

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
BUILDING MATERIALS HOLDING	)	Case No. 09-12074 (KJC)
CORPORATION, et al.,	)	
	)	Jointly Administered
Debtors.	)	
	)	Hearing Date: November 19, 2009 at 11:00 a.m.
	)	Objections due by: November 12, 2009

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**JOINT MOTION FOR RELIEF FROM STAY TO ALLOW  
STATE COURT LITIGATION TO PROCEED**

Pursuant to 11 U.S.C. § 362 and Bankruptcy Rule 4001, the Murray Ridge Owners Association and Laura Alvstad *et al.*<sup>1</sup> (the “Association” and “Alvstad Plaintiffs”, respectively or collectively the “Movants”), hereby jointly request relief from the automatic stay for the limited purpose of (1) determination of the liability, if any, of Debtor, BMC West Corporation (“BMC”) for construction defects at the Murray Ridge townhomes and single family homes located in Beaverton, Oregon, and (2) liquidation of the amount of damages, if any, and (3) application of any insurance proceeds to such damages. No claims shall be pursued personally against BMC. All claims shall be limited to the extent of insurance proceeds, if any. The Movants in support thereof, represent as follows:

**Jurisdiction and Venue**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334(b).

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<sup>1</sup> The following is the full list of the Alvstad Plaintiffs seeking relief from stay; Laura Alvstad, Jeffrey Armstrong, Mohammad Bahramian, Brian Bloomster, Karen Bloomster, Greg Boersma, Carene Boersma, Judy Chen, Roger Chen, Denise Clough, Herbert Clough, Steven Dickinson, Beth Dickinson, Nareth Doun, Tok Doun, May Hing, Jerry Hittle, Eric Ho, Lien Hong, Aziz Inan, Belgin Inan, Mark Kosmowski, Tracy Kozmowski, Martin Lepe, Adriana Lepe, Hao Li, Susan Li, Yeuan-Jen Liao, Mei-Ying Liao, Shengdong Lu, Blake McMahon, Lili McMahon, Wataru Morta, Bob Ogle, Pam Ogle, Kyu Bum Oh, Carrie Paque, Christopher Paque, Pete Parashos, Tammy Parashos, Niruopama Peddireddi, Cindy Pollitt, George Pollitt, Tom Raymond, Rebecca Raymond, Brian Scott, Susan Scott, Yi Shang, Danielle Simonelli, Tim Slingsby, Melinda Slingsby, David Smith, Jan Smith, Neda D. Soofi, Donna Storz, Roger Storz, Ravinder Vedire, Ken Weber, Kristen Weber, Weidong Zhang, Yaojia Zhang, Robert & Sandra Burleson, Gulshana Ahmad, Jose, Cardona & Maria Velez and Paul & Sonoe Rex.

2. This Motion is a contested matter under Rule 9014 of the Federal Rules of Bankruptcy Procedure and is a core proceeding properly heard by this Court pursuant to 28 U.S.C. § 157(b)(2)(G).

3. Venue of this Motion is proper before this Court pursuant to 28 U.S.C. § 1409.

### **Background**

4. On June 16, 2009 (the “Petition Date”), Building Materials Holding Corporation and certain of its affiliated debtors (the “Debtors”), including BMC, filed voluntary petitions for relief pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

5. The Association is the homeowners association of the Murray Ridge development (“Murray Ridge”). Murray Ridge consists of 91 lots containing 14 duplexes, which consist of 28 townhomes, and 63 single family homes and is located at SW Snowy Owl Lane, in Beaverton, Oregon.

6. The Alvstad Plaintiffs are the individual owners of 37 single family homes in Murray Ridge.

7. After discovering construction defects in the townhomes and certain of the single family homes of Murray Ridge, the Association and the Alvstad Plaintiffs each filed lawsuits in the Oregon Circuit Court for the County of Washington [Case No. C081740CV and Case No. C086533CV, respectively] (the “Oregon Actions”).

8. The Association’s suit was filed against the developer and general contractor of Murray Ridge, D.R. Horton, Inc.—Portland (“Horton”). A copy of the complaint filed therein is attached hereto as Exhibit A. Horton in turn filed third party claims against several of its subcontractors including, BMC. A copy of the third party complaint is attached hereto as Exhibit B. The Association intends to assert direct claims against BMC and other subcontractors

involved in the development and construction of Murray Ridge.

9. The Alvstad Plaintiffs suit was filed against BMC and others involved in the development and construction of Murray. A copy of the complaint filed therein is attached hereto as Exhibit A. BMC performed framing work at Murray Ridge, including installation of windows.

10. The Oregon Actions, as to BMC, were stayed upon BMC and the Debtors initiating the instant bankruptcy cases.

### **Requested Relief**

11. The Movants request that an Order be entered lifting the automatic stay under Section 362 (d) of the Bankruptcy Code so that the Movants may move forward with litigating the Oregon Actions against BMC and, if successful, proceed against the BMC's liability carrier for recovery of awarded damages, if any.

### **Argument**

12. The Oregon Actions against BMC have been stayed as a result of the Debtors and BMC's bankruptcy filing. As such, the Movants are entitled to request relief from the automatic stay pursuant to §362(d) of the Bankruptcy Code, which provides:

“(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

- (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;
- (2) with respect to a stay of an act against property under subsection (a) of this Section, if -
  - (A) The Debtor does not have an equity in such property; and
  - (B) Such property is not necessary to an effective reorganization.”

13. Congress enumerated that under Section 362 of the Bankruptcy Code relief from the automatic stay may be granted “for cause.” 11 U.S.C. § 362(d)(1). Cause is not defined in the Code; it must be “determined on a case-by-case basis.” *In re Rexene Products Co.*, 141 B.R. 574, 576 (Bankr.D.Del. 1992) (citing *Matter of Fernstorm Storage and Van Co.*, 938 F.2d 731, 735 (7<sup>th</sup> Cir. 1991)). “The legislative history indicates that cause may be established by a single factor such as ‘a desire to permit an action to proceed...in another tribunal’, or ‘lack of any connection with or interference with the pending bankruptcy case’”. *In re Rexene*, 141 B.R. at 576 (citing H.R. Rep. 95-595, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess., 343-44 (1977) (emphasis added)).

14. This Court has also found an indication, from the legislative history of Section 362 of the Bankruptcy Code, that Congress recognized that the stay should be lifted in appropriate circumstances:

“It will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the Bankruptcy Estate would result, in order to leave the parties to their chosen form and to relieve the Bankruptcy Court from any duties that may be handled elsewhere.”

*Id.* at 576 (Citing H. R. Rep. No. 595, 95<sup>th</sup> Cong., 1st Sess. 341 (1977)).

15. The term “cause” as used in §362(d) has no obvious definition, and is determined on a case-by-case basis. A three-factor test has been adopted for determining whether “cause” exists, applying the following criteria:

- (a) Whether any great prejudice to either the bankrupt estate or the Debtor will result from the continuation of the civil suit;
- (b) Whether the hardship to the non-bankrupt party by maintenance of the stay considerably outweighs the hardship of the Debtor; and
- (c) The creditor has a probability of prevailing on the merits.

(citations omitted). *Id.* at 576.



16. In applying the first prong of the *Rexene* factors , there is no prejudice to BMC, the Debtors or their estates that will result from permitting the parties to proceed with the Oregon Actions. The primary purpose of the automatic stay is to “prevent certain creditors from gaining a preference for their claims against the debtor; to forestall the depletion of the debtor’s assets due to legal costs in defending proceedings against it; and, in general, to avoid interference with the orderly liquidation or rehabilitation of the debtor.” *Id.* at 576.

17. In the Oregon Actions, the Debtors have already retained competent, local defense counsel, who is paid by the Debtors insurer, and any involvement of the Debtors’ estate, its bankruptcy counsel or any employees who are pertinent to the Debtors’ reorganization would be merely ministerial. Moreover, if the Movants are successful in the Oregon Actions and obtain judgments against BMC, any attempt to recover would be only to the extent of the Debtors’ insurance coverage. An action naming the debtor solely to establish the debtor’s liability in order to collect on an insurance policy is not barred by the Bankruptcy Code. See *Beeney v. Beeney*, 142 BR 360, 363 (1992); see also *Munoz v. Munoz*, 287 BR 546 (2002); 11 USCA § 524(e) (“discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt”).

18. Accordingly, allowing the Oregon Actions to proceed will not result in the Movants gaining a preference over other creditors, depleting the Debtors’ assets or interfering with the administration of the Debtors’ bankruptcy cases. The Debtors’ estates will be only minimally affected by the Oregon Actions, if at all. This prong clearly weighs in favor of the Movants.

19. The second prong of the *Rexene* factors likewise weighs in favor of lifting the stay. The hardship the Movants will endure, should the automatic stay continue, far outweighs

any hardship to the Debtors in lifting the stay. Most likely the Debtors would actually incur no hardship or very little at most. Conversely, maintenance of this stay would preclude the Movants from continuing to litigate the Oregon Actions against BMC, thus significantly limiting the Movants' ability to recover appropriate monetary damages. Additionally, until the Oregon Actions are resolved, the Movants will not have the necessary funds to repair the damage to their homes.

20. Furthermore, the state court is the proper forum for the Oregon Actions because they are not only based upon Oregon law, but all the witnesses, expert witnesses, and counsel for all parties are situated in Oregon. The parties would incur substantial expense and inconvenience if the Oregon Actions were moved to Delaware. The Debtors would not face such expense and inconvenience if the Oregon Actions proceed in the court in which they were filed. The Debtors, specifically, BMC have locations in Oregon and their defense counsel for the Oregon action is in Oregon as well. Clearly the hardship imposed upon the Movants by maintaining the automatic stay outweighs the possible harm, if any, to the Debtors.

21. Additionally, the third prong of the *Rexene* factors weighs in favor of the Movants. This Court has held that the required showing of a "probability of success on the merits" is very slight. *Id.* at 578. Further, this Court has also previously held that this prong "merely requires a showing that their claim is not frivolous". *In re Levitz Furniture Incorporated, et al.*, 267 B.R. 516, 523 (Bankr. D. Del. 2000). A review of the complaints filed in the Oregon Action shows that the claims presented therein are far from frivolous. The Movants have a strong probability of prevailing on the merits of the Oregon Actions, as the facts set forth in the complaints filed therein establish a solid foundation upon which an award of damages can be made. Accordingly, this prong weighs in favor of the Movants as well.

22. In sum, continuation of the Oregon Actions will not hinder, burden, delay the administration of the Debtors' cases or be at all inconsistent with the policies of section 362 of the Bankruptcy Code and appears to be the most appropriate option under the circumstances.

### **Conclusion**

WHEREFORE, the Movants request relief from the automatic stay of section 362 for the limited purposes stated herein.

Dated: October 30, 2009

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-and-

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Co-Counsel to the Movants

# **Exhibit A**

1  
2  
3  
4 **IN THE CIRCUIT COURT FOR THE STATE OF OREGON**  
5 **FOR THE COUNTY OF WASHINGTON**

6 MURRAY RIDGE OWNERS ASSOCIATION,  
7 an Oregon nonprofit corporation,

8 Plaintiff,

9 v.

10 D.R. HORTON, INC. – PORTLAND, a Delaware  
11 corporation,

12 Defendant.

13  
14 D.R. HORTON, INC. – PORTLAND,

15 Third-Party Plaintiff,

16 v.

17 AMERICAN CONSTRUCTION AND SIDING,  
18 INC., an Oregon corporation; B.M.C. WEST  
19 CORP., a Delaware corporation; COMPWEST  
20 ROOFING INC., an Oregon corporation; L B  
GUTTERS, LLC, an Oregon limited liability  
company; REX HILL MASONRY, INC., an  
Oregon corporation; JAMES VANDERKIN f/k/a  
L B GUTTERS,

21 Third-Party Defendants.  
22  
23  
24  
25  
26

Case No. C081740CV

**FIRST AMENDED COMPLAINT**  
(Breach of Implied Warranty, Unlawful  
Trade Practices, Fraud, Negligence and  
Breach of Fiduciary Duty)

**JURY TRIAL DEMANDED**

NOT SUBJECT TO MANDATORY  
ARBITRATION

(Claims Exceed \$10,000)

Docketed	
Initials	<u>IKS</u>
Today's Date	<u>6/12/09</u>
Docket Date	<u>7/15/09</u>

RJS, JAM, JAZ, JCP, PEJ, FMA,  
ALH (by email) <Irene>  
Client by mail

1 BMC WEST CORP., a Delaware corporation,

2 Fourth-Party Plaintiff,

3 v.

4 MEAD CONSTRUCTION, INC., an Oregon  
corporation; FRED EICHLER  
5 CONSTRUCTION, LLC., fka FRED EICHLER  
CONSTRUCTION, an Oregon business entity;  
6 SUNTECH CORPORATION fka THOMPSON  
& CUMMINS CONSTRUCTION, INC., an  
7 Oregon corporation; LOS ANGELES FRAMING,  
an Oregon business entity; DL LYTSELL  
8 CONSTRUCTION, LLC., an Oregon business  
entity; CARDONA FRAMING  
9 CONSTRUCTION, LLC, fka CARDONA  
FRAMING CONSTRUCTION, an Oregon  
10 business entity; QUINN EAST CUSTOM  
HOMES, INC., an Oregon corporation; and  
11 STRICKLAND & MOORE fka PINNACLE  
CONCEPT CONSTRUCTION LLC, an Oregon  
12 business entity,

13 Fourth-Party Defendants.

14 FRED EICHLER CONSTRUCTION,

15 Fifth-Party Plaintiff,

16 v.

17 JL & M CONSTRUCTION,

18 Fifth-Party Defendant.

19  
20 Plaintiff alleges as follows:

21 **BACKGROUND ALLEGATIONS**

22 1.

23 At all material times, plaintiff Murray Ridge Owners Association (the “Association”) was  
24 and is an Oregon nonprofit corporation organized under the Planned Community Act, ORS  
25 94.550, *et seq.* The Association is the governing body of the Murray Ridge Townhomes  
26 (“Murray Ridge Townhomes”), which is located at SW Snowy Owl Lane, Beaverton,

1 Washington County, Oregon. Article 8.4 of the Declaration of Protective Covenants,  
2 Conditions, Restrictions and Easements for Murray Ridge (as amended, the "Declaration")  
3 provides that the Association has certain powers and duties, including the following: those  
4 granted under the Oregon Planned Community Act (ORS 94.550, *et seq.*); those granted by the  
5 Declaration; those of a nonprofit corporation pursuant to the laws of Oregon; and any additional  
6 powers, duties and obligations necessary or desirable for carrying out the functions of the  
7 Association. Articles 6.5(a) and 10.7(a) of the Declaration provide that the Board of Directors of  
8 the Association (the "Board") shall maintain the exteriors of the buildings. Except for certain  
9 items as described in the Declaration, the cost of maintaining the exterior is a common expense,  
10 and the performance of such work is the responsibility of the Association; however, such costs  
11 are assessed and apportioned among the individual unit owners of the Murray Ridge Townhomes  
12 (collectively, the "Owners") on a pro rata basis.

13 2.

14 The Owners of the Murray Ridge Townhomes own their units, which include the interior  
15 and exterior of their units, and are all members of the Association.

16 3.

17 The Association adopted Bylaws of Murray Ridge Townhomes Owners Association  
18 ("Bylaws") pursuant to ORS 94.625 and 94.635.

19 4.

20 ORS 94.630(1)(e) provides that a homeowners' association may initiate and intervene in  
21 litigation, in its own name and without joining the individual owners, in matters including but  
22 not limited to actions for damage, destruction, impairment or loss of use relating to or affecting  
23 individually owned real property, the expenses for which, including maintenance, repair or  
24 replacement, the association is responsible, and in matters relating to or affecting the lots or  
25 interests of owners resulting from a nuisance or defect in or damage to individually owned real  
26

1 property, the expenses for which, including maintenance, repair or replacement, the association  
2 is responsible.

3 5.

4 On January 30, 2008, pursuant to ORS 94.662, and more than ten (10) days before the  
5 Complaint was filed, counsel for the Association sent a letter informing the Owners that the  
6 Board intended to commence this litigation, and notifying the Owners of their right to opt out of  
7 this litigation. None of the Owners opted out. The Association's claims in this litigation are  
8 asserted on behalf of unit owners in matters relating to or affecting the units at the Murray Ridge  
9 Townhomes as authorized under ORS 94.630(1)(e), the Declaration, and the Bylaws.

10 6.

11 At all material times, defendant D.R. Horton, Inc. – Portland ("Horton") was and is a  
12 Delaware corporation doing business in Oregon as a developer and general contractor. Horton  
13 was the declarant ("Declarant") of Murray Ridge Townhomes and the Association; recorded the  
14 Declaration; and was a real estate manager of Murray Ridge Townhomes and the Association.  
15 Prior to the February 3, 2004 turnover, Developer controlled and managed the activities and  
16 operation of Murray Ridge Townhomes and the Association.

17 7.

18 Horton is duly licensed by the Oregon Construction Contractors Board (the "CCB") as a  
19 general contractor, and constructed the Murray Ridge Townhomes.

20 8.

21 Article 12.7 of the Declaration provides that the prevailing party in any litigation arising  
22 out of the Declaration or Bylaws shall be entitled to recover its experts' and attorneys' fees and  
23 its costs and disbursements, at trial and on any appeal. Pursuant to ORS 20.096 and the  
24 Declaration, plaintiff is entitled to recover from Horton plaintiff's experts' and attorneys' fees  
25 and costs and disbursements in this action.



1 9.

2 The Murray Ridge Townhomes consist of 31 dwelling units in 14 separate duplex  
3 buildings and three single family residence buildings. The buildings are two-story wood frame  
4 structures. Each building is clad with brick masonry and/or stone on the ground floor, and a  
5 combination of hardi-plank lap siding, hardi-panel siding. The windows are Milgard vinyl-  
6 framed units. The roofs are pitched with composite asphaltic shingles.

7 10.

8 Horton planned, developed, and constructed, or caused to be constructed, the Murray  
9 Ridge Townhomes, and directed the marketing and sale of units. Horton was responsible for  
10 hiring and coordinating contractors, overseeing the construction of Murray Ridge Townhomes,  
11 and supervising the quality of construction. Pursuant to a written Agreement to Purchase,  
12 Horton dba D.R. Horton Realtors, marketed and sold units in the Murray Ridge Townhomes  
13 beginning in 2003 through 2004.

14 11.

15 As an inducement to the Owners to purchase units, Horton expressly or impliedly  
16 represented, promised, or agreed with the Owners that Murray Ridge Townhomes had the  
17 attributes set forth below:

- 18 (a) That "[w]ith D.R. Horton, you'll find . . . an extra measure of value."  
19 (b) That Horton "strive[s] to create long-lasting value."  
20 (c) That Horton was dedicated to building "quality crafted" homes.  
21 (d) That "Quality and Customer Satisfaction are the very most important things to DR  
22 Horton."  
23 (e) That Horton constructed with "attention to detail."  
24 (f) That Horton had "constructed your home with quality materials and the labor of  
25 experienced craftsmen."  
26 (g) That Horton will assign to the Owner manufacturers' warranties on all  
"manufactured products included in the Home" including "manufactured siding."  
(h) That Horton's work "is done under our supervision to attain the best possible  
result for your investment."

- 1 (i) That “[w]e have systems and procedures to ensure that the level of quality meets  
2 our requirements. We inspect every step of construction and are responsible for  
3 quality control.”
- 4 (j) That “[t]he job of your D.R. Horton, Inc.-Portland Construction Superintendent is  
5 to ensure that your new home is constructed to the quality standards of D.R.  
6 Horton, Inc.-Portland, as well as to all building and municipal codes and  
7 specifications.”
- 8 (k) That “[a]ll of our homes are built to meet the code requirements of the jurisdiction  
9 in which the homes are built.”
- 10 (l) That “we’ll be here for you, long after you’ve purchased your new home.”
- 11 (m) That “[w]e stand solidly behind every home we build.”
- 12 (n) That Horton is bound by and will comply with Senate Bill 909.

13 12.

14 In addition to the foregoing representations, Horton impliedly warranted that the Murray  
15 Ridge Townhomes were built in a good and workmanlike manner, and in compliance with  
16 applicable building codes, industry standards and manufacturer specifications and guidelines;  
17 and that the Murray Ridge Townhomes had no material defects. Moreover, Horton and its  
18 agents represented and impliedly warranted that the monthly assessments to unit owners at  
19 Murray Ridge Townhomes were the “best current estimate” and were adequate to pay the  
20 Association’s expenses and to provide adequate replacement reserves.

21 13.

22 From creation of the Association and continuing through turnover on February 3, 2004,  
23 Horton and its agents were agents and real estate managers of Murray Ridge Townhomes and the  
24 Association. Moreover, during this time period, Horton and its agents employed and oversaw all  
25 labor for the construction, operation, and maintenance of Murray Ridge Townhomes; negotiated,  
26 executed, and supervised the performance of contracts for the proper construction, operation,  
maintenance, and safety of Murray Ridge Townhomes; assumed responsibility for proper repairs  
and alterations of Murray Ridge Townhomes; and kept all necessary books and records and

1 collected assessments for Murray Ridge Townhomes (or appointed, employed, and contracted  
2 with contractors to perform such tasks).

3 14.

4 Horton and its agents were involved in and oversaw the development, construction, and  
5 unit sales of Murray Ridge Townhomes. Moreover, Horton's agents were directors and/or  
6 officers of the Association prior to turnover and were therefore responsible for proper  
7 maintenance and repairs of Murray Ridge Townhomes. As a result, Horton and its agents or  
8 should have known of the condition of Murray Ridge Townhomes and that Horton was engaged  
9 in the breaches and tortious conduct alleged herein.

10 15.

11 After taking possession of units, some Owners observed that their units were  
12 experiencing "problems" that were actually signs of water intrusion. The Owners continue to  
13 discover problems with their units, including those identified in detail below in paragraphs 18-20  
14 and elsewhere herein. However, until recently, the Owners and Association were unaware of the  
15 extent of the problems, and what was causing and who was responsible for the problems in their  
16 units.

17 16.

18 There are defects in the envelope and other components of each building at the Murray  
19 Ridge Townhomes, which defects have resulted in water intrusion and property damage to,  
20 among other things, siding, trim, sheathing, framing, interior finishes, and organic growth on the  
21 OSB sheathing and wood framing.

22 17.

23 When the Owners purchased units, they did not know that the building envelope and  
24 other deficiencies existed and had already started to cause property damage. Indeed, when the  
25 Owners purchased their units, they did not understand that the potential for building envelope or  
26 other deficiencies, and the resulting property damage, even existed.

Independent from any other causal factors, the deficiencies in the construction at the Murray Ridge Townhomes are the direct and proximate cause of extensive property damage to the Murray Ridge Townhomes. Specific deficiencies in the buildings are identified in the following non-exhaustive list of faulty workmanship, improper or defective materials, or noncompliance with applicable building codes, industry standards, or manufacturer specifications and guidelines (unless otherwise noted, the deficiencies listed in paragraph 18-20 are common to all 17 of the residential buildings at the Murray Ridge Townhomes):

**Weather Resistant Barrier (WRB):**

- (a) There is currently one type of weather resistant barrier (WRB) in place on the Murray Ridge Townhomes: A Grade D Asphalt Kraft paper manufactured by Fortifiber known as Jumbotex is installed behind the Hardi Plank composite lap siding system. There is a window flashing in place on the Murray Ridge Townhomes development: The flashing is Moistop, which is a woven polypropylene fabric as manufactured by Fortifiber. Jumbotex was improperly reverse-lapped behind sheet-metal transition flashing at siding and metal interface.
- (b) Jumbotex exhibited insufficient vertical laps of less than the code-required 6" minimum vertical lap.
- (c) Jumbotex was improperly lapped around penetrations and in the field of the wall.
- (d) Voids were present in the Jumbotex at utility penetrations and in the field of the wall.
- (e) The Jumbotex was reverse lapped over the windowsill nailing flange and Moistop flashing.
- (f) Moistop was improperly reverse lapped over (as opposed to weather-lapped under) the windowsill-nailing flange.
- (g) Moistop flashing has tears, which appear to be from original installation.

**Vinyl Windows:**

- (h) The nailing flanges on the window are less than 1-1/8" which, according to building code, means that the windows are not self-flashing and that a sheet metal flashing is required at the head of the window.

- 1 (i) Windows have membrane flashings in place around the nailing flange, with the  
2 sill flashing reverse lapped over the windowsill-nailing flange.
- 3 (j) Some weep holes in the windows were blocked with sealant.
- 4 (k) Window flanges were damaged due to over-driven fasteners improperly placed in  
5 the windowsill nailing-flange.
- 6 (l) Fasteners were not installed in the supplied manufacturer nailing slots at the  
7 window flanges at a minimum of 7" on center as required.
- 8 (m) Fasteners used to secure the windows to the wood framed structure are not  
9 corrosion resistant as required by the window manufacturer and code.

10 **Hardi Plank Composite Lap Siding System:**

- 11 (n) The Hardi Plank siding system is installed without the proper 2" clearance above  
12 the concrete flatwork, roofing shingles, and decks.
- 13 (o) The siding system does not achieve the proper 6" clearance above soil and bark  
14 dust in all locations.
- 15 (p) The siding system does not achieve the required 1/4" clearance at the transition  
16 flashings as required by the manufacturer.
- 17 (q) The siding system is sealed to the transition flashings in lieu of achieving the  
18 required 1/4" clearance. Siding sealed to Z-metal flashing prevents the egress of  
19 incidental moisture.
- 20 (r) Fasteners were improperly installed in the siding butt joints, damaging the siding  
21 boards.
- 22 (s) Fasteners that are not corrosion resistant were used to secure siding, which is a  
23 violation of building code and the siding manufacturer.
- 24 (t) Concrete flatwork is improperly poured against Hardi Plank siding. The Hardi  
25 Plank siding is covering wood-framed wall assemblies in these locations.
- 26 (u) The Hardi Plank siding does not completely cover the OSB sheathing at  
horizontal terminations of the siding to the foundation.

**Stone Veneer Siding System:**

- (v) The lath behind the manufactured stone veneer is improperly fastened to the wood  
sheathing with 3/8" "hammer-tacker" staples.
- (w) The stone veneer does not have the manufacturer-required clearances at grade

(4") and concrete flatwork (2").

**Asphalt Shingle Roof System:**

- (x) Diverter flashings have been omitted from roof-to-wall junctions and gutter ends.
- (y) The #30 underlayment does not extend to the edge of the roof sheathing at rakes and gutter edges/eaves, leaving the roof sheathing exposed to water damage.
- (z) Fasteners are improperly exposed or overdriven at the ridges, penetrations, and in the field of the shingles.
- (aa) There are punctures, holes, or tears around the perimeters where the siding installers' pump jack brackets were fastened through the surface of the roof shingles.
- (bb) There are improperly fastened shingles under the end of the fascia/rake at the gable ends.
- (cc) Rake flashing is improperly lapped under the #30 underlayment in areas at the gable ends.
- (dd) Rain gutters are installed without the proper slope to the downspouts, resulting in water accumulating and backing up in the gutters.
- (ee) Ridge shingles are not installed in some locations.

