1971) (unsworn allegations not evidence); *Bertha Mineral Co. v. Buie*, 27 Ga. App. 660, 109 S.E. 539 (1921) (unsworn affidavit not evidence); *Walters v. State, 128 Ga. App.*, 232, 196 S.E.2d 326 (1973) (defendant's unsworn statement not evidence)).

In *Morris v. Jensen*, the Court found that the unsworn statement of a juror stating that "in her opinion the forelady was prejudiced and might have influenced some other jurors" was not competent evidence. *Morris v. Jensen*, 309 S.C. 153, 157, 420 S.E.2d 710, 712 (Ct. App 1992). The Court went on further to state that "the statement is far from a convincing demonstration that the verdict was based on jury bias rather than the evidence at trial." *Id*.

Similarly here, Ms. Ethridge's Declaration is not competent evidence and is not a convincing demonstration that the homeowners received the documents attached to Ms. Ethridge's Declaration, therefore the Declaration is improper and should be removed from the record. Ms. Ethridge's Declaration is filled with inferences which are drawn from the unsworn declarations she has made. The Declaration states that Ms. Ethridge is the litigation paralegal for Lennar and also acts as "a records custodian for the Ryland Group, Inc. f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Group, Inc. and CalAtlantic Homes." Ms. Ethridge does not indicate how long she has worked for CalAtlantic or that she actually ever worked for CalAtlantic. The Declaration further states that Ms. Ethridge is "familiar with CalAtlantic's

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selected corporate documents and the document retention policies of Defendants, including CalAtlantic." Ms. Ethridge goes on to state that she is "aware CalAtlantic is indicated as the Seller and Grantor in certain documents establishing and selling individual residence located in Whitesides Park townhomes." Attached to Ms. Ethridge's Declaration is the Homeowner's Limited Warranty & Maintenance Manual which she states is "a representative copy of such documents as provided to purchasers of homes from CalAtlantic from late 2016 through early to mid-2018 — the time period during which Whitesides Park townhomes were conveyed from CalAtlantic to original purchasers." Ms. Ethridge does not state that she has knowledge that these documents were actually given to the homeowners; instead, Ms. Ethridge simply states that from her "familiarity" with the corporate documents the documents attached to her Declaration were provided to homeowners during the same time period that the Project was sold. Ms. Ethridge also attaches to her declaration "a sample copy of the limited warranty provided by CalAtlantic ("Limited Warranty") to those who purchased homes from that entity, including those who purchased townhomes in Whitesides Park development." Ms. Ethridge admits in her Declaration that all documents related to Whitesides Park townhomes cannot be located; however, "it was the strict requirement and longstanding practice of CalAtlantic to provide the Manual and Limited Warranty to its purchasers and for its purchasers to acknowledge receipt thereof." Again, Ms. Ethridge cannot state that she has knowledge that these documents were given to the homeowners at the Project or that they acknowledge receipt of these documents. The end of the Declaration contains a DocuSign signature of Tracey Ethridge without any indication that the document was sworn to or affirmed before an officer authorized to administer oaths.

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The Declaration of Tracey Ethridge contains declarations that lack the requisite knowledge and are not sworn to or affirmed before an officer authorized to administer oaths, thus this Court should Grant Plaintiff's Motion to Strike, removing the Declaration from the record.

II. THE DECLARATION OF TRACEY ETHRIDGE IS NOT PERMITTED UNDER THE SOUTH CAROLINA RULES OF EVIDENCE OR THE UNITED STATES CODE SERVICE, THEREFORE THIS COURT SHOULD GRANT PLAINTIFF'S MOTION TO STRIKE.

The Declaration of Tracey Etheridge is inadmissible evidence since the Declaration was not notarized and does not contain language referencing potential penalty for perjury. South Carolina Rules of Evidence Rule 902 states that in ten (10) different instances "[e]xtrinsic evidence of authenticity as a condition precedent to admissibility is not required." SCRE 902. One of the ten instances in which extrinsic evidence of authenticity is not required is when documents are accompanied by a certificate of acknowledgement executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgements. SCRE 902 (8).

In *Lister v. NationsBank of Delaware*, the Court found that an affidavit was admissible under SCRE Rule 902(8) and pursuant to the Uniform Recognition of Acknowledgement Act since it contained the Aruban notary. *Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 140, 494 S.E.2d 449, 453 (Ct. App. 1997). Unlike *Lister v. NationsBank*, the Declaration of Tracy Ethridge does not contain any acknowledgement from a notary public or any other officer authorized by law to take acknowledgments. The Declaration only contains Ms. Ethridge's DocuSign signature.

28 USCS §1746 states that "any matter is required or permitted to be supported . . . by the sworn declaration . . . in writing of the person making the same . . . with be supported . . . by the

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unsworn declaration . . . in writing of such person which is subscribed by him, as true under penalty of perjury, and dated . . .” In *United States v. Berry*, the Court found that the statements did not comply with the requirements of 28 U.S.C. §1746 since the document was not notarized, made no reference to the potential penalty for perjury, and was not dated. *United States v. Berry,* 169 Fed. Appx. 164, 165 (4th Cir. 2006). In *Barlow v. Connecticut*, the Court granted the Defendants’ motion to strike letters presented by the Plaintiff since they were neither sworn or dated and did not end with an affirmation stating the statements were true. *Barlow v. Connecticut*, 319 F. Supp. 2d 250, 257 (D. Conn. 2004), aff’d, 148 Fed. Appx. 31 (2d Cir. 2005).

Similarly, the Declaration of Tracey Ethridge is not notarized, does not contain any language indicating that the declarations are made under penalty of perjury, and is not dated; therefore, this Court should Grant Plaintiff’s Motion to Strike and remove the Declaration from the record.

CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests this Court to GRANT Plaintiff’s Motion to Strike Defendants CalAtlantic Group, Inc. f/k/a The Ryland Group, Inc. f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes and Lennar Carolinas, LLC’s Declaration of Tracey Ethridge

[signature page to follow]

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Respectfully submitted.

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May 13, 2021

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ELECTRONICALLY FILED - 2020-10-02 14:03 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1002398

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Whitesides Park Townhomes Property Owners Association, Inc., Plaintiff, vs. CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes; Lennar Carolinas, LLC, Southend Exteriors, Inc., Alpha Omega Construction Group, Inc., Fogel Services, Inc. Defendants.	Case No. 2020-CP-10-02398 MOTION TO DISMISS AND TO COMPEL ARBITRATION ON BEHALF OF DEFENDANTS CALATLANTIC GROUP, INC., F/K/A THE RYLAND GROUP, INC., F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES AND LENNAR CAROLINAS, LLC

PLEASE TAKE NOTICE THAT Defendants, CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes, and Lennar Carolinas, LLC (hereinafter, collectively "Defendants"), by and through their undersigned counsel, will move before this Court for an Order, dismissing this action pursuant to Rule 12(1), *South Carolina Rules of Civil Procedure* and compelling Plaintiff, Whitesides Park Townhomes Property Owners Association, Inc. ("Whitesides") to submit any and all claims to mandatory and binding arbitration.

Defendants move to compel arbitration pursuant to the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, *et seq*., and, pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* Both federal law and South Carolina law favor the resolution of disputes through arbitration. *See Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 109, 739, S.E.2d 209, 213 (2013). Therefore, any dispute that falls within the

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scope of an arbitration clause must be submitted to arbitration. *See Zabinski*, 346 S.C. at 592, 553 S.E.2d at 116 ("Unless a court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should generally be ordered."). Moreover, "any doubt as to whether [a claim is] subject to arbitration must be resolved in favor of arbitration." *Hall v. Green Tree Servicing, LLC*, 413 S.C. 267, 275, 776 S.E.2d 91, 96 (2015).

This Motion to Compel Arbitration is based on the agreement of Plaintiff to participate in binding arbitration in the resolution of any dispute involving Whitesides Park Townhomes (the "Property"), as set forth in the Declaration of Covenants, Conditions, Restrictions and Easements for Whitesides Park, dated September 8, 2016 (the "Covenants"), and recorded in the office of the Register of Deeds for Charleston County, at Book 0582, Page 098. A copy of said Covenants is attached hereto as Exhibit A.

Moreover, Defendants are informed and believe Whitesides brings this action, at least in part, on behalf of the some or all individual owners of townhomes of which the Property consists, such owners being members of Whitesides. All, or a vast majority of the owners of townhomes, on whose behalf Whitesides brings this action, entered into one or more agreements with one or more Defendants pursuant to which they agreed to enter into binding arbitration in the resolution of any disputes arising relative to the Property, as follows:

Some or all owners entered into a Purchase Contract that specifically provides all disputes are subject to mandatory arbitration; some or all owners entered into a Dispute Resolution Agreement Addendum to Home Purchase Agreement that clearly provides that those individuals, as owners, and Defendants, as Seller, must follow the dispute

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resolution procedures set forth therein; specifically, all disputes must be submitted to arbitration. Representative copies of these documents are provided herewith and attached hereto, collectively, as Exhibit B.[1]

As further documented by the Declaration of Tracey Ethridge, attached hereto as Exhibit C, Defendants are informed and believe all owners of Whitesides townhomes received and acknowledged receipt of Homeowner's Limited Warranty & Maintenance Manual ("Manual"), which provides, in pertinent part:

> In the event any dispute arises relating to customer care issues for warranty claims, such disputes may be resolved pursuant to the arbitration procedures specified in the Limited Warranty.

The Insured Limited Warranty ("Limited Warranty"), Section 5, sets forth the procedure to be followed in making a warranty claim. The Limited Warranty provides, *inter alia*, that claims not resolved by repair, replacement, payment or mediation ("Unresolved Disputes") shall be submitted to binding arbitration governed by the procedures of the Federal Arbitration Act, 9 U.S.C.1, *et seq*.

Representative copies of the Manual and the Limited Warranty are attached to the Declaration of Ms. Ethridge.

In addition to the foregoing, all owners, believed to be represented by Whitesides in this action, took ownership of the townhomes comprising the Property pursuant to Title to Real Estate that clearly, substantially and specifically sets forth such Title is subject to the Covenants referenced hereinabove. In addition to the clear and obvious notice that the Covenants are subject to arbitration, either pursuant to the South Carolina Uniform

[1] As set forth in the supporting Declaration of Tracey Ethridge, due to various reasons, including the passage of time and the mergers of entities, some documents cannot be located. However, at least three sets of purchase documents have been located, which include those referenced herein. Additionally, Defendants are informed and believe the individual owners of townhomes may have copies of the documents referenced.

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Arbitration Act or the Federal Arbitration Act, that heads the document, the Covenants, Section X, provide the mandated procedure for dispute resolution, which requires arbitration of claims not otherwise resolved.

Appearing on the at the top of the first page of the Covenants, is the following language, in conspicuous, bold, underlined and all-caps:

> **THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, SECTION 15-48-10 ET SEQ., CODE OF LAWS OF SOUTH CAROLINA, 1976 (AS AMENDED) OR IF IT IS DEEMED NOT TO APPLY, PURSUANT TO THE FEDERAL ARBITRATION ACT, TITLE 9, SECTION 1 ET. SEQ. UNITED STATES CODE (AS AMENDED).**

This Motion is also based upon any supporting memorandum that may be subsequently submitted to the Court, the law of the State of South Carolina and argument of counsel, should the Court so allow.

AND IT IS SO MOVED.

/s/ Cheryl D. Shoun

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Attorneys for Defendants CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes, and Lennar Carolinas, LLC

December 22, 2020

Charleston, South Carolina

Exhibit C – Declaration of Tracey Ethridge

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Whitesides Park Townhomes Property Owners Association, Inc., Plaintiff, vs. Calatlantic Group, Inc. F/K/A The Ryland Group, Inc. F/K/A Standard Pacific Corp. and also D/B/A Calatlantic Homes; Lennar Carolinas, LLC, Southend Exteriors, Inc., Alpha Omega Construction Group, Inc., Fogel Services, Inc. Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Case No. 2020-CP-10-02398 DECLARATION OF TRACEY ETHRIDGE

PERSONALLY APPEARED BEFORE ME, Tracey Ethridge, who swears or affirms as follows:

I am over the age of majority and otherwise mentally and physical competent to make this Declaration on behalf of CalAtlantic Group, Inc. f/k/a The Ryland Group, Inc. F/K/A Standard Pacific Corp. and also D/B/A CalAtlantic Homes; Lennar, Carolinas, LLC ("Defendants"), and do so of my own accord, without duress or influence;

I serve as a litigation paralegal for Lennar Carolinas, LLC and also act as a records custodian for The Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Group, Inc. and CalAtlantic Homes (CalAtlantic Group, Inc. and CalAtlantic Homes collectively referred to as "CalAtlantic");

Pursuant to my role as litigation paralegal and records custodian, I am familiar with CalAtlantic's selected corporate documents and the document retention policies of Defendants, including CalAtlantic;

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Based upon my familiarity with CalAtlantic's selected corporate documents, and document retention policies, I am aware CalAtlantic is indicated as the Seller or Grantor in certain documents establishing and selling individual residences located in the Whitesides Park townhome community, located in Mt. Pleasant, South Carolina;

Based upon my familiarity with the corporate documents of CalAtlantic, I hereby attest that the Homeowner's Limited Warranty & Maintenance Manual ("Manual"), attached hereto as Exhibit A, is a representative copy of such document as provided to purchasers of homes from CalAtantic from late 2016 through early to mid-2018 – the time period during which Whitesides Park townhomes were conveyed from CalAtlantic to original purchasers.

Referenced in and included with the Manual, attached as Exhibit A hereto, is a sample copy of the limited warranty provided by CalAtlantic ("Limited Warranty") to those who purchased homes from that entity, including those who purchased townhomes in the Whitesides Park development. The Limited Warranty provides, among other things, the procedures for resolution of disputes between CalAtlantic. and its purchasers. It conspicuously states, in bold, all capital font, as follows:

> **THIS AGREEMENT INCLUDES PROCEDURES FOR SETTLEMENT OF DISPUTES, INCLUDING MEDIATION AND BINDING ARBITRATION IN ACCORDANCE WITH THE PROCEDURES OF THE FEDERAL ARBITRATION ACT.**

The Limited Warranty further sets forth the procedures to be followed in the event of a warranty claim by or on behalf of an owner, providing if CalAtlantic fails to respond to a request for information within 30 days from the submission of a claim, or if the claim is not resolved by an agreement by CalAtlantic to repair, replace or submit payment for

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an item(s), such constitutes an “unresolved dispute” that shall be submitted to mediation. If the unresolved dispute remains, the claim(s) must be submitted to binding arbitration governed by the procedures of the Federal Arbitration Act, 9 U.S.C. 1, *et seq.* (See, Section 5. e-h).

Due to the passage of time and the merger of corporate entities, all documents relative to sale of the subject townhomes have not been located; however, it was the strict requirement and longstanding practice of CalAtlantic to provide the Manual and the Limited Warranty to its purchasers and for its purchasers to acknowledge receipt thereof, upon the closing on any sale of a residence. Additionally, I have reviewed the Motion to Dismiss, Or, In The Alternative to Compel Arbitration being submitted on behalf of Defendants and am generally familiar with the Purchase Contract and the Dispute Resolution Agreement Addendum to Home Purchase Agreement referenced therein and attached thereto as Exhibit B, and attest that such documents were generally utilized by CalAtlantic at the time period relevant to this action.

DocuSigned by:
Tracey Ethridge
E98F00556ECB430...

TRACEY ETHRIDGE

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON WHITESIDES PARK TOWNHOMES PROPERTY OWNERS ASSOCIATION, INC. Plaintiff, vs. CALATLANTIC GROUP, INC. F/K/A THE RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES; LENNAR CAROLINAS, LLC, SOUTHEND EXTERIORS, INC., ALPHA OMEGA CONSTRUCTION GROUP, INC., FOGEL SERVICES, INC., Defendants.	IN THE COURT OF COMMON PLEAS 2020-CP-10-02398 **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO CALTALANTIC GROUP, INC., F/K/A THE RYLAND GROUP, INC., F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES AND LENNAR CAROLINAS, LLC'S MOTION TO DISMISS AND TO COMPEL ARBITRATION**

Plaintiff, Whitesides Park Townhomes Property Owners Associations, Inc. (hereinafter the "Association") submits this Memorandum of Law in Opposition to CalAtlantic Group, Inc., f/k/a The Ryland Group Inc. f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes (hereinafter, "CalAtlantic") and Lennar Carolinas, LLC's (hereinafter, "Lennar") Motion to Dismiss and to Compel Arbitration. For the reasons set forth herein, the Association respectfully requests CalAtlantic and Lennar's Motion to Dismiss and to Compel Arbitration be Denied.

BACKGROUND

This construction defect case involves allegations of multiple deficiencies arising out of the design, development, and construction of Whitesides Park Townhomes in Charleston County, South Carolina (the "Project). The Project is comprised of thirteen (13) townhomes located in

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four (4) buildings and related common elements which were sold by CalAtlantic between December 2016 and March 2018. The Project was developed and constructed by the CalAtlantic Group, Inc., a Delaware corporation, successor by merger to the Ryland Group, Inc., with the contractor listed on the permits and the building files as CalAtlantic Homes (see Permits and Certificates of Occupancy attached hereto as **Exhibit A**). The Whitesides Park Townhomes Property Owners Associations, Inc. was created pursuant to a Declaration of Covenants, Conditions, Restrictions and Easements for Whitesides Park (hereinafter referred to as "Covenants"), wherein CalAtlantic was the "Declarant." The Covenants were drafted by CalAtlantic and executed on behalf of CalAtlantic, by Don McDonough, the operational vice president of CalAtlantic. The Covenants were signed on September 8, 2016 (attached hereto as **Exhibit B**). The Covenants do not include any other parties other than CalAtlantic and the Association. These two parties are defined as "Bound Parties" in the Covenants. The subcontractors named in this lawsuit are not defined as "Bound Parties" within the Covenants.

CalAtlantic sold the first of the thirteen (13) townhomes on December 15, 2016 to Kelly F. Fowler and Judge W. Fowler (see Deed attached hereto as **Exhibit C**), nearly three months after the Covenants were signed. The Association executed the Covenants as well, but the president for the Association and the signatory on behalf of the Association were the same individual: Don McDonough.

The four buildings of the Project were constructed between December 25, 2016 and January 19, 2018 (see **Exhibit A**).

At issue in this case are claims against the developer, general contractor, and its subcontractors who defectively installed various building components to the Project. The

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developer and general contractor against whom the Association has brought claims is CalAtlantic. Upon information and belief, Lennar announced on February 12, 2018 that it had "completed the previously-announced strategic combination with CalAtlantic, Group, Inc." Lennar Completes Strategic Combination with CalAtlantic, THE OPEN DOOR BY LENNAR (February 13, 2018) https://theopendoor.lennar.com/inside-lennar/lennar-completes-strategic-combination-with-calatlantic/. This transaction was in the form of a merger of CalAtlantic "into a wholly-owned subsidiary of Lennar."

After the Project was completed by CalAtlantic, they failed to repave the roads after construction was complete, as they were destroyed as a result of the construction vehicles and failed to complete the roads per the plans and specifications. CalAtlantic never came back to put the final layer of asphalt on these roads in order to repair the destruction. Furthermore, the reserve was underfunded by CalAtlantic as the developer. CalAtlantic attempted to resolve the matter by sending the Association a Settlement Agreement and General Release, which released virtually any and all claims the Association may ever have against CalAtlantic in exchange for paving the road through the community.

The Association did not agree to the full release of all claims related to the Project, as set forth in the Release proposed by Lennar. However, subsequent to the attempts by CalAtlantic to have the Association release all of its claims related to the Project and the buildings over the Association's simple request to pave the roads in the Project, the buildings began experiencing additional water intrusion issues and construction defects. The Association retained a forensic engineer, Russell T. Mease, P.E., to investigate the issues with the Project (See Russell T.

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Mease's Construction Deficiencies Investigation: Whitesides Park Townhomes, attached hereto as **Exhibit D)**.

The Association filed a Summons and Complaint (attached hereto as **Exhibit E**) against CalAtlantic and Lennar on June 1, 2020. The Association is the party responsible for the maintenance and repair of the claims brought in this lawsuit, as set forth in the Covenants (See Affidavits of homeowners attached as **Exhibit F**). The Association brought claims against CalAtlantic Group, Inc. f/k/a The Ryland Group, Inc. f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes; Lennar Carolinas, LLC, Southend Exteriors, Inc., Alpha Omega Construction Group, Inc., and Fogel Services, Inc. for developer liability, breach of fiduciary duties, negligence, breach of implied warranties, and unfair trade practices due to improper installation and/or designs of the heating and air condition system, ductwork, roof, membrane roofs related accessories, cementitious siding, exterior trim, deck boards, house wrap, trim, windows, doors, tile components, brick and stone veneers, framing, secondary weather barrier, paved driveway, and roads. The Association filed a Motion to Compel Discovery Responses from CalAtlantic and Lennar on September 30, 2020. Counsel for the Association had been in contact with counsel for CalAtlantic and Lennar since July 2020 in an attempt to obtain information and documentation regarding the project. It was not until CalAtlantic and Lennar filed their Motion to Dismiss and Compel Arbitration on December 22, 2020, counsel for the Association became aware of CalAtlantic and Lennar's unwillingness to participate in litigation.

APPLICABLE PROVISIONS IN THE COVENANTS

At issue in CalAtlantic and Lennar's Motion to Dismiss and Compel Arbitration is the Covenants and several other purchase documents between the individual owners and CalAtlantic.

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In CalAtlantic and Lennar's Motion to Dismiss and Compel Arbitration, they state the argument is based on the language in the Covenants as it relates to the Association.

Section 5.2 of Article V of the Covenants articulates which areas of the Project the Association is responsible for. This section states that "[t]he Association shall maintain and keep in good condition, order and repair the Area of Common Responsibility." The following are areas the Association is responsible for according to the Covenants from a maintenance standpoint: (1) all Common Areas, including the Open Space Easement; (2) exterior maintenance of all dwellings including, but not limited to painting, repairing, replacing and caring for the following: roofs (including the roofs joists and trusses, crossbeams, roof decking and underlaying, and shingles or other covering and surface materials); exterior walls and surfaces, including the brick, siding, or other building material forming the exterior walls of any dwelling and/or garage; (3) exterior stoops, landings, railings and steps; and (3) all walkways, driveways, and other paved areas. As stated in the Affidavits of the homeowners, the Association brought these claims under their duty to maintain and keep in good condition the aforementioned areas (See Affidavits of homeowners attached as **Exhibit F**).

Article I of the Covenants, Section 1.5, defines the Association as "Whitesides Park Townhomes Property Owners Association, Inc." Section 1.11 defines "Declarant" as "CalAtlantic Group, Inc., A Delaware corporation, successor by merger to The Ryland Group, Inc., a Maryland corporation, as well as its successors and assigns, if Declarant shall make an express conveyance of its rights as developer hereunder to such successor or assign." Article X of the Covenants is entitled "Dispute Resolution and Limitations on Litigation" section. Article X begins with Section 10.1 which states the following:

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The Association, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article X (collectively, the "***Bound Parties***") agree to encourage the amicable resolution of disputes involving the Property in order to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Property, including, without limitation, claims grievances or disputes arising out of or relating to the interpretations, application or enforcement of this Declaration, the Bylaws, the Association rules or other Articles (collectively and singularly, "Claims"), except for those Claims authorized in Section 10.2 below, shall be resolved using the procedures set forth in Section 10.3 below, in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

Section 10.2 contains the Exempt Claims, which include the following:

(a) Any suit by the Association against any Bound Party to enforce the provisions of Article IV:

(b) Any suit by the Association to obtain a restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article VI and Article VII;

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(c) Any suit between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under federal law or the laws of the State of South Carolina in the absence of a claim based on the Declaration, Bylaws, Articles or rules of the Association if the amount in controversy exceeds Five Thousand and No/100 dollars ($5,000.00);

(d) Any Suits arising out of any written contract between Owners or between the Declarant and any builder, which would constitute a cause of action under the laws of the State of South Carolina in the absence of a claim based on the Declaration, Bylaws, Articles or rules if the Association; and

(e) Any Suit in which all parties are not Bound Parties.

(*emphasis added*)

Exhibit B to CalAtlantic and Lennar's Motion to Compel contains a Purchase Contract from Alex Brown. The Purchase Contract itself contains arbitration provisions and references to the Homeowner's Limited Warranty & Maintenance Manual (hereinafter "Homeowner Manual") which also contains additional arbitration provisions. The Homeowner Manual was attached to Exhibit C of CalAtlantic and Lennar's Motion to Compel. Within the Homeowner Manual is the "New Home Warranty Program Insured Limited Warranty" (hereinafter "Limited Warranty"). The Homeowner Manual was never agreed upon or acknowledged by the Association, who is the party CalAtlantic and Lennar are attempting to compel to arbitrate.

ANALYSIS

The Association opposes CalAtlantic and Lennar's Motion to Dismiss and to Compel Arbitration for the following reasons: (1) the Covenants do not bind the association to arbitration

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since CalAtlantic breached their fiduciary duty to the Association, the Covenants and the arbitrations provisions contained therein are unconscionable; the Covenants explicitly state that the Association is not bound to arbitration since the Association brought the lawsuit against parties that are not "Bound Parties," (2) the Association cannot be compelled to arbitrate under the Purchase contract since the Association is not a party to the Purchase Contract and the Purchase contract is unconscionable (3) the Association cannot be compelled to arbitrate under the Homeowners Manual since they are not a party to the Homeowners Manual and the Homeowners Manual is unconscionable; and (4) the Association cannot be compelled to arbitrate under the Limited Warranty since the Association is not a party to the Limited Warranty and the Limited Warranty is unconscionable

ARBITRABILITY OF A MATTER IS FOR THE COURT TO DECIDE

The Court must first determine the arbitrability of the claim. The question of the arbitrability of a claim is an issue for judicial determination. *Oxford Health Plans, LLC v. Sutter*, 569 U.S. 564 (2013) (noting questions of arbitrability are presumptively left for the court to decide); *Granite Rock Co. v. Int'l Bhd Of TeamsterGroup,* 386 S.C. 488, 689 S.E.2d 602 (2010). General contract defenses such as fraud, duress and unconscionability apply to a court's evaluation of the enforceability of an arbitration clause governed under either the South Carolina Uniform Arbitration Act or the Federal Arbitration Act. *See* 9 U.S.C. § 2 (providing written arbitration agreements may be invalid, revocable and unenforceable based upon "such grounds as exist at law or in equity for the revocation of any contract."); *See also* S.C. Code Ann § 15-48-10(a) (containing similar language to that of the FAA.) This Court may address "arbitrability" based upon general contract defenses recognized in this State. Therefore, if this

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Court finds any clause of a contract unconscionable, including an arbitration clause, the Court may refuse to enforce the clause or otherwise limit its application so as to avoid an unconscionable result. S.C. Code §36-3-302(1).

I. THE COVENANTS DO NOT BIND THE ASSOCIATION TO ARBITRATION SINCE CALATLANTIC BREACHED THEIR FIDUCIARY DUTY TO THE ASSOCIATION, THE COVENANTS ARE UNCONSCIONABLE, AND THE CLAIMS BROUGHT BY THE ASSOCIATION ARE AGAINST PARTIES THAT ARE NOT BOUND PARTIES.

The Covenants are unenforceable against the Association since CalAtlantic executed the Covenants prior to any townhomes being sold from CalAtlantic's control. Furthermore, the Covenants and the provisions therein are wholly unconscionable since an agreement to arbitrate never existed. Even if this Court finds that the Covenants are enforceable, the claims brought by the association are exempt claims as defined in the Covenants.

A. THE ASSOCIATION NEVER AGREED TO ARBITRATE AND THE UNILATERAL INSERTION OF THE ARBITRATION REQUIREMENT IN THE COVENANTS WHILE THE ASSOCIATION WAS UNDER THE CALATLANTIC'S CONTROL WAS A BREACH OF CALATLANTIC'S FIDUCIARY DUTY TO THE ASSOCIATION; THEREFORE, THE COVENANTS ARE UNENFORCEABLE.

Arbitration of disputes is favored amongst South Carolina courts; however, arbitration is only favored when both parties agree to arbitrate the dispute. The Association never agreed to arbitrate any matters nonetheless those set out in the Covenants. CalAtlantic's unilateral decision to insert one-sided terms into the Covenants drafted by CalAtlantic and signed by CalAtlantic as both the Declarant and Association during a conflict of interest is an overreaching act by the developer giving rise to the Covenants being unenforceable.

Covenants and Master Deeds have elements of both contract law and property law and are often considered quasi contracts. *Armstrong v. Ledges Homeowners Ass'n, Inc.*, 360 N.C.

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547, 554, 6633 S.E.2d 78, 84 (2006). These documents are dictated and signed by a single party, the developer, without any input from the association and their future members. At the time the Covenants are enrolled, the association is typically controlled by the developer.

CalAtlantic drafted the Covenants and signed the Covenants on behalf of CalAtlantic and the Association; in fact, the same individual, vice president Don McDonough, signed on behalf of CalAtlantic and the Association. The Covenants were signed nearly three months before any of the townhomes were sold by CalAtlantic. Mr. McDonough was the only individual to sign for a transaction between two parties creating a conflict of interest by placing provisions into the Covenants which clearly benefit CalAtlantic and have the potential to be detrimental to the receiving party, the Association and its future members. The Covenants are wholly unconscionable. CalAtlantic has unilaterally taken away the Association's right to a jury trial and their right to pursue action against the developer and general contractor by the restricting arbitration provision placed in the Covenants without the *actual* consent from the Association.

1. CALATLANTIC OWED A FIDUCIARY DUTY TO THE ASSOCIATION AND ITS MEMBERS, GIVING RISE TO THE CONFLICT OF INTEREST IN THE INSERTION OF THE RESTRICTIONS IN THE COVENANTS.

As the developer of the Project, CalAtlantic owed a fiduciary duty to the Association and its members. *See Goddard v. Fairways Dev. Gen. P'ship*, 310 S.C. 408, 436 S.E.2d 828 (Ct. App. 1993) (finding there is a corollary between the promoters of a corporation and the developers of a planned development unit. In both instances a fiduciary duty exists, thus, developers are bound to act in good faith and in the best interest of the regime it develops). This duty includes acting in the best interest of the Association and its members while the developer is in control of the association. *Id*.

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The Association is a separate entity created by the CalAtlantic and remained in CalAtlantic's control at the time the Covenants were created and executed. At the time of execution, the Association either had no board of directors or had a board which operated under CalAtlantic's control. When the Covenants were executed, the "President" of the Association was CalAtlantic's Operations Vice President: Don McDonough. This Court has recognized that a property owners association lacks independent capacity during the period that a developer-controlled board is in place. *Magnolia n. Prop. Owners' Ass'n, Inc. v Heritage Communities, Inc.*, 397 S.C. 348, 372, 725 S.E.2d 112,125 (Ct. App. 2012) (finding that it was unlikely that the property owner association was going to sue itself while it was developer controlled, (cert. dismissed, 414 S.C. 198, 199, 777 S.E.2d 831 (2015))). The only inference that can be drawn from these set of facts is that the Association did not voluntarily and independently agree, by its own volition, to any provision in the Covenants.

Additionally, at the time the Covenants were signed, no closings had occurred and no deeds had been executed. Meaning the homeowners could have never agreed to any provisions contained in the Covenants or the arbitration provisions. Furthermore, there is no evidence that once the Association was comprised of homeowners, they acknowledged or accepted the one-sided terms CalAtlantic put into the Covenants.

Therefore, a conflict of interest arose when CalAtlantic signed the covenants as both the developer and the Association while under the sole control of CalAtlantic; thus, CalAtlantic breached their fiduciary duty to act in the best interest of the property owners.

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2. THE OFFENSIVE PROVISIONS IN THE COVENANTS DO NOT PASS THE REQUIRED SCRUTINY.

CalAtlantic owed a fiduciary duty to the Association, thus, the offensive provisions in the Covenants, including the arbitration provisions, must be zealously scrutinized by this Court.

> [A]nyone acting in a fiduciary relationship shall not be permitted to make use of that relationship to benefit his own personal interests . . . . [C]ourts of equity will scrutinize with the most zealous vigilance transactions between parties occupying confidential relations towards each other and particularly any transaction between the parties by which the dominant party secures any profit or advantage at the expense of the person under his influence.

Walbeck v. I'On Co., LLC, 426 S.C. 494, 517, 827 S.E.2d 348, 360 (Ct. App. 2018) (quoting *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 599, 358 S.E.2d 150, 152 (Ct. App. 1987)).

This Court must "zealously scrutinize" the offensive provisions CalAtlantic inserted into the Covenants. The "zealous scrutiny" standard presumes a lack of knowledge and voluntariness in transactions occurring within the fiduciary context such as that issue here. *See Wilson v. Wilson*, 117 S.C. 454, 117 S.E. 330 (1921) ("[W]herever a fiduciary relation exist between two persons and a business transaction occurs between them, as a result of which the superior party obtains a possible benefit, equity raises a presumption against its validity, throwing the burden upon him to prove his good faith.").

The Covenants contain many offensive provisions; however, the crux of these offensive provisions is the arbitration provision. The Covenants bind the Association and CalAtlantic to arbitrate virtually all claims except for the four claims considered to be Exempt Claims. The

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Association has 30 days after sending notice to the CalAtlantic of the claims to negotiate with the CalAtlantic. If the negotiations are unsuccessful after those 30 days the Association has 30 days to "submit the Claim to mediation under the auspice of any dispute resolution center or other such independent agency providing similar service in Charleston County . . ." However, it is important to note that if the Association does not submit the Claim to Mediation within 30 day, or 60 days after they send notice to CalAtlantic, then the Covenants state that "Claimant shall be deems to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim." These provisions are clearly offensive and one-sided. If the Association does not take the exact steps as set out by CalAtlantic then they waive all of the claims.

The law presumes the offensive provisions are invalid until shown otherwise. The offensive provisions in the documents here are clearly unfair. Thus far, there has been no evidence produce that could tend to show the CalAtlantic acted in any way other than to further their own interest. It cannot be argued that the Association knowingly and voluntarily agreed to the Covenants when the Association was under the sole control of CalAtlantic at the time the Covenants were executed. CalAtlantic has admitted that they cannot produce any signed documents pertaining to this Project. Thus, this court should find that the Covenants are unenforceable and Deny CalAtlantic and Lennar's Motion to Compel Arbitration.

B. THE COVENANTS AND THE ARBITRATION PROVISIONS CONTAINED THEREIN ARE UNCONSCIONABLE AND THE COURT SHOULD NOT COMPEL ARBITRATION.

The Association had no bargaining power at the time the Covenants were executed making the Covenants and the arbitration provision therein an adhesion contract. As outlined

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above, the arbitration provisions in the Covenants are comprised of many one-sided provisions; however, the arbitration provisions are the most offensive of them all. Adhesion contracts are subject to considerable doubt that an agreement to arbitrate ever existed. The Covenants and the arbitration provisions contained therein are unconscionable and therefore unenforceable.

1. STANDARD CONTRACT DEFENSES APPLY TO THE ARBITRATION PROVISIONS CONTAINED IN THE COVENANTS.

In South Carolina, an unconscionable provision in a contract is unenforceable. A party may effectively challenge the arbitrability of a given claim based upon general contract defenses including fraud, duress and unconscionability. *See Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539, 542 S.E.2d 360, 363-64 (2001). When such questions of arbitrability arise, the trial court, not the arbitrator, decides whether a matter should be resolved through arbitration. *See Oxford Health Plans, LLC v. Sutter*, 569 U.S. 546, 569 (2013). This determination involves a two-step inquiry: (1) whether a valid arbitration agreement exists; and (2) whether the specific dispute falls within the substantive scope of the arbitration agreement. *See Simpson v. MSA of Myrtle Beach, Inc.,* 373 S.C. 14, 23, 644 S.E.2d 663, 667 (2007). "When deciding a motion to compel arbitration under the FAA, the court should look to the state law that ordinarily governs the formation of contracts in determining whether a valid arbitration agreement arose between the parties…" *Smith v. D.R. Horton, Inc.,* 417 S.C. 42, 790 S.E.d 1 (2016).

2. TEST FOR UNCONSCIONABILITY: LACK OF MEANING CHOICE AND OPPRESSIVE AND ONE-SIDED TERMS.

In South Carolina, unconscionability is defined as "the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would

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accept them." Simpson v. MSA of Myrtle Beach, 373 S.C. 14, 25 644 S.E.2d 663, 668-69 (2007). Unconscionability must be evaluated under both prongs: (1) lack of meaningful choice; and (2) oppressive terms. The Supreme Court in *Parson v. John Wieland Homes and Neighborhoods of the Carolinas, Inc*., 418 S.C. 1, 12-13, 791 S.E.2d 128, 134 (2016), confirmed that "unconscionability requires the court to focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker." Furthermore, S.C. Code Ann § 15-48-20(a) states that arbitration will be denied if a court determines no agreement to arbitrate existed.

The arbitration provision is not geared to foster a neutral, fair, adjudication, and was not agreed to by the Association; thus, it is unconscionable and therefore unenforceable.

3. A LACK OF MEANINGFUL CHOICE IS READILY APPARENT IN ADHESION CONTRACTS.

Lack of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue." Simpson, 373 S.C. 25, 644 S.E.2d at 669. "In determining whether a contract was 'tainted by an absence of meaningful choice,' courts should take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause." *Id*. "[U]nder general principles of state contract law, an adhesion contract is a standard form contract offered on a 'take-it-or-leave-it' basis with terms that are not negotiable." *Id*. at 26-27, 644 S.E.2d at 669.

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The Supreme Court in *Smith v. D.R. Horton* issued an Order affirming the denial of a Motion to Compel Arbitration and finding the arbitration provisions unconscionable. *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 790 S.E.d1 (2016). In analyzing of the lack of meaningful choice, the Supreme Court highlighted that it had previously "taken judicial cognizance of the fact that the modern buyer of new residential housing is normally in an unequal bargaining position as against the seller." *Id*. (citing *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 343, 384 S.E.2d 730, 735-36 (1989).

Similarly to *Smith v. D.R. Horton*, there is no evidence that the Association enjoyed a substantially stronger bargaining position than the average homebuyer. The complete opposite is true, the Association had no bargaining position whatsoever since the Association was controlled by the CalAtlantic at the time the Covenants were executed. The Covenants were clearly offered on a take-it-or-leave it document which restricted the rights of the Association and constitutes a contract of adhesion. The Covenants are an adhesion contract that were presented during the time the Association was under the sole control of CalAtlantic. Therefore, the Covenants are unconscionable and the court should Deny CalAtlantic and Lennar's Motion to Dismiss and Compel Arbitration.

C. EVEN IF THE COURT FINDS THAT THE COVENANTS AND THE ARBITRATION PROVISIONS CONTAINED THEREIN ARE ENFORCEABLE, THIS ACTION INVOLVES PARTIES THAT ARE NOT BOUND PARTIES AND ARBITRATION CANNOT BE COMPELLED.

Even if this Court finds that there is a valid contract, with a valid arbitration provision, the specific dispute does not falls within the substantive scope of the arbitration agreement in the Covenants. The claims the Association have brought against CalAtlantic Group and Lennar and their subcontractors fall under the exempt claims provision of the Covenants which are not

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subject to arbitration. Section 10.2 of the Covenants is entitled "Exempt Claims." This section states in part that "[t]he following Claims ("Exempt Claims") shall be exempt from the provisions of Section 10.3." One of the claims that is exempt is "[a]ny suit in which all parties are not Bound Parties." Section 10.1 defines Bound Parties as "The Association, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article X." Section 1.11 defines Declarant as "CalAtlantic Group, Inc, a Delaware corporation, successor by merger to the Ryland Group, Inc., a Maryland corporation, as well as its successors and assigns." Section 10.2 goes on to state that "Any Bound Parties having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 10.2 below, but there shall be no obligation to do so. The Submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 10.2 below shall require the approval of the Association." (see Covenants attached as **Exhibit B**).

This suit was brought by the Association against CalAtlantic and Lennar along with the following subcontractors: Southend Exteriors, Inc.; Alpha Omega Construction Group, Inc.; and Fogel Services, Inc. Lennar, Southend Exteriors, Inc., Alpha Omega Construction Group, Inc., and Fogel Services, Inc. do not fall under the Covenants' definition of "Bound Parties" as they are not the Association, CalAtlantic Group, Inc, a Delaware corporation, successor by merger to the Ryland Group, Inc., a Maryland corporation, as well as its successors and assigns, nor are they subject to the Covenants. Furthermore, the Association does not approve of the submission

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of this claim to the alternative dispute resolution procedures as outlined in the Covenants since they brought these claims in Circuit Court. [1]

Therefore, these claim falls under the Exempt Claims since the suit involves parties that are not "Bound Parties" and is not approved by the Association to be submitted to the alternative dispute resolution procedures.

II. THE ARBITRATION PROVISIONS CONTAINED IN THE PURCHASE CONTRACT DOES NOT BIND THE ASSOCIATION AND ARE UNCONSCIONABLE.

The named Plaintiff in this case is Whitesides Park Townhomes Property Owner Association, Inc., and not the individual homeowners. However, the individual owners had no bargaining power when signing the Purchase Contract. The Purchase Contract is a form contract used by CalAtlantic that is presented in a take-it-or-leave-it manner. Furthermore, the arbitration provisions are oppressive and one-sided. Moreover, no evidence exist that shows that the Association signed these alleged Purchase Contracts agreeing to submit to arbitration.

A. THE ASSOCIATION WAS NOT A PARTY TO THE PURCHASE CONTRACT AND IS THE PLAINTIFF IN THIS CASE.

The Association brought claims against CalAtlantic Group, Inc. f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes; Lennar Carolinas, LLC; Southend Exteriors, Inc.; Alpha Omega Construction Group, Inc.; and Fogel Services Inc. for developer liability, breach of fiduciary duties, along with claims of negligence, breach of implied warranties, and unfair trade practices due to improper installation and/or designs of the heating and air condition system, ductwork, roof, membrane roofs related accessories, cementitious siding, exterior trim, deck

[1] In the *Woodlands Condominium Association v. Centex Homes*, Circuit Court Judge Clifton Newman denied Centex Homes Motion to Dismiss and Stay Proceedings and Compel Arbitration finding that no arbitration provision existed between Centex Homes and the Parties. *Woodlands Condominium Association v. Centex Homes,* 2015-CP-26-4514 (August 12, 2016).

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boards, house wrap, trim, windows, doors, tile components, brick and stone veneers, framing, secondary weather barrier, paved driveway, and roads. As outlined in the Covenants, these claims are the responsibility of the Association. The Association must maintain and keep in good condition all of the building components, including the shingles, brick, exterior siding, window trim, porches, heating and air conditioning system, flashings, all of which are defective, thus the Association brought the current lawsuit (see Affidavits of Homeowners attached as **Exhibit F**).

A party can compel arbitration if it is establishes the existence of a written agreement, including an arbitration provision, that purports to cover the dispute. *Am. Gen. Life & Acc. Ins. Co. v. Wood*, 429 F.3d 83, 87 (4th Cir. 2005). While arbitration is viewed with favor by our courts, "it is predicated on an agreement to arbitrate because parties are waiving their fundamental right to access the courts." *Wilson v. Willis*, 426 S.C. 326, 337, 827 S.E.2d 167, 173 (2019). Arbitration is only available when the parties involved contractually agree to arbitrate." *Towels v. United Health Corp.*, 338 S.C. 29, 37, 524 S.E.2d 839, 843-44 (Ct. App. 1999). The Purchase Contract is between the homebuyer and CalAtlantic and does not include an agreement by the Association to the terms. Thus, CalAtlantic and Lennar cannot require the Association to participate in arbitration under the sole directive of the Purchase Contract.

B. THE PURCHASE CONTRACT CONTAINS ARBITRATION PROVISIONS THAT ARE UNCONSCIONABLE.

The Purchase Contract contains multiple arbitration provisions. Arbitration provisions appear in section twelve (12) of the Purchase Contract entitled "Dispute Resolution", section thirteen (13) of the Purchase Contract entitled "Limited Contractual Warranty and Warranty

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Disclaimers", and in the Dispute Resolution Addendum to Home Purchase Agreement. All of these provisions are unconscionable.

1. A LACK OF MEANINGFUL CHOICE IS READILY APPARENT IN ADHESION CONTRACTS

The Courts have taken "judicial cognizance of the fact that the modern buyer of new residential housing is normally in an unequal bargaining position as against the seller." *Smith v. D.R. Horton,* 417 S.C. 42, 50, 790 S.E.2d 1, 4 (2016). Here, as in *Smith v. D.R. Horton*, "there is no indication (. . .) that the [homeowners] enjoyed a substantially stronger bargaining position against [CalAtlantic] than the average homebuyer, or that they were represented by independent counsel." *Id*. The Purchase Contract is a form agreement of that CalAtlantic presented to the individual homeowners on a take-it-or-leave-it basis.

2. THE PURCHASE CONTRACT INCLUDES OPPRESSIVE AND ONE-SIDED TERMS.

The Purchase contract contains a host of one-sided and oppressive terms similar to those in *Smith*. The Disputer Resolution Addendum contained in the Purchase Contract states that in order to commence arbitration the homeowner must file a "Request for Arbitration" with Columbia National Risk Retention Group (hereinafter "Claims Administrator"). The document goes on to state that the claim will be submitted by the Claims Administrator to an Independent Arbitration Service chosen by the Claims Administrator. While these provisions on their face seem harmless, a further look into the Claims Administrator shows that they are an entity of Lennar. A business search on Vermont Secretary of State's website indicates that the Claims Administrator's Assumed Business name is Lennar, one of the defendants assigned the Covenants and responsibility for the warranty requests. (See attached as **Exhibit G**). These provisions effectively make it to where if the homeowners have a dispute with CalAtlantic and

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Lennar they must submit the dispute to CalAtlantic and Lennar for CalAtlantic and Lennar to essentially chose who will arbitrate the matter. These terms are clearly one-sided and oppressive to the homeowners.

Therefore, the homeowners had no substantial bargaining powers when they signed the take-it-or-leave it Purchase contract which contained oppressive and one-sided terms; thus, this court should find that the arbitration provision within the Purchase contract is unconscionable and unenforceable.

III. THE ARBITRATION PROVISIONS CONTAINED IN THE HOMEOWNER MANUAL AND THE LIMITED WARRANTY CONTAINED THEREIN ARE UNCONSCIONABLE AND NOT APPLICABLE TO THE ASSOCIATION.

