

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement”) is made and entered into by and between Plaintiffs and the Class Representatives John Stewart, Tadashi Mitsuoka, and Victoria Mitsuoka on behalf of themselves and all other Class Members (“the Class”), and Defendants Haseko Homes, Inc., Haseko Construction, Inc., Ke Noho Kai Development, LLC, and Fairway’s Edge Development, LLC (jointly, “Haseko”) (collectively, “Settling Parties”). The terms of this Settlement are conditioned on and subject to final approval by the Circuit Court of the First Circuit, State of Hawai‘i presiding over this matter, *Mitsuoka, et al., v. Haseko Homes, Inc., et al.*, Circuit Court of the First Circuit, State of Hawai‘i Case No. 12-1-3030-11 LWC, which together with *Mitsuoka, et al. v. Haseko Homes, Inc., et al.*, Dispute Prevention & Resolution Inc. (“DPR”) No. 17-0447-A shall collectively be referred to herein as “the Lawsuit”.

SUMMARY OF LAWSUIT

1. In November 2012, Plaintiffs Tadashi Mitsuoka, and Victoria Mitsuoka (“the Mitsuokas”) filed the Lawsuit as a putative class action lawsuit in the Circuit Court of the First Circuit, State of Hawai‘i against Haseko Homes, Inc., Haseko Construction, Inc., Ke Noho Kai Development, LLC, Spinnaker Place Development, LLC, Fairway’s Edge Development, LLC, and Coastal Construction, Inc. The Honorable Virginia L. Crandall initially presided over the Lawsuit in the Circuit Court proceedings, then the case was ultimately transferred and currently assigned to the Honorable Lisa W. Cataldo (“the Court”).
2. Plaintiffs’ complaint alleged defects with respect to the wind resistance design specified and installed in 621 homes in the Ocean Pointe development located in Ewa Beach, Oahu, Hawai‘i (“Ocean Pointe”).
3. Haseko caused similar wind resistance designs to be installed in all 621 Class Member Structures in Ocean Pointe that are at issue in the Lawsuit and this Settlement. A schedule of the tax map key numbers and addresses of all Class Member Structures is listed at

“Exhibit G—Affected Unit Count” to the April 28, 2021 AIA Document A201-2007 General Conditions of the Contract for Construction attached hereto as Exhibit 2.

4. The Lawsuit alleged that the wind resistance designs in the Class Member Structures in Ocean Pointe are defective for various reasons.
5. On March 8, 2013, Plaintiffs filed their First Amended Complaint.
6. On April 11, 2013, Haseko and Spinnaker Place Development, LLC filed their Answer to the First Amended Complaint and Crossclaim against Coastal Construction, Inc.
7. On May 29, 2013, Coastal Construction, Inc. filed its Answer to Plaintiffs First Amended Complaint
8. On July 10, 2013, Coastal Construction, Inc. filed its Answer to Haseko and Spinnaker Place Development, LLC’s Crossclaim.
9. On July 11, 2013, the Court entered its Order Granting in Part and Denying in Part Haseko and Spinnaker Place Development, LLC’s Motion to Compel Arbitration and Stay Judicial Proceedings.
10. On June 3, 2014, the parties filed a Stipulation for Partial Dismissal Without Prejudice of Defendant Coastal Construction, Inc., effectuating Coastal Construction, Inc.’s dismissal from the entire case.
11. On February 29, 2016, the Court granted Haseko and Spinnaker Place Development, LLC’s Motion Regarding the Proper Forum to Determine Class Certification, declaring that the Court shall decide class certification issues.
12. On June 16, 2017, the Court entered its Order Granting Plaintiffs’ Motion for Class Certification, certifying the following class:

All eligible[] current individual and entity homeowners who purchased homes in the development known as Ocean Pointe, located in the District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawai‘i, that were designed, developed, and constructed with wind protection systems with foundation anchor bolts, said homes having been constructed

after August 1, 2005 and identified in Exhibit 3 to Plaintiffs' Motion for Class Certification.

Exhibit 3 to Plaintiffs' Motion for Class Certification and attached to the Order Granting Plaintiffs' Motion for Class Certification identifies the same Class Member Structures listed at "Exhibit G—Affected Unit Count" to the April 28, 2021 AIA Document A201-2007 General Conditions of the Contract for Construction attached hereto as Exhibit 2. The Court's Class Certification Order excluded from the Class, "(a) judges who have presided over this case; (b) persons employed by Haseko; (c) government entities and agencies; and (d) affiliates of Haseko." The Court's Class Certification Order appointed the Mitsuokas to serve as Class Representatives and Melvin Y. Agena of the Law Offices of Melvin Y. Agena, and Graham B. LippSmith and Celene Chan Andrews, then of Kasdan LippSmith Weber Turner LLP and now of LippSmith LLP, to serve as Class Counsel.¹ On July 25, 2017, Kenneth S. Kasdan of Kasdan LippSmith Weber Turner LLP appeared as counsel for the Class. On June 22, 2018, Sharla Manley of Kasdan LippSmith Weber Turner LLP appeared as counsel for the Class. Mr. Kasdan and Ms. Manley are now with the law firm of Kasdan Turner Thomson Booth LLC. Since their respective appearances to the present, Mr. Kasdan and Ms. Manley have served as co-counsel for the Class in the Lawsuit, along with Messrs. Agena and LippSmith, and Ms. Chan Andrews. The foregoing counsel shall collectively be referred to herein as "Class Counsel".

13. On June 16, 2017, the Court entered its Order Granting Defendant Spinnaker Place Development, LLC's Motion for Summary Judgment, dismissing all claims against that defendant with prejudice. As of that date, the Settling Parties became the only remaining parties in the Lawsuit.

¹ Glenn K. Sato of the Law Office of Glenn K. Sato was also appointed as Class Counsel. Mr. Sato and his firm withdrew as counsel on January 30, 2020.

14. In the years during which the Lawsuit was pending in the Court and before it was compelled to arbitration, the Settling Parties conducted substantial formal written discovery on both class certification and merits issues. Among other discovery, the Settling Parties propounded and responded to dozens of written discovery requests, inspected and exchanged thousands of documents, exchanged expert reports, and took depositions of party, third party, and expert witnesses.
15. On June 16, 2017, the Court entered its Order Granting Plaintiffs' Motion for Clarification that the Claims of Both the Class Representatives and the Class are in Arbitration or, in the Alternative, to Compel Class Arbitration, Filed April 25, 2017, in which the Court compelled class action arbitration. Pursuant to the Court's order, the parties proceeded to binding arbitration at DPR before Lou Chang, Jerry Hiatt, and Sidney Ayabe ("the Panel"). DPR assigned the Lawsuit a DPR arbitration number, No. 17-0447-A ("the Arbitration").
16. On October 30, 2018, the Panel entered its Stipulation and Order Regarding Class Notice Procedure, approving KCC Class Action Services, LLC ("KCC") to serve as the notice administrator, approving the class notice procedures, and approving the class notice documents to effectuate notice of class certification to the Class Members and to give the Class Members the opportunity to opt out of the Lawsuit. Among other procedures, the Order required KCC to mail the approved class notice to the Class Member Structures at issue herein, which specifically provided:
 - a. Class Members who do not opt out will "Stay in this lawsuit. Give up rights. Await the outcome. Share in possible money or benefits obtained in this lawsuit.";
 - b. "If money damages or benefits are obtained, those who do not opt out of the class will be notified about how to ask for a share."; and
 - c. "If you are a Class Member and you do nothing, you are choosing to stay in the **Class**. If you stay in the **Class**, you will be legally bound by all of the decisions that the Court and arbitrators make. This means that if the Plaintiffs obtain money

or benefits from the Haseko Defendants – either as a result of a judgment or a settlement – you will be eligible for a share. This also means that regardless of whether the Plaintiffs win or lose the lawsuit, you will not be able to start a new lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Haseko Defendants concerning the legal claims and issues being alleged in this lawsuit ever again.” (emphasis in original).

17. On March 7, 2019, the Class filed KCC’s Proof of Mailing and Publication of Website; Declaration of Jeanne M. Chernila establishing that KCC complied with the Panel’s October 30, 2018, the Panel entered its Stipulation and Order Regarding Class Notice Procedure by timely mailing the class notice to all Class Member Structures and publishing case information on the class website. KCC also reported that no Class Member opted out as of the Panel’s opt out deadline, meaning that all Class Members are before the Panel and the Court for the Lawsuit.
18. Thereafter, the Panel set several deadlines for the Settling Parties to meet for the Arbitration that were supplemented, revised, and added to throughout the time the Lawsuit was in Arbitration.
19. From mid 2018 through August 2020, the Settling Parties engaged in substantial merits, third-party, and expert discovery. In that period, the Settling Parties accomplished, among other discovery tasks, the following:
 - a. Issuance and production of several rounds of written discovery between the Settling Parties, including requests for production, interrogatories, and supplemental responses;
 - b. Issuance of subpoenas and production of subpoenaed documents from numerous third-parties involved in Ocean Pointe development and building;
 - c. Production, review, and analysis of hundreds of thousands of pages of party and third-party documents obtained both in party discovery and through subpoenas;

- d. Visual inspections, photography, and review of photography of dozens of Class Member Structures;
 - e. Destructive testing sessions of more than one dozen Class Member Structures. Each of these inspections entailed coordinating the work of more than a dozen attendants, including both sides' counsel, experts, construction professionals, and forensic professionals. Each of these sessions also entailed visual inspections, substantial siding removal, identification, inspection, cataloging, documenting, and sampling of materials from Class Member Structures' foundations.
 - f. Sampling, laboratory analysis, and expert evaluation of hundreds of shot pin samples, concrete samples, and forensic lift samples from Class Member properties;
 - g. Production, review, and analysis of hundreds of pages of highly technical expert reports and tens of thousands of pages of highly technical expert files from the more than a dozen expert witnesses designated by the Settling Parties; and
 - h. Approximately two dozen depositions, including party depositions, third party depositions, and expert depositions.
20. From August 2020 through September 2020, the Settling Parties briefed, filed, and argued the merits on eight motions for summary judgment on the claims, culminating in hundreds of pages of legal and factual briefing and thousands of pages of exhibits.
21. The Settling Parties also engaged in substantial preparation for the Arbitration hearing, including, but not limited to:
- a. Exchanging witness lists identifying Arbitration witnesses;
 - b. Exchanging exhibit lists collectively identifying hundreds of Arbitration exhibits and compiling the same for the Panel;
 - c. Preparing and analyzing hundreds of shot pins harvested from the destructive testing on Class Homes;

- d. Preparing, exchanging, and presenting the Panel with lengthy and technical expert PowerPoint presentations;
 - e. Drafting, evaluating, and executing party stipulations and Panel orders concerning procedural and evidentiary matters for the Arbitration;
 - f. Reviewing and assembling deposition transcripts for testimony from Arbitration witnesses;
 - g. Reviewing and assembling exhibits for testimony from Arbitration witnesses;
 - h. Drafting, researching, and evaluating each Settling Party's Pre-Arbitration Briefs;
 - i. Several meet and confer sessions by counsel, both in person and by telephone;
 - j. Extensive internal legal research and preparation for counsel for both Settling Parties;
 - k. Extensive coordination of, preparation for, and preparation of twenty live trial witnesses—the vast majority of whom were technical experts—for Arbitration.
22. On October 12, 2020, the Panel granted the Class' Motion to Add John G. Stewart As a Class Representative, naming Mr. Stewart as a Plaintiff in the Lawsuit and appointing him to serve as an additional Class Representative.
23. From October 12, 2020 through October 30, 202, the Settling Parties engaged in the evidentiary phase of the Arbitration before the Panel. During the Arbitration, the Settling Parties accomplished the following:
- a. Arranged for, prepared, and took live trial testimony from and cross-examination of twenty witnesses, the vast majority of whom were technical experts;
 - b. Marshalled the admission of hundreds of exhibits;
 - c. Argued several discreet legal and factual issues that came up throughout the proceedings; and
 - d. Extensively strategized, prepared, and conducted legal research during the times they were not taking testimony before the Panel.

24. After completing the evidentiary phase of the Arbitration, the Settling Parties spent the following several weeks preparing and submitting their respective Closing Briefs, which were comprised of dense factual and legal arguments and totaled nearly two hundred pages between the Settling Parties. The evidentiary phase of the Arbitration closed upon submission of these briefs on December 14, 2020.
25. After extensive analysis of the evidence and legal issues presented to them leading into and during the Arbitration's evidentiary phase, the Panel issued its Partial Final Arbitration Decision and Award on February 8, 2021.
26. Throughout the period since the Settling Parties were compelled to Arbitration, they also engaged in extensive, arm's-length settlement discussions and negotiations, both in several formal joint sessions before Keith W. Hunter of DPR ("the Mediator") and in numerous other informal discussions with the Mediator. The Settling Parties formally mediated with the Mediator in January 2020, September 2020, and February 2021. Following the Panel's February 8, 2021 Partial Final Arbitration Decision, the Settling Parties each engaged in additional settlement discussions through the Mediator to successfully resolve the Lawsuit on the terms set forth in this Settlement and subject to approval by the Court.
27. As the result of the more than eight years of complex litigation detailed above, the Settling Parties, counsel for the Settling Parties, the Mediator, and the Court are thoroughly familiar with the factual and legal issues presented by the Settling Parties' respective claims and defenses and recognize the uncertainties as to the ultimate outcome of the Lawsuit and that any final result could require years of further complex litigation, including additional Arbitration proceedings on critical issues, Arbitration confirmation proceedings, and appeals, that would involve substantial additional risk and expense.
28. The Settling Parties, Class Counsel, and Defense Counsel agree that the Settlement represents a fair, reasonable, and adequate resolution of the Lawsuit.

29. The Settling Parties desire to compromise and settle all issues and claims that have been brought against Haseko in this Lawsuit.
30. The Settling Parties desire and intend to seek Court approval of the Settlement as set forth herein, provide notice to the Class in a manner approved by the Court and as detailed herein, and, upon final judicial approval, the Settling Parties intend to seek a Final Order and Judgment from the Court approving and implementing the Settlement and, thereby, resolving all claims in the Lawsuit.

NOW, THEREFORE, and without admitting any wrongdoing or liability whatsoever, and in consideration of the promises, covenants, and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, and subject to approval by the Court, the Settling Parties agree as follows:

DEFINED TERMS

31. “**Administrator**” means KCC Class Action Services, LLC, the qualified third-party appointed to administer the Settlement, including implementation and management of the Notice Plan and Settlement Escrow.
32. “**Attorney Fees, Costs, and All Other Expenses**” means the amounts approved by the Court for payment to Class Counsel to cover attorney fees, costs, and all other expenses, including but not limited to incentive awards for any Plaintiffs, all costs and expenses of addressing objections and appeals, any claims for attorney fees or costs and all other possible expenses by others, except for those items specifically assigned as Haseko’s responsibility under this Settlement.
33. “**Class**” means:
 - a. All eligible current individual and entity homeowners as of June 16, 2017 when the Circuit Court certified the Class, or their successors, who purchased homes in

the development known as Ocean Pointe, located in the District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawai‘i, that were designed, developed, and constructed with wind protection systems with foundation anchor bolts, said homes having been constructed after August 1, 2005 and identified at “Exhibit G—Affected Unit Count” to the April 28, 2021 AIA Document A201-2007 General Conditions of the Contract for Construction attached hereto as Exhibit 2.

- b. Excluded from the Class are: (i) judges who have presided over this case; (ii) persons employed by Haseko; (iii) government entities and agencies; and (iv) affiliates of Haseko.
34. “**Class Claims**” means any and all past, present, and future claims, controversies, disputes, actions, causes of action, suits, liability or liabilities, obligations, judgments, liens, debts, rights, involving, relating to, resulting from, arising out of, connected or traceable to the Lawsuit. The Class Claims include rights to appeal, losses, demands, or damages, of whatever name or nature, any and all claims for general damages, special damages, exemplary damages, statutory damages, damages based upon a multiplication of compensatory damages, punitive damages, diminution in value, damages of every kind or nature whatsoever resulting from, arising out of, connected or traceable to, or in any way relating to, either directly or indirectly, the Lawsuit, including any and all claims asserted therein, for property damage, for contribution, for defense or indemnity (whether written, contractual, in an insurance policy, or otherwise), for reimbursement or recoupment, for attorney fees, for litigation costs, and for any and all other additional losses, whether based on any theory in contract, tort, warranty, including, but not limited, the Home Builder’s Limited Warranty, PWC Form No. 117 Rev. 05/02, federal, state or local statute, building code(s), whether in law or equity, whether contingent or uncertain, whether latent or patent, whether known or unknown, and whether anticipated or not, in any manner involving, resulting from, arising out of, connected or traceable to, or in any

way relating to, either directly or indirectly, the Lawsuit, including any and all claims and alleged construct defects asserted therein. Notwithstanding the above, Class Claims do not include claims for bodily injury.

35. “**Class Counsel**” means Melvin Y. Agena of the Law Offices of Melvin Y. Agena, Graham B. LippSmith of LippSmith LLP, Celene Chan Andrews of LippSmith LLP, Kenneth S. Kasdan of Kasdan Turner Thomson Booth LLC, and Sharla Manley of Kasdan Turner Thomson Booth LLC.
36. “**Class Member Structure**” means any single-family home or individual townhome, located in the Ocean Pointe Development owned by a Class Member. The Class Member Structures are listed at “Exhibit G—Affected Unit Count” to the April 28, 2021 AIA Document A201-2007 General Conditions of the Contract for Construction attached hereto as Exhibit 2;
37. “**Class Representatives**” means Plaintiffs Tadashi Mitsuoka, Victoria Mitsuoka, and John G. Stewart.
38. “**Construction Manager**” means Iopono Holdings Group, LLC d/b/a Bergeman Group, the qualified third party approved and appointed to manage the Shot Pin Repair Program.
39. “**Contractor**” means SageBilt, Inc., the qualified third party approved and appointed to perform the construction contemplated in the Shot Pin Repair Program. This term shall also refer to any additional or replacement Contractor approved and appointed by the Court.
40. “**Court**” means the Honorable Lisa W. Cataldo of the Circuit Court of the First Circuit, State of Hawai‘i, or the Judge of the Circuit Court of the First Circuit, State of Hawai‘i, assigned to the Lawsuit if not Judge Cataldo.
41. “**Defense Counsel**” means the following counsel of record for Haseko in the Lawsuit: Melvyn M. Miyagi and Ross T. Shinyama, and the law firm Watanabe Ing LLP.
42. “**Effective Date**” means the first date by which the Final Order and Judgment entered pursuant to this Settlement becomes final. The Final Order and Judgment entered

pursuant to this Settlement becomes final on the date on which all appellate rights with respect to the Final Order and Judgment have expired or have been exhausted in a matter that conclusively affirms the Final Order and Judgment.

43. **“Final Order and Judgment”** means the anticipated Final Order and Judgment of the Court approving the Settlement, thereby resolving the Lawsuit, which Final Order and Judgment shall be substantially in the forms attached hereto, respectively, as Exhibits 9 and 10 to be entered by the Court.
44. **“Haseko”** or **“Released Party”** means Haseko Defendants, Haseko Homes, Inc., Haseko Construction, Inc., Ke Noho Kai Development, LLC, and Fairway’s Edge Development, LLC, Steadfast, collectively and individually, and including their respective parents, members, managers, affiliates, related companies, contractors, subcontractors, architects, engineers, design professionals, manufacturers, suppliers (including any and all Shot Pin manufacturers and/or suppliers including, but not limited to, Ramset and Simpson Strong-Tie), consultants, experts, insurers, indemnitors, corporate representatives, officers, directors, agents, stockholders, shareholders, attorneys, heirs, executors, administrators, personal representatives, successors, successors in trust, successor trustees, trustees, trustees in bankruptcy, receivers, guardians, legal representatives, assigns, general partners or joint venturers, and employees of any of the foregoing.
45. **“Lawsuit”** means and includes:
 - a. *Mitsuoka, et al., v. Haseko Homes, Inc., et al.*, Circuit Court of the First Circuit, State of Hawai‘i Case No. 12-1-3030-11 LWC; and
 - b. *Mitsuoka, et al., v. Haseko Homes, Inc., et al.*, DPR No. 17-0447-A.
46. **“Mediator”** means Keith W. Hunter of DPR.
47. **“Notice”** means the Court-approved form(s) of notice of the Settlement to the Class, which are attached as Exhibits 4-7.
48. **“Notice Plan”** means the Court-approved procedures for the Administrator to effectuate notice of and administration for the Settlement, which is attached as Exhibit 3.

49. **“Ocean Pointe Development”** means the Ocean Pointe housing development located in the District of Ewa, City and County of Honolulu, Island of O‘ahu, State of Hawai‘i that was developed and built by Haseko.
50. **“Panel”** means Arbitrators Lou Chang, Jerry Hiatt, and Sidney Ayabe of DPR.
51. **“Partial Award”** means the Panel’s February 8, 2021 Partial Final Arbitration Decision and Award in *Mitsuoka, et al., v. Haseko Homes, Inc., et al.*, DPR No. 17-0447-A.
52. **“Person”** means an individual, corporation, partnership, limited partnership, limited liability company, joint venture, homeowners’ association, joint stock company, estate, legal representative, trust, trustee, association, unincorporated association, townhome association, government or any political subdivision or agency thereof, any business or legal entity, and such individual’s or entity’s spouse, significant other, heirs, predecessors, successors, representatives, and assigns.
53. **“Preliminary Approval Order”** means the order granting preliminary approval of the Settlement substantially in the form attached hereto as Exhibit 8 to be entered by the Court.
54. **“Releasing Parties”** means any and all Plaintiffs, Class Representatives, Class Members, or any Person, releasing claims in this Settlement, including the Exhibits attached hereto.
55. **“Settlement”** means this Settlement and Release Agreement, including all Exhibits attached hereto, and the notices and other documents contemplated by this Settlement, and any amendments thereto.
56. **“Settlement Escrow”** means an escrow account established by the Administrator for the purpose of receiving the Settlement Fund and from which the Administrator will issue payments to effectuate this Settlement.
57. **“Settlement Fund”** means Haseko’s and/or Steadfast’s payment of amounts totaling \$20,000,000.00 into the Settlement Escrow, the allocation and related deadlines of which are further detailed in Paragraphs 71-72 below.

58. **“Settling Parties”** means, collectively, Plaintiffs, Class Representatives, the Class, and Haseko.
59. **“Shot Pin”** means the metal nails embedded in the Class Member Structures’ concrete foundations to connect framing of the Structures to the foundations.
60. **“Shot Pin Repair Program”** means the remediation construction work to be verified by the Structural Engineer, managed by the Construction Manager, and performed by the Contractor pursuant to the April 28, 2021 AIA Document A101-2007 Standard Form Agreement Between Owner and Contractor attached hereto as Exhibit 1; and the April 28, 2021 AIA Document A201-2007 General Conditions of the Contract for Construction attached hereto as Exhibit 2, and all exhibits thereto.
61. **“Special Master”** means the neutral assigned by DPR, located in Honolulu, Hawai‘i, the qualified third party resolution service approved and appointed by the Court to resolve any disputes between Persons seeking benefits provided in this Settlement.
62. **“Steadfast”** means Steadfast Insurance Company, Haseko’s insurer for this action. The Parties acknowledge and agree that Steadfast is a signatory to this Agreement solely as it relates to its promise to pay as set forth in Paragraph 68 of this Agreement.
63. **“Structural Engineer”** means Engineering Design Group, Inc., the qualified third party approved and appointed by the Court to perform engineering services concerning the Shot Pin Repair Program. This term shall also refer to any additional or replacement Structural Engineer approved and appointed by the Court.
64. The plural of any defined term shall include the singular, and the singular of any defined term shall include the plural, as the case may be.

DENIAL OF ANY WRONGDOING AND LIABILITY

65. Haseko denies the material factual allegations and legal claims asserted in the Lawsuit, including, but not limited to, any and all charges of wrongdoing or liability arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged,

in the Lawsuit, including any amendments, cross actions, cross-claims, counterclaims or third-party complaints of any kind related to the Lawsuit. Haseko specifically denies any and all allegations of wrongdoing or liability concerning, regarding or related to the Shot Pins in the Class Member Structures.

SETTLEMENT CONSIDERATION AND BENEFITS

66. Class Counsel have satisfied their due diligence duties to the Class and conducted a thorough examination and investigation of the law and facts, including substantial discovery relating to the matters set forth in the Lawsuit and which resulted in this Settlement. Class Counsel and the Class Representatives recognize and acknowledge the expense, effort, length of continued proceedings, and risk that would be necessary to prosecute the Lawsuit against Haseko through additional Arbitration proceedings, Arbitration confirmation proceedings, Court proceedings and appeals. Class Counsel also took into account the uncertain outcome and the risk of continued litigation, especially in complex actions such as this Lawsuit, as well as the difficulties and delays inherent in such litigation. Class Counsel are mindful of the challenges in proving the claims and defeating the defenses at issue in the Lawsuit. Class Counsel believe that this proposed Settlement confers substantial benefits upon the Class. Based on their evaluation of all of these factors, Class Counsel has determined that this proposed Settlement is in the best interests of the Plaintiffs, Class Representatives, and Class. This proposed Settlement was a product of multiple arm's-length, adversarial settlement negotiations between Class Counsel and Defense Counsel that was overseen over an extended period of time by the Mediator.
67. The Administrator shall establish the Settlement Escrow within fourteen days after the Effective Date for receipt and administration of the Settlement Fund.
68. Steadfast, on behalf of Haseko, shall pay the Settlement Fund into the Settlement Escrow within thirty days after the Effective Date.

69. The Settlement Fund represents the total sums to be paid by or on behalf of the Haseko to fully and finally resolve the Lawsuit. Under no circumstances will Haseko or its insurer's payments exceed the amount of the Settlement Fund.
70. Haseko and/or Steadfast shall have no obligation to pay the Settlement Fund if the Settlement is not approved or is otherwise voided before the Effective Date as provided for under the terms herein.
71. Under this Settlement, and subject to Court approval, Class Counsel has the sole authority to allocate the Settlement Fund to pay for the Shot Pin Repair Program, the Administrator's costs, and Attorney Fees, Costs, and All Other Expenses. Haseko has had no involvement or input whatsoever in the allocation of the Settlement Fund. Pursuant to Class Counsel's sole authority, the Settlement Fund shall, subject to Court approval, be allocated as follows:
- a. \$11,508,150.00 shall be used for the Shot Pin Repair Program, the Administrator costs, and the Notice Plan;
 - b. \$8,491,850.00 shall be used for Attorney Fees (plus all applicable state and local taxes), Costs, and All Other Expenses, including any amounts for Class Representative incentive awards and any Special Master costs.
72. If there are any residual amounts in the Settlement Fund for the Settlement that remain unallocated after the above payments are approved by the Court and made by the Administrator, those funds will be re-allocated in the following order until they are exhausted:
- a. First, for any additional repairs of Class Member Structures related to the Shot Pins as determined by Class Counsel and in consultation with the Structural Engineer, Construction Manager, and/or Contractor as approved by the Court;
 - b. Second, for any reasonable additional costs incurred for the administration of the Settlement, including to increase Class Member awareness and participation in the Shot Pin Repair Program; and

- c. Third, to a local charitable entity or entities serving Hawai'i that are related to affordable housing and/or prevention of homelessness and would qualify for *cypres* distributions of the residue as approved by the Court.
73. Time is of the essence. Haseko agrees to reasonably assist in and not to impede or otherwise impair Class Counsel's ability to promptly seek the Court's approval of the Settlement and to timely comply with the deadlines and requirements set forth in the Shot Pin Repair Program.
74. Class Members shall have his, her, or its Structure enrolled in the Shot Pin Repair Program. There shall be no claim form required for a Class Member to qualify a Class Member Structure for the Shot Pin Repair Program. Class Members shall cooperate with the Construction Manager and/or Contractor's reasonable requests, scheduling timetables, and scheduling constraints that may arise during the process of repairing up to 621 Class Member Structures. The Construction Manager and/or Contractor shall have the ability to directly contact Class Members in person, by telephone, by written correspondence, and by electronic communications to enlist and schedule participation in the Shot Pin Repair Program.
75. Class Counsel anticipates that the Shot Pin Repair Program will be completed within sixteen (16) months from the date of commencement set forth at Article 3 in Exhibit 1.
76. If, after the Effective Date, any Class Member sells, transfers, or loses ownership of any Structure in the Shot Pin Repair Program, that Structure shall remain enrolled in the Shot Pin Repair Program and the successor-in-interest in the Structure shall be entitled to the remediation work to be performed in the Shot Pin Repair Program.

GLOBAL SETTLEMENT AND RELEASE

77. This Settlement is intended to be a global settlement of all Class Claims involving, resulting from, arising out of, connected or traceable to, or in any way relating to, either directly or indirectly, the Lawsuit, including any and all claims and alleged construction

defects asserted therein, which include, but are not limited to, the Shot Pins.

Notwithstanding the above, the release does not include claims for bodily injury.