**Sheet Metal Flashings:**

- (ff) Sheet metal flashings are improperly lapped under the WRB at window heads, bellybands, and the deck ledgers.
- (gg) Kick out/diverter flashings have been omitted from roof-to-wall junctures.

**Deck Ledger Flashing:**

- (hh) The Z-flashing installed above the deck ledgers is reverse lapped over the WRB, resulting in water ingress behind the deck ledger.
- (ii) The Z-flashing installed above the deck ledger was observed to be discontinuous in at least one deck location.

19.

The deficiencies identified in paragraph 18 and elsewhere herein are the direct and proximate cause of extensive property damage to the units and common property at the Murray

1 Ridge Townhomes including, without limitation, the following:

- 2 (a) Damage to the lap and panel siding.
- 3 (b) Damage to the brick and stone masonry (including leeching of salt and lime).
- 4 (c) Damage to fasteners.
- 5 (d) Water damage, including dry rot, to trim, exterior sheathing, deck sheathing, roof
- 6 sheathing, and building framing members.
- 7 (e) Water intrusion into trim, exterior sheathing, deck sheathing, roof sheathing,
- 8 building framing members, interior walls, sheetrock, window and door frames,
- 9 and floor coverings, resulting in moisture meter readings of 20-40% throughout
- 10 the Murray Ridge Townhomes.
- 11 (f) Organic growth (including algae, moss, mildew, and mold).
- 12 (g) Water damage, including staining and corrosion, to window and door assemblies.
- 13 (h) Water damage to flashing materials, weather-resistant barrier materials, asphalt-
- 14 impregnated building paper, and roof underlayment.
- 15 (i) Water damage to composite roof shingles.
- 16 (j) Water damage to interior finishes, including window frames, sheetrock, and floor
- 17 coverings.

18 20.

19 Water intrusion, faulty workmanship, improper or defective materials, improper design,  
20 and improper installation or noncompliance with applicable building codes, industry standards,  
21 or manufacturer specifications and guidelines, have caused significant property damage at the  
22 Murray Ridge Townhomes. Despite reasonable efforts by the Association to mitigate its  
23 damages, the property damage caused by deficiencies in the buildings is ongoing, and will  
24 worsen over time.

25 21.

26 Remediation of the above listed deficiencies will include but is not limited to the  
following:

- (a) Removal and replacement of all exterior cladding (*i.e.*, brick, stone veneer, lap

1 and panel siding, trims and flashing), weather resistive barrier (WRB), and  
2 damaged wall sheathing, framing and insulation, on the front and back of the  
buildings, and targeted removal and replacement on the sides of the buildings;

3 (b) Removal and reinstallation of all windows and replacement of damaged units; and

4 (c) Removal and replacement of roof shingles, underlay, and flashings on targeted  
5 areas of the roof edge and rake.

6 22.

7 As a result of Horton's actions or inaction as alleged herein the Owners and Association  
8 have suffered or will suffer damages of at least **\$3,326,000**, as more particularly described as  
9 follows:

10 (a) The total cost of reasonable and necessary repairs to the buildings at the Murray  
11 Ridge Townhomes in the approximate sum of at least **\$2,400,000**, but in an exact  
12 amount to be proven at trial, which amount will continue to increase as time  
13 passes, and which amount does not include the cost to repair interior defects or an  
allowance for the direct cost of moving and storing the Owners' personal

14 (b) The total cost of a third-party construction manager to furnish architectural  
15 services; obtain permits; act as the Association's representative during the repair  
16 work; and document the repair work to ensure that the work complies with,  
17 among other things, (i) all applicable industry standards, (ii) the applicable  
building code, (iii) all applicable laws, ordinances, rules and regulations, (iv) all  
18 applicable manufacturers' instructions and specifications, and (v) the plans and  
specifications; all in the approximate sum of at least **\$240,000**, but in an exact  
19 amount to be proven at trial, which amount will continue to increase as time  
passes;

20 (c) The total cost to move and store the Owners' personal belongings during the  
21 course of the repair work, and to clean unit interiors when the repair work is  
22 complete, in the approximate sum of at least **\$78,000** (based on an estimate of  
\$2,000 per unit for moving charges, and monthly storage fees of \$300 per unit per  
23 month for a period of nine calendar months), but in an exact amount to be proven  
at trial, which amount will continue to increase as time passes;

24 (d) The total repair costs already or to be incurred (including extra cleaning costs and  
25 the cost of plaintiff's efforts to mitigate its damages) in the approximate sum of at  
least **\$50,000**, but in an exact amount to be proven at trial, which amount will  
26 continue to increase as time passes; and



1 (e) Loss of use and lost past and future profits for the units, for the estimated repair  
2 duration of at least nine calendar months, in the approximate sum of at least  
3 \$558,000 (based on an average monthly rental value of \$2,000 per unit), but in an  
4 exact amount to be proven at trial, which amount will continue to increase as time  
5 passes.

6  
7 **NOTICE & CURE COMPLIANCE**

8 23.

9 In an effort to avoid this litigation, and in the form and manner required under ORS  
10 701.560, *et seq.*, the Association sent to Horton written notice identifying the construction  
11 defects alleged herein, describing the necessary repairs, and requesting that Horton perform the  
12 necessary repairs or take other appropriate action to address the Owners' concerns. The  
13 foregoing notice was sent by registered mail on November 27, 2007, a date that is more than  
14 ninety (90) days before this action was filed. After receiving the Association's notice, Horton  
15 undertook an investigation of the buildings. Independent of the notice provided to Horton, on  
16 information and belief, Horton had actual or constructive knowledge of the construction defects  
17 and property damage at the Murray Ridge Townhomes.

18 24.

19 In light of the foregoing written notice, the Association's damages are liquidated.  
20 Therefore, pursuant to ORS 82.010, the Association is entitled to prejudgment interest on each of  
21 its claims herein, running from the date Horton was provided notice, through entry of judgment.

22 **FIRST CLAIM FOR RELIEF**

23 **(Breach Of Implied Warranties)**

24 25.

25 Plaintiff realleges paragraphs 1 – 24 above.

26 26.

Horton sold new, single-family residences to the Owners. These sales by Horton to the  
Owners carried implied warranties of habitability and workmanlike construction.

1 27.

2 During the sale transactions, the Owners were not in an equal bargaining position with  
3 Horton and were forced to rely on the skill and knowledge of Horton and regarding the  
4 construction of the Murray Ridge Townhomes. Such reliance by the Owners was reasonable and  
5 appropriate because Horton and its agents touted their knowledge and skill, and made the  
6 representations set forth above in paragraphs 11 and 12. Moreover, Horton and its agents knew  
7 or should have known that the Owners were not aware of any construction defects in, or resulting  
8 property damage to, the units at the Murray Ridge Townhomes.

9 28.

10 The representations set forth above in paragraphs 11 and 12 were passed onto subsequent  
11 purchasers. It was foreseeable the representations of Horton and would be passed on to  
12 subsequent purchasers.

13 29.

14 As a matter of law, the construction defects in, and resulting property damage to, the  
15 units and common property identified in paragraphs 18-20 above and elsewhere herein constitute  
16 material breaches of the implied warranties of habitability and workmanlike construction.

17 30.

18 As a result of Horton's breach of the implied warranties of habitability and workmanlike  
19 construction, the Association has been damaged as set forth in paragraph 22 above.

20 **SECOND CLAIM FOR RELIEF**

21 **(Unlawful Trade Practices)**

22 31.

23 Plaintiff realleges paragraphs 1 – 24, 26 – 30 above.

24 32.

25 At all material times, Horton was engaged in the course of its business, vocation, or  
26 occupation of planning, developing, building, marketing, and selling units at the Murray Ridge

1 Townhomes.

2 33.

3 As an inducement to the Owners, Horton made representations, specifically identified in  
4 paragraphs 11 and 12 above, regarding the quality, condition, and attributes of the units and  
5 common elements at the Murray Ridge Townhomes.

6 34.

7 Horton created the marketing materials that were provided to all Owners.

8 35.

9 Horton violated ORS 646.608(1)(e) because the Murray Ridge Townhomes did not have  
10 the represented characteristics, benefits, and qualities, and were instead plagued by the defects  
11 and property damage identified in paragraphs 18-20 above and elsewhere herein; and because the  
12 monthly assessments were insufficient and inadequate to cover the Association's expenses and  
13 reserves.

14 36.

15 Horton violated ORS 646.608(1)(g) because the Murray Ridge Townhomes were not of  
16 the represented standard, quality, or grade, and was instead plagued by the defects and property  
17 damage identified in paragraph 18-20 above and elsewhere herein, and because the monthly  
18 assessments were insufficient and inadequate to cover the Association's expenses and reserves.

19 37.

20 Horton violated ORS 646.608(1)(t) because, concurrent with delivery of units to the  
21 Owners, Horton failed to disclose known material construction defects, which defects, along  
22 with the property damage resulting therefrom, are specifically identified in paragraphs 18-20  
23 above and elsewhere herein; and failed to disclose that the monthly assessments were insufficient  
24 and inadequate to cover the Association's expenses and reserves.

1 38.

2 The Owners reasonably relied on the direct and indirect representations and non-  
3 disclosures by Horton. The Owners would not have purchased units had they known the truth  
4 about the Murray Ridge Townhomes.

5 39.

6 Horton knew or should have known that their conduct constituted unlawful trade  
7 practices, and such conduct was therefore willful.

8 40.

9 The Association and the Owners have been damaged as a result of the unlawful trade  
10 practices by Horton, which damages are specifically identified in paragraph 22 above.

11 41.

12 During construction of the Murray Ridge Townhomes, Horton was aware of faulty  
13 workmanship, improper or defective materials, and improper installation or noncompliance with  
14 applicable building codes, industry standards, or manufacturer specifications and guidelines.  
15 Thus, Horton's conduct described herein was intentional and without justification or excuse, or  
16 was committed with a bad motive or so recklessly as to be in disregard of societal obligations  
17 with respect to the health, safety, and welfare of others. Accordingly, Plaintiff intends to seek  
18 punitive damages from Horton in an amount to be determined by a jury to be reasonable on this  
19 claim.

20 42.

21 Pursuant to ORS 94.630(1)(c), and because none of the Owners opted out of this  
22 litigation, which concerns matters affecting the Murray Ridge Townhomes, the Association is  
23 entitled to pursue claims arising from the Owners' interest in the units and common elements and  
24 to recover its reasonable attorneys' fees and costs pursuant to ORS 646.638(3).  
25  
26

**THIRD CLAIM FOR RELIEF**  
**(Intentional Misrepresentation)**

43.

Plaintiff realleges paragraphs 1 – 24, 26 – 30, and 32-42 above.

44.

On information and belief, while actively selling units at the Murray Ridge Townhomes, Horton and its agents materially misrepresented the quality and characteristics of the Murray Ridge Townhomes in at least three ways: (i) in sales brochures and other marketing or promotional materials; (ii) in widely disseminated oral misrepresentations to purchasers; and, (iii) by actively concealing and otherwise failing to disclose known material construction defects and resulting damage. Horton and its agents made the representations set forth in paragraphs 11 and 12. On information and belief, these representations were false and misleading.

Specifically, Horton and its agents misrepresented that the Murray Ridge Townhomes were built in compliance with applicable building codes when in truth and in fact they were not in several material particulars. Horton and its agents knew that these representations were false, or made them recklessly without knowing if they were true or false, and made these false representations with the intent that the buyers would rely on the apparent, rather than the actual, state of facts.

45.

Pursuant to ORS 94.595 and 94.616, Horton was obligated to prepare and provide the Association with a financial statement, reserve study, reserve account and operating budget, and a budget for replacement and maintenance of common property for the Murray Ridge Townhomes.

46.

Pursuant to ORS 94.595, Horton was further obligated to update the reserve study and to adjust the amount of payments as indicated by the study or update. ORS 94.616 requires the

1 Horton to provide to the Association documents including the Declaration, Bylaws, reserve  
2 study, and all updates and budgets.

3 47.

4 The Association and the Owners are within the class of persons protected by the statutes  
5 cited in the foregoing paragraph. Likewise, the damages suffered by the Association and the  
6 Owners are the type of harms protected against by said statutes.

7 48.

8 The representations by Horton and its agents in the sales and promotional materials, oral  
9 representations to the Owners, reserve study, and budgets were false and misleading. On  
10 information and belief, Horton and were aware of material construction defects and property  
11 damage at the Murray Ridge Townhomes well before the Association was turned over by Horton  
12 to the Owners on February 3, 2004.

13 49.

14 Despite having actual knowledge of some or all of the defects and property damage  
15 alleged in paragraphs 18-20 above and elsewhere herein, Horton and its agents never revised the  
16 sales and promotional materials, reserve study, and budgets, and never revealed any of the  
17 construction defects or property damage to prospective purchasers.

18 50.

19 Despite their knowledge, Horton and its agents made no meaningful effort to correct  
20 permanently the construction defects at the Murray Ridge Townhomes that have resulted in  
21 property damage.

22 51.

23 In the course of marketing and selling units, Horton and its agents expressly told or  
24 implied to purchasers that the units at the Murray Ridge Townhomes had the characteristics and  
25 qualities set forth in paragraphs 11 and 12 and elsewhere herein.

26

1 52.

2 The representations described in the foregoing paragraph were false and misleading  
3 because they intentionally omitted and concealed the construction defects and resulting property  
4 damage identified in paragraphs 18-20 and elsewhere herein.

5 53.

6 Horton and its agents knew that the Owners would rely on the reserve study, budget,  
7 sales brochures, sales agreements, and other marketing materials, as well as the oral  
8 misrepresentations or omissions by Horton and its agents. Horton and knew that they were  
9 making false representations, or failing to disclose material facts, and engaged in such conduct  
10 knowingly and willingly.

11 54.

12 The Association and the Owners were unaware that Horton and its agents were making  
13 false representation, or omitting material facts. The Association and the Owners did in fact  
14 detrimentally rely on the misrepresentations and omissions by Horton and its agents. Had the  
15 Association and the Owners known that Horton and its agents were making false representations,  
16 had the construction defects and resulting damage been disclosed to the Association or the  
17 Owners, or had the Association and/or Owners known that the monthly assessments were  
18 inadequate to cover the Association's expenses and reserves, the Owners would not have  
19 purchased units at the Murray Ridge Townhomes.

20 55.

21 As a direct and proximate result of the intentional misrepresentations and material  
22 omissions by Horton and its agents, the Association and Owners have been damaged as set forth  
23 in paragraph 22 above.

24 56.

25 Because Horton was aware of faulty workmanship, improper or defective materials, and  
26 improper installation or noncompliance with applicable building codes, industry standards, or

1 manufacturer specifications and guidelines, Horton's conduct described herein was intentional  
2 and without justification or excuse, or was committed with a bad motive or so recklessly as to be  
3 in disregard of societal obligations with respect to the health, safety, and welfare of others.  
4 Accordingly, in addition to the damages set forth in paragraph 22 above, Plaintiff intends to seek  
5 punitive damages from Horton in an amount to be determined by a jury to be reasonable on this  
6 claim..

7 57.

8 The Association is entitled to recover its reasonable attorneys' fees pursuant to ORS  
9 94.780 because the Association seeks to enforce compliance with the terms and provisions of the  
10 Oregon Planned Community Act.

11 **FOURTH CLAIM FOR RELIEF**  
12 **(Negligence)**

13 58.

14 Plaintiff realleges paragraphs 1 – 24, 26 – 30, 32-42, and 43-57 above.

15 59.

16 Horton is the party ultimately responsible for all aspects of the development,  
17 construction, marketing, and sales of the Murray Ridge Townhomes, including planning, design,  
18 construction, and sales. Horton and its agents provided the labor and materials to build Murray  
19 Ridge Townhomes; supervised the architectural design and construction work; supervised,,  
20 coordinated and inspected the construction to ensure that the Murray Ridge Townhomes was  
21 built in accordance with approved plans, codes, and industry standards, without any construction  
22 defects, and consistent with representations and warranties to owners; and managed the  
23 Association and Murray Ridge Townhomes prior to turnover. Additionally, Horton and its  
24 agents were the real estate managers for the Association and Murray Ridge Townhomes, and  
25 marketed and sold the units at the Murray Ridge Townhomes. Accordingly, Horton and its  
26 agents owed a duty to the Association and the Owners, as foreseeable future plaintiffs, to



1 perform the foregoing tasks in a non-negligent manner. The failure of Horton and its agents to  
2 comply with these duties caused or contributed to the defects alleged in paragraphs 18-20 above  
3 and elsewhere herein.

4 60.

5 Specifically, as alleged above, the Owners purchased units from Horton based on the  
6 representations (identified in paragraphs 11 and 12 above) about their expertise, the quality of  
7 construction at the Murray Ridge Townhomes, and adequacy of the monthly assessments. The  
8 Association and Owners relied on Horton, as an experienced developer and general contractor,  
9 with knowledge of construction and engineering, to plan, develop, construct, inspect, market, and  
10 sell units at the Murray Ridge Townhomes, and to manage the Association and Murray Ridge  
11 Townhomes, in a reasonable, workmanlike, and honest manner.

12 61.

13 As the initial owner of each unit at the Murray Ridge Townhomes, Horton had the power  
14 to elect the officers and directors of the Association before February 3, 2004. As a member of  
15 the Association, Horton, and its agents owed a duty to the Owners to exercise reasonable care in  
16 electing the officers and directors of the Association and to ensure that the elected officers and  
17 directors promptly took all appropriate actions to address matters of common concern to the  
18 Association. Acting as a member of the Association, Horton negligently elected its agents as  
19 officers and directors, and negligently failed to ensure that those individuals fulfilled their roles  
20 as officers and directors and took appropriate actions on behalf of the Association.

21 62.

22 As officers and directors of the Association, Horton's agents owed a duty to the Owners  
23 to exercise reasonable care in directing the Association and acting as real estate managers for the  
24 Association and Murray Ridge Townhomes, and to take all reasonable steps to remedy problems  
25 of common concern to the Association and Owners, including but not limited to building  
26 envelope problems, structural problems, building systems problems, and resulting property

1 damage. Acting within the course and scope of their duties as officers and directors of the  
2 Association, Horton's agents negligently failed to comply with the provisions set forth in ORS  
3 Chapter 94.550, *et seq.*, and failed to take appropriate action on behalf of the Association.  
4 Specifically, Horton's agents acted in the best interest of Horton rather than the Association;  
5 caused the Association to pay various expenses and costs which were the responsibility of and  
6 for the benefit of Horton; prepared a budget that inadequately provided for replacement reserves  
7 and monthly assessments, and failed to update such budget; actively prevented the discovery of,  
8 and failed to disclose, the true condition of the Murray Ridge Townhomes; and negligently  
9 performed their duties as real estate managers for the Association and Murray Ridge  
10 Townhomes.

11 63.

12 Horton and its agents knew or should have known, while the Association and Owners  
13 were unaware, that there were significant construction defects affecting the units at the Murray  
14 Ridge Townhomes. Horton and its agents knew or should have known that the Murray Ridge  
15 Townhomes were improperly developed, constructed, marketed, managed and sold, and that the  
16 monthly assessments were inadequate. Horton and its agents had this knowledge before all of  
17 the units were sold to the Owners. Horton and its agents were negligent in at least the following  
18 respects:

- 19 (a) Failing to construct Murray Ridge Townhomes in a workmanlike manner;
- 20 (b) Failing to disclose known construction defects and resulting property damage to  
21 the Association and the Owners;
- 22 (c) Failing to repair completely the construction defects and resulting property  
23 damage to units at Murray Ridge Townhomes;
- 24 (d) Failing to warn the Owners and Association of the multiple construction defects  
25 in, and property damage to, Murray Ridge Townhomes;
- 26

1 (e) Failing to take corrective measures to protect the Owners and the Association  
2 from risk of harm arising from the construction defects and property damage at Murray Ridge  
3 Townhomes; and

4 (f) Failing to properly coordinate, schedule, oversee, inspect, and supervise  
5 contractors, subcontractors, or other workers;

6 (g) Providing improper instruction and direction to contractors and subcontractors;  
7 and

8 (h) Failing to notify contractors and subcontractors of improper construction means  
9 and methods, so that reasonable steps could be taken to correct such issues.

10 Further, Horton and its agents knew or should have known the reserves and monthly  
11 assessments which they set were too low, and that the Association was paying expenses and  
12 costs that were Horton's responsibility.

13 64.

14 As a direct and proximate result of Horton's negligence, plaintiff has been damaged as  
15 set forth in paragraph 18-20 and elsewhere herein. Horton's negligence has resulted in ongoing  
16 property damage to the units at the Murray Ridge Townhomes, as identified in paragraph 22 and  
17 elsewhere herein.

18 65.

19 The damages to the Association and the Owners were reasonably certain to occur and  
20 foreseeable if Horton acted negligently.

21 **FIFTH CLAIM FOR RELIEF**

22 **(Breach of Fiduciary Duty )**

23 66.

24 Plaintiff realleges paragraphs 1 – 24, 26 – 30, 32-42, and 43-57, and 59-65 above.  
25  
26

1 67.

2 Horton was the initial owner of each unit, controlled the Association, and had the power  
3 to elect the officers and directors of the Association before turnover on February 3, 2004.

4 Horton exercised this power by electing its agents as officers and directors, and by controlling  
5 the Association's operations, expenditures, repairs, and actions. At all material times before the  
6 February 3, 2004 turnover, as real estate managers who controlled the Association, these Horton  
7 and its agents owned non-delegable fiduciary duties to the Owners and Association.

8 68.

9 At all material times, Horton owned one or more units at the Murray Ridge Townhomes  
10 that it wished to sell. Acting within the course and scope of their duties as officers and directors  
11 of the Association, Horton's agents violated their fiduciary duties to the Owners and Association,  
12 for the purpose of assisting Horton, as follows:

13 (a) To avoid paying Horton's share of monthly expenses;

14 (b) To avoid paying Horton's share of needed assessments for maintenance and  
15 repairs that Developer failed to undertake; and

16 (c) To avoid contributing Horton's share of appropriate reserves to the Association.

17 (d) Horton and its agents actively prevented the discovery of, and failed to disclose,  
18 the true condition of the units. As a direct result of defendants' concealment and nondisclosure,  
19 units owned by Horton were not subject to special assessments for the cost of repairing the  
common elements, which Horton would otherwise have been obligated to pay.

20 69.

21 Horton and its agents caused the Association to pay various expenses and costs, which  
22 expenses and costs were the responsibility of and for the benefit of Horton and not the  
23 Association.

1 70.

2 Horton and its agents negligently prepared a budget that inadequately provided for  
3 replacement costs and reserves. Had the budget been properly prepared, Horton would have  
4 been obligated to contribute more to maintain appropriate costs and reserves.

5 71.

6 Horton and its agents prepared a budget that set the amount of monthly assessments to be  
7 used to pay the Association's ordinary operating expenses. These assessments were set  
8 intentionally low to assist Horton in selling units at the Murray Ridge Townhomes, and to help  
9 Horton avoid paying assessments in the proper amount. As a result, the Association and the  
10 Owners did not receive the appropriate amount of assessments from Horton.

11 72.

12 By breaching their fiduciary duties owed to the Association and the Owners, Horton  
13 caused the damages set forth in paragraph 22 and elsewhere herein.

14 73.

15 Because Horton was aware of faulty workmanship, improper or defective materials, and  
16 improper installation or noncompliance with applicable building codes, industry standards, or  
17 manufacturer specifications and guidelines, Horton's conduct described herein was intentional  
18 and without justification or excuse, or was committed with a bad motive or so recklessly as to be  
19 in disregard of societal obligations with respect to the health, safety, and welfare of others.  
20 Accordingly, in addition to the damages set forth in paragraph 22 above, Plaintiff intends to seek  
21 punitive damages from Horton in an amount to be determined by a jury to be reasonable on this  
22 claim.

23 **PRAYER**

24 WHEREFORE, the Association prays for judgment against defendant as follows:

25 1. On its First (Breach of Implied Warranties) and Fourth (Negligence) Claim for  
26 Relief, for judgment in the amounts alleged in paragraph 22 above, with pre- and post-judgment

1 interest thereon at the rate of nine percent (9%) per annum, plus the Association's reasonable  
2 costs and disbursements incurred herein;

3 2. On its Second (Unlawful Trade Practices), Third (Intentional Misrepresentation),  
4 and Fifth (Breach of Fiduciary Duty) Claims for Relief, for judgment in the amounts alleged in  
5 paragraph 22 above, and a punitive amount to be determined by a jury to be reasonable on each  
6 of these claims, with pre- and post-judgment interest thereon at the rate of nine percent (9%) per  
7 annum, plus the Association's reasonable attorneys' fees, costs, and disbursements incurred  
8 herein; and

9 3. For such further and additional relief the court deems just and equitable.

10 DATED: June 8, 2009.

11 Respectfully submitted,

12 BALL JANIK LLP

13 By:   
14 \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that I served a full, true and correct copy of the foregoing **FIRST**

**AMENDED COMPLAINT** by:

☒ U.S. Postal Service;  
☐ facsimile service;  
☐ e-mail;  
☐ arranging for hand delivery, and/or  
☐ overnight mail

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18 DATED: June 12, 2009.


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Attorneys for Plaintiff



# **Exhibit A**

1  
2  
3  
4 **IN THE CIRCUIT COURT FOR THE STATE OF OREGON**  
5 **FOR THE COUNTY OF WASHINGTON**

6 MURRAY RIDGE OWNERS ASSOCIATION,  
7 an Oregon nonprofit corporation,

8 Plaintiff,

9 v.

10 D.R. HORTON, INC. – PORTLAND, a Delaware  
11 corporation,

12 Defendant.

13  
14 D.R. HORTON, INC. – PORTLAND,

15 Third-Party Plaintiff,

16 v.

17 AMERICAN CONSTRUCTION AND SIDING,  
18 INC., an Oregon corporation; B.M.C. WEST  
19 CORP., a Delaware corporation; COMPWEST  
20 ROOFING INC., an Oregon corporation; L B  
GUTTERS, LLC, an Oregon limited liability  
company; REX HILL MASONRY, INC., an  
Oregon corporation; JAMES VANDERKIN f/k/a  
L B GUTTERS,

21 Third-Party Defendants.  
22  
23  
24  
25  
26

Case No. C081740CV

**FIRST AMENDED COMPLAINT**  
(Breach of Implied Warranty, Unlawful  
Trade Practices, Fraud, Negligence and  
Breach of Fiduciary Duty)

**JURY TRIAL DEMANDED**

NOT SUBJECT TO MANDATORY  
ARBITRATION

(Claims Exceed \$10,000)

Docketed	
Initials	<u>IKS</u>
Today's Date	<u>6/12/09</u>
Docket Date	<u>7/15/09</u>

RJS, JAM, JAZ, JCP, PEJ, FMA,  
ALH (by email) <Irene>  
Client by mail

1 BMC WEST CORP., a Delaware corporation,

2 Fourth-Party Plaintiff,

3 v.