CalAtlantic and Lennar have failed to produce actual copies of the Homeowner's Limited Warranty & Maintenance Manual (hereinafter "Homeowner Manual") that were produced and acknowledged by the homeowners. CalAtlantic and Lennar simply submitted a Declaration of Tracey Etheridge with conclusory, hearsay-ridden statements that it was CalAtlantic's "strict requirement and longstanding practice" to provide the Homeowner Manual and for the purchasers "to acknowledge receipt thereof," and attached as a representative copy to the Declaration. However, CalAtlantic and Lennar cannot state with certainty whether the homeowners of the Project received these exact documents and acknowledge receipt there of. Even if CalAtlantic could prove the same, the arbitration provisions within the Homeowner Manual are unconscionable.

The Purchase Contract produced by CalAtlantic and Lennar contains in Section I a list of of twelve (12) documents with five (5) documents having "X"s by them, presumably indicating those documents were received by the Buyer. Of these five (5) documents includes CalAtlantic

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Homeowner Limited Warranty & Maintenance Manual. However, the Buyers initials are not required under this section as they are in various other sections of the Purchase Contract. In CalAtlantic and Lennar's production of this Purchase Agreement, the Homeowner Manual is not attached to that exhibit but the exhibit containing the Declaration of Tracey Etheridge. In the "representative copy" produced by Tracey Etheridge, there appears to be no signature line in the entire document indicating that even if the homeowners received this document that there was any place for them to indicate receipt.

Furthermore, CalAtlantic have failed to provide documentation that the Association was a party to the Purchase Contract. Therefore, the Court should Deny CalAtlantic and Lennar's Motion to Dismiss and Compel Arbitration since the Declaration of Tracey Etheridge is not evidence that the homeowners received the Homeowner Manual attached to the declaration, the representative copies of the Homeowners Manual is not admissible evidence, The Homeowner Manual is Unconscionable, the Association is not bound by the Homeowners Manual, and the claims brought by the Association do not fall under the claims set out in the Homeowners Manual.

A. THE CONCLUSORY STATEMENTS OF TRACEY ETHERIDGE DOES NOT SHOW STRICT PROOF THAT THE HOMEOWNERS OF THE PROJECT RECEIVED AND ACKNOWLEDGED THE HOMEOWNER MANUAL PRODUCED BY CALATLANTIC AND LENNAR.

Exhibit C to CalAtlantic and Lennar's Motion to Compel Arbitration is a Declaration of Tracey Etheridge (hereinafter the "Declaration") that is signed by Ms. Etheridge, but it is not sworn. The Declaration is not authenticated, is not based on personal knowledge, and is hearsay that does not fall within any exception and should not be considered as evidence in this case. South Carolina Rules of Evidence Rule 902 states that "Extrinsic evidence of authenticity as a

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condition precedent to admissibility is not required" in ten (10) different instances. SCRE 902. SCRE 902(e) states that Documents accompanied by a certificate of acknowledgement executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgements. 28 USCS §1746 states that "any matter is required or permitted to be supported . . . by the sworn declaration . . . in writing of the person making the same . . . with be supported . . . by the unsworn declaration . . . in writing of such person which is subscribed by him, as true under penalty of perjury, and dated . . ."

The Declaration of Tracey Etheridge is a signed declaration without an acknowledgement from a notary public or other officer authorized by law to take acknowledgements, thus the Homeowners Manual attached thereto is not admissible extrinsic evidence, nor shall the Court consider her Declaration. The Declaration also does not include language subjecting Ms. Etheridge to penalty of perjury. Furthermore, the unsworn Declaration does not comply with any requirements necessary to be admissible. 28 *USCS* §1746. Ms. Ethridge is a paralegal for the legal department for Lennar and has not been able to be cross-examined on any of the statements or subjects in her affidavit. Plaintiff has filed a separate Objection and Motion to Strike the Declaration with the Court for Consideration.

In *Morris v. Jensen*, the Court of Appeals found that an unsworn statement from a juror giving her opinion that the forelady was prejudiced was not competent evidence. *Morris v. Jensen*, 309 S.C 153, 157, 420 S.E.2d 710, 712 (Ct. App. 1859) (*Cf. Lineberger v. Colonial Life & Accident Insurance Company*, 12 N.C. App. 135, 182 S.E.2d 643 (1971) (unsworn allegations not evidence); (*Bertha Mineral Co. v. Buie*, 27 Ga. App. 660, 109 S.E. 539 (1921) (unsworn affidavit not evidence); *Walter v. State*, 128 Ga. App. 232, 196 S.E.2d 326 (1973) (defendant's

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unsworn statement not evidence)). The declarant at issue in *Morris v. Jensen* stated: "I feel that I am an honest person and was unbiased in the case even though the forewoman accused me of being biased because of the sentiment presented by the plaintiff's attorney. My vote when I finally did vote was based upon the evidence presented that would show dual negligence . . ." *Id*. at. 157, 420 S.E.2d at 712.

The South Carolina Supreme Court in *Leesville Mfg. Co. v Morgan Woods & Iron Works*, the Court reviewed a letter address to the attorneys for plaintiff that stated the "claim would have been paid long since but that defendant did not owe the about claimed, and inviting [attorney for plaintiff] to call and inspect the books and papers and go over the matter with the president. *Leesville Mfg. Co. v Morgan Woods & Iron Works,* 75 S.C. 342, 344, 55 S.E. 768, 769 (1906). The Court upheld the trial courts decision to not allow the evidence on the ground that it was "self-serving" *Id*. The Court held that "In so far as the statement of the defendants office could be construed as an implied admission against interest, *i.e.,* that something was due on plaintiff's claim, its exclusion was not harmful to defendant; and in so far as the statement was a denial of the correctness of the claim sued on and the readiness to show the defendant's books and papers, it was an unsworn self-serving declaration of defendant or its officer and, therefore, inadmissible. *Id*. at 344-45, 55 S.E. at 769 (*citing Ring v. Huntington*, 8 S.C. L. 162, 1 Mills 162, 16 Cyc., 1202-1206).

Ms. Etheridge states that a "representative copy" of the Homeowner Manual is attached to her declaration. Ms. Ethridge simply states that this documents is the one that was provided to homeowners from "late 2016 through early to mid-2018." Of the thirteen (13) townhomes sold by CalAtlantic, CalAtlantic cannot provide one of the original or a coy of the original Limited

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Warranty that was produced to any of the thirteen homeowners upon purchase of their townhome but only a representative copy that may or may not contain similar language to the original copy provided to the homeowners. These townhomes were sold by CalAtlantic between December 15, 2016 and March 27, 2018. Furthermore, Ms. Ethridge states that "it was the strict requirement and longstanding practice of CalAtlantic to provide the Homeowner Manual and the Limited Warranty to its purchasers and for its purchasers to acknowledge receipt thereof, upon the closing on any sale of a residence." CalAtlantic and Lennar have failed to provide any evidence that this document, or any document similar to it, was given to the homeowners or received by them. Similar to *Morris v. Jensen* and *Leesville Mfg. Co. v Morgan Woods & Iron Work*, Ms. Etheridge's self-serving statement that it was CalAtlantic's "longstanding practice" to provide homeowners with the Homeowner Manual is not proof that any of the homeowners received the Homeowner Manual and Limited Warranty provided by Ms. Ethridge. The Declaration is void of any statements that homeowners of the Project actually received the documents attached to the Declaration. Ms. Ethridge's mere conjecture that CalAtlantic always provided these documents therefore the homeowners must have received these documents and are therefore bound by them an unsworn self-serving declaration of CalAtlantic and Lennar or its office and, therefore, inadmissible.

B. REPRESENTATIVE COPIES OF THE HOMEOWNER MANUAL AND THE LIMITED WARRANTY CONTAINED THEREIN DO NOT MEET THE STANDARD OF EVIDENCE REQUIRED.

Ms. Ethridge's declaration states "that the Homeowner's Limited Warranty & Maintenance Manual ("Manual") … is a representative copy of such document as provided to purchasers of homes from CalAtlantic from late 2016 through early to mid-2018 - the time

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period during which Whitesides Park townhomes were conveyed from CalAtlantic to original purchasers." The Declaration speculates that this representative copy is the copy that could have been given to the homeowners of the Project, is an unauthenticated hearsay, lacks any foundation, and is not based on personal knowledge.

The United States Court of Appeals for the Fifth Circuit addressed the use of representative copies in *Brown v. Phoenix Life Ins. Co.*, 2021 U.S. App. Lexis 766 (2021). In *Brown v. Phoenix Life Ins. Co.*, the court analyzed the magistrate judges opinion that the Second Amended Complaint as equating the "representative copy of the contract from" as an accurate copy of the original, written policy." *Brown v. Phoenix Life Ins. Co.* , 2021 U.S. App. Lexis 766 , *10. The Court recognized that nowhere in the complaint is their an allegation "that the 'representative copy of the contract form' accurately represents the terms of the original written Policy." Id. The Court held that "[e]ither the terms of the original written policy permit the contested additional premiums, or they do not. It may turn out that Phoenix will be able to prove that the 'representative copy of the contract form' is an accurate representation of the original Policy, despite Brown's allegations in the Second Amended Complaint. But the dispute over what the original Policy says (as opposed to what it means) is a dispute of fact that cannot be resolved at this motion to dismiss stage." *Id*.

Similarly, Ms. Ethridge does not state that the Homeowners Manual attached to her declaration is an accurate copy of the Homeowners Manual that was sent to the homeowners at the Project. Ms. Ethridge simply states that the representative copy is one in which was provided from "late 2016 through early to mid-2018" and that it was the "strict requirement and longstanding practice" of CalAtlantic to provide such Homeowners Manual to the resident have

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then acknowledge receipt. However, Ms. Ethridge cannot provide evidence that that any of the the homeowners acknowledged receipt of the exact Homeowner Manual she provided.

Therefore, the Homeowners Manual provided in the Declaration cannot be viewed as an accurate representation or a copy of the original Homeowner Manual since CalAtlantic and Lennar cannot prove that this is an accurate representation of the Homeowner Manual provided to the homeowners at the Project and the court should not consider the Homeowner Manual as evidence in this case.

C. The Homeowners Manual and the Limited Warranty contained therein contain arbitration provisions that are unconscionable.

Even if this Court finds that CalAtlantic and Lennar have provided sufficient evidence to indicate the homeowners were provided and acknowledged the Homeowner Manual, the provisions contained in the Limited Warranty are unconscionable.

The Homeowner Manual is roughly nineteen (19) pages long. On the tenth page of this document is the first time the word arbitration is used, stating: “In the event any dispute arises relating to customer care issues for warranty claims, such disputes may be resolved pursuant to the arbitration procedures specified in the Limited Warranty.” Section five (5) of the Homeowner Manual includes the Limited Warranty. This section states “A sample copy of CalAtlantic’s Limited Warranty is reprinted on the following pages.” The arbitration provisions Ms. Etheridge provides in her Declaration that she states is conspicuous, appears on what is marked as page one but is the fourth page of the Limited Warranty. Making this provision appear on the twenty third page of the entire packet.

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1. LACK OF A MEANINGFUL CHOICE.

The Courts have taken "judicial cognizance of the fact that the modern buyer of new residential housing is normally in an unequal bargaining position as against the seller." *Smith v. D.R. Horton,* 417 S.C. 42, 50, 790 S.E.2d 1, 4 (2016). Here, as in Smith, "there is no indication (. . .) that the [homeowners] enjoyed a substantially stronger bargaining position against [Defendants] than the average homebuyer, or that they were represented by independent counsel." *Id.* The Homeowner Manual and the Limited Warranty were referenced in the Purchase Contract as documents the homeowners should have received. As stated above the Purchase Contract is a form agreement of CalAtlantic that was presented to the individual homeowners on a take-it-or-leave-it basis. Furthermore, the homeowners had not bargaining power regarding the provisions in the Homeowner Manual and Limited warranty since they allegedly were just handed the document and asked to acknowledge receipt of such, which CalAtlantic cannot provide occurred.

2. OPPRESSIVE AND ONE-SIDED TERMS

The arbitration provisions within the Limited Warranty are similar to the ones found in the Purchase Contract; however, the Limited Warranty contains additional one-sided terms. Section D of the Limited Warranty lists what is not covered "under this Agreement." This list includes: (1) Consequential damages including but not limited to: cost of shelter, transportation, food, moving, storage and lost wages or other incidental expenses related to relocating during repairs (2) violation of applicable building codes or ordinances that do not result in a defect otherwise covered under this warranty."

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Section E.5 describes how homeowners are to make a warranty claim. After contacting the builder with the request, homeowners must send a Request for Mediation to Columbia National on the form provided in the Warranty Booklet. On page forty-five (45) of the Limited Warranty is the Request for Mediation Form which gives the full name of Columbia National: Columbia National Risk Retention Group, Inc. This is the same entity as the Claims Administrator that was seen in the Purchase Contract which is an entity of Lennar. Once the Homeowners submit their request to Columbia National then Columbia National "will attempt to mediate the claim with the Builder" and if they are unsuccessful Columbia national "*may* refer the claim to an independent mediation association." (Emphasis added). If Columbia National and the mediator determine within 30 days that the dispute is unresolvable, either party may submit a Request for Arbitration to Columbia National at which time Columbia National will refer the matter to an independent arbitrator. These terms are clearly oppressive and one sided as the homeowner must submit the claims to an entity of Lennar in order to negotiate with the CalAtlantic and Lennar. (see Homeowner Manual and Limited Warranty attached as **Exhibit C** to CalAtlantic and Lennar's Motion to Dismiss and Compel Arbitration).

It is clear that the homeowners had no bargaining power regarding the arbitration provisions in the Homeowners Manual and the Limited Warranty that are inherently oppressive and one sided and.

D. THE ASSOCIATION WAS NOT A PARTY TO THE HOMEOWNER MANUAL AND LIMITED WARRANTY AND IS THE PLAINTIFF IN THIS CASE.

A party can compel arbitration if it is establishes the existence of a written agreement, including an arbitration provision, that purports to cover the dispute. *Am. Gen. Life & Acc. Ins.*

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Co. v. Wood, 429 F.3d 83, 87 (4th Cir. 2005). While arbitration is viewed with favor by our courts, "it is predicated on an agreement to arbitrate because parties are waiving their fundamental right to access the courts." *Wilson v. Willis*, 426 S.C. 326, 337, 827 S.E.2d 167, 173 (2019). Arbitration is only available when the parties involved contractually agree to arbitrate." *Towels v. United Health Corp.*, 338 S.C. 29, 37, 524 S.E.2d 839, 843-44 (Ct. App. 1999). The Homeowner Manual and Limited Warranty is between the homebuyer and CalAtlantic and does not include an agreement by the Association to the terms. Thus, the Association cannot be required to participate in arbitration under the sole directive of the Homeowner Manual and Limited Warranty.

E. THE CLAIMS BROUGHT BY THE ASSOCIATION DO NOT FALL UNDER THE CLAIMS FOUND IN THE THE HOMEOWNER MANUAL AND THE LIMITED WARRANTY CONTAINED THEREIN.

Even if the Court finds that the Association is subject to the arbitration provisions set out in the Homeowners Manual and Limited Warranty, the claims do not fall under claims that are covered under the Limited Warranty. Under the Covenants, the Association must maintain and keep in good condition all of the building components, including the shingles, brick, exterior siding, window trim, porches, heating and air conditioning system, flashings, all of which are defective, thus the Association brought the current lawsuit (see Affidavits of Homeowners attached as **Exhibit F**). The Association's board is currently comprised of five individuals: Jeffrey Cain, Elizabeth Smith, James Zadora, Marc Swedenburg, and Kelly Fowler. Jeffrey Cain is the President of the board and Elizabeth Smith is the treasurer. An Affidavit was also submitted by Susan Cunard, who is the wife of board member Marc Swedenburg. The Townhomes that make up the Project were sold by CalAtlantic between December 2016 and

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March 2018. The Limited Warranty provides "protection" for the following: Beginning Coverage, Coverage During Year One, Coverage During Years One and Two, and Coverage During Years One Through Ten. Since this suit was filed on June 1, 2020 and the last Townhome was sold in March 2018 the only coverage that the Limited Warranty provides is Coverage During Years One Through Ten. Coverage During Years One Through Ten states "We warrant for a period of ten years that your Home is protected against loss resulting from Major Structural Defects (as defined in Section A of this Agreement)." Section A defines the Major Structural Defect, but also give examples of "Non-Load-Bearing Components, damage to which does not constitute Major Structural Defects which include the following:

> (i) non-load-bearing partitions and walls;
> (ii) drywall;
> (iii) floor covering; sub-floor material; or wall covering material;
> (iv) ***brick, stucco, decorative cementitious finish, stone, or veneer***;
> (v) ***any type of exterior siding;***
> (vi) ***roof shingles, sheathing and tar pape***r;
> (vii) ***heating, ventilating, air-conditioning, plumbing, electrical, and mechanical systems***;
> (viii) appliances, fixtures, or items of equipment;
> (ix) ***doors, windows, trim,*** cabinets, hardware, insulation, paint, and stains; and
> (x) concrete floors in attached garages and basements that are built separately from foundation walls or other structural elements of the Home."

(*emphasis added*). Plaintiff, the Association, has brought claims against CalAtlantic, Lennar, and their subcontractors for the improper development, construction, installation and/or deigns of the heating and air condition system, ductwork, roof, membrane roofs related accessories, cementitious siding, exterior trim, deck boards, house wrap, trim, windows, doors, tile components, brick and stone veneers, framing, secondary weather barrier, paved driveway, and roads, along with other claims contained in the Complaint. (attached hereto as **Exhibit E**). It is

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apparent that almost all of the claims brought by against CalAtlantic and Lennar fall within the scope of the Ten Year warranty as set out in the list of damage which does not constitute Major Structural Defects.

Therefore, the claims brought by the Association do not constitute claims that are contained in the Limited Warranty.

IV. THE FEDERAL STANDARD FOR WAIVING YOUR CONSTITUTIONAL RIGHT TO A JURY TRIAL CANNOT BE MET IN AN ADHESION CONTRACT.

A. THE RIGHT TO A JURY TRIAL IS FUNDAMENTAL AND THERE IS A PRESUMPTION AGAINST WAIVER.

The Seventh Amendment of the United States Constitution provides "(i)n Suits at common law, where the value in controversy shall exceed twenty dollars, the right to a jury trial shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law". James Madison, the drafter of the 7th Amendment, stated in a speech to the House of Representatives on June 8, 1789 "Trial by jury cannot be considered as a natural right, but a right resulting from the social compact which regulates the action of the community, but is as essential to secure the liberty of the people as any one of the pre-existent rights of nature." Our Courts have traditionally been zealous protectors of this right stating "Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care." *Parsons v. Bedford*, 28 U.S. 433 (1830).

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B. THE FEDERAL TEST FOR WAIVING YOUR RIGHT TO A JURY TRIAL REQUIRES THE WAIVER TO BE KNOWING, VOLUNTARY AND INTENTIONAL.

While it is understood that this right, as with other constitutional rights, can be waived, the Federal Courts have been clear that a jury right is "fundamental" and that there is a presumption against waiver of jury trials. *See Aetna Insurance Co. v. Kennedy*, 301 U.S. 389 (1937) "It is elementary that the Seventh Amendment right to a jury trial is fundamental and that its protection can only be relinquished knowingly and intentionally." *National Equipment Rental, Ltd. v. Hendrix,* 565 F.2d 255 (2nd Circ. 1977). "The factors a court must consider in determining whether a contractual waiver of a right to a jury trial was entered into knowingly and voluntarily include: 1) the negotiability of contract terms and negotiations between the parties concerning the waiver provision; 2) the conspicuousness of the waiver provision in the contract; 3) the relative bargaining power of the parties; and 4) the business acumen of the party opposing the waiver." *See Morgan Guar. Trust Co., v. Crane,* 36 F. Supp. 2d 602 (S.D.N.Y 1999).

C. THE ARBITRATION PROVISIONS WERE NON-NEGOTIABLE SINCE THE COVENANTS WERE SIGNED UNDER CALATLANTIC'S CONTROL AND THE PURCHASE CONTRACT AND HOMEOWNER MANUAL WERE FORM PURCHASE AGREEMENTS.

The arbitration provisions at hand constitute a jury trial waiver as it takes away any right to a jury trial as guaranteed to them in the Seventh Amendment to the United States Constitution and by Article 1 Section 14 of the South Carolina Constitution.

The arbitration provisions bar the Association and the individual homeowners from ever being able to sue CalAtlantic and Lennar in court, which is a contractual jury trial waiver. None of the multiple arbitration provisions were negotiated by the Association or the individual

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homeowners as they were placed in the Covenants at a time where CalAtlantic's interest were in conflict and they were placed into form agreements presented to the individual homeowners. *See Dreiling v. Peugot Motors of America*, 539 F.Supp. 402 (D. Col. 1982) (the court refused to enforce a waiver in part because it was contained in a form contract drafted by the party seeking to enforce.)

D. ARBITRATION PROVISIONS WOULD NOT CONSTITUTE A VALID JURY TRIAL WAIVER UNDER FEDERAL LAW.

The last two factors, relative bargaining power of the parties and sophistication of the parties, are often considered together. Unlike a typical home purchaser, the CalAtlantic and Lennar are sophisticated business entities which construct and sell thousands of houses ever year and which ave attorneys who draft the form documents used for every purchase. The contracts are not negotiable. Furthermore, the Association had no bargaining power when the Covenants were signed since CalAtlantic was in control of the Association.

The Association had no bargaining power and were not savvy and resource- rich business owners like both CalAtlantic and Lennar. CalAtlantic knew exactly what it was doing with this arbitration provision and having the Association waive rights to a jury trial.

CONCLUSION

In conclusion, this Court should deny CalAtlantic and Lennar's Motion to Dismiss and Compel arbitration given that CalAtlantic is no longer entitled to compel arbitration; and even if it were, this Court should refuse to enforce the unilaterally inserted and unconscionable provisions in the Covenants, Purchase Contract, Homeowner Manual, and Limited Warranty,

three of which the Association is not a party, that strips the Association of the substantial rights and remedies and results in a stacked process.

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON WHITESIDES PARK TOWNHOMES PROPERTY OWNERS ASSOCIATION, INC. Plaintiff, vs. CALATLANTIC GROUP, INC. F/K/A THE RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES; LENNAR CAROLINAS, LLC; SOUTHEND EXTERIORS, INC.; ALPHA OMEGA CONSTRUCTION GROUP, INC.; FOGEL SERVICES, INC. Defendants.	IN THE COURT OF COMMON PLEAS 2020-CP-10-2398 **PLAINTIFF'S OBJECTIONS TO CALATLANTIC GROUP, INC. F/K/A THE RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES AND LENNAR CAROLINAS, LLC'S DECLARATION OF TRACEY ETHRIDGE**

Plaintiff Whitesides Park Townhomes Property Owners Association, Inc. (hereinafter "Plaintiff"), hereby submit the following objections to Defendants CalAtlantic Group, Inc. f/k/a The Ryland Group, Inc. f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes and Lennar Carolinas, LLC's Declaration of Tracey Ethridge.

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Defendants' Evidence	Objections
Declaration of Tracey Ethridge	In order to be considered by the Court, pursuant to Rule 11(c) of the South Carolina Rules of Civil Procedure, "affidavits or verifications authorized or permitted under these Rules shall be written statements or declarations by a party of his attorney of record or of a witness, sworn to or affirmed before and officer authorized to administer oaths, that the affiant knows the facts stated to be true of his own knowledge …" The South Carolina Court of Appeals has found that unsworn statements are not competent evidence. *Morris v. Jensen*, 309 S.C. 153, 157, 420 S.E.2d 710, 712 (Ct. App. 1992) (*citing Lineberger v. Colonial Life & Accident Insurance Company*, 12 N.C. App. 135, 182 S.E.2d 643 (1971) (unsworn allegations not evidence); *Bertha Mineral Co. v. Buie*, 27 Ga. App. 660, 109 S.E. 539 (1921) (unsworn affidavit not evidence); *Walters v. State*, 128 Ga. App. 232, 196 S.E.2d 326 (1973) (defendant's unsworn statement not evidence)).
Declaration of Tracey Ethridge	Additionally, to the extent the testimony is lay opinion, Declarant offers speculative lay testimony here. South Carolina Rules of Evidence Rule 602 states that "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony".
Declaration of Tracey Ethridge	Lastly, no personal knowledge. Witnesses are prohibited from testifying as to matters that they lack personal knowledge, pursuant to South Carolina Rules of Evidence Rule 602.

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For the reasons set forth above, Plaintiff respectfully requests this Court to GRANT Plaintiff's Motion to Strike Defendants CalAtlantic Group, Inc. f/k/a The Ryland Group, Inc. f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes and Lennar Carolinas, LLC's Declaration of Tracey Ethridge.

BLUNDY LAW FIRM, LLC

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON WHITESIDES PARK TOWNHOMES PROPERTY OWNERS ASSOCIATION, INC. Plaintiff, vs. CALATLANTIC GROUP, INC. F/K/A THE RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES; LENNAR CAROLINAS, LLC, SOUTHEND EXTERIORS, INC., ALPHA OMEGA CONSTRUCTION GROUP, INC., AND FOGEL SERVICES INC. Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2020-CP-10-02398 **ORDER DENYING DEFENDANTS' MOTION TO DISMISS AND COMPEL ARBITRATION**

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's Attorney:	Amanda M. Blundy, Esq.
Defendants' Attorney:	Cheryl D. Shoun, Esq.
Date of Hearing:	March 22, 2021
Court Reporter:	N/A

This matter came before the Court on March 22, 2021 on Defendants CalAtlantic Group, Inc. f/k/a the Ryland Group, Inc. f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes ("CalAtlantic") and Lennar Carolinas, LLC's ("Lennar") Motion to Dismiss and Compel Arbitration, filed December 22, 2020. This Motion is disposed of without the necessity of a hearing pursuant to the Chief Justice's April 3, 2020 Order, As Amended March 4, 2021, Section (c)(4). This Motion is listed on the March 22, 2021 Charleston County Motions Roster published February 22, 2021. The Defendants filed their Motion and Memorandum in Support on December 22, 2020.

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The Plaintiff filed its Memorandum in Opposition on March 22, 2021. For the following reasons, the Defendants' Motion to Compel Arbitration is heard and respectfully Denied.

PROCEDURAL HISTORY

This case arises out of alleged deficiencies in the design, development, and construction of Whitesides Park Townhomes (hereinafter referred to as "the Project"), which is comprised of four (4) buildings containing thirteen (13) townhomes. Defendant CalAtlantic, along with its subcontractors Defendants Southend Exteriors, Inc., Alpha Omega Construction Group, Inc., and Fogel Services Inc., constructed the multi-family buildings. Plaintiff Whitesides Park Townhomes Property Owners Association, Inc. ("the Association" or "the Plaintiff") filed their Summons and Complaint against Defendants CalAtlantic, Lennar, and the subcontractors on June 1, 2020.[1]

The Plaintiff Association was created pursuant to a Declaration of Covenants, Conditions, Restrictions and Easements for Whitesides Park (the "Covenants") on September 8, 2016. The Covenants were drafted by Defendant CalAtlantic and executed by the same person, Don McDonough, as Operational Vice President of Defendant CalAtlantic, and as President of the Association, on behalf of both the Declarant, Defendant CalAtlantic, and Association. See Covenants at 45-46. The Covenants contain an arbitration provision, which sets forth specific claims that are exempt from arbitration. Id. at 34-35.

The fist townhome was sold on December 15, 2016. The remaining townhomes were sold subsequently. The individual townhome owners entered into Purchase Contracts with Defendant CalAtlantic at the time of purchase. The individual townhome owners also received the

[1] The Plaintiff brought suit against the Defendants alleging developer liability, breach of fiduciary duties, along with claims of negligence, breach of implied warranties, and unfair trade practices due to improper installation and/or designs of the heating and air condition system, ductwork, roof, membrane roofs related accessories, cementitious siding, exterior trim, deck boards, house wrap, trim, windows, doors, tile components, brick and stone veneers, framing, secondary weather barrier, paved driveway, and roads.

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Homeowner's Limited Warranty & Maintenance Manual, which included the New Home Warranty Program Insured Limited Warranty.

The Defendants contend that the Plaintiff must submit to binding arbitration pursuant to arbitration provisions contained in the Covenants, the Purchase Contracts, the Homeowner's Limited Warranty & Maintenance Manual, and the New Home Warranty Program Insured Limited Warranty. For the following reasons, the Defendants' Motion to Compel Arbitration is heard and respectfully Denied.

CONCLUSION OF LAW

Both federal law and South Carolina law favor the resolution of disputes through arbitration. See Landers v. Fed. Deposit Ins. Corp., 402 S.C. 100, 109, 739, S.E.2d 209, 213 (2013); see also Heffner v. Destiny, Inc., 321 S.C. 536, 471 S.E.2d 135 (1995); see also O'Neil v. Hilton Head Hosp., 115 F.3d 272, 273 (4th Cir. 1997). Where parties contractually agreed to arbitrate a dispute, the court must compel the parties to submit the dispute to arbitration for resolution. See 9 U.S.C. § 2; see also S.C. Code Ann. §§ 15-48-20 & -180; see also Volt Info. Sciences, Inc. v. Bd. of Trustees of Leland Stanford Junior Univ., 489 U.S. 468, 478 (1989).

"Although arbitration is viewed favorably by the courts, it is predicated on an agreement to arbitrate because parties are waiving their fundamental right to access to the courts." Wilson v. Willis, 426 S.C. 326, 337, 827 S.E.2d 167, 173 (2019) (citing E.E.O.C. v. Waffle House, Inc., 534 U.S. 279, 294, 122 S.Ct. 754, 151 L.Ed.2d 755 (2002) (recognizing that arbitration "is a matter of consent, not coercion"). "Even though arbitration has a favored place, there still must be an underlying agreement between the parties to arbitrate." Id. (citing Arrants v. Buck, 130 F.3d 636, 640 (4th Cir. 1997)); see also 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

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to arbitrate any dispute which he has not agreed to submit."). Accordingly, arbitration will be denied if a court determines no agreement to arbitrate existed. See S.C. Code Ann § 15-48-20(a).

"[T]he trial court should determine the threshold validity of the arbitration agreement." Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 23, 644 S.E.2d 663, 667 (2007); see also Zabinsky, 346 S.C. at 596, 553 S.E.2d at 118 ("The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise.").

I. Defendants are not entitled to compel arbitration under the arbitration provisions in the Covenants because the Covenants are unconscionable.

A party may effectively challenge the arbitrability of a given claim based upon general contract defenses including fraud, duress, and unconscionability. See Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 539, 542 S.E.2d 360, 363-64 (2001); see also Doe v. TCSC, LLC, 430 S.C. 602, 611, 846 S.E.2d 874, 878 (Ct. App. 2020). In South Carolina, an unconscionable provision in a contract is unenforceable. Unconscionability is defined as "the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." Simpson v. MSA of Myrtle Beach, 373 S.C. 14, 25 644 S.E.2d 663, 668-69 (2007); see also Doe, 430 S.C. at 612, 846 S.E.2d at 879.

"While we analyze both prongs, they invite similar proof and often overlap, and 'if more of one [prong] is present, then less of the other is required.'" Doe, 430 S.C. at 612, 846 S.E.2d at 879 (citing Farnsworth on Contracts § 29.4 at 4-212 (2020-1 Supp.) and Corbin on Contracts § 29.4 at 388 (2002 ed.) (noting "most cases do not fall neatly" into categorical boxes). "Unconscionability is gauged at the time the contract was made." Id. "If a court as a matter of law finds any clause of a contract to have been unconscionable at the time it was made, the court may

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refuse to enforce the unconscionable clause, or so limit its application so as to avoid any unconscionable result." Id.

When the Association was created, and at the time the Covenants were executed, Don McDonough was acting as both the Operational Vice President of CalAtlantic, and as President of the Association, and Mr. McDonough executed the Covenants on behalf of both Defendant CalAtlantic, and the Association. See Covenants at 45-46. A property owners' association lacks independent capacity during the period that the developer-controlled board is in place. Magnolia n. Prop. Owners' Ass'n, Inc. v. Heritage Communities, Inc., 397 S.C. 348, 372, 725 S.E.2d 112,125 (Ct. App. 2012).

The unilateral insertion of an arbitration provision in the Covenants while the Association was solely under Defendant CalAtlantic's control confirms the lack of an underlying agreement between the parties to arbitrate and substantiates that the arbitration provision is therefore unenforceable. 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.").

That the Covenants were executed by Mr. McDonough on behalf of both the Defendant and the Association as both the Operational Vice President of CalAtlantic, and as President of the Association is a clear conflict of interest, and the transaction between the Defendant and the Association was not arms-length.

Moreover, the Association had no bargaining power when the Covenants were signed as the Association was under the sole control of the Defendant CalAtlantic, and the Covenants were executed by Mr. McDonough on behalf of both parties. The Covenants contain a one-sided provisions which benefits Defendant CalAtlantic and restricts the rights of the Association, and

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they were offered in a take-it-or-leave it document in which the Association had no input or bargaining power. As the Association never voluntarily agreed to arbitrate, and no valid agreement existed, the Covenants cannot be enforced. The Association lacked a meaningful choice due to the one-sided provisions of the Covenants, as the provisions were introduced and executed by the same person, Don McDonough. Based on the foregoing, the Court finds the arbitration provision contained in the Covenants unconscionable, and declines to enforce the provision against the Plaintiff.

Accordingly, for this reason, the Defendants' Motion to Compel Arbitration is heard and respectfully Denied.

II. Defendants are not entitled to compel arbitration under the arbitration provisions in the Purchase Contract and Homeowner's Limited Warranty & Maintenance Manual because the Association is not a party to those documents, and the individual homeowners are not the plaintiffs in this action.

A party may only compel arbitration if it establishes the existence of a written agreement, including an arbitration provision, that purports to cover the dispute. Am. Gen. Life & Acc. Ins. Co. v. Wood, 429 F.3d 83, 87 (4th Cir. 2005). Arbitration is only available when the parties involved contractually agree to arbitrate. Towels v. United Health Corp., 338 S.C. 29, 37, 524 S.E.2d 839, 843-44 (Ct. App. 1999).

The Defendants assert that the Association is compelled to arbitrate its claims because the individual homeowners entered into Purchase Contracts and Limited Warranty & Maintenance Manuals that contained arbitration provisions. The Defendants cannot compel the Association to arbitrate pursuant to the arbitration provisions contained in the Purchase Contract or Limited Warranty & Maintenance Manual because the individual homeowners are not the plaintiffs in this action and are not suing for damages associated with their individual units. Rather, the Plaintiff's causes of action are brought by the Association under their duty to maintain and keep in good

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condition the common areas, and allege defects against the Defendants for the common areas of the property, not for each individual unit.[2] The relevant inquiry is not the arbitrability of each individual homeowner's claims against the Defendants. Rather, it is the arbitrability of the Association's claims regarding alleged defects in the common areas against the Defendants.

Therefore, in light of the foregoing, the Court finds that the Association did not contractually agree to the arbitration provisions contained in the Purchase Contract or the Homeowner's Limited Warranty & Maintenance Manual, and did not contractually agree to arbitrate in the Purchase Contract or Homeowner's Limited Warranty & Maintenance Manual. Therefore, any assertion that the Association is bound to the arbitration provisions in these documents is without merit.

Accordingly, for this reason, the Defendants' Motion to Compel Arbitration is heard and respectfully Denied.

CONCLUSION

For the foregoing reasons, the Defendants' Motion to Compel Arbitration is heard and respectfully Denied.

AND IT IS SO ORDERED.

_____
Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

May _____, 2021
Charleston, South Carolina

[2] Section 5.2 of Article V of the Covenants defines the common areas that the Association is responsible for maintaining. These areas include (1) all common areas, including the open space easement; (2) exterior maintenance of all dwellings including, but not limited to painting, repairing, replacing and caring for the following: roofs (including the roofs joists and trusses, crossbeams, roof decking and underlaying, and shingles or other covering and surface materials); exterior walls and surfaces, including the brick, siding, or other building material forming the exterior walls of any dwelling and/or garage; (3) exterior stoops, landings, railings and steps; and (3) all walkways, driveways, and other paved areas. See Covenants at Article V, Section 5.2.

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Charleston Common Pleas

Case Caption: Whitesides Park Townhomes Property Owners Association Inc VS Calatlantic Group Inc , defendant, et al

Case Number: 2020CP1002398

Type: Order/Other

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Whitesides Park Townhomes Property Owners Association, Inc., Plaintiff, vs. CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes; Lennar Carolinas, LLC, Southend Exteriors, Inc., Alpha Omega Construction Group, Inc., Fogel Services, Inc. Defendants.	Case No. 2020-CP-10-02398 **DEFENDANTS CALATLANTIC GROUP, INC., F/K/A THE RYLAND GROUP, INC., F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES AND LENNAR CAROLINAS, LLC'S MOTION TO ALTER OR AMEND**

Defendants, CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes, and Lennar Carolinas, LLC (hereinafter, collectively "Defendants"), by and through their undersigned counsel, respectfully moves the Court, pursuant to Rules 52(b) and 59(e), SCRCP, to reconsider, alter or amend its judgment entered on May 7, 2021, denying Defendants' Motion to Dismiss and Compel Arbitration (the "Order"). Defendants base this Motion on the following grounds.

1. The arbitration provisions in the Covenants are not unconscionable. As noted by the Court, a finding of unconscionability requires both "the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." Order at 4 (citing *Simpson v. MSA of Myrtle Beach*, 373 S.C. 14, 25, 644 S.E.2d 663, 668-69 (2007). While the Court found the arbitration provisions in the Covenants to be one-sided, it did not hold the provisions were

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so oppressive that no reasonable person would make them and no fair and honest person would accept them, as required to find the provisions unconscionable. *See Brown v. Green Tree Services, LLC*, 585 F.Supp.2d 770 (D.S.C. 2008) ("Unconscionability is a narrow doctrine . . . and the inequality must be so gross as to shock the conscience.") (citation omitted); *Marzulli v. Tenet South Carolina, Inc.*, No. 2015-002363, 2018 WL 1531507, at *3 (S.C. Ct. App. Mar. 28, 2018) (explaining that unconscionability is a two-part test and both prongs must be satisfied).

2. The Covenants' arbitration provisions cannot be unconscionable simply because "the provisions were introduced and executed by the same person." Order at 6. If that were true, the Covenants, in their entirety, would be unconscionable. However, Whiteside's claims in this case are based upon certain of its obligations arising pursuant to the Covenants, which obligations it claims to be valid and enforceable against it. Compl. at ¶ 4. If the Covenants are unconscionable, and thus unenforceable, Whitesides' claims fail as a matter of law. Moreover, Whitesides cannot bring claims based upon the Covenants, while simultaneously trying to avoid the Covenants' arbitration clause. *See, e.g.*, *Osborne v. Marina Inn at Grande Dunes, LLC*, No. 4:08-cv-0490, 2009 WL 3152044, at *9 (D.S.C. Sept. 23, 2009).

3. The Covenants' arbitration provisions cannot be unconscionable simply because they were executed by the developer on behalf of both parties. Indeed, it is commonplace for covenants, conditions, and restrictions ("CC&Rs") to be created and recorded by the developer, and for the property owners' association ("POA") to be developer-controlled for a period of time. Thus, the Court's ruling effectively precludes the inclusion of an arbitration provision in declarant CC&Rs, and calls into question the

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validity and enforceability of rights and obligations created pursuant to declarant CC&Rs. Courts that have recently considered this issue have found such arbitration provisions to be enforceable. *See Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC*, 55 Cal. 4th 223, 282 P.3d 1217 (2012) (defendant developer who recorded the CC&Rs could enforce arbitration provision in those CC&Rs in construction defect action filed against the developer by a condominium association governed by those CC&Rs, even though the association did not exist as a separate entity when the CC&Rs were drafted and recorded).

4. The Covenants, including the arbitration provisions, are valid and enforceable because they comply with the South Carolina Homeowners Association Act, S.C. Code Ann. §§ 27-30-110, *et seq*., which specifically envisions that an HOA will be created by the declarant pursuant to governing documents, which also set forth the rights of the declarant. To be enforceable, such governing documents simply must be recorded. S.C. Code Ann. § 27-30-130.

5. The Covenants' arbitration provisions are not one-sided; indeed, they apply equally to Defendants, as Declarant, and Whitesides, as the POA. With certain specifically limited, enumerated exceptions, all claims are subject to mandatory arbitration, without regard to whether they are brought by the Declarant or the POA. Such provisions provide an adequate remedy, and, in the best interests of all parties, are intended to encourage the amicable resolution of disputes and to avoid the costs of litigation.

6. The arbitration provisions are conspicuously stated in the Covenants, which are recorded and run with the land. *See Hayslip v. U.S. Home Corp.*, 276 So.3d 109, 115

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(Fla. 2d DCA 2019) (arbitration provision in recorded instrument touches and concerns the land). *Cf. J&JB Timberlands, LLC v. Woolsey Energy II, LLC*, No. 14-cv-1318-SMY-RJD, 2017 WL 396174, at *3-4 (S.D. Ill. Jan. 30, 2017) (arbitration provision in deed touches and concerns the land and is binding upon successor in interest); *Cason v. Conoco Pipeline Co.*, 280 F.Supp.2d 1309, 1317-20 (N.D. Okla. 2003) (arbitration provision in easement touches and concerns the land and is binding upon assignee). The Title to Real Estate pertaining to the Property also expressly states that such Title is subject to the Covenants. Each property owner, and thus Whitesides, either expressly or implicitly, acknowledged and consented to the Covenants, including the arbitration provisions, and there is no surprise to the property owners or Whitesides that such disputes would be arbitrated. Each property owner, and thus Whitesides, had a choice whether to buy property governed by such Covenants, pursuant to which they took title, and in doing so voluntarily agreed to the provisions therein.

7. The Purchase Agreement, Addendum, Manual, and Limited Warranty (the "Purchase Documents") compel arbitration of Whitesides' claims. Although the individual property owners are not named plaintiffs, Whitesides admits that it is comprised of individual property owners and states in its Complaint that the claims therein were assigned to it by the individual property owners. *See* Compl. at ¶ 5 ("[Whitesides] is also charged with pursuing claims enumerated hereafter by virtue of having been assigned individual claims by townhome owners at this project."); Pl.'s Opp. to Mot. at 11 (Whitesides is "comprised of homeowners"). *Cf. Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 844 S.E.2d 66 (Ct. App. 2020) (arbitration provision in original purchase agreement binding upon successor in interest).

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8. Whitesides' claims are not limited to "alleged defects in the common areas," Order at 6-7, and they clearly encompass claims of the individual property owners pursuant to the Purchase Documents. Specifically, Whitesides seeks declarations from the Court pertaining to provisions in "the Governing Documents and other transaction documents," and seeks damages unrelated to common area elements. *See e.g.*, Compl. at ¶ 57 (claiming damages "in order to renovate, correct, repair and restore the townhomes, buildings, building components, and common areas"); Compl. at ¶ 35 (seeking damages to "reconstruct major portions of the townhomes," and for the "loss of use, enjoyment and depreciations of the value of their property"); Compl. at ¶¶ 40-42 (arguing the warranty limitations are unconscionable); Compl. at ¶ 31 (arguing "the Governing Documents and other transaction documents" unduly restrict the remedies of both "the Plaintiff and owners").

9. The mandatory arbitration provisions of the Purchase Documents are expressly binding upon Whitesides, as the assignee of the individual property owners' claims.[1] *See, e.g.*, Defs. Mot. to Dismiss and Compel Arbitration at Ex. B pp. 93-95. *See also Sanders v. Savannah Hwy. Auto. Co.*, 432 S.C. 328, 333, 852 S.E.2d 744, 746 (Ct.

[1] All individual property owners entered into and received copies of the Purchase Documents. In its Motion to Dismiss and Compel Arbitration, Defendants attached representative copies of the Purchase Documents. They also submitted the Declaration of Tracey Ethridge, wherein Ms. Ethridge attested that not all purchase documents could be located, but that the copies attached were representative and it was the strict requirement and longstanding practice of Defendants for all owners to acknowledge receipt of such Purchase Documents upon closing. Since the filing of Defendants' motion and submission of Ms. Ethridge's declaration, Defendants have been able to locate copies of all remaining Purchase Documents for the Property. Copies of these additional Purchase Documents are attached hereto as Exhibit "A." The Supplemental Declaration of Tracey Ethridge is attached hereto as Exhibit "B." The Court should consider this new evidence in ruling on Defendants' Motion.

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App. 2020) (arbitration clause is binding upon an assignee). Specifically, the arbitration provisions are binding upon "any successor or assign" of the individual property owners and any representative acting on behalf of the individual property owners' rights, "including without limitation any class representative or homeowners' association." Defs. Mot. to Dismiss and Compel Arbitration at Ex. B pp. 93-95. Moreover, Whitesides is expressly "BOUND BY THE DISPUTE RESOLUTION PRCEDURES DESCRIBED THEREIN." *Id*. (emphasis original).

10. Not only is Whitesides bound by the arbitration provisions in the Purchase Documents by virtue of some or all of its claims having been assigned to it by the individual landowners, Whitesides is also bound by the arbitration provisions in the Purchase Documents based on agency principles and the fact that Whitesides is comprised of individual homeowners. The Court does not appear to have considered these facts, or the controlling law thereon, and its ruling that Whitesides is not bound by the arbitration provisions in the Purchase Documents constitutes clear error.

Based on the foregoing, Defendants respectfully submit the Court erred in its determination that the arbitration provisions in the Covenants are unconscionable and that Whitesides is not bound by the arbitration provisions in the Purchase Documents. This Motion may be further supported by the record in this case and any subsequently filed supporting memorandum. Counsel for Defendants certifies pursuant to Rule 11 of the South Carolina Rules of Civil Procedure that consultation with counsel for Plaintiff would serve no useful purpose.

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May 17, 2021

Charleston, South Carolina

Exhibit A –
Purchase Agreements for Whiteside Park Townhomes

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Community ID: 08862010000 Home Site: 0001
Lot Type Spec

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

RYLAND HOMES®

Agreement of Sale

Date: August 11, 2016

Geoffrey Smith (Mr., Mrs., or Ms.)
BUYER NAME

Lois Smith (Mr., Mrs., or Ms.)
BUYER NAME

PO Box 20458
PRESENT ADDRESS

Charleston | SC | 29413
CITY | STATE | ZIP

United States
COUNTRY

(843)853-5577
PHONE | CELL PHONE | WORK PHONE

gsmith@smithcox.com
PRIMARY EMAIL ADDRESS

Leigh Mason
SALES COUNSELOR

CalAtlantic Group, Inc.
SELLER

216 Seven Farms Drive, Suite 200
ADDRESS

Charleston | SC | 29492
CITY | STATE | ZIP

08862010000/ 0001 | Whitesides Park
COMMUNITY # / HOME SITE | COMMUNITY NAME

1090 Rifle Range Road
PROPERTY ADDRESS

Mt Pleasant | | SC | 29464
CITY | COUNTY | STATE | ZIP

McCORMICK | 8102/ A
PLAN NAME | PLAN # / ELEVATION

Standard
SWING

PURCHASE PRICE

BASE PURCHASE PRICE	$459,000.00
OPTIONS AND UPGRADES	$64,060.00
HOME SITE PREMIUM	$4,000.00
OTHER	($ 5,000.00)
TOTAL PURCHASE PRICE*	$522,060.00

PAYMENTS

Deposit paid upon signing this Agreement:	$2,000.00
Balance of deposit required to be paid by _____ or pursuant to Deposit Rider.**	N/A
Estimated cash from You at Settlement (Cash to Close.)***:	$520,060.00
Estimated cash from mortgage proceeds at Settlement (the Mortgage Amount)***:	$0.00

*Total Purchase Price shown is as of the date this Agreement is signed by Buyer. Amount may change based on future option and upgrade selections, and other Change Orders.