78. Upon the Effective Date, and for and in consideration of Steadfast's full payment of the Settlement Fund on Haseko's behalf, and all other provisions of this Settlement and subject to the limitations herein and the Exhibits attached hereto, Plaintiffs, the Class Representatives, and the Class release, acquit, and forever discharge Haseko from any and all Class Claims.
79. Steadfast's payment on behalf of Haseko of the Settlement Funds into the Settlement Escrow is in consideration for Plaintiffs, the Class Representatives, and the Class' obligations hereunder, including the release of their Class Claims. Plaintiffs, the Class Representatives, and the Class' release of their Class Claims is in consideration for Haseko's and Steadfast's obligations hereunder, including payment of the Settlement Funds.
80. The releases provided for hereinabove are as a result of being a Class Member or a Person with a legal right to assert claims for a Class Member, the Court's approval process herein, and the occurrence of the Effective Date, and are not conditioned on receipt of consideration by any particular member of the Class. Rather, it is the intent of the Settling Parties and this Settlement that the benefit is the repair of the Class Member Structures, and that said benefits and rights attach to the Class Member Structures. Persons who, after the date of the Preliminary Approval Order, acquire legal rights to assert claims within the scope of this Settlement that belong initially to a Class Member shall take such rights subject to all of the terms, time periods, releases, caps, prohibitions against overlapping or double recoveries, and other provisions contained herein.
81. Class Counsel shall cooperate with Haseko to ensure that the releases set forth in the Final Approval Order and Judgment are given their full force and effect (including by seeking the inclusion of the releases in the Final Order and Judgment) and to ensure that

the Plaintiffs, Class Representatives, and Class Members comply with their obligations set forth in this Settlement.

82. It is the intent of the Settling Parties that, other than receiving the Settlement benefits provided herein, no Class Member shall recover, directly or indirectly, any additional compensation, consideration, or sums for claims released by operation of this Settlement, including, without limitation, to the claims settled and release hereinabove.

ADDITIONAL SETTLEMENT OBLIGATIONS

83. Upon the Court's final approval of this Settlement and Steadfast's payment on Haseko's behalf of the Settlement Fund into the Settlement Escrow, the Partial Award, including any and all factual findings and legal conclusions therein, shall be set aside, vacated, expunged, *nunc pro tunc*, and be of no force or effect for any purpose including but not limited to, for any purported collateral estoppel or other preclusive effect purposes.
84. In accordance with DPR Arbitration Rule 30, the Settling Parties acknowledge, understand, and agree that the Partial Award is not and shall not be considered a final award.
85. **Stipulation and Panel Order:** In further accordance with DPR Arbitration Rule 30, upon execution of the settlement agreement, the Settling Parties shall jointly request that the Panel enter a Stipulation and Order setting forth the terms of this Settlement, including, but not limited to, an order by the Panel setting aside, vacating, and expunging, *nunc pro tunc*, the Partial Award, including any and all factual findings and legal conclusions therein ("Panel Order") to be effective only upon the Court's final approval of the Settlement and Steadfast's payment on Haseko's behalf of the Settlement Fund into the Settlement Escrow.
86. In the Stipulation and Panel Order, the Settling Parties shall jointly request that the Panel consider and include in the Panel Order:

- a. That the Panel has considered, *inter alia*, the hardships and equities of this case, the intention of Haseko to challenge the Partial Award, before the Panel, the Court and/or on appeal absent a settlement, the absence of any final award and/or judgment, and the general Hawai‘i policy favoring settlements, and concluded that, on balance, the Partial Award shall be set aside, vacated, and expunged, *nunc pro tunc*, and shall be of no force or effect for any purpose including but not limited to, for any purported collateral estoppel or other preclusive effect purposes effective only upon the Court’s final approval of the Settlement and Steadfast’s payment on Haseko’s behalf of the Settlement Fund into the Settlement Escrow. The foregoing factors for the Panel to consider are not intended to be exhaustive; and
 - b. A stipulation that the Panel has the authority, or is expressly reinstated with the authority, to set aside, vacate, and expunge the Partial Award as requested to be effective only upon the Court’s final approval of the Settlement and Steadfast’s payment on Haseko’s behalf of the Settlement Fund into the Settlement Escrow. The joint request shall be made and the Panel Order shall be issued before the Class files its motion for preliminary approval of the Settlement is in the Court.
87. The Settling Parties also agree that the Preliminary Approval Order, attached as Exhibit 8, shall recognize, among other things:
- a. The Partial Award is not and shall not be construed as a judgment or a final determination; and
 - b. The Partial Award, including any and all factual findings and legal conclusions therein, will be set aside, vacated, expunged, *nunc pro tunc* by the Panel, and determined by the Panel to be of no force or effect for any purpose including, but not limited to, for any purported collateral estoppel or other preclusive effect purposes only upon the Court’s final approval of the Settlement and Steadfast’s payment on behalf of Haseko of the Settlement Fund into the Settlement Escrow.

88. If, and for whatever reason, the Court is not inclined or declines to approve the Preliminary Approval Order to include the provisions set forth in the preceding paragraph, and instead requires that the Settling Parties file a separate motion, the Settling Parties shall file a joint motion requesting the above relief. The joint motion shall be drafted by counsel for Haseko and subject to the Class' edits and approval.
89. The above provisions in Paragraph 87 shall also be incorporated into any Final Order and Judgment entered by the Court.
90. The Settlement requires approval and entry of both the above Stipulation and Panel Order (Paragraph 86) and the Preliminary Approval Order with the provisions in Paragraph 87. If either is not approved and entered, then the Settlement shall be voidable at any party's sole discretion.
91. The Settling Parties may only disclose the February 8, 2021 Partial Final Arbitration Decision and Award in the following limited circumstances: (1) To the Circuit Court as part of any motion for preliminary approval; (2) to Class Members as part of the Court-approved class notice; and (3) on the Lawsuit website published and maintained by the Administrator to effectuate the Notice Plan. The February 8, 2021 Partial Final Arbitration Decision and Award may also be disclosed by Haseko and/or Steadfast in any action for contribution or indemnification based on the Lawsuit and the payment of the Settlement Fund.
92. The Settling Parties mutually agree they will not disparage one another or otherwise take any action which could reasonably be expected to adversely affect one another's personal or professional reputation.
93. If the Settlement fails for any reason, for example but not exclusively, if the Court does not approve the Settlement or a Settling Party materially breaches the Settlement, the Panel's jurisdiction over the Lawsuit shall be fully reinstated, that the Partial Award remains enforceable, and that the Class shall have twenty business days from reinstatement of the Panel's jurisdiction to file their declaration and any supporting

documents in support of their claims for costs, attorney fees, and Hawai'i general excise tax for the City and County of Honolulu.

APPOINTMENT, APPROVAL, AND OVERSIGHT OF STRUCTURAL ENGINEER

94. For purposes of the Shot Pin Repair Program, Class Counsel will retain the services of the Structural Engineer to be approved by the Court. The Structural Engineer will be responsible for verifying for the Court that the work performed in the Shot Pin Repair Program will comply with the operative building codes. For its services in the Shot Pin Repair Program, the Structural Engineer shall be paid out of the Settlement Fund for its reasonable fees and expenses, not to exceed \$130,650.00.
95. As a condition of its retention and in addition to its other obligations separately set forth herein, the Structural Engineer shall:
 - a. Fulfill all responsibilities and duties assigned to the Structural Engineer under the terms of this Settlement; and
 - b. Fulfill all responsibilities and duties assigned to the Structural Engineer in the Shot Pin Repair Program.
96. For filing along with the Motion for Preliminary Approval and for the Court's evaluation and appointment of the Structural Engineer, Class Counsel shall file a declaration by the Structural Engineer setting forth:
 - a. The Structural Engineer's background and qualifications;
 - b. A summary of the Structural Engineer's services in the Shot Pin Repair Program performed up to the date of the Motion for Preliminary Approval;
 - c. A summary of the Structural Engineer's anticipated services in the Shot Pin Repair Program to be performed for its duration;
 - d. A summary of any opinions the Structural Engineer has rendered to date or anticipates rendering in the future concerning the sufficiency of the Shot Pin Repair Program; and

- e. A summary of the Structural Engineer's total estimated fees and costs for all services in the Shot Pin Repair Program.
97. Upon the Court's review and consideration of the Structural Engineer's declaration, the Court will be requested to make findings concerning the Structural Engineer's qualifications, past and anticipated services and opinions, determine whether to appoint the Structural Engineer for the Shot Pin Repair Program, and approve the Contractor's scope of work. The Court may set forth any such findings and determinations in the order granting preliminary approval of the Settlement.
98. Upon an application by Class Counsel or on its own, the Court may consider and appoint any additional or replacement Structural Engineer.

APPOINTMENT, APPROVAL, AND OVERSIGHT OF CONSTRUCTION MANAGER

99. For purposes of the Shot Pin Repair Program, Class Counsel will retain the services of the Construction Manager to be evaluated and approved by the Court. The Construction Manager will assist in the administration of and manage the Shot Pin Repair Program and ensure the Contractor's compliance therewith. For its services in the Shot Pin Repair Program, the Construction Manager shall be paid out of the Settlement Fund for its reasonable fees and expenses, not to exceed \$1,600,000.00.
100. As a condition of its retention and in addition to its other obligations set forth herein, the Construction Manager shall:
- a. Fulfill all responsibilities and duties assigned to the Construction Manager under the terms of this Settlement; and
 - b. Fulfill all responsibilities and duties assigned to the Construction Manager in the Shot Pin Repair Program.
101. For filing along with the Motion for Preliminary Approval and for the Court's evaluation and appointment of the Construction Manager, Class Counsel shall file a declaration by the Construction Manager setting forth:

- a. The Construction Manager's background and qualifications;
 - b. A summary of the Construction Manager's services in the Shot Pin Repair Program performed up to the date of the Motion for Preliminary Approval;
 - c. A summary of the Construction Manager's anticipated services in the Shot Pin Repair Program to be performed for its duration;
 - d. A summary of any opinions the Construction Manager has rendered to date or anticipates rendering in the future concerning the sufficiency of the Shot Pin Repair Program; and
 - e. A summary of the Construction Manager's total estimated fees and costs for all services in the Shot Pin Repair Program.
102. Upon the Court's review and consideration of the Construction Manager's declaration, the Court will be requested to make findings concerning the Construction Manager's qualifications, past and anticipated services and opinions, determine whether to appoint the Construction Manager for the Shot Pin Repair Program, and approve the Construction Manager's scope of work. The Court may set forth any such findings and determinations in the order granting preliminary approval of the Settlement.
103. Upon an application by Class Counsel or on its own, the Court may consider and appoint any additional or replacement Construction Manager.

APPOINTMENT, APPROVAL, AND OVERSIGHT OF CONTRACTOR

104. For purposes of the Shot Pin Repair Program, Class Counsel will retain the services of the Contractor to be evaluated and approved by the Court. The Contractor will assist in the administration of and perform the construction in the Shot Pin Repair Program. For its services in the Shot Pin Repair Program, the Contractor shall be paid out of the Settlement Fund for its reasonable fees and expenses, not to exceed \$9,703,000.00.
105. As a condition of its retention and in addition to its other obligations set forth herein, the Contractor shall:

- a. Fulfill all responsibilities and duties assigned to the Contractor under the terms of this Settlement; and
 - b. Fulfill all responsibilities and duties assigned to the Contractor in the Shot Pin Repair Program.
106. For filing along with the Motion for Preliminary Approval and for the Court's evaluation and appointment of the Contractor, Class Counsel shall file a declaration by the Contractor setting forth:
- a. The Contractor's background and qualifications;
 - b. A summary of the Contractor's services in the Shot Pin Repair Program performed up to the date of the Motion for Preliminary Approval;
 - c. A summary of the Contractor's anticipated services in the Shot Pin Repair Program to be performed for its duration;
 - d. A summary of any opinions the Contractor has rendered to date or anticipates rendering in the future concerning the sufficiency of the Shot Pin Repair Program; and
 - e. A summary of the Contractor's total estimated fees and costs for all services in the Shot Pin Repair Program.
107. Upon the Court's review and consideration of the Contractor's declaration, the Court will be requested to make findings concerning the Contractor's qualifications, past and anticipated services and opinions, determine whether to appoint the Contractor for the Shot Pin Repair Program, and approve the Contractor's scope of work. The Court may set forth any such findings and determinations in the order granting preliminary approval of the Settlement.
108. Upon an application by Class Counsel or on its own, the Court may consider and appoint any additional or replacement Contractor.

**APPOINTMENT, APPROVAL, AND OVERSIGHT OF ADMINISTRATOR AND
NOTICE PLAN**

109. The Settling Parties propose the Notice Plan attached hereto at Exhibit 3. For its services in the Lawsuit to date and in the Shot Pin Repair Program, the Administrator shall be paid out of the Settlement Fund for its reasonable fees and expenses, not to exceed \$74,500.00.
110. The Administrator, along with Class Counsel, shall be responsible for, without limitation:
- (a) arranging for the mailing of the long form Notices substantially in the same form as the exemplar at Exhibit 4 hereto upon entry of the Preliminary Approval Order;
 - (b) any advertising required for the Notice Plan using the publication Notices in the same form as the exemplar at Exhibit 5;
 - (c) using the short form Notices substantially in the same form as the exemplar at Exhibit 6;
 - (d) arranging for the mailing of the postcard Notices informing the Class of final approval and how to schedule their Structures for the Shot Pin Repair Program substantially in the same form as the exemplar at Exhibit 7 hereto upon entry of the Final Order and Judgment;
 - (e) fulfilling other aspects of the Notice Plan; and
 - (f) administration of the Settlement Escrow.
- The Administrator shall design and implement a plan for notification of this Settlement that shall satisfy the due process rights of Class Members. The Administrator shall collaborate with and assist the Contractor in designing, implementing, and maintaining the website for notification of the Settlement by online means. For the Settlement Escrow, the Administrator shall be authorized to establish accounts with financial institutions (each, an “Account”). All Accounts established under this Agreement shall be deposit accounts with commercial banks with Tier 1 capital exceeding \$1 billion or with an average rating above investment grade by S&P (LT Local Issuer Credit Rating), Moody’s (Long Term Rating) and Fitch Ratings, Inc. (LT Issuer Default Rating) (each as reported by Bloomberg Finance L.P.).
111. The Administrator (and any person retained by the Administrator) shall sign a confidentiality agreement, which shall provide that the names, addresses and other

information about specific Settlement Class Members provided by Class Counsel, by individual Settlement Class Members, or by Haseko shall all be treated as confidential and shall be used by the Administrator, Construction Manager, and Contractor only as required by this Settlement and the Shot Pin Repair Program.

112. The Administrator or person(s) under the control and supervision of the Administrator shall mail the Notices to the Class using the same language and in substantially the same form as the Notices attached at Exhibits 4-7. The long form Notices at Exhibit 4 shall disclose to the Class the existence and nature of the action and the proposed Settlement, the procedures and deadlines for filing Objections, the procedures for noticing intent to appear at the Fairness Hearing, the effect of the Settlement, and the hearing date and location concerning whether the Settlement should be granted final approval and any application for Attorney Fees, Costs, and All Other Expenses.
113. The Administrator shall mail the Notices by first-class postage prepaid U.S. Mail, to Class Members at the addresses identified in Class Counsel's records and to the addresses of the Class Member Structure.
114. The Notices shall each identify the address of the Class Member Structures that are to be repaired under the Shot Pin Repair Program.
115. The Administrator shall append the phrase "OR CURRENT HOMEOWNER" to the address lines for Notices sent to the Class Member Structures.
116. Class Counsel shall provide to the Administrator the last known names and mail address data obtained by Class Counsel. The Administrator shall process such data through the National Change of Address database (where a specific owner is known), the Coding Accuracy Support System and Delivery Point Validation system for the purpose of verifying and updating the addresses.
117. The Administrator shall mail the Notices both to the addresses provided by Class Counsel and to the addresses of the Class Member Structures. The Administrator shall mail the

Notice to the Class Members within three days of the entry of the Preliminary Approval Order.

118. The Notices shall be deemed received by the Class Members and Class Member Structures where they were sent seven days after mailing. In the event that the United States Postal Service returns Notices to the Administrator with a forwarding address for the recipient, the Administrator shall re-mail the Notice to that address, and the forwarding address shall be deemed the updated address for that Class Member. In the event that the United States Postal Service returns Notices to the Administrator because the address of the recipient is no longer valid, and the name of the Class Member is known, the Administrator shall perform a standard skip trace in an effort to attempt to ascertain the current address of the particular Class Member in question and, if such an address is ascertained, the Administrator will promptly re-send the Notice; if the Administrator cannot obtain an updated address for that Class Member, the Administrator shall re-mail that Notice to the Class Member Structure. In any event, the Notice shall be deemed received by the Class Member once the Administrator mails it a second time.
119. The Administrator shall also provide a copy of the Notice to any Class Member who requests the Notice.
120. Within fourteen days after the deadline to mail the Notice to the Class Members, the Administrator shall provide declarations to the Court, with a copy to Class Counsel and Defense Counsel, attesting to the measures undertaken to provide the Notice to the Class.
121. Additional details regarding the Notice Plan and the dissemination of Notices for the Class are provided in the Notice Plan at Exhibit 3.

**NO LIABILITY FOR CONDUCT OF ADMINISTRATOR, SPECIAL MASTER,
STRUCTURAL ENGINEER, CONSTRUCTION MANAGER, AND/OR CONTRACTOR**

122. Haseko and Defense Counsel shall have no responsibility or liability of any kind whatsoever with respect to retaining the Administrator, Special Master, Structural

Engineer, Construction Manager, and/or Contractor. Plaintiffs, the Class Representatives, the Class, Class Counsel, Haseko, and Defense Counsel shall have no responsibility or liability of any kind whatsoever related to any conduct or determinations of the Administrator, Special Master, Structural Engineer, Construction Manager, and/or Contractor, or any of their agents, whether or not wrongful, negligent, reckless or intentional, based on any theory of law or equity, with respect to any matter, including, but not limited, the performance or failure to perform their duties as set forth or undertaken in accordance with this Settlement, including but not limited to responsibility or liability for construction or design defects in the Shot Pin Repair Program work.

123. Plaintiffs, the Class Representatives, the Class, Class Counsel, Haseko, and Defense Counsel reserve all claims and rights against Administrator, Special Master, Structural Engineer, Construction Manager, and/or Contractor for any failure(s) to fulfill their responsibilities and duties.

PRELIMINARY APPROVAL SUBMISSIONS

124. The Settling Parties agree that, if necessary to effectuate the Settlement, certification of the Class for the purpose of Settlement is appropriate under HRCF Rule 23.
125. Within seven days after execution of the Settlement, Class Counsel will submit the Settlement together with its Exhibits and any legal memoranda in support of the Settlement to the Court and will request that the Court issue Preliminary Approval Order substantially in the form attached at Exhibit 8. The form of the requested Order shall be for preliminary approval of the Settlement, approval of the Notice Plan, and approval of the Notices at Exhibits 3-7.

OBJECTIONS BY CLASS MEMBERS

126. Any Class Member who intends to object to the fairness, reasonableness and adequacy of the Settlement (“Objections”) must mail a timely written Objection to the Administrator

by first-class mail with postage paid. The Administrator will then serve any Objections received on Class Counsel, Defense Counsel, and all other parties due notice in this case by U.S. Mail. The Administrator will then also file any such Objections with the Court by filing such documents directly or arranging for such documents to be filed by Class Counsel. Objections must be postmarked no later than thirty days after the date of the mailing of the Notice. The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether an Objection has been timely submitted. In his/her/its Objections, an objecting Class Member must:

- a. Set forth his/her/its full name, current address, and telephone number;
- b. Identify the address of the Structure giving rise to standing to make an Objection and establish the sender's status as a Class Member, if the sender's current address is different;
- c. Identify the owner of the Class Member Structure;
- d. State that the objector has reviewed the definitions of the Class and understands that he/she/it is a member of the Class, and has not opted out of the Class;
- e. Set forth a complete statement of all legal and factual bases for any Objection that the objector wishes to assert; and
- f. Provide copies of any documents that the objector wishes to submit relating to his/her/its position.

127. In addition to the requirements set forth in Paragraph 126 above, objecting Class Members must state in writing whether he/she/it intends to appear at the Fairness Hearing(s) either with or without separate counsel. No Class Member shall be entitled to be heard at the Fairness Hearing (whether individually or through separate counsel) or to object to the Settlement, and no written Objections or briefs submitted by any Class Member shall be received or considered by the Court at the Fairness Hearing, unless written Notice of the Class Member's intention to appear at the Fairness Hearing and copies of any written Objections or briefs were postmarked or served on the

Administrator on or before thirty days after the date of the mailing of the Notice. In addition to its obligations to serve and file timely Objections received, the Administrator will also serve any Notices of a Class Member's intention to appear at the Fairness Hearing and associated briefing received on Class Counsel, Defense Counsel, and all other parties due notice in this case by U.S. Mail. The Administrator will also file any such Notices of a Class Member's intention to appear at the Fairness Hearing and associated briefing with the Court by filing such documents directly or arranging for such documents to be filed by Class Counsel or Defense Counsel. Class Members who fail to serve timely written objections in the manner specified above shall be deemed to have waived any Objections and shall be foreclosed from making any Objection (whether by appeal or otherwise) to the Settlement.

128. In the event of any appeals from the Final Order and Judgment, Class Counsel will be solely responsible for responding to objectors and defending the Court's Final Order and Judgment at their own cost. Haseko will join and/or not oppose Class Counsel's defense of the Final Order and Judgment.
129. The Settling Parties agree that they will not solicit, facilitate, or assist in any way, Objections by potential or actual Class Members. The Settling Parties recognize that they have an obligation to support the Settlement and to seek the Court's approval of its terms.

FAIRNESS HEARING

130. Subject to any changes the Court may later order, the Fairness Hearing shall be conducted to determine final approval of the Settlement, along with the amount properly payable for Attorney Fees, Costs and All Other Expenses ("Fairness Hearing") on a date and time to be set by the Court upon granting preliminary approval of the Settlement.
131. Class Counsel and Haseko shall file their briefs in support of Settlement approval no later than seven calendar days before the Fairness Hearing. To the extent they wish to respond to any Objections made by Class Members, Class Counsel and Haseko shall concurrently

file those responses. The Parties shall also present a Final Order and Judgment substantially in the forms attached, respectively, at Exhibits 9-10.

ATTORNEY FEES, COSTS, AND ALL OTHER EXPENSES

132. Haseko agrees that any amounts awarded by the Court to Class Counsel for Attorney Fees, Costs, and All Other Expenses, including Class Representative incentive awards and any Special Master costs, shall be paid out of the Settlement Fund, so long as the amount awarded by the Court does not exceed the sum of \$8,491,850.00, and the Court's order is otherwise consistent with the Settlement. The allocations for Attorney Fees, Costs, and All Other Expenses are as follows, subject to Court review and approval:
- a. Up to \$6,666,666.67 in total Attorney Fees (1/3 of the Settlement Fund);
 - b. Up to \$314,133.33 in total Hawai'i general excise tax for the City and County of Honolulu on Attorney Fees;
 - c. Up to \$1,491,050.00 in total reimbursement of the Class' litigation costs and any Special Master costs; and
 - d. Up to \$20,000.00 in total Class Representative incentive awards (\$10,000.00 for each Class Representative household).

This amount does not include the costs for the Shot Pin Repair Plan, Administration costs, and/or Notice Plan costs totaling \$11,508,150.00 that will also be paid out of the Settlement Fund.

133. The Class Representative incentive awards recognize the substantial time and effort each expended in reviewing pleadings, offering their homes for analysis and destructive testing, participating in discovery, preparing for and testifying in depositions and Arbitration, and monitoring and advising on the settlement proceedings.
134. Haseko does not oppose, will not oppose, and will not encourage or assist any third party in opposing Class Counsel's request for Attorney Fees, Costs, and All Other Expenses in

an amount of up to of \$8,491,850.00, nor will Haseko contest or negatively comment on the reasonableness of the amount as long as the request is consistent with the Settlement.

135. Any additional attorney fees, costs, or other expenses incurred by Class Counsel in appeals of the Final Order and Judgment may not be recovered from Haseko. However, Class Counsel may file a subsequent request for additional attorney fees, costs, or other expenses incurred on any appeals to be paid from the Settlement Fund.
136. Any attorney fees, costs, or other expenses incurred by Haseko in the Lawsuit and any appeals of the Final Order and Judgment are the sole responsibility of Haseko. Haseko shall not seek to recover such attorney fees, costs, or other expenses from any other Parties or the Settlement Fund.
137. Any Attorney Fees, Costs, and Other Expenses awarded by the Court to Class Counsel shall be paid out of the Settlement Fund to Class Counsel within ten days of the Effective Date.

COMMUNICATIONS ON THE SETTLEMENT

138. The Settling Parties will not issue any press releases or solicit media attention concerning the settlement agreement and any of the terms therein. If contacted by the media, the Settling Parties shall state that the Class claims were amicably resolved.
139. In the event Haseko is contacted by Class Members about this Settlement, Haseko may communicate to Class Members its support of the Settlement. However, because there are potential attorney-client communication concerns, and in an abundance of caution, Haseko shall respond, if at all, to Class Members in a manner materially consistent with the following:

“Haseko supports the Settlement. If you have any question regarding the details of the Settlement, please log onto the settlement website at www.HasekoClass.com or contact Class Counsel through the Law Offices of Melvin Y. Agena, (808) 536-6647.”

140. There shall be no restrictions on communications by the Administrator, Class Counsel, the Contractor, the Construction Manager, and/or the Structural Engineer to Class Members to provide information on and to encourage, facilitate, and effectuate participation in the Shot Pin Repair Program.

RECORDING OF SETTLEMENT

141. Haseko shall have the right to record in the Office of the Assistant Registrar of the Land Court of the State of Hawai‘i and/or the Bureau of Conveyances of the State of Hawai‘i, as applicable, an executed copy of this Settlement and/or Final Orders and Judgment against each Class Member Structure, and all terms and conditions of this Settlement, including the release, acquittal, and discharge of Haseko set forth herein, shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in or to any Class Member Structure or any portion thereof without the execution, delivery or recordation of any further instrument, the acquisition of any such right or interest in any Class Member Structure shall be deemed to constitute the acceptance of all terms and conditions of this Settlement such by such person or entity, and upon the transfer of any such right or interest in any Class Member Structure, the same shall be subject to and the transferee shall assume and be bound and obligated to observe all of the terms and conditions contained in this Settlement. A schedule of the tax map key numbers and addresses of all Class Member Structures is at “Exhibit G—Affected Unit Count” to the April 28, 2021 AIA Document A201-2007 General Conditions of the Contract for Construction attached hereto as Exhibit 2.

BEST EFFORTS

142. The Settling Parties and their counsel agree to cooperate fully with one another and to use their best efforts to effectuate the Settlement, including without limitation in seeking

preliminary and final Court approval of Settlement, carrying out the terms of the Settlement, and promptly agreeing upon and executing all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement and to carry out the terms of the Settlement.

MISCELLANEOUS PROVISIONS

143. The Settling Parties intend the Settlement to be a final and complete resolution of all disputes between them with respect to the Lawsuit including, but not limited to, the Shot Pins. The Settlement is comprised of claims that are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties agree that the consideration provided to the Class and the other terms of the Settlement were negotiated at arm's-length and in good faith by the Settling Parties, with the assistance of the Mediator, and reflect a Settlement that was reached voluntarily after consultation with competent legal counsel.
144. Neither this Settlement, nor any act performed or document executed pursuant to or in furtherance of this Settlement may be deemed to be or may be used as an admission of, or evidence of, the validity of any of the Class Claims, or of any wrongdoing or liability of Haseko; or is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any Settling Parties in any civil, or administrative proceeding in any court, administrative agency, arbitration, mediation, or other tribunal. Haseko may file this Settlement and/or the Final Orders and Judgments in any action or proceeding that may be brought against it in order to support any defense or counterclaim, including without limitation those based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.
145. All agreements made and orders entered during the course of the Lawsuit relating to the confidentiality of information will survive this Settlement.

146. Any and all Exhibits to this Settlement are material and integral parts hereof and are fully incorporated herein by this reference.
147. This Settlement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest and, if Court approval is required, subject to Court approval.
148. This Settlement and any Exhibits attached hereto constitute the entire agreement among the Settling Parties, and no representations, warranties, or inducements have been made to any Settling Party concerning this Settlement or its Exhibits other than the representations, warranties, and covenants covered and memorialized in such documents. Except as otherwise provided herein, the Settling Parties will bear their own respective attorney fees and costs.
149. Each counsel or other Person executing this Settlement or any of its Exhibits on behalf of any Settling Party hereby warrants that such Person has the full authority to do so.
150. This Settlement may be executed by facsimile, by electronic signature, and/or by scanned signature, and in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. The executed Settlement with a complete set of signatures and counterparts will be filed with the Court.
151. This Settlement will be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.
152. The Court shall retain continuing and exclusive jurisdiction over the Settling Parties and all Class Members, and over the administration and enforcement of the Settlement. Any disputes or controversies arising with respect to the interpretation, enforcement, or implementation of this Settlement must be made by motion to or settlement by the Court.
153. The Settling Parties agree that Haseko is in no way liable for any taxes Class Counsel, Plaintiffs, the Class Representatives, Class Members, or others may be required to pay as a result of the receipt of Settlement benefits.