4 MEAD CONSTRUCTION, INC., an Oregon  
corporation; FRED EICHLER  
5 CONSTRUCTION, LLC., fka FRED EICHLER  
CONSTRUCTION, an Oregon business entity;  
6 SUNTECH CORPORATION fka THOMPSON  
& CUMMINS CONSTRUCTION, INC., an  
7 Oregon corporation; LOS ANGELES FRAMING,  
an Oregon business entity; DL LYTSELL  
8 CONSTRUCTION, LLC., an Oregon business  
entity; CARDONA FRAMING  
9 CONSTRUCTION, LLC, fka CARDONA  
FRAMING CONSTRUCTION, an Oregon  
10 business entity; QUINN EAST CUSTOM  
HOMES, INC., an Oregon corporation; and  
11 STRICKLAND & MOORE fka PINNACLE  
CONCEPT CONSTRUCTION LLC, an Oregon  
12 business entity,

13 Fourth-Party Defendants.

14 FRED EICHLER CONSTRUCTION,

15 Fifth-Party Plaintiff,

16 v.

17 JL & M CONSTRUCTION,

18 Fifth-Party Defendant.

19  
20 Plaintiff alleges as follows:

21 **BACKGROUND ALLEGATIONS**

22 1.

23 At all material times, plaintiff Murray Ridge Owners Association (the “Association”) was  
24 and is an Oregon nonprofit corporation organized under the Planned Community Act, ORS  
25 94.550, *et seq.* The Association is the governing body of the Murray Ridge Townhomes  
26 (“Murray Ridge Townhomes”), which is located at SW Snowy Owl Lane, Beaverton,

1 Washington County, Oregon. Article 8.4 of the Declaration of Protective Covenants,  
2 Conditions, Restrictions and Easements for Murray Ridge (as amended, the "Declaration")  
3 provides that the Association has certain powers and duties, including the following: those  
4 granted under the Oregon Planned Community Act (ORS 94.550, *et seq.*); those granted by the  
5 Declaration; those of a nonprofit corporation pursuant to the laws of Oregon; and any additional  
6 powers, duties and obligations necessary or desirable for carrying out the functions of the  
7 Association. Articles 6.5(a) and 10.7(a) of the Declaration provide that the Board of Directors of  
8 the Association (the "Board") shall maintain the exteriors of the buildings. Except for certain  
9 items as described in the Declaration, the cost of maintaining the exterior is a common expense,  
10 and the performance of such work is the responsibility of the Association; however, such costs  
11 are assessed and apportioned among the individual unit owners of the Murray Ridge Townhomes  
12 (collectively, the "Owners") on a pro rata basis.

13 2.

14 The Owners of the Murray Ridge Townhomes own their units, which include the interior  
15 and exterior of their units, and are all members of the Association.

16 3.

17 The Association adopted Bylaws of Murray Ridge Townhomes Owners Association  
18 ("Bylaws") pursuant to ORS 94.625 and 94.635.

19 4.

20 ORS 94.630(1)(e) provides that a homeowners' association may initiate and intervene in  
21 litigation, in its own name and without joining the individual owners, in matters including but  
22 not limited to actions for damage, destruction, impairment or loss of use relating to or affecting  
23 individually owned real property, the expenses for which, including maintenance, repair or  
24 replacement, the association is responsible, and in matters relating to or affecting the lots or  
25 interests of owners resulting from a nuisance or defect in or damage to individually owned real  
26

1 property, the expenses for which, including maintenance, repair or replacement, the association  
2 is responsible.

3 5.

4 On January 30, 2008, pursuant to ORS 94.662, and more than ten (10) days before the  
5 Complaint was filed, counsel for the Association sent a letter informing the Owners that the  
6 Board intended to commence this litigation, and notifying the Owners of their right to opt out of  
7 this litigation. None of the Owners opted out. The Association's claims in this litigation are  
8 asserted on behalf of unit owners in matters relating to or affecting the units at the Murray Ridge  
9 Townhomes as authorized under ORS 94.630(1)(e), the Declaration, and the Bylaws.

10 6.

11 At all material times, defendant D.R. Horton, Inc. – Portland ("Horton") was and is a  
12 Delaware corporation doing business in Oregon as a developer and general contractor. Horton  
13 was the declarant ("Declarant") of Murray Ridge Townhomes and the Association; recorded the  
14 Declaration; and was a real estate manager of Murray Ridge Townhomes and the Association.  
15 Prior to the February 3, 2004 turnover, Developer controlled and managed the activities and  
16 operation of Murray Ridge Townhomes and the Association.

17 7.

18 Horton is duly licensed by the Oregon Construction Contractors Board (the "CCB") as a  
19 general contractor, and constructed the Murray Ridge Townhomes.

20 8.

21 Article 12.7 of the Declaration provides that the prevailing party in any litigation arising  
22 out of the Declaration or Bylaws shall be entitled to recover its experts' and attorneys' fees and  
23 its costs and disbursements, at trial and on any appeal. Pursuant to ORS 20.096 and the  
24 Declaration, plaintiff is entitled to recover from Horton plaintiff's experts' and attorneys' fees  
25 and costs and disbursements in this action.

1 9.

2 The Murray Ridge Townhomes consist of 31 dwelling units in 14 separate duplex  
3 buildings and three single family residence buildings. The buildings are two-story wood frame  
4 structures. Each building is clad with brick masonry and/or stone on the ground floor, and a  
5 combination of hardi-plank lap siding, hardi-panel siding. The windows are Milgard vinyl-  
6 framed units. The roofs are pitched with composite asphaltic shingles.

7 10.

8 Horton planned, developed, and constructed, or caused to be constructed, the Murray  
9 Ridge Townhomes, and directed the marketing and sale of units. Horton was responsible for  
10 hiring and coordinating contractors, overseeing the construction of Murray Ridge Townhomes,  
11 and supervising the quality of construction. Pursuant to a written Agreement to Purchase,  
12 Horton dba D.R. Horton Realtors, marketed and sold units in the Murray Ridge Townhomes  
13 beginning in 2003 through 2004.

14 11.

15 As an inducement to the Owners to purchase units, Horton expressly or impliedly  
16 represented, promised, or agreed with the Owners that Murray Ridge Townhomes had the  
17 attributes set forth below:

- 18 (a) That "[w]ith D.R. Horton, you'll find . . . an extra measure of value."  
19 (b) That Horton "strive[s] to create long-lasting value."  
20 (c) That Horton was dedicated to building "quality crafted" homes.  
21 (d) That "Quality and Customer Satisfaction are the very most important things to DR  
22 Horton."  
23 (e) That Horton constructed with "attention to detail."  
24 (f) That Horton had "constructed your home with quality materials and the labor of  
25 experienced craftsmen."  
26 (g) That Horton will assign to the Owner manufacturers' warranties on all  
"manufactured products included in the Home" including "manufactured siding."  
(h) That Horton's work "is done under our supervision to attain the best possible  
result for your investment."

- 1 (i) That “[w]e have systems and procedures to ensure that the level of quality meets  
2 our requirements. We inspect every step of construction and are responsible for  
3 quality control.”
- 4 (j) That “[t]he job of your D.R. Horton, Inc.-Portland Construction Superintendent is  
5 to ensure that your new home is constructed to the quality standards of D.R.  
6 Horton, Inc.-Portland, as well as to all building and municipal codes and  
7 specifications.”
- 8 (k) That “[a]ll of our homes are built to meet the code requirements of the jurisdiction  
9 in which the homes are built.”
- 10 (l) That “we’ll be here for you, long after you’ve purchased your new home.”
- 11 (m) That “[w]e stand solidly behind every home we build.”
- 12 (n) That Horton is bound by and will comply with Senate Bill 909.

13 12.

14 In addition to the foregoing representations, Horton impliedly warranted that the Murray  
15 Ridge Townhomes were built in a good and workmanlike manner, and in compliance with  
16 applicable building codes, industry standards and manufacturer specifications and guidelines;  
17 and that the Murray Ridge Townhomes had no material defects. Moreover, Horton and its  
18 agents represented and impliedly warranted that the monthly assessments to unit owners at  
19 Murray Ridge Townhomes were the “best current estimate” and were adequate to pay the  
20 Association’s expenses and to provide adequate replacement reserves.

21 13.

22 From creation of the Association and continuing through turnover on February 3, 2004,  
23 Horton and its agents were agents and real estate managers of Murray Ridge Townhomes and the  
24 Association. Moreover, during this time period, Horton and its agents employed and oversaw all  
25 labor for the construction, operation, and maintenance of Murray Ridge Townhomes; negotiated,  
26 executed, and supervised the performance of contracts for the proper construction, operation,  
maintenance, and safety of Murray Ridge Townhomes; assumed responsibility for proper repairs  
and alterations of Murray Ridge Townhomes; and kept all necessary books and records and

1 collected assessments for Murray Ridge Townhomes (or appointed, employed, and contracted  
2 with contractors to perform such tasks).

3 14.

4 Horton and its agents were involved in and oversaw the development, construction, and  
5 unit sales of Murray Ridge Townhomes. Moreover, Horton's agents were directors and/or  
6 officers of the Association prior to turnover and were therefore responsible for proper  
7 maintenance and repairs of Murray Ridge Townhomes. As a result, Horton and its agents or  
8 should have known of the condition of Murray Ridge Townhomes and that Horton was engaged  
9 in the breaches and tortious conduct alleged herein.

10 15.

11 After taking possession of units, some Owners observed that their units were  
12 experiencing "problems" that were actually signs of water intrusion. The Owners continue to  
13 discover problems with their units, including those identified in detail below in paragraphs 18-20  
14 and elsewhere herein. However, until recently, the Owners and Association were unaware of the  
15 extent of the problems, and what was causing and who was responsible for the problems in their  
16 units.

17 16.

18 There are defects in the envelope and other components of each building at the Murray  
19 Ridge Townhomes, which defects have resulted in water intrusion and property damage to,  
20 among other things, siding, trim, sheathing, framing, interior finishes, and organic growth on the  
21 OSB sheathing and wood framing.

22 17.

23 When the Owners purchased units, they did not know that the building envelope and  
24 other deficiencies existed and had already started to cause property damage. Indeed, when the  
25 Owners purchased their units, they did not understand that the potential for building envelope or  
26 other deficiencies, and the resulting property damage, even existed.



Independent from any other causal factors, the deficiencies in the construction at the Murray Ridge Townhomes are the direct and proximate cause of extensive property damage to the Murray Ridge Townhomes. Specific deficiencies in the buildings are identified in the following non-exhaustive list of faulty workmanship, improper or defective materials, or noncompliance with applicable building codes, industry standards, or manufacturer specifications and guidelines (unless otherwise noted, the deficiencies listed in paragraph 18-20 are common to all 17 of the residential buildings at the Murray Ridge Townhomes):

**Weather Resistant Barrier (WRB):**

- (a) There is currently one type of weather resistant barrier (WRB) in place on the Murray Ridge Townhomes: A Grade D Asphalt Kraft paper manufactured by Fortifiber known as Jumbotex is installed behind the Hardi Plank composite lap siding system. There is a window flashing in place on the Murray Ridge Townhomes development: The flashing is Moistop, which is a woven polypropylene fabric as manufactured by Fortifiber. Jumbotex was improperly reverse-lapped behind sheet-metal transition flashing at siding and metal interface.
- (b) Jumbotex exhibited insufficient vertical laps of less than the code-required 6" minimum vertical lap.
- (c) Jumbotex was improperly lapped around penetrations and in the field of the wall.
- (d) Voids were present in the Jumbotex at utility penetrations and in the field of the wall.
- (e) The Jumbotex was reverse lapped over the windowsill nailing flange and Moistop flashing.
- (f) Moistop was improperly reverse lapped over (as opposed to weather-lapped under) the windowsill-nailing flange.
- (g) Moistop flashing has tears, which appear to be from original installation.

**Vinyl Windows:**

- (h) The nailing flanges on the window are less than 1-1/8" which, according to building code, means that the windows are not self-flashing and that a sheet metal flashing is required at the head of the window.

- 1 (i) Windows have membrane flashings in place around the nailing flange, with the  
2 sill flashing reverse lapped over the windowsill-nailing flange.
- 3 (j) Some weep holes in the windows were blocked with sealant.
- 4 (k) Window flanges were damaged due to over-driven fasteners improperly placed in  
5 the windowsill nailing-flange.
- 6 (l) Fasteners were not installed in the supplied manufacturer nailing slots at the  
7 window flanges at a minimum of 7" on center as required.
- 8 (m) Fasteners used to secure the windows to the wood framed structure are not  
9 corrosion resistant as required by the window manufacturer and code.

10 **Hardi Plank Composite Lap Siding System:**

- 11 (n) The Hardi Plank siding system is installed without the proper 2" clearance above  
12 the concrete flatwork, roofing shingles, and decks.
- 13 (o) The siding system does not achieve the proper 6" clearance above soil and bark  
14 dust in all locations.
- 15 (p) The siding system does not achieve the required 1/4" clearance at the transition  
16 flashings as required by the manufacturer.
- 17 (q) The siding system is sealed to the transition flashings in lieu of achieving the  
18 required 1/4" clearance. Siding sealed to Z-metal flashing prevents the egress of  
19 incidental moisture.
- 20 (r) Fasteners were improperly installed in the siding butt joints, damaging the siding  
21 boards.
- 22 (s) Fasteners that are not corrosion resistant were used to secure siding, which is a  
23 violation of building code and the siding manufacturer.
- 24 (t) Concrete flatwork is improperly poured against Hardi Plank siding. The Hardi  
25 Plank siding is covering wood-framed wall assemblies in these locations.
- 26 (u) The Hardi Plank siding does not completely cover the OSB sheathing at  
horizontal terminations of the siding to the foundation.

**Stone Veneer Siding System:**

- (v) The lath behind the manufactured stone veneer is improperly fastened to the wood  
sheathing with 3/8" "hammer-tacker" staples.
- (w) The stone veneer does not have the manufacturer-required clearances at grade

(4") and concrete flatwork (2").

**Asphalt Shingle Roof System:**

- (x) Diverter flashings have been omitted from roof-to-wall junctions and gutter ends.
- (y) The #30 underlayment does not extend to the edge of the roof sheathing at rakes and gutter edges/eaves, leaving the roof sheathing exposed to water damage.
- (z) Fasteners are improperly exposed or overdriven at the ridges, penetrations, and in the field of the shingles.
- (aa) There are punctures, holes, or tears around the perimeters where the siding installers' pump jack brackets were fastened through the surface of the roof shingles.
- (bb) There are improperly fastened shingles under the end of the fascia/rake at the gable ends.
- (cc) Rake flashing is improperly lapped under the #30 underlayment in areas at the gable ends.
- (dd) Rain gutters are installed without the proper slope to the downspouts, resulting in water accumulating and backing up in the gutters.
- (ee) Ridge shingles are not installed in some locations.

**Sheet Metal Flashings:**

- (ff) Sheet metal flashings are improperly lapped under the WRB at window heads, bellybands, and the deck ledgers.
- (gg) Kick out/diverter flashings have been omitted from roof-to-wall junctures.

**Deck Ledger Flashing:**

- (hh) The Z-flashing installed above the deck ledgers is reverse lapped over the WRB, resulting in water ingress behind the deck ledger.
- (ii) The Z-flashing installed above the deck ledger was observed to be discontinuous in at least one deck location.

19.

The deficiencies identified in paragraph 18 and elsewhere herein are the direct and proximate cause of extensive property damage to the units and common property at the Murray

1 Ridge Townhomes including, without limitation, the following:

- 2 (a) Damage to the lap and panel siding.
- 3 (b) Damage to the brick and stone masonry (including leeching of salt and lime).
- 4 (c) Damage to fasteners.
- 5 (d) Water damage, including dry rot, to trim, exterior sheathing, deck sheathing, roof
- 6 sheathing, and building framing members.
- 7 (e) Water intrusion into trim, exterior sheathing, deck sheathing, roof sheathing,
- 8 building framing members, interior walls, sheetrock, window and door frames,
- 9 and floor coverings, resulting in moisture meter readings of 20-40% throughout
- 10 the Murray Ridge Townhomes.
- 11 (f) Organic growth (including algae, moss, mildew, and mold).
- 12 (g) Water damage, including staining and corrosion, to window and door assemblies.
- 13 (h) Water damage to flashing materials, weather-resistant barrier materials, asphalt-
- 14 impregnated building paper, and roof underlayment.
- 15 (i) Water damage to composite roof shingles.
- 16 (j) Water damage to interior finishes, including window frames, sheetrock, and floor
- 17 coverings.

18 20.

19 Water intrusion, faulty workmanship, improper or defective materials, improper design,  
20 and improper installation or noncompliance with applicable building codes, industry standards,  
21 or manufacturer specifications and guidelines, have caused significant property damage at the  
22 Murray Ridge Townhomes. Despite reasonable efforts by the Association to mitigate its  
23 damages, the property damage caused by deficiencies in the buildings is ongoing, and will  
24 worsen over time.

25 21.

26 Remediation of the above listed deficiencies will include but is not limited to the  
following:

- (a) Removal and replacement of all exterior cladding (*i.e.*, brick, stone veneer, lap

1 and panel siding, trims and flashing), weather resistive barrier (WRB), and  
2 damaged wall sheathing, framing and insulation, on the front and back of the  
buildings, and targeted removal and replacement on the sides of the buildings;

3 (b) Removal and reinstallation of all windows and replacement of damaged units; and

4 (c) Removal and replacement of roof shingles, underlay, and flashings on targeted  
5 areas of the roof edge and rake.

6 22.

7 As a result of Horton's actions or inaction as alleged herein the Owners and Association  
8 have suffered or will suffer damages of at least **\$3,326,000**, as more particularly described as  
9 follows:

10 (a) The total cost of reasonable and necessary repairs to the buildings at the Murray  
11 Ridge Townhomes in the approximate sum of at least **\$2,400,000**, but in an exact  
12 amount to be proven at trial, which amount will continue to increase as time  
13 passes, and which amount does not include the cost to repair interior defects or an  
allowance for the direct cost of moving and storing the Owners' personal  
14 belongings during the course of the repair work, or cleaning when the repair work  
is complete;

15 (b) The total cost of a third-party construction manager to furnish architectural  
16 services; obtain permits; act as the Association's representative during the repair  
17 work; and document the repair work to ensure that the work complies with,  
among other things, (i) all applicable industry standards, (ii) the applicable  
18 building code, (iii) all applicable laws, ordinances, rules and regulations, (iv) all  
applicable manufacturers' instructions and specifications, and (v) the plans and  
19 specifications; all in the approximate sum of at least **\$240,000**, but in an exact  
amount to be proven at trial, which amount will continue to increase as time  
passes;

20 (c) The total cost to move and store the Owners' personal belongings during the  
21 course of the repair work, and to clean unit interiors when the repair work is  
complete, in the approximate sum of at least **\$78,000** (based on an estimate of  
22 \$2,000 per unit for moving charges, and monthly storage fees of \$300 per unit per  
23 month for a period of nine calendar months), but in an exact amount to be proven  
at trial, which amount will continue to increase as time passes;

24 (d) The total repair costs already or to be incurred (including extra cleaning costs and  
25 the cost of plaintiff's efforts to mitigate its damages) in the approximate sum of at  
least **\$50,000**, but in an exact amount to be proven at trial, which amount will  
26 continue to increase as time passes; and

1 (e) Loss of use and lost past and future profits for the units, for the estimated repair  
2 duration of at least nine calendar months, in the approximate sum of at least  
3 \$558,000 (based on an average monthly rental value of \$2,000 per unit), but in an  
4 exact amount to be proven at trial, which amount will continue to increase as time  
5 passes.

6  
7 **NOTICE & CURE COMPLIANCE**

8 23.

9 In an effort to avoid this litigation, and in the form and manner required under ORS  
10 701.560, *et seq.*, the Association sent to Horton written notice identifying the construction  
11 defects alleged herein, describing the necessary repairs, and requesting that Horton perform the  
12 necessary repairs or take other appropriate action to address the Owners' concerns. The  
13 foregoing notice was sent by registered mail on November 27, 2007, a date that is more than  
14 ninety (90) days before this action was filed. After receiving the Association's notice, Horton  
15 undertook an investigation of the buildings. Independent of the notice provided to Horton, on  
16 information and belief, Horton had actual or constructive knowledge of the construction defects  
17 and property damage at the Murray Ridge Townhomes.

18 24.

19 In light of the foregoing written notice, the Association's damages are liquidated.  
20 Therefore, pursuant to ORS 82.010, the Association is entitled to prejudgment interest on each of  
21 its claims herein, running from the date Horton was provided notice, through entry of judgment.

22 **FIRST CLAIM FOR RELIEF**

23 **(Breach Of Implied Warranties)**

24 25.

25 Plaintiff realleges paragraphs 1 – 24 above.

26 26.

Horton sold new, single-family residences to the Owners. These sales by Horton to the  
Owners carried implied warranties of habitability and workmanlike construction.

1 27.

2 During the sale transactions, the Owners were not in an equal bargaining position with  
3 Horton and were forced to rely on the skill and knowledge of Horton and regarding the  
4 construction of the Murray Ridge Townhomes. Such reliance by the Owners was reasonable and  
5 appropriate because Horton and its agents touted their knowledge and skill, and made the  
6 representations set forth above in paragraphs 11 and 12. Moreover, Horton and its agents knew  
7 or should have known that the Owners were not aware of any construction defects in, or resulting  
8 property damage to, the units at the Murray Ridge Townhomes.

9 28.

10 The representations set forth above in paragraphs 11 and 12 were passed onto subsequent  
11 purchasers. It was foreseeable the representations of Horton and would be passed on to  
12 subsequent purchasers.

13 29.

14 As a matter of law, the construction defects in, and resulting property damage to, the  
15 units and common property identified in paragraphs 18-20 above and elsewhere herein constitute  
16 material breaches of the implied warranties of habitability and workmanlike construction.

17 30.

18 As a result of Horton's breach of the implied warranties of habitability and workmanlike  
19 construction, the Association has been damaged as set forth in paragraph 22 above.

20 **SECOND CLAIM FOR RELIEF**

21 **(Unlawful Trade Practices)**

22 31.

23 Plaintiff realleges paragraphs 1 – 24, 26 – 30 above.

24 32.

25 At all material times, Horton was engaged in the course of its business, vocation, or  
26 occupation of planning, developing, building, marketing, and selling units at the Murray Ridge

1 Townhomes.

2 33.

3 As an inducement to the Owners, Horton made representations, specifically identified in  
4 paragraphs 11 and 12 above, regarding the quality, condition, and attributes of the units and  
5 common elements at the Murray Ridge Townhomes.

6 34.

7 Horton created the marketing materials that were provided to all Owners.

8 35.

9 Horton violated ORS 646.608(1)(e) because the Murray Ridge Townhomes did not have  
10 the represented characteristics, benefits, and qualities, and were instead plagued by the defects  
11 and property damage identified in paragraphs 18-20 above and elsewhere herein; and because the  
12 monthly assessments were insufficient and inadequate to cover the Association's expenses and  
13 reserves.

14 36.

15 Horton violated ORS 646.608(1)(g) because the Murray Ridge Townhomes were not of  
16 the represented standard, quality, or grade, and was instead plagued by the defects and property  
17 damage identified in paragraph 18-20 above and elsewhere herein, and because the monthly  
18 assessments were insufficient and inadequate to cover the Association's expenses and reserves.

19 37.

20 Horton violated ORS 646.608(1)(t) because, concurrent with delivery of units to the  
21 Owners, Horton failed to disclose known material construction defects, which defects, along  
22 with the property damage resulting therefrom, are specifically identified in paragraphs 18-20  
23 above and elsewhere herein; and failed to disclose that the monthly assessments were insufficient  
24 and inadequate to cover the Association's expenses and reserves.



1 38.

2 The Owners reasonably relied on the direct and indirect representations and non-  
3 disclosures by Horton. The Owners would not have purchased units had they known the truth  
4 about the Murray Ridge Townhomes.

5 39.

6 Horton knew or should have known that their conduct constituted unlawful trade  
7 practices, and such conduct was therefore willful.

8 40.

9 The Association and the Owners have been damaged as a result of the unlawful trade  
10 practices by Horton, which damages are specifically identified in paragraph 22 above.

11 41.

12 During construction of the Murray Ridge Townhomes, Horton was aware of faulty  
13 workmanship, improper or defective materials, and improper installation or noncompliance with  
14 applicable building codes, industry standards, or manufacturer specifications and guidelines.  
15 Thus, Horton's conduct described herein was intentional and without justification or excuse, or  
16 was committed with a bad motive or so recklessly as to be in disregard of societal obligations  
17 with respect to the health, safety, and welfare of others. Accordingly, Plaintiff intends to seek  
18 punitive damages from Horton in an amount to be determined by a jury to be reasonable on this  
19 claim.

20 42.

21 Pursuant to ORS 94.630(1)(c), and because none of the Owners opted out of this  
22 litigation, which concerns matters affecting the Murray Ridge Townhomes, the Association is  
23 entitled to pursue claims arising from the Owners' interest in the units and common elements and  
24 to recover its reasonable attorneys' fees and costs pursuant to ORS 646.638(3).  
25  
26

**THIRD CLAIM FOR RELIEF**  
**(Intentional Misrepresentation)**

43.

Plaintiff realleges paragraphs 1 – 24, 26 – 30, and 32-42 above.

44.

On information and belief, while actively selling units at the Murray Ridge Townhomes, Horton and its agents materially misrepresented the quality and characteristics of the Murray Ridge Townhomes in at least three ways: (i) in sales brochures and other marketing or promotional materials; (ii) in widely disseminated oral misrepresentations to purchasers; and, (iii) by actively concealing and otherwise failing to disclose known material construction defects and resulting damage. Horton and its agents made the representations set forth in paragraphs 11 and 12. On information and belief, these representations were false and misleading.

Specifically, Horton and its agents misrepresented that the Murray Ridge Townhomes were built in compliance with applicable building codes when in truth and in fact they were not in several material particulars. Horton and its agents knew that these representations were false, or made them recklessly without knowing if they were true or false, and made these false representations with the intent that the buyers would rely on the apparent, rather than the actual, state of facts.

45.

Pursuant to ORS 94.595 and 94.616, Horton was obligated to prepare and provide the Association with a financial statement, reserve study, reserve account and operating budget, and a budget for replacement and maintenance of common property for the Murray Ridge Townhomes.

46.

Pursuant to ORS 94.595, Horton was further obligated to update the reserve study and to adjust the amount of payments as indicated by the study or update. ORS 94.616 requires the

1 Horton to provide to the Association documents including the Declaration, Bylaws, reserve  
2 study, and all updates and budgets.

3 47.