** An additional deposit may be required at time of option selection.

***Cash to Close and Mortgage Amount are solely estimates and are subject to change. These amounts do not include Settlement Costs or financing costs.

Mortgage Application is due 5 days of the Agreement of Sale Date.

You must make option selections on the date scheduled by the Design Center

Mortgage Approval is due 30 days from the Mortgage Application.

In order to be eligible to purchase the Home, You must pre-qualify with Our affiliated mortgage company, regardless of an existing pre-approval through another lending institution or Your intention to make application to another lending institution. You expressly acknowledge and understand that the pre-qualification through Our affiliated mortgage company does not require You to ultimately finance the purchase of Your Home through Our affiliated mortgage company.

☐ Subject to Contingency ☐ Outside Realtor Participation

Estimated Date of Substantial Completion of Home: December 2016.

Buyer's Initials | Buyer's Initials

Revised 01/01/16

Community ID: **08862010000** Home Site: **0001**
Lot Type **Spec**

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DEFINITIONS

AGREEMENT: This Agreement of Sale, as modified by any executed Rider or Amendment attached hereto or referencing this Agreement of Sale.

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

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

HOME: Residential dwelling pursuant to above-referenced Plan Name to be constructed by Us.

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

HOME SITE: The lot or parcel upon which the Home has been or will be constructed.

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

MORTGAGE APPROVAL: An unconditional written commitment from a recognized lender for a mortgage loan to be secured by the Property. Our affiliated mortgage company is a recognized lender.

PROPERTY: The Home Site and the Home that We will construct on it.

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

SETTLEMENT: The time when You pay the balance of the Total Purchase Price and Your Settlement Costs, and We deliver to You a Special Warranty Deed to the Property.

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

SUBSTANTIAL COMPLETION: When an occupancy permit is issued by the local building authority or when the Home is otherwise habitable. Substantial completion may occur even though some items are not complete as long as the Home is habitable. We will complete unfinished work as soon as possible after the Settlement. It is specifically agreed upon by the parties that any "punch list" or "touch-up" items to be completed by Us will not constitute grounds for delaying acceptance of possession or for withholding or escrowing any of the funds due to Us hereunder.

WE, US, OURS, SELLER: Refers to CalAtlantic Group, Inc. d/b/a Ryland Homes.

YOU, YOUR, YOURS, BUYER: Refers to the Buyer, whether one or more persons, as named on Page 1 of this Agreement.

GENERAL TERMS

1. PURCHASE: You agree to purchase and We agree to sell the Property for the Total Purchase Price set forth above as the same may be revised by this Agreement.

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

Construction of the Home will be substantially in accordance with the Home plans and Your selected options and color choices ("Net Effect"), unless otherwise modified (i) by Us in Our discretion or (ii) requested by You and approved by Us in writing. We reserve the right to make changes in the Home blueprints as We deem reasonably appropriate, as may be necessitated by (a) material availability or (b) construction requirements in the field or if the modifications or changes are required by any controlling governmental authority. It is important for You to understand details concerning availability and location of options and standard features, the position of the Home on the Home Site, the proposed final grade, and any easements, rights-of-way or landscaping that may pertain to the Home Site. Questions that may arise about the Home or Home Site before, during or after the construction process will be answered by specific reference to the applicable blueprints, plot plan and plat of the Home Site as well as this Agreement.

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

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

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

We also have the right to:

- determine the ground elevation;
- determine the location of the Home on the Home Site and homes on neighboring home sites;

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- reverse or modify the position of the Home on the Home Site;
- substitute materials and equipment of equal quality and similar design; and
- remove trees and shrubbery from the Home Site. We will not be liable for any damage to trees or shrubbery not removed.

Since there are multiple construction techniques that are common to the homebuilding industry, We reserve the right, in Our discretion, to determine and substitute construction techniques whenever We determine appropriate.

We make no warranty, express or implied, as to Your Home conforming to any model home, floor plan, rendering or any other example that We may use in Our advertising or promotional programs, other than that which is shown on the blueprints for the plan name and plan number set forth below. All room sizes and home square footage shown on floor plans and brochures are approximate. We make no representation as to the location of cluster mailboxes, utility boxes, street lights, fire hydrants or storm drain inlets or basins. Model home furnishings, decorator wall and floor coverings, lighting and window treatments, shrubbery, landscaping, displays, advertising, and promotional materials are for display and marketing purposes only and are not part of this Agreement. You agree that all marketing materials prepared by Us are Our proprietary property and that You may not copy or use these materials for the resale of Your Home.

You also understand that all optional extras selected by You and shown on Your Net Effect Rider supersede the blueprints and will be included in Your Home.

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

Blueprints for	**McCORMICK**	**8102**		
	Plan Name	Plan Number		
Record Plat for	**Whitesides Park**	**0001**	**Buyer's Initials**	**Buyer's Initials**
	Community ID	Home Site		

You acknowledge and agree that, because of conditions that may be encountered in construction of the Home, the plans and specifications which are kept by Us may not be totally consistent with those plans and specifications which are on file with various governmental authorities, and You agree that construction of the Home need not be accomplished totally in accordance with the plans and specifications on file with such governmental authorities. We will build the Home in a workmanlike manner. You understand and agree that certain items such as brick, wood, woodgrain, carpeting, paint, cabinets, cultured marble, tile, stone, natural and man-made countertop materials and the like are subject to shading and gradation and may vary from samples, models or color charts, and from piece to piece, and We will not be liable for such variation. Further, You acknowledge that existing trees may be harmed during the construction and development process and no warranty is made that such trees will survive and We have no obligation to replace damaged or dead trees.

3. TIMING OF SUBSTANTIAL COMPLETION: You acknowledge and agree that Substantial Completion may occur before or after the Estimated Date of Substantial Completion. Notwithstanding the foregoing, Substantial Completion will occur, in any case, no later than two (2) years from the date You sign this Agreement. However, the date for Substantial Completion may be extended by acts of God or any other grounds cognizable under the State contract law where the Property is located as impossibility or frustration of performance. In such circumstances, We will not be liable for these delays in construction. It is the intention of the parties that this sale qualify for the exemption provided by 15 U.S.C. Section 1702(a)(2) and that nothing in this Agreement shall be construed or so operate as to any of Our obligations or Your rights in a manner which would render such exemption inapplicable.

4. SETTLEMENT: Settlement will take place after Substantial Completion in Charleston County at a date and time that We select. ***THE ESTIMATED DATE OF SUBSTANTIAL COMPLETION IS ONLY A GUIDELINE.*** Within 5 days of Us informing You of completion of drywall, You will inform Us of the name of the attorney who will handle the Settlement. Once the Settlement date is established, We are authorized to postpone the Settlement date for any reason. We shall have no liability to You for any postponement of the Settlement date.

If You are unable to settle on the date and time set by Us, You may be held in default of this Agreement. You may request an extension of Your Settlement date. We are not required to grant this extension; however, if an extension is granted, You agree to pay Us an extension fee equal to one-thirtieth of 1% of the Total Purchase Price for each day that Settlement is postponed with a minimum extension fee of $**0.00**. We will ordinarily not schedule Settlement on the last day of the month. The extension fee must be paid at the time the request is granted. Payment of any extension fee must be made in the manner determined by Us.

At Settlement, all amounts due from You must be paid by wire transfer.

At Settlement, We will pay the Property Charges apportioned to the Property prior to the Settlement date. Except if otherwise provided on a Rider, You will pay all other Settlement Costs, which include all Property Charges apportioned to the Property after the Settlement date. Notwithstanding the foregoing, We will pay the deed stamps (fees based on consideration) on the deed of conveyance, if such stamps are customarily paid by sellers in the County in which the Property is located.

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

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

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

Buyer's Initials Buyer's Initials

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

If You default under this Agreement, We may elect to terminate this Agreement. If You default under this Agreement and We terminate this Agreement, You shall lose any and all rights under this Agreement and all deposits and monies paid by You hereunder may be retained by or for the account of Us as agreed upon liquidated damages, consideration for the execution of this Agreement and in full settlement of any claims, whereupon the parties shall be relieved of all obligations under this Agreement. The parties agree that this provision is not intended as a penalty or forfeiture and that Our actual damages in the event of a default by You would be extremely difficult or impossible to determine. Therefore, by signing this Agreement, the parties acknowledge that the amount(s) paid or agreed to be paid by You as of the date of such default, with interest accrued thereon (if applicable), is agreed upon as the parties' reasonable estimate of Our liquidated damages in the event of a breach of this Agreement by You. If Seller defaults in the performance of this Agreement, Your remedies are limited to cancellation of this Agreement and return of Your Deposit or actual damages. Notwithstanding the foregoing, if We fail to achieve Substantial Completion within two (2) years of the date You sign this Agreement, as extended pursuant to paragraph 3 above, You will be entitled to all remedies available to You under applicable law and in equity.

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

- We determine that Your Mortgage Approval (a) does not meet the requirements of this Agreement, (b) was not obtained within the required time, or (c) is conditional or non-binding; or
- We are unable to obtain all necessary public and private approvals and permits within a reasonable time.

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

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

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

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

10. INDOOR AIR QUALITY: Residential construction methods cannot keep out all indoor air contaminants. Contaminants such as pollen, dust mites, mold and other organics are a normal part of a residential home's indoor air environment. Maintaining indoor air quality after Settlement is Your responsibility and requires regular cleaning, maintenance and timely repair of the Home. If excessive moisture is present in Your Home, You should immediately remove the moisture and repair the source of the moisture. We will not be responsible for damage to Your Home from failure to adequately and timely clean, maintain and repair Your Home. You agree that Your sole remedy for damages caused by mold, other fungi or other indoor air contaminants shall be the remedy set forth in the warranty documents provided to You.

11. MEGAN'S LAW: You are advised that We make no representation regarding the presence or absence of any convicted sex offenders in the community in which You are purchasing. You are hereby notified that if such information is material to Your decision to purchase a home, You should exercise whatever due diligence You deem necessary in this regard to obtain information regarding convicted sex offenders from local law enforcement agencies.

12. PATRIOT ACT: Federal law requires that U.S. Entities block assets and not transact with persons and entities whose names appear on a governmentally prepared list. Accordingly, Your name will be checked against this list, and You agree to provide Us acceptable identification. If Your name matches the list, the transaction will be suspended and We will file all governmentally required reports.

13. ARBITRATION: ANY CONTROVERSY, CLAIM OR DISPUTE ARISING OUT OF OR IN ANY WAY RELATING TO (A) THIS AGREEMENT, (B) THE PROPERTY, (C) YOUR PURCHASE OF THE PROPERTY, (D) OUR CONSTRUCTION OF THE HOME, OR (E) ANY PERSONAL INJURY OR PROPERTY DAMAGE THAT YOU ALLEGE TO HAVE SUSTAINED ON THE PROPERTY, SHALL FIRST BE SUBMITTED TO MEDIATION AND, IF NOT SETTLED DURING MEDIATION, SHALL BE RESOLVED BY BINDING ARBITRATION UNDER THE FEDERAL ARBITRATION ACT OR SIMILAR STATE STATUTE, AND NOT BY A COURT OF LAW.

THE MEDIATION AND THE ARBITRATION SHALL BE CONDUCTED BY THE AMERICAN ARBITRATION ASSOCIATION (AAA) UNDER THE AAA CONSTRUCTION INDUSTRY ARBITRATION RULES AND MEDIATION PROCEDURES UNLESS THE PARTIES AGREE OTHERWISE. THE DECISION OF THE ARBITRATOR SHALL BE BASED ON APPLICABLE LAW AND BE FINAL AND BINDING ON YOU AND US AND JUDGMENT UPON THE AWARD MAY BE ENFORCED IN ANY COURT HAVING JURISDICTION.

IN THE EVENT THAT THE PROVISIONS OF THIS SECTION ARE DETERMINED TO BE UNENFORCEABLE FOR ANY REASON, WE AND YOU AGREE THAT ANY TRIAL OF THE ISSUES RELATING TO THIS AGREEMENT OF SALE SHALL BE TRIED ONLY TO THE COURT AND NOT TO A JURY. YOU EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY.

Buyer's Initials Buyer's Initials

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THE RIGHTS AND OBLIGATIONS SET FORTH IN THIS SECTION SHALL SURVIVE CLOSING OR ANY EARLY TERMINATION OF THIS AGREEMENT OF SALE. WE SHALL HAVE THE OPTION TO INCLUDE OUR SUBCONTRACTORS, SUPPLIERS AND WARRANTY COMPANY AS PARTIES IN THE MEDIATION AND ARBITRATION.

14. TIME: **TIME IS OF THE ESSENCE** for the Settlement date and for all of Your obligations under this Agreement. This means that You will be in default if You fail to settle as scheduled or otherwise fail to perform within the time provided in this Agreement.

15. POSSESSION: You have the right to possession of the Property after Settlement. **NO PERSONAL POSSESSIONS WILL BE ALLOWED ON THE PROPERTY BEFORE SETTLEMENT**. We accept the risk of loss or damage to the Property until the earlier to occur of Settlement or delivery of possession to You.

16. ASSIGNMENT: You may not assign or record either this Agreement or any memorandum of this Agreement.

17. NOTICES: Any notice of Settlement shall be in writing, provided notice of postponement of Settlement may be given verbally by an authorized Ryland Homes Closing Coordinator. Notwithstanding the foregoing, all notices may be given by telephone, facsimile, mail or other means of communication, at Our option. An affidavit of one of Our representatives that such notice was given shall be conclusive evidence for purposes of proving that notice was given. Except as otherwise provided herein, any notice, demand, consent, delivery or request which is required or permitted to be given in connection with this Agreement (other than the notice of Settlement described above) shall be in writing and sent by (i) hand delivery, (ii) nationally recognized courier, (iii) facsimile or (iv) United States certified mail with return receipt requested. All notices shall only be deemed given when and received (a) if given by facsimile, when facsimile is transmitted during normal business hours (8:00 a.m. to 5:00 p.m.) and confirmation of complete receipt is received during normal business hours, (b) if hand delivered, when the copy is receipted, (c) if given by a nationally recognized courier, on the day the communication is actually received, (d) if given by certified mail, return receipt requested, postage paid, when actually received to the addresses specified herein.

All notices will be given to You at the address or by use of telephone numbers specified on the first page hereof unless We have received notice from You in writing of any change therein prior to the date notice of Settlement is given. Further, You acknowledge and agree that You shall provide to Us said written notice within five (5) business days of You changing Your address or telephone number(s).

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

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

AFTER SETTLEMENT, IT IS PROBABLE THAT PORTIONS OF THE SUBDIVISION AND OTHER HOME SITES WILL BE UNDER ACTIVE DEVELOPMENT AND CONSTRUCTION. THIS DEVELOPMENT AND CONSTRUCTION MAY CREATE ADDITIONAL TRAFFIC, NOISE AND OTHER INCONVENIENCES. PORTIONS OF THE SUBDIVISION AND HOME SITES UNDER DEVELOPMENT AND CONSTRUCTION MAY BE DANGEROUS AND YOU AGREE NOT TO ENTER THESE AREAS AND AGREE TO KEEP YOUR FAMILY AND GUESTS FROM ENTERING THESE AREAS. ANY SUCH ENTRY SHALL BE DEEMED A TRESPASS.

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

21. HOME OWNER'S WARRANTY: At Settlement, We will register Your Home with the Your New Home Warranty Program Insured Limited Warranty. You agree to accept this warranty program as the only warranty from Us. We make no warranty concerning unknown geological or environmental matters. Our home warranty provides that We will repair damage to Your Home caused by the warranted item. We are not responsible for consequential losses (such as by way of example damage to personal property) resulting from the failure of a warranted item. You acknowledge that You have received and reviewed the form of the Your New Home Warranty Program Insured Limited Warranty

22. HOMEOWNER GUIDE: You acknowledge that You have had the opportunity to review the Ryland Homes Homeowner Guide (either by viewing the contents, under Homeowner Resources on Our website (CalAtlantichomes.com) or by reviewing a hard copy of the Ryland Homes Homeowner Guide) prior to executing this Agreement. A copy of the Ryland Homes Homeowner Guide is available for review at the sales office. Although Our Homeowner Guide is available by visiting CalAtlantichomes.com, if You prefer a hard copy of the Homeowner Guide, You may obtain one by contacting Your Ryland Homes Home Sales Counselor. It is important that You are familiar with the Homeowner's Manual, which is a part of the Homeowner Guide, in order to care for Your new Home.

23. NO OTHER AGREEMENTS: We make no express or implied warranties to You except as required by law and as set forth in this Agreement and on the Riders. There are no other oral or written agreements or representations, directly or indirectly, connected with this Agreement. We make no representation concerning (a) any land adjacent to or near the Property, (b) the quality of utility service, or (c) future market conditions and their

Buyer's Initials Buyer's Initials

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resulting impact on housing prices. We will not be bound by any representations or promises made by any salesperson or other person unless they are expressly included in this Agreement on the lines below. Furthermore, We reserve the right to change Our pricing and marketing strategies as We deem necessary including but not limited to changing product offerings and design criteria within a community. **You have the right to use the closing services of an attorney chosen by You, the right to procure homeowner's insurance from a company chosen by You and, in the event You are financing the purchase of Your Home, a lender chosen by You in connection with the purchase of the Home. If You elect in Your sole discretion to (1) finance through Our affiliated mortgage company, and (2) close with a settlement provider of Our choice, We agree to make a contribution toward Approved Settlement Costs, as defined and set forth in the Financing and Approved Settlement Costs Rider.** In the event You elect to close with an attorney other than the settlement provider of Our choice, We shall have no duty or obligation relating to or arising from the issuance/delivery of a title insurance commitment and are hereby released from any and all duty and/or obligations arising therefrom, if any, or to provide such attorney or title company any document(s) whatsoever, including but not limited to, any documentation regarding Our formation, existence and/or good standing, Our authority to convey a home or the authority of any person acting on Our behalf to execute and/or deliver documents on Our behalf. By including the following terms, We are making them a part of this Agreement: **None**.

THIS SECTION SHOULD NOT BE LEFT BLANK IF YOU ARE RELYING ON ANY ORAL STATEMENTS OR PROMISES. PLEASE INSERT THE WORD "NONE" IF YOU ARE NOT RELYING ON ANY ORAL STATEMENTS.

Buyer's Initials _____ Buyer's Initials _____

24. NOTICES REGARDING SELECTIONS: We understand the importance of the decisions surrounding the home buying process, and want to offer flexibility for Our home buyers. However, in order to build Your Home on schedule, We require decisions on options, non-structural changes and color selections to be completed within the time required by this Agreement. Structural changes will not be permitted after You sign this Agreement. If Your selections are not delivered to Us within the required period, You will be in default and We will be entitled to exercise the remedies set forth in Section 6. Alternatively, at Our option, We may make standard selections and color selections on Your behalf, which selections will be binding upon You. You acknowledge:

- The design consultant's role is advisory only. All selections that You make are Your sole responsibility. It is Your responsibility to verify the accuracy of Your selections of color, location, option numbers and description.
- Colors on some products may vary slightly due to different dye lots, production runs or other factors. We are not responsible for exact color matching.
- We will order materials and construct Your Home based on Your selections from selection and order forms signed by You in connection with the purchase of Your Home. If Buyer is composed of more than one person, the selection sheet is only required to have one signature. The selections are binding on You and cannot be changed once the selection sheets are signed.
- If You default on Your Agreement, We may retain any deposits paid, including any option deposits, as liquidated damages.
- If the material You selected is not available, You agree to make a new selection without delay. We reserve the right to substitute material of like pattern, quality and design if You fail to do so upon Our request.
- All changes to inventory homes must be pre-approved in writing by Us

.

25. EARNEST MONEY & OPTION DEPOSIT: Buyer(s) understands that a minimum of $**2,000**is due at the time of contract unless otherwise stipulated on the Deposit Rider. Furthermore, the buyer(s) agree to the following deposit policy:

VA, State Bond or 100% financing requires a total of 1.5% of the Total Purchase Price as of the date of this Agreement of Sale to be collected prior to the start of construction, in addition to the Option Deposit listed below.

FHA, Conventional financing or Cash sales requires a total of 3.5% of the Total Purchase Price as of the date of this Agreement of Sale to be collected prior to the start of construction, in addition to the Option Deposit listed below.

You acknowledge and agree that if You select any Design Center option(s) for Your Home You will be required to deliver to Us an option deposit of no less than Five percent (5%) of the total price of Design Center options up to $50,000.00. For Design Center options in excess or $50,000.00 You will be required to pay Us an option deposit of fifty percent (50%) of the options over $50,000.00.

All option deposits shall be paid in full by You to Us in immediately available funds at the time Your Design Center options are selected, as evidenced by Your execution of the Agreement, Selection Sheet, Net Effect Rider and/or Change Order Rider.

Any and all option deposits and monies paid by You hereunder shall be included in the definition of "Deposit" under the Agreement of Sale.

Buyer's Initials _____ Buyer's Initials _____

26. RECEIPT OF HOME WARRANTY: You hereby acknowledge receipt of a form copy of Your New Home Warranty Program Insured Limited Warranty.

Buyer's Initials _____ Buyer's Initials _____

27. HOME INSPECTION: You may desire that a home inspector review your home prior to closing. You understand and agree that the home inspection is not a contingency to this agreement of sale.

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

Check all riders that are attached to and incorporated in this Agreement:

☑ Financing and Approved Settlement Costs Rider ☒ Acknowledgment of Agency Disclosure & Real Estate Company

Buyer's Initials _____ Buyer's Initials _____

Revised 01/01/16

Community ID: **08862010000** Home Site: **0001**
Lot Type **Spec**

☒ Homeowners' Association Rider
☐ House to Sell Rider
☐ Model Home/Inventory Home Rider
☒ Privacy Policy Notice
☒ Notice of Affiliated Business Arrangements
☐ Home Move-Up Contingency Rider
☒ Receipt for Your New Home Warranty Program Insured Limited Warranty

Rider
☒ State Rider
☐ Off-Site Land Disclosure
☐ Owner Occupancy Rider
☐ Deposit Rider
☒ Westwood Insurance Rider
☐ Other (specify) ____

29. COUNTERPARTS AND FACSIMILE SIGNATURES: This Agreement shall be validly executed when signed in counterparts. Signatures may be given via facsimile transmission and shall be deemed given as of the date and time of the transmission of this Agreement by facsimile to the other party.

30. APPLICABLE LAW: This Agreement is governed by the Laws of the State in which the Property is located. If any part of this Agreement is illegal, the rest of this Agreement will remain in full force.

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

Lois J Smith 8-11-16
BUYER SIGNATURE DATE

8/11/16
BUYER SIGNATURE DATE

WITNESS

CALATLANTIC GROUP, INC.

By: 8/12/16
AUTHORIZED OFFICER DATE

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

Mr. ☐ Ms. ☐ Mrs. ☐

Lois Jones Smith
First Name Middle Name or Initial (optional) Last Name

Mr. ☐ Ms. ☐ Mrs. ☐

Samuel Geoffrey Maxwell Smith
First Name Middle Name or Initial (optional) Last Name

Buyer's Initials Buyer's Initials

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Rider to Agreement of Sale

between Geoffrey Smith, Lois Smith, Buyer(s)

and

CalAtlantic Group, Inc., d/b/a Ryland Homes, Seller

Net Effect
as of Change Order Number 3 and Customer Selection Version 2 *Order By Category*

Whitesides Park - 08862010000

Date Printed:	August 11,2016	Prepared By:	Leigh Mason
Lot Address:	1090 Rifle Range Road Mt Pleasant, SC 29464		
Lot:	0001	Contract Date:	August 11, 2016
Plan/Elev:	McCORMICK-8102 (A)	Estimated Close:	December
Swing:	Standard		

ADM - Administrative Options

Option Number	Color/Location	Quantity	Description	Extended Price
A100525	/	1	Home energy rating assurance	$0.00

APP - Appliances

Option Number	Color/Location	Quantity	Description	Extended Price
A286075	/	1	Classic package - gas | (counter depth refrigerator) | (whirlpool)	$3,200.00

BAM - Bath Accessories & Mirrors

Option Number	Color/Location	Quantity	Description	Extended Price
A180393	/	1	Eva chrome accessories | half bath	$75.00
A180392	/	3	Eva chrome accessories | full bath	$450.00
A180855	/	1	Frameless shower door @ | luxury tile shower	$1,000.00

CAB - Cabinets

Option Number	Color/Location	Quantity	Description	Extended Price
A193600	/	8832	Cabinet upgrade | see selection sheet	$8,832.00

CTP - Countertops

Option Number	Color/Location	Quantity	Description	Extended Price
A210160	/	1	Granite level 1 in kitchen | w/ undmnt sink & upgrde faucet	$0.00
A210169	/	1	Delete granite lvl1 in kitchen | w/undmnt sink & upg faucet	($2,200.00)
A210258	/	1	Upgrade bath vanity top | large - double bowl - square	$850.00
A212440	/	1	Level 2 backsplash | back wall only	$1,200.00
A210152	/	1	Silestone level 2 in kitchen | w/ undmnt sink & upgrde faucet	$5,300.00

DWF - Drywall & Wall Finishes

Option Number	Color/Location	Quantity	Description	Extended Price
A176130	/	1	Upgrade paint / white ceilings | choice of 6 wall colors	$0.00

ELE - Electrical

Option Number	Color/Location	Quantity	Description	Extended Price
A160901	/	1	Outdoor lighting package | andover	$0.00
A160072	/	1	Non-gfi receptacle | specify location	$75.00
A161265	/	1	Catv (cable) jack	$75.00
A160807	/	2	Recessed can light | specify location	$300.00
A160921	Nickel /	2	Mini pendant lighting | westin	$300.00
A160800	/	4	12" under-cab. flourescent | light - specify location	$400.00

EMI - Entertainment/Music/Intercom

Option Number	Color/Location	Quantity	Description	Extended Price
A200155	/	1	1" prepipe for wall mounted tv	$200.00

EXT - Exterior Specialty

Option Number	Color/Location	Quantity	Description	Extended Price
A220304	/	1	Garage door opener | w/ keypad	$0.00

FLR - Flooring

Option Number	Color/Location	Quantity	Description	Extended Price
A225811	/	423	Carpet upgrade* | see selection sheet	($423.00)
A256110	/	963	Tile upgrade* | see selection sheet	$963.00
A245410	/	5213	Wood upgrade* | see selection sheet	$5,213.00

Buyer's Initials

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between Geoffrey Smith, Lois Smith, Buyer(s)

and

CalAtlantic Group, Inc., d/b/a Ryland Homes, Seller

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Whitesides Park - 08862010000

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Plan/Elev:	McCORMICK-8102 (A)	Estimated Close:	December
Swing:	Standard		

INT - Interior Finish (Doors & Trim)

Option Number	Color/Location	Quantity	Description	Extended Price
A166110	/	1	Rb3 door casing & 5 1/4" base | entire house	$0.00
A166111	/	1	Rb3 window casing w/ mdf jambs | entire house	$0.00
A167609	/	1	Schlage seville lever (bn) | (incl handleset)	$0.00
A166860	/	1	Wood rail @ opt rail locations	$0.00
A168100	/	1	Upgrade closet w/ superslide | & one stack of wire shelving	$350.00
A166125	/	1	Upgrade base to 810 | entire home	$750.00
A166060	/	1	Hardwood stairs (landing if | applicable) w/ painted riser & | stained handrail (base)	$6,550.00

MCH - HVAC/Insulation

Option Number	Color/Location	Quantity	Description	Extended Price
A150031	/	1	Programmable thermostat	$0.00

PLB - Plumbing

Option Number	Color/Location	Quantity	Description	Extended Price
A130610	/	2	Eva chrome | tub/shower faucets (per bath)	$150.00
A130600	/	4	Eva chrome | sink faucet (per bowl)	$200.00
A131606	/	1	Upgrade pedestal sink - square	$250.00
A131851	/	1	Optional tankless | rinnai rl 75 water heater	$1,450.00
A130035	/	1	Luxury tile shower | w/tile floor,dual shower heads | & corner seat	$3,300.00

STR - Structural

Option Number	Color/Location	Quantity	Description	Extended Price
A113034	/	1	Bedroom ilo flex @ ground flr	$2,250.00
A122200	/	1	Elevator	$23,000.00

WDW - Windows

Option Number	Color/Location	Quantity	Description	Extended Price
A140350	/	1	Ply gem 1500 series window | (impact glass)	$0.00

Customer Selections

CS - BATHROOM SHOWER DOOR

Value	Description
Chrome	Frameless/finish: luxury tile shower tabs and door handle; clear glass

CS - BATHROOM SHOWER W/TILE

Value	Description
White	Curb cap: cultured marble
Parkway gray grout=sterling silver	Luxury tile shower: tile and grout

CS - CABINETS

Value	Description
* package ii	Design (doors fronts all square): package
Drawers=3502sn doors=s503sn	Door hardware: kitchen = knobs and/or pulls
Yes	Glass: each side of range
Refined	Molding: design
New haven painted stone	Style/stain: kitchen style/stain
Andover white	Vanities 35": ground floor bath

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and

CalAtlantic Group, Inc., d/b/a Ryland Homes, Seller

Net Effect
as of Change Order Number 3 and Customer Selection Version 2 *Order By Category*

Whitesides Park - 08862010000

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Plan/Elev:	McCORMICK-8102 (A)	Estimated Close:	December
Swing:	Standard		

Customer Selections

CS - CABINETS

Value	Description
Andover white	Vanities 35": hall bath
New haven painted stone	Vanities 35": master bath
3503pn	Vanities: all vanities same hardware (knobs only)

CS - COUNTERTOP - BATHROOM VANITIES

Value	Description
White (matte finish)	Location/material all have eased edge: cultured marble standard unless noted
Blanco maple	Location/material all have eased edge: upgrade master bath

CS - EXTERIOR SELECTIONS

Value	Description
Yes	Brick: charlestown with ivory mortar
Yes	Coach lights: andover bronze
Yes	Shingles: architectural = weathered wood
Monteray taupe	Siding: pre-painted hardie plank
Yes	Trim: color= white
Yes	Trim: front door & shutters (per plan) = color=sealskin sw7675

CS - FLOORING

Value	Description
Running bond	Direction of tile: all tile installed
Franciscan slate desert crema 3x3 grout=natural tan install running bond	Elevator: tile
Hw=prime harvest oak blackened brown 3"	Material/style/color: bedroom - master & closet
C=fast ball bare mineral	Material/style/color: bedroom 2
C=fast ball bare mineral	Material/style/color: bedroom 3
Franciscan slate desert crema 18x18 grout=smoke grey #89	Material/style/color: covered deck
Hw=prime harvest blackened brown 3"	Material/style/color: dining
Hw=prime harvest blackened brown 3"	Material/style/color: family room
C=fast ball bare mineral	Material/style/color: flex space
T=parkway beige 12x24 grout=marble beige	Material/style/color: foyer (ground floor)
T=parkway beige 12x24 grout=marble beige	Material/style/color: garage entry with flex space
T=parkway beige 12x24 grout=marble beige	Material/style/color: hall bath
T=parkway beige 12x24 grout=marble beige	Material/style/color: hall bath 3 = ground floor
Hw=prime harvest blackened brown 3"	Material/style/color: hallway 2nd floor
Hw=prime harvest blackened brown 3"	Material/style/color: kitchen
T=parkway beige 12x24 grout=marble beige	Material/style/color: laundry
T=parkway gray 12x24 grout=sterling silver	Material/style/color: master bath
American oak clubhouse	Stain for hardwood stairs: color

Buyer's Initials Buyer's Initials

Rider to Agreement of Sale

between Geoffrey Smith, Lois Smith, Buyer(s)

and
CalAtlantic Group, Inc., d/b/a Ryland Homes, Seller

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Swing:	Standard		

Customer Selections

CS - FLOORING

Value	Description
8 lb	Type: carpet pad

CS - KITCHEN COUNTERTOPS

Value	Description
Yukon blanco / 4cm eased	Quartz: color / edge

CS - KITCHEN FAUCET

Value	Description
Stainless	W/corian/silestone/granite: brantford = finish

CS - KITCHEN SINKS

Value	Description
Is24-s one large bowl	Stainless undermounted: style

CS - LIGHTING - HOUSE

Value	Description
Nickel	Style = trinity: finish

CS - LIGHTING BATHROOMS & POWDER ROOM

Value	Description
Chrome	Style= trinity: finish

CS - PAINT SELECTIONS

Value	Description
White	Ceilings: color
White	Trim: color
Agreeable gray	Walls: color

CS - TILE BACKSPLASH

Value	Description
Running bond	Direction: direction
Rittenhouse square 3x6 white semi-gloss grout=light pewter	Field tile: style/color/grout

CS - XX RYLAND DECORATOR XX

Value	Description
Joy causey	Name: name

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Rider to Agreement of Sale

between Geoffrey Smith, Lois Smith, Buyer(s)

and

CalAtlantic Group, Inc., d/b/a Ryland Homes, Seller

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Whitesides Park - 08862010000

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Lot:	0001	Contract Date:	August 11, 2016
Plan/Elev:	McCORMICK-8102 (A)	Estimated Close:	December
Swing:	Standard		

Total Options:	**$64,060.00**
Lot Premium:	**$4,000.00**
Base Price:	**$459,000.00**
Price Adjustments:	**($5,000.00)**
Total Sales Price:	**$522,060.00**

Options Deposit: **$0.00** **Check #:** _____

Amendment to Agreement of Sale

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

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

Witness:

_____
SALES Representative/HOMESTORE Representative

_____
SALES Representative/HOMESTORE Representative

Lois J Smith 8/11/16
Buyer Date

Geoffrey Smith 8/11/16
Buyer Date

CalAtlantic Group, Inc.

By: _____ 5/12/16
Authorized Officer Date

By: _____
Broker Approval Date

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Whitesides Park
Project: 08862010000 Lot: 0001

AMENDMENT TO AGREEMENT (REVISION)
BETWEEN Geoffrey Smith, Lois Smith BUYER(S)

and

CalAtlantic Group, Inc., d/b/a Ryland Homes., SELLER
DATED 08-09-2016

The Agreement is amended as follows:

This is an inventory home that is already under construction. No structural changes can be made. Buyer allowed to make spec allowable changes only.

All of the other terms and conditions in the Agreement remain unchanged and in full-force and effect.

This Amendment is not effective until signed by the Authorized Officer of CalAtlantic Group, Inc.

IN WITNESS WHEREOF the parties, intending to be legally bound, have executed and delivered this Amendment to the Agreement as of the date indicated below.

Lois J Smith 8-11-16
Buyer Date

8/11/16
Buyer Date

CalAtlantic Group, Inc.

By: 6/12/16
Authorized Officer Date

By: _____
Broker Approval (if any) Date

Created: August 9, 2016 10:32 AM

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Whitesides Park
Project: 08862010000 Lot: 0001

AMENDMENT TO AGREEMENT (REVISION)
BETWEEN Geoffrey Smith, Lois Smith BUYER(S)

and

CalAtlantic Group, Inc., d/b/a Ryland Homes., SELLER
DATED 08-09-2016

The Agreement is amended as follows:

Deposit change

Deposit Type: Earnest Money at Contract
Deposit Amount: $2,000.00

Plan Base Price: $459,000.00
Lot Premium: $4,000.00
Options: $64,060.00
Total Incentives: $5,000.00
Total Purchase Price: $522,060.00

All of the other terms and conditions in the Agreement remain unchanged and in full-force and effect.

This Amendment is not effective until signed by the Authorized Officer of CalAtlantic Group, Inc.

IN WITNESS WHEREOF the parties, intending to be legally bound, have executed and delivered this Amendment to the Agreement as of the date indicated below.

Lois J Smith 8-11-16
Buyer Date

8/11/16
Buyer Date

CalAtlantic Group, Inc.

By: 8/12/16
Authorized Officer Date

By:
Broker Approval (if any) Date

Created: August 9, 2016 10:30 AM

C2015, CalAtlantic Group, Inc.

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Whitesides Park
Project: 08862010000 Lot: 0001

AMENDMENT TO AGREEMENT (REVISION)
BETWEEN Geoffrey Smith, Lois Smith BUYER(S)

and

CalAtlantic Group, Inc., d/b/a Ryland Homes., SELLER
DATED 08-09-2016

The Agreement is amended as follows:

Incentive Change

Type: Seller Contribution
Amount: $4,000.00
Comment: Seller to pay up to $4k in closing cost if buyer uses CalAtlantic Mortgage and closes with Dodds, Hennessy, and Stith.

Plan Base Price: $459,000.00
Lot Premium: $4,000.00
Options: $64,060.00
Total Incentives: $5,000.00
Total Purchase Price: $522,060.00

All of the other terms and conditions in the Agreement remain unchanged and in full-force and effect.

This Amendment is not effective until signed by the Authorized Officer of CalAtlantic Group, Inc.

IN WITNESS WHEREOF the parties, intending to be legally bound, have executed and delivered this Amendment to the Agreement as of the date indicated below.

Lois J Smith 8-11-16
Buyer Date

8-11-16
Buyer Date

CalAtlantic Group, Inc.

By: 8/12/16
Authorized Officer Date

By: _____
Broker Approval (if any) Date

Created: August 9, 2016 10:29 AM

C2015, CalAtlantic Group, Inc.

ELECTRONICALLY FILED - 2021 May 17 8:20 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1002398

Whitesides Park
Project: 08862010000 Lot: 0001

AMENDMENT TO AGREEMENT (REVISION)
BETWEEN Geoffrey Smith, Lois Smith BUYER(S)

and

CalAtlantic Group, Inc., d/b/a Ryland Homes., SELLER
DATED 08-08-2016

The Agreement is amended as follows:

Incentive Change

Type: Option
Amount: $5,000.00
Comment: August Incentive

Plan Base Price: $459,000.00
Lot Premium: $4,000.00
Options: $64,060.00
Total Incentives: $5,000.00
Total Purchase Price: $522,060.00

All of the other terms and conditions in the Agreement remain unchanged and in full-force and effect.

This Amendment is not effective until signed by the Authorized Officer of CalAtlantic Group, Inc.

IN WITNESS WHEREOF the parties, intending to be legally bound, have executed and delivered this Amendment to the Agreement as of the date indicated below.

Lois J Smith 8/11/16
Buyer Date

8/11/16
Buyer Date

CalAtlantic Group, Inc.

By: 8/12/16
Authorized Officer Date

By: _____
Broker Approval (if any) Date

Created: August 8, 2016 2:58 PM

C2015, CalAtlantic Group, Inc.

ELECTRONICALLY FILED - 2021 May 17 8:20 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1002398

Rider to Agreement of Sale
between Geoffrey Smith and Lois Smith Buyer(s)
and
CalAtlantic Group, Inc., d/b/a Ryland Homes, Seller

FINANCING AND APPROVED SETTLEMENT COSTS RIDER

1. **Financing And Approved Settlements Costs.**

A. As provided below, the Agreement is subject to cancellation if You fail to obtain Mortgage Approval. You agree to make a Mortgage Application by the date specified in the Agreement and to cooperate with all reasonable requests of Your recognized lender, failing which You will be in default. A variety of Mortgage loan programs are available and You may apply for any of the available programs, provided You agree You will not apply for a Mortgage loan that requires a down payment of less than 5% of the Total Purchase Price.

B. You must deliver to Us a copy of Your Mortgage Approval by the date specified within the Agreement.

C. If after You have applied and proceeded in good faith, You are unable to obtain Mortgage Approval by the date specified in the Agreement, then You may terminate the Agreement by written notice to Us within three (3) business days after the date You are required to deliver Mortgage Approval to Us. If You terminate the Agreement by written notice to Us within the specified time frame, We will refund any Deposit paid by You to Us, except for the amount of any Non-refundable Option Down-payments or other non-refundable payments, which We may retain even though You have terminated the Agreement under this provision. If You fail to timely deliver Us notice of termination in accordance with this paragraph and thereafter terminate the Agreement for failure to obtain Mortgage Approval, You will not be entitled to a refund of Your Deposit.

D. If You timely provide notice of termination of the Agreement, We have the right to attempt to obtain Mortgage Approval for You and suspend Your notice of termination. If We make this election, We will notify You within ten (10) days of Our receipt of Your notice of termination, and We will have thirty (30) days from receipt of Your notice of termination to find You Mortgage Approval that qualifies under the Agreement at prevailing rates from another lender. Upon request, You agree to cooperate with Us by promptly providing information to other lenders. If We find You Mortgage Approval, Your notice of termination will be null and void. If We are unable to find You Mortgage Approval within this thirty (30) day period, the Agreement shall terminate and We will refund You any Deposit paid by You to Us, except for any Non-refundable Option Down-payments or other non-refundable payments.

E. If You fail to deliver Us Your Mortgage Approval by the date specified in the Agreement, We may, but are not obligated to, terminate the Agreement, in which event We will refund to You any Deposit paid by You to Us, except for any Non-refundable Option Down-payments and other non-refundable payments. Nothing herein restricts our right to declare You in default if You fail to comply with the Agreement of Sale including without limitation failing to cooperate with Your lender.

F. If the Agreement is terminated for Your failure to close/settle, We will be entitled to retain Your Deposit even if Your failure to close/settle is because You cannot satisfy Your Mortgage Approval contingencies, there has been a change in circumstances and You no longer qualify for the mortgage loan, or You have not secured a Mortgage Approval.

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

H. Unpredictability exists in the building process and the completion and settlement on the Property may be delayed. Except as expressly provided in the Agreement, We are not responsible for delays in completion of the Property and delays in settlement. In no event will We accept responsibility for any expired lock-in agreements or any changes in the interest rate identified in Your Mortgage Loan with Your recognized lender, and You hereby agree that You will release Us and hold Us harmless for any such matters. If You lock in Your Mortgage Loan interest rate, You do so at Your own risk.

I. In the event You choose Our affiliated mortgage company to finance the purchase of the Property and agree to close and obtain owner's and mortgagee title insurance through a title attorney selected by Seller, We agree to pay up to $4,000, which You may use towards Approved Settlement Costs. Notwithstanding anything to the contrary herein, if You do not choose Our affiliated mortgage company to finance the purchase of the Property and do not close/settle and obtain owner's and mortgagee title insurance through a title attorney selected by Seller and the amount set forth in the previous sentence exceeds two percent (2%) of the Total Purchase Price of the Property, the amount which exceeds two percent (2%) of the Total Purchase Price of the Property shall be available to You to use towards Approved Settlement costs regardless of the recognized lender You use to finance the purchase of the Property or the attorney used to conduct settlement.

J. "Approved Settlement Costs" means: Any Settlement Costs defined in the Agreement that the recognized lender allows a seller to pay.

K. The **maximum** amount of Approved Settlement Costs that We agree to pay is the amount set forth in I above. **In the event that at the time of Settlement, the actual Approved Settlement Costs are less than the maximum, We will pay only for the actual Approved Settlement Costs incurred. Any excess shall be forfeited.** The amount that We pay will be shown as a debit to the Seller and a credit to the Buyer on the Settlement Statement.

L. You are free to select any recognized lender and attorney to conduct settlement in connection with purchase, financing and settlement on Your Home. However, You acknowledge that certain contributions to Approved Settlement Costs are only

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available if You finance through Our affiliated mortgage company and close and obtain owner's and mortgagee title insurance through a title attorney selected by Seller.

M. Except as otherwise provided above, You have agreed to pay **ALL COSTS ASSOCIATED WITH SETTLEMENT** including, but not limited to, title insurance and documentary stamps.

N. No change in Your lender, loan amount or the loan program shall be grounds to delay Settlement or create a new financing contingency.

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

☐ 3. **FHA Financing.** If the box is checked, You (either You, Buyer or purchaser) have indicated Your intention to apply for a mortgage loan insured by the Federal Housing Administration (FHA).

☐ 4. **VA Financing.** If the box is checked, You (either You, Buyer or purchaser) have indicated Your intention to apply for a mortgage loan insured by the Department of Veteran Affairs (VA).

A. All earnest money and other deposits made by You shall be deposited into a special trust account as required by 38 USC Section 3706. CALATLANTIC TITLE, INC. or an attorney or other title company selected by Us (herein after "Escrow Agent") will act as escrow agent to hold the earnest money and other deposits made by You. It is agreed by You and Us that earnest money and other deposits (hereinafter "Escrow Funds") will be held in an escrow account by Escrow Agent. The Escrow Funds will be held by the Escrow Agent until the settlement/closing of the Home under the Agreement or until the Agreement is otherwise terminated in accordance with its terms. At settlement/closing of the Home, the Escrow Funds will be credited to You on the Settlement Statement. In the event We provide written notice to Escrow Agent that You have defaulted under the Agreement or the Agreement has otherwise terminated, then Escrow Agent, without further notice, shall promptly pay the Escrow Funds to the party instructed by Us. No liability shall accrue against Escrow Agent by virtue of Escrow Agent acting in accordance with this Rider.

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

5. This Section 5 only applies if You are financing the purchase of the Home with a FHA or VA mortgage loan. It is expressly agreed that notwithstanding any other provisions of this contract, the purchaser shall not be obligated to complete the purchase of the Property described herein or incur any penalty by forfeiture of earnest money deposits or otherwise unless the purchaser has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Department of Veterans Administration, or a Direct Endorsement lender setting forth the appraised value of the property of not less than **$ 522,060.00**. The purchaser shall have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the Property. The purchaser should satisfy himself/herself that the price and condition of the Property are acceptable.

The Seller, Borrower, Real Estate Broker, or Agent involved in this loan transaction are certifying that the terms of the Agreement are true to the best of their knowledge and belief. Any other agreement entered into by any of the following parties must be fully disclosed and attached to this Agreement.

The Seller, Borrower, Real Estate Broker, or Agent, fully understand that it is a Federal crime punishable by fine or imprisonment or both to knowingly make any false statement concerning any of the above facts as applicable under the provision of Title 18, United States Code, Section 1012 and 1014.