154. No Class Member or other Person shall have any claim against Haseko, Defense Counsel, Plaintiffs, the Released Parties, the Administrator, the Special Master, the Structural Engineer, the Construction Manager, the Contractor, or any agent designated by Counsel for the Settlement Classes based on any eligibility determinations, distributions, or payments made in accordance with the Settlement or based on the payments made or other relief provided and made substantially in accordance with this Settlement or with further Orders of the Court or any appellate court.
155. The Settling Parties hereby agree and stipulate to stay all proceedings and any appeals in this Lawsuit until the approval of this Settlement has been finally determined.
156. None of the Settling Parties, or their respective counsel, will be deemed the drafter of this Settlement or its Exhibits for purposes of construing the provisions thereof. The language in all parts of this Settlement and its Exhibits will be interpreted according to its fair meaning and will not be interpreted for or against any of the Settling Parties as the drafter thereof.
157. This Settlement and any Exhibits hereto will be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Hawai‘i and no other location without giving effect to, and irrespective of any other State’s or jurisdiction’s, choice-of-law principles. The Circuit Court of the First Circuit, State of Hawai‘i, and only the Circuit Court of the First Circuit, State of Hawaii, shall have exclusive jurisdiction to enforce or resolve any disputes related to the Settlement and Exhibits, including but not limited to (a) any and all disputes arising out of applications for, claims concerning, and/or allocations of Attorney Fees, Costs, and All Other Expenses by Class Counsel and/or the Court and (b) any and all disputes arising out of claims by any other attorneys seeking attorney fees, costs, other expenses, or awards resulting from or in any way related to the Court’s award of Attorney Fees, Costs, and All Other Expenses from the Settlement Fund.

158. If this Settlement is not approved by the Court or the Settlement is terminated, voided or fails to become effective in accordance with the terms of the Settlement, the Settling Parties will be restored to their respective positions in the Lawsuit as of February 9, 2021. In such event, the terms and provisions of the Settlement will have no further force and effect and shall not be used in the Lawsuit or in any other proceeding for any purpose, and any Judgment or Order entered by the Court in accordance with the terms of this Settlement will be treated as null, void, and vacated *nunc pro tunc*. None of the Settling Parties shall have an obligation to pay for any attorney fees, costs, or other expenses incurred by any of the other Settling Parties in connection with the terminated, voided, or otherwise ineffective Settlement. No order of the Court or modification or reversal on appeal of any order of the Court concerning any award of attorney fees, expenses, or costs to Class Counsel will constitute grounds for cancellation or termination of this Settlement.

IN WITNESS WHEREOF, the Settling Parties have duly executed this Settlement and Release as of May 12, 2021.

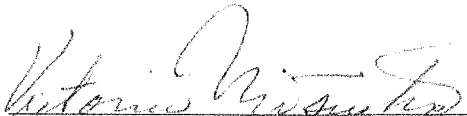
TADASHI MITSUOKA



Plaintiff and Class Representative

DATED: May 6, 2021

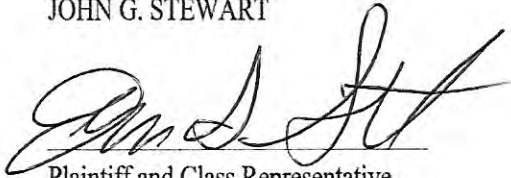
VICTORIA MITSUOKA



Plaintiff and Class Representative

DATED: May 6, 2021

JOHN G. STEWART



Plaintiff and Class Representative

DATED: 5 MAY, 2021

HASEKO HOMES, INC.

By: _____
Its: _____

DATED: _____, 2021

HASEKO CONSTRUCTION, INC.

By: _____
Its: _____

DATED: _____, 2021

KE NOHO KAI DEVELOPMENT, LLC

By: _____
Its: _____

DATED: _____, 2021

FAIRWAY'S EDGE DEVELOPMENT, LLC

By: _____
Its: _____


DATED: _____, 2021

JOHN G. STEWART

Plaintiff and Class Representative


DATED: _____, 2021

HASEKO HOMES, INC.


By: Tsutomu Sagawa
Its: President


DATED: May 6, 2021

HASEKO CONSTRUCTION, INC.


By: Tsutomu Sagawa
Its: President


DATED: May 6, 2021

KE NOHO KAI DEVELOPMENT, LLC
By Haseko Homes, Inc., Its Manager


By: Tsutomu Sagawa
Its: President

DATED: May 6, 2021

FAIRWAY'S EDGE DEVELOPMENT, LLC
By Haseko Homes, Inc., Its Manager


By: Tsutomu Sagawa
Its: President

DATED: May 6, 2021

STEADFAST INSURANCE COMPANY

Robert Koscielniak

Digitally signed by Robert Koscielniak
DN: cn=Robert Koscielniak, o=Zurich North
America, ou=Latent & Environmental Claims,
email=Robert.Koscielniak@zurichna.com, c=US
Date: 2021.05.12 12:49:54 -05'00'
Adobe Acrobat version: 2015.006.00000

By: _____
Its: _____

DATED: _____, 2021

APPROVED AS TO FORM:

[Signature]

MELVIN Y. AGENA
GRAHAM B. LIPPSMITH
CELENE S. CHAN
KENNETH S. KASDAN
SHARLA MANLEY
Attorneys for Plaintiffs and the Class

DATED: May 10, 2021

MELVYN M. MIYAGI
ROSS T. SHINYAMA
Attorneys for Haseko Homes, Inc.
Haseko Construction, Inc.
Ke Noho Kai Development, LLC
Fairway's Edge Development, LLC

DATED: _____, 2021

STEADFAST INSURANCE COMPANY

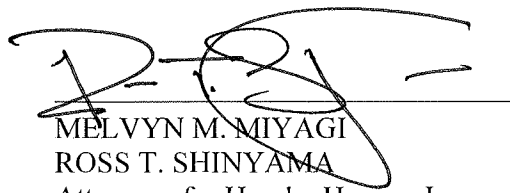
By: _____
Its: _____

DATED: _____, 2021

APPROVED AS TO FORM:

MELVIN Y. AGENA
GRAHAM B. LIPPSMITH
CELENE S. CHAN
KENNETH S. KASDAN
SHARLA MANLEY
Attorneys for Plaintiffs and the Class

DATED: _____, 2021



MELVYN M. MIYAGI
ROSS T. SHINYAMA
Attorneys for Haseko Homes, Inc.
Haseko Construction, Inc.
Ke Noho Kai Development, LLC
Fairway's Edge Development, LLC

DATED: May 12, 2021

EXHIBIT 1

AIA[®] Document A101[™] – 2007

Standard Form of Agreement Between Owner and Contractor *where the basis of payment is a Stipulated Sum*

AGREEMENT made as of the **28th** day of **April** in the year **2021**
(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status and address)

Mitsuoka, et al., v. Haseko Homes, Inc., et al., Circuit Court of First Circuit, State of Hawai'i Civil No. 12-1-3030-11 LWC, Dispute Prevention & Resolution, Inc. ("DPR") No. 17-0447-A ("the Lawsuit"), by and through Class Counsel Melvin Y. Akena and Graham B. LippSmith

Law Office of Melvin Y. Akena
Law Office of LippSmith LLP
Harbor Court Commercial Tower
55 Merchant Street, Suite 1850
Honolulu, Hawai'i 96813

AND the Contractor:

(Name, legal status and address)

SageBilt Inc.
a Delaware Profit Corporation
Contractor's License BC 35585, Classifications B, C-33 and C-51. Expiration Date 9/30/2022 unless renewed.
1319 Powhatan Street
Alexandria, Virginia 22314

For the following Project:

(Name, location and detailed description)

Ocean Pointe Shot Pin Repair Project
Ewa Beach, Hawai'i

The CONSTRUCTION MANAGER:

(Name, legal status and address)

Iopono Holdings Group, LLC
a Hawai'i Limited Liability Company
doing business as Bergeman Group
License CT-31817
812 Ilaniwai Street
Honolulu, HI 96813

The ENGINEER:

(Name, legal status and address)

Michael K. Kasamoto
License PE-3874-S
Engineering Design Group, Inc.
a Hawai'i Corporation
1236 S. King Street, Honolulu, HI 96814

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201[™]-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

ELECTRONIC COPYING of any portion of this AIA[®] Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

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- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS
- 10 INSURANCE AND BONDS
- 11 CONTRACTOR REPAIR ACT
- 12 CONTRACTOR DISCLOSURES

WHEREAS the Class Mitsuoka, et al., v. Haseko Homes, Inc., et al., Circuit Court of First Circuit, State of Hawai‘i Civil No. 12-1-3030-11 LWC, Dispute Prevention & Resolution, Inc. (“DPR”) No. 17-0447-A (“*the Lawsuit*”), by and through Class Counsel Melvin Y. Agena and Graham B. LippSmith, and the Contractor (collectively “the Parties”) hereby enter into the following Agreement for remediation work pertaining to structural straps at the Project.

WHEREAS the Parties understand and agree that this Agreement is contingent on final approval of a master settlement agreement by the Court or any Appellate Court in *the Lawsuit*, litigation resulting in the entry of a final order approving the master settlement agreement and judgment, as well as either (i) the expiration of the period for any appeals therefrom or (ii), if any appeals are made, the exhaustion of any and all appeals thereon to a final conclusion (“Final Order”) and payment of settlement sums due thereunder. Subject to this condition, the Parties hereby agree as follows:

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. Except as expressly provided in the Contract Documents to the contrary, the Contractor, at its sole cost, risk and expense, shall construct, equip, provide, purchase, pay for and furnish all of the Work in accordance with the Contract Documents and governmental laws, ordinances, codes, rules and regulations as they apply to its performance of the Work.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement shall be no later than one hundred and fifty-six (156) days from execution of this Agreement which shall include funding of the escrow account for payments due to the Contractor, and issuance of the payment to Contractor for mobilization by the Owner and issuance of the Notice to Proceed by the Construction Manager or as may otherwise be mutually agreed by the Parties.

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work on or before fourteen (14) months from the date of commencement as defined in the Notice to Proceed issued by the Construction Manager to the Contractor.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's proper and timely performance of the Contract. The Contract Sum shall be Nine Million Seven Hundred Three Thousand Dollars and Zero Cents (\$9,703,000.00), subject to additions and deductions as provided in the Contract Documents. The parties do not generally expect that there will be any Class Member opt outs that would reduce the number of Units in the repair Program below the six hundred and twenty-one (621) Units included in the repair Program as enumerated in Exhibit G. However, if any additional Class Member opt outs are permitted, the Contract Sum shall be equitably adjusted.

§ 4.2 The Contract Sum is based upon the fixed costs as described in Exhibit A and subject to any adjustments provided in the Contract Documents.

§ 4.3 The Contractor shall within thirty (30) days of execution of this Agreement submit to the Owner and Construction Manager an itemized breakdown of Exhibit A allocating the Contract Sum amongst the six hundred twenty-one (621) Units included in the repair Program as enumerated in Exhibit G. Said cost breakdown shall be provided on AIA Document G703-1992 or as otherwise may be acceptable to the Construction Manager and submitted with each Application for Payment in accordance with Article 9 of the AIA Document A201-2007, General Conditions of the Contract for Construction, as amended, and made a part of this Agreement.

Any Units identified in Exhibit G or any amendments thereto that are not made available for performance of the Work therein by the Contractor shall be excluded from the Work by Change Order and the amounts set forth on AIA Document G703-1992 for such Units shall not be paid to the Contractor in accordance with Section § 9.1.4 of Article 9 of AIA Document A201.

§ 4.4 Allowances included in the Contract Sum:

Item	Price
None	None

ARTICLE 5 PAYMENTS**§ 5.1 PROGRESS PAYMENTS**

§ 5.1.1 Based upon Applications for Payment, including all supporting documentation, submitted to the Construction Manager by the Contractor and Certificates for Payment issued by the Construction Manager, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

An Application for Payment shall not be submitted more frequently than every 14 calendar days. Payment shall occur monthly as enumerated in AIA Document A201 as modified for this Agreement and attached hereto.

§ 5.1.3 Upon receipt by the Construction Manager of an electronic Application for Payment, payment shall be made by the Owner not later than thirty (30) calendar days after the Construction Manager receives the electronic Application, provided the completed and notarized Application for Payment is timely submitted and is acceptable to

the Construction Manager. Payment shall be deemed to have been made upon deposit with an express courier for delivery to Contractor or upon making of arrangements with the Contractor for pick-up of the check.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work. The Schedule of Values is attached as Exhibit A and any subsequent versions thereof shall be prepared in the same form. This Schedule shall be used as a basis for reviewing the Contractor's Application for Payment.

The Contractor acknowledges that the Construction Manager will, as part of its duties, assist the Owner in satisfying the requirements for issuance of payment from the escrow account holding the Contract Sum. The Contractor shall, as part of its Application for Payment, support the Construction Manager as may be reasonably required to satisfy the requirements for issuance of payment from the escrow account, provided such requirements are in conformance with the Contract Documents. Conditional waivers of lien shall accompany each Application for Payment submitted by the Contractor. Certificates of Unit Substantial Completion for the condominium building(s) and or house(s) included in each Application for Payment in conformance with Section 9.8 of the AIA A201-2007 shall be included with said Application for Payment submitted by the Contractor, before the Application for Payment will be considered complete. The Substantial Completion form is attached hereto as Exhibit D and the procedure is defined in Section 9.8 of the AIA 201-2007.

§ 5.1.5 [Intentionally Omitted]

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of five percent (5%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five percent (5%);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Construction Manager has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Construction Manager shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.5 of AIA Document A201-2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

Except as hereinafter provided, or set forth in AIA Document A201 as amended, the Owner shall have the option, but not the obligation, to reduce the retainage requirements of this Contract or release any portion of retainage prior to the date specified in the Contract Documents. Any reduction or release of retainage, or portion thereof, however, shall not be a waiver of (i) any of the Owner's rights to retainage in connection with other payments to the Contractor, or (ii) any other right or remedy that the Owner has under the Contract Documents, at law or in equity.

§ 5.1.9 Contractor's Application for Payment will be used on the Schedule of Values attached as Exhibit A, as the same may be revised by written agreement of the parties, and shall not include payments to suppliers or subcontractors for materials or equipment which have not been incorporated into the Work.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment shall be made by the Owner to the Contractor as Increments of at least 100 Units are completed and when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment which respect to the subject Increment; and
- .2 a final Certificate for Payment for the subject Increment has been issued by the Construction Manager which shall not be unreasonably delayed or withheld; and
- .3 a final unconditional lien has been provided by the Contractor and all of its sub-contractors with subcontractors having a value of \$10,000.00 or more for all amounts paid by Owner for the subject Increment.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than as provided in Section 5.1.3 above.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

The Construction Manager will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

☒ Arbitration pursuant to Section 15.4 of AIA Document A201-2007

☐ Litigation in a court of competent jurisdiction

☐ Other *(Specify)*

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below.

(Insert rate of interest agreed upon, if any.)

One percent (1%)

§ 8.3 The Owner's representative:

(Name, address and other information)

Dana Bergeman
 Iopono Holdings Group, LLC
 a Hawai'i Limited Liability Company
 doing business as Bergeman Group
 812 Ilaniwai Street
 Honolulu, HI 96813

§ 8.4 The Contractor's representative:
(Name, address and other information)

Peter Page
 SageBilt Inc.
 a Hawai'i Foreign Profit Corporation
 1319 Powhatan Street
 Alexandria, Virginia 22314

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

§ 8.6.1 Construction Manager and its owner's agent and representatives shall not be liable for any act or omission by the Owner, or any of its officers, directors, members, employees or agents.

The owners, directors, officers, members, employees and agents of the Owner shall not be personally liable for any claim that may arise under this Contract.

The owners, directors, officers, members, employees and agents of SageBilt Inc. shall not be personally liable for any claim that may arise under this Contract.

The owners, directors, officers, members, employees and agents of Iopono Holdings Group, LLC shall not be personally liable for any claim that may arise under this Contract.

The cost of the Honolulu Department of Planning & Permitting (DPP) building permit(s) and plan review fees are included in the Contract Sum. Owner will not provide for separate payment of building permit and plan review fees. Contractor shall deliver its payment(s) to DPP and pick-up the building permit(s) prior to starting any Work and post building permits as required by law. Copies shall be provided to the Construction Manager.

Performance and Payment Bonds are not required to be obtained by the Contractor and are not included in the Contract Sum.

§ 8.6.2 Contractor shall retain all copyrights to Contractor-authored content prepared for the Project.

§ 8.6.3 Notwithstanding the provisions of § 12.2.1 of AIA Document A201-2007, Contractor shall not be liable or charged for compensation for the Construction Manager's services and expenses incurred in the normal course of creating punch lists and re-inspection(s) and administrative work necessitated thereby.

§ 8.6.4 The Contractor represents the following to the Owner (in addition to any other representations contained in the Contract Document), which representations may be fully relied upon by the Owner, and shall survive the execution and delivery of this Contract, any termination of this Contract, and the final completion of the Work:

.1 that it is financially solvent, currently able to pay all debts as they mature, and possessed of sufficient working capital and financing facilities to complete the Work and perform all of its obligations hereunder provided the parties satisfy their respective obligations hereunder;

.2 that it is able to furnish the plant, tools, materials, supplies, equipment and labor that it currently knows will be required to complete the Work and perform its obligations hereunder;

- .3 that it is authorized to do business in the State of Hawai‘i and properly licensed by all necessary governmental authorities having jurisdiction over the Work; and
- .4 that its execution of this Contract and its performance thereof is within its duty authorized corporate powers.

§ 8.6.5 Contractor acknowledges it has reviewed the existing site conditions of approximately ten (10) homes within the Project and that such experience has been incorporated into the Contractors pricing forming the Contract Sum.

§ 8.6.6 Contractor acknowledges it was provided with copies of the original construction drawings dating to time of original construction.

§ 8.6.7 Contractor acknowledges the existence of shear walls that will require modification in order to complete the Work. Similarly, the Contractor acknowledges that there are siding conditions (examples: “panelized” “board & batten” “stucco”) that may necessitate repairs be completed from the inside of the home rather than the outside, and that the number of homes where such conditions may be encountered is unknown.

§ 8.6.8 Contractor acknowledges final repair plan from the Engineer, Michael K. Kasamoto, will be provided to the Contractor following completion by the Engineer.

§ 8.6.9 Contractor acknowledges the scope of Work requires replacement of the existing shot pins at each of the 621 Units and their associated garages, as provided in Exhibit G, or as amended for Class Member opt outs, with new stainless-steel Titen anchors and associated hardware as required by the Project Manual and the Construction Documents prepared by the Engineer.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101–2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 9.1.3 [Intentionally Omitted]

§ 9.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)
Specifications are included as a part of The Drawings enumerated in Article 9 Section 9.1.5

Section	Title	Date	Pages

§ 9.1.5 The Drawings, to be prepared and provided by the Engineer:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
T-1	Title Page	To Be Determined
S-1	Details	To Be Determined
S-2	Details & Manuf. Specs.	To Be Determined
S-3	Manufacturer’s Specs.	To Be Determined
S-4	Structural Notes	To Be Determined
S-5	Other Notes	To Be Determined

§ 9.1.6 [Intentionally Omitted]

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:



- .1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties,
- .2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor’s bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Project Information Manual – Ocean Pointe Shot Pin Replacement Project – Dated April 28, 2021
 Exhibit A – Schedule of Values - Dated April 28, 2021
 Exhibit B – Contractor’s Disclosures
 Exhibit C – Honolulu Department of Planning & Permitting Special Inspection Form
 Exhibit D – Substantial Completion Form
 Exhibit E – Certificate of Final Completion Form
 Exhibit F – Sample Subcontractors Agreement
 Exhibit G – Affected Unit Count
 Exhibit H – Hawai‘i CGL Endorsement
 Exhibit I – Intentionally Omitted
 Exhibit J – Sample Homeowner Warranty

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of insurance or bond

See Article 11 of AIA Document A201-2007

Limit of liability or bond amount (\$0.00)

See Article 11 of AIA Document A201-2007

ARTICLE 11 CONTRACTOR REPAIR ACT

CHAPTER 672E OF THE HAWAII REVISED STATUTES CONTAINS IMPORTANT REQUIREMENTS WHICH, IF APPLICABLE, YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO DESIGNED, REPAIRED, OR CONSTRUCTED A HOME OR FACILITY. NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR AND/OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THE LAW, AND FAILURE TO FOLLOW THEM MAY NEGATIVELY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

ARTICLE 12 CONTRACTOR DISCLOSURES

The Parties agree that the disclosures that contractors are required by Haw Rev. Stat. § 444-25.5 and Haw. Admin. R. § 16-77-79(a) to make before entering into contracts with “homeowners” (including but not limited to lien rights of labor, suppliers and subcontractors, the percentage of work to be subcontracted, the extent of the financial security available to assure performance by Contractor, the right of the Owner to require Contractor to provide performance and payment bonds at Owner’s expense and the approximate cost thereof) are not applicable to this Agreement with the entire *Lawsuit Class*, by and through Class Counsel, in connection with a settlement approved by Court, and the Owner acknowledges that it has obtained appropriate legal advice relating to those matters and hereby releases, waives and agrees not to assert any and all claims arising out of the failure of Contractor to make such disclosures including, but not limited to, that this Agreement is void or for relief pursuant to Haw. Rev. Stat.

Chapter 480. Nonetheless, Exhibit B hereto sets forth certain disclosures which Contractor would be required to make, both verbally and in writing, when entering into contracts with individual homeowners and Owner agrees that it shall be solely responsible for making any such disclosures to the individual members of the Class, who are not parties to this Agreement, to the extent that such disclosures are either required by law or otherwise appropriate.

This Agreement entered into as of the day and year first written above. The Parties agree that this Agreement may be executed via either original, email, or faxed signatures in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

DocuSigned by:

Melvin Avena

049FB0DD60E46B...

OWNER (Signature)

Melvin Y. Avena, Attorney for Class

(Printed name and title)

DocuSigned by:

Peter Page

0B94876A3DE14A1

CONTRACTOR (Signature)

Peter M. Page, Jr., SageBilt Inc. President

(Printed name and title)

EXHIBIT 2

AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

AGREEMENT made as of the 28th day of April in the year 2021
(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status and address)

Mitsuoka, et al., v. Haseko Homes, Inc., et al., Circuit Court of First Circuit, State of Hawai'i Civil No. 12-1-3030-11 LWC, Dispute Prevention & Resolution, Inc. ("DPR") No. 17-0447-A ("the Lawsuit"), by and through Class Counsel Melvin Y. Agena and Graham B. LippSmith

Law Office of Melvin Y. Agena
Law Office of LippSmith LLP
Harbor Court Commercial Tower
55 Merchant Street, Suite 1850
Honolulu, Hawai'i 96813

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AND the Contractor:

(Name, legal status and address)

SageBilt Inc.
a Hawai'i Foreign Profit Corporation
1319 Powhatan Street
Alexandria, Virginia 22314

For the following Project:

(Name, location and detailed description)

Ocean Pointe Shot Pin Repair Project
Ewa Beach, Hawai'i

The Construction Manager:

(Name, legal status and address)

Iopono Holdings Group, LLC
a Hawai'i Limited Liability Company
doing business as Bergeman Group
License CT-31817
812 Ilaniwai Street
Honolulu, HI 96813

The Engineer:

(Name, legal status and address)

Michael K. Kasamoto
License PE-3874-S
Engineering Design Group, Inc.
a Hawai'i Corporation
1236 S. King Street, Honolulu, HI 96814

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WHEREAS the Class in Mitsuoka, et al., v. Haseko Homes, Inc., et al., Circuit Court of First Circuit, State of Hawai'i Civil No. 12-1-3030-11 LWC, Dispute Prevention & Resolution, Inc. ("DPR") No. 17-0447-A (*"the Lawsuit"*), by and through Class Counsel Melvin Y. Agena and Graham B. LippSmith, and the Contractor (collectively "the Parties") hereby enter into the following Agreement for remediation work pertaining to structural straps at the Project.

WHEREAS the Parties understand and agree that this Agreement is contingent on final approval of a master settlement agreement by the Court or any Appellate Court in *the Lawsuit*, litigation resulting in the entry of a final order approving the master settlement agreement and judgment, as well as either (i) the expiration of the period for any appeals therefrom or (ii), if any appeals are made, the exhaustion of any and all appeals thereon to a final conclusion ("Final Order") and payment of settlement sums due thereunder. Subject to this condition and the limitations of Section 3.1 of the A101 - 2007, the Parties hereby agree as follows:

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Construction Manager. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the Parties hereto and supersedes all prior and contemporaneous negotiations, representations or agreements, either written or oral, between the parties or their representatives. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Engineer or the Construction Manager or their consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor except as set forth in Sections 5.3 and 5.4, (3) between the Owner and the Engineer, Construction Manager or their consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Construction Manager shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Construction Manager's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, taxes, plan review fees, building permits and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total repair of 621 Units provided in Exhibit G or as may be amended for Class Member opt outs, which the Work performed under the Contract Documents may be the whole or in part.

§ 1.1.4.1 A "Unit" is defined as a single residential home or townhouse within the Project, together with its garage, whether attached or detached.

§ 1.1.4.2 A "Unit Owner" means the owners of any single Unit included in the Work and includes representatives of condominium associations, if any, where the Work involves common elements.

§ 1.1.4.3 The "Premises" includes all of the common areas as well as the individual 621 residential Units as listed on Exhibit G hereto, or as may be amended if any Class Members are permitted to opt out of the *Lawsuit* settlement, and are located within the Ocean Pointe Development located in Ewa Beach, Hawai'i.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams. If the Work required by any final Drawings first provided to the Contractor after execution of the Agreement is not acceptable to Contractor in its sole discretion, Contractor may terminate the Agreement within five (5) business days from receipt thereof.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Engineer and the Engineer's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor, subject to the exclusions contained in the Contract Documents. In the event of a conflict between the provisions of two or more Contract Documents, the Agreement and the A201-2007 General Conditions as executed by the Parties shall control over all other Contract Documents and the Drawings shall control over the Project Conditions and Information Manual. Performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

- .1 Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names or similar reference, no substitutions may be made unless accepted prior to execution of the Contract or if accepted by the Engineer via substitution request submitted to the Construction Manager and not objected to by the Owner within ten (10) days of Engineer's written approval, and when involving a change in the Contract Sum or Contract Time, also accepted by the Owner and Construction Manager as a Change in the Work in accordance with Article 7. Where two or more products are shown or specified, the Contractor has the option to use either of those shown or specified.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Engineer and the Engineer's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Engineer's or Engineer's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Engineer and the Engineer's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the Class to be defined in the master settlement agreement in the Litigation and represented by Class Counsel. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. Ultimately, the Court in the Litigation shall have the sole authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Class Counsel agrees to promptly file the necessary motions seeking approval of the *Lawsuit* settlement and of this Agreement. Such motions shall also request establishment of an escrow account for deposit of settlement monies equal to the Contract Sum as security for payment for the Work and appointment of the Construction Manager to carry out the functions allocated to him under the terms of this Agreement and, consistent therewith, to authorize issuance of payment of Contractor from the monies deposited in the escrow account. If (i) approval of the settlement is not obtained, (ii) the escrow account for payment of Contractor is not established and funds equal to the Contract Sum are deposited therein, (iii) if a construction manager with authority to approve issuance of payment to Contractor from the escrow account is not appointed, or (iv) a Final Order is not entered, Contractor shall have the right to terminate this agreement within ninety (90) days from failure of any such condition, or by September 1, 2021, whichever comes first, or as may be mutually agreed by Owner and Contractor.

§ 2.1.2 The Parties acknowledge and agree that *the Lawsuit* Class has entered into this Agreement by and through their Class Counsel ("Class"), and that Class Counsel will be acting on behalf of the Class in connection with administration of this Agreement under the supervision of the Court. The Parties further agree that the "Owner" is the entire *Lawsuit* Class, under the supervision of the Court, and that administration of the Agreement and performance of the rights and responsibilities of the Owner under this Agreement through final payment to Contractor shall be performed solely by Class Counsel, under the supervision of the Court, including determination by the Court of any issues raised by Class Members regarding the scope of Work to be performed by the Contractor in the individual Units under the Contract Documents and the procedures therefor, that the individual members of the Class are not parties to and shall not have standing to exercise the rights of the Owner under this Agreement and that the independent rights and remedies of the individual members of the Class as against the Contractor shall be solely as provided in the warranties issued to them by Contractor upon completion of the Work in their separate Units.

§ 2.1.3 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights, to the extent applicable. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) an allowable change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable and good faith concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7. The Contractor shall secure and pay for necessary approvals and charges required for construction.