4 The Association and the Owners are within the class of persons protected by the statutes  
5 cited in the foregoing paragraph. Likewise, the damages suffered by the Association and the  
6 Owners are the type of harms protected against by said statutes.

7 48.

8 The representations by Horton and its agents in the sales and promotional materials, oral  
9 representations to the Owners, reserve study, and budgets were false and misleading. On  
10 information and belief, Horton and were aware of material construction defects and property  
11 damage at the Murray Ridge Townhomes well before the Association was turned over by Horton  
12 to the Owners on February 3, 2004.

13 49.

14 Despite having actual knowledge of some or all of the defects and property damage  
15 alleged in paragraphs 18-20 above and elsewhere herein, Horton and its agents never revised the  
16 sales and promotional materials, reserve study, and budgets, and never revealed any of the  
17 construction defects or property damage to prospective purchasers.

18 50.

19 Despite their knowledge, Horton and its agents made no meaningful effort to correct  
20 permanently the construction defects at the Murray Ridge Townhomes that have resulted in  
21 property damage.

22 51.

23 In the course of marketing and selling units, Horton and its agents expressly told or  
24 implied to purchasers that the units at the Murray Ridge Townhomes had the characteristics and  
25 qualities set forth in paragraphs 11 and 12 and elsewhere herein.

26

1 52.

2 The representations described in the foregoing paragraph were false and misleading  
3 because they intentionally omitted and concealed the construction defects and resulting property  
4 damage identified in paragraphs 18-20 and elsewhere herein.

5 53.

6 Horton and its agents knew that the Owners would rely on the reserve study, budget,  
7 sales brochures, sales agreements, and other marketing materials, as well as the oral  
8 misrepresentations or omissions by Horton and its agents. Horton and knew that they were  
9 making false representations, or failing to disclose material facts, and engaged in such conduct  
10 knowingly and willingly.

11 54.

12 The Association and the Owners were unaware that Horton and its agents were making  
13 false representation, or omitting material facts. The Association and the Owners did in fact  
14 detrimentally rely on the misrepresentations and omissions by Horton and its agents. Had the  
15 Association and the Owners known that Horton and its agents were making false representations,  
16 had the construction defects and resulting damage been disclosed to the Association or the  
17 Owners, or had the Association and/or Owners known that the monthly assessments were  
18 inadequate to cover the Association's expenses and reserves, the Owners would not have  
19 purchased units at the Murray Ridge Townhomes.

20 55.

21 As a direct and proximate result of the intentional misrepresentations and material  
22 omissions by Horton and its agents, the Association and Owners have been damaged as set forth  
23 in paragraph 22 above.

24 56.

25 Because Horton was aware of faulty workmanship, improper or defective materials, and  
26 improper installation or noncompliance with applicable building codes, industry standards, or

1 manufacturer specifications and guidelines, Horton's conduct described herein was intentional  
2 and without justification or excuse, or was committed with a bad motive or so recklessly as to be  
3 in disregard of societal obligations with respect to the health, safety, and welfare of others.  
4 Accordingly, in addition to the damages set forth in paragraph 22 above, Plaintiff intends to seek  
5 punitive damages from Horton in an amount to be determined by a jury to be reasonable on this  
6 claim..

7 57.

8 The Association is entitled to recover its reasonable attorneys' fees pursuant to ORS  
9 94.780 because the Association seeks to enforce compliance with the terms and provisions of the  
10 Oregon Planned Community Act.

11 **FOURTH CLAIM FOR RELIEF**  
12 **(Negligence)**

13 58.

14 Plaintiff realleges paragraphs 1 – 24, 26 – 30, 32-42, and 43-57 above.

15 59.

16 Horton is the party ultimately responsible for all aspects of the development,  
17 construction, marketing, and sales of the Murray Ridge Townhomes, including planning, design,  
18 construction, and sales. Horton and its agents provided the labor and materials to build Murray  
19 Ridge Townhomes; supervised the architectural design and construction work; supervised,,  
20 coordinated and inspected the construction to ensure that the Murray Ridge Townhomes was  
21 built in accordance with approved plans, codes, and industry standards, without any construction  
22 defects, and consistent with representations and warranties to owners; and managed the  
23 Association and Murray Ridge Townhomes prior to turnover. Additionally, Horton and its  
24 agents were the real estate managers for the Association and Murray Ridge Townhomes, and  
25 marketed and sold the units at the Murray Ridge Townhomes. Accordingly, Horton and its  
26 agents owed a duty to the Association and the Owners, as foreseeable future plaintiffs, to

1 perform the foregoing tasks in a non-negligent manner. The failure of Horton and its agents to  
2 comply with these duties caused or contributed to the defects alleged in paragraphs 18-20 above  
3 and elsewhere herein.

4 60.

5 Specifically, as alleged above, the Owners purchased units from Horton based on the  
6 representations (identified in paragraphs 11 and 12 above) about their expertise, the quality of  
7 construction at the Murray Ridge Townhomes, and adequacy of the monthly assessments. The  
8 Association and Owners relied on Horton, as an experienced developer and general contractor,  
9 with knowledge of construction and engineering, to plan, develop, construct, inspect, market, and  
10 sell units at the Murray Ridge Townhomes, and to manage the Association and Murray Ridge  
11 Townhomes, in a reasonable, workmanlike, and honest manner.

12 61.

13 As the initial owner of each unit at the Murray Ridge Townhomes, Horton had the power  
14 to elect the officers and directors of the Association before February 3, 2004. As a member of  
15 the Association, Horton, and its agents owed a duty to the Owners to exercise reasonable care in  
16 electing the officers and directors of the Association and to ensure that the elected officers and  
17 directors promptly took all appropriate actions to address matters of common concern to the  
18 Association. Acting as a member of the Association, Horton negligently elected its agents as  
19 officers and directors, and negligently failed to ensure that those individuals fulfilled their roles  
20 as officers and directors and took appropriate actions on behalf of the Association.

21 62.

22 As officers and directors of the Association, Horton's agents owed a duty to the Owners  
23 to exercise reasonable care in directing the Association and acting as real estate managers for the  
24 Association and Murray Ridge Townhomes, and to take all reasonable steps to remedy problems  
25 of common concern to the Association and Owners, including but not limited to building  
26 envelope problems, structural problems, building systems problems, and resulting property

1 damage. Acting within the course and scope of their duties as officers and directors of the  
2 Association, Horton's agents negligently failed to comply with the provisions set forth in ORS  
3 Chapter 94.550, *et seq.*, and failed to take appropriate action on behalf of the Association.  
4 Specifically, Horton's agents acted in the best interest of Horton rather than the Association;  
5 caused the Association to pay various expenses and costs which were the responsibility of and  
6 for the benefit of Horton; prepared a budget that inadequately provided for replacement reserves  
7 and monthly assessments, and failed to update such budget; actively prevented the discovery of,  
8 and failed to disclose, the true condition of the Murray Ridge Townhomes; and negligently  
9 performed their duties as real estate managers for the Association and Murray Ridge  
10 Townhomes.

11 63.

12 Horton and its agents knew or should have known, while the Association and Owners  
13 were unaware, that there were significant construction defects affecting the units at the Murray  
14 Ridge Townhomes. Horton and its agents knew or should have known that the Murray Ridge  
15 Townhomes were improperly developed, constructed, marketed, managed and sold, and that the  
16 monthly assessments were inadequate. Horton and its agents had this knowledge before all of  
17 the units were sold to the Owners. Horton and its agents were negligent in at least the following  
18 respects:

- 19 (a) Failing to construct Murray Ridge Townhomes in a workmanlike manner;
- 20 (b) Failing to disclose known construction defects and resulting property damage to  
21 the Association and the Owners;
- 22 (c) Failing to repair completely the construction defects and resulting property  
23 damage to units at Murray Ridge Townhomes;
- 24 (d) Failing to warn the Owners and Association of the multiple construction defects  
25 in, and property damage to, Murray Ridge Townhomes;
- 26

1 (e) Failing to take corrective measures to protect the Owners and the Association  
2 from risk of harm arising from the construction defects and property damage at Murray Ridge  
3 Townhomes; and

4 (f) Failing to properly coordinate, schedule, oversee, inspect, and supervise  
5 contractors, subcontractors, or other workers;

6 (g) Providing improper instruction and direction to contractors and subcontractors;  
7 and

8 (h) Failing to notify contractors and subcontractors of improper construction means  
9 and methods, so that reasonable steps could be taken to correct such issues.

10 Further, Horton and its agents knew or should have known the reserves and monthly  
11 assessments which they set were too low, and that the Association was paying expenses and  
12 costs that were Horton's responsibility.

13 64.

14 As a direct and proximate result of Horton's negligence, plaintiff has been damaged as  
15 set forth in paragraph 18-20 and elsewhere herein. Horton's negligence has resulted in ongoing  
16 property damage to the units at the Murray Ridge Townhomes, as identified in paragraph 22 and  
17 elsewhere herein.

18 65.

19 The damages to the Association and the Owners were reasonably certain to occur and  
20 foreseeable if Horton acted negligently.

21 **FIFTH CLAIM FOR RELIEF**

22 **(Breach of Fiduciary Duty )**

23 66.

24 Plaintiff realleges paragraphs 1 – 24, 26 – 30, 32-42, and 43-57, and 59-65 above.  
25  
26



1 67.

2 Horton was the initial owner of each unit, controlled the Association, and had the power  
3 to elect the officers and directors of the Association before turnover on February 3, 2004.

4 Horton exercised this power by electing its agents as officers and directors, and by controlling  
5 the Association's operations, expenditures, repairs, and actions. At all material times before the  
6 February 3, 2004 turnover, as real estate managers who controlled the Association, these Horton  
7 and its agents owned non-delegable fiduciary duties to the Owners and Association.

8 68.

9 At all material times, Horton owned one or more units at the Murray Ridge Townhomes  
10 that it wished to sell. Acting within the course and scope of their duties as officers and directors  
11 of the Association, Horton's agents violated their fiduciary duties to the Owners and Association,  
12 for the purpose of assisting Horton, as follows:

13 (a) To avoid paying Horton's share of monthly expenses;

14 (b) To avoid paying Horton's share of needed assessments for maintenance and  
15 repairs that Developer failed to undertake; and

16 (c) To avoid contributing Horton's share of appropriate reserves to the Association.

17 (d) Horton and its agents actively prevented the discovery of, and failed to disclose,  
18 the true condition of the units. As a direct result of defendants' concealment and nondisclosure,  
19 units owned by Horton were not subject to special assessments for the cost of repairing the  
common elements, which Horton would otherwise have been obligated to pay.

20 69.

21 Horton and its agents caused the Association to pay various expenses and costs, which  
22 expenses and costs were the responsibility of and for the benefit of Horton and not the  
23 Association.

1 70.

2 Horton and its agents negligently prepared a budget that inadequately provided for  
3 replacement costs and reserves. Had the budget been properly prepared, Horton would have  
4 been obligated to contribute more to maintain appropriate costs and reserves.

5 71.

6 Horton and its agents prepared a budget that set the amount of monthly assessments to be  
7 used to pay the Association's ordinary operating expenses. These assessments were set  
8 intentionally low to assist Horton in selling units at the Murray Ridge Townhomes, and to help  
9 Horton avoid paying assessments in the proper amount. As a result, the Association and the  
10 Owners did not receive the appropriate amount of assessments from Horton.

11 72.

12 By breaching their fiduciary duties owed to the Association and the Owners, Horton  
13 caused the damages set forth in paragraph 22 and elsewhere herein.

14 73.

15 Because Horton was aware of faulty workmanship, improper or defective materials, and  
16 improper installation or noncompliance with applicable building codes, industry standards, or  
17 manufacturer specifications and guidelines, Horton's conduct described herein was intentional  
18 and without justification or excuse, or was committed with a bad motive or so recklessly as to be  
19 in disregard of societal obligations with respect to the health, safety, and welfare of others.  
20 Accordingly, in addition to the damages set forth in paragraph 22 above, Plaintiff intends to seek  
21 punitive damages from Horton in an amount to be determined by a jury to be reasonable on this  
22 claim.

23 **PRAYER**

24 WHEREFORE, the Association prays for judgment against defendant as follows:

25 1. On its First (Breach of Implied Warranties) and Fourth (Negligence) Claim for  
26 Relief, for judgment in the amounts alleged in paragraph 22 above, with pre- and post-judgment

1 interest thereon at the rate of nine percent (9%) per annum, plus the Association's reasonable  
2 costs and disbursements incurred herein;

3 2. On its Second (Unlawful Trade Practices), Third (Intentional Misrepresentation),  
4 and Fifth (Breach of Fiduciary Duty) Claims for Relief, for judgment in the amounts alleged in  
5 paragraph 22 above, and a punitive amount to be determined by a jury to be reasonable on each  
6 of these claims, with pre- and post-judgment interest thereon at the rate of nine percent (9%) per  
7 annum, plus the Association's reasonable attorneys' fees, costs, and disbursements incurred  
8 herein; and

9 3. For such further and additional relief the court deems just and equitable.

10 DATED: June 8, 2009.

11 Respectfully submitted,

12 BALL JANIK LLP

13 By:   
14 \_\_\_\_\_

15 Richard J. Stone, OSB No. 94002

16 rstone@bjllp.com

17 Facsimile: (503) 226-3910

18 Attorneys for Plaintiffs

19 Trial Attorneys:

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21 Jennifer McCauley, OSB No. 01339

**CERTIFICATE OF SERVICE**

I hereby certify that I served a full, true and correct copy of the foregoing **FIRST**

**AMENDED COMPLAINT** by:

☒ U.S. Postal Service;  
☐ facsimile service;  
☐ e-mail;  
☐ arranging for hand delivery, and/or  
☐ overnight mail

addressed to the following named person(s) at their last known address(es):

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18 DATED: June 12, 2009.


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Attorneys for Plaintiff

## **Exhibit B**

1  
2  
3  
4  
5  
6  
7 IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
8 FOR THE COUNTY OF WASHINGTON

9 MURRAY RIDGE OWNERS ASSOCIATION,  
10 an Oregon nonprofit corporation,

11 Plaintiff(s),

12 v.

13 D.R. HORTON, INC. - PORTLAND, a  
14 Delaware corporation; DOES 1-15

15 Defendant(s).

16 D.R. HORTON, INC. - PORTLAND

17 Third-party Plaintiff(s),

18 v.

19 AMERICAN CONSTRUCTION AND SIDING,  
20 INC., an Oregon Corporation; B.M.C. WEST  
21 CORP., a Delaware Corporation;  
22 COMPWEST ROOFING INC., an Oregon  
23 Corporation; L B GUTTERS, LLC, an Oregon  
24 Limited Liability Company; REX HILL  
25 MASONRY, INC., an Oregon Corporation;  
JAMES VANDERKIN f/k/a L B GUTTERS;

Third-party Defendant(s).

NO. C081740CV

THIRD PARTY COMPLAINT FOR  
DAMAGES FOR:

- (1) BREACH OF CONTACT
- (2) BREACH OF WARRANTY
- (3) CONTRACTUAL INDEMNITY AND DEFENSE
- (4) COMMON LAW INDEMNITY
- (5) CONTRIBUTION

**JURY TRIAL DEMANDED**

**CLAIM OVER \$50,000 - NOT SUBJECT  
TO MANDATORY ARBITRATION**

*updated*  
• CAPTION  
• Roster

*we/e JP/PT/JAM/Att*  
*(m) - client (Att)*

RECEIVED

JUN 20 2008

BALL JANIK LLP

COMES NOW Third Party Plaintiff D.R. Horton, Inc. – Portland (hereinafter “D.R. Horton”) by and through their undersigned counsel, and for a third party complaint against the Third Party Defendants herein, hereby alleges as follows:

**I. PARTIES; JURISDICTION AND VENUE**

1.

Defendant/Third Party Plaintiff D.R. Horton, Inc. – Portland (“D.R. Horton”) is a Delaware corporation authorized to do business in Oregon, and has paid all fees prerequisite to maintaining this suit. During the relevant timeframe, D.R. Horton conducted business in Washington County, Oregon.

2.

Third Party Defendant American Construction & Siding, Inc. (“American”) is a duly licensed Oregon corporation and contractor which, during the relevant timeframe, did business in Washington County, Oregon. American contracted with D.R. Horton for the purpose of, and was responsible for, providing the labor and materials required to properly install the siding for the Murray Ridge Townhomes (“project”).

3.

Third Party Defendant BMC West Corp. (“BMC”) is a duly licensed Delaware corporation and contractor which, during the relevant timeframe, did business in Washington County, Oregon. BMC contracted with D.R. Horton for the purpose of, and was responsible for, providing the labor and materials required to properly install the framing and setting of windows for the Project.

4.

Third Party Defendant CompWest Roofing Systems, Inc. (“CompWest”) is a duly licensed Oregon corporation and contractor which, during the relevant timeframe, did business



1 in Washington County, Oregon. CompWest contracted with D.R. Horton for the purpose of, and  
2 was responsible for, providing the labor and materials required to properly install the roofing for  
3 the Project.

4 5.

5 Third Party Defendant L B Gutters, LLC ("L B Gutters") was, during the relevant  
6 timeframe, a duly licensed Oregon limited liability company and contractor which did business in  
7 Washington County, Oregon. American contracted with D.R. Horton for the purpose of, and  
8 was responsible for, providing the labor and materials required to properly install the gutters for  
9 the Project.

10 6.

11 Third Party Defendant Rex Hill Masonry, Inc. ("Rex Hill") is a duly licensed Oregon  
12 corporation and contractor which, during the relevant timeframe, did business in Washington  
13 County, Oregon. Rex Hill contracted with D.R. Horton for the purpose of, and was responsible  
14 for, providing the labor and materials required to properly install the masonry, including masonry  
15 veneer, for the Project.

16 7.

17 Upon information and belief, Third Party Defendant James Vanderkin f/k/a L B Gutters  
18 ("Vanderkin") is an individual who, during the relevant timeframe, was a contractor who did  
19 business in Washington County, Oregon. Upon information and belief, Vanderkin contracted  
20 with D.R. Horton for the purpose of, and was responsible for, providing the labor and materials  
21 required to properly install the gutters for the Project. Upon information and belief, Vanderkin  
22 contracted with D.R. Horton either in addition to or as a successor of L B Gutters.  
23  
24  
25

8.

Third Party Defendants identified above are referred to herein collectively as "Subcontractors." The Subcontractors supplied labor and materials to construct the Project.

9.

**Subject to a final determination that this matter be submitted to binding arbitration,** Jurisdiction for this third party Complaint is proper within the State of Oregon, and venue for this third-party complaint is property within Washington County, as the property on which the third-party defendants performed work is located within Washington County, Oregon.

## **II. FACTS COMMON TO ALL SUBCONTRACTORS**

10.

D.R. Horton realleges paragraphs 1 – 9 as if fully set forth herein.

11.

All of the Subcontractors signed contracts with D.R. Horton to perform work at the Project. All of those contracts contain performance standards which each of the Subcontractors were obligated to perform and satisfy. These standards include, but are not limited to, the following: (i) the duty to cooperate with other subcontractors; (ii) the duty to perform all work in a good and workmanlike manner; (iii) the duty to perform all work in accordance with plans and specifications; (iv) the duty to perform all work according to industry standard practices; (v) the duty to perform work to the satisfaction of D.R. Horton; (vi) the duty to inspect the work of others affecting each of the Subcontractors' own respective scope of work; (vii) the duty to report to D.R. Horton of any defects.

12.

All of the contracts that the Subcontractors signed contain express warranties given to D.R. Horton regarding their respective scopes of work. This includes, but is not limited to, a

1 warranty to D.R. Horton, the first purchasers and subsequent purchasers that the  
2 Subcontractor's work shall conform to the specifications of the contract, be of good quality, free  
3 of faults and defects, and in accordance with all applicable government authorities.

4 13.

5 All of the contracts that the Subcontractors signed contain indemnity and defense  
6 clauses which required the Subcontractors to defend and indemnify D.R. Horton for all claims,  
7 demands, causes of actions, suits or other litigation (including all costs thereof and attorneys  
8 fees) of every kind and character.

9 14.

10 The contracts that each of the Subcontractors signed contains a clause entitling D.R.  
11 Horton to the recovery of all costs and fees, including but not limited to attorney's fees and  
12 costs, incurred in enforcing the contracts against the Subcontractors.

13 15.

14 Plaintiff Murray Ridges Owners Association ("Plaintiff" or "HOA") has filed this lawsuit in  
15 which it alleges, at paragraphs 18-20 of its Complaint, instances of construction defects and  
16 resulting damage, which D.R. Horton disputes. However, if proven, the HOA's alleged  
17 construction defects constitute a breach of each of the Subcontractors' respective performance  
18 obligations under their contracts.

19 16.

20 Plaintiff HOA has filed this lawsuit in which it alleges, at paragraphs 18-20 of its  
21 Complaint, instances of construction defects and resulting damage, which D.R. Horton disputes.  
22 However, if proven, the HOA's alleged construction defects constitute a breach of each of the  
23 Subcontractors' respective warranty obligations under their contracts.  
24  
25

17.

1 Plaintiff HOA has filed this lawsuit in which it alleges, at paragraphs 18-20 of its  
2 Complaint, instances of construction defects and resulting damage, which D.R. Horton disputes.  
3 However, if proven, the HOA's alleged construction defects constitute a breach of each of the  
4 Subcontractors' respective duty of care to D.R. Horton, the HOA, and its constituent unit  
5 owners/members, for which the Subcontractors' negligence is primary and active.  
6

7 18.

8 Plaintiff HOA has filed this lawsuit in which it alleges, at paragraphs 18-20 of its  
9 Complaint, instances of construction defects and resulting damage, which D.R. Horton disputes.  
10 However, if proven, the HOA's alleged construction defects are incident to, arise out of, and are  
11 in connection with Subcontractors' breach of the warranties and covenants provided by  
12 Subcontractors and/or the work performed by the Subcontractors or their personnel.  
13

14 19.

15 Plaintiff HOA's suit has triggered the Subcontractors' respective defense and indemnity  
16 obligations. D.R. Horton has tendered the defense and indemnity of this claim to the  
17 Subcontractors, which has not been accepted by any Subcontractor. D.R. Horton hereby  
18 renews its tender to each of the Subcontractors. This tender is based upon both common law  
19 and contractual indemnity. If this tender is not accepted by the Subcontractors, or any of them,  
20 then D.R. Horton will be entitled to its reasonable attorneys' fees in defending this lawsuit.  
21

22 20.

23 Prior to filing this Third Party Complaint, D.R. Horton sent secondary notices of defects  
24 to the Subcontractors. D.R. Horton has met all conditions precedent to filing this Third-Party  
25 Complaint.

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**III. FIRST CLAIM: AMERICAN CONSTRUCTION AND SIDING, INC. ("American")**

(Count One: Breach of Contract)

21.

D.R. Horton realleges paragraphs 1 – 20 as if fully set forth herein.

22.

American executed a valid written contract with D.R. Horton whereby it provided materials and labor for the construction and/or installation of the siding on the residences at the Murray Ridge Townhomes Project.

23.

Plaintiff HOA has filed this lawsuit in which it alleges, at paragraphs 18-20 of its Complaint, instances of defect in, and damage caused by, the work and/or materials provided by American. D.R. Horton disputes this. However, to the extent such claims are proven by HOA, American is liable to D.R. Horton for breach of the terms of its contract, including but not limited to all enumerated performance standards, for failure to properly perform its work, damaging D.R. Horton as a direct and proximate result.

(Count Two: Breach of Warranty)

24.

D.R Horton realleges paragraphs 1-23 as if fully set forth herein.

25.

American executed a valid written contract with D.R. Horton whereby it provided materials and labor for the construction and/or installation of the siding on the residences at the Murray Ridge Townhomes Project.

26.

1 Plaintiff HOA has filed this lawsuit in which it alleges, at paragraphs 18-20 of its  
2 Complaint, instances of defect in, and damage caused by, the work and/or materials provided  
3 by American. D.R. Horton disputes this. However, to the extent such claims are proven by  
4 HOA, American is liable to D.R. Horton for breach of the warranty terms of its contract,  
5 damaging D.R. Horton as a direct and proximate result.  
6

7 (Count Three: Contractual Indemnity and Defense)

8 27.

9 D.R. Horton realleges paragraphs 1-26 as if fully set forth herein.

10 28.

11 American executed a valid written contract with D.R. Horton whereby it provided  
12 materials and labor for the construction and/or installation of the siding of the residences at the  
13 Murray Ridge Townhomes Project. As part of the contract, American agreed to defend and  
14 indemnify D.R. Horton.

15 29.

16 Plaintiff HOA has filed a lawsuit in which it alleges, at paragraphs 18-20 of its Complaint,  
17 instances of defect in, and damage caused by, the work and/or materials provided by American.  
18 D.R. Horton disputes this. However, to the extent such claims are proven by HOA, then  
19 American is liable to D.R. Horton for a defense, as well as indemnification of all amounts for  
20 which D.R. Horton becomes obligated to pay Plaintiff HOA, together with all other costs, fees  
21 (including attorney's fees) and damages incurred by D.R. Horton.  
22  
23  
24  
25

30.

D.R. Horton has tendered the defense and indemnity and hereby renews its tender. American's failure to defend and indemnify D.R. Horton constitutes a breach of American's contract, entitling D.R. Horton to recover all costs, losses, fees, expenses and damages.

(Count Four: Common Law Indemnity)

31.

D.R. Horton realleges paragraphs 1-30 as if fully set forth herein.

32.

Plaintiff HOA has filed a lawsuit in which it alleges, at paragraphs 18-20 of its Complaint, instances of defect in, and damage caused by, the work and/or materials provided by American. D.R. Horton disputes this. However, to the extent such claims are proven by HOA, then the acts and/or omissions of American are or were the primary and active cause of any alleged defects, and the acts and/or omissions of D.R. Horton, if any, were secondary and passive. Therefore, American is liable to D.R. Horton for common law indemnity of all amounts for which D.R. Horton becomes obligated to pay Plaintiff HOA, together with all other costs, fees (including attorney's fees) and damages incurred by D.R. Horton.

(Count Five: Contribution)

33.

D.R. Horton realleges paragraphs 1-32 as if fully set forth herein.

34.

Plaintiff HOA has filed this lawsuit in which it alleges, at paragraphs 18-20 of its Complaint, instances of defect in, and damage caused by, the work and/or materials provided by American. D.R. Horton disputes this. However, to the extent such claims are proven by

1 HOA, American is liable to D.R. Horton for common law contribution from American in an  
2 amount equal to American's proportional share of damages, fees and costs.

3 **IV. SECOND CLAIM: B.M.C. WEST**

4 (Count One: Breach of Contract)

5 35.

6 D.R. Horton realleges paragraphs 1-20 as if fully set forth herein.

7 36.

8 B.M.C. West executed a valid written contract with D.R. Horton whereby it provided  
9 materials and labor for the construction and/or installation of the framing and setting of windows  
10 on the residences at the Murray Ridge Townhomes Project.