Buyer's Signature — Date: 8-11-16

Buyer's Signature — Date: 8-11-16

Seller's Signature — Date: 8/12/16

Seller's Signature — Date

The undersigned as an authorized signatory for Escrow Agent hereby agrees to hold the earnest money and other deposits as hereinabove provided.

Authorized Signatory for _____

Date

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If FHA or VA is checked above Real Estate Broker, or Agent shall sign below:

_____

Real Estate Broker or Agent

Community ID: 08862010000 Homesite: 0001

Rider to Agreement of Sale
between Geoffrey Smith and Lois Smith , Buyer(s)
and
CalAtlantic Group, Inc., d/b/a Ryland Homes, Seller

ACKNOWLEDGEMENT OF RECEIPT OF AGENCY DISCLOSURE BROCHURE

The undersigned acknowledges receipt of the attached Agency Disclosure Brochure, promulgated by the South Carolina Department of Labor, Licensing and Regulations.

Buyer's Initials _____ Buyer's Initials _____

REAL ESTATE COMPANY RIDER

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

REAL ESTATE COMPANY:

AGENT:

ADDRESS: , , ,

PHONE:

FAX:

CO. FEDERAL TAX ID #: _____

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

In connection with this purchase, We will pay to the Real Estate Company listed above a commission of 3% of the total Home price (which includes Base Price plus Structural Options plus Lot Premium plus Design Center Options less Seller concessions), payable if and when this purchase is settled and the proceeds are paid to Us.

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

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

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

Signed this _____ day of _____, 20_____.

Buyer:_____

Buyer:_____

Real Estate Company:

By:_____
Agent/Broker

Broker's License Number:_____

Sales Agent's License Number:_____

CalAtlantic Group, Inc.

By: _____ 8/12/16
Authorized Officer

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

Signed this 11th day of August, 2016

Buyer: _____

Buyer: _____

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Project: 08862010000 Lot: 0001

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Rider to Agreement of Sale
between Geoffrey Smith and Lois Smith , Buyer(s)
and
CalAtlantic Group, Inc., d/b/a Ryland Homes, Seller

HOMEOWNERS' ASSOCIATION RIDER

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

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

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

☒ C. Rules and Regulations

☒ D. Articles of Incorporation for each Homeowners' Association

☒ E. Other (specify) $720.00 capitalization fee paid at time of closing

Your initial assessments for the Homeowners' Associations are estimated to be $ 180.00 /month. Amounts are subject to change from time to time. Please consult Your Homeowners' Association Documents for verification of this amount.

Buyer's Initials

Buyer's Initials

RYLAND 783

CUSTOMER - SALES REPRESENTATIVE CHECKLIST

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

- ❖ _____ Explanation of the exterior elevation of the home you are purchasing. Front elevation is **McCormick** . Front material **Hardi Plank** Side & Rear material **Hardi Plank**.
- ❖ _____ You have reviewed the blueprints dated **4-4-16** and all questions have been answered to Your satisfaction. You understand that Your home will be built to substantially follow the blueprints and if any discrepancies arise during construction, the blueprint will be the definitive authority, **not any model You visited** or sales brochure You may have seen or any oral representation made to You by the Ryland Homes Sales Representative. Your job specific blueprints will be reviewed at Your pre-construction meeting.
- ❖ _____ You understand Ryland Homes' elevation and color scheme policy regarding building the same elevation You purchased, as it pertains to the community You are purchasing in.
- ❖ _____ You understand standard items which have been included in Your home and have discussed optional items available to You. Further options will be made available to You at the Ryland Homes Design Center appointment.
- ❖ _____ Lighting packages vary per home type (not per community) and You understand which lighting fixtures are standard in Your home.
- ❖ _____ You understand that model homes are for display purposes only and Your home may not be built exactly as the model is demonstrated (refer to blueprints). You also understand that Ryland Homes's vendors and products may sometimes change. Ryland Homes reserves the right to substitute materials of equal quality.
- ❖ _____ Your Sales Representative has shown You the recorded plat for the community in which You are purchasing and You have walked Your specific homesite. Approximate boundaries were noted and special conditions (if any) were discussed.
- ❖ _____ Discussion of financing and qualifications to purchase this home: interest rates, monthly payments, HOA dues, PMI and property taxes. You understand that You have 5 days in which to make application for a mortgage.
- ❖ _____ Discussion of Ryland Homes's Policy on: Pre-Start Walk Through of the site, Optional Pre-Drywall Inspection (Construction will not be delayed more than 2 days), Pre- Settlement & Post Settlement Inspections, Ryland Homes Warranty Program.
- ❖ _____ **You understand that Your estimated delivery date will be set by Ryland Homes' Operations Manager and can be subject to change depending on weather or subcontractor situations. It has not been represented at contract in any way that Your delivery date is a guaranteed date. If You make plans to move without a written letter from Ryland Homes Division office stating Your exact closing date, place, and time, You do so at Your own risk. You do not hold Ryland Homes responsible for any oral representations made to You.**
- ❖ _____ Explanation of earnest money, closing attorney, inability to close and consequences. If You fail to close for any reason, except for loan denial, Ryland Homes has the right to retain Your deposit as liquidated damages or to ask for interest to be paid for any delay. Seller-paid closing costs can only be used for specific nonrecurring closing cost items. We will retain any unused seller-paid closing cost contribution.
- ❖ _____ You understand that time is of the essence and it is imperative that Ryland Homes start Your home as soon as possible and it is incumbent upon You to make Your designer selections when notified by the Design Center. Failure to do so will put You in default of Your contract and subject You to forfeiture of Your earnest money.
- ❖ _____ You have purchased an inventory home and changes to the original selections may require Your estimated delivery date to be amended by the Operations Manager.
- ❖ _____ If You are using a lender other than Our Affiliated mortgage company, You acknowledge You have been given a copy of the Outside Lender Rider and You understand all of the provisions in the rider.
- ❖ _____ Ryland Homes reserves the right to choose whether to build Your home as drawn on blueprint (garage on the right) or flipped/mirrored (garage on the left) depending on lot conditions.
- ❖ _____ Due to the possibility of theft or damage from vandalism, We will lock homes under construction at 5:00 pm daily. Due to insurance liability, all visits to the site are at Your own risk and You are to be escorted by a Ryland Homes employee. Please call and schedule an appointment with Your Construction Supervisor or Sales Representative prior to coming out to the neighborhood.
- ❖ _____ You are purchasing a home with a room (bonus or bath) over a garage and You understand there may be a temperature variance compared to the rest of Your home.
- ❖ _____ A copy of the Covenants, Conditions and Restrictions as well as any Deed Restrictions have been made available for Your review. You understand that Home Owners Association participation is mandatory.
- ❖ _____ We have discussed the Homeowner's Manual and given You a copy.
- ❖ _____ Hard Hat Policy (the wearing of hard hats is mandatory when on job site.)
- ❖ _____ There have been no representations made by any Ryland Homes employee pertaining to the future development of this community or surrounding land.
- ❖ _____ All construction meetings are to be scheduled during normal business hours, Monday through Friday 9 a.m. to 5 p.m.

Buyer: _____ Buyer: _____

Sales Rep: _____ Date: _____

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Community ID: **08862010000** Home Site:**0001**

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RYLAND

Rider to Agreement of Sale
between **Geoffrey Smith and Lois Smith** , Buyer(s)
and
CalAtlantic Group, Inc., d/b/a Ryland Homes, Seller

Purchaser Information Sheet and Authorization

Name:	Geoffrey Smith	Name:	Lois Smith

I hereby authorize Ryland Homes, its agents and assignees, to conduct a preliminarily review of my financial ability to obtain a loan to purchase the Property. I understand that this will be accomplished through Ryland Homes' use of a proprietary secure internet program licensed by Ryland Homes or one of its affiliates. This secure computer internet program runs a credit report and provides Ryland Homes a summary statement indicating whether the customer's credit is satisfactory to potentially obtain a home loan. Ryland Homes is not provided any details of your credit report as part of this proprietary program. **This preliminary review does not guarantee that I am eligible to purchase the Property or eligible for a mortgage loan to purchase the Property. This Purchaser Information Sheet and authorization is not an application for a loan and I understand Ryland Homes is not a lender. CalAtlantic Mortgage, Inc. is a lender affiliated with Ryland Homes.**

I understand I am required to complete an application for a loan in accordance with the Agreement of Sale and that I am not required to use CalAtlantic Mortgage, Inc. to obtain a loan for the purchase of the Property. I understand that I may use a mortgage company of my choice to obtain a loan to purchase the Property.

I agree to provide my lender separate authorization for credit checks, employment records, banking accounts and/or any other information which the lender may deem necessary in connection with my application for a loan. I understand that the use of a photocopy of this form may be necessary and I authorize the use and request that a photo copy be honored as an original.

Lois J Smith
Buyer's Signature — Date: 8-11-16

Buyer's Signature — Date: 8-11-16

Community ID: 08862010000 Home Site:0001

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Rider to Agreement of Sale
between Geoffrey Smith and Lois Smith , Buyer(s)
and
CalAtlantic Group, Inc., d/b/a/ Ryland Homes, Seller

Privacy Policy Notice

Purpose of this Notice.

The purpose of this Privacy Policy Notice ("Notice") is to inform Buyer(s) (herein sometimes referred to as "You") of how Seller, and CalAtlantic Group, Inc., if different than the Seller, (herein collectively sometimes referred to as "Ryland Homes", or "Us", or "We" or "Our"), protects and uses Your non-public personal information. Please read this policy carefully as it gives You important information about how Ryland Homes handles Your personal information. By entering into the Agreement of Sale, You agree that We and our affiliated companies may use Your non-public personal information as described in and in the manner provided by this Privacy Policy Notice.

Compliance with the Law.

Ryland Homes protects Your privacy in accordance with the requirements of applicable federal and state laws. These laws and regulations require that Ryland Homes provides You with a notice of our privacy policies and practices informing You of the types of information that Ryland Homes collects from You and the persons or entities to whom Your non-public personal information may be disclosed. After You are no longer a customer of Ryland Homes, we will continue to treat the non-public personal information we have about You as if You were still our customer.

Non-Public Personal Information.

In the course of Your visits to the Our website, viewing our online advertising and in Your electronic correspondence with Us whether through social media, e-mail or otherwise, You may share non-public personal information about Yourself, such as, by way of example, name, age, marital status, e-mail address, postal address, state of residence, telephone numbers, and Your online activities, such as Your website preferences, the type of device You are using when visiting this website or otherwise interacting with Us. When You visit a sales office You may share similar information with Us either by completing a registration form or through Your interaction with the Our Sales Counselor. You may also be requested to provide Us Your social security number when we preliminarily review Your mortgage loan eligibility.

All of the non-public personal information We collect from You is herein referred to as "Non-Public Personal Information".

Use of Non-Public Personal Information.

Ryland Homes may use Your Non-Public Personal Information in connection with certain aspects of our business and in managing our relationship with You.

After You execute a purchase agreement with Ryland Homes and pursuant to this Privacy Policy notice, Ryland Homes may use Your Non-Public Personal Information to

- complete Your requested home purchase including working with Your lender and settlement agent to finalize Your loan and close Your home purchase,
- keep You informed on Ryland Homes products and services and to provide You community information,
- permit third parties with whom Ryland Homes has a business relationship to provide You information on products and services we believe may be of interest to You as a home buyer or home owner,
- provide warranty service to You as a home owner,
- provide You customer satisfaction surveys,
- provide the master developer and any applicable homeowners association and/or condominium association and their agents information concerning You and Your home purchase, and
- manage Your relationship with Ryland Homes.

Ryland Homes may use Your Non-Public Personal Information in connection with the operation of our business such as by way of example in connection with financing that we seek from third parties or in connection with any potential sale, joint venture or reorganization of all or a part of our business operations.

Confidentiality.

Unless otherwise required by law, Ryland Homes treats Non-Public Personal Information as non-confidential and non-proprietary. Notwithstanding the foregoing, if You have provided us Your social security number we treat that information as confidential. If Ryland Homes is required by law to treat any of the Non-Public Personal Information as confidential, we restrict access to the Non-Public Personal Information to our employees and third parties who have a reasonable need to know that information and We maintain physical, electronic and procedural safeguards that comply with federal standards to guard Your Non-Public Personal Information. Ryland Homes does not guarantee that these procedural safeguards will be effective in all circumstances. If You believe the security of any information or data You have shared with Ryland Homes has been compromised, please inform Your sales counselor.

Ryland Homes may disclose Non-Public Personal Information about You as permitted by law for such purposes as protecting against fraud, resolving consumer disputes or inquiries, reporting to consumer reporting agencies, judicial process, or subpoena.

Affiliated Company Marketing Consent.

Buyer's Initials Buyer's Initials

Community ID: **08862010000** Home Site:**0001**

Please elect below (by checking the appropriate box and initialing where provided) whether Our affiliated companies may use Your Non-Public Personal Information to contact You after Your execution of a purchase agreement to provide You information on the products and services they offer to purchasers of Our homes, including available financing and settlement/closing services. You may change Your preference in the future by following the instructions under the heading How to Opt-Out or Change Elections. (Buyer must check box and initial).

☑ Yes, Your affiliates may use My Non-Public Personal Information to contact Me about available financing and settlement services.
Initials: LJS JMS

☐ No, Your affiliates may not use My Non-Public Personal Information to contact Me about available financing and settlement services.
Initials: _____ _____

Notwithstanding the foregoing, without Your consent, Ryland Homes may share Non-Public Personal Information with any of our affiliated companies and third parties if they are working with You to finance or close Your purchase of a home in any manner we believe is reasonable to best meet Your needs. Third parties may assist Ryland Homes in operating and improving our business and we may, without Your consent, share Your Non-Public Personal Information with these third parties as we believe is reasonable and appropriate.

Third Party "Opt-Out" Opportunity.

Ryland Homes may be approached by third party companies that have a product, service or other marketing information that we believe may be of interest to You as a home buyer or home owner. Ryland Homes may share certain Non-Public Personal Information such as Your name, address, telephone number, postal address and e-mail address in an effort to help You find these resources. These companies may include one or more telecommunications companies, gas companies and electric utility providers who serve the community, and subcontractors who have worked on Your home so that they may provide You information on extended service or warranty plans, or monitoring or maintenance services they may offer. You have the opportunity to "opt-out" of having this Non-Public Personal Information shared for marketing purposes with third parties at any time. You may opt–out by following the instructions below. Please be aware, in the event You decide to opt-out, Ryland Homes will not share Your Non-Public Personal Information with third parties so that they may market to You and as a result You will not receive any marketing information about products or services offered by or through these third parties that may be of interest to You.

California Privacy Rights.

Ryland Homes provides all of its customers a cost free method to opt-out of information sharing. If a customer opts-out, Ryland Homes will not share the customer's Non-Public Personal Information for marketing purposes. As a result of the foregoing, Ryland Homes is not obligated to provide customers who have requested such information with a list of the categories of Non-Public Personal Information shared with third parties for direct marketing purposes or the names and addresses of the third parties to whom we have shared such Non-Public Personal Information for direct marketing purposes during the preceding calendar year.

How to Opt-Out or Change Elections.

To opt-out of, or change Your elections regarding, marketing offers, contact Ryland Homes by any of the following methods:

- On the website: go to www.CalAtlantichomes.com, check the link for Privacy Policy (which may be labeled as Your Privacy Policy) and complete the opt-out/change election form by following the instructions undo the Privacy Policy Notice for Ryland Homes;
- By mail or hand delivery: check the opt-out box and complete the form at the end of this Notice, and send it to the address provided or deliver it to Your sales counselor.

You may, at any time after completing this form, change Your preference and consent elections through Ryland.com or by contacting Your Ryland Homes Sales Counselor. The policies set forth in this Notice are effective at the time of publishing, but are subject to change in order to best meet the needs of our customers and to reflect changes in local, state and federal laws.

I/We acknowledge that we have received and read this Notice.

Customer Lori J Smith

Date:_____

Customer _____

Date:_____

LJS JMS

Buyer's Initials

Buyer's Initials

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Community ID: **08862010000** Home Site:**0001**

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Opt-Out Form

To: CalAtlantic Group, Inc.

From: _____
Name(s)

_____
address

_____
address

_____
address

Check each that applies:

Third Party Marketing:

☐ (Opt-Out) Please discontinue sharing Non-Public Personal Information about me with unaffiliated third parties. I understand that Ryland Homes continues to have the right under applicable law to share Non-Public Personal Information about me with certain third parties.

☐ (If you have previously Opted-Out, and You want to therefor Opt-In, please check here) Please share my Non-Public Personal Information about me with unaffiliated third parties.

Affiliated Company Marketing (If You desire to change Your previous election, please complete as appropriate):

☐ (Opt-In) Please share my Non-Public Personal Information about me with Ryland Homes affiliated companies for marketing purposes.

☐ (Opt-Out) Please discontinue sharing my Non-Public Personal Information about me with Ryland Homes affiliated companies for marketing purposes.

Please return a copy of this Notice with Your signature below to Your Ryland Homes sales counselor or by mailing the Notice to the Contract Administrator at 216 Seven Farms Drive, Suite 200, Charleston, SC 29492.

.

Customer Lori J Smith

Date:_____

Customer _____

Date:_____

_____
Buyer's Initials

_____
Buyer's Initials

Community ID: **08862010000** Home Site: **0001**

Rider to Agreement of Sale
between Geoffrey Smith and Lois Smith , Buyer(s)
and
CalAtlantic Group, Inc., d/b/a Ryland Homes, Seller

NOTICE OF AFFILIATED BUSINESS ARRANGEMENT

CalAtlantic Mortgage, Inc.

To: **Geoffrey Smith and Lois Smith**

From: **CalAtlantic Group, Inc.**

Property: **Lot 0001, Whitesides Park / 1090 Rifle Range Road, Mt Pleasant, SC 29464**

Date: **08/11/2016**

This is to give you notice that CalAtlantic Group, Inc. has a business relationship with CalAtlantic Mortgage, Inc., Our affiliated mortgage company. Our affiliated mortgage company is wholly owned by companies that are wholly owned by CalAtlantic Group, Inc. Because of this relationship, this referral may provide CalAtlantic Group, Inc. a financial or other benefit.

Set forth below is the estimated charge or range of charges for the settlement services listed. You are NOT required to use the listed provider(s) as a condition for settlement of your loan on or purchase of the subject property. THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

Company	Fee Description	Estimated Charge
CalAtlantic Mortgage, Inc. Provides mortgage loan origination services.	Origination fees Appraisal fees Flood Certification Fee	$0 - $1,325.00 $400.00 - $900.00 $25.00 - $45.00

ACKNOWLEDGMENT

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

Buyer's Signature Date

Buyer's Signature Date

ELECTRONICALLY FILED - 2021 May 17 8:20 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1002398

Community ID: **08862010000** Home Site: **0001**

ELECTRONICALLY FILED - 2021 May 17 8:20 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1002398

Rider to Agreement of Sale

between Geoffrey Smith and Lois Smith , Buyer(s)
and
CalAtlantic Group, Inc., d/b/a Ryland Homes, Seller

NOTICE OF AFFILIATED BUSINESS ARRANGEMENT
(CALATLANTIC TITLE)

This is to give You notice that CalAtlantic Group, Inc. has a business relationship with CalAtlantic Title Charleston, LLC. ("CalAtlantic Title"). CalAtlantic Title is a limited liability company having CalAtlantic Title, Inc., an affiliate of CalAtlantic Group, Inc., and The Carolinas Title Agency of Charleston, LLC, as its equal members. Because of this relationship, this referral may provide CalAtlantic Group, Inc. a financial or other benefit. Set forth below is the estimated charge or range of charges by CalAtlantic Title for the settlement services listed. You are NOT required to use CalAtlantic Title as a condition of Your sales contract or the purchase of Your Home. THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

Provider	Settlement Service	Charge or Range of Charges
CalAtlantic Title	Owner's and Lender's Title Insurance	$3.60 per $1,000.00 of coverage for 1st $50,000.00 $3.00 per $1,000.00 of coverage over $50,000.00 up to $100,000.00 $2.10 per $1,000.00 of coverage over $100,000.00 up to $500,000.00
CalAtlantic Title	Simultaneous Issuance Fees	$100.00
Dodds & Hennessy	Attorneys' Fees	$375.00

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

Acknowledgment:

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

Lois J Smith 8/11/16
Buyer's Signature Date

Geoffrey Smith 8/11/16
Buyer's Signature Date

Community: **Whitesides Park** Home Site: **0001**

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Rider to Agreement of Sale
between Geoffrey Smith and Lois Smith Buyer(s)
and
CalAtlantic Group, Inc.d/b/a Ryland Homes, Seller

Community: **Whitesides Park**
Lot : **0001**

Buyer's Name:
Geoffrey Smith
Lois Smith

Property Address:
1090 Rifle Range Road
Mt Pleasant, SC 29464

RYLAND HOMES AND WESTWOOD INSURANCE AGENCY

In the process of Your purchasing the Home, there are needs for a variety of services including but not limited to home loans and property insurance. Seller and/or one of its affiliated companies has an agreement with Westwood Insurance Agency pursuant to which Seller may provide Your contact information and limited information about Your Home purchase to Westwood Insurance Agency so that they may contact You and provide You information concerning property insurance available through Westwood Insurance Agency. The agreement with Westwood Insurance Agency obligates Westwood Insurance Agency to maintain the confidentiality of Your non-public personal information. Seller or one of its affiliates may receive compensation from Westwood Insurance Agency. Seller and its affiliated companies are not affiliated with Westwood Insurance Agency and makes no representation or warranty concerning the services or products available through Westwood Insurance Agency.

In order to comply with Our policy regarding Your privacy, We will share information about You with Westwood Insurance Agency in order to inform You of opportunities that may be of interest to You unless You let Us know below that You prefer that We do not share such information. By signing below, You give permission for Westwood Insurance Agency to contact You whether or not Your telephone number(s) are listed on the Federal Do Not Call list.

Do Not Allow Information Sharing With Westwood Insurance Agency: If You check the box below and sign this form below We will not share nonpublic personal information about You with Westwood Insurance Agency. In the unlikely event that an error occurs or Seller inadvertently fails to advise Westwood Insurance Agency of Your desire to not be contacted, please inform Us of Your declination.

☐ Do not share personal information with Westwood Insurance Agency.

We will maintain the original of this document, or a true and correct copy. You are entitled to a copy of this document upon request, but You may want to make a copy of the document for Your own records.

The undersigned hereby sign this request on the date written.

Lois J Smith
Signature
Lois Smith
Print Name

G Smith
Signature
Geoffrey Smith
Print Name

Date: _____

Westwood Insurance Telephone: 888-822-5396

Community ID: 08862010000 Homesite: 0001

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Rider to Agreement of Sale
between Geoffrey Smith and Lois Smith , Buyer(s)
and
CalAtlantic Group, Inc., d/b/a Ryland Homes, Seller

STATE RIDER
(South Carolina)

1. **Notices Regarding Selections.**

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

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

C. We will order materials and construct Your Home based on Your selections on the Customer Selected Option Sheet and all selection and order forms signed by You in connection with the purchase of Your Home. The selections are binding on You and cannot be changed.

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

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

2. **Trusses.**

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

3. **Insulation.**

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

AREAS OF HOME	TYPE OF INSULATION	THICKNESS	R-VALUE
Top Floor Ceilings - Flat	Blown Loose Fill Fiber Glass	12.4	R-30
Top Floor Ceilings - Other than Flat[1]	Fiberglass Batt	10.0	R-30
Exterior Walls	Fiberglass Batt	3½	R-13
Floors Over Unconditioned Space[2]	Fiberglass Batt	6.25	R-19
Floors Over Outdoor or Open Space	Fiberglass Batt	6.25	R-19
Rim or Band Joist Areas	Fiberglass Batt	3½	R-13
Conditioned Crawl Space Walls	N/A	N/A	N/A
Conditioned Basement Walls	N/A	N/A	N/A

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

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

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

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

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

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

Buyer's Initials Buyer's Initials

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State Rider (continued)

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

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

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

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

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

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

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

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

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

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

5. You acknowledge that (i) the Property is within an area of the community You are buying a Home in (the "Community") which is not subdivided as of the date hereof, (ii) We are not obligated to provide a metes and bounds description of the Property and (iii) You are satisfied with describing the Property by the sketch attached to the Agreement of Sale as Exhibit _____. You further acknowledge that the proposed site plan for the Community as of the date hereof (the "Site Plan") is subject to the City/County of _____ review and approval and such approval may be contingent upon Us modifying the Site Plan (by way of example but not limitation: modifying the size, configuration, dimensions and/or location of the Property depicted on Exhibit _____, amenities, green space, entrance or common area). Said modifications shall not cause a recalculation of the Total Purchase Price described on page 1 of the Agreement of Sale. Notwithstanding the foregoing, in the event the final dimensions of the Property differs materially and adversely from the sketch depicted on Exhibit _____, You shall have the right but not the obligation to terminate the Agreement of Sale in writing within five (5) business days of Your receipt of the approved _____ Subdivision Plan and We shall promptly return Your Deposit to You. As hereinafter provided, We may sign any documents necessary for such subdivision or site plan approval as Your attorney-in-fact. To the extent that the documents for such subdivision or site plan approval require the joinder of the owners in the Community, We, by Our duly authorized officers, may, as the agent or the attorney-in-fact for You, execute, acknowledge and deliver such documents (including, without limitation, any consents or other documents required by any governmental agencies in connection with such subdivision or site plan approval); and You irrevocably nominate, constitute and appoint Us, through Our duly authorized officers, as Your proper and legal attorneys-in-fact for such purpose. Said appointment is coupled with an interest and is therefore irrevocable. Any such documents executed pursuant to this Section 5 may recite that it is made pursuant to this Section 5. Notwithstanding the foregoing, You agree to execute or otherwise join in any petition and/or other documents required in connection with such subdivision or site plan approval. The provisions of this Section 5 shall survive the Settlement and delivery of the Special Warranty Deed.

9. **COMMUNICATIONS COMPANY DISCLOSURE**. We have entered or may enter into a marketing agreement with a communications company ("Communications Company") that provides telephone and high-speed internet services, which allows the Communications Company to market its services to Our home buyers. You are not required to purchase any services from the Communications Company, but if the Communications Company is available in your community, this means that We will receive compensation from the Communications Company for the closing of Your Home. You acknowledge and agree that (i) We have not made any representation or warranty regarding the usefulness, condition or fitness of any services that You may purchase from the Communications Company, (ii) We are not a party to any contract entered into between You and the Communications Company and (iii) We are not responsible for any issues that You may have with the Communications Company if You purchase services from the Communications Company. You further agree to hold Us harmless from any claims that You may have against the Communications Company in the event that You have any dealings with the Communications Company.

10. HOME INSPECTION: Should you desire a home inspection prior to closing, Ryland Homes agrees to with the following provisions:

Buyer's Initials _____ Buyer's Initials _____

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A. Ryland Homes reserves the right to have an appointed representative accompany the Home Inspector at its discretion.
B. The Home Inspection will not be allowed to delay our construction schedule.
C. All inspections must be scheduled through the Community Sales Counselor. The inspection must be scheduled at least one week in advance, is to take place during normal working hours (Mon. - Fri. 9:00 am to 4:00 pm) and must be in accordance with the Community Building Supervisor's Schedule.
D. Buyer shall pay for all inspections initiated by buyer.
E. Ryland Homes is not required to service any or all requests on the inspector's list. They will be reviewed strictly as recommendations and responded to with the code requirements. Ryland Homes policies are the determining factors on remedy.
F. The Inspection may not be scheduled during the Pre-Settlement Orientation.
G. The Inspector must be licensed by the State of South Carolina as a Home Inspector. The Inspector must provide Ryland Homes with proof of licensure plus proof of General Liability Insurance, Automobile Insurance and Workman's Compensation Insurance (if any employees of the Home Inspector will be on site).

11. LAWN POLICY: The yard You will receive is a starter lawn. The care and maintenance of Your lawn will be Your responsibility after Settlement. It is imperative that Your lawn be properly watered and maintained. Starter lawns may take at least three (3) full seasons of proper care and maintenance before You can expect to have a lush, full crop of grass. We do not guarantee You will have a weed or rock-free lawn. We will not guarantee this product against lack of maintenance, damage due to weather or acts of God. For best results, We suggest You consult with a lawn care company on the proper maintenance procedures, including but not limited to the application of herbicides and fertilizers.

12. TREE POLICY:

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

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

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

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

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

14. SEISMIC DISCLOSURE:

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

B. The Residential Building Code (IRC 2012) dictates the associated design procedures for residential structures according to the "site class" of the property. We design and build to the IRC 2012 requirements.

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

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

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

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

Sales Counselor

Sales Counselor

Buyer's Signature — Date 8-11-16

Buyer's Signature — Date 8-11-16

Buyer's Initials

Buyer's Initials

Community ID: **08862010000** Home Site: **0001**

Rider to Agreement of Sale

between Geoffrey Smith and Lois Smith , Buyer(s)

and

CalAtlantic Group, Inc., d/b/a Ryland Homes, Seller

RECEIPT FOR YOUR NEW HOME WARRANTY PROGRAM INSURED LIMITED WARRANTY

We hereby acknowledge receipt of a form copy of Your New Home Warranty Program Insured Limited Warranty.

Signed this 11th day of August, 2016

Buyer: Lois J Smith

Buyer: Geoffrey Smith

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RYLAND HOMES
My STYLE
DESIGN CENTER

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Allowable Changes and Additions for Homes Prior to Insulation

- ♦ Flooring
- ♦ Countertops
- ♦ Kitchen Sink and Faucet
- ♦ Bathroom Faucets
- ♦ Interior Paint Selection
- ♦ Lighting Fixtures (Bathrooms and Living Area)
- ♦ Interior Trim

(Crown Molding, Chair Rail, Picture Molding, Bead board only)

- ♦ Appliances

(Power source can not be changed, Electric/Gas)

- ♦ Tile Backsplashes

(Cannot delete tile backsplash, if added, outlets will not be moved down)

Customer — Date: 8/11/16

Customer — Date: 8/11/16

Sales Counselor — Date

Community ID: **08862010000** Home Site:**0001**

Rider to Agreement of Sale
between Geoffrey Smith and Lois Smith , Buyer(s)
and
CalAtlantic Group, Inc., d/b/a Ryland Homes, Seller

Customer Experience and Expectation Rider

Purchasing a new home is an exciting time; however, it can also be a little overwhelming for a variety of factors. At Ryland Homes, We pride ourselves on working with our customers to make the purchase experience an enjoyable one. This Rider is designed to provide You background on the meetings We will have with You as construction commences, progresses, and is completed. It will also detail how We will communicate with You during the construction of Your Home, and how You can obtain warranty service, if needed. We encourage You to communicate directly with Your Ryland Homes Sales Counselor and Ryland Homes Homebuilder during construction. If You are purchasing a to be built home, a Ryland Homes employee will contact You to set a date for the Pre-Construction Conference. At or before the Pre-Construction Conference, You will be introduced to the Ryland Homes Homebuilder assigned to manage the construction of Your Home. Email communication from and to You is generally preferred by Us. We will make every reasonable effort to respond to Your inquiries no later than two (2) business days of receipt. Please indicate below how You want Us to contact You to schedule conferences and provide You construction updates on the progress of Your new Home.

Contact Information (If You provide email addresses, We will send correspondence pursuant to this Rider to both email addresses, but if You want to be contacted by telephone, We will contact the primary contact at the telephone number provided):

Name	Email address(es)	Tel. # (check box for primary contact)
Geoffrey Smith		☐
Lois Smith		☐

Financing Your New Home. You may have completed a loan application before You executed the Agreement of Sale and been pre-approved for a loan. If not, and You plan on financing the purchase of the Home, You will be required to make a loan application and provide certain documents and information to Your lender who will verify Your eligibility to obtain a loan. Many loan programs are available with varying requirements, such as minimum down payment, term, interest rate, mortgage insurance requirements, etc. You will work with Your lender to determine what loan programs may be best suited to You. Upon approval by Your lender a loan commitment will be provided to You. Loan commitments normally have conditions, such as by way of example an appraisal of Your Home, which are required to be satisfied before You close on the Home. Our affiliated lender, Our affiliated mortgage company, offers many loan programs on competitive terms. If You use Our affiliated mortgage company to finance the purchase of Your Home and close through our affiliated title company or preferred title agent, as applicable, You may be eligible for certain incentives outlined in the Financing and Approved Settlement Costs Rider. Please refer to the Agreement of Sale which provides time frames within which You are required to apply for and obtain Mortgage Approval.

(Buyer's Initials) (Sales Counselor's Initials)

Design Center. After You execute the Agreement of Sale, and depending upon the stage of construction of Your Home, You will be contacted by Us or one of Our Design Center representatives to schedule an appointment at Our Design Center. The Design Center is where You will select Your options, upgrades, colors and other selections. You will be allotted a certain amount of time to work with one of our representatives during which they will assist You on selections. Design Center hours vary by Division. Please check with the Design Center representative or Your Sales Counselor for operating hours. We suggest that You take advantage of any preview appointments or other resources offered by Us and the Design Center to familiarize You with available options, upgrades and selections. Your Sales Counselor can provide You more information on the Division's policies and resources. We recommend that You do not bring Your children to Your Design Center appointment. Upon completion of Your Design Center appointment and execution of a change order to Your Purchase Agreement, You may be required to make a deposit for the options selected. Since the Design Center may process the change order, please bring Your checkbook to Your Design Center appointment. It is important that You complete Your selections within the timeframe required by the Agreement of Sale.

(Buyer's Initials) (Sales Counselor's Initials)

Pre-Construction Conference. If Your new Home was not under construction when You signed Your Agreement of Sale, once approvals and permits have been obtained for Your new home, a Ryland Homes employee will set a pre-construction conference

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during which the Homesite, plot plan (location and orientation of Your Home on the Homesite), Your selections, and the construction process will be reviewed by You and the Ryland Homes Homebuilder assigned to manage the construction of Your new Home. The pre-construction meeting will take place during normal business hours. We highly encourage You take advantage of this opportunity to meet Your builder and to gain a better understanding of the construction process and timelines for construction. We will provide reasonable advance notice of the pre-construction conference, but will not delay construction of Your Home if You are unable to attend the meeting on the designated date and time. Any completion date We provide to You at that meeting is solely an estimate and is not a guaranteed date.

(Buyer's Initials) (Sales Counselor's Initials)

Visiting the Construction Site. If You want to visit Your new Home while it is under construction, You must arrange for the visit with Your Ryland Homes Sales Counselor or Homebuilder. We will attempt to accommodate Your periodic inspections, but may not always be able to do so. We may only let You on the construction site if You are accompanied by Your Homebuilder. At any inspection, You must wear proper footwear (closed toe shoes with low stable heels and thick soles) and depending on the status of construction, a hard hat, which We will loan to You for the inspection. You must also abide by any safety instructions, whether posted on the jobsite or given to You by a Ryland Homes representative. A construction site is a dangerous place and children under 18 are not permitted on the construction site. You agree that by visiting the construction site You assume the risk of injury to Yourself and Your family members. Any inspector who You invite to the construction site must register with Ryland Homes, have insurance required by Ryland Homes, sign an inspection agreement/waiver/hold harmless, and be accompanied by a Ryland Homes Homebuilder. Homebuilders have very limited availability to accompany inspectors and We cannot guarantee that inspections will be accommodated during the construction process.

(Buyer's Initials) (Sales Counselor's Initials)

Pre-Drywall Conference. Depending on the progress of construction of Your new Home when You signed Your Agreement of Sale, Your Homebuilder, and possibly Your Sales Counselor, will contact You to schedule an on-site meeting once the walls are framed and mechanical and electric lines are in place. Wall insulation may or may not be completed at the time of the conference. The pre-drywall conference will take place during normal business hours. This meeting is designed to provide You an opportunity to view the behind the walls materials and workmanship, confirm that the selections You have made have been incorporated to the current stage of construction and for You and Your Homebuilder to discuss the future installation of Your selections. We strongly encourage You to take advantage of this Pre-drywall conference as this is the appropriate time to confirm the installation of options, upgrades and selections. Due to production schedules, We will provide reasonable advance notice of the pre-drywall conference, but will not delay construction of Your Home if You are unable to attend the meeting on the designated date and time. We will update You on future installation and completion dates. Any installation and completion dates provided are solely estimates and are not guarantees.

(Buyer's Initials) (Sales Counselor's Initials)

Update Photographs and Emails. We will endeavor to provide You an update on the progress of Your new Home at least every other week. These communications will normally be photographs, emails and/or calls from either Your Sales Counselor or Homebuilder. Please be aware if you request communication by telephone in lieu of email, We may not be able to send You photographs of construction progress.

(Buyer's Initials) (Sales Counselor's Initials)

Pre-Settlement Notice. In accordance with the Agreement of Sale, once Your Home is nearing completion, You will be notified of Your Settlement Date and time (sometimes referred to as the Closing Date) together with the location of Settlement. This notice will be provided in accordance with Agreement of Sale and may not be communicated by email or telephone as described above. The settlement agent will work with You and Your lender in an effort to assure Settlement is not delayed and all documentation is delivered timely. If You select a lender other than Our affiliated mortgage company, We will not be responsible for delays associated with the Settlement, caused by Your lender. At Settlement, You will pay the balance of Your purchase price, execute all loan documents, as applicable, and receive title and keys to Your New Home.

(Buyer's Initials) (Sales Counselor's Initials)

Pre-Settlement Orientation. This meeting will take place at Your new Home during normal business hours on the day of, or a few days prior to, Settlement and is designed to acquaint You with the features of Your new Home, explain to You The Your New Warranty, a specimen copy of which is provided to You at the time You execute the Agreement of Sale. You are encouraged to review the Homeowner's Guide, which is available online at CalAtlantichomes.com, prior to this meeting as it provides important information on materials used in Your new Home and valuable information on maintaining Your new Home. At Settlement, You will be provided with any manufacturer's warranties applicable to mechanical systems, such as Your HVAC unit(s), and appliances. At the Pre-Settlement Orientation, You will have the opportunity to tour Your new Home with Your Homebuilder and notate any items to be corrected post-Settlement. It is important to notate items pre-Settlement, as certain repairs not noted pre-Settlement may not be eligible for repair after Settlement (for example, scratched glass, cabinets, countertops and other

cosmetic items). Depending on the date of the Pre-Settlement Orientation and Your Settlement, certain items may be completed prior to Settlement. We will endeavor to complete any incomplete items timely after Settlement, provided depending upon the climate within which Your new Home is located certain items can only be completed when weather permits.

(Buyer's Initials) (Sales Counselor's Initials)

Settlement/Closing. Settlement will normally take place at the offices of the title company or title agent, which in some States, may be an attorney's office. At Settlement, You will execute loan documents, other closing documents, a settlement statement and You will be required to pay the balance of the purchase price and closing costs not funded through Your loan. We normally require Your payment to be wired to the title agent prior to Settlement. The title agent will hold Your funds in escrow to be applied to the amount due from You at Settlement. Where available, Our affiliated title company, or our preferred title agent will handle your Settlement unless You have selected another title agent. Your settlement agent will also arrange for title insurance to be issued to You and Your lender. Our affiliated title company writes title insurance through First American Title Insurance Company or Chicago Title Insurance Company, two of the largest and most respected underwriters. Your Agreement of Sale and its Riders provide detail on closing costs You should expect to incur.

(Buyer's Initials) (Sales Counselor's Initials)

Warranty Service. If after Settlement, You determine Your new Home requires warranty service, You can request service through CalAtlantichomes.com, or by emailing or calling our Warranty Department and We will schedule an inspection and make repairs, as needed, if covered by Our written warranty. Please understand that certain warranty work may require multiple visits depending upon the time of inspection, availability of parts and weather.

(Buyer's Initials) (Sales Counselor's Initials)

Satisfaction Surveys. After Settlement, and during the first year of home ownership, You will receive three (3) surveys from a third party we retain to measure our performance and Your satisfaction with Our service and Your Home. These surveys provide feedback to Us, which We use to improve Our homes and customer experience. We ask that You please respond to these surveys timely as Our goal is to continually improve customer satisfaction.

(Buyers Initials) (Sales Counselor's Initials)

If You have questions concerning the matters set forth in this Rider, please ask Your Sales Counselor.

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CalAtlantic Homes

PURCHASE CONTRACT

NOTICE IS HEREBY GIVEN PURSUANT TO THE UNIFORM ARBITRATION ACT, SECTION 15-48-10, ET. SEQ., CODE OF LAWS OF SOUTH CAROLINA (1976 AS AMENDED) THAT THIS AGREEMENT IS SUBJECT TO MANDATORY ARBITRATION.

BUYER INFORMATION

Name: Alex Brown

Present Address: 735 Coleman Blvd Apt 211 City: Mt. Pleasant State: sc Zip: 29464

Home Phone: _____ Work Phone: _____ Cell Phone: 513-616-1641

Fax: _____ Email: Brownac420@gmail.com

Name: _____

Present Address: _____ City: _____ State: _____ Zip: _____

Home Phone: _____ Work Phone: _____ Cell Phone: _____

Fax: _____ Email: _____

Name: _____

Present Address: _____ City: _____ State: _____ Zip: _____

Home Phone: _____ Work Phone: _____ Cell Phone: _____

Fax: _____ Email: _____

PROJECT: Whitesides Park

SELLER'S SALES COUNSELOR: Tina Jones

TRANSACTION SUMMARY AND EXECUTION

This Transaction Summary and Execution ("**Transaction Summary**") sets forth some of the terms of this Purchase Contract ("**Contract**") between the Buyer identified above and CalAtlantic Group, Inc., a Delaware corporation ("**Seller**"). It is only part of this Contract; all of the terms of this Contract must be read carefully and understood before this Contract is signed. Capitalized terms are defined in Paragraph 1 of this Contract or as they appear throughout the Contract.

A. **PROPERTY.** Lot 0002, Block _____ (if applicable) as shown on that certain map/subdivision plat recorded in Book/Drawer/Volume/Cabinet/Document , at Page/Slide _____, in the official records of _____ County, Sc.

The Property is commonly identified as the following street address: 1094 Rifle Range Road, Mt Pleasant, Sc, 29464, and may also be referred to as all or any of the following: Plan Berkeley, Elevation A, Subdivision Name Whitesides Park, Unit _____, Phase/Section _____, Block _____ Tract _____ as set forth in the declaration recorded in the official records of _____, Sc.

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B. **BUYER AND VESTING.** The Buyer(s) ("**Buyer**") is(are):

Alex Brown

Title to the Property will vest as follows:

☑ To Be Determined ☐ Joint Tenancy with Right of Survivorship

☐ Sole Ownership ☐ Tenancy in Common

☐ Other

(How title is taken has legal and tax consequences. See Paragraph 6(b)).

C. **PURCHASE PRICE.**

Base Purchase Price	$	436,000.00
Lot Premium	$	
Price of Upgrades/Optional Items (as per Optional Items and Additional Deposit Amendment, if any):	$	63,121.00
Other Adjustments:	$	(30,200.00)
Total Purchase Price:[1]	**$**	**468,921.00**

D. **METHOD OF PAYMENT OF PURCHASE PRICE.**

(i) **Initial Deposit**. $ 2,000.00

Received by Seller as referenced on separate deposit receipt.

(ii) **Additional Deposits**.

Buyer agrees to make additional cash deposits with seller as follows:

on or before 03/15/2018	$	7,000.00
on or before _____	$	
on or before _____	$	
Total Additional Deposits.	$	**7,000.00**

(iii) **New Loan(s)**. *(Check if applicable)*

☐ Proceeds of new loan(s) to be obtained by financing Buyer on or before the Closing Date in the amount of $ _____

(iv) **Balance of Purchase Price Paid in Cash by Buyer.**[2]

on or before _____ $ _____

E. **ESTIMATED CLOSING COSTS AND PRORATIONS.**[3] $ _____

F. **MONTHLY ASSOCIATION ASSESSMENTS (SUBJECT TO CHANGE).**

As of _____ $ _____

[1] Does not include Upgrades/Optional Items ordered after the Contract Date which will be added to the Total Purchase Price.

[2] Does not include Closing Costs, Taxes, or Prorations.

[3] The amounts set forth in Paragraph E are estimates and such estimates will vary. Please read Paragraph 7 for more details regarding costs to be paid at Closing.

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G. TITLE INSURER:
(Check one.)

☒ Buyer elects to use Seller's affiliated title insurer, CalAtlantic Title Charleston, LLC

☐ Buyer elects to use the following alternate title insurer designated by Buyer:

_____

Any title insurer designated by Buyer must have the ability to issue an insured closing letter for the Selected Lender. If Buyer checks this box but does not designate the name of the alternate title insurer (or designates a company that does not provide such services), then Buyer will be deemed to have elected to use Seller's affiliated title insurer, CalAtlantic Title Charleston, LLC.

Buyer may later change Buyer's selection, subject to Paragraph 6(a)(i).

BUYER'S INITIALS: AB / _____ / _____

H. CLOSING AGENT:
(Check one.)

☒ Buyer elects to use Seller's affiliated closing agent, CalAtlantic Title Charleston, LLC

☐ Buyer elects to use the following alternate closing agent designated by Buyer:

_____

Any closing agent designated by Buyer must provide evidence to Seller that such closing agent maintains adequate errors and omissions insurance and fidelity insurance. Buyer is solely responsible for all costs and expenses relating to the use of any alternate closing agent. If Buyer checks this box but does not designate the name of the alternate closing agent (or designates a company that does not provide such services), then Buyer will be deemed to have elected to use Seller's closing agent set forth above.

Buyer may later change Buyer's selection, subject to Paragraph 6(a)(iii).

BUYER'S INITIALS: AB / _____ / _____

I. LENDER:
(Check one.)

☒ Buyer elects to use Seller's affiliated mortgage company, CalAtlantic Mortgage, Inc.

☐ Buyer elects to use the following alternate mortgage company designated by Buyer:

_____

If Buyer checks this box but does not designate the name of the alternate mortgage company (or designates a company that does not provide such services), then Buyer will be deemed to have elected to use Seller's affiliated mortgage company, CalAtlantic Mortgage, Inc.

Buyer may later change Buyer's Selected Lender, subject to Paragraph 4(b).

☐ Buyer elects to pay the Purchase Price in cash

Type of Loan: ☒ Conventional ☐ FHA ☐ VA ☐ Other ☐ Not applicable (paying cash)

BUYER'S INITIALS: AB / _____ / _____

J. REPRESENTATION. Seller's sales counselor represents Seller and does not represent Buyer.
(Check one.)

☐ Buyer represents that Buyer is not represented by an agent, broker, salesperson or any other person ("**Co-Broker**") with respect to the purchase of the Property.

☑ Seller, Buyer, and Co-Broker have executed a co-broker agreement ("**Co-Broker Agreement**").