§ 2.2.3 If required for the Work, the Owner or the Construction Manager shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner or the Construction Manager shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner or the Construction Manager shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. Notwithstanding any other provision of the Contract Documents, the Owner or the Construction Manager shall furnish, at no cost to the Contractor, architectural and engineering services (e.g. provision of drawings and specifications) required by the City and County of Honolulu for the issuance of construction and/or building permits necessary for performance of the Project and for actual completion of the Work. Additionally, the Owner through the Engineer or the Construction Manager, shall furnish specific product information for the materials to be incorporated in to the Work, including information pertaining to the manufacturer, model numbers and similar information.

§ 2.2.5 The Owner or the Construction Manager shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, after the Owner's written notice thereof or the Construction Manager, the Contractor shall diligently commence to cure within fifteen (15) days of notice and complete the cure within a reasonable time thereafter, failing which the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior written approval of the Construction Manager. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within thirty (30) days, together with interest thereafter at the rate provided in Section 8.2 of the Agreement.

§ 2.5 EXTENT OF OWNER RIGHTS

§ 2.5.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law, or (iii) in equity.

§ 2.5.2 In no event shall the Owner or Construction Manager have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

ARTICLE 3 CONTRACTOR**§ 3.1 GENERAL**

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed under Hawai'i law. The person designated in Section 8.4 of the Agreement as the Contractor's representative shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents. All of the Contractor's Work shall conform to the Contract Documents. No change therefrom shall be undertaken without the prior written approval of the Construction Manager. When more detailed information is required for performance of the Work or when an interpretation of the Contract Documents is requested, the Contractor shall submit a written request to the Construction Manager who shall furnish such information or interpretation in the form of supplemental instruction or other written form or Drawing.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Engineer or Construction Manager in the administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the Project site and become generally familiar with local visible conditions under which the Work is to be performed.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner or the Construction Manager pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the Project site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Construction Manager may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. Nor is Contractor required to conform the Work to current building code or other requirements that are at variance with the Drawings and Specifications.

§ 3.2.4 If the Contractor believes that additional cost or time is required because of clarifications or instructions the Construction Manager issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor knowingly fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Construction Manager for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for non-conformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's commercially reasonable skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Construction Manager before proceeding with that portion of the Work using Contractor's alternative means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 Work shall only be allowed between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday unless extended work hours are allowed by the Construction Manager. At the beginning of each day's work, the Contractor shall give a list of names to security personnel at the Project site indicating the people present at the jobsite that day. Work shall be fully manned and shall progress on a continuous basis.

§ 3.3.5 The Contractor shall take reasonable steps appropriate to minimize the disruption or inconvenience to the Unit Owners, residents, guests and employees of the Project, subject to Contractor's rights under Subsection 3.10.1. The Contractor shall insure that its employees and those of its Subcontractors treat residents, guests and employees of the Project with courtesy and respect at all times. The Contractor, Subcontractors and their agents and employees shall not use boom boxes, stereos, radios, CD or tape players, or any other similar devices for reproduction or amplification of music, voices or sounds on the Project site.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Construction Manager in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with notification to the Construction Manager, the prior written consent of the Engineer and without any objection to said substitution by the Owner within ten (10) days of Engineer's written approval, all of which shall be submitted to the Construction Manager.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts and any other individuals associated with the Project.

§ 3.5 WARRANTY

§ 3.5.1 For the time periods described in this Section 3.5, the Contractor, and any assigns, warrant to Owner that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work required by the Contract Documents. Work not conforming to these requirements shall be considered defective. The Contractor's warranties exclude remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, normal wear and tear and normal usage, and all other exclusions contained in the Contract Documents. The Contractor's warranties also exclude aesthetic conditions (e.g., cleanliness, matching of paint color and sheen, consistency of textures, and smoothness of drywall repairs, and the appearance of cabinetry repairs) not included in the punch list for any Unit prior to completion and acceptance of the Work therein. If required by the

Construction Manager at any time prior to Project Completion, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment furnished under the Contract. The preceding warranty is limited to labor furnished by Contractor which is warranted against failure for five (5) years after Substantial Completion of the Work in each Unit. Contractor does not warrant any materials furnished in performance of the Work but agrees that, for a period of five (5) years following substantial completion of each Unit, shall facilitate manufacturer warranty claims for material furnished to such Unit which is reported to be defective by (i) inspecting such material, (ii) reporting the condition to the manufacturer, (iii) initiating a warranty claim on behalf of the Unit Owner, and (iv) performing any warranty work which is authorized by the manufacturer on terms and conditions acceptable to Contractor. Contractor has no other obligation with respect to materials furnished in conformance with the Contract Documents. Contractor further agrees to provide the same warranty to the Unit Owner for each unit in which Work is performed, in a form approved by Owner, upon substantial completion of the Work therein.

§ 3.5.2 The Contractor shall assign to the Owner at the time of final payment for the Work or any portion thereof any and all manufacturer's warranties relating to materials and labor used in the Work and shall perform the Work in such manner so as to preserve any and all such manufacturer's warranties. If necessary as a matter of law, the Contractor may retain the right to enforce directly any such manufacturers' warranties during the period thereof.

§ 3.6 TAXES

The Contractor shall pay sales, excise, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for and, as soon as practicable, furnish the Owner with copies of all permits and fees, licenses, and inspections by government agencies necessary for proper and timely execution and completion of the Work including, without limitation, all building permits.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall also obtain and pay all charges for all approvals for street closings, parking meter removal, and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

§ 3.7.3 If the Contractor performs Work contrary to the plans and specifications or, except as specified by the Contract Documents, is contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs and fines attributable to correction of such Work.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the Project site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Construction Manager before conditions are disturbed and in no event later than 21 days after first observance of the conditions.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Construction Manager in writing. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed in writing by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct,

but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1** Allowances shall cover the cost to the Contractor of materials and equipment delivered at the Project site and all required taxes, plan review and building permit fees, less applicable trade discounts;
- .2** Contractor's costs for unloading and handling at the Project site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3** Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Notwithstanding the above, in the event of notice by Owner under Sections 2.4 or 14.2.2, notice shall be deemed to have been sufficiently served only if delivered by express courier to Contractor's address as specified in Section 8.4 of the Agreement. No Subcontractor work is permitted unless the superintendent is present to coordinate that work, and to communicate with the Owner and the Construction Manager.

§ 3.9.2 The Contractor, as soon as practicable after entry of The Final Order in the Litigation, shall furnish in writing to the Owner through the Construction Manager the name, contact information and qualifications of a proposed superintendent. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Construction Manager has reasonable objection to the proposed superintendent or (2) that the Construction Manager requires additional time to review. Failure of the Construction Manager to reply within the fourteen (14) day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Construction Manager has made reasonable and timely objection.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Parties do hereby agree that the Contractor will provide the Construction Schedule within thirty (30) days of the Court's Final Order in the Litigation. The Construction Schedule shall include milestones for completion of all Units within the Contract Time in whatever sequence the Contractor determines to be appropriate and no detailed schedule for performance of the Work within any Unit is required. The sequence in which Units are scheduled for performance of the Work therein may be modified by the Contractor at any time as Contractor determines to be necessary or appropriate to achieve the milestones indicated in the Construction Schedule. The Owner and Construction Manager acknowledge that the Contract Sum is based upon an efficient and economical schedule for performance of the Work and that adherence to the Contractor's construction schedule, including the daily schedule and work flow, is critical for Contractor's successful performance of the Work, and agree to cooperate with such schedule to the fullest extent reasonably possible.

§ 3.10.2 The Contractor shall prepare the required written submittals promptly after the Court's Final Order in the Litigation and submit the schedule(s) for the Construction Manager's written approval. The Construction Manager's approval shall not unreasonably be delayed or withheld. The submittals shall (1) be coordinated with the Contractor's Construction Schedule, and (2) allow the Construction Manager reasonable time to review submittals. If the Contractor fails to timely submit a submittal, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. If the Construction Manager does not reject any submittal in writing within 28 days from submission by Contractor, it shall be deemed approved.

§ 3.10.3 Provided the owners and occupants of the Units cooperate by making their Units available for performance of the Work in conformance therewith, the Contractor shall perform the Work in accordance with the most recent schedules submitted to the Owner and Construction Manager. Contractor shall schedule performance of the Work for individual Units directly with the owners thereof. Should the owner of a Unit fail to respond or cooperate with Contractor's attempt to schedule the Work for such Unit by providing the Unit Owner with at least two alternative dates, Contractor may remove the Unit from the schedule and notify the Construction Manager. The Construction Manager shall then attempt to secure the agreement of the Unit Owner to one of at least two other alternative dates provided by the Contractor for performance of the Work in such Unit. If the Construction Manager is not able to secure the agreement of the Unit owner or the Unit owner fails to make the Unit available for performance of the Work as scheduled, the Construction Manager shall, upon the request of Contractor, promptly issue a change order removing such Unit from the Contractors' Scope of Work. Thereafter, the Unit may not thereafter be added to the Contractor's scope of work without the express agreement of Contractor.

§ 3.10.4 The Contractor shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Owner of any delays or potential delays. The Construction Schedule shall be updated to reflect actual conditions (sometimes referred to as "progress reports") as set forth in Subsection 3.10.1. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, or the Contract Sum unless any such adjustment is agreed to in writing by the Owner and authorized pursuant to Change Order.

§ 3.10.5 [Intentionally Omitted]

§ 3.11 DOCUMENTS AND SAMPLES AT THE PROJECT SITE

The Contractor shall maintain at its office for the Owner one complete copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good and legible condition and marked currently to indicate field changes and selections made during construction, and one complete and legible copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Construction Manager and shall be delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the requirements of the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Engineer or Construction Manager is subject to the limitations of Section 4.2.7. Informational submittals upon which the Engineer or Construction Manager is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Construction Manager Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Construction Manager or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Owner's separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Construction Manager that the Contractor has (1) reviewed them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and

coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Construction Manager and/or Engineer, as required by the Contract Documents.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Engineer's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Engineer via the Construction Manager in writing of such deviation at the time of submittal and (1) the Engineer and Construction Manager have given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Engineer's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Construction Manager on previous submittals. In the absence of such written notice, the Construction Manager's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in or inherent to the materials required by the Contract Documents.

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the Project site with materials or equipment.

§ 3.13.2 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, loss and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed in such a manner that public areas adjacent to the Project site shall be free from all debris, building materials, and equipment likely to cause hazardous or dangerous conditions.

§ 3.13.3 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Unit Owner, which consent shall be in the sole discretion of the Unit Owner.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 Unless otherwise provided in the Contract Documents, the Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably

withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 On a daily basis from commencement to completion of the Work, the Contractor shall keep the Project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project site.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, after receipt of written notice and two (2) work days allowance for cure, the Owner may do so and Owner shall be entitled to reimbursement for the cost thereof from the Contractor within thirty (30) days, together with interest thereafter at the rate provided in Section 8.2 of the Agreement. Contractor shall be held responsible only for cleanup of areas within its control, and shall not be held responsible for cleanup of areas of the Work or common areas entered by Owner's separate contractors unless the Contractor's responsibility is established by photographic documentation by Owner, or other reasonable means.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Construction Manager complete access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees associated with performance of the Work. The Contractor shall indemnify and hold harmless the Owner, Engineer and Construction Manager from loss on account thereof, but shall not be responsible for such loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Engineer. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished in writing to the Construction Manager.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Engineer, Construction Manager and agents and employees of any of them from and against liabilities, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such liability, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such liability, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 3.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.19 EXTENT OF CONTRACTOR'S RIGHTS

§ 3.19.1 The rights stated in this Article 3 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Contractor (i) granted in the Contract Documents, (ii) at law, or (iii) in equity.

§ 3.19.2 In no event shall the Contractor have control over, charge of, or any responsibility for design or for selection of or the quality of the materials and equipment specified for the Work, or repair of any conditions existing in the Premises or the Project not specifically included in the Contractor's Work, notwithstanding any of the rights and authority granted the Contractor in the Contract Documents.

ARTICLE 4 ENGINEER**§ 4.1 GENERAL**

§ 4.1.1 The Owner shall retain an engineer lawfully licensed to practice engineering or an entity lawfully practicing engineering in the State of Hawai'i. That person or entity is identified as the Engineer in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Engineer as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Construction Manager. Consent shall not be unreasonably withheld or delayed.

§ 4.1.3 If the employment of the Engineer is terminated, the Owner shall employ a successor engineer as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Engineer.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Construction Manager will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until final payment is due, and (with the Owner's concurrence), from time to time during the one (1) year warranty period for correction of the Work as set forth in Section 12.2. The Construction Manager will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Construction Manager will visit the Project site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Construction Manager will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Construction Manager will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Construction Manager will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Construction Manager will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Construction Manager about matters arising out of or relating to the Contract. Communications by and with the Engineer and its consultants shall be through the Construction Manager. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Construction Manager's evaluations of the Contractor's Applications for Payment, the Construction Manager will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Construction Manager has authority to reject Work that does not conform to the Contract Documents. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Construction Manager nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Construction Manager to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Construction Manager will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Engineer's action will be taken in accordance with the submittal schedule approved by the Construction Manager or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Engineer's or Construction Manager's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Construction Manager, of any construction means, methods, techniques, sequences or procedures. The Engineer's or Construction Manager's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Construction Manager will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Construction Manager will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Construction Manager will conduct inspections to determine the date or dates of Unit Substantial Completion and the date of final completion; issue Certificates of Unit Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Construction Manager agree, the Construction Manager will provide one or more project representatives to assist in carrying out the Construction Manager's responsibilities at the Project site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Construction Manager will interpret and decide as the Initial Decision Maker matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Construction Manager's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Construction Manager will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Construction Manager will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Construction Manager's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Construction Manager will review and respond to requests for information about the Contract Documents. The Construction Manager's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Engineer will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the Project site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor retained by the individual Class Member Owner of a Unit.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Project site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 The Contractor shall furnish the Owner through the Construction Manager, in writing (i) the names and trade for each Subcontractor and (ii) the names of all persons or entities proposed as manufacturer of the products identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the names of the installing Subcontractors. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Construction Manager has reasonable objection to any such proposed person or entity or (2) that the Construction Manager requires additional time for review. Failure of the Owner or Construction Manager to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Construction Manager has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Construction Manager has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Construction Manager has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Construction Manager makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner, Engineer and Construction Manager. Each subcontract agreement shall preserve and protect the rights of the Owner, Engineer and Construction Manager under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 All subcontracts having a value of \$50,000.00 or more shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract, attached to the Agreement as Exhibit F, and shall specifically provide that the Owner is an intended third-party beneficiary of each such subcontract.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 If the Work in connection with a subcontract has been suspended for more than thirty (30) days after termination of the contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for increases in direct costs incurred by such Subcontractor as a result of the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity and shall be released from all obligations thereunder from and after the date of such assignment.

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

§ 5.4.5 To the extent applicable law does not prohibit waivers of liens at the time of contract signing, the Contractor shall include in its subcontracts having a value of \$10,000.00 or more a provision that the subcontractors waive and release all of their lien rights and rights to file claims of lien regarding the Project.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the Project site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them to the extent that, consistent with Section 3.10.1, such cooperation does not interfere with the Contractor's Construction Schedule. The Contractor shall participate with other separate contractors and the Owner in reviewing their separate construction schedules. The Contractor shall make appropriate revisions to its construction schedule as mutually agreed provided that such revisions are consistent with Section 3.10.1. The coordinated construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised in writing.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the separate contractors of Unit Owners reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs to the extent that such accommodation does not impede Contractor's schedule for performance of the Work. After giving the Construction Manager notice and a reasonable opportunity to cure any conflict with the activities of separate contractors, Contractor may reschedule or remove a Unit from the Schedule to avoid any such conflict.

§ 6.2.2 [Intentionally Omitted]

§ 6.2.3 The Contractor shall reimburse the Owner for reasonable costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities not in conformance with the Contractor's Construction Schedule or because of defective construction. The Owner shall be responsible to the Contractor for applicable charges established in Exhibit A because of Owner's own forces or a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the Project site and surrounding area free from waste materials and rubbish, the Owner may clean up and the Construction Manager will allocate the cost among those responsible as reasonably determined by the Construction Manager.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Construction Manager; a Construction Change Directive requires agreement by the Owner, where necessary the Engineer and the Construction Manager and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Construction Manager alone, or by the Engineer with the acceptance of the Construction Manager.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in Section 7.3 and Subsection 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Contractor and Construction Manager stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner Construction Manager, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Unit prices and labor rates as stated in Exhibit A or subsequently agreed upon in writing; or
- .2 If there is no applicable unit price or labor rate in Exhibit A, mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating written data to permit evaluation

§ 7.3.4 [Intentionally Omitted]

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining either of them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 [Intentionally Omitted]

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed in writing by the Construction Manager. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be incorporated into a Change Order and covered by an Application for Payment thereafter. For any portion of the cost that remains in dispute, the Construction Manager will make an interim determination for purposes of certification of payment upon Contractor's applications for payment of those costs and certify for payment the amount that the Construction Manager determines, in the Construction Manager's professional judgment, to be reasonably justified. The Construction Manager's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15. Contractor shall not be obligated to perform any changes in the Work that would require Contractor to incur unpaid costs while a dispute is pending unless the Owner provides Contractor with reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's payment obligations under the Contract with respect to such changes in the Work.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Construction Manager concerning the adjustments in the Contract Sum and Contract Time, if applicable, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Construction Manager will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Construction Manager, and the Engineer with the acceptance of the Construction Manager as required by Section 7.1.2, have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Construction Manager, and where applicable also the Engineer, and shall be binding on the Owner and Contractor, subject to Contractor's right to initiate a Claim pursuant to Article 15.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Construction Manager for completion of the Project in accordance with Section 9.8. The date of Unit Substantial Completion is the date certified by the Construction Manager for completion of an individual Unit in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work in a proper and timely manner.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, Engineer or Construction Manager, a separate contractor employed by the Owner or by the agents, employees or authorized representatives of any of them; or by changes ordered in the Work; or by labor disputes, fire, sabotage, vandalism, concealed conditions, hazardous materials not already included in the scope of the Work, or casualties requiring reconstruction or repair to the Work or Project or any parts thereof, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's reasonable control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Construction Manager determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Construction Manager may determine. Notwithstanding the above, Contractor retains all other rights related to delay and time as expressed in the Contract Documents.

8.3.1.1 If the Contractor is delayed at any time in the commencement or progress of the Work in any Unit by the act or neglect of a Unit Owner or occupant (including family members, guests, and tenants) or their agents, or by other causes that the Construction Manager determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Construction Manager may determine. Should a Unit Owner or occupant fail to make all areas of a Unit in which Work is to be performed available for performance of the Work at the time scheduled for commencement of Work in the Unit by failing to timely move or relocate furnishings, personal possessions or other obstructions that impair Contractor's access to any portion of the work area or otherwise interfering with Contractor's performance at any time prior to completion of the Unit, Contractor shall immediately notify the Construction Manager. If such obstruction or interference is not cured within four hours, the Unit will be rescheduled for the Work. If the Unit Owner does not remove the obstruction and make the Unit available for completion of the Work in the Unit within thirty days thereafter, Contractor shall be relieved of performing the Work in the affected areas without any adjustment of the Contract Sum. Notwithstanding the above, Contractor retains all other rights related to delay and time as expressed in the Contract Documents.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 [Intentionally Omitted]

ARTICLE 9 PAYMENTS AND COMPLETION**§ 9.1 CONTRACT SUM**

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for the proper and timely performance of the Work under the Contract Documents. The Owner through Class Counsel will negotiate and enter into separate payment agreements for the services of the Construction Manager and Engineer. The Owner and Contractor have agreed that this is a lump-sum fee agreement for the Work completed on the Units listed on Exhibit A pursuant to the Schedule of Values at Exhibit A and subject to adjusted payments only as specified in the terms set forth herein.

§ 9.1.2 The Contract Sum shall be held in an escrow account designated by the Court in the Litigation from which disbursements will be made by the Construction Manager (subject to approval of the Court in the Litigation) or the Court's designee in the event the Court in the Litigation does not approve the Construction Manager to distribute the Contract Sum.

§ 9.1.3 The Contract Sum cannot exceed Nine Million Seven Hundred Three Thousand Dollars and Zero Cents (\$9,703,000.00) under any circumstances. In the event that Contractor is entitled to payment of additional amounts for any reason under the Contract Documents, the Change Order or Construction Change Directive for such an additive adjustment shall also include an offsetting deductive adjustment for reduction in other portions of the Contractor's scope of Work, as determined by the Construction Manager and Owner, so that there is a net zero-dollar effect of any such Change Order or Construction Change Directive.

§ 9.1.4 Any Units identified in Exhibit G, or as may be amended for Class Member opt outs, that are not made available for performance of the Work therein by the Contractor shall be excluded from the Work by Change Order and the amounts for such Units set forth in the itemized breakdown of the Schedule of Values provided by Contractor pursuant to Section 4.3 of AIA Document A101, as may be amended, ("Excluded Funds") shall not be paid to the Contractor unless those amounts are reallocated by the Construction Manager or Owner as a result of any Change Order or Construction Change Directive.

§ 9.1.5 Intentionally Omitted

§ 9.2 SCHEDULE OF VALUES

The Schedule of Values, Exhibit A, allocates the entire Contract Sum to the various portions of the Work approved by the parties. This Schedule shall be used by the Construction Manager as a basis for reviewing the Contractor's Applications for Payment and may be amended pursuant to the Contract Documents.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 The Contractor shall submit to the Construction Manager an itemized Application for Payment prepared in accordance with the Schedule of Values for completed portions of the Work. Such Application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Construction Manager may require in accordance with Section 9.8 herein.

§ 9.3.1.1 As provided in Section 7.3.9, such Applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance reasonably satisfactory to the Owner: (i) a current Contractor's lien waiver and duly executed statement showing all Subcontractors with whom the Contractor has entered into subcontracts that exceed \$10,000; (ii) duly executed waivers of mechanics' liens from all Subcontractors with subcontracts that exceed \$50,000; (iii) for any change order the amount of which is based on cost and not a stipulated sum, the amount requested for each subcontractor, and (iv) all information and materials reasonably required to comply with the requirements of the Contract Documents.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Project site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the Project site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Project site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the Project site for such materials and equipment stored off the Project site.

§ 9.3.3 The Contractor warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

- .1 The Owner shall release any payments withheld due to a lien or claim of lien if the Contractor obtains security acceptable to the Owner or a lien bond that is (i) issued by a surety acceptable to the Owner, (ii) in form and substance satisfactory to the Owner, and (iii) in an amount not less than One Hundred Fifty percent (150%) of such lien claim. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Subsection 9.3.3. The cost of any premiums incurred in connection with such bonds and security shall be the sole responsibility of the Contractor and shall not be a part of, or cause any adjustment to, the Contract Sum.
- .2 The Contractor waives any right it may have to assert a mechanic's or other lien against the Project site and any improvements thereon, including, without limitation, the Work itself. Furthermore, the Contractor will cause a similar provision, waiving any right to a mechanic's or other lien against the Project site and any improvements thereon, including the Work, to be included in all of its subcontracts and any sub-subcontracts having a value of \$10,000.00 or more.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Construction Manager will, within seven (7) days after receipt of the Contractor's completed electronic Application for Payment as specified in Section 9.3.1, either approve a Certificate for Payment, with a copy to the Contractor, for such amount as the Construction Manager reasonably determines is properly due, or notify the Contractor and Owner in writing of the Construction Manager's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Construction Manager to the Owner, based on the Construction Manager's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 If, subsequent to issuing any Certificate pursuant to this Section 9.4, the Construction Manager should reasonably determine that any previous Certificate was in error (whether by review of additional conditions or documents, discovery of mathematical error, or any other reason), then the Construction Manager shall issue a Revised Certificate for Payment, setting forth the changes in the amounts due Contractor as well as the reason for such revision.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Construction Manager may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's opinion, the representations to the Owner required by Section 9.4.2 cannot be made. If the Construction Manager is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Construction Manager cannot agree on a revised amount, the Construction Manager will promptly issue a Certificate for Payment for the amount for which the Construction Manager is able to make such representations to the Owner. The Construction Manager may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be reasonably necessary in the Construction Manager's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 damage to property of Unit Owners that is not covered by insurance;
- .5 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .6 failure to carry out the Work in accordance with the Contract Documents after written notice and opportunity to cure which shall not be less than thirty (30) days from the date of the Owner's notice.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Construction Manager withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Construction Manager and the Construction Manager will reflect such joint payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Construction Manager has issued a Certificate for Payment pursuant to Section 5.1.4 of this Agreement, the Owner through the Construction Manager shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Construction Manager will, on written request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Construction Manager and Owner on account of portions of the Work done by such Subcontractor. No such action shall be deemed interference with Contractor's contractual relations with its Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers' amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. No such action shall be deemed interference with Contractor's contractual relations with its Subcontractor. Neither the Owner nor Construction Manager shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If the Construction Manager does not forward to the Owner an approved Certificate for Payment in accordance with Subsection 9.4.1, or the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents the amount certified by the Construction Manager, then the Contractor may, upon three (3) additional business days' written notice to the Construction Manager, stop the Work until payment of the amount owing has been received. The Contractor retains its right to terminate the Contract pursuant to Article 14, but if the Contract is not terminated, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable shut-down, delay and start-up, plus interest as provided for in Section 8.2 of the Agreement and subject to the cap provided in Section 9.1.3.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly by the Contractor within thirty (30) days, together with interest thereafter at the rate provided in Section 8.2 of the Agreement. If the Contractor fails to timely make any payment due the Owner pursuant to the Contract Documents, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work because the Contractor fails or refuses to do so after written notice and reasonable opportunity to do so, the Construction Manager or Owner shall issue a Change Order or, if the Contractor is not in agreement, a Construction Change Directive offsetting such amount against the Contract Sum and may, subject to any Claim by Contractor, deduct an amount equal to the amount thereof from any payment then or thereafter due the Contractor from the Owner.

§ 9.8 UNIT COMPLETION

§ 9.8.1 Unit substantial completion is the stage in the progress of the Work when the Work within one (1) individual Unit is substantially complete in accordance with the Contract Documents.

§ 9.8.2 When the Contractor considers that the Work within an individual Unit is substantially complete, the Contractor shall notify the Unit Owner of said status and promptly schedule a punch list inspection with the Unit Owner or their authorized representative. The Contractor shall provide the punch list inspection notification in writing via the unit status report contained within each Unit during completion of the Work or by telephone at least 24 hours in advance of the requested review.

§ 9.8.3 In the event the Unit Owner or their authorized representative is unresponsive or is otherwise unwilling or unable to participate in the punch list inspection, the Contractor shall conduct the inspection with the Construction Manager.

§ 9.8.4 [Intentionally Omitted]

§ 9.8.5 Punch list inspections shall be documented using the Unit Substantial Completion Certificate attached hereto as Exhibit D. Using this Certificate, the Contractor shall prepare a comprehensive list of punch list items to be completed or corrected for each Unit. Except as otherwise expressly established in the Contract Documents, the absence of an item on the Unit Substantial Completion Certificate does not alter the responsibility of the Contractor to complete the Work in accordance with the Contract Documents.

§ 9.8.6 The Contractor shall request that the parties at the punch list inspection sign the Unit Substantial Completion Certificate before departing the Unit. In the event the Unit Owner or their designated representative are not present at the punch list inspection or they refuse or fail to sign the Unit Substantial Completion Certificate, the Contractor shall document the reason for their refusal or failure and defer the matter to the Construction Manager who shall promptly sign the Certificate.

§ 9.8.7 Upon execution of the Unit Substantial Completion Certificate by the parties, the punch list inspection shall be considered complete and the completed Unit Substantial Completion Certificate shall be provided to the Unit Owner or their designated representative.

§ 9.8.8 Copies of the Unit Substantial Completion Certificate shall be provided to the Construction Manager for each Unit. Upon receipt of the Certificate by the Construction Manager for each Unit, said Unit shall be considered substantially complete and it will be permissible for the Contractor to include the cost of the Work in its Application for Payment, which shall be submitted in accordance with Article 5 of the Agreement.

§ 9.8.9 Following completion of the Unit Substantial Completion Certificate for a Unit, the Contractor shall with reasonable promptness correct or complete the Work identified on the Unit Substantial Completion Certificate as required by the Contract Documents. Once such Work is substantially completed the Contractor shall finalize the unit status report indicating that the Work is complete and leave the completed form in the Unit for the Unit Owner.

§ 9.8.10 Upon completion of the punch list work and fulfillment of the requirements of Subsection 9.8.9 above, the Contractor shall execute and complete the Unit Certificate of Completion in the form of Exhibit E with the Unit Owner or their authorized representative. In the event the Unit Owner or their authorized representative is unresponsive or is otherwise unwilling or unable to sign the Unit Certificate of Completion after one attempt by Contractor to meet with during normal business hours within five days from Contractor's initial communication for such purpose, the Contractor shall notify the Construction Manager and forward the Unit Certificate of Completion to the Construction Manager who shall promptly sign. Release of retainage for any Unit will not occur until the Construction Manager has received the Unit Certificate of Completion form for such Unit in conformance with this Section 9.8.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 Other than in work areas while Unit Work is being performed, Unit Residents may occupy or use any completed or partially completed Unit except during hazardous materials operations. Pets may remain on the premises and the Unit Owner or resident shall be responsible for confining pets, if any, or removing them from the premises, during the entirety of the Work in an individual Unit.