11 37.

12 Plaintiff HOA has filed a lawsuit in which it alleges, at paragraphs 18-20 of its Complaint,  
13 instances of defect in, and damage caused by, the work and/or materials provided by B.M.C.  
14 West. D.R. Horton disputes this. However, to the extent such claims are proven by HOA,  
15 B.M.C. West is liable to D.R. Horton for breach of the terms of its contract, including but not  
16 limited to all enumerated performance standards, for failure to properly perform its work,  
17 damaging D.R. Horton as a direct and proximate result.

18 (Count Two: Breach of Warranty)

19 38.

20 D.R. Horton realleges paragraphs 1-20 and 35-37 as if fully set forth herein.

21 39.

22 B.M.C. West executed a valid written contract with D.R. Horton whereby it provided  
23 materials and labor for the construction and/or installation of the framing and window setting on  
24 the residences at the Murray Ridge Townhomes Project.  
25



40.

Plaintiff HOA has filed a lawsuit in which it alleges, at paragraphs 18-20 of its Complaint, instances of defect in, and damage caused by, the work and/or materials provided by B.M.C. West. D.R. Horton disputes this. However, to the extent such claims are proven by HOA, B.M.C. West is liable to D.R. Horton for breach of the warranty terms of its contract, damaging D.R. Horton as a direct and proximate result.

(Count Three: Contractual Indemnity and Defense)

41.

D.R. Horton realleges paragraphs 1-20 and 38-40 as if fully set forth herein.

42.

B.M.C. West executed a valid written contract with D.R. Horton whereby it provided materials and labor for the construction and/or installation of the framing and window setting on the residences at the Murray Ridge Townhomes Project. As part of the contract, B.M.C West agreed to defend and indemnify D.R. Horton.

43.

Plaintiff HOA has filed a lawsuit in which it alleges, at paragraphs 18-20 of its Complaint, instances of defect in, and damage caused by, the work and/or materials provided by B.M.C West. D.R. Horton disputes this. However, to the extent such claims are proven by HOA, then B.M.C. West is liable to D.R. Horton for a defense, as well as indemnification of all amounts for which D.R. Horton becomes obligated to pay plaintiff HOA, together with all other costs, fees (including attorney's fees) and damages incurred by D.R. Horton.

44.

D.R. Horton has tendered the defense and indemnity and hereby renews its tender. B.M.C West's failure to defend and indemnify D.R. Horton constitutes a breach of B.M.C West's contract, entitling D.R. Horton to recover all costs, losses, fees, expenses and damages.

(Count Four: Common Law Indemnity)

45.

D.R. Horton realleges paragraphs 1-20 and 35-44 as if fully set forth herein.

46.

Plaintiff HOA has filed a lawsuit in which it alleges, at paragraphs 18-20 of its Complaint, instances of defect in, and damage caused by, the work and/or materials provided by B.M.C. West. D.R. Horton disputes this. However, to the extent such claims are proven by HOA, then the acts and/or omissions of B.M.C. West are or were the primary and active cause of any alleged defects, and the acts and/or omissions of D.R. Horton, if any, were secondary and passive. Therefore, B.M.C. West is liable to D.R. Horton for common law indemnity of all amounts for which D.R. Horton becomes obligated to pay Plaintiff HOA, together with all other costs, fees (including attorney's fees) and damages incurred by D.R. Horton.

(Count Five: Contribution)

47.

D.R. Horton realleges paragraphs 1-20 and 35-46 as if fully set forth herein.

48.

Plaintiff HOA has filed this lawsuit in which it alleges, at paragraphs 18-20 of its Complaint, instances of defect in, and damage caused by, the work and/or materials provided by B.M.C. West. D.R. Horton disputes this. However, to the extent such claims are proven by

1 HOA, B.M.C. West is liable to D.R. Horton for common law contribution from B.M.C. West in an  
2 amount equal to American's proportional share of damages, fees and costs.

3 **V. THIRD CLAIM: COMPWEST**

4 (Count One: Breach of Contract)

5 49.

6 D.R. Horton realleges paragraphs 1-20 as if fully set forth herein.

7 50.

8 CompWest executed a valid written contract with D.R. Horton whereby it provided  
9 materials and labor for the construction and/or installation of the roofing on the residences at the  
10 Murray Ridge Townhomes Project.

11 51.

12 Plaintiff HOA has filed a lawsuit in which it alleges, at paragraphs 18-20 of its Complaint,  
13 instances of defect in, and damage caused by, the work and/or materials provided by  
14 CompWest. D.R. Horton disputes this. However, to the extent such claims are proven by HOA,  
15 CompWest is liable to D.R. Horton for breach of the terms of its contract, including but not  
16 limited to all enumerated performance standards, for failure to properly perform its work,  
17 damaging D.R. Horton as a direct and proximate result.

18 (Count Two: Breach of Warranty)

19 52.

20 D.R. Horton reaileges paragraphs 1-20 and 49-51 as if fully set forth herein.

21 53.

22 CompWest executed a valid written contract with D.R. Horton whereby it provided  
23 materials and labor for the construction and/or installation of the roofing on the residences at the  
24 Murray Ridge Townhomes Project.  
25

54.

Plaintiff HOA has filed a lawsuit in which it alleges, at paragraphs 18-20 of its Complaint, instances of defect in, and damage caused by, the work and/or materials provided by CompWest. D.R. Horton disputes this. However, to the extent such claims are proven by HOA, CompWest is liable to D.R. Horton for breach of the warranty terms of its contract, damaging D.R. Horton as a direct and proximate result.

(Count Three: Contractual Indemnity and Defense)

55.

D.R. Horton realleges paragraphs 1-20 and 49-54 as if fully set forth herein.

56.

CompWest executed a valid written contract with D.R. Horton whereby it provided materials and labor for the construction and/or installation of the roofing on the residences at the Murray Ridge Townhomes Project. As part of the contract, CompWest agreed to defend and indemnify D.R. Horton.

57.

Plaintiff HOA has filed a lawsuit in which it alleges, at paragraphs 18-20 of its Complaint, instances of defect in, and damage caused by, the work and/or materials provided by CompWest. D.R. Horton disputes this. However, to the extent such claims are proven by HOA, then CompWest is liable to D.R. Horton for a defense, as well as indemnification of all amounts for which D.R. Horton becomes obligated to pay Plaintiff HOA, together with all other costs, fees (including attorney's fees) and damages incurred by D.R. Horton.

58.

D.R. Horton has tendered the defense and indemnity and hereby renews its tender. CompWest's failure to defend and indemnify D.R. Horton constitutes a breach of CompWest's contract, entitling D.R. Horton to recover all costs, losses, fees, expenses and damages.

(Count Four: Common Law Indemnity)

59.

D.R. Horton realleges paragraphs 1-20 and 49-58 as if fully set forth herein.

60.

Plaintiff HOA has filed a lawsuit in which it alleges, at paragraphs 18-20 of its Complaint, instances of defect in, and damage caused by, the work and/or materials provided by CompWest. D.R. Horton disputes this. However, to the extent such claims are proven by HOA, then the acts and/or omissions of CompWest are or were the primary and active cause of any alleged defects, and the acts and/or omissions of D.R. Horton, if any, were secondary and passive. Therefore, CompWest is liable to D.R. Horton for common law indemnity of all amounts for which D.R. Horton becomes obligated to pay Plaintiff HOA, together with all other costs, fees (including attorney's fees) and damages incurred by D.R. Horton.

(Count Five: Contribution)

61.

D.R. Horton realleges paragraphs 1-20 and 49-60 as if fully set forth herein.

62.

Plaintiff HOA has filed this lawsuit in which it alleges, at paragraphs 18-20 of its Complaint, instances of defect in, and damage caused by, the work and/or materials provided by CompWest. D.R. Horton disputes this. However, to the extent such claims are proven by

1 HOA, CompWest is liable to D.R. Horton for common law contribution from CompWest in an  
2 amount equal to CompWest's proportional share of damages, fees and costs.

3 **VI. FOURTH CLAIM: L B GUTTERS**

4 (Count One: Breach of Contract)

5 63.

6 D.R. Horton realleges paragraphs 1-20 as if fully set forth herein.

7 64.

8 L B Gutters executed a valid written contract with D.R. Horton whereby it provided  
9 materials and labor for the construction and/or installation of the gutter system on the  
10 residences at the Murray Ridge Townhomes Project.

11 65.

12 Plaintiff HOA has filed a lawsuit in which it alleges, at paragraphs 18-20 of its Complaint,  
13 instances of defect in, and damage caused by, the work and/or materials provided by L B  
14 Gutters. D.R. Horton disputes this. However, to the extent such claims are proven by HOA, L B  
15 Gutters is liable to D.R. Horton for breach of the terms of its contract, including but not limited to  
16 all enumerated performance standards, for failure to properly perform its work, damaging D.R.  
17 Horton as a direct and proximate result.

18 (Count Two: Breach of Warranty)

19 66.

20 D.R. Horton realleges paragraphs 1-20 and 63-65 as if fully set forth herein.  
21  
22  
23  
24  
25

67.

L B Gutters executed a valid written contract with D.R. Horton whereby it provided materials and labor for the construction and/or installation of the gutter system on the residences at the Murray Ridge Townhomes Project.

68.

Plaintiff HOA has filed a lawsuit in which it alleges, at paragraphs 18-20 of its Complaint, instances of defect in, and damage caused by, the work and/or materials provided by L B Gutters. D.R. Horton disputes this. However, to the extent such claims are proven by HOA, L B Gutters is liable to D.R. Horton for breach of the warranty terms of its contract, damaging D.R. Horton as a direct and proximate result.

(Count Three: Contractual Indemnity and Defense)

69.

D.R. Horton realleges paragraphs 1-20 and 63-68 as if fully set forth herein.

70.

L B Gutters executed a valid written contract with D.R. Horton whereby it provided materials and labor for the construction and/or installation of the gutter system on the residences at the Murray Ridge Townhomes Project. As part of the contract, L B Gutters agreed to defend and indemnify D.R. Horton.

71.

Plaintiff HOA has filed a lawsuit in which it alleges, at paragraphs 18-20 of its Complaint, instances of defect in, and damage caused by, the work and/or materials provided by L B Gutters. D.R. Horton disputes this. However, to the extent such claims are proven by HOA, then L B Gutters is liable to D.R. Horton for a defense, as well as indemnification of all amounts

1 for which D.R. Horton becomes obligated to pay Plaintiff HOA, together with all other costs, fees  
2 (including attorney's fees) and damages incurred by D.R. Horton.

3 72.

4 D.R. Horton has tendered the defense and indemnity and hereby renews its tender. L B  
5 Gutters' failure to defend and indemnify D.R. Horton constitutes a breach of L B Gutters'  
6 contract, entitling D.R. Horton to recover all costs, losses, fees, expenses and damages.

7 (Count Four: Common Law Indemnity)

8 73.

9 D.R. Horton realleges paragraphs 1-20 and 63-72 as if fully set forth herein.

10 74.

11 Plaintiff HOA has filed a lawsuit in which it alleges, at paragraphs 18-20 of its Complaint,  
12 instances of defect in, and damage caused by, the work and/or materials provided by L B  
13 Gutters. D.R. Horton disputes this. However, to the extent such claims are proven by HOA,  
14 then the acts and/or omissions of L B Gutters are or were the primary and active cause of any  
15 alleged defects, and the acts and/or omissions of D.R. Horton, if any, were secondary and  
16 passive. Therefore, L B Gutters is liable to D.R. Horton for common law indemnity of all  
17 amounts for which D.R. Horton becomes obligated to pay Plaintiff HOA, together with all other  
18 costs, fees (including attorney's fees) and damages incurred by D.R. Horton.

19 (Count Five: Contribution)

20 75.

21 D.R. Horton realleges paragraphs 1-20 and 63-74 as if fully set forth herein.

22 76.

23  
24 Plaintiff HOA has filed this lawsuit in which it alleges, at paragraphs 18-20 of its  
25 Complaint, instances of defect in, and damage caused by, the work and/or materials provided



1 by L B Gutters. D.R. Horton disputes this. However, to the extent such claims are proven by  
2 HOA, L B Gutters is liable to D.R. Horton for common law contribution from L B Gutters in an  
3 amount equal to L B Gutters' proportional share of damages, fees and costs.

4 **VII. FIFTH CLAIM: REX HILL MASONRY**

5 (Count One: Breach of Contract)

6 77.

7 D.R. Horton realleges paragraphs 1-20 as if fully set forth herein.

8 78.

9 Rex Hill Masonry executed a valid written contract with D.R. Horton whereby it provided  
10 materials and labor for the construction and/or installation of the masonry, including masonry  
11 veneer, on the residences at the Murray Ridge Townhomes Project.

12 79.

13 Plaintiff HOA has filed a lawsuit in which it alleges, at paragraphs 18-20 of its Complaint,  
14 instances of defect in, and damage caused by, the work and/or materials provided by Rex Hill  
15 Masonry . D.R. Horton disputes this. However, to the extent such claims are proven by HOA,  
16 Rex Hill Masonry is liable to D.R. Horton for breach of the terms of its contract, including but not  
17 limited to all enumerated performance standards, for failure to properly perform its work,  
18 damaging D.R. Horton as a direct and proximate result.

19 (Count Two: Breach of Warranty)

20 80.

21 D.R. Horton realleges paragraphs 1-20 and 77-79 as if fully set forth herein.  
22  
23  
24  
25

81.

Rex Hill Masonry executed a valid written contract with D.R. Horton whereby it provided materials and labor for the construction and/or installation of the masonry, including masonry veneer, on the residences at the Murray Ridge Townhomes Project.

82.

Plaintiff HOA has filed a lawsuit in which it alleges, at paragraphs 18-20 of its Complaint, instances of defect in, and damage caused by, the work and/or materials provided by Rex Hill Masonry. D.R. Horton disputes this. However, to the extent such claims are proven by HOA, Rex Hill Masonry is liable to D.R. Horton for breach of the warranty terms of its contract, damaging D.R. Horton as a direct and proximate result.

(Count Three: Contractual Indemnity and Defense)

83.

D.R. Horton realleges paragraphs 1-20 and 77-82 as if fully set forth herein.

84.

Rex Hill Masonry executed a valid written contract with D.R. Horton whereby it provided materials and labor for the construction and/or installation of the masonry, including masonry veneer, on the residences at the Murray Ridge Townhomes Project. As part of the contract, Rex Hill Masonry agreed to defend and indemnify D.R. Horton.

85.

Plaintiff HOA has filed a lawsuit in which it alleges, at paragraphs 18-20 of its Complaint, instances of defect in, and damage caused by, the work and/or materials provided by Rex Hill Masonry. D.R. Horton disputes this. However, to the extent such claims are proven by HOA, then Rex Hill Masonry is liable to D.R. Horton for a defense, as well as indemnification of all

1 amounts for which D.R. Horton becomes obligated to pay Plaintiff HOA, together with all other  
2 costs, fees (including attorney's fees) and damages incurred by D.R. Horton.

3 86.

4 D.R. Horton has tendered the defense and indemnity and hereby renews its tender. Rex  
5 Hill Masonry's failure to defend and indemnify D.R. Horton constitutes a breach of Rex Hill  
6 Masonry's contract, entitling D.R. Horton to recover all costs, losses, fees, expenses and  
7 damages.

8 (Count Four: Common Law Indemnity)

9 87.

10 D.R. Horton realleges paragraphs 1-20 and 77-86 as if fully set forth herein.

11 88.

12 Plaintiff HOA has filed a lawsuit in which it alleges, at paragraphs 18-20 of its Complaint,  
13 instances of defect in, and damage caused by, the work and/or materials provided by Rex Hill  
14 Masonry. D.R. Horton disputes this. However, to the extent such claims are proven by HOA,  
15 then the acts and/or omissions of Rex Hill Masonry are or were the primary and active cause of  
16 any alleged defects, and the acts and/or omissions of D.R. Horton, if any, were secondary and  
17 passive. Therefore, Rex Hill Masonry is liable to D.R. Horton for common law indemnity of all  
18 amounts for which D.R. Horton becomes obligated to pay Plaintiff HOA, together with all other  
19 costs, fees (including attorney's fees) and damages incurred by D.R. Horton.

20 (Count Five: Contribution)

21 89.

22 D.R. Horton realleges paragraphs 1-20 and 77-88 as if fully set forth herein.  
23  
24  
25

90.

Plaintiff HOA has filed this lawsuit in which it alleges, at paragraphs 18-20 of its Complaint, instances of defect in, and damage caused by, the work and/or materials provided by Rex Hill Masonry. D.R. Horton disputes this. However, to the extent such claims are proven by HOA, Rex Hill Masonry is liable to D.R. Horton for common law contribution from Rex Hill Masonry in an amount equal to Rex Hill Masonry's' proportional share of damages, fees and costs.

#### **VIII. SIXTH CLAIM: JAMES VANDERKIN**

(Count One: Breach of Contract)

91.

D.R. Horton realleges paragraphs 1-20 as if fully set forth herein.

92.

Upon information and belief, James Vanderkin, either in addition to or as a successor of L B Gutters, executed a valid written contract with D.R. Horton whereby it provided materials and labor for the construction and/or installation of the gutter system on the residences at the Murray Ridge Townhomes Project.

93.

Plaintiff HOA has filed a lawsuit in which it alleges, at paragraphs 18-20 of its Complaint, instances of defect in, and damage caused by, the work and/or materials provided by Vanderkin. D.R. Horton disputes this. However, to the extent such claims are proven by HOA, Vanderkin is liable to D.R. Horton for breach of the terms of its contract, including but not limited to all enumerated performance standards, for failure to properly perform its work, damaging D.R. Horton as a direct and proximate result.

(Count Two: Breach of Warranty)

94.

D.R. Horton realleges paragraphs 1-20 and 91-93 as if fully set forth herein.

95.

Vanderkin executed a valid written contract with D.R. Horton whereby it provided materials and labor for the construction and/or installation of the gutter system on the residences at the Murray Ridge Townhomes Project.

96.

Plaintiff HOA has filed a lawsuit in which it alleges, at paragraphs 18-20 of its Complaint, instances of defect in, and damage caused by, the work and/or materials provided by Vanderkin. D.R. Horton disputes this. However, to the extent such claims are proven by HOA, Vanderkin is liable to D.R. Horton for breach of the warranty terms of its contract, damaging D.R. Horton as a direct and proximate result.

(Count Three: Contractual Indemnity and Defense)

97.

D.R. Horton realleges paragraphs 1-20 and 91-96 as if fully set forth herein.

98.

Vanderkin executed a valid written contract with D.R. Horton whereby it provided materials and labor for the construction and/or installation of the gutter system on the residences at the Murray Ridge Townhomes Project. As part of the contract, Vanderkin agreed to defend and indemnify D.R. Horton.

99.

Plaintiff HOA has filed a lawsuit in which it alleges, at paragraphs 18-20 of its Complaint, instances of defect in, and damage caused by, the work and/or materials provided by

1 Vanderkin. D.R. Horton disputes this. However, to the extent such claims are proven by HOA,  
2 then Vanderkin is liable to D.R. Horton for a defense, as well as indemnification of all amounts  
3 for which D.R. Horton becomes obligated to pay Plaintiff HOA, together with all other costs, fees  
4 (including attorney's fees) and damages incurred by D.R. Horton.

5 100.

6 D.R. Horton has tendered the defense and indemnity and hereby renews its tender.  
7 Vanderkin's failure to defend and indemnify D.R. Horton constitutes a breach of Vanderkin's  
8 contract, entitling D.R. Horton to recover all costs, losses, fees, expenses and damages.

9 (Count Four: Common Law Indemnity)

10 101.

11 D.R. Horton realleges paragraphs 1-20 and 91-100 as if fully set forth herein.

12 102.

13 Plaintiff HOA has filed a lawsuit in which it alleges, at paragraphs 18-20 of its Complaint,  
14 instances of defect in, and damage caused by, the work and/or materials provided by  
15 Vanderkin. D.R. Horton disputes this. However, to the extent such claims are proven by HOA,  
16 then the acts and/or omissions of Vanderkin are or were the primary and active cause of any  
17 alleged defects, and the acts and/or omissions of D.R. Horton, if any, were secondary and  
18 passive. Therefore, Vanderkin is liable to D.R. Horton for common law indemnity of all amounts  
19 for which D.R. Horton becomes obligated to pay Plaintiff HOA, together with all other costs, fees  
20 (including attorney's fees) and damages incurred by D.R. Horton.

21 (Count Five: Contribution)

22 103.

23 D.R. Horton realleges paragraphs 1-20 and 91-102 as if fully set forth herein.  
24  
25

1 Plaintiff HOA has filed this lawsuit in which it alleges, at paragraphs 18-20 of its  
2 Complaint, instances of defect in, and damage caused by, the work and/or materials provided  
3 by Vanderkin. D.R. Horton disputes this. However, to the extent such claims are proven by  
4 HOA, Vanderkin is liable to D.R. Horton for common law contribution from Vanderkin in an  
5 amount equal to Vanderkin's proportional share of damages, fees and costs.  
6

7 WHEREFORE, HAVING FULLY ASSERTED ITS THIRD-PARTY CLAIMS AGAINST  
8 THIRD-PARTY DEFENDANTS, defendant/third party plaintiff D.R. Horton, Inc. – Portland prays  
9 for judgment against third party defendants on the basis of the following theories:

- 10 1. Contractual and/or common law indemnity, including an award of reasonable  
11 costs, disbursements and attorney's fees;
- 12 2. Breach of contract, including an award of reasonable costs, disbursements and  
13 attorneys' fees;
- 14 3. Breach of warranty, including an award of reasonable costs, disbursements and  
15 attorney's fees;
- 16 4. For contribution from each third-party defendant for its share of any common  
17 liability.

18 Defendant/Third Party Plaintiff D.R. Horton, Inc. – Portland further prays for any and all such  
19 other and further relief as the Court deems just.

20 DATED this 18th day of June, 2008.

21 PREG O'DONNELL & GILLET PLLC

22  
23 By 

Jeffrey W. Daly

OSB 04222

24 Attorneys for Defendant D.R. Horton, Inc. -  
25 Portland

1  
2  
3  
4  
5  
6  
7 IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
8 FOR THE COUNTY OF WASHINGTON

9 MURRAY RIDGE OWNERS ASSOCIATION

10 Plaintiff(s),

NO. C081740CV

11 v.

DECLARATION OF SERVICE

12 D.R. HORTON, INC.

13 Defendant(s).

14  
15 The undersigned certifies under penalty of perjury under the laws of the State of Oregon  
16 that on this day the undersigned caused to be served in the manner indicated below a copy of:

17 1. Third Party Complaint for Damages  
18 directed to the following individuals:

19 //

20 //

21 //

22 //

23 //

24 //

25  
RECEIVED

JUN 20 2008

BALL JANK LLP



**Counsel for Plaintiff Murray Ridge**

**Townhomes:**

Phillip E. Joseph, Esq.  
Ball Janik LLP  
101 S.W. Main Street, Suite 1100  
Portland, OR 97204-3219

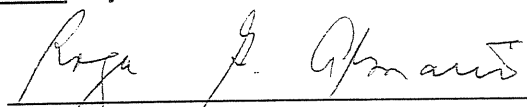
☐ Via Messenger  
☐ Via Facsimile – (503) 295-1058  
☒ Via U.S. Mail, postage prepaid  
☐ Via Overnight Mail, postage prepaid  
☐ Via Email, with recipient's approval

**Counsel for Defendant BMC West:**

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Portland, OR 97205

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☒ Via U.S. Mail, postage prepaid  
☐ Via Overnight Mail, postage prepaid  
☐ Via Email, with recipient's approval

DATED at Seattle, Washington, this 18<sup>th</sup> day of June, 2008.

  
\_\_\_\_\_  
Roga G. Almario

**Counsel for Defendant Comp West**

**Roofing Systems, Inc.:**

Paul E. Sheely, Esq.  
Smith Freed & Eberhard, PC  
111 S.W. Fifth Avenue, Suite 4300  
Portland, OR 97204

☐ Via Messenger  
☐ Via Facsimile – (503) 227-2535  
☒ Via U.S. Mail, postage prepaid  
☐ Via Overnight Mail, postage prepaid  
☐ Via Email, with recipient's approval

# **Exhibit C**

1  
2  
3  
4 **IN THE CIRCUIT COURT FOR THE STATE OF OREGON**  
5 **FOR THE COUNTY OF WASHINGTON**

6 LAURA ALVSTAD; JEFFREY ARMSTRONG;  
7 MOHAMMAD BAHRAMIAN; BRIAN  
8 BLOOMSTER; KAREN BLOOMSTER; GREG  
9 BOERSMA; CARENE BOERSMA; JUDY  
10 CHEN; ROGER CHEN; DENISE CLOUGH;  
11 HERBERT CLOUGH; STEVEN DICKINSON;  
12 BETH DICKINSON; NARETH DOUN; TOK  
13 DOUN; MAY HING; JERRY HITTLE; ERIC  
14 HO; LIEN HONG; AZIZ INAN; BELGIN INAN;  
15 MARK KOSMOWSKI; TRACY KOSMOWSKI;  
16 MARTIN LEPE; ADRIANA LEPE; HAO LI;  
17 SUSAN LI; YEUAN-JEN LIAU; MEI-YING  
18 LIAU; SHENGDONG LU; BLAKE  
19 MCMAHON; LILI MCMAHON; WATARU  
20 MORITA; BOB OGLE; PAM OGLE; KYU  
21 BUM OH; KRISTIN OH; CARRIE PAQUE;  
22 CHRISTOPHER PAQUE; PETE PARASHOS;  
23 TAMMY PARASHOS; NIRUOPAMA  
24 PEDDIREDDI; CINDY POLLITT; GEORGE  
25 POLLITT; TOM RAYMOND; REBECCA  
26 RAYMOND; BRIAN SCOTT; SUSAN SCOTT;  
YI SHANG; DANIELLE SIMONELLI; TIM  
SLINGSBY; MELINDA SLINGSBY; DAVID  
SMITH; JAN SMITH; NEDA D. SOOFI;  
DONNA STORZ; ROGER STORZ; RAVINDER  
VEDIRE; KEN WEBER; KRISTEN WEBER;  
WEIDONG ZHANG; YAOJIA ZHANG;  
GURPREET SINGH; AND DALJIT SINGH,

Plaintiffs,

v.