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Except as provided in any Co-Broker Agreement executed by Seller, Buyer represents and warrants that Buyer has not dealt with any other agents, brokers, salesperson, finders or person of any kind who could make a claim for a commission or finder's fee in connection with this transaction (other than finder or referral fees that may be offered to other CalAtlantic homeowners in Seller's sole discretion and as allowed by law) ("**Claim**") and Buyer will defend, indemnify and hold Seller harmless for, from and against any and all liability, responsibility, claims, losses, damages, costs, controversies, expenses or attorney's fees sustained or incurred by Seller resulting from such Claim.

K. **SIGNIFICANT DATES/DEADLINES.**

(i) Contract Date: The date on which this Contract is executed by an officer or authorized representative of Seller.

(ii) Loan Application Deadline: 03/02/2018

(iii) Loan Approval Deadline: 03/25/2018

(iv) Options Selection Deadline(s):

(a) _____ _____

(b) _____ _____

(c) _____ _____

(d) _____ _____

☐ See Options Selection Deadlines and Policies Addendum

(v) Estimated Closing Date: 03/28/2018

L. **RECEIPT OF DOCUMENTATION.** Buyer should completely review all reports and disclosures relating to the Property. Buyer is aware of Buyer's affirmative duty to exercise reasonable care to protect Buyer by reviewing such reports and disclosures and by identifying and evaluating those facts that are known to or within the diligent attention and observation of Buyer. Buyer acknowledges that Buyer has received the following documents. Buyer understands that these documents contain important information regarding the Property.

X	Limited Warranty
X	CalAtlantic Homeowner Limited Warranty & Maintenance Manual
X	Disclosure Statement
X	Agency Disclosure Brochure
X	Final Public Report / Receipt for Public Report / Subdivision Disclosure Report
	Plot Plan/Site Plan
	Articles of Incorporation of the Association
	Bylaws of the Association
	Declaration
	Architectural Guidelines / Architectural Rules & Landscape Guidelines
	Association Rules
	Current pro forma operating budget and other current financial and other related statements

_____

_____

M. **DELIVERY OF DOCUMENTS TO LENDER BY BUYER.** Buyer agrees that Buyer will promptly provide the entire purchase contract, all addenda and all amendments to any lender loaning purchase money to Buyer for this transaction. Such documents must be provided to such lender(s) within five (5) business days of the execution of such documents and in no event later than the Loan Approval Deadline, if applicable, or the Closing Date, if the Loan Approval Deadline has passed or the Contract does not set forth a Loan Approval Deadline. If the lender(s) will not accept documents directly from Buyer, Buyer agrees to provide such documents to the closing agent and will confirm that the closing agent has provided the documents to the lender(s).

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N. **EFFECTIVENESS OF CONTRACT**. EXECUTION OF THIS CONTRACT BY BUYER ALONE WILL CONSTITUTE AN OFFER TO PURCHASE THE PROPERTY. SELLER RESERVES THE RIGHT TO REJECT SUCH OFFER FOR ANY REASON. RECEIPT AND ACKNOWLEDGEMENT OF A DEPOSIT BY THE SALES COUNSELOR DOES NOT CONSTITUTE ACCEPTANCE BY SELLER. THIS CONTRACT WILL BECOME EFFECTIVE AND BINDING UPON THE PARTIES ONLY WHEN IT IS SIGNED AND DELIVERED BY AN OFFICER OR AUTHORIZED REPRESENTATIVE OF SELLER. THE DELIVERY OF A COPY OF THE FULLY EXECUTED CONTRACT TO BUYER WILL CONSTITUTE NOTICE TO BUYER THAT BUYER'S OFFER HAS BEEN ACCEPTED. IF BUYER'S OFFER IS NOT ACCEPTED, SELLER WILL RETURN TO BUYER ANY FUNDS DEPOSITED BY BUYER IN PAYMENT OF THE PURCHASE PRICE.

O. **ENTIRE AGREEMENT**. This Contract contains the entire agreement between the parties, and no addition or modification of any term will be effective unless set forth in writing and signed by both parties. All advertising material and all prior representations or agreements, if any, whether oral or written, are hereby superseded, and Buyer has not relied upon any of them in deciding to enter this Contract. No salesperson, employee or agent of Seller has authority to modify the terms of this Contract. Therefore, Buyer should write in below any representations or promises that are not set forth in this Contract, but that have been made by a salesperson, employee or agent of Seller or contained in the advertising material of Seller and upon which Buyer is relying in making this purchase. If Buyer fails to write in any statements below, Seller will be deemed not to have made any representations or promises that are not set forth in this Contract.

Alex Brown None

BUYER'S INITIALS: AB / /

P. **BUYER'S ACKNOWLEDGMENT**. NOTWITHSTANDING THAT THIS CONTRACT IS EXECUTED ON THIS PAGE, BUYER ACKNOWLEDGES THAT BUYER HAS READ AND UNDERSTANDS AND WILL BE BOUND BY EACH AND EVERY TERM OF THIS CONTRACT IF SELLER ACCEPTS BUYER'S OFFER WHETHER SUCH TERM APPEARS BEFORE OR AFTER THIS EXECUTION.

BUYER:

Signature — Date: 2/28/2018

Alex Brown
Name

Signature — Date

Name

Signature — Date

Name

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ACCEPTANCE OF CONTRACT BY SELLER:

CalAtlantic Group, Inc.,
a Delaware corporation

By Jennifer Petras
Title: Authorized Representative
Date Signed by Seller: 3/2/2018

ADDRESS OF SELLER:
,
,
Phone:
Fax:

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THIS PURCHASE CONTRACT, including the foregoing Transaction Summary, together with the addenda and exhibits attached hereto, and amendments to any of the foregoing, constitutes an agreement by which Seller agrees to sell and the Buyer agrees to purchase the property described in Paragraph A of the Transaction Summary (which property may or may not be owned by Seller at the time of this Contract) upon the terms and conditions set forth herein.

1. DEFINITIONS.

(a) "**Association**" (when applicable) means any homeowner's association referred to in a Declaration.

(b) "**Buyer's Title Policy**" means the standard coverage owner's policy of title insurance issued by Title Insurer on its standard coverage policy form insuring Buyer's title to the Property to be obtained under this Contract.

(c) "**Closing**" means the day that the Deed is recorded in the office of official land records of the County in which the Property is located.

(d) "**Closing Agent**" means the closing agent set forth in Paragraph H of the Transaction Summary or other closing agent as selected by Buyer as authorized by this Contract.

(e) "**Contract Date**" means the date set forth as the "Date Signed by Seller" in the Transaction Summary directly below Seller's execution of this Contract.

(f) "**Declaration**" means any recorded Declaration of Covenants, Conditions and Restrictions, Declaration of Condominium or similar instrument for the Project as amended and supplemented.

(g) "**Deed**" means the executed general warranty deed to be executed by Seller, subject to the exceptions set forth in Paragraphs 6 and 13.

(h) "**Lender's Title Policy**" means the policy of title insurance required by Selected Lender.

(i) "**Loan**" means the loan secured by a first deed of trust or mortgage to be obtained by Buyer under this Contract if so indicated by Paragraph D(iii) of the Transaction Summary. If Buyer is also obtaining a loan secured by a second deed of trust or mortgage, "Loan" will include such additional loan.

(j) "**Loan Approval**" means Selected Lender's unconditional approval of the Loan to Buyer in the full amount necessary to complete the purchase of the Property under the terms of this Contract, subject only to the appraisal of the Property and any other conditions approved by Seller in its reasonable discretion.

(k) "**Occupancy Approval**" means the approval permitting occupancy of the Property issued by the appropriate City or County department, whether provided orally or in writing by a certificate or other document. Such Occupancy Approval may include temporary certificates of occupancy issued by the appropriate city or county.

(l) "**Option(s)**" means the various selections, upgrades, and/or extra items that Seller may offer for installation in the Property.

(m) "**Options Selection Deadline**" means the deadline(s) set forth in Paragraph K(iv) of the Transaction Summary or, if applicable, the Options Selection Deadlines and Policies Addendum.

(n) "**Property**" means the property described in Paragraph A of the Transaction Summary including the Residence of the plan type set forth in Paragraph A of the Transaction Summary together with any upgrades or optional items purchased in this Contract or purchased by separate document executed by Seller and Buyer that is delivered to Buyer by Seller. In the event of any discrepancy between the legal description of the Property and the street address set forth in Paragraph A of the Transaction Summary, the legal description will control.

(o) "**Project**" means the real estate development in which the Property is located.

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(p) "**Purchase Price**" or "**Total Purchase Price**" means the "Total Purchase Price" indicated in Paragraph C of the Transaction Summary together with the purchase price of any upgrade or optional item subsequently purchased by separate document executed by Seller and Buyer and made a part of this Contract.

(q) "**Residence**" means the dwelling unit and related improvements to be constructed by Seller on the Property.

(r) "**Selected Lender**" means the lender selected by Buyer on or before the Loan Application Deadline, which will be the lender set forth in Paragraph I of the Transaction Summary, Seller's Designated Lender, or such other lender consented to in writing by Seller pursuant to Paragraph 4(b).

(s) "**Seller's Designated Lender**" means Seller's affiliate, CalAtlantic Mortgage, Inc.

(t) "**Title Insurer**" means the title company set forth in Paragraph G of the Transaction Summary or other title insurance company as selected by Buyer as authorized by this Contract.

(u) "**Total Deposit**" means the Initial Deposit in the amount set forth in Paragraph D(i) of the Transaction Summary together with any additional cash deposits by Buyer.

(v) "**Transaction**" means the transaction contemplated under this Contract.

(w) "**Transaction Summary**" means the Transaction Summary and Execution appearing at the beginning of this Contract.

2. RESIDENCE AND PROJECT.

(a) **Residence**. If not already completed, Seller will construct or cause to be constructed a Residence on the property described in Paragraph A of the Transaction Summary and obtain Occupancy Approval. The Closing is conditioned upon the prior issuance of Occupancy Approval. Construction of the Residence will be substantially in accordance with the Residence plans and the Options selected by Buyer and accepted by Seller in writing, unless: (i) modified by Seller in Seller's sole discretion; (ii) requested by Buyer and approved by Seller in writing; or (iii) the variation falls within the tolerances specified in the CalAtlantic Homeowner Limited Warranty & Maintenance Manual. Items such as structural bearing points, heating systems, water heater, plumbing lines and laundry trays, wiring and electrical system, gas and electric meters, basement exit and stairwell, garage and/or deck steps and garage service doors will be located by Seller at Seller's sole discretion.

(b) **Selection of Upgrades/Options**. Seller may, but has no obligation to, offer Buyer Options. If Seller offers Options to Buyer, then Buyer agrees to notify Seller of Buyer's decision regarding the Options no later than the Options Selection Deadline. Seller will not be obligated to install any Options, and Seller will not be bound by Buyer's decision regarding said Options, unless Options as requested by Buyer are accepted by Seller in writing. If Buyer fails to notify Seller within the time required, Seller may hold Buyer in default and pursue the remedies set forth in Paragraphs 10 and 11. If Seller chooses to proceed with the Closing despite Buyer's failure to notify Seller within the time required, Buyer will be presumed conclusively to have accepted standard items and to have elected no Options. Buyer should refer to the Options Selection Deadlines and Policies Addendum.

(c) **Completion Within Two Years**. Seller will in all events complete the construction of the Residence within two (2) years after the date Buyer executes this Contract (assuming the Contract is also executed and delivered by Seller), as extended by any Unavoidable Delay. "**Unavoidable Delay**" means delay caused by matters which are legally recognized as defenses to contract actions pursuant to the laws of the state in which the Property is located. If Seller fails to complete the Residence within this two-year period (or within the period beyond two years when extended by Unavoidable Delay), Buyer may (i) terminate this Contract in which case all sums Buyer has deposited will be refunded to Buyer within fifteen (15) days after Seller's receipt of Buyer's written cancellation request, or (ii) seek any available remedy at law or in equity against Seller.

(d) **Homeowner Inspection**. Prior to the Closing, Buyer will be notified that construction of the Residence on the Property has been substantially completed (if not completed as of the Contract Date) and date(s) will be scheduled for the Buyer's orientation and inspection of the Residence. Buyer and Seller's representatives will inspect the Residence and Buyer will be oriented to the care and maintenance of Buyer's Residence and have an opportunity to inspect the Property. During the orientation and inspection, Buyer agrees to note to Seller's representative any conditions that Buyer requests Seller to correct. If Seller agrees corrections should be made, Seller will make such corrections within a reasonable period of time, which may be before or after the Closing. Provided that Occupancy Approval has been issued, Buyer agrees that Buyer will not delay the Closing because corrections have not been completed. Should Buyer fail to inspect the Property on the date(s) scheduled

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for Buyer's orientation and inspection, Buyer will waive Buyer's opportunity to inspect the Property and be oriented to the care and maintenance of Buyer's Residence, and Buyer authorizes Seller to, at Seller's sole and absolute discretion, perform the orientation and inspection on Buyer's behalf, and Buyer agrees to close on the date set for the Closing. If after such an inspection there is a disagreement between Seller and Buyer concerning any items Seller agreed in writing to make, then the dispute will be settled as provided in Paragraph 12 below.

(e) **Substitutions and Conveyance of Easements**. Seller reserves the right to make substitutions or changes that may, in its sole and absolute discretion, be necessary or desirable to any improvement provided that such changes are of substantially equivalent value and comply with the appropriate City or County building codes. Seller may substitute other materials, fixtures, or methods of construction if, in Seller's judgment, such substitutions become necessary or desirable. Consultation with Buyer will not in any case be deemed a waiver of Seller's right to make any such changes. Elevations, roof tile type, color, and paint colors are selected by site-coordinator and may vary by lot. Seller reserves the right, prior to the Closing, to convey easements for landscaping and for the maintenance of the landscaping and the irrigation systems appurtenant thereto over any portion of the Property that may be located outside a fence on the Property but within the boundary of the Property ("**Easement Area**") if in the sole judgment of Seller such Easement Area is not likely to be used by the occupant of the Property and should therefore be maintained in a clean and attractive condition by the owner of property adjacent to the Easement Area or by an Association for the benefit of the Project.

(f) **Insulation**. Insulation will be installed in the Property as follows:

(i) Exterior Walls will be insulated with Batt insulation to a thickness of 3 1/2 inches, which, according to the manufacturer, will yield an R-value of R-13.

(ii) Ceiling Insulation will be insulated with Blown insulation to a thickness of 11.1 inches, which, according to the manufacturer, will yield an R-value of R-30.

(iii) Vertical walls adjacent to attic areas will be insulated with Batt insulation to a thickness of 3 1/2 inches, which, according to the manufacturer, will yield an R-value of R-13.

(iv) Areas over garages adjacent to living space will be insulated with Batt insulation to a thickness of 6 1/2 inches, which, according to the manufacturer, will yield an R-value of R-19.

(The higher the R-Value, the greater the insulating power. Savings vary. Higher R-Values mean greater insulating power. If Seller advertised a comparison of one type of insulation to another, ask Seller for a fact sheet on R-Values. Locations specified do not include ceilings and walls surrounding patios, or any areas beyond the exterior walls of the home. Notwithstanding the foregoing, the insulation installed in certain areas may be of lesser thickness and R-Value than indicated because the structural integrity or design of the Residence does not permit any greater thickness. Examples of locations where thickness and R-Values may vary include, without limitation, locations where studs are placed in walls, at corners and windows, and where roof trusses attach to outside walls. The R-Values shown are according to the manufacturer and/or installers of the insulation, and Seller does not warrant or represent the accuracy or correctness of this information.)

(g) **Site Visits.** CONSTRUCTION SITES ARE INHERENTLY DANGEROUS. Buyer, on Buyer's behalf and on behalf of Buyer's agents, charges and invitees, agrees not to enter the Project or the Property before obtaining the express written permission of the Seller. Seller reserves the absolute right to deny or restrict Buyer's access to the Project and the Property. If Buyer receives Seller's written permission to enter the Project or the Property, then at all times during such entry Buyer and Buyer's agents, charges, and invitees must be accompanied by a representative of Seller and must comply with all safety requirements imposed by Seller including, without limitation, use of a hard hat. If Buyer or Buyer's agents, charges, or invitees enter the Project or the Property prior to Closing with or without Seller's written permission, Buyer assumes all risk of personal injury and damages resulting for, from and against such construction site entry, and further agrees to defend, indemnify, and hold Seller harmless from any injury or damages sustained or suffered by Buyer or Buyer's agents, charges, or invitees while present at the Project or the Property.

(h) **Move-In; Alterations; Advertising**. Except as set forth in Paragraph 2(g) above, Buyer and Buyer's agents are prohibited from entering, occupying, altering or moving possessions into the Property until after the Closing. If Buyer or Buyer's agents make alterations to the Property before the Closing, Seller may, at its option and without notice to Buyer, and in addition to any other remedies Seller may have, remove any or all of such alterations at Buyer's sole expense. Buyer agrees to defend,

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indemnify, and hold harmless Seller and its agents, employees, and independent contractors for, from and against all liability, losses, claims or damages arising as a result of such alterations. Until after the Closing, Buyer and Buyer's agents are not permitted to advertise the Property or show the Property to prospective purchasers or tenants or place any signs at or near the Property.

(i) **Surrounding Improvements**. Seller will use reasonable efforts to complete the required public and private improvements surrounding the Property in a timely manner. If Seller is unable to complete improvements including, without limitation, finish grading, landscaping, hardscaping, and fencing, Buyer agrees that the Closing may occur and all documents may be recorded without installation of such improvements, provided the Residence is habitable and that such improvements are thereafter installed without additional cost to Buyer. Buyer agrees to allow Seller to enter the Property to complete the improvements.

(j) **Sidewalks, Curbs, and Gutters**. Buyer understands and acknowledges that the controlling governmental agency may have imposed upon Seller obligations for the maintenance and repair of sidewalks, curbs, and gutters located within the Project. If such obligations have been imposed, Buyer will accept full responsibility for the payment of any and all costs and expenses arising out of or related to the repair and/or replacement of all or any sidewalks, curbs, and gutters located within the Project that have been damaged or destroyed by Buyer or Buyer's agents. Buyer agrees to pay Seller for any damage to the sidewalks, curbs, and gutters caused by Buyer or its agents within ten (10) days after receipt of written notice from Seller describing such damage and requesting payment for the same.

(k) **Utility Services**. Seller will make reasonable efforts to coordinate the initiation of utility services at the Property, such as gas, electric, and telephone services. Notwithstanding the foregoing, Buyer understands and agrees that Seller will not be responsible for scheduling of such utility services and that the Closing and the orientation and inspection described in Paragraph 2(d) above are not dependent upon utility installation or activation.

3. PAYMENT OF PURCHASE PRICE.

(a) **Purchase Price**. Buyer agrees to pay the Purchase Price in the manner specified in the Transaction Summary. Whether Buyer elects to pay the balance of the Purchase Price with a Loan by providing the Loan amount in Paragraph D(iii) of the Transaction Summary or with cash, Buyer will not be permitted to change the method selected without Seller's prior written consent. Seller may withhold such consent in its sole and absolute discretion.

(b) **Initial Deposit**. Buyer agrees to make an initial cash deposit toward the Purchase Price in the amount set forth in Paragraph D(i) of the Transaction Summary. The Initial Deposit will be disbursed or applied in accordance with the applicable terms of this Contract. If Seller does not accept this Contract, the Initial Deposit will be returned to Buyer.

(c) **Additional Cash Deposits**. Buyer agrees to deposit the cash amount(s) set forth in Paragraph D(ii) of the Transaction Summary on or before the date(s) therein set forth. Upon making each such additional cash deposit, Buyer will execute and deliver to Seller an Additional Deposit Amendment in the form provided by Seller. Buyer's failure to deposit any portion of the cash amount(s) set forth in Paragraph D(ii) or D(iv) of the Transaction Summary on or before the date(s) therein set forth (or as otherwise required by Seller) will constitute a default by Buyer under the terms of this Contract. Any deposits paid by Buyer will be applied toward the Purchase Price unless otherwise provided by this Contract (including the Options Selection Deadlines and Policies Addendum).

4. NEW LOAN. This paragraph will apply if a portion of the Purchase Price will be paid with a Loan.

(a) **Buyer's Obligation to Obtain Loan**. It will be the obligation of Buyer to obtain a Loan in the full amount necessary to complete the purchase of the Property under the terms of this Contract. Buyer expressly represents to Seller that Buyer is qualified to obtain the Loan. Buyer understands that if Seller accepts Buyer's offer to purchase the Property, Seller's acceptance will be in reliance upon Buyer's express representation that Buyer is qualified to obtain the Loan. Except as provided in Paragraph 4(e) below, Buyer's failure to obtain the Loan will be a default

(i) Loan Terms. The Loan will be evidenced by a promissory note secured by a first deed of trust or mortgage (and, if applicable, a second deed of trust or mortgage) on the Property. The deed(s) of trust or mortgage(s) and the note(s) will be in forms designated by Selected Lender and the note(s) will provide for payments of principal and interest, the

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amortization period of the principal and the rate of interest as specified by Selected Lender. Except as expressly set forth herein, the terms and conditions of the Loan are a matter of concern solely between Buyer and Selected Lender and will not in any way affect the rights or obligations of the parties under this Contract. BUYER ACKNOWLEDGES THAT SELLER MAKES NO REPRESENTATION THAT THE TERM OR INTEREST RATE PREVAILING AT THE CLOSING WILL BE THE TERM OR RATE QUOTED BY SELECTED LENDER TO BUYER AT THE TIME OF LOAN APPROVAL. BUYER ACKNOWLEDGES THAT THE SALE AND PURCHASE OF THE PROPERTY IS NOT CONTINGENT UPON BUYER'S ABILITY TO RETAIN THE TERM OR INTEREST RATE QUOTED AT THE TIME OF LOAN APPROVAL AND THAT BUYER WILL BE REQUIRED TO PAY THE INTEREST RATE CHARGED OVER THE TERM REQUIRED BY SELECTED LENDER AT THE CLOSING. Buyer agrees to make such impound payments for real property taxes and assessments, Association dues (when applicable), and fire and other hazard insurance premiums as may be required by Selected Lender.

(ii) Lender Approval of Options. Options can only be financed with the permission of the Selected Lender.

(b) **Selection of Lender**. Although Buyer may select Buyer's lender at the time of Buyer's execution of this Contract by providing the name of such lender in Paragraph I of the Transaction Summary, Buyer has until the Loan Application Deadline to select the Selected Lender. Any selection or change of lender after the Loan Application Deadline requires Seller's prior written consent, which will not be unreasonably withheld. The Selected Lender must be a state or federally chartered bank or credit union, or a state licensed mortgage banking institution. IN NO EVENT WILL BUYER BE REQUIRED TO USE SELLER'S DESIGNATED LENDER.

(c) **Loan Application to Selected Lender**. Buyer agrees to submit a complete loan application package to the Selected Lender on or before the Loan Application Deadline specified in Paragraph K(ii) of the Transaction Summary. A complete loan application package will include the application, credit information, and any other documents or information required by Selected Lender, and such application will not be "complete" for purposes of this Paragraph 4(c) unless all of the information required by Selected Lender has been accurately and fully provided. Buyer agrees to provide any additional documents or information required by the Selected Lender within seventy-two (72) hours of a request for such documents or information. Buyer's failure to submit a complete loan application package on or before the Loan Application Deadline or provide further documents or information within seventy-two (72) hours will be a default. Buyer hereby authorizes Seller to communicate directly with Selected Lender for purposes of determining Buyer's ability to obtain loan approval and to confirm that Buyer has sufficient funds to close, and Buyer does hereby authorize Selected Lender to release all information reasonably requested by Seller for such purposes.

(d) **Loan Approval**.

(i) Loan Approval Deadline. Written Verification of Loan Approval (defined below) must be provided to Seller on or before the Loan Approval Deadline specified in Paragraph K(iii) of the Transaction Summary. Buyer's failure to provide Seller Written Verification of Loan Approval on or before the Loan Approval Deadline will be a default.

(ii) Written Verification of Loan Approval. Not later than three (3) days after obtaining Loan Approval, Buyer agrees to provide Seller written verification from Selected Lender that Buyer has obtained Loan Approval ("**Written Verification of Loan Approval**"). Such Written Verification of Loan Approval may include reasonable conditions, as determined by Seller in its reasonable discretion. Buyer's failure to provide Written Verification of Loan Approval to Seller within three (3) days after obtaining Loan Approval will be a default. Once Written Verification of Loan Approval is obtained, Buyer will not take any action that would jeopardize Buyer's Loan Approval. Buyer agrees, within ten (10) days after receiving a written request from Seller, to verify to Seller's reasonable satisfaction the availability of funds to close. Buyer's failure to verify, upon Seller's request, that Buyer has sufficient funds to close (including, if requested by Seller, a statement from the Selected Lender that Buyer still has Loan Approval) will be a default.

(e) **Cancellation by Buyer on or Before Loan Approval Deadline**. Notwithstanding the foregoing, a Buyer who (i) has submitted a complete loan application package to Selected Lender pursuant to Paragraph 4(c), (ii) is not otherwise in default under the terms of this Contract, (iii) has not yet obtained Loan Approval, and (iv) has received written denial of Buyer's application for a Loan from Selected Lender ("**Loan Denial**"), may terminate the Contract on or before the Loan Approval Deadline by delivering written notice of such cancellation and a copy of the Loan Denial to Seller. If Buyer terminates the Contract in accordance with this Paragraph 4(e), then immediately upon Seller's receipt of Buyer's notice of cancellation,

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Seller will be released from its obligations to sell the Property to Buyer, Buyer will have no further rights against Seller and Seller will have no further obligation to Buyer, except that Seller will, within fifteen (15) days after Seller's receipt of Buyer's notice of cancellation, order that Buyer's Total Deposit be refunded to Buyer. Except as provided in Paragraph 2(c) above, any cancellation by a Buyer after the Loan Approval Deadline or Loan Approval, whichever occurs first, will be a default.

(f) **Not a Loan Application or Commitment**. This Contract does not constitute either a loan application to, or loan approval or commitment by, any lending institution. Buyer agrees to obtain, and will be solely responsible for obtaining, the Loan.

(g) **Lender's Title Policy**. Any Lender's Title Policy obtained by Selected Lender must be provided by the Title Insurer unless Buyer provides Seller with written notice of Buyer's selection of a different title insurance company, acceptable to Selected Lender, to provide the Lender's Title Policy. If Buyer provides such written notice within forty-five (45) days prior to the Estimated Closing Date, Buyer will be solely responsible for any additional costs incurred as a result of changing the title insurance company.

(h) **Appraisal**. Seller will have no obligation to adjust the Purchase Price or otherwise compensate Buyer if Buyer is unable to procure an appraisal of the Property equal to or exceeding the Purchase Price. If the Loan is guaranteed by the Federal Housing Administration or the Department of Veterans Affairs, further restrictions relating to appraisals will be set forth in a FHA/VA Financing Addendum executed by Buyer and Seller.

(i) **Independent Appraiser and Lender**. Both the Selected Lender and the appraiser conducting the appraisal of the Property must be independent of and unrelated to Buyer and cannot be affiliated with Buyer in any respect.

5. ALL CASH BUYER. This paragraph will apply if, as indicated by Paragraph D of the Transaction Summary, Buyer elects to pay the Purchase Price in cash (i.e., without using the proceeds of a Loan).

(a) **Representation Regarding Sufficient Funds**. Buyer represents that Buyer has sufficient funds to pay the Purchase Price in cash and covenants that Buyer will continue to have sufficient funds until such funds are delivered to Seller by Buyer.

(b) **Financial Document Submittal**. Buyer agrees, within five (5) days after the Contract Date, to verify to Seller's reasonable satisfaction that Buyer has sufficient funds to pay the Purchase Price in cash by providing financial documents (including specific financial documents requested by Seller) to Seller. Thereafter, Buyer agrees, within ten (10) days after receiving a written request from Seller, to verify to Seller's reasonable satisfaction that Buyer has sufficient funds to pay the Purchase Price in cash by providing such financial documents to Seller. Buyer's failure to provide such financial documents within five (5) days after the Contract Date or within ten (10) days after receiving Seller's written request will be a default.

(c) **Seller's Notification of Inadequacy of Funds and Buyer's Option to Cancel**. If Seller determines, in its reasonable judgment, that Buyer does not have sufficient funds to pay the Purchase Price in cash, Seller may give Buyer notice of such determination. As long as Buyer is not in default, Buyer may terminate the Contract and cancel the Closing by delivering written notice of such cancellation to Seller within ten (10) days of receiving notice of Seller's determination that Buyer has insufficient funds. If Buyer terminates the Contract and cancels the Closing in accordance with this Paragraph 5(c), then immediately upon Seller's receipt of Buyer's notice of cancellation, Seller will be released from its obligations to sell the Property to Buyer, Buyer will have no further rights against Seller and Seller will have no further obligation to Buyer, except that Seller will, within fifteen (15) days after Seller's receipt of Buyer's notice of cancellation, order that Buyer's Total Deposit be refunded to Buyer. Nothing herein prevents Buyer from providing Seller additional information regarding Buyer's financial condition after Seller gives Buyer notice of Seller's determination that Buyer does not have sufficient funds to pay the Purchase Price in cash. However, if, within ten (10) days of receiving notice of Seller's determination that Buyer has insufficient funds, Buyer has not canceled the Contract and Seller has not notified Buyer that it has withdrawn its determination that Buyer has insufficient funds, Buyer will be in default. Nothing in this Paragraph 5 obligates Seller to notify Buyer that Buyer has insufficient funds to pay the Purchase Price in cash and the determination of whether or not to give such notification will be made in Seller's sole and absolute discretion.

6. CLOSING AND TITLE.

(a) **Deposits of Documents and Funds**. By the Closing Date (i) Buyer agrees to deposit with Seller all funds and documents required to pay the Purchase Price and to comply with Buyer's obligations under this Contract, and (ii) Seller agrees to deposit a Deed and all other documents required to comply with Seller's obligations under this Contract. The Deed may be subject to (i) real property taxes, assessments, fees or charges not yet due or delinquent, (ii) those matters which would be shown on a

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survey of the Property or would be apparent upon an inspection of the Property, (iii) matters affecting title suffered or created by or with Buyer's written consent, (iv) building, zoning, and other applicable ordinances and regulations of the applicable governing authority, (v) matters resulting from the inclusion of the Property in a special district, (vi) the Limited Warranty provisions referenced in Paragraph 13, below, (vii) the Declaration (if any), and (viii) covenants, conditions, restrictions, easements, rights, rights-of-way, encumbrances and all other matters set forth in the Deed or which are of record at the time the Deed is recorded ("**Permitted Exceptions**"). Seller will not be obligated to escrow deposits or other funds unless provided in the Transaction Summary or otherwise required by law.

(i) Title Policy. Any Title Policy obtained by Buyer must be provided by the Title Insurer unless Buyer provides Seller with written notice of Buyer's selection of a different title insurance company for Buyer's Title Policy. If Buyer provides such written notice within forty-five (45) days prior to the Estimated Closing Date, Buyer will be solely responsible for any additional costs incurred as a result of changing the title insurance company.

(ii) The Closing. The Closing will occur ten (10) days after written notice to Buyer (or more, if specified in such written notice) by Seller ("**Closing Date**"), provided that the Closing Date will be no earlier than the date Occupancy Approval is issued. Seller will have the right to extend the Closing Date for any reason by delivering written notice to Buyer, and Seller will not have any liability to Buyer for any extension of the Closing Date. At Buyer's request, Seller may, in Seller's sole and absolute discretion, grant Buyer an extension of time in which to close. Any such extension granted by Seller must be in writing, signed by Buyer and Seller, and the date set forth therein will be the "**Extended Closing Date**." Buyer agrees to pay Seller an extension fee equal to one-thirtieth ($1/30^{th}$) of one percent (1%) of the Total Purchase Price for each day the Closing Date is extended. If Seller agrees to postpone the closing date until the Extended Closing Date, Seller may, at Seller's sole and absolute discretion, demand that the aforementioned extension fee be paid by Buyer in advance, directly to Seller, by check, cashiers check, cash, or money order, at the time the parties execute the written agreement setting forth the Extended Closing Date, or at any other time, or in any other manner. The extension fee will not be applied to the Purchase Price, and will be non-refundable to Buyer unless the purchase of the Property does not close due to a default by Seller. THE DATE OF ACTUAL CLOSING COULD SUBSTANTIALLY DIFFER FROM THE ESTIMATED CLOSING DATE. BUYER HEREBY ACCEPTS THE UNCERTAINTY OF THE ESTIMATED CLOSING DATE, AND, EXCEPT AS EXPRESSLY PROVIDED IN PARAGRAPH 2(c) ABOVE, BUYER HEREBY WAIVES ANY AND ALL CLAIMS AGAINST SELLER, ITS AGENTS, EMPLOYEES AND INDEPENDENT CONTRACTORS ARISING AS A RESULT OF THE FAILURE OF SELLER TO CLOSE BY THE ESTIMATED CLOSING DATE.

(iii) Closing Agent. The Closing Agent will coordinate the Closing unless Buyer provides Seller with written notice of Buyer's selection of a different closing agent to coordinate the Closing, subject to the requirements set forth in Paragraph H of the Transaction Summary. If Buyer provides such written notice within forty-five (45) days prior to the Estimated Closing Date, Buyer will be solely responsible for any additional costs incurred as a result of changing the closing agent.

(iv) No Contingency for Prior Sale. Unless otherwise indicated below, Buyer acknowledges that the purchase and sale of the Property contemplated by this Contract is not contingent upon the prior sale of other property Buyer owns (including, without limitation, real property, stocks, 401K holdings and personal property) and that Buyer will be in default under this Contract for failure to close on or before the Closing Date because of Buyer's inability to sell any such property.

☑ Buyer's purchase is not contingent.

☐ Buyer's purchase is contingent upon the sale of present residence (see Contingent Upon Sale Addendum).

BUYER'S INITIALS: AB _____ / _____

(b) **Vesting**. The manner of taking title may have significant legal and tax consequences. Buyer should consult with Buyer's professional advisor regarding such consequences. Unless Buyer designates otherwise to Seller, title to the Property will be vested as set forth in Paragraph B of the Transaction Summary. If not designated in Paragraph B, Buyer agrees to inform Title Insurer how title will vest prior to the Closing Date.

7. **CLOSING COSTS AND REAL PROPERTY TRANSFER TAXES.** All closing costs and real property transfer taxes (if applicable) will be paid by Buyer. Such closing costs include all costs, expenses, fees and charges relating to (a) the Loan

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(including, without limitation, the cost of the Lender's Title Policy, credit reports, Loan fees and impound payments), (b) the delivery of title (including, without limitation, recording fees, stamp taxes (if applicable) and the cost of Buyer's Title Policy), and (c) the Association, if any (including, without limitation, assessments, a contribution to the reserve account, or transfer or set-up fees). Such closing costs will also include prepaid items (including, without limitation, prepaid real estate taxes, initial association fees, and prepaid interest). THE ACTUAL CLOSING COSTS AND PRORATIONS COULD SUBSTANTIALLY DIFFER FROM THE ESTIMATED CLOSING COSTS AND PRORATIONS. BUYER HEREBY ACCEPTS THE UNCERTAINTY OF THE ESTIMATED CLOSING COSTS AND PRORATIONS, AND BUYER HEREBY WAIVES ANY AND ALL CLAIMS AGAINST SELLER, ITS AGENTS, EMPLOYEES, AND INDEPENDENT CONTRACTORS RELATING TO SUCH ESTIMATE.

8. **PRORATIONS**. Real property taxes and assessments will be prorated as of the Closing Date between Seller and Buyer based upon the latest available tax and assessment bills at the Closing on a calendar year basis. If any such bill covers real property owned by Seller in addition to the Property, the amount of real property taxes and assessments allocable to the Property for proration purposes will be provided by Seller. Association assessments (when applicable) will also be prorated as of the Closing. ANY DIFFERENCE BETWEEN THE AMOUNT OF TAXES USED FOR PRORATION PURPOSES AND THE AMOUNT OF ANY ACTUAL TAX LIABILITY WILL BE SETTLED BETWEEN THE PARTIES ON A PRORATED BASIS AFTER CLOSING. All prorations will be made on the basis of a thirty-day (30) month.

9. **TAXES**.

   a) **Supplemental Tax**. **ALL PARTIES ARE AWARE THAT THE PROPERTY HAS BEEN OR MAY BE REASSESSED FOR REAL PROPERTY TAX PURPOSES, THAT ADDITIONAL TAX AMOUNTS MAY BE ASSESSED BY THE COUNTY ASSESSOR AND MAY BECOME A LIEN AGAINST THE PROPERTY ON THE DATE OF CHANGE IN OWNERSHIP OR COMPLETION OF NEW CONSTRUCTION, AND THAT A SUPPLEMENTAL TAX BILL MAY BE ISSUED FOLLOWING THE CLOSING TO BUYER. SELLER WILL HAVE NO OBLIGATIONS WITH RESPECT TO ANY SUPPLEMENTAL ASSESSMENT. BUYER AGREES TO DEFEND, INDEMNIFY, AND HOLD SELLER HARMLESS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES OR LIABILITY ARISING FROM BUYER'S FAILURE TO PAY ANY SUCH SUPPLEMENTAL ASSESSMENTS.**

   b) **No Withholding.** Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor (i.e. Seller) is a foreign person. To inform Buyer that withholding of tax is not required in connection with this transaction, Seller certifies that Seller is not a foreign corporation, foreign partnership, foreign trust, or foreign estate.

10. **BUYER'S DEFAULT; REMEDY FOR DEFAULT**. Buyer's failure or refusal to comply or perform within the time or in the manner required under any of the provisions of this Contract will constitute Buyer's default whether or not such provision expressly states that such failure or refusal is a default. Buyer's express or implied refusal to perform under this Contract prior to the time Buyer's performance is due (i.e. anticipatory repudiation) will also constitute a default. In the event of any default by Buyer, Seller will have a continuing right to terminate the Contract, cancel the Closing and have no further obligation to Buyer, and Seller may further pursue any available remedy at law or in equity that Seller may have against Buyer, or if Seller and Buyer have initialed the Liquidated Damages paragraph contained in this Contract (Paragraph 11), Seller will be entitled to the sum set forth in Paragraph 11 as liquidated damages for default.

11. **LIQUIDATED DAMAGES. IF BUYER DEFAULTS UNDER ANY TERM OR PROVISION OF THIS CONTRACT, SELLER WILL BE RELEASED FROM ITS OBLIGATION TO SELL THE PROPERTY TO THE BUYER AND SELLER MAY FURTHER PURSUE ANY REMEDY IN LAW OR EQUITY THAT SELLER MAY HAVE AGAINST BUYER ON ACCOUNT OF SUCH DEFAULT. HOWEVER, BY INITIALING HERE**

BUYER: AB / _____ / _____ **AND SELLER:** JP **AGREE THAT:**

IF BUYER DEFAULTS UNDER ANY TERM OR PROVISION OF THIS CONTRACT, BUYER AND SELLER AGREE THAT IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE ACTUAL DAMAGES SUFFERED BY SELLER, THAT BUYER DESIRES TO LIMIT THE DAMAGES FOR WHICH BUYER MAY BE LIABLE AS THE RESULT OF A DEFAULT BY BUYER, AND THAT BUYER AND SELLER BOTH DESIRE TO AVOID THE COSTS AND DELAYS OF LEGAL PROCEEDINGS. THEREFORE, IN THE EVENT OF A DEFAULT BY BUYER PRIOR TO THE CLOSING, SELLER WILL BE ENTITLED TO TERMINATE THIS

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CONTRACT, CANCEL THE CLOSING AND RETAIN, AS LIQUIDATED DAMAGES, AN AMOUNT EQUAL TO BUYER'S DEPOSITS, WHICH AMOUNT WILL BE DEEMED TO BE A REASONABLE ESTIMATE OF SELLER'S DAMAGES RESULTING FROM THE FAILURE TO CLOSE THIS TRANSACTION AND NOT A PENALTY. IN DETERMINING THE REASONABLENESS OF THE AMOUNT OF LIQUIDATED DAMAGES WITH RESPECT TO OPTIONS, THE PARTIES HAVE CONSIDERED THE AMOUNT EXPENDED OR COMMITTED BY SELLER IN INSTALLING OR PREPARING TO INSTALL SUCH OPTIONS AND THE ADVERSE IMPACT ON THE MARKETABILITY OF THE PROPERTY ONCE THE OPTIONS SELECTED HAVE BEEN INSTALLED. NOTHING CONTAINED HEREIN IS INTENDED TO LIMIT SELLER'S RIGHT TO SEEK INDEMNIFICATION FROM BUYER FOR THE SPECIFIC ACTS DESCRIBED IN PARAGRAPH J OF THE TRANSACTION SUMMARY AND PARAGRAPHS 2(g), 2(h) AND 9(a). FOR PURPOSES OF THIS PARAGRAPH 11, "BUYER'S DEPOSITS" WILL MEAN AND REFER TO BUYER'S PURCHASE DEPOSIT AND TO ALL OTHER MONEYS DEPOSITED BY BUYER WITH SELLER IN CONNECTION WITH THE PURCHASE OF THE PROPERTY, INCLUDING WITHOUT LIMITATION OPTION DEPOSITS.

12. **DISPUTE RESOLUTION**. ANY DISPUTES OR CLAIMS OR CONTROVERSIES OF ANY TYPE BETWEEN BUYER (OR ANY REPRESENTATIVE OF BUYER ACTING WITH RESPECT TO BUYER'S RIGHTS, INCLUDING ANY HOMEOWNERS' ASSOCIATION) AND SELLER (OR ANY OTHER PARTIES INCLUDED WITHIN THE DEFINITION OF "SELLER" CONTAINED IN THE DISPUTE RESOLUTION AGREEMENT ADDENDUM TO THIS CONTRACT "ADR ADDENDUM")) ARISING OUT OF OR RELATING TO THIS CONTRACT, THE PROPERTY, OR ANY OTHER MATTER AS DESCRIBED IN THE ADR ADDENDUM, WILL BE RESOLVED PURSUANT TO THE PROCEDURES SPECIFIED IN THE ADR ADDENDUM. **UNDER THE ADR ADDENDUM, BUYER AGREES, AMONG OTHER THINGS, TO SUBMIT SUCH DISPUTES OR CLAIMS OR CONTROVERSIES TO BINDING ARBITRATION AND TO WAIVE ANY AND ALL RIGHTS TO A JURY TRIAL.** BUYER AND SELLER EACH ACKNOWLEDGE THAT THEY HAVE READ, UNDERSTAND AND AGREE TO THE TERMS OF THIS PARAGRAPH.

BUYER'S INITIALS: AB / _____ / _____ **SELLER'S INITIALS:** JP

13. **LIMITED CONTRACTUAL WARRANTY AND WARRANTY DISCLAIMERS**. Prior to signing this Contract, Buyer was provided the Limited Warranty and the Homeowner Limited Warranty & Maintenance Manual ("**Manual**") for review. Buyer has reviewed, understands, and agrees to be bound by the terms of the Limited Warranty and the Manual. Seller's election to provide and be subject to the Limited Warranty and the Manual is in consideration of Buyer's and Seller's agreement to the dispute resolution procedures and waiver of jury trial set forth in the Dispute Resolution Agreement Addendum. After Closing, this Contract will serve as proof of Buyer's enrollment into the Limited Warranty program and any Application for Home Enrollment called for by the Limited Warranty. Buyer, on behalf of Buyer and Buyer's successors, assigns, subsequent owners, heirs and parties holding rights to the Property ("**Subsequent Owners**"), agrees to be bound by the Limited Warranty, including the binding arbitration procedure and limitation on statutory and common law remedies described therein. The Limited Warranty will run with the land and will bind Subsequent Owners. The Deed may reference the Limited Warranty and/or the Manual. The Limited Warranty is insured by Columbia National Risk Retention Group, Inc., which is an affiliate of Seller. THE LIMITED WARRANTY, WHEN ISSUED, WILL BE THE ONLY WARRANTY, EXPRESS OR IMPLIED, MADE BY SELLER WITH REGARD TO THE PROPERTY, AND SELLER DISCLAIMS ALL OTHER WARRANTIES AS MORE FULLY SET FORTH IN THE "DISCLAIMER AND WAIVER OF WARRANTIES AND OTHER RIGHTS ADDENDUM" TO THIS CONTRACT.

BUYER'S INITIALS: AB _____ / _____

14. **SUCCESSORS AND ASSIGNS**. This Contract cannot be assigned or transferred by Buyer in whole or in part, whether voluntarily or by operation of law, without the prior written consent of Seller in its sole and absolute discretion, and any such assignment or transfer without such prior written consent will be null and void and will constitute a default by Buyer. This Contract and the rights, duties and obligations of the parties will be binding upon and inure to the benefit of the successors and assigns of Seller and, subject to the preceding sentence, to the heirs, executors, administrators, successors and assigns of Buyer.

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15. MISCELLANEOUS PROVISIONS.

(a) **Severability**. If any portion of this Contract is declared by any court or arbitrator to be invalid, illegal or unenforceable, such portion will be deemed severed from this Contract and the remaining parts of this Contract will remain in full force and effect, as fully as though the severed portion had never been part of this Contract.

(b) **No Recordation of Lis Pendens or Assertion of Lien**. In no event will this Contract or any document or other memorandum related to the subject matter of this Contract be recorded without the consent of Seller. Buyer further agrees not to file any lis pendens or other instrument, nor assert or record any purchaser's or similar lien, against the Property prior to the Closing; except that a lis pendens may be filed by Buyer provided that (a) Buyer is not in default under the Contract; (b) Buyer is pursuing an action for specific performance and has demonstrated a bona fide intent to purchase the Property; and (c) such lis pendens is not filed more than ten (10) days after Buyer became aware or should have become aware of Seller's default entitling Buyer to pursue its specific performance action and in no event later than ten (10) days after the date the Closing is supposed to occur pursuant to Paragraph 6(a)(ii).

(c) **Required Actions of Buyer and Seller**. Buyer and Seller agree to execute all instructions and documents and take all actions (including the deposit of funds in addition to such funds as may be specifically provided for herein) as may be required in order to consummate the Transaction contemplated by this Contract and will use their reasonable good faith efforts to accomplish the Closing in accordance with the terms of this Contract. All amounts due from Buyer must be paid by wire transfer.

(d) **Notice of Cancellation**. The failure or express refusal by one party to perform any obligation within the time and upon the terms and conditions required under the Contract will be a default. Any notice of cancellation by either Buyer or Seller, including the notice by Seller given pursuant to the Liquidated Damages paragraph of this Contract, may be given only in writing and delivered to the other party to this Contract in accordance with Paragraph 15(j) below.