§ 9.9.2 Contractor shall immediately notify Owner or Construction Manager if a Unit owner or Unit resident informs the Contractor that a resident has a medical or mobility condition (e.g., use of a walker or crutches) that Contractor, from a layman's perspective, may reasonably believe could result in the resident being endangered by the Work (including through exposure to dust or latex paint fumes). Owner and Construction Manager will provide Contractor with similar notification should the same come to their attention. Owner shall make reasonable efforts to coordinate with and request that such persons refrain from remaining in Work areas when Work is being performed by Contractor in their Unit.

§ 9.9.3 [Intentionally Omitted]

§ 9.9.4 Unless otherwise agreed upon in writing, partial occupancy or use of a portion or portions of the Unit Work shall not constitute acceptance of Unit Work not complying with the requirements of the Contract Documents.

§ 9.10 PROJECT COMPLETION

§ 9.10.1 When the Work in all of the Units has been completed and the Contractor considers (the Project) to be substantially complete, Contractor shall prepare and submit to the Construction Manager a comprehensive list of items to be completed prior to final payment. Substantial Completion of the Project means the stage of completion of the Work in which all of the Unit Work has been completed.

§ 9.10.2 Upon receipt of the Contractor's list, the Construction Manager will make a reasonably prompt inspection to determine whether the Project Work or a designated portion thereof is substantially complete. If the Construction Manager's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents the Contractor shall, before issuance of the Certificate of Final Completion for the Project, complete or correct such item upon notification by the Construction Manager. In such case, the Contractor shall then submit a written request for another inspection by the Construction Manager to determine Final Completion.

§ 9.10.3 The Warranty periods required by the Contract Documents shall commence upon the date of Substantial Completion of each Unit. The Certificate of Final Completion shall be submitted to the Owner and Construction Manager for their written acceptance of responsibilities assigned to them in such Certificate. Upon acceptance, the Construction Manager shall direct the Owner to make payment of retainage applying to such Work or designated portion thereof.

§ 9.11 FINAL PAYMENT

§ 9.11.1 Whenever all Work has been finally completed in at least one hundred (100) Units, Contractor may apply for final payment for such Units ("Increment"). Upon receipt of the Contractor's written notice that the Work for any Increment is complete and ready for final inspection and acceptance and upon receipt of an Application for

Final Payment, the Construction Manager will promptly make such inspection and, when the Construction Manager finds the Work acceptable under the Contract Documents and the Contract fully performed for any such Increment, the Construction Manager will promptly issue a final Certificate for Payment stating that to the best of the Construction Manager's knowledge, information and belief, and on the basis of the Construction Manager's and Engineer's on-site visits and inspections, the Work for such Increment has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor for Increment and noted in the final Certificate for Payment is due and payable. The Construction Manager's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under or pursuant to the Contract Documents for such Increment shall be assembled and delivered by the Contractor to the Construction Manager as part of the Contractor's Application for Final Payment. The final Certificate for Payment will not be issued by the Construction Manager until all warranties and guarantees required by the Contract Documents for such Increment have been received by the Owner.

§ 9.11.2 Neither final payment nor any remaining retained percentage for any Increment shall become due until the Contractor submits to the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work of such Increment for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents is currently in effect, and (3) if required by the Owner, other data establishing payment or satisfaction of obligations for such Increment, such as receipts, releases and waivers of liens from subcontractors with contracts in excess of \$10,000.00 an indexed, loose leaf binder containing all inspection reports, permits, and temporary and final licenses necessary for the use of the Units in such Increment. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against any lien filed by such Subcontractor.

§ 9.11.3 If, after Substantial Completion of an Increment, final completion of the Work therein is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager so confirms in writing, the Owner shall, upon application by the Contractor and certification by the Construction Manager, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.11.3 The making of final payment for any Unit shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.11.4 Acceptance of final payment for any Unit by the Contractor Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Unit Owners shall be responsible for trimming back landscaping prior to commencement of the Work on an individual Unit. Additionally, Unit Owners shall be responsible for removing personal property blocking the Contractor's access the work whether interior or exterior.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

- .3 other property at the Project site or adjacent thereto, such as, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

Notwithstanding the above, Owner understands and acknowledges that damage to the existing landscaping is unavoidable. Contractor will not damage landscaping except as it determines is necessary to perform the Work and shall not be responsible for repair or replacement of damaged landscaping.

If a default hereunder poses an immediate risk to the health, safety or welfare of Owner or the Project, Owner may promptly act to cure said default without notice to Contractor, and such action shall not constitute a breach of the Agreement or relieve Contractor from any liability thereunder.

§ 10.2.2 The Contractor will inspect the Work areas for pre-existing damage prior to performance of the Work in each Unit and document conditions that might otherwise result in a claim by the Unit Owner. The originals of such documents shall be maintained by Contractor and shall include date and time stamped photographs where applicable. In the event of a claim by a Unit Owner, copies of all such documentation for the subject Unit shall be submitted to the Construction Manager. The Contractor shall repair any damage that the Construction Manager reasonably determines to be Contractor's responsibility.

§ 10.2.3 The Contractor shall provide the Construction Manager and the Owner with any documentation for the Construction Manager or Owner's approval prior to sending documentation to any Unit owners. Contractor shall also maintain a project-specific call center and website to provide project information and answer Unit Owner questions. The Contractor shall provide the Construction Manager and the Owner with any scripts for the call center and information to be published on the website for the Construction Manager or Owner's approval prior to using them. In addition, Contractor shall provide written reminders to Unit residents of the schedule for the Work affecting each Unit as the Work progresses in a form to be approved by the Construction Manager or Owner prior to using them.

§ 10.2.4 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, or injury in connection with performance of the Work.

§ 10.2.5 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Unit residents thereof. The cost of such measures shall be at Contractor's sole cost and expense.

§ 10.2.6 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner and the Construction Manager prompt advance written notice.

§ 10.2.7 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of a Unit owner or of the Owner or Construction Manager or anyone directly or indirectly employed by them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.8 The Contractor shall designate a responsible member of the Contractor's organization at the Project site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Construction Manager.

§ 10.2.9 The Contractor shall not permit any part of the construction or Project site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.10 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from loss, injury or damage by any cause.

§ 10.2.11 The Contractor shall promptly report in writing to the Construction Manager all accidents arising out of or in connection with the Work that cause death, personal injury or property damage, with a description of the incident, to the extent the same is consistent with the Contractor's duty of cooperation with its insurance company and its investigation of the incident. In addition, if death, serious personal injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Construction Manager.

§ 10.2.12

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to fungus, mold and spores ("mold"), asbestos or polychlorinated biphenyl (PCB), encountered on the Project site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Construction Manager in writing. The individual Class Member Owner of any single Unit on which the Work is performed shall advise the Contractor of the known presence of asbestos on the walls and ceilings of the Project. Further, the individual Class Member Owner of any single Unit on which the Work is performed shall disclose to the Contractor the known existence of lead, PCB and mold/mildew or any other hazardous material at the Project site. The Contractor is aware that mold may be present in the Work areas but has no obligation to remediate mold or replace contaminated materials under the Contract Documents.

§ 10.3.2 Upon receipt of the Contractor's written notice pursuant to Section 10.3.1, the individual Class Member Owner of the affected Unit shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless at the sole cost and expense of the individual Class Member Owner of the affected Unit. Unless otherwise required by the Contract Documents, the individual Class Member Owner of the affected Unit shall furnish in writing to the Contractor and Construction Manager the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Construction Manager will promptly reply to the individual Class Member Owner of the affected Unit in writing stating whether or not either has reasonable objection to the persons or entities proposed by the individual Class Member Owner of the affected Unit. If either the Contractor or Construction Manager has an objection to a person or entity proposed by the individual Class Member Owner of the affected Unit, the individual Class Member Owner of the affected Unit shall propose another to whom the Contractor and the Construction Manager have no reasonable objection. When the material or substance has been rendered harmless and the individual Class Member Owner pays Contractor's reasonable additional costs of shut-down, delay and start-up, as determined by the Construction Manager, the Contractor shall resume Work in the affected Unit. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount to be paid solely by the individual Class Member Owner of the affected Unit. The term "rendered harmless" shall be interpreted to mean levels of mold asbestos and or PCB that are less than the exposure standards set forth in all applicable federal, state and local laws, ordinances, codes, rules and regulations. In no event, however, shall the individual Class Member Owner of the affected Unit have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor of any tier, any material supplier, or any entity for whom any of them is responsible. The Contractor shall not use any fill or other materials to be incorporated into the Work that are hazardous, toxic or made up of any items that are hazardous or toxic.

§ 10.3.3 As a condition for resuming the Work in any Unit in which the presence of a hazardous material or substance is confirmed by testing, the individual Class Member Owner of such Unit shall indemnify and hold harmless the Contractor, Subcontractors, Engineer, Construction Manager, the Owner and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees,

arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (including the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The individual Class Member Owner of any affected Unit shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the Project site unless such materials or substances are required by the Contract Documents. The individual Class Member Owner of any affected Unit shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the individual Class Member Owner of any affected Unit for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the Project site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 [Intentionally Omitted]

§ 11.1.2 [Intentionally Omitted]

§ 11.1.3 [Intentionally Omitted]

§ 11.1.4 [Intentionally Omitted]

§ 11.2 OWNER'S LIABILITY INSURANCE

[Intentionally Omitted]

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 [Intentionally Omitted]

§ 11.3.1.1 [Intentionally Omitted]

§ 11.3.1.2 [Intentionally Omitted]

§ 11.3.1.3 [Intentionally Omitted]

§ 11.3.1.4 [Intentionally Omitted]

§ 11.3.1.5 [Intentionally Omitted]

§ 11.3.2 BOILER AND MACHINERY INSURANCE

[Intentionally Omitted]

§ 11.3.3 LOSS OF USE INSURANCE

[Intentionally Omitted]

§ 11.3.4 [Intentionally Omitted]

§ 11.3.5 [Intentionally Omitted]

§ 11.3.6 [Intentionally Omitted]

§ 11.3.7 WAIVERS OF SUBROGATION
[Intentionally Omitted]

§ 11.3.8 [Intentionally Omitted]

§ 11.3.9 [Intentionally Omitted]

§ 11.3.10 [Intentionally Omitted]

§ 11.4 Contractors and Subcontractors Insurance Requirements

§ 11.4.1 Prior to the commencement of any work, the Contractor and all Subcontractors subject to these insurance requirements agree, at its own expense, to procure, carry and maintain insurance from an insurance company or companies lawfully authorized to do business in the State of Hawai'i as will protect against claims for bodily injury or death and property damage which may arise out of operations and completed operations under the Contract whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall include the minimum coverage or limits of liability specified hereunder or required by law.

§ 11.5 Coverage and Limits of Liability

§ 11.5.1 The Contractor and all Subcontractors with a subcontract having a value of \$50,000.00 or greater shall maintain in force and effect during the period of the Contract the following insurance coverage written by carriers with at least an A-: VII financial rating according to the current edition of Best's Key Rating Guide with minimum limits of liability as follows in the sections below:

§ 11.6 Commercial General Liability

General Aggregate	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Damage to Premises rented to insured	\$ 100,000
Medical Expense Limit	\$ 5,000

§ 11.6.1 The Commercial General Liability insurance required shall include without limitation at least coverage for bodily injury and property damage, premises and operations, contractual liability, independent contractors, products and completed operations, personal and advertising injury, damage to premises rented to the insured and medical expense. The commercial general liability shall be written on an occurrence basis. There shall be no exclusion for multi-family, townhouse or condominium projects. The Policy shall also be endorsed to include the Expanded Occurrence Definition for projects in the State of Hawaii, the form of which is attached as Exhibit H hereto.

§ 11.6.2 The Contractor shall provide pollution liability coverage with a minimum limit of \$1,000,000 per occurrence and \$1,000,000 in the aggregate. This requirement does not apply to Subcontractors who are not licensed to perform hazardous waste remediation.

§ 11.7 [Intentionally Omitted]

§ 11.8 Business Automobile Liability

Bodily Injury Each Person	\$1,000,000
Bodily Injury Each Accident	\$1,000,000

Property Damage Each Accident \$1,000,000

or

Combined Single Limit of Liability \$1,000,000

The business auto policy shall include coverage for all owned, leased, hired and non-owned vehicles.

§ 11.9 Workers' Compensation: Statutory

Employers Liability

Bodily Injury by Accident	\$1,000,000 Each Accident
Bodily Injury by Disease	\$1,000,000 Policy Limit
Bodily Injury by Disease	\$1,000,000 Each Employee

§ 11.10 Umbrella Liability \$10,000,000 Aggregate

The Contractor shall provide umbrella liability shall be at least following form excess over the commercial general liability, business auto liability and employer's liability. The policy shall provide defense expense in addition to the limits of liability. The required coverage can be achieved through any combination of Commercial General Liability and Umbrella coverage. This requirement does not apply to Subcontractors.

§ 11.11 [Intentionally Omitted]

§ 11.12 Certificates of Insurance

§ 11.12.1 Certificates of Insurance on Accord form 25 or equivalent as satisfactory evidence of the insurance required by the Contract, shall be furnished by the Contractor and all required Subcontractors prior to the commencement of any Work and thereafter upon renewal or replacement of each required policy of insurance. The Owner shall not be obligated to compensate the Contractor for work performed or materials furnished by the Contractor until such certificate of insurance has been received by Owner. The Contractor shall upon request of the Owner provide copies of the policies and/or required endorsements to the Owner. An additional certificate evidencing continuation of the required insurance shall be submitted with the Application for Final Payment.

§ 11.12.2 In the event Contractor fails to procure or maintain any insurance coverage set forth above, the Owner, at its option, may purchase such coverage and deduct the cost thereof from monies due to the Contractor, or terminate the Contract, in addition to all other remedies available to the Owner.

§ 11.12.3 The insurance requirements in regards to types or limits or acceptance of certificates of insurance by the Owner shall in no way limit or relieve the Contractor or Subcontractors of its responsibilities under the Contract or at law including, without limitation, Contractors and Subcontractors indemnification obligations and liability in excess of the limits of the coverage required. Owner makes no representation that the minimum limits of coverage specified under the terms of the Contract are adequate to protect the Contractor or Subcontractors against Contractor's or Subcontractors undertaking of the Contract. In the event Contractor or Subcontractors, in their sole discretion, believe that the insurance coverage called for under the Contract is insufficient, Contractor or Subcontractors shall provide at its own expense such additional insurance as the Contractor or Subcontractors deem adequate and necessary. In the event Contractor or Subcontractors maintains higher limits of liability, Contractor's and all Subcontractors' liability and obligation to indemnify and hold harmless Owner and any other persons as required by the Contract Documents shall not be limited to the minimum limits of liability required to be carried by the Contractor or Subcontractors as outlined above.

§ 11.13 [Intentionally Omitted]

§ 11.14 PERFORMANCE BOND AND PAYMENT BOND

§ 11.14.1 [Intentionally Omitted]

§ 11.14.2 [Intentionally Omitted]

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**§ 12.1 UNCOVERING OF WORK**

§ 12.1.1 If a portion of the Work is covered contrary to the Construction Manager's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Construction Manager, be uncovered for the Construction Manager's examination and be replaced at the Contractor's sole expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Construction Manager has not specifically requested to examine prior to its being covered, the Construction Manager may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK**§ 12.2.1 BEFORE OR AFTER COMPLETION**

The Contractor shall promptly correct Work rejected by the Construction Manager or failing to conform to the requirements of the Contract Documents, whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's services and expenses made necessary thereby, shall be at the Contractor's expense. If, prior to the date of Final Completion, the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to its pre-damage condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable and for which the Contractor is responsible.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Unit Substantial Completion, the Work covered by the warranty for such unit is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one (1) year period as set forth in Section 3.5, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Construction Manager, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one (1) year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 Upon completion of any Work under or pursuant to this Section 12.2.2, the one (1) year correction period in connection with the Work requiring correction shall be renewed and recommence if the Contractor receives notice of the required correction within thirty (30) days of Unit Substantial Completion. The obligations under Section 12.2 shall cover any repairs and replacement to any part of the Work or other property that is damaged by the defective Work.

§ 12.2.3 The Contractor shall remove from the Project site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so by written notice instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable as reasonably recommended by the Construction Manager as the Initial Decision Maker. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the laws of the State of Hawai'i without giving effect to the conflict of laws principles thereof. All legal proceedings shall take place in Honolulu, Hawai'i and no other location. The Owner and Contractor waive the right to assert that such location is in an inconvenient forum or is an improper jurisdiction.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 or set forth elsewhere in the Contract Documents, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender or other entity providing construction financing or credit enhancement for the Project. The Contractor shall execute all consents reasonably required to facilitate such assignment, provided that such consents do not modify the terms of the Contract Documents except as expressly agreed to by the Contractor in a written amendment to the Agreement.

§ 13.2.3 If after the Final Order any Owner who has not opted out of the Class sells, transfers or loses ownership of the individual Unit to be repaired in the Project, the successor-in-interest to that Unit may request and the Contractor shall perform the repair protocol described herein provided the Unit is made available to Contractor at a time acceptable to the Contractor prior to Project Completion and Final Payment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. Notwithstanding the above, in the event of notice by Owner under Sections 2.4 or 14.2.2, notice shall be deemed to have been sufficiently served only if delivered to Contractor by express courier, delivered to Contractor's address as specified in Section 8.4 of the Agreement. Notice to the Owner shall be deemed to have been duly served if delivered pursuant to this Section 13.3, to the Owner's Representative as specified in Section 8.3 of the Agreement. In the event of notice to Contractor other than pursuant to Sections 2.4 and/or 14.2.2, Owner may send notice to: SageBilt Inc., at 1319 Powhatan Street, Alexandria, VA 22314.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Except as expressly provided in the Contract Documents, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 [Intentionally Omitted]

§ 13.5.2 If the public authorities having jurisdiction determine that portions of the Work require testing, inspection or approval not required by the Construction Documents, the Construction Manager will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Construction Manager of when and where tests and inspections are to be made so that the Construction Manager may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense with a Change Order issued pursuant to Section 9.1.3.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Construction Manager's services and expenses shall be at the Contractor's expense. The Contractor also agrees that the cost of testing services required for the convenience of the Contractor in its scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne solely by the Contractor.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager.

§ 13.5.5 If the Construction Manager is to observe tests, inspections or approvals required by the Contract Documents, the Construction Manager will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate set forth in Section 8.2 of the Agreement.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by Hawai'i law, but in any case not more than ten (10) years after the date of Substantial Completion of the Work for any Unit. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§13.7.1 Nothing contained in the Contract shall be deemed to create a contractual relationship with or a cause of action in favor of any third party against Contractor.

§ 13.8 GENERAL PROVISIONS

§ 13.8.1 All personal pronouns used in the Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and subsections are for convenience only and neither limit nor amplify the provisions of the Contract. The use herein of the word "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

§ 13.8.2 Wherever possible, each provision of the Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of the Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of the Agreement or valid portions of such provision, which are hereby deemed severable.

§ 13.9 NO ORAL WAIVER

§ 13.9.1 The provisions of the Contract Documents shall not be changed, amended, waived or otherwise modified in any respect except by a writing signed by the Owner and Contractor. No person is authorized on behalf of the Owner or Contractor to orally change, amend, waive or otherwise modify the terms of the Contract Documents or any of the Contractor's or Owner's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval or consent granted to the Contractor or Owner shall be limited to the specific matters stated in the writing signed by the Owner or Contractor, respectively, and shall not relieve the Contractor or Owner, as the case may be, of any other duties and obligations under the Contract Documents. No "constructive," "implied" or "imputed" changes shall be allowed.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**§ 14.1 TERMINATION BY THE CONTRACTOR**

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Construction Manager has not approved a Certificate for Payment, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents.
- .4 [Intentionally Omitted]

§ 14.1.2 [Intentionally Omitted]

§ 14.1.3 If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon seven (7) days' written notice to the Owner and Construction Manager and allowance for cure, terminate the Contract and recover from the Owner payment in conformance with the Schedule of Values for Work executed, costs incurred by reason of such termination, and damages. However, the above notwithstanding, in the event of termination pursuant to 14.1.1.1 or 14.1.1.2, Owner shall not be responsible to Contractor for payment of damages.

§ 14.1.4 If the Work is stopped for a period of ten (10) days in the aggregate, in a 60 day period and such stoppage was not previously addressed via Change Order and is not the result of any act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon ten (10) additional days' written notice to the Owner and the Construction Manager, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.1.5 If the Owner, Engineer or Construction Manager, the Owner's separate contractors, or their agents, employees, designated representatives or consultants unreasonably and materially interrupts or delays Contractor's performance of the Work in conformance with Contractor's construction schedule, including the daily schedule and work flow, Contractor, at its discretion, may give fifteen (15) days written notice, which notice shall specifically describe to the Owner the interruption and/or delay, of Contractor's intent to terminate the Contract unless, within such fifteen-day period, such interruption or delay is cured. In the event of such termination, Contractor shall have no further obligation or liability to Owner with regard to the portion of the Work not performed and may recover from the Owner payment in conformance with the Schedule of Values for Work executed, costs incurred by reason of such termination, and damages. Notwithstanding the foregoing, the Contractor shall, for the Units completed prior to termination, continue to have responsibility to correct Work not in conformance with the requirements of the Contract Documents, to provide the required warranty services, to indemnify, and to resolve disputes as required by the Contract Documents. At the insistence of the Owner, Engineer or the Construction Manager that the Work be performed according to the terms of the Contract based on their reasonable determination of Contractor's failure to do the same shall not be considered interruption or delay of Contractor's Work.

§ 14.1.6 If either party to the Agreement becomes insolvent, or consents to the appointment of a receiver or if such receiver is appointed without the application or consent of the other party, or if either party to the Agreement suffers

any petition to be filed under the Federal Bankruptcy Act, or if either party to the Agreement ceases carrying on its existing business, then in any such event such party shall be in default hereunder, and the non-defaulting party shall have the right to terminate the Agreement forthwith and to exercise all other remedies available at law or in equity.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 fails to commence the Work in accordance with the Contract;
- .2 after two (2) or more notices from the Owner or Construction Manager, fails to prosecute the Work, or any work reflected in a Change Order or Construction Change Directive in accordance with the Contract Documents;
- .3 after two (2) or more notices from the Owner or Construction Manager, refuses or fails to supply enough properly skilled workers or proper materials;
- .4 on two (2) or more instances, fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .5 after two (2) or more notices from the Owner or Construction Manager, disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority
- .6 fails to substantially complete the Work by the date stated either in Section 3.3 of the Agreement, as adjusted for reasons beyond the reasonable control of Contractor, and subject to allowance for cure established in the Contract Documents, or in a Change Order; or
- .7 on two (2) or more instances is otherwise guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, fifteen (15) days' written notice and allowance for cure by Contractor, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the Project site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive any further payment other than for the Units completed prior to termination. Contractor shall have no responsibility with regard to any Units for which the Contractor performed no Work prior to termination, including any costs incurred by Owner therefor.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 Neither the Owner nor its agents or representatives may, without cause permitted by the Contract Documents, suspend, delay or interrupt the Work in whole or in part. Should the Work in whole or in part be suspended, delayed or interrupted contrary to this paragraph, the Contractor shall be entitled to payment in conformance with Exhibit A, costs incurred by reason of such suspension, delay or interruption, and damages.

§ 14.3.2 [Intentionally Omitted]

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may not terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 [Intentionally Omitted]

§ 14.4.3 In the event of an unauthorized termination for the Owner's convenience, or of Owner's wrongful termination for cause, the Contractor shall be entitled to receive payment for Work executed (including retention), and costs incurred by reason of such termination, and termination fees as defined by the Contract Documents, and shall have no responsibility for performance of Work in any Units after termination.

ARTICLE 15 CLAIMS AND DISPUTES**§ 15.1 CLAIMS****§ 15.1.1 DEFINITION**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by the Owner, Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Construction Manager, if the Construction Manager is not serving as the Initial Decision Maker. Claims may be reserved in writing, within the time limits set forth in this Subsection 15.1.2. If a Claim is reserved, the resolution of Claims and Disputes procedures described in Section 15.2 shall not commence until written notice from the claimant is received by the Construction Manager.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim that does not involve a failure of payment as provided in Section 9.7 or termination or suspension pursuant to Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Construction Manager will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

§ 15.1.6.1 The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3 and 10.4, shall be referred to the Initial Decision Maker for a decision. The Construction Manager will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, a decision by the Initial Decision Maker shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless ten (10) days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree in writing, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) reject the Claim in whole or in part, (2) approve the Claim, (3) suggest a compromise, or (4) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within five (5) days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Construction Manager, if the Construction Manager is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Any of the Parties may compel mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 31 days from the date of a decision, demand in writing that the other party mediate within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to mediate within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy. Such notification shall not be deemed interference with Contractor's relationship with its surety.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, if allowed, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.2.9 The decision of the Construction Manager as the Initial Decision Maker in response to a Claim shall not be a condition precedent to arbitration in the event (1) the position of the Construction Manager is vacant, (2) the Construction Manager has failed to render a decision within the agreed time limits, (3) the Construction Manager has failed to take action required under Subsection 15.2.5 within 30 days after the Claim is made, or (4) the Claim relates to a construction lien.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The Parties shall endeavor to resolve their Claims by mediation that, unless the parties mutually agree otherwise, shall be administered by Dispute Prevention & Resolution, Inc. ("DPR") in accordance with DPR's Mediation Rules, Protocols and Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with DPR. The request may be made

concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by written agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The Parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Honolulu, Hawai'i and no other location, unless another location is mutually agreed upon in writing. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 If the Parties have selected arbitration as the method for binding dispute resolution in the Agreement, all claims, counterclaims, disputes and other matters in question (hereinafter referred to as a "controversy") subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise in writing, shall be administered by DPR in accordance with its Arbitration Rules, Protocols and Procedures in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with DPR. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. Any arbitration shall take place in Honolulu, Hawai'i and no other location.

§ 15.4.1.1 Notice of demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event say the demand for arbitration be made if institution of legal or equitable proceeding arising out of such controversy would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by DPR shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The parties hereby agree to waive the provisions of HRS Sections 658A- 21(a), (c) and (e). Each party hereby submits itself to the jurisdiction of the courts of the State of Hawai'i located in Honolulu, Hawai'i and no other location for the enforcement of such award. The arbitration shall be conducted by one arbitrator agreed to in writing by both parties. If the parties are unable to agree upon a single arbitrator, then such arbitrator shall be selected by the executive in charge of the Honolulu office of DPR. The arbitrator selected, in either manner, shall have a minimum of ten (10) years' experience in construction, design, commercial, real estate and business matters. Each party shall pay for its own witness' and attorneys' fees, as well as one-half (1/2) of the costs and fees of the arbitrator; provided, however, the unsuccessful party shall bear the fees and expenses of the arbitrator, reasonable attorneys' fees of both parties, and other reasonable costs and expenses incurred by the prevailing party in such arbitration proceeding.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Any one of the Parties, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Any one of the Parties, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

15.5 Legal and Related Fees

§ 15.5.1 In the event that it shall become necessary for Owner or Contractor to retain legal counsel to enforce any provision of the Agreement against the other party and a legal action is commenced (i.e., litigation or arbitration), each party shall bear their own costs, including reasonable attorneys' fees, costs and costs of defense, incurred in connection with such legal action notwithstanding any statute providing for such an award.

EXHIBIT A

Ocean Pointe Shot Pin Replacement Project
SCHEDULE OF VALUES
April 28, 2021

Contract Sum Schedule of Values

Portion of The Work	Units	Cost Type	Subtotal Value
Mobilization, Admin Setup, Website	1	Fixed Fee	\$503,000
Repair of 621 Units	1	Fixed Fee	\$9,200,000
General Excise Taxes & Fees	1	Fixed Fee	Included
Building Permit & Plan Review Fees	1	Fixed Fee	Included
Demobilization & Close Out	1	Fixed Fee	Included
Total Contract Sum			\$9,703,000

No greater than 30 days after the execution of this Agreement, the Contractor shall provide to the Owner and Construction Manager a detailed breakdown of this Schedule of Values allocating the total Contract Sum amongst the 621 residential Units, including the associated garages, enumerated in Exhibit G attached hereto.

No greater than thirty (30) days after Owner's receipt of funding for the Project, Owner shall pay Contractor a sum equal to \$503,000 as a mobilization and administrative set up fee. The mobilization fee will cover such things as website development, warehouse leasing and build-out, inventory management systems, and production and dissemination of unit owner notices, etc.