D.R. HORTON, INC. – PORTLAND, a Delaware  
corporation; AMERICAN CONSTRUCTION  
AND SIDING, INC., an Oregon corporation;  
BMC WEST CORP, a Delaware corporation;  
COMPWEST ROOFING, INC., an Oregon  
corporation; LB GUTTERS, LLC, an Oregon  
limited liability company; REX HILL  
MASONRY, INC., an Oregon corporation;

Case No. C086533CV

**FIRST AMENDED COMPLAINT**  
(BREACH OF EXPRESS WARRANTY;  
BREACH OF CONTRACT; BREACH  
OF IMPLIED WARRANTIES;  
INTENTIONAL  
MISREPRESENTATION;  
NEGLIGENCE; NEGLIGENT  
MISREPRESENTATION; NUISANCE;  
NEGLIGENCE *PER SE*)

(Claims Exceed \$10,000)

**JURY TRIAL DEMANDED**

Claims Not Subject to Mandatory  
Arbitration

1 SAGELAND HOMES, INC., an Oregon  
2 corporation; L.L. LINDBERG CO., a Washington  
3 corporation; WESTGATE CONSTRUCTION,  
4 INC., an Oregon corporation, GREGORY  
5 CHERNISHOFF dba, GREGG'S CARPENTRY,  
an Individual, RALPH PARKER CONCRETE,  
INC., an Oregon corporation, MOSLEY & SONS  
DRYWALL, INC., an Oregon corporation; and  
DOES 1 – 5,

6 Defendants.

7  
8 D.R. HORTON, INC. – PORTLAND, a Delaware  
corporation; DOES 1-15,

9 Third-Party Plaintiff,

10 v.

11 AMERICAN CONSTRUCTION & SIDING,  
12 INC., an Oregon corporation; BMC WEST  
13 CORP., a Delaware corporation; GREGG  
14 CHERNISHOFF, d/b/a GREGGS CARPENTRY;  
15 EMPIRE PACIFIC WINDOWS CORP. d/b/a  
16 EMPIRE PACIFIC WINDOWS, an Oregon  
17 corporation; FEODOR IVANOV, d/b/a  
18 AMERICAN CONSTRUCTION AND SIDING;  
19 LL LINDBERG CO., LLC, an Oregon limited  
liability company; MOSLEY & SONS  
DRYWALL, INC., an Oregon corporation;  
RALPH PARKER CONCRETE, INC., an Oregon  
corporation; REX HILL MASONRY, INC., an  
Oregon corporation; SAGELAND HOMES,  
INC., an Oregon corporation; WESTGATE  
CONSTRUCTION, INC., an Oregon corporation,

20 Third-Party Defendants.

21 Plaintiffs allege as follows:

22 **BACKGROUND ALLEGATIONS**

23 1.

24 At all material times, plaintiffs were and are Oregon residents, and are the owners of  
25 thirty-three (33) single family homes (the "Owners") which are part of the Murray Ridge  
26

development located at SW Snowy Owl Lane, Beaverton, Washington County, Oregon ("Murray Ridge"). Plaintiffs' specific addresses are as follows:

- a) Plaintiffs Mohammad Bahramian and Neda D. Soofi are the owners of the single family home located at 15595 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.
- b) Plaintiffs Martin Lepe and Adriana Lepe are the owners of the single family home located at 15635 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.
- c) Plaintiffs Nareth Doun and Tok Doun are the owners of the single family home located at 15655 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.
- d) Plaintiffs Aziz Inan and Belgin Inan are the owners of the single family home located at 15707 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.
- e) Plaintiffs Bob Ogle and Pam Ogle are the owners of the single family home located at 15757 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.
- f) Plaintiffs David Smith and Jan Smith are the owners of the single family home located at 15771 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.
- g) Plaintiffs Ken Weber and Kristen Weber are the owners of the single family home located at 15783 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.
- h) Plaintiffs Tim Slingsby and Melinda Slingsby are the owners of the single family home located at 15845 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.
- i) Plaintiffs Weidong Zhang and Yi Shang are the owners of the single family home located at 15909 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.
- j) Plaintiffs Tom Raymond and Rebecca Raymond, as trustees of the Thomas and Rebecca Raymond Living Trust, are the owners of the single family home located at 15915 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.

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- 1 k) Plaintiffs Hao Li and Susan Li are the owners of the single family home located at  
2 15955 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.
- 3 l) Plaintiffs Steven Dickinson and Beth Dickinson are the owners of the single  
4 family home located at 15975 SW Snowy Owl Lane, Beaverton, Washington  
5 County, Oregon.
- 6 m) Plaintiffs Eric Ho and Lien Hong are the owners of the single family home  
7 located at 16085 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.
- 8 n) Plaintiffs Ravinder Vedire and Niruopama Peddireddi are the owners of the single  
9 family home located at 16088 SW Snowy Owl Lane, Beaverton, Washington  
10 County, Oregon.
- 11 o) Plaintiffs Pete Parashos and Tammy Parashos are the owners of the single family  
12 home located at 16100 SW Snowy Owl Lane, Beaverton, Washington County,  
13 Oregon.
- 14 p) Plaintiffs Greg Boersma and Carene Boersma are the owners of the single family  
15 home located at 16085 SW Snowy Owl Lane, Beaverton, Washington County,  
16 Oregon.
- 17 q) Plaintiffs Brian Scott and Susan Scott, as trustees of the Scott Living Trust, are  
18 the owners of the single family home located at 16117 SW Snowy Owl Lane,  
19 Beaverton, Washington County, Oregon.
- 20 r) Plaintiffs Brian Bloomster and Karen Bloomster are the owners of the single  
21 family home located at 16129 SW Snowy Owl Lane, Beaverton, Washington  
22 County, Oregon.
- 23 s) Plaintiffs Donna Storz and Roger Storz, as trustees of the Roger K. Storz and  
24 Donna M. Storz Joint Revocable Trust, are the owners of the single family home  
25 located at 16140 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.

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- t) Plaintiff May Hing is the owner of the single family home located at 16147 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.
- u) Plaintiffs Carrie Paque and Christopher Paque are the owners of the single family home located at 16153 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.
- v) Plaintiff Wataru Morita is the owner of the single family home located at 16160 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.
- w) Plaintiffs Jerry Hittle and Laura Alvstad are the owners of the single family home located at 16167 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.
- x) Plaintiffs Mark Kosmowski and Tracy Kosmowski are the owners of the single family home located at 16179 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.
- y) Plaintiffs Kyu Bum Oh and Kristin Oh are the owners of the single family home located at 16200 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.
- z) Plaintiffs David Liao and Mei-Ying Liao are the owners of the single family home located at 16205 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.
- aa) Plaintiffs Cindy Pollitt and George Pollitt are the owners of the single family home located at 16252 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.
- bb) Plaintiffs Denise Clough and Herbert Clough are the owners of the single family home located at 16255 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.
- cc) Plaintiffs Yaojia Zhang and Shengdong Lu the owners of the single family home located at 16335 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.

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1 dd) Plaintiffs Judy Chen and Roger Chen are the owners of the single family home  
2 located at 16345 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.

3 ee) Plaintiffs Blake McMahon and Lili McMahon are the owners of the single family  
4 home located at 16400 SW Snowy Owl Lane, Beaverton, Washington County,  
5 Oregon.

6 ff) Plaintiffs Jeffrey Armstrong and Simonelli Armstrong are the owners of the single  
7 family home located at 16429 SW Snowy Owl Lane, Beaverton, Washington  
8 County, Oregon.

9 gg) Plaintiffs Gurpreet and Daljit Singh are the owners of the single family home  
10 located at 15935 SW Snowy Owl Lane, Beaverton, Washington County, Oregon.

11 The 33 single family homes identified above are herein collectively referred to as (the  
12 “Homes”).

13 2.

14 Murray Ridge is a residential development [organized under the Oregon Planned  
15 Community Act, ORS 94.550, *et seq.*] consisting of 91 lots with 14 duplex buildings and 63  
16 single family homes. The Homes are clad with a combination of Harkiplank lap and panel  
17 siding, and either brick or stone veneer. The windows are vinyl-framed units, manufactured by  
18 Empire Pacific. The roofs are pitched with composite asphaltic shingles.

19 3.

20 At all material times, defendant D.R. Horton, Inc. – Portland (“Horton”) was and is a  
21 Delaware corporation doing business in Oregon as a developer and general contractor, and is  
22 duly licensed by the Oregon Construction Contractors Board (the “CCB”) as a general  
23 contractor. Horton is a wholly owned subsidiary of D.R. Horton, Inc. which is a Delaware  
24 corporation.

25 ///

26 ///



1 4.

2 Horton planned, developed, and constructed (or caused to be constructed) Murray Ridge,  
3 and directed the marketing and sale of the Homes. Horton was responsible for hiring,  
4 coordinating, and supervising contractors; overseeing the construction of Murray Ridge; and  
5 supervising the quality of construction. Pursuant to written Purchase Agreements, Horton, dba  
6 D.R. Horton Realtors, marketed and sold the Homes in Murray Ridge.

7 5.

8 At all material times, defendants Does 1-5 were and are individuals or entities that  
9 commanded, advised, controlled, and approved the activities of Horton and enjoyed the fruits of  
10 the profits or had a financial stake in Murray Ridge.

11 6.

12 At all material times, defendant American Construction and Siding, Inc. ("American")  
13 was and is an Oregon corporation doing business in Oregon as a construction contractor, and is  
14 duly licensed by the CCB as a specialty contractor. On information and belief, American  
15 contracted with Horton to supply labor and materials for installation of the siding on the Homes.

16 7.

17 At all material times, defendant BMC West Corp ("BMC") was and is a Delaware  
18 corporation doing business in Oregon as a construction contractor, and is duly licensed by the  
19 CCB as a general contractor. On information and belief, BMC contracted with Horton to supply  
20 labor and materials for installation of framing, windows, and exterior doors at the Homes.

21 8.

22 At all material times, defendant Compwest Roofing, Inc. ("Compwest") was and is an  
23 Oregon corporation doing business in Oregon as a construction contractor, and was duly licensed  
24 by the CCB as a specialty contractor. On information and belief, Compwest contracted with  
25 Horton to supply labor and materials for installation of the roofing on the Homes.

26 ///

1 9.

2 At all material times, defendant LB Gutters, LLC ("LB") was and is an Oregon limited  
3 liability company doing business in Oregon as a construction contractor, and was duly licensed  
4 by the CCB as a specialty contractor. On information and belief, LB contracted with Horton to  
5 supply labor and materials for installation of the gutters and downspouts on the Homes.

6 10.

7 At all material times, defendant Rex Hill Masonry, Inc. ("Rex Hill") was and is an  
8 Oregon corporation doing business in Oregon as a construction contractor, and is duly licensed  
9 by the CCB as a specialty contractor. On information and belief, Rex Hill contracted with  
10 Horton to supply labor and materials for installation of the masonry, including but not limited to  
11 brick and stone, on the Homes.

12 11.

13 At all material times, defendant Sageland Homes, Inc. ("Sageland") was and is an Oregon  
14 corporation doing business in Oregon as a construction contractor, and is duly licensed by the  
15 CCB as a general contractor. On information and belief, Sageland contracted with Horton to  
16 supply labor and materials for installation of the framing, windows, and exterior doors at the  
17 Homes.

18 12.

19 At all material times, defendant L.L. Lindberg Co., ("Lindberg") was and is a  
20 Washington corporation doing business in Oregon as a construction contractor, and is duly  
21 licensed by the CCB as a general contractor. On information and belief, Lindberg contracted  
22 with Horton to supply labor and materials for installation of the framing, windows, and exterior  
23 doors at the Homes.

24 13.

25 At all material times, defendant Westgate Construction, Inc. ("Westgate") was and is an  
26 Oregon corporation doing business in Oregon as a construction contractor, and is duly licensed

1 by the CCB as a general contractor. On information and belief, Westgate contracted with Horton  
2 to supply labor and materials for installation of the framing, windows, and exterior doors at the  
3 Homes.

4 14.

5 At all material times, defendant Gregory Chernishoff dba Gregg's Carpentry  
6 ("Chernishoff") was and is an Oregon resident doing business in Oregon as a construction  
7 contractor, and was duly licensed by the CCB as a general contractor. On information and  
8 belief, Chernishoff contracted with Horton to supply labor and materials for installation of the  
9 framing, windows, and exterior doors at the Homes.

10 15.

11 At all material times, defendant Ralph Parker Concrete, Inc. ("Parker") was and is an  
12 Oregon corporation doing business in Oregon as a construction contractor, and is duly licensed  
13 by the CCB as a general contractor. On information and belief, Parker contracted with Horton to  
14 supply labor and materials for installation of the concrete flat work at the Homes.

15 16.

16 At all material times, defendant Mosley & Sons, Inc. ("Mosley") was and is an Oregon  
17 corporation doing business in Oregon as a construction contractor, and is duly licensed by the  
18 CCB as a general contractor. On information and belief, Mosley contracted with Horton to  
19 supply labor and materials for installation of drywall at the Homes. The defendants identified in  
20 paragraphs 6 through 16 are herein referred to collectively as the "Subcontractors."

21 17.

22 Horton and Does 1-5 were involved in and oversaw the development, construction, and  
23 sale of Murray Ridge and the Homes. As a result, Horton and Does 1-5 knew or should have  
24 known of the condition of the Homes, and that Horton and Does 1-5 were engaged in the  
25 breaches and tortious conduct alleged herein.

26 ///

1 18.

2 The Subcontractors were involved in and oversaw the construction of Murray Ridge and  
3 the Homes. As a result, the Subcontractors knew or should have known of the condition of the  
4 Homes, and the defects alleged herein.

5 19.

6 The following are current owners who purchased Homes directly from Horton (the  
7 “Original Owners”):

- 8 a. Mohammad Bahramian and Neda D. Soofi, 15595 SW Snowy Owl Lane;
- 9 b. Nareth and Tok Doun, 15655 SW Snowy Owl Lane;
- 10 c. Bob and Pam Ogle, 15757 SW Snowy Owl Lane;
- 11 d. David and Jan Smith, 15771 SW Snowy Owl Lane;
- 12 e. Steven and Beth Dickinson, 15975 SW Snowy Owl Lane;
- 13 f. Eric Ho and Lien Hong (Lynn), 16085 SW Snowy Owl Lane;
- 14 g. Ravinder Vedire and Niruopama Peddireddi, 16088 SW Snowy Owl Lane;
- 15 h. Pete and Tammy Parashos, 16100 SW Snowy Owl Lane;
- 16 i. Brian and Karen Bloomster, 16129 SW Snowy Owl Lane;
- 17 j. May Hing, 16147 SW Snowy Owl Lane;
- 18 k. Carrie and Christopher Paque, 16153 SW Snowy Owl Lane;
- 19 l. Jerry Hittle and Laura Alvstad, 16167 SW Snowy Owl Lane;
- 20 m. Mark and Tracy Kosmowski, 16179 SW Snowy Owl Lane;
- 21 n. David (Yeuan-Jen) and Mei-Ying Liau, 16205 SW Snowy Owl Lane;
- 22 o. Denise and Herbert Clough, 16255 SW Snowy Owl Lane;
- 23 p. Judy and Roger Chen, 16345 SW Snowy Owl Lane;
- 24 q. Blake and Lili McMahon, 16400 SW Snowy Owl Lane;
- 25 r. Jeffrey and Simonelli Armstrong, 16429 SW Snowy Owl Lane.

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20.

The following are current owners who are subsequent purchasers of Homes at Murray Ridge (the “Subsequent Owners”):

- a. Martin and Adriana Lepe, 15635 SW Snowy Owl Lane;
- b. Aziz and Belgin Inan, 15707 SW Snowy Owl Lane;
- c. Ken and Kristen Weber, 15783 SW Snowy Owl Lane;
- d. Tim and Melinda Slingsby, 15845 SW Snowy Owl Lane;
- e. Weidong and Yi Shang Zhang, 15909 SW Snowy Owl Lane;
- f. Tom and Rebecca Raymond, 15915 SW Snowy Owl Lane;
- g. Hao and Susan Li, 15955 SW Snowy Owl Lane;
- h. Greg and Carene Boersma, 16103 SW Snowy Owl Lane;
- i. Brian and Susan Scott, 16117 SW Snowy Owl Lane;
- j. Donna and Roger Storz, 16140 SW Snowy Owl Lane;
- k. Wataru (Sho) Morita, 16160 SW Snowy Owl Lane;
- l. Kyu Bum and Kristin Oh, 16200 SW Snowy Owl Lane;
- m. George and Cindy Pollitt, 16252 SW Snowy Owl Lane;
- n. Yaojia Zhang and Shengdong Lu, 16335 SW Snowy Owl Lane;
- o. Gurpreet and Daljit Singh, 15935 SW Snowy Owl Lane.

21.

Owners have observed that their Homes were experiencing “problems” that were actually signs of water intrusion. The Owners continue to discover problems with their Homes, including those identified in detail below in paragraphs 22-25, in Exhibit A attached hereto, and elsewhere herein. However, until recently, the Owners were unaware of the extent of the problems, and what was causing and who was responsible for the problems in their Homes.

///

///

1 22.

2 There are defects in the envelope and other components of each of the Homes at Murray  
3 Ridge, which defects have resulted in water intrusion and property damage to, among other  
4 things, siding, trim, sheathing, framing, interior finishes, and organic growth on the sheathing  
5 and wood framing.

6 23.

7 When the Owners purchased their Homes, they did not know that the building envelope  
8 and other deficiencies existed and had already started to cause property damage. Indeed, when  
9 the Owners purchased their Homes, they did not understand that the potential for building  
10 envelope or other deficiencies, and the resulting property damage, even existed.

11 24.

12 Independent from any other causal factors, the deficiencies in the construction at the  
13 Owners' Homes are the direct and proximate cause of extensive property damage to the Homes.  
14 Specific deficiencies in the Homes are identified in the attached Exhibit A, which is a non-  
15 exhaustive list of faulty workmanship, improper or defective materials, or noncompliance with  
16 applicable building codes, industry standards, or manufacturer specifications and guidelines for  
17 each of the Homes.

18 25.

19 The deficiencies identified in Exhibit A and elsewhere herein are the direct and  
20 proximate cause of extensive property damage to the Homes including, without limitation, the  
21 following:

- 22 a. Damage to the lap and panel siding.  
23 b. Damage to the brick and stone masonry (including leeching of salt and lime).  
24 c. Damage to fasteners.  
25 d. Water damage, including dry rot, to trim, exterior sheathing, roof sheathing, and  
26 building framing members.

- e. Water intrusion into trim, exterior sheathing, roof sheathing, building framing members, interior walls, sheetrock, and window and door frames, resulting in elevated moisture meter readings throughout the Homes.
- f. Organic growth (including algae, moss, mildew, and mold).
- g. Water damage, including staining and corrosion, to window and door assemblies.
- h. Water damage to flashing materials, weather-resistant barrier materials, and roof underlayment.
- i. Water damage to composite roof shingles.
- j. Water damage to interior finishes, including window frames, sheetrock, floors, and floor coverings.

26.

Water intrusion, faulty workmanship, improper or defective materials, improper design, and improper installation or noncompliance with applicable building codes, industry standards, or manufacturer specifications and guidelines, have caused significant property damage at the Homes. Despite reasonable efforts by the Owners to mitigate their damages, the property damage caused by deficiencies in the Homes is ongoing, and will worsen over time.

27.

Remediation of the above listed deficiencies will include but is not limited to the following:

- a. Removal and replacement of all exterior cladding (*i.e.*, brick, stone veneer, lap and panel siding, trims and flashing), weather resistive barrier (WRB), and damaged wall sheathing, framing and insulation;
- b. Removal and reinstallation of all windows and replacement of damaged units; and
- c. Removal and replacement of roof shingles, underlay, and flashings on targeted areas of the roof edge and rake.

28.

As a result of defendants' actions or inaction as alleged herein the Owners have suffered or will suffer damages of at least **\$216,200 per Home**, as more particularly described as follows:

- 1 a. The total cost of reasonable and necessary repairs to the Homes in the present sum  
2 of at least **\$120,000 per Home**, but in an exact amount to be proven at trial,  
3 which amount will continue to increase as time passes, and which amount does  
4 not include the cost to repair interior defects or an allowance for the direct cost of  
5 moving and storing the Owners' personal belongings during the course of the  
6 repair work, or cleaning when the repair work is complete;
- 7 b. The total cost of a third-party construction manager to furnish architectural  
8 services; obtain permits; act as the Association's representative during the repair  
9 work; and document the repair work to ensure that the work complies with,  
10 among other things, (i) all applicable industry standards, (ii) the applicable  
11 building code, (iii) all applicable laws, ordinances, rules and regulations, (iv) all  
12 applicable manufacturers' instructions and specifications, and (v) the plans and  
13 specifications; all in the present sum of **\$12,000 per Home**, but in an exact  
14 amount to be proven at trial, which amount will continue to increase as time  
15 passes;
- 16 c. The total cost to move and store the Owners' personal belongings during the  
17 course of the repair work, and to clean unit interiors when the repair work is  
18 complete, in the present sum of **\$5,200 per Home** (based on an estimate of  
19 \$2,500 per Home for moving charges, and monthly storage fees of \$300 per  
20 Home per month for a period of nine calendar months), but in an exact amount to  
21 be proven at trial, which amount will continue to increase as time passes;
- 22 d. The total repair costs already or to be incurred (including extra cleaning costs and  
23 the cost of plaintiffs' efforts to mitigate their damages) in the present sum of  
24 **\$1,500 per Home**, but in an exact amount to be proven at trial, which amount will  
25 continue to increase as time passes;
- 26 e. In addition to cost of repairs, the total diminution in the value of each Home in the  
present sum of **\$55,000 per Home** (based on an estimated 10% diminished value  
per Home with an average value of \$550,000), but in an exact amount to be  
proven at trial, which amount will continue to increase as time passes and which  
will be permanently incurred by the Owners as damages regardless of repairs; and
- f. Loss of use and/or lost past and future profits for the units, for the estimated repair  
duration of at least nine calendar months, in the present sum of **\$22,500 per  
Home** (based on an average monthly rental value of \$2,500 per unit), but in an  
exact amount to be proven at trial, which amount will continue to increase as time  
passes.

### ORS 701.565 NOTICE OF DEFECTS

29.

In an effort to avoid this litigation, and in the form required under ORS 701.565, the  
Owners sent to Horton written notice identifying the construction defects alleged herein,  
describing the necessary repairs, and requesting that Horton perform the necessary repairs or take



1 other appropriate action to address the Owners' concerns. Independent of the notice provided to  
2 Horton, on information and belief, Horton had actual or constructive knowledge of the  
3 construction defects and property damage at the Homes. The Subcontractors also received  
4 similar notices of construction defects and right to cure pursuant to ORS 701.560, *et seq.*

5 30.

6 In light of the foregoing written notice, the Owners' damages are liquidated. Therefore,  
7 pursuant to ORS 82.010, the Owners are entitled to prejudgment interest on each of their claims  
8 herein, running from the date defendants were provided notice, through entry of judgment.

9 **FIRST CLAIM FOR RELIEF**

10 **(Breach of Express Warranty – Against Horton)**

11 31.

12 Plaintiffs reallege paragraphs 1-30 above.

13 32.

14 Horton expressly and impliedly warranted that the Homes would be constructed in  
15 compliance with applicable building codes, laws, ordinances, rules and regulations of public  
16 authorities; in compliance with industry standards and manufacturers' specifications and  
17 guidelines; and that the Homes would be free of material defects in materials or workmanship.

18 33.

19 The Owners provided Horton and its agents with timely notice of the construction defects  
20 and property damage affecting the Homes.

21 34.

22 The Owners have satisfied all conditions precedent to be performed on their part.

23 35.

24 Horton has materially breached the express warranty to the Owners as evidenced by the  
25 construction defects and property damage identified in paragraphs 21-25 above, in Exhibit A,  
26 and elsewhere herein. As a result of Horton's breach, the Owners have been damaged and are

1 entitled to recover the damages set forth in paragraph 28 above, plus plaintiffs' reasonable costs  
2 and disbursements. The Original Owners' purchase and sale agreements provide for the  
3 recovery of the prevailing party's attorneys' fees and costs. Therefore, pursuant to ORS 20.096,  
4 the Owners are entitled to recover their reasonable attorneys' fees and costs.

5 36.

6 Pursuant to the express warranty provided to the Original Owners of the Homes, Horton's  
7 warranty is automatically transferable to subsequent owners of the Homes. Therefore, this claim  
8 is made on behalf of all Owners.

9 **SECOND CLAIM FOR RELIEF**  
10 **(Breach of Contract – Against Horton)**

11 37.

12 Plaintiffs reallege paragraphs 1-30, and 32-36 above.

13 38.

14 As an inducement to the Original Owners to purchase Homes, Horton expressly or  
15 impliedly represented, promised, or agreed with the Owners that the Homes had the attributes set  
16 forth below:

- 17 a. That Horton was dedicated to building "quality crafted" homes.  
18 b. That the Homes were "quality built."  
19 c. That Horton constructed with "attention to detail."  
20 d. That Horton had constructed the Homes "to the quality standards of D. R. Horton,  
21 Inc.—Portland, as well as to all building and municipal codes and specifications."  
22 e. That Horton constructed the Homes with "quality and reliable workmanship."  
23 f. That the Homes were built with "sound construction."  
24 g. That Horton would "take care of any problems."  
25 h. That the Homes were built by a "reputable builder that backed its work with a ten  
26 year warranty."

1 39.

2 In addition to the foregoing representations, Horton impliedly warranted that the Homes  
3 were built in a good and workmanlike manner, in accordance with the approved plans, and in  
4 compliance with applicable building codes, manufacturers' specifications and guidelines, and  
5 industry standards; and that the Homes had no material defects.

6 40.

7 Horton breached its agreement with the Original Owners by failing to deliver the Homes  
8 in the manner and condition promised in paragraphs 38-39 and elsewhere herein. Specifically,  
9 the Homes were and are plagued by the construction defects and property damage described in  
10 paragraphs 21-25 above and elsewhere herein.

11 41.

12 As a result of Horton's breach, the Original Owners have been damaged as set forth in  
13 paragraph 28 above.

14 **THIRD CLAIM FOR RELIEF**

15 **(Breach Of Implied Warranties – Against Horton)**

16 42.

17 Plaintiffs reallege paragraphs 1-30, 32-36, and 38-41 above.

18 43.

19 Horton sold new, single-family residences to the Original Owners. The sales of the  
20 Homes by Horton to the Original Owners carried implied warranties of habitability and  
21 workmanlike construction.

22 44.

23 During the sale transactions, the Original Owners were not in an equal bargaining  
24 position with Horton and were forced to rely on the skill and knowledge of Horton regarding the  
25 construction of the Homes. Such reliance by the Original Owners was reasonable and  
26 appropriate because Horton and Does 1-5 touted their knowledge and skill, and made the

1 representations set forth above in paragraphs 38 and 39. Moreover, Horton and Does 1-5 knew  
2 or should have known that the Original Owners were not aware of any construction defects in, or  
3 resulting property damage to, the Homes.

4 45.

5 Horton's representations were passed onto subsequent purchasers who relied on the  
6 representations in deciding to purchase their Homes. It was foreseeable that Horton's  
7 representations would be passed on to subsequent purchasers.

8 46.

9 The construction defects in, and resulting property damage to, the Homes as set forth in  
10 paragraphs 21-25 above, and elsewhere herein, constitute material breaches of the implied  
11 warranties of habitability and workmanlike construction.