(e) **Transaction Summary**. The Transaction Summary is an integrated part of this Contract. In the event of any discrepancy between the information contained in the Transaction Summary and the provisions of the remainder of this Contract, the provisions of the remainder of this Contract will control.

(f) **Counterparts**. This Contract may be executed in counterparts, each of which will be deemed an original, and said counterparts will constitute one and the same instrument.

(g) **Survival**. All of the covenants and representations set forth in this Contract which are not conditions of the Closing will survive the Closing and delivery of the Deed. The following provisions will survive any termination of this Contract: (i) Paragraph 12 (dispute resolution); (ii) Paragraphs J of the Transaction Summary and Paragraphs 2(g), 2(h), and 9(a) (indemnification of Seller); and (iii) Paragraph 15(b) (limitations on lis pendens).

(h) **No Waiver**. The waiver by Seller of any term or provision of this Contract will not be construed as a waiver of any other or subsequent term or provision of this Contract. Seller's failure to assert and pursue the remedies set forth in this Contract for a default will not constitute a waiver of Buyer's default.

(i) **Time of the Essence**. Time will be considered of the essence of this Contract.

(j) **Notices**. All notices or other communication required or permitted under this Contract must be in writing, and must be hand delivered, sent by certified mail return receipt requested, sent by Express Mail of the U. S. Postal Service or any other courier guaranteeing overnight delivery, or sent by facsimile (unless otherwise provided herein). Notices must be addressed to the person to receive such notice at the addresses (or facsimile numbers) of Buyer and Seller set forth in this Contract or at any other address (or facsimile number) substituted therefor by written notice to the other party to this Contract. Notices will be deemed received upon actual receipt if hand delivered, 48 hours after deposit in the United States mail if sent by certified mail, or 24 hours after deposit in the Express Mail of the U.S. Postal Service or with another courier guaranteeing overnight delivery. If the notice is sent by facsimile, it will be deemed received on the date set forth on the confirmation sheet printed by the sending facsimile machine showing delivery of the notice without errors to the facsimile number of the receiving party. Failure of the addressee to accept or acknowledge receipt will not invalidate notice given in accordance with this paragraph. If Buyer is more than one person, service on one of such persons will be deemed to be service on Buyer.

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(k) **Construction**. If the day on which any action is required to be taken under the terms of this Contract is not a business day (e.g., a Saturday, Sunday, or state or national holiday), the action will be taken on the next succeeding business day.

(l) **Incorporation of Addenda**. All addenda referred to herein or otherwise provided to Buyer are incorporated into this Contract as though fully set forth herein.

[END]

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CALATLANTIC HOMES

PURCHASE CONTRACT

BUYER INFORMATION

Name:	Maureen Hunter						
Present Address:	6 Cross Way		City:	Mendham	State: NJ	Zip:	07945
Home Phone:	646-650-3720	Work Phone:			Cell Phone:	973-868-8999	
Fax:			Email:	maureen.c.hunter@gmail.com			
Name:	Emily Beth Scheinert						
Present Address:	6 Cross Way		City:	Mendham	State: NJ	Zip:	07945
Home Phone:		Work Phone:			Cell Phone:		
Fax:			Email:	Scheinerteb@g.cofc.edu			
Name:							
Present Address:			City:		State:	Zip:	
Home Phone:		Work Phone:			Cell Phone:		
Fax:			Email:				

PROJECT: Whitesides Park

SELLER'S SALES COUNSELOR: Tina Jones

TRANSACTION SUMMARY AND EXECUTION

This Transaction Summary and Execution ("**Transaction Summary**") sets forth some of the terms of this Purchase Contract ("**Contract**") between the Buyer identified above and CalAtlantic Group, Inc., a Delaware corporation ("**Seller**"). It is only part of this Contract; all of the terms of this Contract must be read carefully and understood before this Contract is signed. Capitalized terms are defined in Paragraph 1 of this Contract or as they appear throughout the Contract.

A. **PROPERTY.** Lot 0003, Block _____ (if applicable) as shown on that certain map/subdivision plat recorded in Book/Drawer/Volume/Cabinet/Document , at Page/Slide _____, in the official records of _____ County, Sc.

The Property is commonly identified as the following street address: 1098 Rifle Range Road, Mt Pleasant, Sc, 29464, and may also be referred to as all or any of the following: Plan Mccormick, Elevation A, Subdivision Name Whitesides Park, Unit _____, Phase/Section _____, Block _____ Tract _____ as set forth in the declaration recorded in the official records of _____, Sc.

NOTICE IS HEREBY GIVEN PURSUANT TO THE UNIFORM ARBITRATION ACT, SECTION 15-48-10, ET. SEQ., CODE OF LAWS OF SOUTH CAROLINA (1976 AS AMENDED) THAT THIS AGREEMENT IS SUBJECT TO MANDATORY ARBITRATION.

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B. BUYER AND VESTING. The Buyer(s) ("**Buyer**") is(are):

Maureen Hunter and Emily Beth Scheinert

Title to the Property will vest as follows:

☑ To Be Determined ☐ Joint Tenancy with Right of Survivorship

☐ Sole Ownership ☐ Tenancy in Common

☐ Other

(How title is taken has legal and tax consequences. See Paragraph 6(b)).

C. PURCHASE PRICE.

Base Purchase Price	$	467,000.00
Lot Premium	$	2,000.00
Price of Upgrades/Optional Items (as per Optional Items and Additional Deposit Amendment, if any):	$	51,321.00
Other Adjustments:	$	(21,937.00)
Total Purchase Price:[1]	$	**498,384.00**

D. METHOD OF PAYMENT OF PURCHASE PRICE.

(i) **Initial Deposit.** $ _____

Received by Seller as referenced on separate deposit receipt.

(ii) **Additional Deposits.**

Buyer agrees to make additional cash deposits with seller as follows:

on or before _____ $ _____

on or before _____ $ _____

on or before _____ $ _____

Total Additional Deposits. $ _____

(iii) **New Loan(s).** *(Check if applicable)*

☐ Proceeds of new loan(s) to be obtained by financing Buyer on or before the Closing Date in the amount of $ _____

(iv) **Balance of Purchase Price Paid in Cash by Buyer.**[2]

on or before _____ $ _____

E. ESTIMATED CLOSING COSTS AND PRORATIONS.[3] $ _____

F. MONTHLY ASSOCIATION ASSESSMENTS (SUBJECT TO CHANGE).

As of _____ $ _____

[1] Does not include Upgrades/Optional Items ordered after the Contract Date which will be added to the Total Purchase Price.
[2] Does not include Closing Costs, Taxes, or Prorations.
[3] The amounts set forth in Paragraph E are estimates and such estimates will vary. Please read Paragraph 7 for more details regarding costs to be paid at Closing.

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G. TITLE INSURER:
(Check one.)

☒ Buyer elects to use Seller's affiliated title insurer, CalAtlantic Title Charleston, LLC

☐ Buyer elects to use the following alternate title insurer designated by Buyer:

_____

Any title insurer designated by Buyer must have the ability to issue an insured closing letter for the Selected Lender. If Buyer checks this box but does not designate the name of the alternate title insurer (or designates a company that does not provide such services), then Buyer will be deemed to have elected to use Seller's affiliated title insurer, CalAtlantic Title Charleston, LLC.

Buyer may later change Buyer's selection, subject to Paragraph 6(a)(i).

BUYER'S INITIALS: MH / EBS / _____

H. CLOSING AGENT:
(Check one.)

☒ Buyer elects to use Seller's affiliated closing agent, CalAtlantic Title Charleston, LLC

☐ Buyer elects to use the following alternate closing agent designated by Buyer:

_____

Any closing agent designated by Buyer must provide evidence to Seller that such closing agent maintains adequate errors and omissions insurance and fidelity insurance. Buyer is solely responsible for all costs and expenses relating to the use of any alternate closing agent. If Buyer checks this box but does not designate the name of the alternate closing agent (or designates a company that does not provide such services), then Buyer will be deemed to have elected to use Seller's closing agent set forth above.

Buyer may later change Buyer's selection, subject to Paragraph 6(a)(iii).

BUYER'S INITIALS: MH / EBS / _____

I. LENDER:
(Check one.)

☒ Buyer elects to use Seller's affiliated mortgage company, CalAtlantic Mortgage, Inc.

☐ Buyer elects to use the following alternate mortgage company designated by Buyer:

_____

If Buyer checks this box but does not designate the name of the alternate mortgage company (or designates a company that does not provide such services), then Buyer will be deemed to have elected to use Seller's affiliated mortgage company, CalAtlantic Mortgage, Inc.

Buyer may later change Buyer's Selected Lender, subject to Paragraph 4(b).

☐ Buyer elects to pay the Purchase Price in cash

Type of Loan: ☒ Conventional ☐ FHA ☐ VA ☐ Other ☐ Not applicable (paying cash)

BUYER'S INITIALS: MH / EBS / _____

J. REPRESENTATION. Seller's sales counselor represents Seller and does not represent Buyer.
(Check one.)

☐ Buyer represents that Buyer is not represented by an agent, broker, salesperson or any other person ("**Co-Broker**") with respect to the purchase of the Property.

☑ Seller, Buyer, and Co-Broker have executed a co-broker agreement ("**Co-Broker Agreement**").

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Except as provided in any Co-Broker Agreement executed by Seller, Buyer represents and warrants that Buyer has not dealt with any other agents, brokers, salesperson, finders or person of any kind who could make a claim for a commission or finder's fee in connection with this transaction (other than finder or referral fees that may be offered to other CalAtlantic homeowners in Seller's sole discretion and as allowed by law) ("**Claim**") and Buyer will defend, indemnify and hold Seller harmless for, from and against any and all liability, responsibility, claims, losses, damages, costs, controversies, expenses or attorney's fees sustained or incurred by Seller resulting from such Claim.

K. **SIGNIFICANT DATES/DEADLINES.**

(i) Contract Date: The date on which this Contract is executed by an officer or authorized representative of Seller.

(ii) Loan Application Deadline: 10/24/2017

(iii) Loan Approval Deadline: 11/19/2017

(iv) Options Selection Deadline(s):

(a) _____ _____

(b) _____ _____

(c) _____ _____

(d) _____ _____

☐ See Options Selection Deadlines and Policies Addendum

(v) Estimated Closing Date: 12/21/2017

L. **RECEIPT OF DOCUMENTATION.** Buyer should completely review all reports and disclosures relating to the Property. Buyer is aware of Buyer's affirmative duty to exercise reasonable care to protect Buyer by reviewing such reports and disclosures and by identifying and evaluating those facts that are known to or within the diligent attention and observation of Buyer. Buyer acknowledges that Buyer has received the following documents. Buyer understands that these documents contain important information regarding the Property.

X Limited Warranty
X CalAtlantic Homeowner Limited Warranty & Maintenance Manual
X Disclosure Statement
X Agency Disclosure Brochure
_____ Final Public Report / Receipt for Public Report / Subdivision Disclosure Report
_____ Plot Plan/Site Plan
_____ Articles of Incorporation of the Association
_____ Bylaws of the Association
_____ Declaration
_____ Architectural Guidelines / Architectural Rules & Landscape Guidelines
_____ Association Rules
_____ Current pro forma operating budget and other current financial and other related statements

_____

_____

M. **DELIVERY OF DOCUMENTS TO LENDER BY BUYER.** Buyer agrees that Buyer will promptly provide the entire purchase contract, all addenda and all amendments to any lender loaning purchase money to Buyer for this transaction. Such documents must be provided to such lender(s) within five (5) business days of the execution of such documents and in no event later than the Loan Approval Deadline, if applicable, or the Closing Date, if the Loan Approval Deadline has passed or the Contract does not set forth a Loan Approval Deadline. If the lender(s) will not accept documents directly from Buyer, Buyer agrees to provide such documents to the closing agent and will confirm that the closing agent has provided the documents to the lender(s).

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N. **EFFECTIVENESS OF CONTRACT**. EXECUTION OF THIS CONTRACT BY BUYER ALONE WILL CONSTITUTE AN OFFER TO PURCHASE THE PROPERTY. SELLER RESERVES THE RIGHT TO REJECT SUCH OFFER FOR ANY REASON. RECEIPT AND ACKNOWLEDGEMENT OF A DEPOSIT BY THE SALES COUNSELOR DOES NOT CONSTITUTE ACCEPTANCE BY SELLER. THIS CONTRACT WILL BECOME EFFECTIVE AND BINDING UPON THE PARTIES ONLY WHEN IT IS SIGNED AND DELIVERED BY AN OFFICER OR AUTHORIZED REPRESENTATIVE OF SELLER. THE DELIVERY OF A COPY OF THE FULLY EXECUTED CONTRACT TO BUYER WILL CONSTITUTE NOTICE TO BUYER THAT BUYER'S OFFER HAS BEEN ACCEPTED. IF BUYER'S OFFER IS NOT ACCEPTED, SELLER WILL RETURN TO BUYER ANY FUNDS DEPOSITED BY BUYER IN PAYMENT OF THE PURCHASE PRICE.

O. **ENTIRE AGREEMENT**. This Contract contains the entire agreement between the parties, and no addition or modification of any term will be effective unless set forth in writing and signed by both parties. All advertising material and all prior representations or agreements, if any, whether oral or written, are hereby superseded, and Buyer has not relied upon any of them in deciding to enter this Contract. No salesperson, employee or agent of Seller has authority to modify the terms of this Contract. Therefore, Buyer should write in below any representations or promises that are not set forth in this Contract, but that have been made by a salesperson, employee or agent of Seller or contained in the advertising material of Seller and upon which Buyer is relying in making this purchase. If Buyer fails to write in any statements below, Seller will be deemed not to have made any representations or promises that are not set forth in this Contract.

Maureen Hunter None

Emily Beth Scheinert None

BUYER'S INITIALS: MH / EBS /

P. **BUYER'S ACKNOWLEDGMENT**. NOTWITHSTANDING THAT THIS CONTRACT IS EXECUTED ON THIS PAGE, BUYER ACKNOWLEDGES THAT BUYER HAS READ AND UNDERSTANDS AND WILL BE BOUND BY EACH AND EVERY TERM OF THIS CONTRACT IF SELLER ACCEPTS BUYER'S OFFER WHETHER SUCH TERM APPEARS BEFORE OR AFTER THIS EXECUTION.

BUYER:

Maureen Hunter — 10/18/2017
Signature — Date
Maureen Hunter
Name

Emily Beth Scheinert — 10/18/2017
Signature — Date
Emily Beth Scheinert
Name

Signature — Date

Name

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ACCEPTANCE OF CONTRACT BY SELLER:

CalAtlantic Group, Inc.,
a Delaware corporation

By kelli Snyder
Title: Authorized Representative
Date Signed by Seller: 10/23/2017

ADDRESS OF SELLER:
,
,

Phone:
Fax:

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THIS PURCHASE CONTRACT, including the foregoing Transaction Summary, together with the addenda and exhibits attached hereto, and amendments to any of the foregoing, constitutes an agreement by which Seller agrees to sell and the Buyer agrees to purchase the property described in Paragraph A of the Transaction Summary (which property may or may not be owned by Seller at the time of this Contract) upon the terms and conditions set forth herein.

1. **DEFINITIONS**.

(a) "**Association**" (when applicable) means any homeowner's association referred to in a Declaration.

(b) "**Buyer's Title Policy**" means the standard coverage owner's policy of title insurance issued by Title Insurer on its standard coverage policy form insuring Buyer's title to the Property to be obtained under this Contract.

(c) "**Closing**" means the day that the Deed is recorded in the office of official land records of the County in which the Property is located.

(d) "**Closing Agent**" means the closing agent set forth in Paragraph H of the Transaction Summary or other closing agent as selected by Buyer as authorized by this Contract.

(e) "**Contract Date**" means the date set forth as the "Date Signed by Seller" in the Transaction Summary directly below Seller's execution of this Contract.

(f) "**Declaration**" means any recorded Declaration of Covenants, Conditions and Restrictions, Declaration of Condominium or similar instrument for the Project as amended and supplemented.

(g) "**Deed**" means the executed general warranty deed to be executed by Seller, subject to the exceptions set forth in Paragraphs 6 and 13.

(h) "**Lender's Title Policy**" means the policy of title insurance required by Selected Lender.

(i) "**Loan**" means the loan secured by a first deed of trust or mortgage to be obtained by Buyer under this Contract if so indicated by Paragraph D(iii) of the Transaction Summary. If Buyer is also obtaining a loan secured by a second deed of trust or mortgage, "Loan" will include such additional loan.

(j) "**Loan Approval**" means Selected Lender's unconditional approval of the Loan to Buyer in the full amount necessary to complete the purchase of the Property under the terms of this Contract, subject only to the appraisal of the Property and any other conditions approved by Seller in its reasonable discretion.

(k) "**Occupancy Approval**" means the approval permitting occupancy of the Property issued by the appropriate City or County department, whether provided orally or in writing by a certificate or other document. Such Occupancy Approval may include temporary certificates of occupancy issued by the appropriate city or county.

(l) "**Option(s)**" means the various selections, upgrades, and/or extra items that Seller may offer for installation in the Property.

(m) "**Options Selection Deadline**" means the deadline(s) set forth in Paragraph K(iv) of the Transaction Summary or, if applicable, the Options Selection Deadlines and Policies Addendum.

(n) "**Property**" means the property described in Paragraph A of the Transaction Summary including the Residence of the plan type set forth in Paragraph A of the Transaction Summary together with any upgrades or optional items purchased in this Contract or purchased by separate document executed by Seller and Buyer that is delivered to Buyer by Seller. In the event of any discrepancy between the legal description of the Property and the street address set forth in Paragraph A of the Transaction Summary, the legal description will control.

(o) "**Project**" means the real estate development in which the Property is located.

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(p) "**Purchase Price**" or "**Total Purchase Price**" means the "Total Purchase Price" indicated in Paragraph C of the Transaction Summary together with the purchase price of any upgrade or optional item subsequently purchased by separate document executed by Seller and Buyer and made a part of this Contract.

(q) "**Residence**" means the dwelling unit and related improvements to be constructed by Seller on the Property.

(r) "**Selected Lender**" means the lender selected by Buyer on or before the Loan Application Deadline, which will be the lender set forth in Paragraph I of the Transaction Summary, Seller's Designated Lender, or such other lender consented to in writing by Seller pursuant to Paragraph 4(b).

(s) "**Seller's Designated Lender**" means Seller's affiliate, CalAtlantic Mortgage, Inc.

(t) "**Title Insurer**" means the title company set forth in Paragraph G of the Transaction Summary or other title insurance company as selected by Buyer as authorized by this Contract.

(u) "**Total Deposit**" means the Initial Deposit in the amount set forth in Paragraph D(i) of the Transaction Summary together with any additional cash deposits by Buyer.

(v) "**Transaction**" means the transaction contemplated under this Contract.

(w) "**Transaction Summary**" means the Transaction Summary and Execution appearing at the beginning of this Contract.

2. **RESIDENCE AND PROJECT.**

(a) **Residence**. If not already completed, Seller will construct or cause to be constructed a Residence on the property described in Paragraph A of the Transaction Summary and obtain Occupancy Approval. The Closing is conditioned upon the prior issuance of Occupancy Approval. Construction of the Residence will be substantially in accordance with the Residence plans and the Options selected by Buyer and accepted by Seller in writing, unless: (i) modified by Seller in Seller's sole discretion; (ii) requested by Buyer and approved by Seller in writing; or (iii) the variation falls within the tolerances specified in the CalAtlantic Homeowner Limited Warranty & Maintenance Manual. Items such as structural bearing points, heating systems, water heater, plumbing lines and laundry trays, wiring and electrical system, gas and electric meters, basement exit and stairwell, garage and/or deck steps and garage service doors will be located by Seller at Seller's sole discretion.

(b) **Selection of Upgrades/Options**. Seller may, but has no obligation to, offer Buyer Options. If Seller offers Options to Buyer, then Buyer agrees to notify Seller of Buyer's decision regarding the Options no later than the Options Selection Deadline. Seller will not be obligated to install any Options, and Seller will not be bound by Buyer's decision regarding said Options, unless Options as requested by Buyer are accepted by Seller in writing. If Buyer fails to notify Seller within the time required, Seller may hold Buyer in default and pursue the remedies set forth in Paragraphs 10 and 11. If Seller chooses to proceed with the Closing despite Buyer's failure to notify Seller within the time required, Buyer will be presumed conclusively to have accepted standard items and to have elected no Options. Buyer should refer to the Options Selection Deadlines and Policies Addendum.

(c) **Completion Within Two Years**. Seller will in all events complete the construction of the Residence within two (2) years after the date Buyer executes this Contract (assuming the Contract is also executed and delivered by Seller), as extended by any Unavoidable Delay. "**Unavoidable Delay**" means delay caused by matters which are legally recognized as defenses to contract actions pursuant to the laws of the state in which the Property is located. If Seller fails to complete the Residence within this two-year period (or within the period beyond two years when extended by Unavoidable Delay), Buyer may (i) terminate this Contract in which case all sums Buyer has deposited will be refunded to Buyer within fifteen (15) days after Seller's receipt of Buyer's written cancellation request, or (ii) seek any available remedy at law or in equity against Seller.

(d) **Homeowner Inspection**. Prior to the Closing, Buyer will be notified that construction of the Residence on the Property has been substantially completed (if not completed as of the Contract Date) and date(s) will be scheduled for the Buyer's orientation and inspection of the Residence. Buyer and Seller's representatives will inspect the Residence and Buyer will be oriented to the care and maintenance of Buyer's Residence and have an opportunity to inspect the Property. During the orientation and inspection, Buyer agrees to note to Seller's representative any conditions that Buyer requests Seller to correct. If Seller agrees corrections should be made, Seller will make such corrections within a reasonable period of time, which may be before or after the Closing. Provided that Occupancy Approval has been issued, Buyer agrees that Buyer will not delay the Closing because corrections have not been completed. Should Buyer fail to inspect the Property on the date(s) scheduled

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for Buyer's orientation and inspection, Buyer will waive Buyer's opportunity to inspect the Property and be oriented to the care and maintenance of Buyer's Residence, and Buyer authorizes Seller to, at Seller's sole and absolute discretion, perform the orientation and inspection on Buyer's behalf, and Buyer agrees to close on the date set for the Closing. If after such an inspection there is a disagreement between Seller and Buyer concerning any items Seller agreed in writing to make, then the dispute will be settled as provided in Paragraph 12 below.

(e) **Substitutions and Conveyance of Easements**. Seller reserves the right to make substitutions or changes that may, in its sole and absolute discretion, be necessary or desirable to any improvement provided that such changes are of substantially equivalent value and comply with the appropriate City or County building codes. Seller may substitute other materials, fixtures, or methods of construction if, in Seller's judgment, such substitutions become necessary or desirable. Consultation with Buyer will not in any case be deemed a waiver of Seller's right to make any such changes. Elevations, roof tile type, color, and paint colors are selected by site-coordinator and may vary by lot. Seller reserves the right, prior to the Closing, to convey easements for landscaping and for the maintenance of the landscaping and the irrigation systems appurtenant thereto over any portion of the Property that may be located outside a fence on the Property but within the boundary of the Property ("**Easement Area**") if in the sole judgment of Seller such Easement Area is not likely to be used by the occupant of the Property and should therefore be maintained in a clean and attractive condition by the owner of property adjacent to the Easement Area or by an Association for the benefit of the Project.

(f) **Insulation**. Insulation will be installed in the Property as follows:

(i) Exterior Walls will be insulated with Batt insulation to a thickness of 3 1/2 inches, which, according to the manufacturer, will yield an R-value of R-13.

(ii) Ceiling Insulation will be insulated with Blown insulation to a thickness of 11.1 inches, which, according to the manufacturer, will yield an R-value of R-30.

(iii) Vertical walls adjacent to attic areas will be insulated with Batt insulation to a thickness of 3 1/2 inches, which, according to the manufacturer, will yield an R-value of R-13.

(iv) Areas over garages adjacent to living space will be insulated with Batt insulation to a thickness of 6 1/2 inches, which, according to the manufacturer, will yield an R-value of R-19.

(The higher the R-Value, the greater the insulating power. Savings vary. Higher R-Values mean greater insulating power. If Seller advertised a comparison of one type of insulation to another, ask Seller for a fact sheet on R-Values. Locations specified do not include ceilings and walls surrounding patios, or any areas beyond the exterior walls of the home. Notwithstanding the foregoing, the insulation installed in certain areas may be of lesser thickness and R-Value than indicated because the structural integrity or design of the Residence does not permit any greater thickness. Examples of locations where thickness and R-Values may vary include, without limitation, locations where studs are placed in walls, at corners and windows, and where roof trusses attach to outside walls. The R-Values shown are according to the manufacturer and/or installers of the insulation, and Seller does not warrant or represent the accuracy or correctness of this information.)

(g) **Site Visits.** CONSTRUCTION SITES ARE INHERENTLY DANGEROUS. Buyer, on Buyer's behalf and on behalf of Buyer's agents, charges and invitees, agrees not to enter the Project or the Property before obtaining the express written permission of the Seller. Seller reserves the absolute right to deny or restrict Buyer's access to the Project and the Property. If Buyer receives Seller's written permission to enter the Project or the Property, then at all times during such entry Buyer and Buyer's agents, charges, and invitees must be accompanied by a representative of Seller and must comply with all safety requirements imposed by Seller including, without limitation, use of a hard hat. If Buyer or Buyer's agents, charges, or invitees enter the Project or the Property prior to Closing with or without Seller's written permission, Buyer assumes all risk of personal injury and damages resulting for, from and against such construction site entry, and further agrees to defend, indemnify, and hold Seller harmless from any injury or damages sustained or suffered by Buyer or Buyer's agents, charges, or invitees while present at the Project or the Property.

(h) **Move-In; Alterations; Advertising**. Except as set forth in Paragraph 2(g) above, Buyer and Buyer's agents are prohibited from entering, occupying, altering or moving possessions into the Property until after the Closing. If Buyer or Buyer's agents make alterations to the Property before the Closing, Seller may, at its option and without notice to Buyer, and in addition to any other remedies Seller may have, remove any or all of such alterations at Buyer's sole expense. Buyer agrees to defend,

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indemnify, and hold harmless Seller and its agents, employees, and independent contractors for, from and against all liability, losses, claims or damages arising as a result of such alterations. Until after the Closing, Buyer and Buyer's agents are not permitted to advertise the Property or show the Property to prospective purchasers or tenants or place any signs at or near the Property.

(i) **Surrounding Improvements**. Seller will use reasonable efforts to complete the required public and private improvements surrounding the Property in a timely manner. If Seller is unable to complete improvements including, without limitation, finish grading, landscaping, hardscaping, and fencing, Buyer agrees that the Closing may occur and all documents may be recorded without installation of such improvements, provided the Residence is habitable and that such improvements are thereafter installed without additional cost to Buyer. Buyer agrees to allow Seller to enter the Property to complete the improvements.

(j) **Sidewalks, Curbs, and Gutters**. Buyer understands and acknowledges that the controlling governmental agency may have imposed upon Seller obligations for the maintenance and repair of sidewalks, curbs, and gutters located within the Project. If such obligations have been imposed, Buyer will accept full responsibility for the payment of any and all costs and expenses arising out of or related to the repair and/or replacement of all or any sidewalks, curbs, and gutters located within the Project that have been damaged or destroyed by Buyer or Buyer's agents. Buyer agrees to pay Seller for any damage to the sidewalks, curbs, and gutters caused by Buyer or its agents within ten (10) days after receipt of written notice from Seller describing such damage and requesting payment for the same.

(k) **Utility Services**. Seller will make reasonable efforts to coordinate the initiation of utility services at the Property, such as gas, electric, and telephone services. Notwithstanding the foregoing, Buyer understands and agrees that Seller will not be responsible for scheduling of such utility services and that the Closing and the orientation and inspection described in Paragraph 2(d) above are not dependent upon utility installation or activation.

3. **PAYMENT OF PURCHASE PRICE**.

(a) **Purchase Price**. Buyer agrees to pay the Purchase Price in the manner specified in the Transaction Summary. Whether Buyer elects to pay the balance of the Purchase Price with a Loan by providing the Loan amount in Paragraph D(iii) of the Transaction Summary or with cash, Buyer will not be permitted to change the method selected without Seller's prior written consent. Seller may withhold such consent in its sole and absolute discretion.

(b) **Initial Deposit**. Buyer agrees to make an initial cash deposit toward the Purchase Price in the amount set forth in Paragraph D(i) of the Transaction Summary. The Initial Deposit will be disbursed or applied in accordance with the applicable terms of this Contract. If Seller does not accept this Contract, the Initial Deposit will be returned to Buyer.

(c) **Additional Cash Deposits**. Buyer agrees to deposit the cash amount(s) set forth in Paragraph D(ii) of the Transaction Summary on or before the date(s) therein set forth. Upon making each such additional cash deposit, Buyer will execute and deliver to Seller an Additional Deposit Amendment in the form provided by Seller. Buyer's failure to deposit any portion of the cash amount(s) set forth in Paragraph D(ii) or D(iv) of the Transaction Summary on or before the date(s) therein set forth (or as otherwise required by Seller) will constitute a default by Buyer under the terms of this Contract. Any deposits paid by Buyer will be applied toward the Purchase Price unless otherwise provided by this Contract (including the Options Selection Deadlines and Policies Addendum).

4. **NEW LOAN**. This paragraph will apply if a portion of the Purchase Price will be paid with a Loan.

(a) **Buyer's Obligation to Obtain Loan**. It will be the obligation of Buyer to obtain a Loan in the full amount necessary to complete the purchase of the Property under the terms of this Contract. Buyer expressly represents to Seller that Buyer is qualified to obtain the Loan. Buyer understands that if Seller accepts Buyer's offer to purchase the Property, Seller's acceptance will be in reliance upon Buyer's express representation that Buyer is qualified to obtain the Loan. Except as provided in Paragraph 4(e) below, Buyer's failure to obtain the Loan will be a default

(i) Loan Terms. The Loan will be evidenced by a promissory note secured by a first deed of trust or mortgage (and, if applicable, a second deed of trust or mortgage) on the Property. The deed(s) of trust or mortgage(s) and the note(s) will be in forms designated by Selected Lender and the note(s) will provide for payments of principal and interest, the

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amortization period of the principal and the rate of interest as specified by Selected Lender. Except as expressly set forth herein, the terms and conditions of the Loan are a matter of concern solely between Buyer and Selected Lender and will not in any way affect the rights or obligations of the parties under this Contract. BUYER ACKNOWLEDGES THAT SELLER MAKES NO REPRESENTATION THAT THE TERM OR INTEREST RATE PREVAILING AT THE CLOSING WILL BE THE TERM OR RATE QUOTED BY SELECTED LENDER TO BUYER AT THE TIME OF LOAN APPROVAL. BUYER ACKNOWLEDGES THAT THE SALE AND PURCHASE OF THE PROPERTY IS NOT CONTINGENT UPON BUYER'S ABILITY TO RETAIN THE TERM OR INTEREST RATE QUOTED AT THE TIME OF LOAN APPROVAL AND THAT BUYER WILL BE REQUIRED TO PAY THE INTEREST RATE CHARGED OVER THE TERM REQUIRED BY SELECTED LENDER AT THE CLOSING. Buyer agrees to make such impound payments for real property taxes and assessments, Association dues (when applicable), and fire and other hazard insurance premiums as may be required by Selected Lender.

(ii) Lender Approval of Options. Options can only be financed with the permission of the Selected Lender.

(b) **Selection of Lender**. Although Buyer may select Buyer's lender at the time of Buyer's execution of this Contract by providing the name of such lender in Paragraph I of the Transaction Summary, Buyer has until the Loan Application Deadline to select the Selected Lender. Any selection or change of lender after the Loan Application Deadline requires Seller's prior written consent, which will not be unreasonably withheld. The Selected Lender must be a state or federally chartered bank or credit union, or a state licensed mortgage banking institution. IN NO EVENT WILL BUYER BE REQUIRED TO USE SELLER'S DESIGNATED LENDER.

(c) **Loan Application to Selected Lender**. Buyer agrees to submit a complete loan application package to the Selected Lender on or before the Loan Application Deadline specified in Paragraph K(ii) of the Transaction Summary. A complete loan application package will include the application, credit information, and any other documents or information required by Selected Lender, and such application will not be "complete" for purposes of this Paragraph 4(c) unless all of the information required by Selected Lender has been accurately and fully provided. Buyer agrees to provide any additional documents or information required by the Selected Lender within seventy-two (72) hours of a request for such documents or information. Buyer's failure to submit a complete loan application package on or before the Loan Application Deadline or provide further documents or information within seventy-two (72) hours will be a default. Buyer hereby authorizes Seller to communicate directly with Selected Lender for purposes of determining Buyer's ability to obtain loan approval and to confirm that Buyer has sufficient funds to close, and Buyer does hereby authorize Selected Lender to release all information reasonably requested by Seller for such purposes.

(d) **Loan Approval**.

(i) Loan Approval Deadline. Written Verification of Loan Approval (defined below) must be provided to Seller on or before the Loan Approval Deadline specified in Paragraph K(iii) of the Transaction Summary. Buyer's failure to provide Seller Written Verification of Loan Approval on or before the Loan Approval Deadline will be a default.

(ii) Written Verification of Loan Approval. Not later than three (3) days after obtaining Loan Approval, Buyer agrees to provide Seller written verification from Selected Lender that Buyer has obtained Loan Approval ("**Written Verification of Loan Approval**"). Such Written Verification of Loan Approval may include reasonable conditions, as determined by Seller in its reasonable discretion. Buyer's failure to provide Written Verification of Loan Approval to Seller within three (3) days after obtaining Loan Approval will be a default. Once Written Verification of Loan Approval is obtained, Buyer will not take any action that would jeopardize Buyer's Loan Approval. Buyer agrees, within ten (10) days after receiving a written request from Seller, to verify to Seller's reasonable satisfaction the availability of funds to close. Buyer's failure to verify, upon Seller's request, that Buyer has sufficient funds to close (including, if requested by Seller, a statement from the Selected Lender that Buyer still has Loan Approval) will be a default.

(e) **Cancellation by Buyer on or Before Loan Approval Deadline**. Notwithstanding the foregoing, a Buyer who (i) has submitted a complete loan application package to Selected Lender pursuant to Paragraph 4(c), (ii) is not otherwise in default under the terms of this Contract, (iii) has not yet obtained Loan Approval, and (iv) has received written denial of Buyer's application for a Loan from Selected Lender ("**Loan Denial**"), may terminate the Contract on or before the Loan Approval Deadline by delivering written notice of such cancellation and a copy of the Loan Denial to Seller. If Buyer terminates the Contract in accordance with this Paragraph 4(e), then immediately upon Seller's receipt of Buyer's notice of cancellation,

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Seller will be released from its obligations to sell the Property to Buyer, Buyer will have no further rights against Seller and Seller will have no further obligation to Buyer, except that Seller will, within fifteen (15) days after Seller's receipt of Buyer's notice of cancellation, order that Buyer's Total Deposit be refunded to Buyer. Except as provided in Paragraph 2(c) above, any cancellation by a Buyer after the Loan Approval Deadline or Loan Approval, whichever occurs first, will be a default.

(f) **Not a Loan Application or Commitment**. This Contract does not constitute either a loan application to, or loan approval or commitment by, any lending institution. Buyer agrees to obtain, and will be solely responsible for obtaining, the Loan.

(g) **Lender's Title Policy**. Any Lender's Title Policy obtained by Selected Lender must be provided by the Title Insurer unless Buyer provides Seller with written notice of Buyer's selection of a different title insurance company, acceptable to Selected Lender, to provide the Lender's Title Policy. If Buyer provides such written notice within forty-five (45) days prior to the Estimated Closing Date, Buyer will be solely responsible for any additional costs incurred as a result of changing the title insurance company.

(h) **Appraisal**. Seller will have no obligation to adjust the Purchase Price or otherwise compensate Buyer if Buyer is unable to procure an appraisal of the Property equal to or exceeding the Purchase Price. If the Loan is guaranteed by the Federal Housing Administration or the Department of Veterans Affairs, further restrictions relating to appraisals will be set forth in a FHA/VA Financing Addendum executed by Buyer and Seller.

(i) **Independent Appraiser and Lender**. Both the Selected Lender and the appraiser conducting the appraisal of the Property must be independent of and unrelated to Buyer and cannot be affiliated with Buyer in any respect.

5. **ALL CASH BUYER**. This paragraph will apply if, as indicated by Paragraph D of the Transaction Summary, Buyer elects to pay the Purchase Price in cash (i.e., without using the proceeds of a Loan).

(a) **Representation Regarding Sufficient Funds**. Buyer represents that Buyer has sufficient funds to pay the Purchase Price in cash and covenants that Buyer will continue to have sufficient funds until such funds are delivered to Seller by Buyer.

(b) **Financial Document Submittal**. Buyer agrees, within five (5) days after the Contract Date, to verify to Seller's reasonable satisfaction that Buyer has sufficient funds to pay the Purchase Price in cash by providing financial documents (including specific financial documents requested by Seller) to Seller. Thereafter, Buyer agrees, within ten (10) days after receiving a written request from Seller, to verify to Seller's reasonable satisfaction that Buyer has sufficient funds to pay the Purchase Price in cash by providing such financial documents to Seller. Buyer's failure to provide such financial documents within five (5) days after the Contract Date or within ten (10) days after receiving Seller's written request will be a default.

(c) **Seller's Notification of Inadequacy of Funds and Buyer's Option to Cancel**. If Seller determines, in its reasonable judgment, that Buyer does not have sufficient funds to pay the Purchase Price in cash, Seller may give Buyer notice of such determination. As long as Buyer is not in default, Buyer may terminate the Contract and cancel the Closing by delivering written notice of such cancellation to Seller within ten (10) days of receiving notice of Seller's determination that Buyer has insufficient funds. If Buyer terminates the Contract and cancels the Closing in accordance with this Paragraph 5(c), then immediately upon Seller's receipt of Buyer's notice of cancellation, Seller will be released from its obligations to sell the Property to Buyer, Buyer will have no further rights against Seller and Seller will have no further obligation to Buyer, except that Seller will, within fifteen (15) days after Seller's receipt of Buyer's notice of cancellation, order that Buyer's Total Deposit be refunded to Buyer. Nothing herein prevents Buyer from providing Seller additional information regarding Buyer's financial condition after Seller gives Buyer notice of Seller's determination that Buyer does not have sufficient funds to pay the Purchase Price in cash. However, if, within ten (10) days of receiving notice of Seller's determination that Buyer has insufficient funds, Buyer has not canceled the Contract and Seller has not notified Buyer that it has withdrawn its determination that Buyer has insufficient funds, Buyer will be in default. Nothing in this Paragraph 5 obligates Seller to notify Buyer that Buyer has insufficient funds to pay the Purchase Price in cash and the determination of whether or not to give such notification will be made in Seller's sole and absolute discretion.

6. **CLOSING AND TITLE**.

(a) **Deposits of Documents and Funds**. By the Closing Date (i) Buyer agrees to deposit with Seller all funds and documents required to pay the Purchase Price and to comply with Buyer's obligations under this Contract, and (ii) Seller agrees to deposit a Deed and all other documents required to comply with Seller's obligations under this Contract. The Deed may be subject to (i) real property taxes, assessments, fees or charges not yet due or delinquent, (ii) those matters which would be shown on a

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survey of the Property or would be apparent upon an inspection of the Property, (iii) matters affecting title suffered or created by or with Buyer's written consent, (iv) building, zoning, and other applicable ordinances and regulations of the applicable governing authority, (v) matters resulting from the inclusion of the Property in a special district, (vi) the Limited Warranty provisions referenced in Paragraph 13, below, (vii) the Declaration (if any), and (viii) covenants, conditions, restrictions, easements, rights, rights-of-way, encumbrances and all other matters set forth in the Deed or which are of record at the time the Deed is recorded ("**Permitted Exceptions**"). Seller will not be obligated to escrow deposits or other funds unless provided in the Transaction Summary or otherwise required by law.

(i) Title Policy. Any Title Policy obtained by Buyer must be provided by the Title Insurer unless Buyer provides Seller with written notice of Buyer's selection of a different title insurance company for Buyer's Title Policy. If Buyer provides such written notice within forty-five (45) days prior to the Estimated Closing Date, Buyer will be solely responsible for any additional costs incurred as a result of changing the title insurance company.

(ii) The Closing. The Closing will occur ten (10) days after written notice to Buyer (or more, if specified in such written notice) by Seller ("**Closing Date**"), provided that the Closing Date will be no earlier than the date Occupancy Approval is issued. Seller will have the right to extend the Closing Date for any reason by delivering written notice to Buyer, and Seller will not have any liability to Buyer for any extension of the Closing Date. At Buyer's request, Seller may, in Seller's sole and absolute discretion, grant Buyer an extension of time in which to close. Any such extension granted by Seller must be in writing, signed by Buyer and Seller, and the date set forth therein will be the "**Extended Closing Date.**" Buyer agrees to pay Seller an extension fee equal to one-thirtieth ($1/30^{th}$) of one percent (1%) of the Total Purchase Price for each day the Closing Date is extended. If Seller agrees to postpone the closing date until the Extended Closing Date, Seller may, at Seller's sole and absolute discretion, demand that the aforementioned extension fee be paid by Buyer in advance, directly to Seller, by check, cashiers check, cash, or money order, at the time the parties execute the written agreement setting forth the Extended Closing Date, or at any other time, or in any other manner. The extension fee will not be applied to the Purchase Price, and will be non-refundable to Buyer unless the purchase of the Property does not close due to a default by Seller. THE DATE OF ACTUAL CLOSING COULD SUBSTANTIALLY DIFFER FROM THE ESTIMATED CLOSING DATE. BUYER HEREBY ACCEPTS THE UNCERTAINTY OF THE ESTIMATED CLOSING DATE, AND, EXCEPT AS EXPRESSLY PROVIDED IN PARAGRAPH 2(c) ABOVE, BUYER HEREBY WAIVES ANY AND ALL CLAIMS AGAINST SELLER, ITS AGENTS, EMPLOYEES AND INDEPENDENT CONTRACTORS ARISING AS A RESULT OF THE FAILURE OF SELLER TO CLOSE BY THE ESTIMATED CLOSING DATE.

(iii) Closing Agent. The Closing Agent will coordinate the Closing unless Buyer provides Seller with written notice of Buyer's selection of a different closing agent to coordinate the Closing, subject to the requirements set forth in Paragraph H of the Transaction Summary. If Buyer provides such written notice within forty-five (45) days prior to the Estimated Closing Date, Buyer will be solely responsible for any additional costs incurred as a result of changing the closing agent.

(iv) No Contingency for Prior Sale. Unless otherwise indicated below, Buyer acknowledges that the purchase and sale of the Property contemplated by this Contract is not contingent upon the prior sale of other property Buyer owns (including, without limitation, real property, stocks, 401K holdings and personal property) and that Buyer will be in default under this Contract for failure to close on or before the Closing Date because of Buyer's inability to sell any such property.

☑ Buyer's purchase is not contingent.
☐ Buyer's purchase is contingent upon the sale of present residence (see Contingent Upon Sale Addendum).

BUYER'S INITIALS: MH / EBS / _____

(b) **Vesting**. The manner of taking title may have significant legal and tax consequences. Buyer should consult with Buyer's professional advisor regarding such consequences. Unless Buyer designates otherwise to Seller, title to the Property will be vested as set forth in Paragraph B of the Transaction Summary. If not designated in Paragraph B, Buyer agrees to inform Title Insurer how title will vest prior to the Closing Date.

7. **CLOSING COSTS AND REAL PROPERTY TRANSFER TAXES.** All closing costs and real property transfer taxes (if applicable) will be paid by Buyer. Such closing costs include all costs, expenses, fees and charges relating to (a) the Loan

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(including, without limitation, the cost of the Lender's Title Policy, credit reports, Loan fees and impound payments), (b) the delivery of title (including, without limitation, recording fees, stamp taxes (if applicable) and the cost of Buyer's Title Policy), and (c) the Association, if any (including, without limitation, assessments, a contribution to the reserve account, or transfer or set-up fees). Such closing costs will also include prepaid items (including, without limitation, prepaid real estate taxes, initial association fees, and prepaid interest). THE ACTUAL CLOSING COSTS AND PRORATIONS COULD SUBSTANTIALLY DIFFER FROM THE ESTIMATED CLOSING COSTS AND PRORATIONS. BUYER HEREBY ACCEPTS THE UNCERTAINTY OF THE ESTIMATED CLOSING COSTS AND PRORATIONS, AND BUYER HEREBY WAIVES ANY AND ALL CLAIMS AGAINST SELLER, ITS AGENTS, EMPLOYEES, AND INDEPENDENT CONTRACTORS RELATING TO SUCH ESTIMATE.

8. **PRORATIONS**. Real property taxes and assessments will be prorated as of the Closing Date between Seller and Buyer based upon the latest available tax and assessment bills at the Closing on a calendar year basis. If any such bill covers real property owned by Seller in addition to the Property, the amount of real property taxes and assessments allocable to the Property for proration purposes will be provided by Seller. Association assessments (when applicable) will also be prorated as of the Closing. ANY DIFFERENCE BETWEEN THE AMOUNT OF TAXES USED FOR PRORATION PURPOSES AND THE AMOUNT OF ANY ACTUAL TAX LIABILITY WILL BE SETTLED BETWEEN THE PARTIES ON A PRORATED BASIS AFTER CLOSING. All prorations will be made on the basis of a thirty-day (30) month.

9. **TAXES**.

   a) **Supplemental Tax**. **ALL PARTIES ARE AWARE THAT THE PROPERTY HAS BEEN OR MAY BE REASSESSED FOR REAL PROPERTY TAX PURPOSES, THAT ADDITIONAL TAX AMOUNTS MAY BE ASSESSED BY THE COUNTY ASSESSOR AND MAY BECOME A LIEN AGAINST THE PROPERTY ON THE DATE OF CHANGE IN OWNERSHIP OR COMPLETION OF NEW CONSTRUCTION, AND THAT A SUPPLEMENTAL TAX BILL MAY BE ISSUED FOLLOWING THE CLOSING TO BUYER. SELLER WILL HAVE NO OBLIGATIONS WITH RESPECT TO ANY SUPPLEMENTAL ASSESSMENT. BUYER AGREES TO DEFEND, INDEMNIFY, AND HOLD SELLER HARMLESS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES OR LIABILITY ARISING FROM BUYER'S FAILURE TO PAY ANY SUCH SUPPLEMENTAL ASSESSMENTS.**

   b) **No Withholding**. Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor (i.e. Seller) is a foreign person. To inform Buyer that withholding of tax is not required in connection with this transaction, Seller certifies that Seller is not a foreign corporation, foreign partnership, foreign trust, or foreign estate.