The Work may be reduced, and the Contract Sum adjusted accordingly, for 1) any Units that opt out of the settlement, and 2) any other Units, which, for reasons permitted by the Contract Documents (including non-responsive and uncooperative Unit Owners), are excluded from the Work to be performed by Contractor.

The cost of repair for each of the 621 Units and their associated garages as set forth in this Schedule of Values is based upon installation of new stainless-steel anchors (example: "Titen" Anchors) and associated hardware as required by the Project Manual and Construction Documents.

In the event of an unauthorized termination as described in A201-2007 Section 14.4.3, the Contractor shall be entitled to a termination fee which includes payment for Work executed, and costs incurred by reason of such termination including demobilization costs, along with reasonable overhead and profit on the Work not executed, and any other fees or charges authorized by the Contract Documents.

EXHIBIT B — DISCLOSURES

Ocean Pointe Shot Pin Replacement Project April 28, 2021

As set forth in Article 12 of the Agreement, the Parties agree that the following disclosures are not applicable to this Agreement. Nonetheless, Contractor makes the following Disclosures which, as set forth in Article 12 of the Agreement, the Owner agrees it shall be solely responsible for making to individual members of the Class to the extent that such Disclosures are either required by law or otherwise appropriate.

Lien Rights:

Any person who furnishes labor (prime or subcontractor) or materials (material supplier) for a home improvement or renovation project and is not paid can file a claim (lien) in Circuit Court against the property under Hawaii Revised Statutes ("HRS") chapter 507. This is true even if the contract price was paid in full to the prime contractor and the contractor fails to pay his subcontractors or material suppliers.

In order to obtain a lien against a property, a contractor, subcontractor, or material supplier must go to the court and show that goods or services for the project have been supplied but have not been paid for. The persons who own the property will be notified to appear and defend against these claims in court.

If a lien is obtained, the homeowners are entitled to prove in a later court proceeding that the prime contractor was paid in full. The court could then enter judgment favor of the owners against the prime contractor and direct payment out of the contractor's recovery fund up to the amount allowed by law, if the prime contractor was properly licensed and the homeowner entered into the contract with the prime contractor.

When final payment is made, the Contractor for this project will provide a release of its lien rights. The Contractor's release will not prevent other persons, such as subcontractors and suppliers, from filing liens, but Contractor will be obligated to pay them for any work for which the Contractor has been paid.

An owner can also publish a Notice of Completion in the newspaper as soon as the work is done. No lien may be claimed 46 days after the notice requirement (among other things) is completed in accordance with HRS §507-43. The newspaper will charge you for publishing the Notice.

Performance and Payment Bonds:

An owner has the right to require the Contractor to provide performance and payment bonds for the Work which will guarantee completion of the project and payment of all liens if the Contractor fails to complete the Work or to pay all valid debts and liens related to the performance of the Work. The bonds are usually provided by surety companies or material supply houses to qualified contractors. The bonds may cost you up to 10% of the project cost.

Unless you request that the Contractor provide performance and payment bonds at your expense, the project will not be bonded. Contractor has existing financing arrangements with lending institutions that are sufficient to provide the funds required for Contractor to perform the contract in the event that additional funds are necessary for the Contractor to do so.

Subcontractors:

Approximately 10% of the Contract will be performed by subcontractors.

Contractor's License:

Sagebilt Inc.'s Contractor's License number is BC 35585 and includes Classifications B, C33 and C51. Unless renewed, the License will expire on 09/30/2022.

EXHIBIT C
SPECIAL INSPECTION & ACCEPTANCE
OF THE WORK BY ENGINEER OF RECORD.

Building Permit No.: _____

____ Tax Map Key: _____

Application Index No.: _____

BUILDING DEPARTMENT
CITY AND COUNTY OF HONOLULU

BUILDING CODE REQUIREMENTS FOR SPECIAL INSPECTIONS

Section 1701 of the Uniform Building Code requires that the owner employ one or more special inspectors independent of the contractors performing the work. The special inspector shall provide inspection during construction on the following types of work:

1. Concrete

2. Bolts Installed in Concrete

3. Special Moment-Resisting Concrete Frame

4. Reinforcing Steel and Prestressing Steel Tendons

5. Structural Welding

6. High-Strength Bolting

7. Structural Masonry

8. Reinforced Gypsum Concrete

9. Insulating Concrete Fill
10. Spray-Applied Fireproofing

11. Piling, Drilled Piers and Caissons

12. Shotcrete

13. Special Grading, Excavation and Filling

14. Fire-Protection System

15. Special Cases (specify)

16. Sheathed Shear Walls and Diaphragms

17. Complete Load Path and Uplift Ties

18. Termite Protection

(Detailed clarification of above items are listed on the reverse side of this page.)

Circle the number corresponding to the types of work for this project requiring special inspection. Fill the circled numbers in the table below together with the identity of all special inspectors who will be performing the inspection.

Item No.	Identity of Special Inspector	License Number	Telephone Number	Signature of Special Inspector	Approved by Plans Examiner

Duties and responsibilities of the special inspector:

1. Observe work assigned for conformance with approved design drawings and specifications.
2. Furnish inspection reports to the owner, the engineer or architect of record, and other owner-designated persons. All discrepancies shall be brought to the immediate attention of the contractor for correction, then, if uncorrected, to the proper design authority and to the building official.
3. Submit a final signed report stating whether the work requiring special inspection was, to the best of the special inspector's knowledge, in conformance with approved plans and specifications and the applicable workmanship provisions of the Building Code. Also, indicate the type of work that was inspected. This report shall be submitted prior to the issuance of the Certificate of Occupancy.

Print name and provide signature of the structural
engineer or architect responsible for the structural design.

Date

Telephone Number

DISTRIBUTION:
APPLICANT
BLDG. INSP.
FILE

DS

PP

DS

Ma

Special Inspection is required for the following types of work:

- 1. **Concrete.** During the taking of test specimens and placing of reinforced concrete. See item 12 for shotcrete.
EXCEPTIONS: 1. Concrete for foundations conforming to minimum requirements of Table 18-I-D or for Group R, Division 3 or Group U Division 1 Occupancies, provided the building official finds that a special hazard does not exist.
2. For foundation concrete, other than cast-in-place drilled piles or caissons, where the structural design is based on an *f_c* no greater than 2,500 pounds per square inch (psi) (17.2MPa).
3. Nonstructural slabs on grade, including prestressed slabs on grade when effective pretress in concrete is less than 150 psi (1.03 Mpa).
4. Site work concrete fully supported on earth and concrete where no special hazard exists.
- 2. **Bolts installed in concrete.** Prior to and during the placement of concrete around bolts when stress increases permitted by Footnote 5 of Table 19-E or Section 1925 are utilized.
- 3. **Special moment-resisting concrete frame.** As required by Section 1921.9 of this code.
- 4. **Reinforcing steel and prestressing steel tendons.**
 - 4.1 During all stressing and grouting of tendons in prestressed concrete.
 - 4.2 During placing of reinforcing steel and prestressing tendons for all concrete required to have special inspection by item 1.
EXCEPTION: The special inspector need not be present continuously during placing of reinforcing steel and prestressing tendons, provided the special inspector has inspected for conformance with the approved plans prior to the closing of forms or the delivery of concrete to the jobsite.
- 5. **Structural welding.**
 - 5.1 **General.** during the welding of any member or connection which is designed to resist loads and forces required by this code.
EXCEPTIONS: 1. Welding done in an approved fabricator's shop in accordance with Section 1701.7.
2. The special inspector need not be continuously present during welding of the following items, provided the materials, qualifications of welding procedures and welders are verified prior to the start of work; periodic inspections are made of work in progress; and a visual inspection of all welds is made prior to completion or prior to shipment of shop welding:
 - 2.1 Single-pass fillet welds not exceeding 5/16 inch (7.9 mm) in size.
 - 2.2 Floor and roof deck welding.
 - 2.3 Welded studs when used for structural diaphragm or composite systems.
 - 2.4 Welded sheet steel for cold-formed steel framing members such as studs and joists.
 - 2.5 Welding of stairs and railing system.
 - 5.2 **Special moment-resisting steel frames.** During the welding of special moment-resisting steel frames. In addition to item 5.1 requirements above, nondestructive testing as required by Section 1703 of this code.
 - 5.3 **Welding of reinforcing steel.** During the welding of reinforcing steel.
EXCEPTION: The special inspector need not be continuously present during the welding of ASTM A 706 reinforcing steel not larger than No. 5 bars used for embedments, provided the materials, qualifications of welding procedures and welders are verified prior to the start of work; periodic inspections are made of work in progress; and a visual inspection of all welds is made prior to completion or prior to shipment of shop welding.
- 6. **High-strength bolting.** As required by Chapter 22, Division IV. Such inspections may be performed on a periodic basis in accordance with the requirements of Section 1701.6.
- 7. **Structural masonry.**
 - 7.1 For masonry, other than fully grouted open-end hollow-unit masonry, during preparation and taking of any required prisms or test specimens, placing of all masonry units, placement of reinforcement, inspection of grout space, immediately prior to closing of cleanouts, and during all grouting operations.
EXCEPTION: For hollow-unit masonry where the *f_m* is no more than 1,500 psi (10.34 Mpa) for concrete units or 2,600 psi (17.93 Mpa) for clay units, special inspection may be performed as required for fully grouted open-end hollow-unit masonry specified in item 7.2 below.
 - 7.2 For fully grouted open-end hollow-unit masonry during preparation and taking of any required prisms or test specimens, at the start of laying units, after the placement of reinforcing steel, grout space prior to each grouting operation, and during all grouting operations.
EXCEPTION: Special inspection as required in items 7.1 and 7.2 above need not be provided when design stresses have been adjusted as specified in Chapter 21 to permit noncontinuous inspection.
- 8. **Reinforced gypsum concrete.** When cast-in-place Class B gypsum concrete is being mixed and placed.
- 9. **Insulating concrete fill.** During the application of insulating concrete fill when used as part of a structural system.
EXCEPTION: The special inspections may be limited to an initial inspection to check the deck surface and placement of reinforcing. The special inspector shall supervise the preparation of compression test specimens during this initial inspection.
- 10. **Spray-applied fireproofing.** As required by U.B.C. Standard 7-6.
- 11. **Piling, drilled piers and caissons.** During driving and testing of piles and construction of cast-in-place drilled piles or cassions. See items 1 and 4 for concrete and reinforcing steel inspection.
- 12. **Shotcrete.** During the taking of test specimens and placing of all shotcrete and as required by Section 1922.10 and 1922.11.
EXCEPTION: Shotcrete work fully supported on earth, minor repairs and when, in the opinion of the building official, no special hazard exists.
- 13. **Special grading, excavation and filling.** During earth-work excavation, grading and filling operations inspection to satisfy requirements of Chapter 18 and Appendix Chapter 33 of this code.
- 14. **Fire-protection system.**
 - 14.1 Smoke-control system.
 - 14.1.1 During erection of ductwork and prior to concealment for the purposes of leakage testing and recording device location.
 - 14.1.2 Prior to occupancy and after sufficient completion for the purposes of pressure difference testing, flow measurements, and detection and control verification.
 - 14.2 Fire-extinguishing systems.
 - 14.2.1 During installation of sprinkler and standpipe systems.
EXCEPTION: The special inspector need not be present continuously during the installation of the sprinkler and standpipe systems, provided that the special inspector has inspected for conformance with the approved plans prior to concealment.
 - 14.2.2 During acceptance tests as required by U.B.C. Standards 9-1, 9-2, and 9-3.
- 15. **Special cases.** Work which, in the opinion of the building official, involves unusual hazards or conditions.
- 16. **Sheathed shear walls and diaphragms.**
 - 16.1 Where sheathing edge nail spacing is less than 4 inches on center or in buildings having an Importance Factor (I) greater than 1.
 - 16.2 The following items in connection with such diaphragms and shear walls shall be inspected:
 - 16.2.1 Anchor bolts.
 - 16.2.2 Tie-downs.
 - 16.2.3 Concrete or masonry to diaphragm ties.
 - 16.2.4 Drag strut connections, including diaphragm nailing thereto.
 - 16.2.5 Nailing (size, spacing, nail heads flush with sheathing surfaces).
- 17. **Complete load path and uplift ties.** Metal connectors, anchors or fasteners for wood and cold-formed steel construction at the following locations: roof ridges, roof rafters to beam or wall supports, beams to posts, posts or walls to floor framing or foundation below, and all other connections that are part of the load path to resist uplift forces.
EXCEPTION: The special inspector need not be present during the installation of all of the connectors, provided that the special inspector verifies that all of the connectors are installed in conformance with the requirements of this code.
- 18. **Termite protection.** Termite barrier, treated structural lumber, and pipe penetrations for new wood frame residential buildings.

WAIVER OF SPECIAL INSPECTION. The building official may waive the requirement for the employment of a special inspector if the construction is of a minor nature. The employment of a special inspector shall not be required for construction work for any government agency that provides its own inspectors.

PERIODIC SPECIAL INSPECTION. Some inspections may be made on a periodic basis and satisfy the requirements of continuous inspection, provided this periodic scheduled inspection is performed as outlined in the project plans and specifications and approved by the building official.

APPROVED FABRICATORS. Special inspections required by the Building Code shall not be required where the work is done on the premises or a fabricator approved by the building official to perform such work without special inspection. The approval shall be subject to revocation by the building official if it is found that any work done pursuant to the approval is in violation of this code.

EXHIBIT D

Unit Substantial Completion & Punch List Form
Ocean Pointe Shot Pin Replacement Project

Date of Issue: _____ Unit Owner Name: _____

Unit Address: _____

Owner: Mitsuoka, et al., v. Haseko Homes, Inc., et al., Circuit Court of First Circuit, State of Hawai'i Civil No. 12-1-3030-11 LWC, Dispute Prevention & Resolution, Inc. ("DPR") No. 17-0447-A (<i>"the Lawsuit"</i>), by and through Class Counsel Melvin Y. Agena and Graham B. LippSmith	Contractor: SageBilt Inc. 1319 Powhatan Street Alexandria, VA 2234
--	--

Acknowledgement:
The Work performed under this Contract in the above-named Unit has been reviewed and found, to the Contractor's best knowledge, information and belief, to be complete. This form is to identify and list additional work, if any, required by the Unit Owner to complete or correct the services provided by the Contractor. Only items in areas where work occurred will be considered. The Contractor is not responsible for Owners concerns that are outside the scope of the project.

Please list the items affected by the project that you would like considered for repair:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

The Contractor will complete or correct the items listed above to the extent such punch list items are required by the Contract Documents, including any damage caused by the Contractor in the performance of the Work. The contractor shall correct the identified items within 10 calendar days from the above date unless the nature of the repairs is such that additional time is required, in which case Contractor shall complete such with deliberate speed.

CONTRACTOR

UNIT OWNER / AGENT / CM
(Circle One)

NAME

NAME

SIGNATURE

SIGNATURE

DATE

DATE

DS
ma

DS
pp

EXHIBIT E

Unit Certificate of Final Completion
Ocean Pointe Shot Pin Replacement Project

Date of Issue: _____ Unit Owner Name: _____

Unit Address: _____

Owner: Mitsuoka, et al., v. Haseko Homes, Inc., et al., Circuit Court of First Circuit, State of Hawai'i Civil No. 12-1-3030-11 LWC, Dispute Prevention & Resolution, Inc. ("DPR") No. 17-0447-A (<i>the Lawsuit</i>), by and through Class Counsel Melvin Y. Agena and Graham B. LippSmith	Contractor: SageBilt Inc. 1319 Powhatan Street Alexandria, VA 2234
--	--

Final Unit Owner Comments (if any / if applicable):

Acknowledgement:

The Work in the above named Unit performed under the Ocean Pointe Class Action Shot Pin Replacement Project, including any punch list work, has been reviewed and found to the best of the undersigned's knowledge, information and belief, to be complete.

SageBilt Inc. Representative
Print Name

BY _____

DATE _____

Circle One:
Unit Owner / Owner Agent / CM
Print Name

BY _____

DATE _____

DS
ma

DS
pp

Exhibit F – Sample Subcontract Agreement

AIA[®] Document A401[™] – 2017

Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month and year.)

BETWEEN the Contractor:
(Name, legal status, address and other information)

SageBilt Inc.
a Delaware Profit Corporation
Contractor's License BC 35585, Classifications B, C-33 and C-51. Expiration Date
9/30/2022 unless renewed.
1319 Powhatan Street
Alexandria, Virginia 22314

and the Subcontractor:
(Name, legal status, address and other information)

« »
« »
« »
« »

The Contractor has made a contract for construction (hereinafter, the Prime Contract)
dated: « »

with the Owner:
(Name, legal status, address and other information)

The Class in Mitsuoka, et al., v. Haseko Homes, Inc., et al., Circuit Court of First Circuit,
State of Hawai'i Civil No. 12-1-3030-11 LWC, Dispute Prevention & Resolution, Inc.
("DPR") No. 17-0447-A ("the Lawsuit"), by and through Class Counsel Melvin Y. Agena
and Graham B. LippSmith

for the following Project:
(Name, location and detailed description)

«Ocean Pointe»
«Ewa Beach, Hawaii»
«Ocean Pointe Non-Repouse Shot Pin Replacement Project»

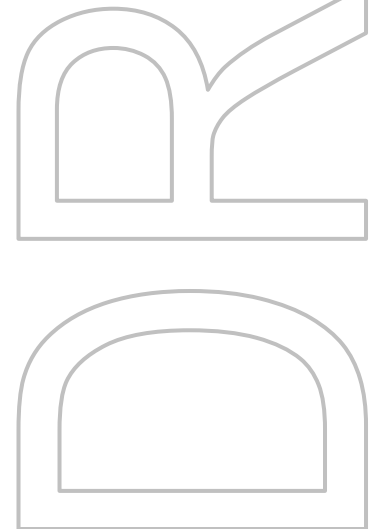
The Prime Contract provides for the furnishing of labor, materials, equipment and services
in connection with the construction of the Project. A copy of the Prime Contract,
consisting of the Agreement Between Owner and Contractor (from which compensation
amounts may be deleted) and the other Contract Documents enumerated therein, has been
made available to the Subcontractor.

The Architect for the Project:

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201[™]-2017, General Conditions of the Contract for Construction, is adopted in this document by reference.



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(Name, legal status, address and other information)

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The Contractor and the Subcontractor agree as follows.



TABLE OF ARTICLES

1	THE SUBCONTRACT DOCUMENTS
2	MUTUAL RIGHTS AND RESPONSIBILITIES
3	CONTRACTOR
4	SUBCONTRACTOR
5	CHANGES IN THE WORK
6	CLAIMS AND DISPUTES
7	TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT
8	THE WORK OF THIS SUBCONTRACT
9	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
10	SUBCONTRACT SUM
11	PAYMENTS
12	INSURANCE AND BONDS
13	TEMPORARY FACILITIES, SERVICES, EQUIPMENT AND WORKING CONDITIONS
14	MISCELLANEOUS PROVISIONS
15	ENUMERATION OF SUBCONTRACT DOCUMENTS

ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications to the Prime Contract, whether issued before or after the execution of this Agreement, in accordance with the provisions of Article 5; (4) other documents listed in Article 15 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement, in accordance with the provisions of Article 5. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein.

§ 1.2 The Subcontract Documents form the Subcontract for Construction. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications to the Prime Contract or Modifications to this Subcontract issued subsequent to the execution of this Agreement, appears in Article 15.

§ 1.3 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the AIA Document A201™–2017, General Conditions of the Contract for Construction.

§ 1.4 The Subcontract may be amended or modified only by a Modification to this Subcontract. A Modification to this Subcontract is a written amendment to this Agreement signed by both parties, or as otherwise described in, and in accordance with the provisions of, Article 5.

§ 1.5 The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.6 The Contractor shall make the Subcontract Documents available to the Subcontractor prior to execution of this Agreement, and thereafter, upon request. The Contractor may charge the Subcontractor for the reasonable cost to reproduce the Subcontract Documents provided to the Subcontractor.

ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of AIA Document A201–2017 apply to this Agreement pursuant to Section 1.3 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities that the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies, and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies, and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in this Agreement and is referred to throughout the Subcontract Documents as if singular in number. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all Project matters requiring the Contractor's approval or authorization. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall render decisions in a timely manner and in accordance with the Contractor's construction schedule.

§ 3.2 Services Provided by the Contractor

§ 3.2.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall review, and expedite written responses to, submittals made by the Subcontractor in accordance with Section 4.2.3 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor with copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 3.2.2 The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. Except as previously agreed upon, additional costs to the Subcontractor resulting from relocation of such storage areas at the direction of the Contractor shall be reimbursed by the Contractor.

§ 3.3 Communications

§ 3.3.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects the performance of this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.3.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.3.3 The Contractor shall permit the Subcontractor to request information directly from the Architect regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 3.3.4 If hazardous materials or substances are being used on the site by the Contractor, a subcontractor, or anyone directly or indirectly employed by them (other than the Subcontractor), and they are a type of hazardous material or substance of which an employer is required by law to notify its employees, the Contractor shall, prior to delivery to the Project site or exposure of the Subcontractor's employees to such material or substance, give notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.3.5 The Contractor shall promptly notify the Subcontractor of any fault or defect in the Work under this Subcontract or nonconformity with the Subcontract Documents.

§ 3.3.6 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein. If the Contractor does not have such information, the Contractor shall request the information from the Owner in accordance with Article 2 of AIA Document A201-2017 and promptly furnish the information received from the Owner to the Subcontractor.

§ 3.3.7 Within 30 days after receipt of a written request, or earlier if so required by law, the Contractor shall furnish to the Subcontractor a copy of any bond covering payment of obligations under this Subcontract or shall authorize a copy to be furnished.

§ 3.3.8 If the Contractor asserts a Claim against, or defends a Claim by, the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the Claim that relates to the Work of the Subcontractor.

§ 3.4 Claims by the Contractor

§ 3.4.1 Liquidated damages, if provided for in the Prime Contract, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

§ 3.4.2 The Contractor's Claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

- .1 seven days' notice prior to the Contractor's providing services or materials, except in an emergency; and
- .2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

§ 3.5 Contractor's Remedies

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within five working days after receipt of notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, without prejudice to other remedies the Contractor may have, remedy such default or neglect and withhold, in accordance with Section 11.1.7.2, the reasonable cost thereof from current or future payments due the Subcontractor. If payments due to the Subcontractor are not sufficient to cover such amounts, the Subcontractor shall pay the difference to the Contractor.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 General

The Subcontractor is the person or entity identified as such in this Agreement and is referred to throughout the Subcontract Documents as if singular in number. The Subcontractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Subcontractor shall designate in writing a representative who shall have express authority to act on the Subcontractor's behalf with respect to the Project. The term "Subcontractor" means the Subcontractor or the Subcontractor's authorized representative.

§ 4.2 Execution and Progress of the Work

§ 4.2.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.2.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in, or interference with the Work of the Contractor, other subcontractors, the Owner, or Separate Contractors.

§ 4.2.3 Submittals

§ 4.2.3.1 The Subcontractor shall submit Shop Drawings, Product Data, Samples, and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.2.3.2 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Subcontractor represents to the Contractor that the Subcontractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Subcontract Documents.

§ 4.2.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.2.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.2.6 The Subcontractor shall pay for all materials, equipment, and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.2.7 The Subcontractor shall take necessary precautions to properly protect the work of the Contractor, Separate Contractors, and other subcontractors from damage caused by operations under this Subcontract.

§ 4.2.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and Separate Contractors whose work might affect the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or Separate Contractors.

§ 4.3 Permits, Fees, Notices, and Compliance with Laws

§ 4.3.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.3.2 The Subcontractor shall comply with Federal, state, and local tax laws; social security acts; unemployment compensation acts; and workers' compensation acts, insofar as applicable to the performance of this Subcontract.

§ 4.4 Safety Precautions and Procedures

§ 4.4.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract. The Subcontractor shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, for the safety of persons and property, in accordance with the requirements of the Prime Contract. The Subcontractor shall notify the Contractor within three days of an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.4.2 If hazardous materials or substances are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors, or anyone directly or indirectly employed by them, and they are a type of hazardous material or substance of which an employer is required by law to notify its employees, the Subcontractor shall, prior to delivery to the Project site or exposure of the Contractor, other subcontractors, and other employers on the site to such material or substance, give notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with the laws by the Contractor, other subcontractors, and other employers on the site.

§ 4.4.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB),

encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay, and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.4.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.4.3 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 4.4.5 The Subcontractor shall reimburse the Contractor for the cost and expense the Contractor incurs (1) for remediation of a hazardous material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.4.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

§ 4.5 Cleaning Up

§ 4.5.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 4.5.2 As provided under Section 3.4.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

§ 4.6 Warranty

§ 4.6.1 The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall provide satisfactory evidence as to the kind and quality of materials and equipment furnished or to be furnished.

§ 4.6.2 All material, equipment, or other special warranties required by the Subcontract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with the Subcontract Documents.

§ 4.7 Indemnification

§ 4.7.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.7.

§ 4.7.2 In claims against any person or entity indemnified under this Section 4.7 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts

they may be liable, the indemnification obligation under Section 4.7.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor, or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 4.8 Remedies for Nonpayment

If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay, and remobilization.

§ 4.9 Professional Services Provided by Subcontractor

§ 4.9.1 The Subcontractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Subcontract Documents or unless the Subcontractor is required to provide such services in order to carry out the Subcontractor's responsibilities for its own construction means, methods, techniques, sequences, and procedures. The Subcontractor shall not be required to provide professional services in violation of applicable law.

§ 4.9.2 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Subcontractor by the Subcontract Documents, the Contractor will provide all performance and design criteria that such services must satisfy to the extent the Contractor has received such performance and design criteria from the Owner and Architect under the terms of the Prime Contract.

§ 4.9.3 If professional design services or certifications by a design professional are required because of means, methods, techniques, sequences, or procedures required by the Contractor and related to the Work of the Subcontractor, the Contractor will provide all performance and design criteria that such services must satisfy.

§ 4.9.4 The Subcontractor shall be entitled to rely upon the adequacy, accuracy, and completeness of the performance and design criteria received from the Contractor under this Section 4.9.

§ 4.9.5 The Subcontractor shall cause the professional services performed under this Section 4.9 to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop drawings and other submittals related to the Work designed by such design professional shall bear the professional's written approval when submitted to the Contractor. The Contractor shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals, provided the Contractor has provided to the Subcontractor all performance and design criteria required by this Section 4.9.

ARTICLE 5 CHANGES IN THE WORK

§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of a Modification to the Prime Contract issued subsequent to the execution of this Agreement, the Contractor shall promptly notify the Subcontractor of such Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions, or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, with the Subcontract Sum and the Subcontract Time adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a Claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

§ 5.3 The Subcontractor shall make all Claims promptly to the Contractor for additional cost, extensions of time and damages for delays, or other causes in accordance with the Subcontract Documents. A Claim which will affect or become part of a Claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of

the Prime Contract. Such Claims shall be received by the Contractor not less than two working days preceding the time by which the Contractor's Claim must be made. Failure of the Subcontractor to make such a timely Claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

ARTICLE 6 CLAIMS AND DISPUTES

§ 6.1 Mediation

§ 6.1.1 Claims, disputes, or other matters in controversy arising out of or related to this Subcontract, except those waived as provided for in Sections 6.5 and 11.3.2, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 6.1.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 6.1.2, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings.

§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 6.3 of this Agreement

☐ Litigation in a court of competent jurisdiction

☐ Other: (Specify)

☐

If the Contractor and Subcontractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

§ 6.3 Arbitration

§ 6.3.1 If the Contractor and Subcontractor have selected arbitration as the method of binding dispute resolution in Section 6.2, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. The arbitration should be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Subcontract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 6.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 6.3.3 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 6.3.4 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 6.4 Consolidation or Joinder

§ 6.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 6.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim, dispute, or other matter in question not described in the written consent.

§ 6.4.3 The Contractor and Subcontractor grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Contractor and Subcontractor under this Agreement.

§ 6.5 Waiver of Claims for Consequential Damages

The Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Subcontract, including without limitation, any consequential damages due to either party's termination in accordance with Article 7. Nothing contained herein shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of this Agreement.

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 Termination by the Subcontractor

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, the Subcontractor's Sub-subcontractors, or their agents or employees or other persons or entities performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, as well as reasonable overhead and profit on work not executed and costs incurred by reason of such termination.

§ 7.2 Termination by the Contractor

§ 7.2.1 Termination for Cause

If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a ten-day period after receipt of notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed the unpaid balance of the Subcontract Sum, the Subcontractor shall pay the difference to the Contractor.

§ 7.2.2 Termination for Convenience

§ 7.2.2.1 If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor shall promptly deliver notice to the Subcontractor.

§ 7.2.2.2 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work properly executed, costs incurred by reason of the termination, and reasonable overhead and profit on the Work not executed.