12 47.

13 As a result of Horton's breach of the implied warranties of habitability and workmanlike  
14 construction, the Owners have been damaged as set forth in paragraph 28 above.

15 **FOURTH CLAIM FOR RELIEF**

16 **(Intentional Misrepresentation – Against Horton and Does 1-5)**

17 48.

18 Plaintiffs reallege paragraphs 1-30, 32-35, 37-41, and 43-47 above.

19 49.

20 On information and belief, while actively selling Homes at Murray Ridge, Horton and  
21 Does 1-5 materially misrepresented the quality and characteristics of the Homes in at least two  
22 ways: (i) in sales brochures and other marketing or promotional materials; and (ii) in widely  
23 disseminated oral misrepresentations to purchasers.

24 50.

25 The representations by Horton and Does 1-5 in the sales and promotional materials, and  
26 orally, to the Owners were false and misleading.

1 51.

2 On information and belief, Horton and Does 1-5 were, or should have been, aware of  
3 material construction defects during the course of construction.

4 52.

5 Despite having knowledge of some or all of the defects and risk of resulting damage  
6 alleged in paragraphs 21-25 above and elsewhere herein, Horton and Does 1-5 never revised the  
7 sales and promotional materials, and never revealed any of the construction defects or property  
8 damage to purchasers or prospective purchasers.

9 53.

10 Despite their knowledge, Horton and Does 1-5 made no meaningful effort to correct  
11 permanently the construction defects at the Homes which have caused property damage.

12 54.

13 In the course of marketing and selling the Homes, Horton and Does 1-5 expressly told or  
14 implied to purchasers that the Homes at Murray Ridge had the characteristics and qualities set  
15 forth in paragraphs 38 and 39 and elsewhere herein.

16 55.

17 The representations described in the foregoing paragraph were false and misleading  
18 because they intentionally omitted and concealed the construction defects and resulting property  
19 damage identified in paragraphs 21-25 and elsewhere herein.

20 56.

21 Horton and Does 1-5 knew that the Owners would rely on the sales brochures, sales  
22 agreements, and other marketing materials, as well as the oral misrepresentations or omissions  
23 by Horton and Does 1-5. Horton and Does 1-5 knew that they were making false  
24 representations, or failing to disclose material facts, and engaged in such conduct knowingly and  
25 willingly or in reckless disregard of the truth.

26 ///

1 57.

2 The Owners were unaware that Horton and Does 1-5 were making false representation or  
3 omitting material facts. The Owners did in fact detrimentally rely on the misrepresentations and  
4 omissions by Horton and Does 1-5. Had the Owners known that Horton and Does 1-5 were  
5 making false representations, or had the construction defects and resulting damage been  
6 disclosed to the Owners, the Owners would not have purchased Homes at Murray Ridge.

7 58.

8 The representations set forth above in paragraphs 38 and 39 were passed onto subsequent  
9 purchasers who relied upon the representations in deciding to purchase their Homes. It was  
10 foreseeable the representations of Horton and Does 1-5 would be passed on to subsequent  
11 purchasers.

12 59.

13 As a direct and proximate result of the intentional misrepresentations and material  
14 omissions by Horton and Does 1-5, the Owners have been damaged as set forth in paragraph 28  
15 above.

16 60.

17 In addition to the damages set forth in paragraph 28 above, the Owners intend to file a  
18 motion under ORS 31.725 for leave to amend this Complaint to seek to recover punitive  
19 damages from Horton and Does 1-5 in an amount to be determined at trial.

20 **FIFTH CLAIM FOR RELIEF**

21 **(Negligence - Against All Defendants)**

22 61.

23 Plaintiffs reallege paragraphs 1-30, 32-35, 37-41, 43-47, and 49-60 above.

24 62.

25 Horton was ultimately responsible for all aspects of the development, construction,  
26 marketing, and sales of the Homes and townhomes at Murray Ridge, including planning, design,

1 construction, and sales. Horton, Does 1-5, and the Subcontractors provided the labor and  
2 materials to build Murray Ridge; supervised construction work; and supervised, coordinated, and  
3 inspected the construction to ensure that the Murray Ridge was built in accordance with  
4 approved plans, codes, and industry standards, without any construction defects and consistent  
5 with the representations and warranties to Owners. Additionally, Horton and Does 1-5  
6 supervised the architectural design, and marketed and sold the Homes at Murray Ridge.  
7 Accordingly, Horton and the Subcontractors owed a duty to the Owners, as foreseeable future  
8 plaintiffs, to perform the foregoing tasks in a reasonable, workmanlike, and non-negligent  
9 manner. The failure of Horton and the Subcontractors to comply with these duties caused or  
10 contributed to the defects and resulting damage alleged in paragraphs 21-25 above and elsewhere  
11 herein.

12 63.

13 The Subcontractors provided the labor and materials, and hired and supervised other  
14 subcontractors who provided labor and materials, to build the Homes at Murray Ridge. As such,  
15 the Subcontractors owed the Owners, as foreseeable future plaintiffs, a duty to provide their  
16 labor, materials, and supervision in a reasonable, workmanlike, and non-negligent manner. The  
17 negligence of the Subcontractors in performing their tasks at Murray Ridge, as alleged in  
18 paragraphs 21-25 and elsewhere herein caused the damages alleged in paragraph 28 above and  
19 elsewhere herein.

20 64.

21 Specifically, as alleged above, the Owners purchased units from Horton based on the  
22 representations (identified in paragraphs 38 and 39 above) about Horton's and Does 1-5's  
23 expertise and the quality of construction at Murray Ridge. The Owners relied on Horton and  
24 Does 1-5, as an experienced developer and general contractor, with knowledge of construction,  
25 design, and engineering, to plan, develop, construct, inspect, market, and sell the Homes at  
26 Murray Ridge, in a reasonable, workmanlike, honest, and non-negligent manner.

65.

Defendants knew or should have known, while the Owners were unaware, that there were significant construction defects affecting the Homes at Murray Ridge. Each of the foregoing defendants knew or should have known that the Homes at Murray Ridge were improperly developed, constructed, marketed, and sold. Defendants were negligent in at least the following respects:

- a. Failing to construct the Homes at Murray Ridge in a reasonable and workmanlike manner;
- b. Failing to disclose known construction defects and resulting property damage to the Owners;
- c. Failing to repair the construction defects and resulting property damage to Homes at Murray Ridge;
- d. Failing to warn the Owners of the multiple construction defects in, and property damage to, the Homes at Murray Ridge;
- e. Failing to take corrective measures to protect the Owners from risk of harm arising from the construction defects and property damage at the Homes at Murray Ridge;
- f. Failing to properly coordinate, schedule, oversee, inspect, and supervise contractors, subcontractors, or other workers;
- g. Failing to determine the compatibility or appropriateness of the various building components installed on the Homes at Murray Ridge;
- h. Providing improper plans, specifications, instruction, and direction to contractors and subcontractors; and
- i. Failing to notify contractors and subcontractors of improper construction means and methods, so that reasonable steps could be taken to correct such issues.

66.

As a direct and proximate result of defendants' negligence, plaintiffs have been damaged as set forth in paragraph 28 and elsewhere herein. Defendants' negligence has resulted in ongoing property damage to the Homes at Murray Ridge, as identified in paragraphs 25 and 26, Exhibit A, and elsewhere herein.

///



1 67.

2 The damages to the Owners were reasonably certain to occur and foreseeable if  
3 defendants acted negligently.

4 **SIXTH CLAIM FOR RELIEF**

5 **(Negligent Misrepresentation – Against Horton and Does 1-5)**

6 68.

7 Plaintiffs reallege paragraphs 1-30, 32-35, 37-41, 43-47, 49-60 and 62-67 above.

8 69.

9 A special relationship existed between the Owners and Horton and Does 1-5. Within the  
10 scope of such special relationship, Horton and Does 1-5 – nongratiotously and solely to further  
11 their own economic interests – made the false representations and material non-disclosures  
12 alleged in paragraphs 38 and 39, and elsewhere herein, and failed to act with reasonable care or  
13 competence.

14 70.

15 The Original Owners relied on the representations of Horton and Does 1-5 in deciding to  
16 purchase their Homes.

17 71.

18 The representations set forth above in paragraphs 38 and 39 were passed onto subsequent  
19 purchasers. It was foreseeable the representations of Horton would be passed on to subsequent  
20 purchasers.

21 72.

22 As a direct and proximate result of the negligent misrepresentations by Horton and Does  
23 1-5, the Owners have been damaged as set forth in paragraph 28 above and elsewhere herein.

24 ///

25 ///

26 ///

1 **SEVENTH CLAIM FOR RELIEF**

2 **(Nuisance – Against All Defendants)**

3 73.

4 Plaintiffs reallege paragraphs 1-30, 32-35, 38-41, 43-47, 49-60, 62-67 and 69-72 above.

5 74.

6 Defendants negligently and/or recklessly constructed the Homes in such a way that they  
7 created defective building envelopes that allowed, and currently continue to allow, water  
8 intrusion and resulting damage to the Homes. Although defendants' activities on the Homes  
9 ceased after construction, defendants' activities nonetheless caused, and resulted in, the creation  
10 of physical conditions (i.e., a defective building envelopes) that presently continue to  
11 substantially and unreasonably interfere with and invade the Owners' interest in the private use  
12 and enjoyment of their Homes. Defendants' actions as alleged herein constitute a private  
13 nuisance.

14 75.

15 As a result of such nuisance, the Owners have been damaged as set forth in paragraph 28  
16 above and elsewhere herein.

17 **EIGHTH CLAIM FOR RELIEF**

18 **(Negligence *Per Se* – Against All Defendants)**

19 76.

20 Plaintiffs reallege paragraphs 1-30, 32-35, 37-41, 43-47, 49-60, 62-67, 69-72, and 74-75  
21 above.

22 77.

23 Oregon's Residential Building Code governs the construction, alteration, and repair of  
24 residences in Oregon and establishes uniform performance standards to protect the health, safety,  
25 welfare, comfort, and security of Oregon residents.

26 ///

1 78.

2 As building contractors in Oregon, defendants were required to comply with all  
3 provisions of the Building Code.

4 79.

5 Defendants failed to construct the Homes in compliance with the Building Code as  
6 described above in paragraphs 21-25.

7 80.

8 The Building Code is designed to protect homeowners, such as Plaintiffs, from the type  
9 of damages described above.

10 81.

11 Defendants' conduct as set forth in paragraphs 21-25 constitutes negligence *per se*  
12 because of its failure to construct the Residence according to the Building Code.

13 82.

14 As a direct and proximate result of the negligence *per se* of defendants, Plaintiffs have  
15 suffered property damage and other losses, and are entitled to recover those damages as set forth  
16 in paragraph 28 above.

17 **JURY TRIAL DEMANDED**

18 83.

19 Plaintiffs demand a jury trial on all of their claims.

20 **OFFER TO MEDIATE**

21 84.

22 The Original Owners offer to mediate, or otherwise engage in any applicable alternative  
23 or contractual dispute resolution procedures of their claims as may be required under the  
24 circumstances.

25 ///

26 ///

**PRAYER**

WHEREFORE, the Owners pray for judgment against defendants as follows:

1. On the Owners' First (Breach of Express Warranty) and Third (Breach of Implied Warranty) Claims for Relief, for judgment against Horton in the amounts alleged in paragraph 28 above, with pre- and post-judgment interest thereon at the rate of nine percent (9%) per annum, plus the Owners' reasonable attorneys' fees, costs, and disbursements incurred herein;

2. On the Owners' Second (Breach of Contract) Claim for Relief, for judgment against Horton in the amounts alleged in paragraph 28 above, with pre- and post-judgment interest thereon at the rate of nine percent (9%) per annum, plus the Owners' reasonable attorneys' fees, costs, and disbursements incurred herein;

3. On the Owners' Fourth (Intentional Misrepresentation) and Sixth (Negligent Misrepresentation) Claims for Relief, for judgment against Horton and Does 1-5 in the amounts alleged in paragraph 28 above, with pre- and post-judgment interest thereon at the rate of nine percent (9%) per annum, plus the Owners' reasonable costs and disbursements incurred herein;

4. On the Owners' Fifth (Negligence), Seventh (Nuisance), and Eighth (Negligence *Per Se*) Claims for Relief, for judgment against all defendants in the amounts alleged in paragraph 28 above, with pre- and post-judgment interest thereon at the rate of nine percent (9%) per annum, plus the Owners' reasonable costs and disbursements incurred herein; and

5. For such further and additional relief the court deems just and equitable.

DATED: May 5, 2009.

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## **EXHIBIT A**

### **15595 SW Snowy Owl Lane:**

#### **Weather Resistant Barrier (WRB) Defects:**

- WRB (Asphalt Saturated Kraft Paper) was improperly reverse lapped over the windowsill-nailing flange.
- WRB is missing the code required two inch vertical lap.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

#### **Window Issues:**

- Fasteners were installed within three inches of the window nailing flange corner.
- Non-corrosion resistant fasteners were used for attachment of the windows.
- Windowsill nailing flanges were broken.

#### **Hardi Plank Composite Siding System Issues:**

- Fasteners were improperly installed within the 3/8 inch of siding board edge.
- Corrosion resistant fasteners were not used to attachment the siding and trim.
- The siding system does not achieve the required two inch clearance at the transition to final grade as required by the manufacturer.
- The siding system is sealed to the transition flashings, therefore not achieving clearance.
- End cuts of wood trim are unpainted and unprimed.

#### **Masonry Veneer Issues:**

- The masonry veneer does not have the code required minimum one inch airspace from the wood wall assembly.

#### **Flashing Issues:**

- "Z" metal flashing was installed above windows, doors, and bellybands on the home improperly reverse lapped over the WRB.
- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly sealed to the siding.
- Unsealed voids were found at the ends of window head flashings.
- Kick-out/diverter flashings have been omitted at roof to wall junctures on the home.
- Cap flashing has been omitted at the head of the deck support columns.

#### **Composition Roof Issues:**

- Roof underlayment has not been lapped into the gutter.
- A gutter and downspout system have been omitted.
- Multiple unsealed penetrations were found in the composition shingles.

### **15635 SW Snowy Owl Lane:**

#### **Weather Resistant Barrier (WRB) Defects:**

- WRB (DuPont Tyvek) was improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

#### **Window Issues:**

- Manufacturer required fasteners were omitted at the manufacturer required locations in the windowsill nailing flanges.

- Window nailing flanges were not set in sealant.

**Deck Columns and Deck Flashing Issues:**

- Cap flashings have been omitted at the deck support columns.
- "Z" metal flashing was reverse lapped with WRB.

**Hardi Plank Composite Siding System:**

- Fasteners were improperly installed within 3/8 inch of the siding board edge.
- The siding system does not achieve the required ¼ inch clearance at the transition flashings as required by the manufacturer.
- The siding system is sealed to the transition flashings, therefore not achieving the required ¼ inch clearance.
- End cuts of wood trim are unpainted and unprimed.

**Flashing Issues:**

- Diverter flashings have been improperly sized at roof to wall junctures on the home.
- "Z" metal flashing installed above windows, doors and belly bands on the home is improperly reverse lapped over the WRB.

**15655 SW Snowy Owl Lane:**

**Weather Resistant Barrier (WRB) Defects:**

- WRB (DuPont Tyvek) was improperly reverse lapped over the windowsill-nailing flange.

**Window Issues:**

- Required flashings are not in place.

**Deck Flashing Issues:**

- Sheet metal ledger flashing has been omitted from the deck support and deck plank interface.

**Hardi Plank Composite Siding System:**

- Fasteners were improperly installed in the butt joints between two courses of siding.
- The siding system does not achieve the required six inch clearance at the transitions to grade as required by the manufacturer.
- The siding system does not achieve the required two inch clearance at the transitions to horizontal surfaces as required by the manufacturer.
- The siding system is sealed to the transition flashings, therefore not achieving the required ¼ inch clearance.
- End cuts of wood trim are unpainted and unprimed.

**Masonry Veneer Issues:**

- The masonry veneer does not have the code required minimum one inch airspace from the wood wall assembly.
- The masonry veneer siding system does not have the code required weep holes below the soldier course of the wainscot wall.

**Flashing Issues:**

- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.
- The required kick-out/diverter flashings have been omitted at roof to wall junctures or are present but not properly dimensioned.
- Flashing has been omitted from the siding to brick interface.

**Composition Roof Issues:**

- Skylight fasteners have broken through the skylight nailing flanges at every location.
- Gutter sections have been cut short.
- Drip edge flashings have been omitted, leaving roof sheathing and truss tail surfaces exposed.
- A gutter and edge flashings have been omitted.
- Fastener heads have been left exposed.

**Crawlspace Issues:**

- The sump pump for the foundation system appears to be a plastic 5-gallon bucket in which the sump pump has been improperly placed above grade, rendering the sump pump ineffective.

**Interior Gypsum Sheathing:**

- Nail pops were observed protruding through the ceiling of the home.

**15707 SW Snowy Owl Lane:**

**Weather Resistant Barrier (WRB) Defects:**

- WRB (DuPont Tyvek) was improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

**Window Issues:**

- Fasteners were installed within three inches of window flange corners.
- Fasteners in the window flanges have corroded.
- A window flange is cracked.

**Deck Columns and Deck Flashing Issues:**

- Cap flashings have been omitted at the deck support columns.
- The weather resistant barrier was not properly lapped at the deck support columns.

**Hardi Plank Composite Siding System:**

- Fasteners were improperly installed within 3/8 inch of siding board edge.
- Fasteners in the siding have corroded.
- The siding system does not achieve the required two inch clearance at the transitions to hard surfaces as required by the manufacturer.
- The siding system is sealed to the transition flashings, therefore not achieving the required clearance.
- End cuts of wood trim are unpainted and unprimed.

**Masonry Veneer Issues:**

- The masonry veneer does not have the code required weep holes below the soldier course on the wainscot wall.
- The masonry veneer does not have the code required minimum one inch airspace from the wood wall assembly.

**Flashing Issues:**

- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.
- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly sealed to the siding.
- Kick-out/diverter flashings have been omitted at roof to wall junctures on the home.

**Composition Roof Issues:**

- Multiple unsealed penetrations were found in the compositions shingles.

**15757 SW Snowy Owl Lane:**

**Weather Resistant Barrier (WRB) Defects:**

- WRB (DuPont Tyvek) was improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

**Deck Columns and Deck Flashing Issues:**

- Deck flashings were omitted at the deck support and deck plank interface.

**Hardi Plank Composite Siding System Issues:**

- Fasteners were improperly installed in the butt joints between two courses of siding.
- Overdriven fasteners have broken the plane of the siding board.
- The siding system does not achieve the required six inch clearance at the transitions to grade as required by the manufacturer.
- The siding system does not achieve the required two inch clearance at the base of the deck support columns as required by the manufacturer.
- The siding system does not achieve the required ¼ inch clearance at the transition flashings as required by the manufacturer.
- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- End cuts of wood trim are unpainted and unprimed.

**Stone Veneer Siding System Issues:**

- The stone veneer siding system does not have the code required weep holes or the required flashing at the top and at the base of the wainscot wall.

**Asphalt Shingle Roof System Issues:**

- Sheet metal flashing was reverse lapped over the surface of the WRB.

**15771 SW Snowy Owl Lane:**

**Weather Resistant Barrier (WRB) Defects:**

- WRB (DuPont Tyvek) was improperly reverse lapped over the windowsill-nailing flange.
- There are voids in the WRB's coverage over the wall sheathing.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

**Window Issues:**

- Required fasteners were omitted at the manufacturer supplied nailing slots in the windowsill nailing-flanges.

**Deck Columns and Deck Flashing Issues:**

- Cap flashings were omitted at the deck support columns.

**Hardi Plank Composite Siding System Issues:**

- Fasteners were improperly installed in the butt joints between two courses of siding.
- Overdriven fasteners have broken the plane of the siding board.
- The siding system does not achieve the required ¼ inch clearance at the transition flashings as required by the manufacturer.



- The siding system is sealed to the transition flashings, therefore not achieving the required ¼ inch clearance.
- End cuts of wood trim are unpainted and unprimed.

**Masonry Veneer Siding System Issues:**

- The masonry veneer siding system does not have the code required minimum one inch airspace from the wood wall assembly.

**Flashing Issues:**

- Diverter flashings have been omitted at roof to wall junctures on the home.
- “Z” metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.

**15783 SW Snowy Owl Lane:**

**Weather Resistant Barrier (WRB) Defects:**

- WRB (DuPont Tyvek) was improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

**Deck Columns and Deck Flashing Issues:**

- Cap flashings have been omitted at the deck support columns.

**Hardi Plank Composite Siding System Issues:**

- Fasteners were improperly installed in the butt joints between two courses of siding.
- Non-corrosion resistant fasteners were used to attach siding to the home.
- The siding system does not achieve the required ¼ inch clearance at the transition flashings as required by the manufacturer.
- The siding system is sealed to the transition flashings, therefore is not achieving the required ¼ inch clearance.
- The siding system does not achieve the required two inch clearance at the transition flashings as required by the manufacturer.

**Masonry Veneer Siding System Issues:**

- The masonry veneer siding system does not have the code required weep holes and flashing at the base of the wainscot wall.
- The masonry veneer does not have the industry standard minimum clearance of four inches from the grade.

**Flashing Issues:**

- Diverter flashings have been omitted at roof to wall junctures on the home.
- “Z” metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.

**Composition Roof Issues:**

- Underlayment has been cut short at the gutter and rake ends.
- Fasteners are pulling out of the roof through the shingles on the home.

**15845 SW Snowy Owl Lane:**

**Weather Resistant Barrier (WRB) Defects:**

- WRB (DuPont Tyvek) was improperly reverse lapped over the windowsill-nailing flange.

- Moistop was improperly reverse lapped over the windowsill-nailing flange.

Window Issues:

- Manufacturer required fasteners were omitted.

Deck Columns and Deck Flashing Issues:

- Unsecured "Z" metal flashings have been reverse lapped with the WRB on the deck support columns.

Hardi Plank Composite Siding System Issues:

- Fasteners were improperly installed in the butt joints between two courses of siding.
- Overdriven fasteners have broken the plane of the siding board.
- The siding system does not achieve the required ¼ inch clearance at the transition flashings as required by the manufacturer.
- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- End cuts of wood trim are unpainted and unprimed.

Masonry Veneer Siding System Issues:

- The masonry veneer siding system does not have the code required minimum one inch airspace from the wood wall assembly.

Flashing Issues:

- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.

Attic Issues:

- Flexible exhaust ducts are routed and terminate at the attic vents toward the roof ridge.

Crawlspace Issues:

- The vapor barrier installed in the crawlspace is disturbed and torn in various locations.

**15909 SW Snowy Owl Lane:**

Weather Resistant Barrier (WRB) Defects:

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

Hardi Plank Composite Siding System Issues:

- Fasteners improperly installed in the butt joints between two courses of siding.
- The siding system does not achieve the required six inches of clearance at the finished grades as required by the manufacturer.
- The siding system does not achieve the required ¼ inch clearance at the transition flashings as required by the manufacturer.
- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- End cuts of wood trim are unpainted and unprimed.

Masonry Veneer Siding System Issues:

- The masonry veneer siding system does not have the code required minimum one inch airspace from the wood wall assembly.

Flashing Issues:

- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.

Composition Roof Issues:

- Underlayment has been cut short at the gutter and rake ends.

#### **15915 SW Snowy Owl Lane:**

##### **Weather Resistant Barrier (WRB) Defects:**

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

##### **Window Issues:**

- Manufacturer required fasteners have been omitted.
- Corroded fasteners were present in the window nailing-flange.

##### **Deck Columns and Deck Flashing Issues:**

- Cap flashings have been omitted at the head of deck support columns.

##### **Hardi Plank Composite Siding System Issues:**

- Fasteners improperly installed in the butt joints between two courses of siding.
- The siding system does not achieve the required six inches of clearance at the finished grades as required by the manufacturer.
- The siding system does not achieve the required ¼ inch clearance at the transition flashings as required by the manufacturer.
- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- End cuts of wood trim are unpainted and unprimed.

##### **Masonry Veneer Siding System Issues:**

- The masonry veneer siding system does not have the code required minimum one inch airspace from the wood wall assembly.
- The masonry veneer siding system does not have the code required weep holes and flashing at the base of the wainscot wall.

##### **Flashing Issues:**

- A nail was improperly placed through the horizontal surface of the “Z” flashing.
- Diverter flashings have been omitted at roof to wall junctures on the home.
- The “Z” metal head flashings installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.

##### **Composition Roof Issues:**

- Multiple unsealed penetrations in the composition shingles.

##### **Attic Issues:**

- Flexible exhaust ducts are routed and terminate at the attic vents toward the roof ridge.

#### **15935 SW Snowy Owl Lane:**

##### **Weather Resistant Barrier (WRB) Defects:**

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

##### **Hardi Plank Composite Siding System Issues:**

- The siding has improper fastening techniques in securing the HardiPlank siding, including over-driven fasteners and fasteners improperly placed in butt joints.
- The siding system is sealed to the transition flashings in lieu of achieving clearance.
- Concrete steps at front entry area are poured directly against siding planks.

**Deck Columns:**

- Omitted cap flashing was observed at head of deck columns.

**Masonry Veneer Siding System Issues:**

- The masonry veneer does not conform to code required minimum one inch airspace from the wood wall assembly. According to Chapter 7, Subsection 703.7.2.2, Airspace, of the One and Two-Family Dwelling Code, "the veneer shall be separated from the sheathing by an airspace of a minimum of 1-inch."

**Flashing Issues:**

- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly sealed to siding.
- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the Tyvek WRB.

**15955 SW Snowy Owl Lane:**

**Weather Resistant Barrier (WRB) Defects:**

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

**Deck Columns and Deck Flashing Issues:**

- Deck flashings have been omitted at the deck support and deck plank interface.

**Hardi Plank Composite Siding System Issues:**

- Fasteners improperly installed in the butt joints between two courses of siding.
- Overdriven fasteners break the plane of the siding board.
- The siding system does not achieve the required six inches of clearance at the finished grades as required by the manufacturer.
- The siding system does not achieve the required ¼ inch clearance at the transition flashings as required by the manufacturer.
- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- End cuts of wood trim are unpainted and unprimed.

**Masonry Veneer Siding System Issues:**

- The masonry veneer siding system does not have the code required weep holes and flashing below the soldier course and at the base of the wainscot wall.
- The masonry veneer does not have the code required minimum one inch airspace from the wood wall assembly.
- Corroded fasteners in trim boards.

**Flashing Issues:**

- Diverter flashings have been omitted at roof to wall junctures on the home.
- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.

**Composition Roof Issues:**

- A gutter and diverter flashing have been omitted at a small "bump-out" roof on the east elevation.

### **15975 SW Snowy Owl Lane:**

#### **Weather Resistant Barrier (WRB) Defects:**

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

#### **Window Issues:**

- Windows were installed out of square.
- Windowsill nailing flanges were broken.