10. **BUYER'S DEFAULT; REMEDY FOR DEFAULT**. Buyer's failure or refusal to comply or perform within the time or in the manner required under any of the provisions of this Contract will constitute Buyer's default whether or not such provision expressly states that such failure or refusal is a default. Buyer's express or implied refusal to perform under this Contract prior to the time Buyer's performance is due (i.e. anticipatory repudiation) will also constitute a default. In the event of any default by Buyer, Seller will have a continuing right to terminate the Contract, cancel the Closing and have no further obligation to Buyer, and Seller may further pursue any available remedy at law or in equity that Seller may have against Buyer, or if Seller and Buyer have initialed the Liquidated Damages paragraph contained in this Contract (Paragraph 11), Seller will be entitled to the sum set forth in Paragraph 11 as liquidated damages for default.

11. **LIQUIDATED DAMAGES. IF BUYER DEFAULTS UNDER ANY TERM OR PROVISION OF THIS CONTRACT, SELLER WILL BE RELEASED FROM ITS OBLIGATION TO SELL THE PROPERTY TO THE BUYER AND SELLER MAY FURTHER PURSUE ANY REMEDY IN LAW OR EQUITY THAT SELLER MAY HAVE AGAINST BUYER ON ACCOUNT OF SUCH DEFAULT. HOWEVER, BY INITIALING HERE**

BUYER: MH / EBS / _____ **AND SELLER:** KS **AGREE THAT:**

IF BUYER DEFAULTS UNDER ANY TERM OR PROVISION OF THIS CONTRACT, BUYER AND SELLER AGREE THAT IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE ACTUAL DAMAGES SUFFERED BY SELLER, THAT BUYER DESIRES TO LIMIT THE DAMAGES FOR WHICH BUYER MAY BE LIABLE AS THE RESULT OF A DEFAULT BY BUYER, AND THAT BUYER AND SELLER BOTH DESIRE TO AVOID THE COSTS AND DELAYS OF LEGAL PROCEEDINGS. THEREFORE, IN THE EVENT OF A DEFAULT BY BUYER PRIOR TO THE CLOSING, SELLER WILL BE ENTITLED TO TERMINATE THIS

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CONTRACT, CANCEL THE CLOSING AND RETAIN, AS LIQUIDATED DAMAGES, AN AMOUNT EQUAL TO BUYER'S DEPOSITS, WHICH AMOUNT WILL BE DEEMED TO BE A REASONABLE ESTIMATE OF SELLER'S DAMAGES RESULTING FROM THE FAILURE TO CLOSE THIS TRANSACTION AND NOT A PENALTY. IN DETERMINING THE REASONABLENESS OF THE AMOUNT OF LIQUIDATED DAMAGES WITH RESPECT TO OPTIONS, THE PARTIES HAVE CONSIDERED THE AMOUNT EXPENDED OR COMMITTED BY SELLER IN INSTALLING OR PREPARING TO INSTALL SUCH OPTIONS AND THE ADVERSE IMPACT ON THE MARKETABILITY OF THE PROPERTY ONCE THE OPTIONS SELECTED HAVE BEEN INSTALLED. NOTHING CONTAINED HEREIN IS INTENDED TO LIMIT SELLER'S RIGHT TO SEEK INDEMNIFICATION FROM BUYER FOR THE SPECIFIC ACTS DESCRIBED IN PARAGRAPH J OF THE TRANSACTION SUMMARY AND PARAGRAPHS 2(g), 2(h) AND 9(a). FOR PURPOSES OF THIS PARAGRAPH 11, "BUYER'S DEPOSITS" WILL MEAN AND REFER TO BUYER'S PURCHASE DEPOSIT AND TO ALL OTHER MONEYS DEPOSITED BY BUYER WITH SELLER IN CONNECTION WITH THE PURCHASE OF THE PROPERTY, INCLUDING WITHOUT LIMITATION OPTION DEPOSITS.

12. **DISPUTE RESOLUTION**. ANY DISPUTES OR CLAIMS OR CONTROVERSIES OF ANY TYPE BETWEEN BUYER (OR ANY REPRESENTATIVE OF BUYER ACTING WITH RESPECT TO BUYER'S RIGHTS, INCLUDING ANY HOMEOWNERS' ASSOCIATION) AND SELLER (OR ANY OTHER PARTIES INCLUDED WITHIN THE DEFINITION OF "SELLER" CONTAINED IN THE DISPUTE RESOLUTION AGREEMENT ADDENDUM TO THIS CONTRACT "ADR ADDENDUM")) ARISING OUT OF OR RELATING TO THIS CONTRACT, THE PROPERTY, OR ANY OTHER MATTER AS DESCRIBED IN THE ADR ADDENDUM, WILL BE RESOLVED PURSUANT TO THE PROCEDURES SPECIFIED IN THE ADR ADDENDUM. **UNDER THE ADR ADDENDUM, BUYER AGREES, AMONG OTHER THINGS, TO SUBMIT SUCH DISPUTES OR CLAIMS OR CONTROVERSIES TO BINDING ARBITRATION AND TO WAIVE ANY AND ALL RIGHTS TO A JURY TRIAL.** BUYER AND SELLER EACH ACKNOWLEDGE THAT THEY HAVE READ, UNDERSTAND AND AGREE TO THE TERMS OF THIS PARAGRAPH.

BUYER'S INITIALS: MH / EBS / _____ **SELLER'S INITIALS:** KS

13. **LIMITED CONTRACTUAL WARRANTY AND WARRANTY DISCLAIMERS**. Prior to signing this Contract, Buyer was provided the Limited Warranty and the Homeowner Limited Warranty & Maintenance Manual ("**Manual**") for review. Buyer has reviewed, understands, and agrees to be bound by the terms of the Limited Warranty and the Manual. Seller's election to provide and be subject to the Limited Warranty and the Manual is in consideration of Buyer's and Seller's agreement to the dispute resolution procedures and waiver of jury trial set forth in the Dispute Resolution Agreement Addendum. After Closing, this Contract will serve as proof of Buyer's enrollment into the Limited Warranty program and any Application for Home Enrollment called for by the Limited Warranty. Buyer, on behalf of Buyer and Buyer's successors, assigns, subsequent owners, heirs and parties holding rights to the Property ("**Subsequent Owners**"), agrees to be bound by the Limited Warranty, including the binding arbitration procedure and limitation on statutory and common law remedies described therein. The Limited Warranty will run with the land and will bind Subsequent Owners. The Deed may reference the Limited Warranty and/or the Manual. The Limited Warranty is insured by Columbia National Risk Retention Group, Inc., which is an affiliate of Seller. THE LIMITED WARRANTY, WHEN ISSUED, WILL BE THE ONLY WARRANTY, EXPRESS OR IMPLIED, MADE BY SELLER WITH REGARD TO THE PROPERTY, AND SELLER DISCLAIMS ALL OTHER WARRANTIES AS MORE FULLY SET FORTH IN THE "DISCLAIMER AND WAIVER OF WARRANTIES AND OTHER RIGHTS ADDENDUM" TO THIS CONTRACT.

BUYER'S INITIALS: MH / EBS / _____

14. **SUCCESSORS AND ASSIGNS**. This Contract cannot be assigned or transferred by Buyer in whole or in part, whether voluntarily or by operation of law, without the prior written consent of Seller in its sole and absolute discretion, and any such assignment or transfer without such prior written consent will be null and void and will constitute a default by Buyer. This Contract and the rights, duties and obligations of the parties will be binding upon and inure to the benefit of the successors and assigns of Seller and, subject to the preceding sentence, to the heirs, executors, administrators, successors and assigns of Buyer.

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15. **MISCELLANEOUS PROVISIONS**.

(a) **Severability**. If any portion of this Contract is declared by any court or arbitrator to be invalid, illegal or unenforceable, such portion will be deemed severed from this Contract and the remaining parts of this Contract will remain in full force and effect, as fully as though the severed portion had never been part of this Contract.

(b) **No Recordation of Lis Pendens or Assertion of Lien**. In no event will this Contract or any document or other memorandum related to the subject matter of this Contract be recorded without the consent of Seller. Buyer further agrees not to file any lis pendens or other instrument, nor assert or record any purchaser's or similar lien, against the Property prior to the Closing; except that a lis pendens may be filed by Buyer provided that (a) Buyer is not in default under the Contract; (b) Buyer is pursuing an action for specific performance and has demonstrated a bona fide intent to purchase the Property; and (c) such lis pendens is not filed more than ten (10) days after Buyer became aware or should have become aware of Seller's default entitling Buyer to pursue its specific performance action and in no event later than ten (10) days after the date the Closing is supposed to occur pursuant to Paragraph 6(a)(ii).

(c) **Required Actions of Buyer and Seller**. Buyer and Seller agree to execute all instructions and documents and take all actions (including the deposit of funds in addition to such funds as may be specifically provided for herein) as may be required in order to consummate the Transaction contemplated by this Contract and will use their reasonable good faith efforts to accomplish the Closing in accordance with the terms of this Contract. All amounts due from Buyer must be paid by wire transfer.

(d) **Notice of Cancellation**. The failure or express refusal by one party to perform any obligation within the time and upon the terms and conditions required under the Contract will be a default. Any notice of cancellation by either Buyer or Seller, including the notice by Seller given pursuant to the Liquidated Damages paragraph of this Contract, may be given only in writing and delivered to the other party to this Contract in accordance with Paragraph 15(j) below.

(e) **Transaction Summary**. The Transaction Summary is an integrated part of this Contract. In the event of any discrepancy between the information contained in the Transaction Summary and the provisions of the remainder of this Contract, the provisions of the remainder of this Contract will control.

(f) **Counterparts**. This Contract may be executed in counterparts, each of which will be deemed an original, and said counterparts will constitute one and the same instrument.

(g) **Survival**. All of the covenants and representations set forth in this Contract which are not conditions of the Closing will survive the Closing and delivery of the Deed. The following provisions will survive any termination of this Contract: (i) Paragraph 12 (dispute resolution); (ii) Paragraphs J of the Transaction Summary and Paragraphs 2(g), 2(h), and 9(a) (indemnification of Seller); and (iii) Paragraph 15(b) (limitations on lis pendens).

(h) **No Waiver**. The waiver by Seller of any term or provision of this Contract will not be construed as a waiver of any other or subsequent term or provision of this Contract. Seller's failure to assert and pursue the remedies set forth in this Contract for a default will not constitute a waiver of Buyer's default.

(i) **Time of the Essence**. Time will be considered of the essence of this Contract.

(j) **Notices**. All notices or other communication required or permitted under this Contract must be in writing, and must be hand delivered, sent by certified mail return receipt requested, sent by Express Mail of the U. S. Postal Service or any other courier guaranteeing overnight delivery, or sent by facsimile (unless otherwise provided herein). Notices must be addressed to the person to receive such notice at the addresses (or facsimile numbers) of Buyer and Seller set forth in this Contract or at any other address (or facsimile number) substituted therefor by written notice to the other party to this Contract. Notices will be deemed received upon actual receipt if hand delivered, 48 hours after deposit in the United States mail if sent by certified mail, or 24 hours after deposit in the Express Mail of the U.S. Postal Service or with another courier guaranteeing overnight delivery. If the notice is sent by facsimile, it will be deemed received on the date set forth on the confirmation sheet printed by the sending facsimile machine showing delivery of the notice without errors to the facsimile number of the receiving party. Failure of the addressee to accept or acknowledge receipt will not invalidate notice given in accordance with this paragraph. If Buyer is more than one person, service on one of such persons will be deemed to be service on Buyer.

(k) **Construction**. If the day on which any action is required to be taken under the terms of this Contract is not a business day (e.g., a Saturday, Sunday, or state or national holiday), the action will be taken on the next succeeding business day.

(l) **Incorporation of Addenda**. All addenda referred to herein or otherwise provided to Buyer are incorporated into this Contract as though fully set forth herein.

[END]

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CALATLANTIC HOMES

BUYER INCENTIVE AND ALLOWANCE ADDENDUM NO. 1

PROJECT NAME: Whitesides Park

PROPERTY: Lot or Unit: 0003 Street Address: 1098 Rifle Range Road, Mt Pleasant, Sc, 29464

BUYER: Maureen Hunter, Emily Beth Scheinert

THIS BUYER INCENTIVE AND ALLOWANCE ADDENDUM constitutes a part of the Contract between Buyer and Seller pertaining to the Property. This Buyer Incentive and Allowance Addendum will replace any previous Buyer Incentive and Allowance Addendum previously entered between Buyer and Seller.

1. **Incentives or Allowances Offered by Seller.**

Buyer will receive a closing cost credit of up to $ 4,000.00 toward closing costs ("**Credit**") if, and only if, Buyer closes Buyer's Loan with Seller's Designated Lender and uses CalAtlantic Title, Inc. as the Title Insurer . The Credit must be used to pay closing costs. If the sum of the closing costs is less than the Credit, Buyer will not receive the benefit of the remaining balance of the Credit.

Buyer will receive up to a $ 21,514.00 credit for use at the CalAtlantic Homes Design Studio . Buyer acknowledges that Buyer will be responsible for payment of a cash deposit on such options or upgrades. This incentive may only be used to purchase Options at the CalAtlantic Homes Design Studio and Buyer will not receive a credit or reimbursement of any remaining incentive that is not paid toward such Options.

(Signature Page Follows)

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2. **Lender Limitations on Incentives**. The incentives, credits, and other seller contributions may exceed lender limits established for the loan program for which Buyer qualifies, may require Buyer to contribute additional cash at closing, or may be prohibited by Selected Lender. Buyer will remain obligated to close under the Contract whether or not the Selected Lender approves the incentives, credits, and other seller contributions.

3. **Buyer Agrees to Provide Information to the Lender**. Buyer agrees that Buyer will promptly provide the entire purchase contract, all addenda (including this addendum), and all amendments to any lender loaning purchase money to Buyer for this transaction. Such documents must be provided to such lender(s) within five (5) business days of the execution of such documents and in no event later than the Loan Approval Deadline set forth in the Contract or, if the Contract does not set forth a Loan Approval Deadline, in no event later than the Closing. If the lender will not accept documents directly from Buyer, Buyer must provide such documents to the Closing Agent and will confirm that the Closing Agent has provided the documents to the lender(s).

IN WITNESS WHEREOF, the parties have executed this Buyer Incentive and Allowance Addendum as of the date of Seller's acceptance below.

ACCEPTED BY:

SELLER:
CalAtlantic Group, Inc.,
a Delaware corporation

By Kelli Snyder
Title: Authorized Representative

Date signed by Seller: 10/23/2017

BUYER(S):

Maureen Hunter
Signature — 10/18/2017 Date
Maureen Hunter
Name

Emily Beth Scheinert
Signature — 10/18/2017 Date
Emily Beth Scheinert
Name

Signature — Date

Name

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CALATLANTIC HOMES

OPTIONS SELECTION DEADLINES AND POLICIES ADDENDUM

PROJECT NAME: Whitesides Park

PROPERTY: Lot 0003 Of Tract: _____ Street Address: 1098 Rifle Range Road, Mt Pleasant, Sc, 29464

BUYER: Maureen Hunter, Emily Beth Scheinert

This Options Selection Deadlines and Policies Addendum constitutes part of the foregoing Contract between Seller and Buyer pertaining to the Property.

1. **DEADLINES FOR SELECTING OPTIONS**. If Seller offers Options to Buyer, Buyer agrees to select Options no later than the deadlines set forth below.

   ☐ Options selections deadlines are set forth in Paragraph K(iv) of the Transaction Summary of the Contract

   ☐ Options must be selected by the deadlines on Attachment 1.

   ☑ Buyer will not have opportunity to select Options.

2. **DEPOSIT POLICY**. If Buyer selects Options, Buyer will be required to pay the following Option Deposits at the time Buyer selects the Options:

Cost of Options	Amount of Option Deposit Due From Buyer
All options	1.5% of total price of options for VA and 100% financing 3% of total price of options for all other financing 35% of total price of options for all cash buyers
Amounts over 20% of Base Purchase Price	An additional 50% of total price of options, excluding bonus rooms and guest suites

Buyer acknowledges that the independent appraiser for Buyer's Loan (if applicable) may not value Buyer's selected Options at the full price paid for such Options. The risk of such occurrence typically increases depending on the amount and type of Options selected. If the appraisal is lower than the amount being paid by Buyer, Seller will not reduce the Purchase Price and Buyer may be required to provide more cash at Closing in order to meet the requirements of the Selected Lender. Unless otherwise provided in the FHA/VA Financing Addendum (if applicable), Seller will not reimburse Buyer's Total Deposit if Buyer is unable to close because the Property does not appraise at the value required by the Selected Lender.

3. **CHANGES**. Seller may, in its sole discretion, permit Buyer to make changes after making initial selections or the applicable Option deadline passes. Buyer will be required to pay a $250 non-refundable fee for any such change. Such non-refundable fee shall be paid separately to Seller and will not be applied to the Purchase Price.

4. **CUSTOM REQUESTS**. Seller does not offer custom Options.

5. **DESIGNER TIME**. Seller's designer will spend up to 6 total hours assisting Buyer with the selection of Options. If Buyer exceeds this amount of time, Buyer will be required to pay a non-refundable $300 per hour fee for each hour or partial hour designer assists Buyer. Such non-refundable fee must be paid separately to Seller and will not be applied to the Purchase Price.

ACCEPTED BY:

SELLER:

CalAtlantic Group, Inc.

a Delaware corporation

By

kelli Snyder

Title: Authorized Representative

Date Signed by Seller: 10/23/2017

BUYER:

Maureen Hunter — Signature — 10/18/2017 — Date

Maureen Hunter — Name

Emily Beth Scheinert — Signature — 10/18/2017 — Date

Emily Beth Scheinert — Name

Signature — Date

Name

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ATTACHMENT 1

OPTIONS SELECTION DEADLINES

Options are plan and community specific and not all options are available on every home or at every community. If you are purchasing a home that has already been constructed or has already started construction, then you will not have the opportunity to choose certain options (even if listed below).

Deadline	Options to be Selected/Meeting Required
At time Buyer signs the Contract	All Structural Options
Within 30 days of the Contract Date	All interior options, including but not limited to all options listed on the design center option list provided to Buyer.

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CALATLANTIC HOMES

PRIVATE THIRD PARTY HOME INSPECTOR POLICY
Agreement Signed by Buyer

CalAtlantic Homes welcomes the opportunity to further validate the level of quality in our homes by the use of a privately employed "Home Inspector." In the event you choose to utilize a Home Inspector, you will need to contact the CalAtlantic Sales Counselor to schedule your appointment and provide the necessary documentation (see directly below).

Requirements for Homebuyer & Home Inspector:

1. Private "Home Inspector" Policy (signed and dated by Buyer)
2. Access Agreement for Home Inspection (signed and dated by Home Inspector)
3. Home Inspector's Certificate of Insurance (supplied by Home Inspector)

Once these three documents have been received and approved by CalAtlantic's Sales Counselor, the Home Inspector shall make an appointment for his or her inspection with our Sales Counselor. **CalAtlantic will determine in its sole discretion when the home may be inspected.** The inspection needs to be completed **a minimum of five (5) days prior** to the homeowner inspection and orientation required by the Purchase Contract. Any list created by your Home Inspector shall be given to your Sales Counselor. No destructive testing (e.g., cutting drywall, removing roofing material) will be permitted, and any damage caused by the Home Inspector, as per the Access Agreement will be at the cost of the Homebuyer. Please note that the Inspector will not be allowed to attend the homeowner inspection and orientation required by the Purchase Contract. This policy enables CalAtlantic to conduct your homeowner inspection and orientation in an orderly fashion without interruption. This is to your benefit because it allows you to receive all the important information and all your questions can be addressed and answered.

CalAtlantic will determine in its sole discretion whether changes or repairs recommended by the inspector are necessary. CalAtlantic has no obligation to the Home Inspector for any costs incurred for the inspection or any subsequent re-inspections. Please see your warranty manual for a detailed description of the construction standards for your home.

Acknowledged & Agreed:

Maureen Hunter	Emily Beth Scheinert	
Signature	Signature	Signature
Maureen Hunter	Emily Beth Scheinert	
Name	Name	Name
10/18/2017	10/18/2017	
Date	Date	Date

* *Return the above three items to CalAtlantic Home's Sales Counselor.*

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ACCESS AGREEMENT FOR HOME INSPECTIONS
Agreement Signed by Home Inspection Company

PROJECT NAME: Whitesides Park

PROPERTY: Lot or Unit: 0003 Street Address: 1098 Rifle Range Road, Mt Pleasant, Sc, 29464

BUYER: Maureen Hunter, Emily Beth Scheinert

INSPECTION DATE*:_____ INSPECTION TIME*:_____

In consideration for CalAtlantic Group, Inc. and/or its affiliates ("CalAtlantic Homes") agreeing to grant access to the Property, the undersigned Home Inspector hereby agrees as follows:

1. Home Inspector is responsible for all loss or damage to persons or property, and will indemnify, defend and hold CalAtlantic Homes harmless for, from and against all such loss or damage, including without limitation attorneys' fees, costs and expenses, arising out of Home Inspector's presence at the Property. This defense, indemnification, and hold harmless extends to the fullest extent permitted by law.

2. Prior to entering the Neighborhood and home, Home Inspector will provide CalAtlantic Homes with certificates of insurance evidencing General Liability, Auto Liability and Workers' Compensation coverage in the form and amounts listed below. The General Liability insurance of Home Inspector shall name (either specifically or by blanket endorsement) CalAtlantic Group, Inc. and its affiliates as "additional insureds" with respect to liability arising out of Home Inspector's presence at the Property. See Attachments 1 & 2 (Forms of required certificate and endorsement).

3. Insurance Requirements:

Coverage	*Limits*	*Check only if Applicable*
General Liability	$1,000,000	
Auto Liability	$300,000/$300,000/$100,000	☐ Personal Auto Coverage (No Company Autos)
Workers' Compensation	Statutory Minimum	☐ Home Inspector represents that it has no company employees (If checked, proof of Workers' Compensation and EL insurance not required)
Employers Liability ("EL")	$1,000,000	

4. Name and address of Home Inspection Company ("Home Inspector"):
   Name: _____
   Street Address: _____
   City, State, & Zip Code: _____
   Telephone Number: _____ FAX Number: _____

_____ _____
Signature (Home Inspector) Date

_____
Printed Name

*Inspection date/time will be set in the sole discretion of CalAtlantic. Must schedule no less than five (5) days prior to the homeowner inspection and orientation required by buyer's purchase contract. Accessible only during normal working hours (Monday through Friday, 7:00 am to 3:30 pm).

Return signed forms and proof of insurance to Sales Counselor

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ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:
Insurance Agent's Name, Address and Phone Number	PHONE (A/C, No, Ext): FAX (A/C, No):
	E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : MNI Insurance Company	
INSURER B : QRS Insurance Company	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Vendor Name
Vendor Address

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 1,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
				ABC123	01/01/01	01/01/01	MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 1,000,000
	POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 1,000,000
	OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$ 300,000
	ANY AUTO						BODILY INJURY (Per person)	$ 100,000
	ALL OWNED AUTOS X SCHEDULED AUTOS			ABC123	01/01/01	01/01/01	BODILY INJURY (Per accident)	$ 300,000
	HIRED AUTOS NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$ 100,000
								$
	UMBRELLA LIAB OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$
	DED RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N						PER STATUTE OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N/A			ABC123	01/01/01	01/01/01	E.L. EACH ACCIDENT	$ 1,000,000
	(Mandatory in NH)						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Coverage applies to ALL OPERATIONS

CERTIFICATE HOLDER	CANCELLATION
CalAtlantic Group, Inc. & Its Affiliates 15360 Barranca Parkway Irvine, CA 92618	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE

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SAMPLE

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS (FORM B)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

CalAtlantic Group, Inc. & Its Affiliates

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section **II**) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

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CALATLANTIC HOMES

COMMON INTEREST DEVELOPMENT ADDENDUM

PROJECT NAME: Whitesides Park

PROPERTY: Lot or Unit: 0003 Street Address: 1098 Rifle Range Road, Mt Pleasant, Sc, 29464

BUYER: Maureen Hunter, Emily Beth Scheinert

THIS COMMON INTEREST DEVELOPMENT ADDENDUM ("**Common Interest Addendum**") constitutes part of the foregoing Contract between Buyer and Seller pertaining to the Property. Capitalized words and phrases used herein which are not defined herein but are defined in the Contract shall have the meaning ascribed thereto in the Contract.

The Property is located in a planned community and is subject to the following association(s) and "Project Documents":

Check One or More (as applicable)

[☑] **A Planned Community with a Homeowners' Association**

The Homeowner's Association is commonly known as Whitesides Park Townhomes Property Owners Association, Inc.
(Name of Association)
(the "**Association**"), and the Property is subject to the following Project Documents:

- The Articles of Incorporation and Bylaws of the Association;
- A declaration of covenants, conditions and restrictions; (and, if applicable, any amendments or supplements thereto; and if applicable, a Notice of Annexation, Supplementary Declaration, or any other such annexation instrument).

[☐] **A Planned Community with a Master Association and a Sub-Association**

The Master Association is commonly known as
(Name of Association)
(the "**Master Association**") and the Property is subject to the following Project Documents:

- The Articles of Incorporation and Bylaws of the Master Association;
- A declaration of covenants, conditions and restrictions; (and, if applicable, any amendments or supplements thereto; and if applicable, a Notice of Annexation, Supplementary Declaration, or any other such annexation instrument).

The Sub-Association is commonly known as _____
(Name of Association)
(the "**Sub-Association**") and the Property is subject to the following additional Project Documents:

- The Articles of Incorporation and Bylaws of the Association;
- A Condominium Plan (if a Condominium Project);
- A declaration of covenants, conditions and restrictions; (and, if applicable, any amendments or supplements thereto; and if applicable, a Notice of Annexation, Supplementary Declaration, or any other such annexation instrument).

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[☐] **Additional Association**

The Additional Association is commonly known as _____
(Name of Association)
and the Property is subject to the following Project Documents:

- The Articles of Incorporation and Bylaws of the Association;
- A declaration of covenants, conditions and restrictions; (and, if applicable, any amendments or supplements thereto; and if applicable, a Notice of Annexation, Supplementary Declaration, or any other such annexation instrument).

1. **MEMBERSHIP IN THE ASSOCIATION(S).** Buyer understands and agrees that upon the recordation of the Grant Deed conveying the Property to the Buyer, Buyer will automatically become a "Member" of the applicable Association(s) referenced above. Buyer shall be deemed to have agreed to and shall be entitled to exercise all of the rights (including, but not limited to, voting rights in such Association(s)), and to perform all of the obligations (including, but not limited to, the payment of Assessments) of a Member, all as more particularly set forth in the applicable Project Documents referenced above.

2. **APPROVAL OF PROJECT DOCUMENTS.** Buyer acknowledges having read and approved the Project Documents as so indicated in Paragraph L(ii) of the Transaction Summary of the Contract.

3. **ASSOCIATION DUES.** Buyer acknowledges that by reason of Buyer's membership in the Association(s), commencing as of the Closing, Buyer is obligated to pay the Assessments levied by such Association(s). The current monthly installment of Regular Assessment levied by the applicable Association(s) is/are estimated to be:

_____ ($ 180.00), and
(Name of Association) (Monthly dues)

_____ ($ _____), and
(Name of Association) (Monthly dues)

_____ ($ _____), and
(Name of Association) (Monthly dues)

Seller shall prorate the monthly installment of Regular Assessments between Buyer and Seller as of the Closing based upon the latest information available to Seller.

4. **WORKING CAPITAL CONTRIBUTION.** Seller is directed to collect from Buyer the sums stated below as an one time payment to the working capital fund for the applicable Association(s). Buyer acknowledges that this amount does not constitute advance payment by Buyer of Regular Assessments levied by such Association. Seller is directed to remit the amount collected to the respective Association upon the Closing.

[☑] **Check here if applicable and indicated to which Association(s) capital contributions apply:**

Whitesides Park Townhomes Property Owners Association, ($ 540.00), and
(Name of Association)

_____ ($ _____), and
(Name of Association)

_____ ($ _____), and
(Name of Association)

5. **ADDITIONAL CONTRIBUTION.** Seller is directed to collect from Buyer the sums stated below as additional contributions for the applicable Association(s) as required by the Project Documents. Buyer acknowledges that these amounts do not constitute advance payment by Buyer of Regular Assessments levied by such Association. Seller is directed to remit the amounts collected to the respective Association upon the Closing.

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[☐] **Check here if applicable and indicated to which Association(s) additional contributions apply:**

_____ ($ _____),and
(Name of Association) (Monthly dues)

_____ ($ _____),and
(Name of Association) (Monthly dues)

_____ ($ _____), and
(Name of Association) (Monthly dues)

6. **INSURANCE**. Buyer shall order insurance on the Property in the form and in the amounts as required by Selected Lender and pay premium(s) for same at Closing. If the Property is a single family attached development or a townhome development and the Association is responsible for obtaining an and maintaining casualty insurance for the attached or townhome buildings for the Community, Seller will obtain an insurance certificate for the master insurance policy acceptable to Selected Lender. MASTER INSURANCE POLICIES DO NOT COVER MANY ITEMS COVERED BY A HOMEOWNERS POLICY AND BUYER MAY WISH TO INCREASE OR EXPAND THE COVERAGE OF A MASTER INSURANCE POLICY (IF ANY).

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of Seller's acceptance below.

ACCEPTED BY:

SELLER:

CalAtlantic Group, Inc.
a Delaware corporation
By kelli Snyder
Title: Authorized Representative
Date Signed by Seller: 10/23/2017

BUYER:

Maureen Hunter — 10/18/2017
Signature — Date

Maureen Hunter
Name

Emily Beth Scheinert — 10/18/2017
Signature — Date

Emily Beth Scheinert
Name

_____ _____
Signature — Date

_____
Name

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CALATLANTIC HOMES

STANDARD SUBDIVISION ADDENDUM

PROJECT NAME: Whitesides Park

PROPERTY: Lot or Unit: 0003 Street Address: 1098 Rifle Range Road, Mt Pleasant, Sc, 29464

BUYER: Maureen Hunter, Emily Beth Scheinert

THIS STANDARD SUBDIVISION ADDENDUM ("**Subdivision Addendum**") constitutes part of the foregoing Contract between Buyer and Seller pertaining to the Property. Capitalized words and phrases used herein which are not defined herein but are defined in the Contract shall have the meaning ascribed thereto in the Contract.

1. **PLAT**

☑ a subdivision plat showing the Property has been recorded and is referenced in the foregoing Contract.
IF THIS OPTION IS SELECTED, THE REMAINDER OF THIS SECTION 1 IS INAPPLICABLE.

☐ a subdivision plat showing the Property has not yet been recorded.

Attached as Exhibit A to this Subdivision Addendum is an approved preliminary plat (the "Preliminary Plat") showing the Property. A final subdivision plat (the "Final Subdivision Plat") showing the Property has not yet been properly approved under the subdivision ordinance or recorded with the Clerk of Court in the county in which the Property is located.

A FINAL SUBDIVISION PLAT HAS NOT BEEN APPROVED OR RECORDED ON THE DATE OF THE CONTRACT AS AMENDED BY THIS SUBDIVISION ADDENDUM. NO GOVERNMENTAL BODY WILL INCUR ANY OBLIGATION TO THE BUYER WITH RESPECT TO THE APPROVAL OF THE FINAL SUBDIVISION PLAT. CHANGES BETWEEN THE PRELIMINARY PLAT AND FINAL SUBDIVISION PLATS ARE POSSIBLE. THE CONTRACT, AS AMENDED BY THIS SUBDIVISION ADDENDUM, MAY BE TERMINATED WITHOUT BREACH BY THE BUYER IF THE RECORDED FINAL SUBDIVISION PLAT DIFFERS IN ANY MATERIAL RESPECT FROM THE PRELIMINARY PLAT.

Prior to Closing, Seller shall deliver to Buyer a copy of the recorded Final Subdivision Plat. If the approved and recorded Final Subdivision Plat does not differ in any material respect from the Preliminary Plat, the Buyer may not be required by Seller to close any earlier than five (5) days after the delivery of a copy of the recorded Final Subdivision Plat. If the approved and recorded Final Subdivision Plat differs in any material respect from the Preliminary Plat, the Buyer may not be required by the Seller to close any earlier than fifteen (15) days after the delivery of the recorded Final Subdivision Plat, during which fifteen (15) day period the Buyer may terminate the Contract without breach or any further obligation and may receive a refund of the Deposit set forth in the Contract.

Buyer will not be required to close the purchase of the Property until the Property has been platted. If the Buyer closes the purchase of the Property, all objections to differences between the Preliminary Plat and the Final Subdivision Plat will be considered waived.

Seller will deliver all closing notices required by Section 6(a)(ii) of the Contract consistent with the requirements of this provision.

2. **SUBDIVISION STREETS DISCLOSURE**. The street(s) within the subdivision ("Subdivision") upon which the Property fronts (the "Street") has the status indicated below:

☐ Privately Maintained Street

The Street is intended for the use and enjoyment of the lot owners within the Subdivision which own lots fronting the Street (the "Lot Owners") and certain other parties, as set forth in the Declaration. The Street has been designated as a private street, and currently there is no intention to ever make it a part of the State, county or municipal highway system for maintenance or any other public street system for maintenance. Therefore, the Seller is not obligated to construct the Street to minimum standards, sufficient to allow its inclusion in the State, county or municipal highway system for maintenance or its inclusion in

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the municipal public street system for maintenance. Consequently, no governmental entity will be responsible for maintenance of the Street. The maintenance and repair of the Street shall be the responsibility of the Association upon completion of the Street by the Seller, as set forth in the Declaration.

☐ Publicly Maintained Street

Seller hereby certifies that the right-of-way and design of the Street have been approved by the pertinent governmental entity, i.e., State Department of Transportation, county or municipality, as applicable, and that the Street has been or will be constructed by Seller in accordance with the standards for subdivision streets adopted by the applicable governmental authorities for acceptance into the public highway or road system; and

☐ The Street has been accepted for maintenance by the State, county or the applicable municipal authority; or

☐ The Street will not be immediately accepted for maintenance by the State, county or the applicable municipal authority and the Association or the developer will be responsible for the maintenance of the Street until such time as the State, county or the applicable municipal authority elects to accept the Street for public maintenance.

Seller shall not be responsible for any additional improvements or maintenance to the Street upon its completion.

3. **APPROVAL OF PROJECT DOCUMENTS**. Buyer acknowledges having read and approved the Project Documents as so indicated in Paragraph L of the Transaction Summary.

ACCEPTED BY:

SELLER:

CalAtlantic Group, Inc.

a Delaware corporation

By

kelli Snyder

Title: Authorized Representative

Date Signed by Seller: 10/23/2017

BUYER:

Maureen Hunter — Signature — 10/18/2017 — Date

Maureen Hunter — Name

Emily Beth Scheinert — Signature — 10/18/2017 — Date

Emily Beth Scheinert — Name

_____ — Signature — _____ — Date

_____ — Name

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Exhibit A to Standard Subdivision Addendum

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CALATLANTIC HOMES

DISCLAIMER AND WAIVER OF WARRANTIES AND OTHER RIGHTS ADDENDUM

PROJECT NAME: Whitesides Park

PROPERTY: Lot or Unit: 0003 Street Address: 1098 Rifle Range Road, Mt Pleasant, Sc, 29464

BUYER: Maureen Hunter, Emily Beth Scheinert

THIS DISCLAIMER AND WAIVER OF WARRANTIES AND OTHER RIGHTS ADDENDUM (the "**Disclaimer and Waiver of Warranties Addendum**") constitutes a part of the foregoing Contract between Seller and Buyer pertaining to the Property.

AS SEPARATELY ACKNOWLEDGED BY BUYER, PRIOR TO BUYER'S EXECUTION OF THIS CONTRACT, SELLER HAS PROVIDED BUYER WITH A COPY OF THE LIMITED WARRANTY OFFERED BY SELLER WITH RESPECT TO THE PROPERTY AND BUYER HAS READ AND UNDERSTOOD THAT LIMITED WARRANTY. THE LIMITED WARRANTY WILL BE CONSIDERED ISSUED BY SELLER TO BUYER AT CLOSING.

BUYER UNDERSTANDS AND AGREES THAT THE LIMITED WARRANTY TO BE ISSUED TO BUYER IS THE ONLY WARRANTY, EXPRESS OR IMPLIED, MADE BY SELLER WITH REGARD TO THE PROPERTY. SELLER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS REGARDING EITHER LATENT OR PATENT DEFECTS IN THE RESIDENCE OR THE PROPERTY OR THE PROJECT, OR ANY COMPONENTS THEREOF, OR FIXTURES OR PERSONAL PROPERTY INSTALLED THEREIN, OR AS TO THE MERCHANTABILITY, FITNESS, HABITABILITY, WORKMANLIKE CONSTRUCTION, OR QUALITY THEREOF, AND DISCLAIMS ANY SUCH WARRANTIES AND REPRESENTATIONS, TO THE FULLEST EXTENT ALLOWED BY LAW.

SPECIFICALLY, AND NOT BY WAY OF LIMITATION, SELLER HAS NOT MADE ANY REPRESENTATION REGARDING VIEWS, THE FUTURE USE, OWNERSHIP, APPEARANCE OR HEIGHT OF SURROUNDING PROPERTY OR ADJOINING PROPERTY (INCLUDING, BUT NOT LIMITED TO, USES WHICH MAY MAKE THE PROPERTY LESS DESIRABLE TO BUYER BECAUSE OF NOISE, TRAFFIC, APPEARANCE OR POLLUTION) SELLING PRICE OF OTHER HOMES, OR DESIRABILITY OF ANY PARTICULAR LOCATION. SELLER MAKES NO WARRANTY OR REPRESENTATION AS TO THE PRESENCE OR NON-PRESENCE OF RADON, METHANE OR OTHER NATURALLY OCCURRING HAZARDOUS ENVIRONMENTAL CONDITIONS, OR TO THE EFFECT OF ANY SUCH CONDITION ON THE PROPERTY OR BUYER.

SELLER'S WARRANTY SHALL IN NO EVENT EXTEND TO ANY CONSUMER PRODUCT, APPLIANCES, AIR CONDITIONING UNITS, FURNACES, WATER HEATERS AND OTHER PRODUCTS INCLUDED IN THE PROPERTY THAT ARE CONSIDERED "CONSUMER PRODUCTS" AS DEFINED BY THE FEDERAL TRADE COMMISSION FOR THE PURPOSES OF THE MAGNUSON MOSS ACT (15 U.S.C. 2301 ET SEQ.) THAT MAY BE INCLUDED IN THIS TRANSACTION. THE MANUFACTURERS OF SOME PRODUCTS USED IN THE HOUSE MAY PROVIDE A MANUFACTURER'S WARRANTY. SELLER HAS NO OBLIGATION OR RESPONSIBILITY FOR THE MANUFACTURER'S PERFORMANCE, AND SELLER DOES NOT WARRANT ANY OF THESE ITEMS FOR ANY USE, FITNESS FOR USE, WORKMANSHIP, QUALITY OR ANY OTHER PURPOSE. IF A MANUFACTURER'S WARRANTY HAS BEEN ISSUED TO SELLER, SELLER HEREBY ASSIGNS TO BUYER, TO BE EFFECTIVE UPON CLOSING, WITHOUT RECOURSE TO SELLER, ALL RIGHTS UNDER SAID MANUFACTURER'S WARRANTIES, AS ARE ASSIGNABLE, ON APPLIANCES AND ANY OTHER CONSUMER PRODUCTS INCLUDED IN THE PROPERTY.

TO THE FULLEST EXTENT ALLOWED BY LAW, BUYER WAIVES ALL IMPLIED WARRANTIES RELATING TO THE RESIDENCE AND THE PROPERTY AND THE PROJECT, INCLUDING ALL IMPLIED WARRANTIES AS TO EITHER LATENT OR PATENT DEFECTS IN THE RESIDENCE OR THE PROPERTY OR THE PROJECT, OR ANY COMPONENT THEREOF, OR FIXTURES OF PERSONAL PROPERTY INSTALLED THEREIN OR THE

MERCHANTABILITY, FITNESS, HABITABILITY, WORKMANLIKE CONSTRUCTION, OR QUALITY THEREOF. BUYER ALSO WAIVES THE RIGHT TO SEEK DAMAGES OR OTHER LEGAL OR EQUITABLE REMEDIES UNDER ANY OTHER COMMON LAW OR STATUTORY THEORY OF LIABILITY, INCLUDING, BUT NOT LIMITED TO NEGLIGENCE AND STRICT LIABILITY. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS PARAGRAPH, CERTAIN WAIVERS OF RIGHTS MAY BE UNENFORCEABLE.

NO SALESPERSON, EMPLOYEE OR AGENT OF SELLER HAS AUTHORITY TO MODIFY THE TERMS OF THIS ADDENDUM. THIS ADDENDUM SUPERSEDES ANY PROMISES, AGREEMENTS, OR OTHER REPRESENTATIONS MADE BY ANY SALESPERSON, EMPLOYEE OR AGENT OF SELLER, WHETHER ORAL OR WRITTEN, WITH RESPECT TO THE MATTERS SET FORTH IN THIS ADDENDUM, AND BUYER HAS NOT RELIED AND SHALL NOT RELY ON ANY SUCH PROMISES, AGREEMENTS, OR OTHER REPRESENTATIONS WITH RESPECT TO THE MATTERS SET FORTH IN THIS ADDENDUM.

ACCEPTED BY:

SELLER:

CalAtlantic Group, Inc.
a Delaware corporation
By
Kelli Snyder
Title: Authorized Representative
Date Signed by Seller: 10/23/2017

BUYER:

Maureen Hunter
Signature
10/18/2017
Date

Maureen Hunter
Name

Emily Beth Scheinert
Signature
10/18/2017
Date

Emily Beth Scheinert
Name

Signature
Date

Name

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CALATLANTIC HOMES

DISPUTE RESOLUTION AGREEMENT ADDENDUM TO HOME PURCHASE AGREEMENT

PROJECT NAME: Whitesides Park

PROPERTY: Lot or Unit: 0003 Street Address: 1098 Rifle Range Road, Mt Pleasant, Sc, 29464

BUYER: Maureen Hunter, Emily Beth Scheinert

THIS DISPUTE RESOLUTION AGREEMENT ADDENDUM TO HOME PURCHASE AGREEMENT ("**Dispute Resolution Agreement**") constitutes a part of the Contract between Buyer and Seller pertaining to the Property. **THIS DISPUTE RESOLUTION AGREEMENT HAS IMPORTANT LEGAL CONSEQUENCES AND SHOULD BE READ THOROUGHLY BEFORE SIGNING. BUYER IS ENCOURAGED TO CONSULT AN ATTORNEY PRIOR TO THE EXECUTION OF THIS DISPUTE RESOLUTION AGREEMENT.**

1. **DEFINITIONS.** For purposes of this Dispute Resolution Agreement only: (i) "**Seller**" means and includes Seller, any director, officer, partner, member, employee, agent, or representative of Seller, any affiliate of Seller (other than an affiliated mortgage lender) and any contractor, subcontractor, consultant, design professional, engineer, or supplier who provided labor, services or materials to the Project and who is bound or has agreed to be bound to the following dispute notification and resolution procedures; (ii) "**Dispute**" means any and all actions or claims by, between or among any Seller party and any Owner arising out of or in any way relating to the Property, the Project, the Contract, liquidated damages issues under the Contract, the Limited Warranty, the Home Builder's Limited Warranty and Maintenance Manual, and/or any other agreements or duties or liabilities as between any Seller party and an Owner relating to the sale of the Property, or events, representations or omissions which pre-date this Contract, or regarding the use or condition of the Property, or the design or construction of or any condition on or affecting the Project, including without limitation construction defects, surveys, soils conditions, grading, specifications, installation of improvements, or disputes which allege strict liability, negligence, nuisance, breach of contract, negligent or intentional misrepresentation, or breach of implied, express or statutory warranties as to the condition of the Property or other portions of the Project, or repairs or replacements made or the reasonableness of costs offered for any defect covered by the Limited Warranty and not resolved during the mediation period described in the Limited Warranty; (iii) "**Owner**" means Buyer, any individuals or entities comprising Buyer, any representative of Buyer acting with respect to Buyer's rights (including without limitation any class representative or homeowners' association so acting), and any successor or assign of Buyer with respect to the Property, the Contract, the Limited Warranty, or any other agreements or obligations with respect to Seller, the Property, or the Project; (iv) "**Project**" means the development, construction and marketing of the Property, and the community of which it is a part; and (v) "**Limited Warranty**" means that Limited Warranty provided to Buyer prior to Contract execution.

2. **ARBITRATION OF DISPUTES.**

(a) BINDING ARBITRATION. WITH RESPECT TO ALL DISPUTES, SELLER AND OWNER MUST COMPLY WITH THE FOLLOWING DISPUTE RESOLUTION PROCEDURES. THESE PROCEDURES ALSO APPLY TO DISPUTES RELATING TO THE LIMITED WARRANTY. SINCE THE PROCEDURES CONTAINED IN THE LIMITED WARRANTY ARE SUBSTANTIVELY THE SAME, BUYER MAY REFER TO THIS DOCUMENT OR THE LIMITED WARRANTY IN ORDER TO DETERMINE HOW TO FILE FOR ARBITRATION FOR WARRANTY DISPUTES.

(i) BUYER MAY COMMENCE THE ARBITRATION PROCESS BY FILING A COMPLETED "REQUEST FOR ARBITRATION" FORM WITH COLUMBIA NATIONAL RISK RETENTION GROUP, INC. ("**CLAIMS ADMINISTRATOR**"), 100 BANK STREET, SUITE 610, P.O. BOX 350, BURLINGTON, VERMONT, 05402-0530. THIS FORM IS ATTACHED TO THE LIMITED WARRANTY. WHETHER OR NOT THE DISPUTE INVOLVES CONSTRUCTION DEFECTS, BUYER AGREES TO DESCRIBE THE DISPUTE ON THE FORM UNDER THE HEADING "NATURE OF DEFECT".

(ii) THE DISPUTE WILL BE SUBMITTED TO AN INDEPENDENT ARBITRATION SERVICE CHOSEN BY THE CLAIMS ADMINISTRATOR WITHIN TWENTY (20) DAYS AFTER THE CLAIMS ADMINISTRATOR'S RECEIPT OF YOUR REQUEST FOR ARBITRATION. THE PARTIES AGREE THAT DEMARS AND ASSOCIATES, LTD. (WWW.DEMARSASSOCIATES.COM) ("**DEMARS**") IS AN ACCEPTABLE ARBITRATION SERVICE AND AGREE TO USE THE DEMARS CONSTRUCTION ARBITRATION PROGRAM.