§ 7.2.2.3 Upon receipt of notice of termination, the Subcontractor shall

- .1 cease operations as directed by the Contractor in the notice;
- .2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

§ 7.3 Suspension by the Contractor for Convenience

§ 7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay, or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

§ 7.3.2 The Subcontract Time and Subcontract Sum shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 7.3.1. Adjustment of the Subcontract Sum shall include profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent that

- .1 performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the Subcontractor is responsible; or
- .2 an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.4 Assignment of the Subcontract

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner pursuant to Section 5.4 of AIA Document A201-2017 provided the Owner accepts the assignment by notifying the Contractor and Subcontractor.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.

(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications, and accepted alternates.)

« »

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 The date of commencement of the Subcontractor's Work, shall be:

(Check one of the following boxes.)

☐ [« »] The date of this Agreement.

☐ [« »] A date set forth in a notice to proceed issued by the Contractor.

☐ [« »] Established as follows:

(Insert a date or a means to determine the date of commencement of the Subcontractor's Work.)

« »

If a date of commencement of the Subcontractor's Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 9.2 Subcontract Time

§ 9.2.1 The Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontract Time shall be measured from the date of commencement of the Subcontractor's Work.

§ 9.2.2 Subject to adjustments of the Subcontract Time as provided in the Subcontract Documents, the Subcontractor shall achieve substantial completion of the Subcontractor's Work:

(Check one of the following boxes and complete the necessary information.)

[☐] Not later than () calendar days from the date of commencement of the Subcontractor's Work.

[☐] By the following date:

§ 9.2.3 Subject to adjustments of the Subcontract Time as provided in the Subcontract Documents, if portions of the Subcontractor's Work are to be completed prior to substantial completion of the Subcontractor's Work, then the Subcontractor shall achieve earlier substantial completion of such portions by the following dates.

(List all portions of the Subcontractor's Work required to achieve substantial completion of the Subcontractor's Portion of the Work.)

Portion of Work

Substantial Completion

§ 9.2.4 If the Subcontractor fails to achieve substantial completion as provided in this Section 9.2, liquidated damages, if any, shall be assessed as set forth in Section 3.4.

§ 9.3 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.4 No extension of time will be valid without the Contractor's written consent after a Claim is made by the Subcontractor in accordance with Section 5.3.

ARTICLE 10 SUBCONTRACT SUM

§ 10.1 The Contractor shall pay the Subcontractor the Subcontract Sum in current funds for the Subcontractor's performance of the Subcontract. The Subcontract Sum shall be (\$), subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 Alternates

§ 10.2.1 Alternates, if any, included in the Subcontract Sum:

Item

Price

§ 10.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Contractor following execution of this Agreement. Upon acceptance, the Contractor shall issue a Modification to this Subcontract:

(Insert below each alternate and the conditions that must be met for the Contractor to accept the alternate.)

Item

Price

Conditions for Acceptance

§ 10.3 Unit prices, if any:

(Identify and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)

Item

Units and Limitations

Price Per Unit (\$0.00)

§ 10.4 Allowances, if any, included in the Subcontract Sum:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item

Price

ARTICLE 11 PAYMENTS**§ 11.1 Progress Payments**

§ 11.1.1 Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Architect, and certificates for payment issued by the Architect, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the part of the Contractor or Subcontractor for breach of trust, or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 11.1.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 11.1.3 Provided an application for payment is received by the Contractor not later than the « » day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Architect. The Contractor shall pay the Subcontractor each progress payment no later than seven working days after the Contractor receives payment from the Owner. If the Architect does not issue a certificate for payment or the Contractor does not receive payment for any cause which is not the fault of the Subcontractor, the Contractor shall pay the Subcontractor, on demand, a progress payment computed as provided in Sections 11.1.7, 11.1.8, 11.1.9 and 11.2.

§ 11.1.4 If the Subcontractor's application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

§ 11.1.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require, and unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

§ 11.1.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

§ 11.1.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Subcontract Sum properly allocable to completed Work;
- .2 That portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing; and
- .3 The amount, if any, for changes in the Work that are not in dispute and have been properly authorized by the Contractor, to the same extent provided in the Prime Contract, pending a final determination by

the Contractor of the cost of changes in the Subcontractor's Work, even though the Subcontract Sum has not yet been adjusted.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of previous payments made by the Contractor;
- .2 The amount, if any, for Work that remains uncorrected and for which the Contractor has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017 for a cause that is the fault of the Subcontractor;
- .3 For Work performed or defects discovered since the last payment application, any amount for which the Contractor may withhold payment in whole or in part, as provided in Article 9 of AIA Document A201-2017, for a cause that is the fault of the Subcontractor; and
- .4 Retainage withheld pursuant to Section 11.1.8 of this Agreement.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to substantial completion of the Subcontractor's Work, the Contractor may withhold the following amounts as retainage from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

« »

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

« »

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to substantial completion of the entire Work, including modifications for substantial completion of portions of the Subcontractor's Work as provided in Section 9.2.3, insert provisions for such modification.)

« »

§ 11.1.9 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide notice to the Subcontractor. If the Subcontractor disputes the Contractor's decision regarding a Subcontractor's Application for Payment in whole or in part, the Subcontractor may submit a Claim in accordance with Article 6. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.1.10 Provided the Contractor has fulfilled its payment obligations under the Subcontract Documents, the Subcontractor shall defend and indemnify the Contractor and Owner from all loss, liability, damage, or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any of the Subcontractor's subcontractors, suppliers, or vendors of any tier. Upon receipt of notice of such lien claim or other claim for payment, the Contractor shall notify the Subcontractor. If approved by the applicable court, when required, the Subcontractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 11.2 Substantial Completion

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within 30 days following issuance by the Architect of the certificate for payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's

substantially completed Work to the same percentage of retainage as that on the Contractor’s Work covered by the certificate.

§ 11.3 Final Payment

§ 11.3.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor’s Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a certificate for payment covering the Subcontractor’s completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a certificate for payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within seven days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.

(Insert provisions for earlier final payment to the Subcontractor, if applicable.)

« »

§ 11.3.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor’s Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

§ 11.4 Interest

Payments due and unpaid under this Subcontract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

« » % « »

ARTICLE 12 INSURANCE AND BONDS

§ 12.1 Subcontractor’s Required Insurance Coverage

§ 12.1.1 The Subcontractor shall purchase and maintain the following types and limits of insurance, from a company or companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor’s operations and completed operations under the Subcontract:

(Specify each type of insurance, such as commercial general liability, automobile, worker’s compensation, employers’ liability, professional liability, and pollution, required to be carried by the Subcontractor, the limits of coverage for each type of insurance, and any other pertinent requirements.)

Type of Insurance	Limits	Other Pertinent Requirements

§ 12.1.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor’s Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor’s completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 12.1.3 If professional services are required under Section 4.9, the Subcontractor shall provide the professional liability insurance coverage required under this Section 12.1 for the following period after completion of the Work:

« »

§ 12.1.4 Certificates of Insurance. The Subcontractor shall provide certificates of insurance acceptable to the Contractor evidencing compliance with the requirements in this Article 12 at the following times: (1) prior to commencement of the Subcontractor’s Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Contractor’s written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter

upon renewal or replacement of such coverage until the expiration of the time required in this Article 12. The certificates shall show the Contractor and the Owner as additional insureds on the Subcontractor's Commercial General Liability and any excess or umbrella liability policy.

§ 12.1.5 Deductibles and Self-Insured Retentions. The Subcontractor shall disclose to the Contractor any deductible or self-insured retentions applicable to any insurance required to be provided by the Subcontractor.

§ 12.1.6 Additional Insured Obligations. To the fullest extent permitted by law, the Subcontractor shall cause its commercial general liability coverage to include: (1) the Contractor, the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor and Owner as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions for which loss occurs during the Subcontractor's completed operations. The additional insured coverage shall be primary and non-contributory to any of the Contractor's and Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ 12.1.7 Notice of Cancellation or Change in Coverage. Within three (3) business days of the date the Subcontractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Subcontract Documents, the Subcontractor shall provide notice to the Contractor of such impending or actual cancellation or expiration. Upon receipt of notice from the Subcontractor, the Contractor shall, unless the lapse in coverage arises from an act or omission of the Contractor, have the right to suspend the Work in accordance with this Agreement until the lapse in coverage has been cured by the procurement of replacement coverage by the Subcontractor. The furnishing of notice by the Subcontractor shall not relieve the Subcontractor of any contractual obligation to provide any required coverage.

§ 12.2 Subcontractor's Required Performance Bond and Payment Bond

§ 12.2.1 The Subcontractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	
Performance Bond	

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

§ 12.2.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations under this Agreement, the Subcontractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ 12.3 Contractor's Insurance and Bond Obligations

§ 12.3.1 The Contractor shall furnish to the Subcontractor certificates of insurance evidencing insurance coverage required of the Contractor under the Prime Contract.

§ 12.3.2 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 12.4 Property Insurance

§ 12.4.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project, to the extent copies of the policies are available to the Contractor. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 12.4.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 12.4.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for payment process.

§ 12.5 Waivers of Subrogation

The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees for damages caused by fire or other causes of loss to the extent those losses are covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work or to property at or adjacent to the Project site, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require similar written waivers in favor of the individuals and entities enumerated herein from the Subcontractor's Sub-subcontractors, agents, and employees. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 12.5 shall not prohibit this waiver of subrogation, which shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 13 TEMPORARY FACILITIES, SERVICES, EQUIPMENT AND WORKING CONDITIONS

§ 13.1 The Contractor shall furnish and make the Contractor's temporary facilities and services available to the Subcontractor at no cost, except as noted below:

« »

§ 13.2 The Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms, except as noted below:

« »

§ 13.3 Specific working conditions as noted below:

(Insert any specific arrangements or requirements concerning working conditions and labor matters applicable to the Subcontractor's Work.)

« »

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

§ 14.2 The Contractor's representative:

(Name, address, email address and other information)

«Peter Page»

«1319 Powhatan Street

Alexandria, Virginia 22314»

«Telephone Number: (800) 501-7703»

«»

«Mobile Number: (571) 237-9175»

«Email Address: ppage@sagewater.com»

§ 14.3 The Subcontractor's representative:

(Name, address, email address and other information)

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§ 14.4 Notice

§ 14.4.1 Except as otherwise provided in Section 14.4.2, where the Subcontract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic notice is set forth in Section 14.4.3.

§ 14.4.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 14.4.3 Notice in electronic format, pursuant to Section 14.4.1, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203™–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

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§ 14.5 Neither the Contractor's nor the Subcontractor's representative shall be changed without ten days' prior notice to the other party.

§ 14.6 The invalidity of any provision of the Subcontract Documents shall not invalidate the Subcontract or its remaining provisions. If it is determined that any provision of the Subcontract violates any law or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case, the Subcontract shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Subcontract.

§ 14.7 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 14.7.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 15 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 15.1 This Agreement is comprised of the following documents:

- .1 AIA Document A401™–2017, Standard Form Agreement Between Contractor and Subcontractor;
- .2 Prime Agreement between the Owner and Contractor, including all exhibits thereto, attached as Exhibit A;
- .3 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if not included in the Prime Agreement, dated as indicated below:
(Insert the date of the E203–2013 incorporated into this Agreement.)

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.4 Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement.)

« »

.5 Other documents:
(List other documents, if any, forming part of the Agreement.)

« »

This Agreement entered into as of the day and year first written above.

CONTRACTOR (Signature)

«Peter Page»«, President»

(Printed name and title)

SUBCONTRACTOR (Signature)

« »« »

(Printed name and title)

EXHIBIT G AFFECTED UNIT COUNT Ocean Point Shot Pin Replacement Project April 28, 2021						
ITEM	TMK	ADDRESS	CITY	STATE	ZIP	TYPE
1	1910120580001	91-2082 Kaioli St 3601	Ewa Beach	HI	96706-6085	TH1
2	1910120580002	91-2082 Kaioli St 3602	Ewa Beach	HI	96706-6085	TH1
3	1910120580003	91-2082 Kaioli St 3603	Ewa Beach	HI	96706-6085	TH1
4	1910120580004	91-2082 Kaioli St 3604	Ewa Beach	HI	96706-6085	TH1
5	1910120580005	91-2082 Kaioli St 3605	Ewa Beach	HI	96706-6085	TH1
6	1910120580006	91-2084 Kaioli St 3701	Ewa Beach	HI	96706-6086	TH2
7	1910120580007	91-2084 Kaioli St 3702	Ewa Beach	HI	96706-6086	TH2
8	1910120580008	91-2084 Kaioli St 3703	Ewa Beach	HI	96706-6086	TH2
9	1910120580009	91-2084 Kaioli St 3704	Ewa Beach	HI	96706-6086	TH2
10	1910120580010	91-2084 Kaioli St 3705	Ewa Beach	HI	96706-6086	TH2
11	1910120580011	91-2084 Kaioli St 3706	Ewa Beach	HI	96706-6086	TH2
12	1910120580012	91-2076 Kaioli St 3801	Ewa Beach	HI	96706-6092	TH2
13	1910120580013	91-2076 Kaioli St 3802	Ewa Beach	HI	96706-6092	TH2
14	1910120580014	91-2076 Kaioli St 3803	Ewa Beach	HI	96706-6092	TH2
15	1910120580015	91-2076 Kaioli St 3804	Ewa Beach	HI	96706-6092	TH2
16	1910120580016	91-2076 Kaioli St 3805	Ewa Beach	HI	96706-6092	TH2
17	1910120580017	91-2076 Kaioli St 3806	Ewa Beach	HI	96706-6092	TH2
18	1910120580018	91-2074 Kaioli St 3901	Ewa Beach	HI	96706-6091	TH2
19	1910120580019	91-2074 Kaioli St 3902	Ewa Beach	HI	96706-6091	TH2
20	1910120580020	91-2074 Kaioli St 3903	Ewa Beach	HI	96706-6091	TH2
21	1910120580021	91-2074 Kaioli St 3904	Ewa Beach	HI	96706-6091	TH2
22	1910120580022	91-2074 Kaioli St 3905	Ewa Beach	HI	96706-6091	TH2
23	1910120580023	91-2074 Kaioli St 3906	Ewa Beach	HI	96706-6091	TH2
24	1910120580024	91-2062 Kaioli St 4001	Ewa Beach	HI	96706-6090	TH2
25	1910120580025	91-2062 Kaioli St 4002	Ewa Beach	HI	96706-6090	TH2
26	1910120580026	91-2062 Kaioli St 4003	Ewa Beach	HI	96706-6090	TH2
27	1910120580027	91-2062 Kaioli St 4004	Ewa Beach	HI	96706-6090	TH2
28	1910120580028	91-2062 Kaioli St 4005	Ewa Beach	HI	96706-6090	TH2
29	1910120580029	91-2062 Kaioli St 4006	Ewa Beach	HI	96706-6090	TH2
30	1910120580030	91-2064 Kaioli St 4101	Ewa Beach	HI	96706-6095	TH1
31	1910120580031	91-2064 Kaioli St 4102	Ewa Beach	HI	96706-6095	TH1
32	1910120580032	91-2064 Kaioli St 4103	Ewa Beach	HI	96706	TH1
33	1910120580033	91-2064 Kaioli St 4104	Ewa Beach	HI	96706-6095	TH1
34	1910120580034	91-2064 Kaioli St 4105	Ewa Beach	HI	96706-6095	TH1
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36	1910120580036	91-2066 Kaioli St 4202	Ewa Beach	HI	96706-6096	TH1
37	1910120580037	91-2066 Kaioli St 4203	Ewa Beach	HI	96706-6096	TH1
38	1910120580038	91-2066 Kaioli St 4204	Ewa Beach	HI	96706-6096	TH1
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41	1910120580041	91-2068 Kaioli St 4302	Ewa Beach	HI	96706-6093	TH12
42	1910120580042	91-2068 Kaioli St 4303	Ewa Beach	HI	96706-6093	TH12
43	1910120580043	91-2068 Kaioli St 4304	Ewa Beach	HI	96706-6093	TH12

ITEM	TMK	ADDRESS	CITY	STATE	ZIP	TYPE
44	1910120580044	91-2070 Kaioli St 4401	Ewa Beach	HI	96706-6094	TH12
45	1910120580045	91-2070 Kaioli St 4402	Ewa Beach	HI	96706-6094	TH12
46	1910120580046	91-2070 Kaioli St 4403	Ewa Beach	HI	96706-6094	TH12
47	1910120580047	91-2070 Kaioli St 4404	Ewa Beach	HI	96706-6094	TH12
48	1910120580048	91-2072 Kaioli St 4501	Ewa Beach	HI	96706-6087	TH11
49	1910120580049	91-2072 Kaioli St 4502	Ewa Beach	HI	96706-6087	TH11
50	1910120580050	91-2072 Kaioli St 4503	Ewa Beach	HI	96706-6087	TH11
51	1910120580051	91-2072 Kaioli St 4504	Ewa Beach	HI	96706-6087	TH11
52	1910120580052	91-2078 Kaioli St 4601	Ewa Beach	HI	96706-6088	TH12
53	1910120580053	91-2078 Kaioli St 4602	Ewa Beach	HI	96706-6088	TH12
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58	1910120580058	91-2080 Kaioli St 4703	Ewa Beach	HI	96706-6089	TH11
59	1910120580059	91-2080 Kaioli St 4704	Ewa Beach	HI	96706-6089	TH11
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61	1910120710002	91-2077 Kaioli St 1002	Ewa Beach	HI	96706	TH21
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63	1910120710004	91-2077 Kaioli St 1004	Ewa Beach	HI	96706	TH21
64	1910120710005	91-2079 Kaioli St 1101	Ewa Beach	HI	96706	TH21
65	1910120710006	91-2079 Kaioli St 1102	Ewa Beach	HI	96706	TH21
66	1910120710007	91-2079 Kaioli St 1103	Ewa Beach	HI	96706	TH21
67	1910120710008	91-2079 Kaioli St 1104	Ewa Beach	HI	96706	TH21
68	1910120710009	91-2099 Kaioli St 2001	Ewa Beach	HI	96706	TH21
69	1910120710010	91-2099 Kaioli St 2002	Ewa Beach	HI	96706	TH21
70	1910120710011	91-2099 Kaioli St 2003	Ewa Beach	HI	96706	TH21
71	1910120710012	91-2099 Kaioli St 2004	Ewa Beach	HI	96706	TH21
72	1910120710013	91-2101 Kaioli St 2101	Ewa Beach	HI	96706	TH21
73	1910120710014	91-2101 Kaioli St 2102	Ewa Beach	HI	96706	TH21
74	1910120710015	91-2101 Kaioli St 2103	Ewa Beach	HI	96706	TH21
75	1910120710016	91-2101 Kaioli St 2104	Ewa Beach	HI	96706	TH21
76	1910120730001	91-2067 Kaioli St 501	Ewa Beach	HI	96706	TH11
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84	1910120730009	91-2071 Kaioli St 701	Ewa Beach	HI	96706	TH12
85	1910120730010	91-2071 Kaioli St 702	Ewa Beach	HI	96706-6179	TH12
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89	1910120730014	91-2073 Kaioli St 802	Ewa Beach	HI	96706	TH11
90	1910120730015	91-2073 Kaioli St 803	Ewa Beach	HI	96706	TH11

ITEM	TMK	ADDRESS	CITY	STATE	ZIP	TYPE
91	1910120730016	91-2073 Kaioli St 804	Ewa Beach	HI	96706	TH11
92	1910120730017	91-2075 Kaioli St 901	Ewa Beach	HI	96706	TH12
93	1910120730018	91-2075 Kaioli St 902	Ewa Beach	HI	96706	TH12
94	1910120730019	91-2075 Kaioli St 903	Ewa Beach	HI	96706	TH12
95	1910120730020	91-2075 Kaioli St 904	Ewa Beach	HI	96706	TH12
96	1910120740001	91-2081 Kaioli St 1201	Ewa Beach	HI	96706	TH11
97	1910120740002	91-2081 Kaioli St 1202	Ewa Beach	HI	96706-6183	TH11
98	1910120740003	91-2081 Kaioli St 1203	Ewa Beach	HI	96706	TH11
99	1910120740004	91-2081 Kaioli St 1204	Ewa Beach	HI	96706-6183	TH11
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107	1910120740012	91-2085 Kaioli St 1404	Ewa Beach	HI	96706	TH12
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111	1910120740016	91-2093 Kaioli St 1704	Ewa Beach	HI	96706	TH11
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122	1910120750003	91-2103 Kaioli St 2203	Ewa Beach	HI	96706-6168	TH1
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126	1910120750007	91-2105 Kaioli St 2302	Ewa Beach	HI	96706-6170	TH1
127	1910120750008	91-2105 Kaioli St 2303	Ewa Beach	HI	96706-6170	TH1
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129	1910120750010	91-2105 Kaioli St 2305	Ewa Beach	HI	96706-6170	TH1
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131	1910120750012	91-2111 Kaioli St 2402	Ewa Beach	HI	96706-6172	TH1
132	1910120750013	91-2111 Kaioli St 2403	Ewa Beach	HI	96706-6172	TH1
133	1910120750014	91-2111 Kaioli St 2404	Ewa Beach	HI	96706-6172	TH1
134	1910120750015	91-2111 Kaioli St 2405	Ewa Beach	HI	96706-6172	TH1
135	1910120750016	91-2113 Kaioli St 2501	Ewa Beach	HI	96706-6190	TH1
136	1910120750017	91-2113 Kaioli St 2502	Ewa Beach	HI	96706-6190	TH1
137	1910120750018	91-2113 Kaioli St 2503	Ewa Beach	HI	96706-6190	TH1

ITEM	TMK	ADDRESS	CITY	STATE	ZIP	TYPE
138	1910120750019	91-2113 Kaioli St 2504	Ewa Beach	HI	96706-6190	TH1
139	1910120750020	91-2113 Kaioli St 2505	Ewa Beach	HI	96706-6190	TH1
140	1910120760001	91-2119 Kaioli St 2801	Ewa Beach	HI	96706-6193	TH1
141	1910120760002	91-2119 Kaioli St 2802	Ewa Beach	HI	96706	TH1
142	1910120760003	91-2119 Kaioli St 2803	Ewa Beach	HI	96706	TH1
143	1910120760004	91-2119 Kaioli St 2804	Ewa Beach	HI	96706	TH1
144	1910120760005	91-2119 Kaioli St 2805	Ewa Beach	HI	96706	TH1
145	1910120760006	91-2121 Kaioli St 2901	Ewa Beach	HI	96706-6194	TH1
146	1910120760007	91-2121 Kaioli St 2902	Ewa Beach	HI	96706-6194	TH1
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152	1910120760013	91-2123 Kaioli St 3003	Ewa Beach	HI	96706	TH1
153	1910120760014	91-2123 Kaioli St 3004	Ewa Beach	HI	96706	TH1
154	1910120760015	91-2123 Kaioli St 3005	Ewa Beach	HI	96706-6195	TH1
155	1910120760016	91-2125 Kaioli St 3101	Ewa Beach	HI	96706-6196	TH1
156	1910120760017	91-2125 Kaioli St 3102	Ewa Beach	HI	96706	TH1
157	1910120760018	91-2125 Kaioli St 3103	Ewa Beach	HI	96706	TH1
158	1910120760019	91-2125 Kaioli St 3104	Ewa Beach	HI	96706	TH1
159	1910120760020	91-2125 Kaioli St 3105	Ewa Beach	HI	96706	TH1
160	1910120770001	91-2131 Kaioli St 3401	Ewa Beach	HI	96706	TH2
161	1910120770002	91-2131 Kaioli St 3402	Ewa Beach	HI	96706	TH2
162	1910120770003	91-2131 Kaioli St 3403	Ewa Beach	HI	96706	TH2
163	1910120770004	91-2131 Kaioli St 3404	Ewa Beach	HI	96706	TH2
164	1910120770005	91-2131 Kaioli St 3405	Ewa Beach	HI	96706	TH2
165	1910120770006	91-2131 Kaioli St 3406	Ewa Beach	HI	96706	TH2
166	1910120770007	91-2133 Kaioli St 3501	Ewa Beach	HI	96706	TH2
167	1910120770008	91-2133 Kaioli St 3502	Ewa Beach	HI	96706	TH2
168	1910120770009	91-2133 Kaioli St 3503	Ewa Beach	HI	96706	TH2
169	1910120770010	91-2133 Kaioli St 3504	Ewa Beach	HI	96706	TH2
170	1910120770011	91-2133 Kaioli St 3505	Ewa Beach	HI	96706	TH2
171	1910120770012	91-2133 Kaioli St 3506	Ewa Beach	HI	96706	TH2
172	1910120780001	91-2115 Kaioli St 2601	Ewa Beach	HI	96706-6191	TH21
173	1910120780002	91-2115 Kaioli St 2602	Ewa Beach	HI	96706-6191	TH21
174	1910120780003	91-2115 Kaioli St 2603	Ewa Beach	HI	96706-6191	TH21
175	1910120780004	91-2115 Kaioli St 2604	Ewa Beach	HI	96706-6191	TH21
176	1910120780005	91-2117 Kaioli St 2701	Ewa Beach	HI	96706-6192	TH21
177	1910120780006	91-2117 Kaioli St 2702	Ewa Beach	HI	96706-6192	TH21
178	1910120780007	91-2117 Kaioli St 2703	Ewa Beach	HI	96706-6192	TH21
179	1910120780008	91-2117 Kaioli St 2704	Ewa Beach	HI	96706-6192	TH21
180	1910120780009	91-2127 Kaioli St 3201	Ewa Beach	HI	96706	TH21
181	1910120780010	91-2127 Kaioli St 3202	Ewa Beach	HI	96706	TH21
182	1910120780011	91-2127 Kaioli St 3203	Ewa Beach	HI	96706	TH21
183	1910120780012	91-2127 Kaioli St 3204	Ewa Beach	HI	96706	TH21
184	1910120780013	91-2129 Kaioli St 3301	Ewa Beach	HI	96706-6198	TH21

ITEM	TMK	ADDRESS	CITY	STATE	ZIP	TYPE
185	1910120780014	91-2129 Kaioli St 3302	Ewa Beach	HI	96706-6198	TH21
186	1910120780015	91-2129 Kaioli St 3303	Ewa Beach	HI	96706-6198	TH21
187	1910120780016	91-2129 Kaioli St 3304	Ewa Beach	HI	96706-6198	TH21
188	1910120860001	91-2065 Kaioli St 101	Ewa Beach	HI	96706	TH2
189	1910120860002	91-2065 Kaioli St 102	Ewa Beach	HI	96706	TH2
190	1910120860003	91-2065 Kaioli St 103	Ewa Beach	HI	96706	TH2
191	1910120860004	91-2065 Kaioli St 104	Ewa Beach	HI	96706	TH2
192	1910120860005	91-2065 Kaioli St 105	Ewa Beach	HI	96706	TH2
193	1910120860006	91-2065 Kaioli St 106	Ewa Beach	HI	96706-6173	TH2
194	1910120860007	91-2063 Kaioli St 201	Ewa Beach	HI	96706	TH2
195	1910120860008	91-2063 Kaioli St 202	Ewa Beach	HI	96706	TH2
196	1910120860009	91-2063 Kaioli St 203	Ewa Beach	HI	96706	TH2
197	1910120860010	91-2063 Kaioli St 204	Ewa Beach	HI	96706	TH2
198	1910120860011	91-2063 Kaioli St 205	Ewa Beach	HI	96706	TH2
199	1910120860012	91-2063 Kaioli St 206	Ewa Beach	HI	96706-6174	TH2
200	1910120860013	91-2109 Kaioli St 301	Ewa Beach	HI	96706	TH1
201	1910120860014	91-2109 Kaioli St 302	Ewa Beach	HI	96706	TH1
202	1910120860015	91-2109 Kaioli St 303	Ewa Beach	HI	96706	TH1
203	1910120860016	91-2109 Kaioli St 304	Ewa Beach	HI	96706	TH1
204	1910120860017	91-2109 Kaioli St 305	Ewa Beach	HI	96706	TH1
205	1910120860018	91-2089 Kaioli St 401	Ewa Beach	HI	96706	TH11
206	1910120860019	91-2089 Kaioli St 402	Ewa Beach	HI	96706	TH11
207	1910120860020	91-2089 Kaioli St 403	Ewa Beach	HI	96706	TH11
208	1910120860021	91-2089 Kaioli St 404	Ewa Beach	HI	96706	TH11
209	1910120860022	91-2087 Kaioli St 1501	Ewa Beach	HI	96706	TH11
210	1910120860023	91-2087 Kaioli St 1502	Ewa Beach	HI	96706	TH11
211	1910120860024	91-2087 Kaioli St 1503	Ewa Beach	HI	96706	TH11
212	1910120860025	91-2087 Kaioli St 1504	Ewa Beach	HI	96706	TH11
213	1910120860026	91-2091 Kaioli St 1601	Ewa Beach	HI	96706-6187	TH12
214	1910120860027	91-2091 Kaioli St 1602	Ewa Beach	HI	96706	TH12
215	1910120860028	91-2091 Kaioli St 1603	Ewa Beach	HI	96706-6187	TH12
216	1910120860029	91-2091 Kaioli St 1604	Ewa Beach	HI	96706-6187	TH12
217	1911330010000	91-6646 Kapolei Pkwy	Ewa Beach	HI	96706-5022	174
218	1911330020000	91-6642 Kapolei Pkwy	Ewa Beach	HI	96706-5022	173
219	1911330030000	91-6640 Kapolei Pkwy	Ewa Beach	HI	96706-5022	172
220	1911330040000	91-6638 Kapolei Pkwy	Ewa Beach	HI	96706-5022	171
221	1911330050000	91-6636 Kapolei Pkwy	Ewa Beach	HI	96706-5022	174
222	1911330060000	91-6634 Kapolei Pkwy	Ewa Beach	HI	96706-5022	173
223	1911330070000	91-6630 Kapolei Pkwy	Ewa Beach	HI	96706-5022	174
224	1911330080000	91-6628 Kapolei Pkwy	Ewa Beach	HI	96706-5022	171
225	1911330090000	91-6626 Kapolei Pkwy	Ewa Beach	HI	96706-5022	172
226	1911330100000	91-6622 Kapolei Pkwy	Ewa Beach	HI	96706-5022	173
227	1911330110000	91-6620 Kapolei Pkwy	Ewa Beach	HI	96706-5022	174
228	1911330120000	91-6618 Kapolei Pkwy	Ewa Beach	HI	96706-5022	173
229	1911330130000	91-6616 Kapolei Pkwy	Ewa Beach	HI	96706-5022	172
230	1911330140000	91-6614 Kapolei Pkwy	Ewa Beach	HI	96706-5022	171
231	1911330150000	91-6612 Kapolei Pkwy	Ewa Beach	HI	96706-5022	174