#### **Hardi Plank Composite Siding System Issues:**

- Fasteners improperly have been installed within the 3/8 inch of siding board edge.
- Corrosion resistant fasteners were not used in the attachment of siding and trim.
- The siding system does not achieve the required two inches clearance at the transition to hard surfaces as required by the manufacturer.
- The siding system does not achieve the required six inches of clearance at the finished grades as required by the manufacturer.
- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- End cuts of wood trim are unpainted and unprimed.

#### **Stone Veneer Issues:**

- The stone veneer has voids in the mortar below the windows.

#### **Flashing Issues:**

- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.
- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly sealed to the siding.
- Unsealed voids were found at the ends of window head flashings.
- Cap flashing has been omitted at the head of the deck support columns.

#### **Composition Roof Issues:**

- Roof underlayment has not been lapped into the gutter.

### **16085 SW Snowy Owl Lane:**

#### **Weather Resistant Barrier (WRB) Defects:**

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

#### **Deck Columns and Deck Flashing Issues:**

- Deck flashings have been omitted at the deck plank interface.
- Cap flashings have been omitted on the deck support columns.

#### **Hardi Plank Composite Siding System Issues:**

- Fasteners improperly have been installed within the 3/8 inch of siding board edge.
- Corrosion resistant fasteners were not used in the attachment of siding and trim.
- Overdriven fasteners break the plane of the siding board.
- The siding system does not achieve the required two inches clearance at the transition to hard surfaces as required by the manufacturer.
- The siding system does not achieve the required six inches of clearance at the finished grades as required by the manufacturer.

- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- End cuts of wood trim are unpainted and unprimed.

**Masonry Veneer Siding System Issues:**

- The masonry veneer siding system does not have the code required weep holes and flashing below the soldier course and at the base of the wainscot wall.
- The masonry veneer does not have the code required minimum one inch airspace from the wood wall assembly.

**Flashing Issues:**

- "Z" metal flashing installed above windows, doors and belly bands on the home is improperly reverse lapped over the WRB.
- Kick-out/diverter flashings have been omitted at roof to wall junctures on the homes.

**Composition Roof Issues:**

- Gutters and diverter flashings have been omitted at locations on the home.

**Attic Issues:**

- Flexible exhaust ducts are routed and terminate at below passive attic vents.

**Crawlspace Issues:**

- The sump for the foundation system is what appears to be a plastic 5-gallon bucket of which the sump pump has been improperly placed above grade, rendering the sump pump ineffective.
- Tears and voids were observed in the vapor barrier in the crawlspace.

**16088 SW Snowy Owl Lane:**

**Weather Resistant Barrier (WRB) Defects:**

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

**Hardi Plank Composite Siding System Issues:**

- Fasteners improperly have been installed within the 3/8 inch of siding board edge.
- Excessive gaps between the end of the siding board and the wood trim.
- Corroded fasteners in trim boards.
- Overdriven fasteners break the plane of the siding board.
- The siding system does not achieve the required two inches clearance at the transition to hard surfaces as required by the manufacturer.
- The siding system does not achieve the required six inches of clearance at the finished grades as required by the manufacturer.
- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- The siding system does not achieve the required ¼ inch clearance at the transition flashings as required by the manufacturer.
- End cuts of wood trim are unpainted and unprimed.

**Masonry Veneer Siding System Issues:**

- The masonry veneer siding system does not have the code required weep holes and flashing below the soldier course and at the base of the wainscot wall.
- The masonry veneer does not have the code required minimum one inch airspace from the wood wall assembly.

Flashing Issues:

- "Z" metal flashing installed above windows, doors and belly bands on the home is improperly reverse lapped over the WRB.

Composition Roof Issues:

- Gutter and edge flashings have been omitted at locations on the home.
- Fastener heads have been left exposed.
- Damaged ridge shingles are present.
- A plumbing vent pipe flashing was not secured with fasteners.

**16100 SW Snowy Owl Lane:**

Weather Resistant Barrier (WRB) Defects:

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

Hardi Plank Composite Siding System Issues:

- Fasteners improperly have been installed in the butt joints between two courses of siding.
- Unsealed penetrations in the cladding system exist at various locations around the building.
- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- The siding system does not achieve the required ¼ inch clearance at the transition flashings as required by the manufacturer.
- End cuts of wood trim are unpainted and unprimed.

Masonry Veneer Siding System Issues:

- The masonry veneer extends below grade in various locations.

Flashing Issues:

- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.
- The proper transition flashing has been omitted from the siding to brick soldier course.

**16103 SW Snowy Owl Lane:**

Weather Resistant Barrier (WRB) Defects:

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

Window Issues:

- Fasteners were installed within three inches of the window nailing flange corner.
- Fasteners were installed farther than ten inches from the window nailing flange corner.

Hardi Plank Composite Siding System Issues:

- Fasteners improperly have been installed within the 3/8 inch of siding board edge.
- Corrosion resistant fasteners were not used in the attachment of siding and trim.
- The siding system does not achieve the required two inches clearance at the transition to hard surfaces as required by the manufacturer.
- The siding system does not achieve the required six inches of clearance at the finished grades as required by the manufacturer.

- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- End cuts of wood trim are unpainted and unprimed.
- Voids/missing sealant around utility penetrations through the siding.

#### Masonry Veneer Siding System Issues:

- The masonry veneer siding system does not have the code required weep holes and flashing below the soldier course and at the base of the wainscot wall.
- The masonry veneer does not have the code required minimum one inch airspace from the wood wall assembly.
- The masonry veneer has voids in the mortar at the transition to the wood trim.

#### Flashing Issues:

- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.
- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly sealed to the siding.
- Flashings have been omitted at the horizontal trim projections on the home.
- Cap flashing has been omitted at the head of the deck support columns.
- Kick-out/diverter flashings have been omitted at roof to wall junctures on the home.

#### Composition Roof Issues:

- Multiple unsealed penetrations were found in the composition shingles.
- Roof underlayment has not been lapped into the gutter.
- Roof underlayment cut short from the rake edge.
- Vent pipe flashings have not been secured to the edge of the roof.

### **16117 SW Snowy Owl Lane:**

#### Weather Resistant Barrier (WRB) Defects:

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

#### Window Issues:

- Manufacturer required corrosion resistant fasteners have been omitted.
- A corner of one window nailing flange was found broken.

#### Deck Columns and Deck Flashing Issues:

- Cap flashings have been omitted at the deck support columns.

#### Hardi Plank Composite Siding System Issues:

- Fasteners improperly installed in the butt joints between two courses of siding.
- Non-corrosion resistant fasteners were used to attach the siding to the home.
- Concrete flatwork has been poured in direct contact with the fiber cement siding.
- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- The siding system does not achieve the required ¼ inch clearance at the transition flashings as required by the manufacturer.
- End cuts of wood trim are unpainted and unprimed.

#### Flashing Issues:

- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.



- The proper transition flashing has been omitted from the siding to cultured stone base.
- Composition Roof Issues:
- Multiple unsealed penetrations in the composition roof shingles.

#### **16129 SW Snowy Owl Lane:**

##### **Weather Resistant Barrier (WRB) Defects:**

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

##### **Window Issues:**

- Manufacturer required corrosion resistant fasteners have been omitted.
- Fasteners were not installed according to manufacturers specification.

##### **Hardi Plank Composite Siding System Issues:**

- Fasteners improperly installed in the butt joints between two courses of siding.
- Non-corrosion resistant fasteners were used to attach the siding to the home.
- The siding system does not achieve the required two inches clearance at the transition to hard surfaces, such as the concrete flatwork as required by the manufacturer.
- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- The siding system does not achieve the required ¼ inch clearance at the transition flashings as required by the manufacturer.
- End cuts of wood trim are unpainted and unprimed.

##### **Masonry Veneer Siding System Issues:**

- The masonry veneer siding system does not have the code required weep holes and flashing below the soldier course and at the base of the wainscot wall.
- The masonry veneer does not have the code required minimum one inch airspace from the wood wall assembly.

##### **Flashing Issues:**

- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.
- Diverter flashings have been omitted at roof to wall junctures on the home.

##### **Composition Roof Issues:**

- Multiple damaged composition roofing shingles.
- Multiple unsealed corroded fasteners.

#### **16140 SW Snowy Owl Lane:**

##### **Weather Resistant Barrier (WRB) Defects:**

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.

##### **Hardi Plank Composite Siding System Issues:**

- Fasteners improperly installed in the butt joints between two courses of siding.
- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- End cuts of wood trim are unpainted and unprimed.
- Corroded fasteners were found in the trim boards.

##### **Masonry Veneer Siding System Issues:**

- The masonry veneer siding system does not have the code required weep holes and flashing below the soldier course and at the base of the wainscot wall.
- The masonry veneer does not have the code required minimum one inch airspace from the wood wall assembly.
- The masonry veneer extends below grade at locations on the residence.

Flashing Issues:

- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.
- Diverter flashings have been omitted or improperly sized at roof to wall junctures on the home.
- Gutters have been omitted at locations on the home.

Composition Roof Issues:

- Underlayment is cut short at gutter edge.
- Sealant failure at fastener heads.
- Torn/damaged shingles.

Attic Issues:

- Flexible exhaust ducts are routed and terminate at the attic vents.

Crawlspace Issues:

- Tears and voids in vapor barrier in crawl space, exposing soil.

**16147 SW Snowy Owl Lane:**

Weather Resistant Barrier (WRB) Defects:

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

Deck Columns and Deck Flashing Issues:

- Flashings have been omitted at the deck support columns and deck plank surface.

Hardi Plank Composite Siding System Issues:

- Fasteners improperly installed in the butt joints between two courses of siding.
- Over driven fasteners are present that break the plane of the siding board.
- Sealant has failed at trim interfaces and at butt joints.
- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- The siding system does not achieve the required ¼ inch clearance at the transition flashings as required by the manufacturer.
- End cuts of wood trim are unpainted and unprimed.

Stone Veneer Siding System Issues:

- The stone veneer siding system extends below grade.

Flashing Issues:

- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.
- Flashings have been omitted at various locations on the home.
- Fasteners have been installed through the horizontal surface of the metal flashing.

Composition Roof Issues:

- Multiple corroded fasteners were found.

Attic Issues:

- Flexible exhaust ducts are routed and terminate at the attic vents.

Crawlspace Issues:

- Tears and voids in vapor barrier in crawl space, exposing soil.

**16153 SW Snowy Owl Lane:**

Weather Resistant Barrier (WRB) Defects:

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.
- Membrane flashing was omitted at the window nailing flanges.

Window Issues:

- Manufacturer required corrosion resistant fasteners have been omitted.
- Window nailing flanges were not set in sealant.
- Window nailing flanges were broken.

Deck Columns and Deck Flashing Issues:

- Cap flashings have been omitted on the deck support columns.

Hardi Plank Composite Siding System Issues:

- Fasteners improperly installed in the butt joints between two courses of siding.
- Over driven fasteners are present that break the plane of the siding board.
- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- The siding system does not achieve the required ¼ inch clearance at the transition flashings as required by the manufacturer.
- End cuts of wood trim are unpainted and unprimed.

Masonry Veneer Siding System Issues:

- The masonry veneer does not have the code required minimum one inch airspace from the wood wall assembly.

Flashing Issues:

- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.

Attic Issues:

- Flexible exhaust ducts are routed and terminate at the attic vents.

Crawlspace Issues:

- Water is penetrating the concrete foundation wall and is flowering into crawlspace.
- Sump pump installed requires 10"-12" of water before the pump is operated.

**16160 SW Snowy Owl Lane:**

Weather Resistant Barrier (WRB) Defects:

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

Window Issues:

- Fasteners were installed within three inches of window flange corners.
- Corroded fasteners were found in the window flanges.

Hardi Plank Composite Siding System Issues:

- Fasteners improperly installed within 3/8 inch of siding board edge.

- Corroded fasteners were found in the trim boards.
- The siding system does not achieve the required two inch clearance at the transition to hard surfaces as required by the manufacturer.
- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- End cuts of wood trim are unpainted and unprimed.

#### Masonry Veneer Siding System Issues:

- The masonry veneer does not have the code required weep holes below the soldier course on the wainscot wall.
- The masonry veneer does not have the code required minimum one inch airspace from the wood wall assembly.

#### Flashing Issues:

- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.
- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly sealed to the siding.
- "Z" metal flashing has been omitted above various windows on the home.
- Kick-out/diverter flashings have been omitted at roof to wall junctures on the home.

#### Composition Roof Issues:

- Multiple unsealed penetrations were found in the composition shingles.

### **16167 SW Snowy Owl Lane:**

#### Weather Resistant Barrier (WRB) Defects:

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

#### Window Issues:

- Required fasteners were omitted at the manufacturer supplied nailing slots in the windowsill nailing-flanges.
- Corroded fasteners were found in the window-nailing flanges.

#### Deck Columns and Deck Flashing Issues:

- Cap flashings have been omitted on the deck support columns.

#### Hardi Plank Composite Siding System Issues:

- Fasteners improperly installed in the butt joints between two courses of siding.
- Non-corrosion resistant fasteners were used to attach the siding to the home.
- The siding system does not achieve the required two inches clearance at the transition to horizontal surfaces as required by the manufacturer.
- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- The siding system does not achieve the required ¼ inch clearance at the transition flashings as required by the manufacturer.
- End cuts of wood trim are unpainted and unprimed.

#### Masonry Veneer Siding System Issues:

- The masonry veneer does not have the code required weep holes below the soldier course on the wainscot wall.

- The masonry veneer does not have the code required minimum one inch airspace from the wood wall assembly.

Flashing Issues:

- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.
- Diverter flashings have been omitted at roof to wall junctures on the home.
- Flashing was omitted from the roof rake edges.

Attic Issues:

- Flexible exhaust ducts are routed and terminate in the attic and not directly to the exterior.

**16179 SW Snowy Owl Lane:**

Weather Resistant Barrier (WRB) Defects:

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

Deck Columns and Deck Flashing Issues:

- Cap flashings have been omitted on the deck support columns.

Hardi Plank Composite Siding System Issues:

- Fasteners improperly installed in the butt joints between two courses of siding.
- Non-corrosion resistant fasteners were used to attach the siding to the home.
- The siding system does not achieve the required two inches clearance at the transition to horizontal surfaces as required by the manufacturer.
- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- The siding system does not achieve the required ¼ inch clearance at the transition flashings as required by the manufacturer.
- End cuts of wood trim are unpainted and unprimed.

Masonry Veneer Siding System Issues:

- The masonry veneer does not have the code required weep holes below the soldier course on the wainscot wall.
- The masonry veneer does not have the code required minimum one inch airspace from the wood wall assembly.

Flashing Issues:

- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.
- Diverter flashings have been omitted at roof to wall junctures on the home.
- A nail was found through the horizontal leg of the "Z" metal flashing.

Composition Roof Issues:

- Multiple unsealed penetrations in the composition shingles.

Attic Issues:

- Flexible exhaust ducts are routed and terminate in the attic and not directly to the exterior.

### **16200 SW Snowy Owl Lane:**

#### **Weather Resistant Barrier (WRB) Defects:**

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

#### **Window Issues:**

- Manufacturer required corrosion resistant fasteners have been omitted at required locations in the windowsill nailing flanges.
- Window nailing flanges were not set in sealant.

#### **Hardi Plank Composite Siding System Issues:**

- Fasteners improperly installed in the butt joints between two courses of siding.
- Over driven fasteners break the plane of the siding board.
- The siding system does not achieve the required six inch clearance at the finished grade as required by the manufacturer.
- The siding system does not achieve the required two inches clearance at the transition to hard surfaces as required by the manufacturer.
- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- The siding system does not achieve the required ¼ inch clearance at the transition flashings as required by the manufacturer.
- End cuts of wood trim are unpainted and unprimed.
- Siding has been installed over foundation vents.

#### **Flashing Issues:**

- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.

### **16205 SW Snowy Owl Lane:**

#### **Weather Resistant Barrier (WRB) Defects:**

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

#### **Hardi Plank Composite Siding System Issues:**

- Fasteners improperly installed in the butt joints between two courses of siding.
- Sealant failure at siding trim connections and at the butt joints in the siding board courses.
- Non-corrosion resistant fasteners were used to attach the siding to the home.
- The siding system does not achieve the required two inches clearance at the transition to hard surfaces as required by the manufacturer.
- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- The siding system does not achieve the required ¼ inch clearance at the transition flashings as required by the manufacturer.
- End cuts of wood trim are unpainted and unprimed.

#### **Masonry Veneer Siding System Issues:**

- The masonry veneer siding system does not have the code required weep holes and flashing below the soldier course and at the base of the wainscot wall.

- The masonry veneer does not have the code required minimum one inch airspace from the wood wall assembly.
- The masonry veneer extends below grade at locations on the residence.

Flashing Issues:

- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.
- Diverter flashings have been improperly sized at roof to wall junctures on the home.

Composition Roof Issues:

- Fasteners securing the roof flashings in place are corroded.
- The roof underlayment is cut short at the rake and gutter edges.

**16252 SW Snowy Owl Lane:**

Weather Resistant Barrier (WRB) Defects:

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

Hardi Plank Composite Siding System Issues:

- The siding system does not achieve the required two inches clearance at the transition to hard surfaces as required by the manufacturer.
- The siding system is sealed to the transition flashings and does not achieve the required ¼ inch clearance as required by the manufacturer.

Masonry Veneer Siding System Issues:

- The masonry veneer siding system has voids in the mortar.
- Flashing has been omitted at transition to wood trim.

Flashing Issues:

- "Z" metal flashing installed above windows, doors and bellybands on the home are improperly sealed to the siding.

Composition Roof Issues:

- Multiple unsealed penetrations were found in the composition shingles.
- There is a damaged boot jack at vent pipe.
- Roof underlayment cut short leaving sheathing exposed.
- Gutter ends in contact with siding the required one inch gap has been omitted.

**16255 SW Snowy Owl Lane:**

Weather Resistant Barrier (WRB) Defects:

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.

Deck Columns and Deck Flashing Issues:

- Deck flashings have been omitted at the deck ledger.

Hardi Plank Composite Siding System Issues:

- Fasteners improperly installed in the butt joints between two courses of siding.
- Over driven fasteners break the plane of the siding board.
- The siding system does not achieve the required six inch clearance at the finished grade as required by the manufacturer.
- The siding system does not achieve the required two inches clearance at the transition to hard surfaces as required by the manufacturer.

- End cuts of wood trim are unpainted and unprimed.
- Corroded fasteners in trim boards.

**Flashing Issues:**

- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.
- Diverter flashings have been omitted at roof to wall junctures on the home.
- Sheet metal flashing has been omitted from the siding to stone interface.

**Composition Roof Issues:**

- A gutter and edge flashing have been omitted at a small "bump-out" roof on the east elevation.
- The roof underlayment does not extend to the edge of the roof sheathing.

**16335 SW Snowy Owl Lane:**

**Weather Resistant Barrier (WRB) Defects:**

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

**Hardi Plank Composite Siding System Issues:**

- The siding system does not achieve required 1 - 2" clearance at the transition to hard surfaces as required by the manufacturer.
- The siding system is sealed to the transition flashings in lieu of achieving clearance.
- The siding has fasteners placed in the butt joints (joint created at the intersection of two board ends).
- Fasteners used to secure siding are not corrosion resistant as required by code.
- The siding has voids at utility penetrations.
- A gutter was omitted on a roof section on the East elevation.

**Foundation Wall Issues:**

- Foundation vents have been filled with concrete.

**Masonry Veneer Siding System Issues:**

- Weep holes and flashing were omitted or covered by concrete flatwork at base of wainscot wall.

**Flashing Issues:**

- "Z" metal flashing installed above windows, doors, and bellybands on the home are improperly sealed to the siding.
- The deck ledger board is attached to the outside of the fiber cement siding and is not properly flashed.
- Required kick-out flashings are missing at roof-to-wall junctures on the home.
- A fastener was driven through the horizontal leg of the "Z" metal flashing at the trim between the brick veneer and fiber cement siding.
- Step flashing laps the WRB above it by less than the code-required 2".

**Composition Roof Issues:**

- Multiple unsealed penetrations were found in the composition shingles.
- Roof underlayment was cut short, leaving sheathing exposed.
- Voids in the roof flashing are present at the rake to ridge intersection on front elevation.



**Foundation Wall Issues:**

- Foundation vents have been filled with concrete and do not allow for proper crawlspace ventilation.

**16345 SW Snowy Owl Lane:**

**Weather Resistant Barrier (WRB) Defects:**

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.

**Window Issues:**

- Required flashings are not in place.

**Deck Flashing Issues:**

- The open deck on the rear of the residence has been fastened through the HardiPlank siding system.
- Sheet metal ledger flashing has been omitted from the ledger board.

**Hardi Plank Composite Siding System Issues:**

- Fasteners improperly installed in the butt joints between two courses of siding.
- The siding system does not achieve the required six inch clearance at the finished grade as required by the manufacturer.
- The siding system does not achieve the required two inches clearance at the transition to hard surfaces as required by the manufacturer.
- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- End cuts of wood trim are unpainted and unprimed.

**Masonry Veneer Siding System Issues:**

- The masonry veneer siding system does not have the code required weep holes and flashing below the soldier course and at the base of the wainscot wall.
- The masonry veneer does not have the code required minimum one inch airspace from the wood wall assembly.
- The masonry veneer does not have the industry standard minimum clearance of four inches from the grade and in locations is installed below grade.

**Flashing Issues:**

- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.
- Diverter flashings have been omitted at roof to wall junctures on the home.
- Kick-out/diverter flashings have been omitted at roof to wall junctures or are present but not properly dimensioned.
- Flashing has been omitted from the siding to brick interface.
- Flashing has been omitted from the garage door trim and radius window trim.

**Composition Roof Issues:**

- Underlayment has been cut short at the west perimeter.
- Gutter and edge flashing have been omitted at locations on the home.

**Attic Issues:**

- Flexible exhaust ducts are routed and terminate at the attic vents toward the roof ridge.
- Several bird block soffit vents are covered by the blown in insulation.

**Crawlspace Issues:**

- The sump for the foundation system is what appears to be a wash basin (sink) of which the sump pump has been improperly placed above grade.

#### Interior Gypsum Sheathing Issues:

- Nail pops were observed protruding through the ceiling of the residence.

### **16400 SW Snowy Owl Lane:**

#### Weather Resistant Barrier (WRB) Defects:

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

#### Window Issues:

- Required fasteners were installed too close or omitted at the manufacturer supplied nailing slots in the windowsill nailing-flanges.
- Corroded fasteners were found in the window-nailing flanges.
- Window nailing flange was cracked.

#### Hardi Plank Composite Siding System Issues:

- Fasteners improperly installed in the butt joints between two courses of siding.
- Non-corrosion resistant fasteners were used to attach the siding to the home.
- The siding system does not achieve the required two inches clearance at the transition to hard surfaces as required by the manufacturer.
- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- The siding system does not achieve the required ¼ inch clearance at the transition flashings as required by the manufacturer.
- End cuts of wood trim are unpainted and unprimed.

#### Masonry Veneer Siding System Issues:

- The masonry veneer siding system does not have the code required weep holes and flashing below the soldier course and at the base of the wainscot wall.
- The masonry veneer does not have the code required minimum one inch airspace from the wood wall assembly.

#### Flashing Issues:

- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.
- Diverter flashings have been omitted at roof to wall junctures on the home.

#### Composition Roof Issues:

- Multiple unsealed and corroded fasteners in the composition shingles.

#### Attic Issues:

- Flexible exhaust ducts are routed and terminate at the attic vents toward the roof ridge.

#### Crawlspace Issues:

- Water is entering crawlspace and unable to drain.

### **16429 SW Snowy Owl Lane:**

#### Weather Resistant Barrier (WRB) Defects:

- WRB (DuPont Tyvek) improperly reverse lapped over the windowsill-nailing flange.
- Moistop was improperly reverse lapped over the windowsill-nailing flange.

Window Issues:

- Fasteners were not installed in the windowsill nailing flange.

Hardi Plank Composite Siding System Issues:

- Fasteners improperly installed within 3/8 inch of siding board edge.
- The siding system does not achieve the required two inch clearance at the transition to hard surfaces as required by the manufacturer.
- The siding system is sealed to the transition flashings in lieu of achieving the required ¼ inch clearance.
- End cuts of wood trim are unpainted and unprimed.

Masonry Veneer Siding System Issues:

- The masonry veneer siding system does not have the code required weep holes and flashing below the soldier course and at the base of the wainscot wall.
- The masonry veneer does not have the code required minimum one inch airspace from the wood wall assembly.

Flashing Issues:

- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly reverse lapped over the WRB.
- "Z" metal flashing installed above windows, doors and bellybands on the home is improperly sealed to the siding.
- Kick-out/diverter flashings have been omitted at roof to wall junctures.

Composition Roof Issues:

- Multiple unsealed

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a full, true and correct copy of the foregoing **FIRST**  
3 **AMENDED COMPLAINT** by:

4 ☒ U.S. Postal Service;  
5 ☐ facsimile service;  
6 ☐ electronic mail service;  
7 ☐ arranging for hand delivery, and/or  
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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
BUILDING MATERIALS HOLDING	)	Case No. 09-12074 (KJC)
CORPORATION, et al.,	)	
	)	Jointly Administered
Debtors.	)	
	)	<b>Re: Docket No. _____</b>
_____	)	

**ORDER GRANTING JOINT MOTION FOR RELIEF FROM  
STAY TO ALLOW STATE COURT LITIGATION TO PROCEED**

Upon consideration of the Joint Motion for Relief from Stay to Allow State Court Litigation to Proceed (the “Joint Motion”), it appearing that proper notice of the Joint Motion has been given and that no further notice is required prior to granting the relief requested in the Joint Motion, and the Court having found that the relief sought therein is reasonable and necessary, IT IS HEREBY ORDERED as follows:

ORDERED, that the Joint Motion is GRANTED; and it is further

ORDERED, that pursuant to 11 U.S.C. §362 the automatic stay is modified and lifted to permit the Movants<sup>1</sup> to proceed with the Oregon Actions; and it is further.

ORDERED, that the Movants may collect on any resulting final judgment or settlement from any applicable liability insurance policies covering the Debtors.

Dated: \_\_\_\_\_, 2009

\_\_\_\_\_  
The Honorable Kevin J. Carey, Chief Judge  
United States Bankruptcy Court

\_\_\_\_\_  
<sup>1</sup>Capitalized terms shall have the meaning ascribed to them in the Motion, unless otherwise defined herein.

CERTIFICATE OF SERVICE

I, Lisa L. Coggins, Esquire, hereby certify that on this 30<sup>th</sup> day of October, 2009, I caused a copy of the foregoing Joint Motion for Relief from Stay to Allow State Court Litigation to Proceed to be served upon the following parties in the manner indicated:

SEE ATTACHED SERVICE LIST

/s/ Lisa L. Coggins  
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