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BUYER MAY OBJECT TO THE USE OF DEMARS OR THE ARBITRATION SERVICE APPOINTED BY THE CLAIMS ADMINISTRATOR (BUT NOT TO THE BINDING ARBITRATION PROCEDURE ITSELF). IF BUYER OBJECTS TO THE ALTERNATIVE INDEPENDENT ARBITRATION SERVICE DESIGNATED BY CLAIMS ADMINISTRATOR, EITHER PARTY MAY, PURSUANT TO THE APPLICABLE PROVISIONS OF THE FEDERAL ARBITRATION ACT, APPLY TO A COURT OF COMPETENT JURISDICTION TO DESIGNATE AN ARBITRATION SERVICE PROVIDER. THIS DESIGNATION WILL BE BINDING UPON BOTH PARTIES.

(iii) IF YOU SUBMIT A REQUEST FOR ARBITRATION, YOU MUST PAY THE ARBITRATOR'S FILING FEE PRIOR TO THE MATTER BEING REFERRED TO THE ARBITRATOR EXCEPT IN ANY STATE OR MUNICIPAL JURISDICTION THAT PROVIDES THAT NO PORTION OF THE FEES SHALL BE ADVANCED OR PAYABLE BY THE HOME OWNER, IN WHICH CASE SELLER WILL ADVANCE OR PAY SUCH FEES AS REQUIRED BY LAW. IN ALL REQUESTS FOR ARBITRATION, SELLER WILL INITIALLY ADVANCE (OR, UPON SATISFACTORY EVIDENCE, REIMBURSE) THE AMOUNT OF ANY ARBITRATION INITIATION/FILING FEES IN EXCESS OF THE AMOUNT OF THE FILING FEES FOR A CIVIL LAWSUIT REQUIRED UNDER APPLICABLE LOCAL LAW AT THE TIME THE ARBITRATION INITIATION/FILING FEES ARE INCURRED. OTHER AND/OR ONGOING FEES AND COSTS OF THE ARBITRATOR WILL BE DIVIDED EQUALLY BETWEEN THE CLAIMANT(S), ON THE ONE HAND, AND SELLER AND ANY OTHER PARTIES TO THE PROCEEDING, ON THE OTHER HAND. IN THE EVENT THAT ANY OF THE FOREGOING PROVISIONS FOR THE PAYMENT OF THE ARBITRATOR'S FEES AND COSTS ARE DETERMINED BY THE ARBITRATOR, OR BY A COURT, TO BE UNENFORCEABLE FOR ANY REASON, THEN SUCH UNENFORCEABLE PROVISIONS WILL BE DEEMED SEVERED AND SELLER WILL INSTEAD ADVANCE ALL ARBITRATOR FEES AND COSTS ASSOCIATED WITH THE PROCEEDING. IN ANY EVENT, THE ARBITRATOR MAY ULTIMATELY RE-ALLOCATE SUCH FEES AND COSTS (BUT NOT THE ATTORNEYS' AND EXPERT FEES OF THE PARTIES) AMONG ALL PARTIES TO THE PROCEEDING IN HIS OR HER DISCRETION AS THE INTERESTS OF JUSTICE DICTATE

(iv) THE ARBITRATION OF LIMITED WARRANTY DISPUTES WILL BE CONDUCTED IN ACCORDANCE WITH THE ARBITRATOR'S RULES AND REGULATIONS RELATING TO HOME WARRANTIES IN EFFECT AT THE TIME OF THE ARBITRATION TO THE EXTENT THAT THEY ARE NOT IN CONFLICT WITH THE FEDERAL ARBITRATION ACT. IF THE DISPUTE DOES NOT RELATE TO THE LIMITED WARRANTY OR THE ARBITRATOR DOES NOT HAVE RULES AND REGULATIONS RELATING TO WARRANTIES, THE ARBITRATOR WILL FOLLOW THE APPLICABLE RULES AND REGULATIONS OF THE ARBITRATION SERVICE TO THE EXTENT THAT THEY ARE NOT IN CONFLICT WITH THE FEDERAL ARBITRATION ACT.

(v) THE DECISION OF THE ARBITRATOR SHALL BE FINAL AND BINDING UPON ALL PARTIES EXCEPT AS PROVIDED IN SECTION G OF THE HUD/VA ADDENDUM OF THE LIMITED WARRANTY.

(b) WAIVER OF BUYER LITIGATION RIGHTS. BUYER ACKNOWLEDGES AND AGREES THAT BY AGREEING TO BINDING ARBITRATION AS PROVIDED HEREIN:

(i) BUYER IS GIVING UP ANY RIGHTS BUYER MIGHT POSSESS TO HAVE A DISPUTE LITIGATED IN A COURT OR JURY TRIAL;

(ii) BUYER'S DISCOVERY AND APPEAL RIGHTS WILL BE LIMITED;

(iii) BUYER'S AGREEMENT TO THIS DISPUTE RESOLUTION AGREEMENT IS VOLUNTARY AND BUYER UNDERSTANDS ITS PROVISIONS;

(iv) IF A DISPUTE INVOLVES PROPERTY OR COMMON AREA OWNED OR MANAGED BY OTHERS, INCLUDING A HOMEOWNERS' ASSOCIATION, THE PROCEDURES SET FORTH HEREIN ARE ALSO ACCEPTABLE FOR RESOLVING DISPUTES WITH RESPECT TO SUCH MATTERS AND BUYER WILL TAKE ALL ACTIONS NECESSARY TO SECURE PARTICIPATION BY SUCH OTHER PARTIES IN THE DISPUTE RESOLUTION PROCEDURES SET FORTH HEREIN; AND

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(v) THE HOMEOWNERS' ASSOCIATION FOR THE PROPERTY OR PROJECT, IF ANY, AND THE INTEREST OF ALL OWNERS IN THE HOMEOWNERS' ASSOCIATION WILL BE BOUND BY THE DISPUTE RESOLUTION PROCEDURES DESCRIBED HEREIN.

NOTICE IS HEREBY GIVEN PURSUANT TO THE UNIFORM ARBITRATION ACT, SECTION 15-48-10, ET. SEQ., CODE OF LAWS OF SOUTH CAROLINA (1976 AS AMENDED) THAT THIS AGREEMENT IS SUBJECT TO MANDATORY ARBITRATION.

(c) Choice of Law and Scope of Arbitrator's Authority. All disputes will be governed, interpreted and enforced according to the Federal Arbitration Act (9 U.S.C. §§ 1-16), which is designed to encourage use of alternative methods of dispute resolution that avoid costly and potentially lengthy court proceedings. Interpretation and application of these procedures will conform to federal court rulings interpreting and applying the Federal Arbitration Act. References to state law will not be construed as a waiver of any rights of the parties under the Federal Arbitration Act or the right of the parties to have the procedures set forth in the Limited Warranty and elsewhere within this Dispute Resolution Agreement interpreted and enforced under the Federal Arbitration Act. However, to the extent necessary, and whenever such laws are not in conflict with other provisions of this Dispute Resolution Agreement or the procedures of any selected alternative dispute resolution service, the arbitrator must apply the laws of the state in which the Property is located. This includes statues of limitations and statutes of repose that would apply if the dispute were brought in court. The arbitrator's award may be enforced in any court of competent jurisdiction. The arbitrator will have the authority to try and must try all issues, whether of fact or law, including without limitation, the validity, scope and enforceability of these dispute resolution provisions, and may issue any remedy or relief that the courts of the state in which the Property is located could issue if presented the same circumstances.

(d) No Recovery of Attorneys' Fees or Expert Witness Fees. To the fullest extent permitted by law, and except to the extent prohibited by law, Buyer and Seller waive any right to recover attorneys' fees or expert witness fees incurred in any dispute.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

Buyer's Initials: MH / EBS / _____ **Seller's Initials:** ks

3. WAIVER OF JURY TRIAL. IN THE EVENT THAT THE DISPUTE RESOLUTION PROCEDURES SET FORTH OR REFERENCED HEREIN ARE DETERMINED TO BE INVALID OR UNENFORCEABLE IN WHOLE OR IN PART, SUCH THAT THE DISPUTE PROCEEDS BY WAY OF CIVIL LITIGATION PROCEEDINGS IN ANY COURT, THE PARTIES NONETHELESS WAIVE ANY AND ALL RIGHTS TO A JURY TRIAL. THE PARTIES MAKE THESE WAIVERS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY.

4. DISPUTES TO BE RESOLVED INDEPENDENTLY. Notwithstanding Paragraph 1(iii) above, Buyer and Seller agree that it is in the best interest of Buyer and Seller that the dispute resolution procedures set forth in this Dispute Resolution Agreement be utilized independently of any actions (including actions brought pursuant to alternative dispute resolution procedures) involving disputes between Seller and other buyers or homeowners. Accordingly, Buyer knowingly waives any right to participate in any form of "class," "joint" or "representative" litigation (including in any "private attorney general capacity") or dispute resolution procedures against Seller. Buyer and Seller make this Agreement on the grounds that they wish to assure, in advance, that any disputes, actions or claims by or between Buyer and Seller will not be combined with the disputes, actions or claims by or between Seller and any other buyer or homeowner. Buyer and Seller include this provision on the additional grounds that: (i) the Property is unique from other properties in the Project, and any potential problems it may suffer will not necessarily be common to other properties; (ii) it may provide Buyer increased ability to control any dispute involving the Property; (iii) Buyer's interests will not be subordinated to the interests of other parties who might otherwise become involved in these dispute resolution procedures; (iv) this approach is likely to foster faster resolution of most disputes that may arise; (v) it will help to avoid conflicts of interest among Buyer's and Seller's representatives; and (vi) it is intended to foster better communication between Buyer and Seller focused on resolving the actual issues that may arise in any dispute between them. Notwithstanding the foregoing, the restrictions of this Paragraph 4 will not apply to actions (including actions brought pursuant to alternative dispute resolution procedures) for damages in the amount of One Thousand Dollars ($1000) or less per action; provided however, that Buyer will still be required to meet any legal requirements for any form of "class," "joint" or "representative" litigation or dispute resolution procedures with respect to such actions.

5. DISPUTES UNDER FHA/VA WARRANTY. Notwithstanding the provisions set forth above, this Paragraph 5 will apply to the extent Buyer is issued a builder's limited warranty approved by U.S. Department of Housing and Urban Development for issuance to certain Federal Housing Administration or Veterans Administration Financed Buyers ("**FHA/VA Warranty**"). With respect to all

disputes regarding the FHA/VA Warranty ("**FHA/VA Warranty Disputes**"), Seller and Owner must comply with the dispute resolution procedures and provisions specified in the FHA/VA Warranty. Specifically, the parties agree that the arbitration of FHA/VA Warranty Disputes will not be mandatory; provided however, that in the event of an action in a court of law, the waiver of jury trial set forth in Paragraph 3 will remain effective. All other disputes will continue to be governed by the provisions set forth above, including, without limitation, the provisions requiring binding arbitration. However, in the event that Owner files an action in a court of law regarding an FHA/VA Dispute while at the same time pursuing an arbitration for other disputes, Seller may elect to have all disputes resolved in the court action.

6. **SURVIVAL OF PROVISIONS.** All provisions of this Dispute Resolution Agreement shall be deemed independent and severable. If any provision or any part of this Dispute Resolution Agreement is for any reason held to be invalid, unenforceable or contrary to any public policy, law, statute and/or ordinance, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision or portions of provisions of this Dispute Resolution Agreement. It is the intent of the parties that the arbitrator shall interpret and enforce all enforceable provisions of this Dispute Resolution Agreement as binding contractual obligations. Buyer's covenants under this Dispute Resolution Agreement shall survive the Closing.

IN WITNESS WHEREOF, the parties have executed this Dispute Resolution Agreement Addendum as of the date of Seller's acceptance below.

ACCEPTED BY:

SELLER:

CalAtlantic Group, Inc.
a Delaware corporation
By
kelli Snyder
Title: Authorized Representative
Date Signed by Seller: 10/23/2017

BUYER:

Maureen Hunter — Signature
10/18/2017 — Date

Maureen Hunter — Name

Emily Beth Scheinert — Signature
10/18/2017 — Date

Emily Beth Scheinert — Name

Signature — Date

Name

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2020-CP-10-2398

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)
Joshua B. Farmer &)
Andrea G. Farmer)
)
Plaintiff,)
vs.)
South Carolina Department of Health &)
Environmental Control & Jackson K.)
Coker, II)
Defendant.)

IN THE COURT OF COMMON PLEAS
9th JUDICIAL CIRCUIT

CERTIFICATE OF TECHNICAL FAILURE OR TECHNICAL DIFFICULTIES

Case No.: ~~2021-CP-10-01607~~

2021 MAY 20 PM 4:04
JULIE J. ARMSTRONG
CLERK OF COURT
BY
FILED

Pursuant to the *South Carolina Electronic Filing Policies and Guidelines*, Cheryl Shown ~~Pet~~, Attorney for the plaintiff(s)/defendant(s), seeks to file the attached _____ by a Traditional Filing Method/Alternative Method of Submission based on the inability to Electronically File the document. The inability to Electronically File the document was caused by:

- ☑ An announced Technical Failure of the Electronic Filing System;
- ☐ A technical difficulty that prevented the successful E-Filing of this document, which is described in detail below, including a statement certifying compliance with Section 9(d) of the Policies and Guidelines: _____;
- ☐ A Repeated Technical Difficulty, which is described in detail below, including a statement certifying compliance with Section 9(f) of the Policies and Guidelines: _____ ; or
- ☐ The document is excluded from the requirement that it be E-Filed in accordance with Section 2(d) of the Policies and Guidelines.

I have served or will serve this notice and the attached _____ on all parties to this action by the following means: _____.

I declare under penalty of perjury that the foregoing is true and correct.

S/ _____ [Name of Attorney]
Attorney for Plaintiff(s)/Defendant(s)
Address: _____
Phone: _____
S.C. Bar No.: _____
Email: _____

SCCA/293 (8/2016)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Whitesides Park Townhomes Property Owners Association, Inc., Plaintiff, vs. CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes; Lennar Carolinas, LLC, Southend Exteriors, Inc., Alpha Omega Construction Group, Inc., Fogel Services, Inc. Defendants.	Case No. 2020-CP-10-02398 **DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE DECLARATION OF TRACEY ETHRIDGE**

FILED
2021 MAY 20 PM 4:55
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Defendants, CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes, and Lennar Carolinas, LLC (hereinafter, collectively "Defendants"), by and through their undersigned counsel, respectfully submit this Response in Opposition to Plaintiff's Motion to Strike Defendants' Declaration of Tracey Ethridge. For the reasons set forth below, Plaintiff's Motion should be denied.

FACTUAL BACKGROUND

On December 22, 2020, Defendants filed a Motion to Dismiss and Compel Arbitration (the "Motion to Compel Arbitration"). In support of their motion, Defendants submitted the Declaration of Tracey Ethridge (the "Declaration"), who is a litigation paralegal for Lennar Carolinas, LLC ("Lennar") and also acts as a records custodian for the Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Group, Inc. and CalAtlantic Homes ("CalAtlantic"). The Declaration was attached as Exhibit "C" to Defendants' Motion to Compel Arbitration. On May 7, 2021, the Court entered an Order

Denying Defendants' Motion to Dismiss and Compel Arbitration (the "Order"). The Order did not address Ms. Ethridge's Declaration. Defendants filed a Motion to Alter or Amend the Court's ruling on May 17, 2021, which is pending before the Court as of the date of this Response.

DISCUSSION

A. The Declaration is Properly Based Upon Ms. Ethridge's Personal Knowledge.

Plaintiff argues the Declaration is invalid because Ms. Ethridge lacks the requisite knowledge to state "[the Purchase Documents] were given to the homeowners at the Project or that they acknowledge receipt of [the Purchase Documents]." Pl.'s Mot. to Strike at 5. However, this argument is without merit and has no bearing upon the validity of the Declaration because the Declaration contains no such statement. Rather, Ms. Ethridge attested in the Declaration that, as the litigation paralegal for Lennar and records custodian for CalAtlantic, she is familiar with CalAtlantic's corporate documents and document retention policies. Ethridge Decl. at 1-2.

Based on that personal knowledge, Ms. Ethridge attested that it is the strict requirement and longstanding practice of CalAtlantic "to provide the Manual and the Limited Warranty to its purchasers and for its purchasers to acknowledge receipt thereof, upon the closing on any sale of a residence." *Id* at 3. Ms. Ethridge attached to the Declaration copies of the Manual and Limited Warranty, which, based on her personal knowledge of CalAtlantic's corporate documents and policies, she states are

representative of such documents utilized by CalAtlantic and provided to purchasers during the relevant time period.[1] *Id.* at 2.

There is nothing objectionable about Ms. Ethridge's statements. Indeed, she has personal knowledge of and familiarity with the corporate documents, policies and practices of CalAtlantic, and is competent to identify the Manual and Limited Warranty documents utilized by CalAtlantic during the relevant period, and to attest to the policies and practices of CalAtlantic in providing such documents to purchasers and requiring acknowledgement of receipt. Whether the Declaration constitutes sufficient evidence that CalAtlantic in fact provided such Purchase Documents to Whitesides' homeowners, and that they acknowledged receipt of such documents, is an issue for the finder of fact.

Plaintiff's argument, thus, does not go to the validity or admissibility of the Declaration, but rather to the weight it should be afforded by the fact finder—a question to be resolved on the merits and which is not the proper subject of a motion to strike. Accordingly, Plaintiff's Motion should be denied.

B. The Declaration is Valid Under South Carolina Law.

Pursuant to the Order of the South Carolina Supreme Court dated April 3, 2020, as amended December 16, 2020, governing court protocols during the COVID-19 pandemic and in effect at the time of Ms. Ethridge's Declaration, a declaration or

[1] Ms. Ethridge stated she attached representative copies of the Purchase Documents because "[d]ue to the passage of time and the merger of corporate entities, all documents relative to sale of the subject townhomes [had] not been located." Ethridge Decl. at 3. Subsequently, Ms. Ethridge submitted a Supplemental Declaration wherein she stated that all relevant Purchase Documents had been located, despite previous diligent efforts to do so. Ethridge Supp. Decl. at 2. Those Purchase Documents and the Supplemental Declaration were filed as exhibits to Defendants' Motion to Alter or Amend on May 17, 2021. This Response, however, is limited to addressing the validity of the original Declaration, as such is the sole subject of Plaintiff's Motion to Strike.

certification from an affiant is permissible in lieu of an affidavit. S.C. Sup. Ct. Order dated April 3, 2020, as amended December 16, 2020, at (c)(16). The Declaration is signed and its contents sworn to and affirmed by Ms. Ethridge. As a legal assistant/paralegal of 6 years, Ms. Ethridge understands, and understood at the time she signed the Declaration, that by swearing to and affirming the information set forth in the Declaration, she was swearing to and affirming the truth of the statements therein, which remain true, and that if she were to make any willfully false statements, she would be subject to punishment by contempt. *See* Declaration of Tracey Ethridge in Opposition to Plaintiff's Motion to Strike, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

Plaintiff does not cite to any binding authority to the contrary. Indeed, Plaintiff cites to Rule 902 of the South Carolina Rules of Evidence for the proposition that, since it is not notarized, the Declaration is inadmissible without extrinsic evidence of authenticity, such as a notarized certificate of acknowledgement. Pl. Mot. to Strike at 6. This argument is misplaced. Rule 902, SCRE, relates to document authentication and the admissibility of documents at trial. Ms. Ethridge's Declaration is a sworn statement, authorized in lieu of an affidavit by Order of the South Carolina Supreme Court, and is self-authenticating. Moreover, the Declaration need not be admissible evidence at trial in order to be part of the record and considered by the Court in ruling on Defendants' Motion to Compel Arbitration.

The only South Carolina case on point cited by Plaintiff is easily distinguishable. In *Morris v. Jensen*, the South Carolina Court of Appeals held that the trial court acted within its discretion when it found that an unsworn statement of a juror in which she provided a purely personal opinion regarding the jury foreperson was insufficient proof of

jury bias. 309 S.C. 153, 157, 420 S.E.2d 710, 712 (Ct. App. 1992). There, the court held that, "in [those] circumstances," the juror's unsworn statement, in which she stated she felt she was "an honest person," was not "a convincing demonstration that the verdict was based on jury bias rather than the evidence at trial." *Id.* Not only are those circumstances not at issue here, where the Declaration was sworn to and affirmed by the declarant and based upon her personal knowledge, but *Morris* actually demonstrates that the issue is one of weight, not admissibility. And, once again, whether or not the Declaration is admissible at trial has no bearing upon the Court's ability to consider it on a pre-trial motion.

Finally, although it is Defendants' fervent belief that Ms. Ethridge's Declaration is a valid and permissible sworn statement in lieu of an affidavit, to the extent Plaintiff argues it should contain specific language relative to penalty for perjury, despite it being sworn to and affirmed, attached hereto as Exhibit "B" and incorporated herein by reference is the Second Supplemental Declaration of Tracey Ethridge. This supplemental declaration is substantively identical to Ms. Ethridge's original Declaration, but adds the following signed certification:

> I certify that the foregoing statements, subscribed by me are true, under penalty of perjury. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

As stated hereinabove, Ms. Ethridge understood and believed at the time she signed and swore to it, and today, that her Declaration was made under penalty of perjury. However, to the extent the Court is inclined to agree with Plaintiff, Defendants should be permitted the opportunity to cure, and the Court, in its discretion and in the interests of justice, should accept and consider the Second Supplemental Declaration submitted herewith.

CONCLUSION

For the foregoing reasons, and any others the Court may deem just and proper, Plaintiff's Motion to Strike should be denied.

Respectfully submitted,

/s/ Cheryl D. Shoun

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Post Office Drawer 400
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cshoun@nexsenpruet.com

Attorneys for Defendants CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes, and Lennar Carolinas, LLC

May 20, 2021

Charleston, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Whitesides Park Townhomes Property Owners Association, Inc., Plaintiff, vs. Calatlantic Group, Inc. F/K/A The Ryland Group, Inc. F/K/A Standard Pacific Corp. and also D/B/A Calatlantic Homes; Lennar Carolinas, LLC, Southend Exteriors, Inc., Alpha Omega Construction Group, Inc., Fogel Services, Inc. Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Case No. 2020-CP-10-02398 DECLARATION OF TRACEY ETHRIDGE IN OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE

COMES NOW, Tracey Ethridge, who swears or affirms, under penalty of perjury, as follows:

1. I am over the age of majority and otherwise mentally and physically competent to make this Affidavit on behalf of CalAtlantic Group, Inc. f/k/a The Ryland Group, Inc. F/K/A Standard Pacific Corp. and also D/B/A CalAtlantic Homes; Lennar, Carolinas, LLC ("Defendants"), and do so of my own accord, without duress or influence;

2. I serve as a litigation paralegal for Lennar Carolinas, LLC and also act as a records custodian for The Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Group, Inc. and CalAtlantic Homes (CalAtlantic Group, Inc. and CalAtlantic Homes collectively referred to as "CalAtlantic");

3. Pursuant to my role as litigation paralegal and records custodian, I am familiar with CalAtlantic's construction, sales and closing policies, practices and

procedures and have access to and am familiar with selected corporate documents of Defendants, including CalAtlantic;

4. On December 22, 2020, Nexsen Pruet, LLC filed my original Declaration in support of the Motion to Dismiss and to Compel Arbitration on Behalf of Defendants CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes, and Lennar Carolinas, LLC. At the time of making said Declaration, I did so swearing or affirming, as indicated at the beginning of the Declaration, as to the information set forth in the Declaration, which, as a paralegal/ legal assistant of 6 years, I understand, and understood at the time I signed said Declaration, to mean the statements were true, they remain true, and if I made or make any willfully false statements, I was and remain subject to punishment by contempt certify the foregoing statements, subscribed by me are true, under penalty of perjury. I am aware that if any of the foregoing statement made by me are willfully false, I am also subject to punishment by contempt.

Tracey Ethridge
TRACEY ETHRIDGE

Executed this __20th_ day of May, 2021

at __Irvine_____, California

EXHIBIT B

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Whitesides Park Townhomes Property Owners Association, Inc., Plaintiff, vs. Calatlantic Group, Inc. F/K/A The Ryland Group, Inc. F/K/A Standard Pacific Corp. and also D/B/A Calatlantic Homes; Lennar Carolinas, LLC, Southend Exteriors, Inc., Alpha Omega Construction Group, Inc., Fogel Services, Inc. Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Case No. 2020-CP-10-02398 SECOND SUPPLEMENTAL DECLARATION OF TRACEY ETHRIDGE

PERSONALLY APPEARED BEFORE ME, Tracey Ethridge, who swears or affirms as follows:

I am over the age of majority and otherwise mentally and physical competent to make this Second Supplemental Declaration on behalf of CalAtlantic Group, Inc. f/k/a The Ryland Group, Inc. F/K/A Standard Pacific Corp. and also D/B/A CalAtlantic Homes; Lennar, Carolinas, LLC ("Defendants"), and do so of my own accord, without duress or influence;

I serve as a litigation paralegal for Lennar Carolinas, LLC and also act as a records custodian for The Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Group, Inc. and CalAtlantic Homes (CalAtlantic Group, Inc. and CalAtlantic Homes collectively referred to as "CalAtlantic");

Pursuant to my role as litigation paralegal and records custodian, I am familiar with CalAtlantic's construction policies, practices and procedures and have access to and

general familiarity with selected corporate documents of Defendants, including CalAtlantic;

Based upon my familiarity with CalAtlantic's practices and selected corporate documents, I am aware CalAtlantic is indicated as the Seller or Grantor in certain documents establishing and selling individual residences located in the Whitesides Park townhome community, located in Mt. Pleasant, South Carolina;

Based upon my familiarity with the corporate documents of CalAtlantic, I hereby attest that the Homeowner's Limited Warranty & Maintenance Manual ("Manual"), attached to my Affidavit hereto as Exhibit A, is a representative copy of such document as provided to purchasers of homes from CalAtantic from late 2015 through early to mid-2018 – the time period during which Whitesides Park townhomes were conveyed from CalAtlantic to original purchasers.

Referenced in and included with the Manual, attached as Exhibit A hereto, is a sample copy of the limited warranty provided by CalAtlantic ("Limited Warranty") to those who purchased homes from that entity, including those who purchased townhomes in the Whitesides Park development. The Limited Warranty provides, among other things, the procedures for resolution of disputes between CalAtlantic. and its purchasers. It conspicuously states, in bold, all capital font, as follows:

> **THIS AGREEMENT INCLUDES PROCEDURES FOR SETTLEMENT OF DISPUTES, INCLUDING MEDIATION AND BINDING ARBITRATION IN ACCORDANCE WITH THE PROCEDURES OF THE FEDERAL ARBITRATION ACT.**

The Limited Warranty further sets forth the procedures to be followed in the event of a warranty claim by or on behalf of an owner, providing if CalAtlantic fails to respond

to a request for information within 30 days from the submission of a claim, or if the claim is not resolved by an agreement by CalAtlantic to repair, replace or submit payment for an item(s), such constitutes an "unresolved dispute" that shall be submitted to mediation. If the unresolved dispute remains, the claim(s) must be submitted to binding arbitration governed by the procedures of the Federal Arbitration Act, 9 U.S.C. 1, *et seq.* (See, Section 5. e-h).

Due to the passage of time and the merger of corporate entities, all documents relative to sale of the subject townhomes have not been located; however, it was the strict requirement and longstanding practice of CalAtlantic to provide the Manual and the Limited Warranty to its purchasers and for its purchasers to acknowledge receipt thereof, upon the closing on any sale of a residence. Additionally, I have reviewed the Motion to Dismiss, Or, In The Alternative to Compel Arbitration being submitted on behalf of Defendants and am generally familiar with the Purchase Contract and the Dispute Resolution Agreement Addendum to Home Purchase Agreement referenced therein and attached thereto as Exhibit B, and attest that such documents were generally utilized by CalAtlantic at the time period relevant to this action.

I certify that the foregoing statements, subscribed by me are true, under penalty of perjury. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

Tracey Ethridge
TRACEY ETHRIDGE

Executed this _May 20_, 2021
at _Irvine, California

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON WHITESIDES PARK TOWNHOMES PROPERTY OWNERS ASSOCIATION, INC. Plaintiff, vs. CALATLANTIC GROUP, INC. F/K/A THE RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES; LENNAR CAROLINAS, LLC, SOUTHEND EXTERIORS, INC., ALPHA OMEGA CONSTRUCTION GROUP, INC., FOGEL SERVICES, INC., Defendants.	IN THE COURT OF COMMON PLEAS 2020-CP-10-02398 **PLAINTIFF'S MEMORANDUM IN OPPOSITION OF DEFENDANTS CALATLANTIC GROUP, INC. F/K/A THE RYLAND GROUP, INC. F/K/A STANDARD PACIFIC CORP. AND ALSO D/B/A CALATLANTIC HOMES AND LENNAR CAROLINAS, LLC'S MOTION TO ALTER OR AMEND**

Plaintiff, Whitesides Park Townhomes Property Owners Associations, Inc. ("Plaintiff") hereby submit this Memorandum of Law in Opposition of Defendants CalAtlantic Group, Inc. f/k/a The Ryland Group, Inc. f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes (hereinafter "CalAtlantic"), and Lennar Carolinas, LLC's (hereinafter "Lennar") Motion to Alter or Amend. Plaintiff respectfully requests that CalAtlantic and Lennar's Motion to Alter or Amend be Denied.

BACKGROUND

This construction defect case was filed on June 1, 2020, and involves allegations of multiple deficiencies arising out of the development, design, and construction of thirteen (13) townhomes located in Whitesides Park Townhomes in Charleston County, South Carolina (the

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"Project"). Whitesides Park Townhomes is comprised of thirteen (13) townhomes located in four (4) buildings and related common elements. At issue in this case are claims against the entities who defectively installed various building components to the Project. The general contractor against whom the Plaintiff has brought claims is CalAtlantic.

CalAtlantic and Lennar filed a Motion to Dismiss and Compel Arbitration (hereinafter the "Motion to Dismiss") on December 22, 2020. Attached to the Motion to Dismiss were three exhibits. Exhibit A to the Motion to Dismiss was a copy of the Declaration of Covenants, Conditions, Restrictions and Easements for Whitesides Park dated September 8, 2016 (hereinafter the "Covenants"). Exhibit B to the Motion to Dismiss were *representative* copies of the Purchase Contract and Dispute Resolution Agreement Addendum to Home Purchase Agreement. Exhibit C to the Motion to Dismiss was the Declaration of Tracey Ethridge (hereinafter the "Declaration"). The Declaration had one exhibit, attached as Exhibit A, which was a *representative* copy of the Homeowner's Limited Warranty & Maintenance Manual which also included a sample copy of the limited warranty. The Motion to Dismiss was placed on the Honorable Dedra L. Jefferson's motions roster for the week of March 22, 2021. Pursuant to Chief Justice's April 3, 2020 Order, As Amended March 4, 2021, Section (c)(4), the Motion to Dismiss was disposed without the necessity of a hearing. Plaintiff submitted a Memorandum in Opposition to CalAtlantic and Lennar's Motion to Dismiss and Compel Arbitration on March 22, 2021 (hereinafter "Plaintiff's Memorandum"). CalAtlantic and Lennar did not submit any additional Memorandum in support of their Motion to Dismiss. The Court entered an Order Denying Defendants' Motion to Dismiss and Compel Arbitration (hereinafter the "Order") on May 7, 2021. CalAtlantic and Lennar filed a Motion to Alter or Amend on May 17, 2021.

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LAW AND ANALYSIS

CalAtlantic and Lennar's Motion to Alter or Amend should be Denied since it attempts to bring in evidence that was not properly encompassed during the disposition of the Motion to Dismiss and this Court did not misunderstand or fail to fully consider or rule on an argument or issue that was brought before the Court during the disposition of the Motion to Dismiss. As to not duplicate arguments that were made during the disposition the Motion to Dismiss, Plaintiff incorporates by reference their Plaintiff's Memorandum, which was previously considered by this Court, as well as the Court's Order. "[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." Elam v. S.C.DOT, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2008). A party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial. Miller Constr. Co., LLC v. PC Constr. Of Greenwood, Inc., 418 S.C. 186, 206, 791 S.E.2d 321, 332 (Ct. App. 2016). "An appellate court cannot address an issue unless it was raised to and ruled upon by the trial court." Ransom v. SC Water Resources Comm., 321 S.C. 211, 467 S.E.2d 463, 467 (Ct. App. 1996). "A party cannot use Rule 59(e) to present new evidence to the court. Mozingo v. Ford Motor Co., 2009 WL 9528979, *2 (Ct. App. 2009) (citing Brailsford v. Brailsford, 380 S.C. 443, 448, 669 S.E.2d 342, 345 (Ct. App. 2008)).

CalAtlantic and Lennar contend that the Court did not contemplate whether the provisions in the Covenants were so oppressive that no reasonable person would make them and

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no fair and honest person would accept them. When analyzing the unconscionability of the arbitration provisions, the Court cited: "'While we analyze both prongs, they invite similar proof and often overlap, and 'if more of one [prong] is present, then less of the other is required.'Doe, 430 S.C. at 612, 864 S.E.2d at 879 (citing Farnsworth on Contracts § 29.4 at 4-212 (2020-1 Supp.) and Corbin on Contracts § 29.4 at 388 (2002 ed.))." Order Denying Defendants' Motion to Dismiss and Compel Arbitration at 4. The Court found that there was no possibility of Plaintiff having any kind of meaningful choice, thus the Court did not need to go into a rigorous analysis of the oppressiveness of the provision.

CalAtlantic and Lennar further argue that the arbitration provisions cannot be unconscionable "simply because 'the provisions were introduced and executed by the same person.'" Contrary to CalAtlantic and Lennar's contention, the Court analyzed many factors in determining unconscionability and not just the who signed the Covenants. CalAtlantic and Lennar cite to Osborne v. Marina Inn at Grande Dunes, LLC for their contention that Whitesides cannot bring claims based upon the Covenants, while simultaneously trying to avoid the Covenant's arbitration clause. Osborne v. Marina Inn at Grand Dunes, LLC, 2009 U.S. Dist. LEXIS 87167*, *23-24 (D.S.C. 2009). CalAtlantic and Lennar are attempting to make an equitable estoppel argument. As stated above, a Rule 59(e) motion is not an opportunity for a party to bring in new arguments or new evidence. CalAtlantic and Lennar chose not to submit a Memorandum and their Motion to Dismiss did not contain any arguments regarding equitable estoppel. Therefore, the Court cannot consider CalAtlantic and Lennar's arguments regarding equitable estoppel since this argument is being brought up for the first time in the Motion to Alter or Amend. See Eaddy v. Oliver, 345 S.C. 39, 44, 545 S.E.2d 830, 833 (Ct. App. 2001) (a

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party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial). Furthermore, CalAtlantic and Lennar suggest that the Court is stating that the Covenants, in their entirety, are unconscionable. "[A]n arbitration clause is separable from the contract in which it is embedded and the issue of validity is distinct from the substantive validity of the contract as a whole." Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 540, 542 S.E.2d 360, 364 (2001) (citing Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 87 S.Ct. 1801 (1967). The Court specifically stated that it found " . . . the arbitration provision contained in the Covenants unconscionable, and [the Court] declines to enforce the provision against the Plaintiff." Order Denying Defendants' Motion to Dismiss and Compel Arbitration at 6.

Moreover, CalAtlantic and Lennar cite to Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC, for the contention that arbitration provisions are enforceable when the developer executes the Covenants on behalf of both parties. However, Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC is a case decided by the California Supreme Court which states: "Pursuant to state regulatory law, a declaration may also include provisions for binding or nonbonding arbitration of disputes between a developer and an owners association, so long as the designated process for arbitration satisfies certain regulatory requirements." Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC, 55 Cal. 4th 223, 237 (Ca. 2012). Additionally, this case hinges on California Civil Code, § 1350 et seq., Davis-Stirling Common Interest Development Act. This case is not binding on this Court and contains analysis into many of California's state laws which are not comparable with South Carolina state law. Furthermore, CalAtlantic and Lennar seem to suggest that the Court's

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decision was made "simply" on the fact that the Covenants were signed by the developer on behalf of parties; however, its apparent in the Court's Order that this fact is just one part of the Court's entire analysis.

Furthermore, CalAtlantic and Lennar suggest that the Court has ruled that the Covenants are unenforceable and point to the South Carolina Homeowners Association Act, S.C. Code Ann. § 27-30-110 for the enforceability of the Covenants, specifically S.C. Code Ann. § 27-30-130. S.C. Code Ann. § 27-30-130 is the "Enforceability of governing documents; recording requirements; rules , regulations, and amendments." The Court made clear in the Order that the arbitration provisions are unenforceable and not the Covenants as a whole. The analysis for determining whether an arbitration provision is unconscionable, and thus unenforceable, does not include analyzing the provision under S.C. Code Ann. § 27-30-130 but instead under contract law, as previously outlined in Plaintiff's Memorandum.

CalAtlantic and Lennar contend that because Plaintiff, Whitesides Park Townhomes Property Owners Associations, Inc., is comprised of individual homeowners that the Purchase Agreement, Addendum, Manual, and Limited Warranty are enforceable against Plaintiff. The Court went through an in-depth analysis in its Order and concluded that "any assertion that the Association is bound to the arbitration provisions in these documents is without merit." Order Denying Defendants' Motion to Dismiss and Compel Arbitration at 7. Furthermore, CalAtlantic and Lennar state that the Court failed to consider "agency principles and the fact that Whitesides is comprise of individual homeowners." As stated above, a Rule 59(e) motion is appropriate when "an issue or argument has been *raised*, but not ruled on." Elam, 361 S.C. at 24, 602 S.E.2d at 780. (emphasis added). CalAtlantic and Lennar did not raise any issues regarding agency

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principles in their Motion to Dismiss and Compel arbitration, thus that is not an issue for the Court to decide in a Rule 59(e) motion. Furthermore, it is evident from the Court's Order that the fact that Whitesides Park Townhomes Property Owners Associations, Inc. is comprised of individual homeowners was contemplated by the Court. The Court specifically stated:

> "Rather, the Plaintiff's causes of action are brought by the Association under their duty to maintain and keep in good condition the common areas, and allege defects against the Defendants for the common areas of the property, not for each individual unit. The relevant inquiry is not the arbitrability of each individual homeowner's claims against the Defendants. Rather, it is the arbitrability of the Association's claims regarding alleged defects in the common areas against the Defendants."

Order Denying Defendants' Motion to Dismiss and Compel Arbitration at 6-7. (footnote omitted).

CalAtlantic and Lennar attached to their Motion to Alter or Amend documents they contend were not in their possession prior to the April 22, 2021. These documents include Purchase Agreements for various individual homeowners. Additionally, CalAtlantic and Lennar submitted, as Exhibit B, the Supplemental Declaration/Certification of Tracey Ethridge (hereinafter the "Declaration:). This Declaration makes statements somewhat similar to the one submitted by CalAtlantic and Lennar in their Motion to Dismiss; however, this Declaration contains additional documents containing information regarding individual homeowners. Plaintiff incorporates all arguments made in Plaintiff's Memorandum regarding the Original Declaration of Tracey Ethridge submitted with CalAtlantic and Lennar's Motion to Dismiss herewith. While it is Plaintiff's position that the Supplemental Declaration/Certification of Tracey Ethridge should not be considered by the court; even if the Court does consider the Declaration and Purchase Agreements, these document are regarding individual homeowners and

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have no bearing on this Motion to Alter or Amend. The Court went through a rigorous analysis in determining that Plaintiff is not bound by the documents of the individual homeowners. This determination included a review of the representative copy of a Purchase Agreement similar to the ones filed as Exhibit A to CalAtlantic and Lennar's Motion to Alter or Amend.

CONCLUSION

In conclusion, this Court should Deny CalAtlantic and Lennar's Motion to Alter or Amend since the Court did not misunderstand or fail to fully consider or rule on an argument or issue previously brought before this Court.

BLUNDY LAW FIRM, LLC

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Charleston, South Carolina
May 26, 2021.

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Whitesides Park Townhomes Property Owners Association, Inc., Plaintiff, vs. CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes; Lennar Carolinas, LLC, Southend Exteriors, Inc., Alpha Omega Construction Group, Inc., Fogel Services, Inc. Defendants.	Case No. 2020-CP-10-02398 **DEFENDANTS' MOTION TO ALTER OR AMEND ORDER GRANTING PLAINTIFF'S MOTION TO STRIKE**

Defendants, CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes ("CalAtlantic"), and Lennar Carolinas, LLC ("Lennar") (hereinafter, collectively "Defendants"), by and through their undersigned counsel, respectfully move the Court, pursuant to Rules 52(b) and 59(e), SCRCP, to reconsider, alter or amend its order entered on June 10, 2021, granting Plaintiff's Motion to Strike the Declaration of Tracey Ethridge (the "Order"). Defendants base this Motion on the following grounds.

1. The Declaration of Tracey Ethridge, attached as Exhibit C to Defendants' Motion to Dismiss and Compel Arbitration filed on December 22, 2020 (the "Declaration"), is permissible under the Order of the South Carolina Supreme Court dated April 3, 2020, as amended December 16, 2020, governing court protocols during the COVID-19 pandemic and in effect at the time of Ms. Ethridge's Declaration (the "April 3, 2020 Order"), which permits a declaration or certification in lieu of an affidavit. S.C. Sup. Ct.

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Order dated April 3, 2020, as amended December 16, 2020, at (c)(16). The Court failed to consider the April 3, 2020 Order.

2. The Court erred in holding that the Declaration was impermissible because it was not notarized, Order at 3-5, as notarization is not required pursuant to the April 3, 2020 Order. April 3, 2020 Order, as amended December 16, 2020, at (c)(16).

3. The Court erred in holding that the Declaration was impermissible because it did not indicate that the statements therein were made on the declarant's own knowledge. Order at 3-4. Ms. Ethridge stated in her Declaration that, in her role as a litigation paralegal and records custodian for CalAtlantic, she was familiar with the corporate documents and document retention policies about which she was attesting. Declaration at 1. Furthermore, Rule 11 of the South Carolina Rules of Civil Procedure expressly permits affidavits and verifications to contain statements made upon information and belief. Rule 11(c), SCRCP.

4. The Court erred in holding that the Declaration was impermissible because it was not dated, Order at 5, as the Declaration is signed using DocuSign and contains a unique signature certificate, which includes the date on which the document was signed. Furthermore, a date is not required pursuant to the April 3, 2020 Order. April 3, 2020 Order, as amended December 16, 2020, at (c)(16).

5. The Court erred in holding that the Declaration was impermissible because it "does not contain any language indicating that the declarations are made under penalty of perjury," Order at 5, as the Declaration is sworn to and affirmed by Ms. Ethridge. Declaration at 1. Furthermore, Ms. Ethridge submitted a Declaration in Opposition to Plaintiff's Motion to Strike (the "Opposition Declaration"), attached as Exhibit A to

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Defendants' Response in Opposition to Plaintiff's Motion to Strike Declaration of Tracey Ethridge, in which she swears and affirms, under penalty of perjury, that the statements contained in the Declaration were true, and remain true, and were made under penalty of perjury. The Court further erred in failing to consider the Opposition Declaration.

6. The Court's Order fails to consider the Second Supplemental Declaration of Tracey Ethridge (the "Supplemental Declaration"), attached as Exhibit B to Defendants' Response in Opposition to Plaintiff's Motion to Strike Declaration of Tracey Ethridge. The Supplemental Declaration, which is virtually identical in substance to the Declaration, is specifically dated and swears and affirms that the statements therein are true and made under penalty of perjury.

Based on the foregoing, Defendants respectfully submit the Court erred in its determination that the Declaration was impermissible and should be stricken. This Motion may be further supported by the record in this case and any subsequently filed supporting memorandum. Counsel for Defendants certifies pursuant to Rule 11 of the South Carolina Rules of Civil Procedure that consultation with counsel for Plaintiff would serve no useful purpose.

/s/ Cheryl D. Shoun

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June 21, 2021

Charleston, South Carolina

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Jul 21 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No. 2020-CP-10-02398

Whitesides Park Townhomes Property Owners Association, Inc.,

Respondent,

v.

CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes; Lennar Carolinas, LLC, Southend Exteriors, Inc., Alpha Omega Construction Group, Inc., Fogel Services Inc., Graciela Razo Rodile, and Melinda Rios Amador,

Of which CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes; Lennar Carolinas, LLC and Lennar Carolinas, LLC are the Appellants.

NOTICE OF APPEAL

CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes and Lennar Carolinas, LLC (collectively, "Appellants") appeal the Honorable Deadra L. Jefferson's order denying Appellants' Motion to Compel Arbitration, filed on May 7, 2021, and the Honorable Deadra L. Jefferson's order denying Appellants' Motion to Reconsider, filed June 21, 2021. Appellants received notice of the Court's denial of the Motion to Reconsider on June 21, 2021.

s/Katon E. Dawson Jr.
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Katon E. Dawson, Jr. (SC Bar No. 101167)
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July 21, 2021

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No. 2020-CP-10-02398

Whitesides Park Townhomes Property Owners Association, Inc.,

Respondent,

v.

CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes; Lennar Carolinas, LLC, Southend Exteriors, Inc., Alpha Omega Construction Group, Inc., Fogel Services Inc., Graciela Razo Rodile, and Melinda Rios Amador,

Of which CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes; Lennar Carolinas, LLC and Lennar Carolinas, LLC are the Appellants.

PROOF OF SERVICE

The undersigned hereby certifies that on July 21, 2021, copies of CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes and Lennar Carolinas, LLC's **Notice of Appeal** by were served on all counsel of record via email containing the above referenced document to counsels' individual AIS email addresses pursuant to the SC Supreme Court COVID Order 2020-05-29-02 as follows:

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July 21, 2021

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SC Court of Appeals

Via E-mail [ctappfilings@sccourts.org] and U.S. Mail

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: **Whitesides Park Townhomes Property Owners Association, Inc., v. CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes; Lennar Carolinas, LLC, Southend Exteriors, Inc., Alpha Omega Construction Group, Inc., Fogel Services Inc., Graciela Razo Rodile and Melinda Rios Amador**
Case Number: 2020-CP-10-02398

Dear Mrs. Kitchings,

Enclosed for filing please find Appellants CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc., f/k/a Standard Pacific Corp. and also d/b/a CalAtlantic Homes and Lennar Carolinas, LLC's Notice of Appeal in the above referenced matter. Also enclosed please find, copies of the orders to be challenged on appeal, the Proof of Service, and this Firm's check in the amount of $250.00 in satisfaction of the Court of Appeals' filing fee.

By copy of this correspondence, we are serving all counsel of record with a copy of the Notice of Appeal. A copy of this Notice of Appeal will also be filed electronically with the Charleston County Clerk of Court. Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Katon E. Dawson, Jr.

KED
Enclosures
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