ITEM	TMK	ADDRESS	CITY	STATE	ZIP	TYPE
232	1911330160000	91-6608 Kapolei Pkwy	Ewa Beach	HI	96706-5022	171
233	1911330170000	91-6606 Kapolei Pkwy	Ewa Beach	HI	96706-5022	172
234	1911330180000	91-6604 Kapolei Pkwy	Ewa Beach	HI	96706-5022	173
235	1911330190000	91-1187 Kaimalie St	Ewa Beach	HI	96706-5021	204
236	1911330200000	91-1183 Kaimalie St	Ewa Beach	HI	96706-5021	201R
237	1911330210000	91-1179 Kaimalie St	Ewa Beach	HI	96706-5021	202R
238	1911330220000	91-1175 Kaimalie St	Ewa Beach	HI	96706-5021	204R
239	1911330230000	91-1171 Kaimalie St	Ewa Beach	HI	96706-5021	203
240	1911330240000	91-1036 Kai Kala St	Ewa Beach	HI	96706	404
241	1911330250000	91-1038 Kai Kala St	Ewa Beach	HI	96706	401
242	1911330260000	91-1042 Kai Kala St	Ewa Beach	HI	96706	402R
243	1911330270000	91-1044 Kai Kala St	Ewa Beach	HI	96706	403R
244	1911330280000	91-1048 Kai Kala St	Ewa Beach	HI	96706	404R
245	1911330290000	91-1051 Kai Kala St	Ewa Beach	HI	96706	403R
246	1911330300000	91-1047 Kai Kala St	Ewa Beach	HI	96706	404
247	1911330310000	91-1043 Kai Kala St	Ewa Beach	HI	96706	402R
248	1911330320000	91-1260 Kaiopua St	Ewa Beach	HI	96706-5006	403R
249	1911330330000	91-1264 Kaiopua St	Ewa Beach	HI	96706-5006	401
250	1911330340000	91-1268 Kaiopua St	Ewa Beach	HI	96706-5006	402
251	1911330350000	91-1272 Kaiopua St	Ewa Beach	HI	96706-5006	404R
252	1911330360000	91-1054 Kai Moana St	Ewa Beach	HI	96706	402
253	1911330370000	91-1058 Kai Moana St	Ewa Beach	HI	96706	404R
254	1911330380000	91-1062 Kai Moana St	Ewa Beach	HI	96706	401
255	1911330390000	91-1063 Kai Moana St	Ewa Beach	HI	96706	404
256	1911330400000	91-1059 Kai Moana St	Ewa Beach	HI	96706	403R
257	1911330410000	91-1055 Kai Moana St	Ewa Beach	HI	96706	401R
258	1911330420000	91-1051 Kai Moana St	Ewa Beach	HI	96706	402
259	1911330430000	91-1049 Kai Moana St	Ewa Beach	HI	96706	404
260	1911330440000	91-1045 Kai Moana St	Ewa Beach	HI	96706	403
261	1911330450000	91-1041 Kai Moana St	Ewa Beach	HI	96706	503R
262	1911330460000	91-1039 Kai Moana St	Ewa Beach	HI	96706	502R
263	1911330470000	91-1023 Kai Moana St	Ewa Beach	HI	96706	503
264	1911330480000	91-1019 Kai Moana St	Ewa Beach	HI	96706	501R
265	1911330490000	91-1017 Kai Moana St	Ewa Beach	HI	96706	501
266	1911330500000	91-1015 Kai Moana St	Ewa Beach	HI	96706	503
267	1911330510000	91-1011 Kai Moana St	Ewa Beach	HI	96706	502
268	1911330520000	91-1009 Kai Moana St	Ewa Beach	HI	96706	503
269	1911330530000	91-1005 Kai Moana St	Ewa Beach	HI	96706	501R
270	1911330540000	91-1001 Kai Moana St	Ewa Beach	HI	96706	502
271	1911330550000	91-1151 Kaimalie St	Ewa Beach	HI	96706-5021	403
272	1911330560000	91-964 Kaiohee St	Ewa Beach	HI	96706-5000	404
273	1911330570000	91-968 Kaiohee St	Ewa Beach	HI	96706-5000	402R
274	1911330580000	91-972 Kaiohee St	Ewa Beach	HI	96706	403R
275	1911330590000	91-974 Kaiohee St	Ewa Beach	HI	96706-5000	401
276	1911330600000	91-978 Kaiohee St	Ewa Beach	HI	96706-5000	404
277	1911330610000	91-980 Kaiohee St	Ewa Beach	HI	96706-5000	402
278	1911330620000	91-982 Kaiohee St	Ewa Beach	HI	96706	403R

ITEM	TMK	ADDRESS	CITY	STATE	ZIP	TYPE
279	1911330630000	91-986 Kaiohee St	Ewa Beach	HI	96706-5000	404
280	1911330840000	91-1030 Kai Kala St	Ewa Beach	HI	96706	304R
281	1911330850000	91-1026 Kai Kala St	Ewa Beach	HI	96706	303R
282	1911330860000	91-1024 Kai Kala St	Ewa Beach	HI	96706	302
283	1911330870000	91-1020 Kai Kala St	Ewa Beach	HI	96706	304
284	1911330880000	91-1018 Kai Kala St	Ewa Beach	HI	96706	303
285	1911330890000	91-1016 Kai Kala St	Ewa Beach	HI	96706	301
286	1911330900000	91-1012 Kai Kala St	Ewa Beach	HI	96706	302R
287	1911330910000	91-1010 Kai Kala St	Ewa Beach	HI	96706	303R
288	1911330920000	91-1008 Kai Kala St	Ewa Beach	HI	96706	301
289	1911330930000	91-1006 Kai Kala St	Ewa Beach	HI	96706	304
290	1911330940000	91-1002 Kai Kala St	Ewa Beach	HI	96706	303
291	1911330950000	91-1000 Kai Kala St	Ewa Beach	HI	96706	304
292	1911330960000	91-1001 Kai Kala St	Ewa Beach	HI	96706	303
293	1911330970000	91-1003 Kai Kala St	Ewa Beach	HI	96706	304
294	1911330980000	91-1007 Kai Kala St	Ewa Beach	HI	96706	302R
295	1911330990000	91-1009 Kai Kala St	Ewa Beach	HI	96706	303R
296	1911331000000	91-1011 Kai Kala St	Ewa Beach	HI	96706	304R
297	1911331010000	91-1015 Kai Kala St	Ewa Beach	HI	96706	301R
298	1911331020000	91-1017 Kai Kala St	Ewa Beach	HI	96706	302R
299	1911331030000	91-1021 Kai Kala St	Ewa Beach	HI	96706	304
300	1911331040000	91-1023 Kai Kala St	Ewa Beach	HI	96706	303
301	1911331050000	91-1025 Kai Kala St	Ewa Beach	HI	96706	301R
302	1911331060000	91-1029 Kai Kala St	Ewa Beach	HI	96706	304R
303	1911331070000	91-1031 Kai Kala St	Ewa Beach	HI	96706	303R
304	1911331080000	91-1040 Kai Moana St	Ewa Beach	HI	96706	503R
305	1911331090000	91-1036 Kai Moana St	Ewa Beach	HI	96706	502R
306	1911331100000	91-1032 Kai Moana St	Ewa Beach	HI	96706	503
307	1911331110000	91-1028 Kai Moana St	Ewa Beach	HI	96706	501R
308	1911331120000	91-1026 Kai Moana St	Ewa Beach	HI	96706	502R
309	1911331130000	91-1022 Kai Moana St	Ewa Beach	HI	96706	503R
310	1911331140000	91-1018 Kai Moana St	Ewa Beach	HI	96706	502R
311	1911331150000	91-1016 Kai Moana St	Ewa Beach	HI	96706	501R
312	1911331160000	91-1010 Kai Moana St	Ewa Beach	HI	96706	503
313	1911350010000	91-6641 Kapolei Pkwy	Ewa Beach	HI	96706-5023	173
314	1911350020000	91-6639 Kapolei Pkwy	Ewa Beach	HI	96706-5023	172
315	1911350030000	91-6637 Kapolei Pkwy	Ewa Beach	HI	96706-5023	171
316	1911350040000	91-6635 Kapolei Pkwy	Ewa Beach	HI	96706-5023	172
317	1911350050000	91-6633 Kapolei Pkwy	Ewa Beach	HI	96706-5023	171
318	1911350060000	91-6631 Kapolei Pkwy	Ewa Beach	HI	96706-5023	174
319	1911350070000	91-6629 Kapolei Pkwy	Ewa Beach	HI	96706-5023	173
320	1911350080000	91-6627 Kapolei Pkwy	Ewa Beach	HI	96706-5023	172
321	1911350090000	91-6625 Kapolei Pkwy	Ewa Beach	HI	96706-5023	173
322	1911350100000	91-6623 Kapolei Pkwy	Ewa Beach	HI	96706-5023	174
323	1911350110000	91-6621 Kapolei Pkwy	Ewa Beach	HI	96706-5023	172R
324	1911350120000	91-6619 Kapolei Pkwy	Ewa Beach	HI	96706-5023	171R
325	1911350130000	91-6615 Kapolei Pkwy	Ewa Beach	HI	96706-5023	174R

ITEM	TMK	ADDRESS	CITY	STATE	ZIP	TYPE
326	1911350140000	91-6613 Kapolei Pkwy	Ewa Beach	HI	96706-5023	173R
327	1911350150000	91-6611 Kapolei Pkwy	Ewa Beach	HI	96706-5023	172R
328	1911350160000	91-6609 Kapolei Pkwy	Ewa Beach	HI	96706-5023	173R
329	1911350170000	91-6607 Kapolei Pkwy	Ewa Beach	HI	96706-5023	174R
330	1911350180000	91-6605 Kapolei Pkwy	Ewa Beach	HI	96706-5023	171R
331	1911350190000	91-1047 Kaianae St	Ewa Beach	HI	96706	204R
332	1911350200000	91-1051 Kaianae St	Ewa Beach	HI	96706	203
333	1911350210000	91-1053 Kaianae St	Ewa Beach	HI	96706	202
334	1911350220000	91-1055 Kaianae St	Ewa Beach	HI	96706	201
335	1911350230000	91-1057 Kaianae St	Ewa Beach	HI	96706	203R
336	1911350240000	91-1059 Kaianae St	Ewa Beach	HI	96706	204R
337	1911350250000	91-1065 Kaianae St	Ewa Beach	HI	96706	202R
338	1911350260000	91-1067 Kaianae St	Ewa Beach	HI	96706-6264	204
339	1911350270000	91-1071 Kaianae St	Ewa Beach	HI	96706	201
340	1911350280000	91-1073 Kaianae St	Ewa Beach	HI	96706	202
341	1911350290000	91-1075 Kaianae St	Ewa Beach	HI	96706	203R
342	1911350300000	91-1079 Kaianae St	Ewa Beach	HI	96706	204
343	1911350310000	91-1001 Kai Uhu St	Ewa Beach	HI	96706	503
344	1911350320000	91-1005 Kai Uhu St	Ewa Beach	HI	96706	502
345	1911350330000	91-1015 Kai Uhu St	Ewa Beach	HI	96706	502R
346	1911350340000	91-1019 Kai Uhu St	Ewa Beach	HI	96706	501
347	1911350350000	91-1021 Kai Uhu St	Ewa Beach	HI	96706	502
348	1911350360000	91-1023 Kai Uhu St	Ewa Beach	HI	96706	502
349	1911350370000	91-1027 Kai Uhu St	Ewa Beach	HI	96706-6266	503R
350	1911350380000	91-1029 Kai Uhu St	Ewa Beach	HI	96706-6266	501
351	1911350390000	91-1033 Kai Uhu St	Ewa Beach	HI	96706-6266	503R
352	1911350400000	91-1037 Kai Uhu St	Ewa Beach	HI	96706-6266	502R
353	1911350410000	91-1039 Kai Uhu St	Ewa Beach	HI	96706-6266	503R
354	1911350420000	91-1043 Kai Uhu St	Ewa Beach	HI	96706-6266	503
355	1911350430000	91-1034 Kai Uhu St	Ewa Beach	HI	96706-6265	403
356	1911350440000	91-1030 Kai Uhu St	Ewa Beach	HI	96706-6265	404
357	1911350450000	91-1028 Kai Uhu St	Ewa Beach	HI	96706-6265	402
358	1911350460000	91-1024 Kai Uhu St	Ewa Beach	HI	96706-6265	401R
359	1911350470000	91-1022 Kai Uhu St	Ewa Beach	HI	96706-6265	404R
360	1911350480000	91-1018 Kai Uhu St	Ewa Beach	HI	96706-6265	403R
361	1911350490000	91-1016 Kai Uhu St	Ewa Beach	HI	96706-6265	402
362	1911350500000	91-1012 Kai Uhu St	Ewa Beach	HI	96706-6265	404
363	1911350510000	91-1001 Kai Weke St	Ewa Beach	HI	96706-6268	303
364	1911350520000	91-1005 Kai Weke St	Ewa Beach	HI	96706-6268	302
365	1911350530000	91-1009 Kai Weke St	Ewa Beach	HI	96706-6268	304R
366	1911350540000	91-1011 Kai Weke St	Ewa Beach	HI	96706-6268	301R
367	1911350550000	91-1015 Kai Weke St	Ewa Beach	HI	96706-6268	303
368	1911350560000	91-1017 Kai Weke St	Ewa Beach	HI	96706-6268	304
369	1911350570000	91-1019 Kai Weke St	Ewa Beach	HI	96706-6268	303
370	1911350580000	91-1023 Kai Weke St	Ewa Beach	HI	96706-6268	302
371	1911350590000	91-1025 Kai Weke St	Ewa Beach	HI	96706-6268	304
372	1911350600000	91-1024 Kai Weke St	Ewa Beach	HI	96706-6267	303

ITEM	TMK	ADDRESS	CITY	STATE	ZIP	TYPE
373	1911350610000	91-1022 Kai Weke St	Ewa Beach	HI	96706-6267	304R
374	1911350620000	91-1018 Kai Weke St	Ewa Beach	HI	96706-6267	303R
375	1911350630000	91-1016 Kai Weke St	Ewa Beach	HI	96706-6267	301
376	1911350640000	91-1012 Kai Weke St	Ewa Beach	HI	96706-6267	304
377	1911350650000	91-1010 Kai Weke St	Ewa Beach	HI	96706-6267	302R
378	1911350660000	91-1006 Kai Weke St	Ewa Beach	HI	96706-6267	301R
379	1911350670000	91-1004 Kai Weke St	Ewa Beach	HI	96706-6267	303R
380	1911350680000	91-1000 Kai Weke St	Ewa Beach	HI	96706-6267	304
381	1911350690000	91-1219 Kaimalie St	Ewa Beach	HI	96706-6281	403
382	1911350700000	91-1223 Kaimalie St	Ewa Beach	HI	96706-6281	401R
383	1911350710000	91-1225 Kaimalie St	Ewa Beach	HI	96706-6281	404R
384	1911350720000	91-1229 Kaimalie St	Ewa Beach	HI	96706-6281	402
385	1911350730000	91-1231 Kaimalie St	Ewa Beach	HI	96706-6281	403
386	1911350740000	91-1235 Kaimalie St	Ewa Beach	HI	96706-6281	404
387	1911350750000	91-1237 Kaimalie St	Ewa Beach	HI	96706-6281	403
388	1911350760000	91-1241 Kaimalie St	Ewa Beach	HI	96706-6281	402
389	1911350770000	91-1243 Kaimalie St	Ewa Beach	HI	96706-6281	401
390	1911350780000	91-1247 Kaimalie St	Ewa Beach	HI	96706-6281	404
391	1911380010000	91-1275 Kaileolea Dr	Ewa Beach	HI	96706	171R
392	1911380020000	91-1271 Kaileolea Dr	Ewa Beach	HI	96706	174R
393	1911380030000	91-1269 Kaileolea Dr	Ewa Beach	HI	96706	173R
394	1911380040000	91-1267 Kaileolea Dr	Ewa Beach	HI	96706	172R
395	1911380050000	91-1265 Kaileolea Dr	Ewa Beach	HI	96706	171R
396	1911380060000	91-1263 Kaileolea Dr	Ewa Beach	HI	96706	174R
397	1911380070000	91-1261 Kaileolea Dr	Ewa Beach	HI	96706	173R
398	1911380080000	91-1259 Kaileolea Dr	Ewa Beach	HI	96706	172R
399	1911380090000	91-1255 Kaileolea Dr	Ewa Beach	HI	96706	173R
400	1911380100000	91-1253 Kaileolea Dr	Ewa Beach	HI	96706	174R
401	1911380110000	91-1249 Kaileolea Dr	Ewa Beach	HI	96706	171R
402	1911380120000	91-1245 Kaileolea Dr	Ewa Beach	HI	96706	172R
403	1911380130000	91-1243 Kaileolea Dr	Ewa Beach	HI	96706	173R
404	1911380140000	91-1241 Kaileolea Dr	Ewa Beach	HI	96706	174R
405	1911380150000	91-1239 Kaileolea Dr	Ewa Beach	HI	96706	171R
406	1911380160000	91-1235 Kaileolea Dr	Ewa Beach	HI	96706	174R
407	1911380170000	91-1233 Kaileolea Dr	Ewa Beach	HI	96706	173R
408	1911380180000	91-1231 Kaileolea Dr	Ewa Beach	HI	96706	172R
409	1911380190000	91-1229 Kaileolea Dr	Ewa Beach	HI	96706	171R
410	1911380200000	91-1227 Kaileolea Dr	Ewa Beach	HI	96706	172R
411	1911380210000	91-1225 Kaileolea Dr	Ewa Beach	HI	96706	173R
412	1911380220000	91-1221 Kaileolea Dr	Ewa Beach	HI	96706	174R
413	1911380230000	91-1052 Kai Kukuma St	Ewa Beach	HI	96706-6277	204
414	1911380240000	91-1054 Kai Kukuma St	Ewa Beach	HI	96706-6277	201
415	1911380250000	91-1056 Kai Kukuma St	Ewa Beach	HI	96706-6277	202
416	1911380260000	91-1058 Kai Kukuma St	Ewa Beach	HI	96706-6277	204R
417	1911380270000	91-1060 Kai Kukuma St	Ewa Beach	HI	96706-6277	203R
418	1911380280000	91-1062 Kai Kukuma St	Ewa Beach	HI	96706-6277	204R
419	1911380290000	91-1064 Kai Kukuma St	Ewa Beach	HI	96706-6277	202

ITEM	TMK	ADDRESS	CITY	STATE	ZIP	TYPE
420	1911380300000	91-1068 Kai Kukuma St	Ewa Beach	HI	96706-6277	201R
421	1911380310000	91-1070 Kai Kukuma St	Ewa Beach	HI	96706-6277	203R
422	1911380320000	91-1072 Kai Kukuma St	Ewa Beach	HI	96706-6277	204R
423	1911380330000	91-1074 Kai Kukuma St	Ewa Beach	HI	96706-6277	202
424	1911380340000	91-1078 Kai Kukuma St	Ewa Beach	HI	96706-6277	203
425	1911380350000	91-1080 Kai Kukuma St	Ewa Beach	HI	96706	204
426	1911380360000	91-1082 Kai Kukuma St	Ewa Beach	HI	96706-6277	202R
427	1911380370000	91-1084 Kai Kukuma St	Ewa Beach	HI	96706-6277	204
428	1911380380000	91-1086 Kai Kukuma St	Ewa Beach	HI	96706-6277	203
429	1911380390000	91-1088 Kai Kukuma St	Ewa Beach	HI	96706-6277	201
430	1911380400000	91-1090 Kai Kukuma St	Ewa Beach	HI	96706-6277	203
431	1911380410000	91-1092 Kai Kukuma St	Ewa Beach	HI	96706-6277	201R
432	1911380420000	91-1096 Kai Kukuma St	Ewa Beach	HI	96706-6277	203
433	1911380430000	91-1043 Hokuikakai St	Ewa Beach	HI	96706-6280	502R
434	1911380440000	91-1047 Hokuikakai St	Ewa Beach	HI	96706-6280	503R
435	1911380450000	91-1051 Hokuikakai St	Ewa Beach	HI	96706-6280	403
436	1911380460000	91-1053 Hokuikakai St	Ewa Beach	HI	96706-6280	404
437	1911380470000	91-1057 Hokuikakai St	Ewa Beach	HI	96706-6280	402R
438	1911380480000	91-1061 Hokuikakai St	Ewa Beach	HI	96706-6280	403R
439	1911380490000	91-1063 Hokuikakai St	Ewa Beach	HI	96706	401R
440	1911380500000	91-1067 Hokuikakai St	Ewa Beach	HI	96706-6280	402
441	1911380510000	91-1071 Hokuikakai St	Ewa Beach	HI	96706-6280	404
442	1911380520000	91-1060 Kai Weke St	Ewa Beach	HI	96706-6269	503R
443	1911380530000	91-1058 Kai Weke St	Ewa Beach	HI	96706-6269	502R
444	1911380540000	91-1054 Kai Weke St	Ewa Beach	HI	96706-6269	501R
445	1911380550000	91-1052 Kai Weke St	Ewa Beach	HI	96706-6269	503
446	1911380560000	91-1048 Kai Weke St	Ewa Beach	HI	96706-6269	501
447	1911380570000	91-1048 Kai Loli St	Ewa Beach	HI	96706-6270	404R
448	1911380580000	91-1044 Kai Loli St	Ewa Beach	HI	96706	402
449	1911380590000	91-1042 Kai Loli St	Ewa Beach	HI	96706-6270	403
450	1911380600000	91-1038 Kai Loli St	Ewa Beach	HI	96706-6270	402
451	1911380610000	91-1036 Kai Loli St	Ewa Beach	HI	96706-6270	404R
452	1911380620000	91-1032 Kai Loli St	Ewa Beach	HI	96706-6270	401R
453	1911380630000	91-1030 Kai Loli St	Ewa Beach	HI	96706-6270	403
454	1911380640000	91-1028 Kai Loli St	Ewa Beach	HI	96706-6270	404
455	1911380650000	91-1024 Kai Loli St	Ewa Beach	HI	96706-6270	501
456	1911380660000	91-1022 Kai Loli St	Ewa Beach	HI	96706-6270	502
457	1911380670000	91-1020 Kai Loli St	Ewa Beach	HI	96706-6270	503R
458	1911380680000	91-1001 Kai Loli St	Ewa Beach	HI	96706-6271	304R
459	1911380690000	91-1005 Kai Loli St	Ewa Beach	HI	96706-6271	303R
460	1911380700000	91-1007 Kai Loli St	Ewa Beach	HI	96706-6271	301
461	1911380710000	91-1011 Kai Loli St	Ewa Beach	HI	96706-6271	304R
462	1911380720000	91-1013 Kai Loli St	Ewa Beach	HI	96706	303
463	1911380730000	91-1015 Kai Loli St	Ewa Beach	HI	96706-6271	304
464	1911380740000	91-1019 Kai Loli St	Ewa Beach	HI	96706-6271	304R
465	1911380750000	91-1021 Kai Loli St	Ewa Beach	HI	96706-6271	303
466	1911380760000	91-1023 Kai Loli St	Ewa Beach	HI	96706-6271	304R

ITEM	TMK	ADDRESS	CITY	STATE	ZIP	TYPE
467	1911380770000	91-1027 Kai Loli St	Ewa Beach	HI	96706-6271	302
468	1911380780000	91-1029 Kai Loli St	Ewa Beach	HI	96706-6271	303
469	1911380790000	91-1031 Kai Loli St	Ewa Beach	HI	96706-6271	304R
470	1911380800000	91-1035 Kai Loli St	Ewa Beach	HI	96706-6271	305R
471	1911380810000	91-1037 Kai Loli St	Ewa Beach	HI	96706-6271	304
472	1911380820000	91-1041 Kai Loli St	Ewa Beach	HI	96706-6271	303
473	1911380830000	91-1043 Kai Loli St	Ewa Beach	HI	96706-6271	304R
474	1911380840000	91-1045 Kai Loli St	Ewa Beach	HI	96706-6271	303
475	1911380850000	91-1049 Kai Loli St	Ewa Beach	HI	96706-6271	304
476	1911380860000	91-1040 Kai Weke St	Ewa Beach	HI	96706-6284	502
477	1911380870000	91-1038 Kai Weke St	Ewa Beach	HI	96706-6284	503
478	1911380880000	91-1034 Kai Weke St	Ewa Beach	HI	96706-6284	501
479	1911380890000	91-1030 Kai Weke St	Ewa Beach	HI	96706-6284	502R
480	1911380900000	91-1160 Kaiee St	Ewa Beach	HI	96706	303
481	1911380910000	91-1156 Kaiee St	Ewa Beach	HI	96706	304R
482	1911380920000	91-1154 Kaiee St	Ewa Beach	HI	96706	303R
483	1911380930000	91-1150 Kaiee St	Ewa Beach	HI	96706	304R
484	1911380940000	91-1148 Kaiee St	Ewa Beach	HI	96706	303R
485	1911380950000	91-1146 Kaiee St	Ewa Beach	HI	96706	304R
486	1911380960000	91-1144 Kaiee St	Ewa Beach	HI	96706	304
487	1911380970000	91-1140 Kaiee St	Ewa Beach	HI	96706	303
488	1911380980000	91-1138 Kaiee St	Ewa Beach	HI	96706	302
489	1911380990000	91-1136 Kaiee St	Ewa Beach	HI	96706	304R
490	1911381000000	91-1134 Kaiee St	Ewa Beach	HI	96706	301R
491	1911381010000	91-1130 Kaiee St	Ewa Beach	HI	96706	303
492	1911381020000	91-1128 Kaiee St	Ewa Beach	HI	96706	302
493	1911381030000	91-1122 Kaiee St	Ewa Beach	HI	96706	304R
494	1911381040000	91-1120 Kaiee St	Ewa Beach	HI	96706	301R
495	1911381050000	91-1116 Kaiee St	Ewa Beach	HI	96706	303
496	1911381060000	91-1110 Kaiee St	Ewa Beach	HI	96706	304
497	1911381070000	91-1063 Kai Kukuma St	Ewa Beach	HI	96706-6276	402
498	1911381080000	91-1059 Kai Kukuma St	Ewa Beach	HI	96706-6276	403
499	1911381090000	91-1057 Kai Kukuma St	Ewa Beach	HI	96706-6276	403R
500	1911381100000	91-1053 Kai Kukuma St	Ewa Beach	HI	96706-6276	404R
501	1911381110000	91-1044 Kai Uhu St	Ewa Beach	HI	96706-6282	502
502	1911381120000	91-1042 Kai Uhu St	Ewa Beach	HI	96706-6282	503
503	1911381130000	91-1031 Kai Weke St	Ewa Beach	HI	96706-6275	404R
504	1911381140000	91-1035 Kai Weke St	Ewa Beach	HI	96706-6275	402
505	1911381150000	91-1037 Kai Weke St	Ewa Beach	HI	96706-6275	403
506	1911381160000	91-1041 Kai Weke St	Ewa Beach	HI	96706-6275	404
507	1911381170000	91-1045 Kai Weke St	Ewa Beach	HI	96706-6275	401
508	1911381180000	91-1047 Kai Weke St	Ewa Beach	HI	96706-6275	403R
509	1911381190000	91-1051 Kai Weke St	Ewa Beach	HI	96706-6275	402R
510	1911381200000	91-1053 Kai Weke St	Ewa Beach	HI	96706-6275	404R
511	1911381210000	91-1057 Kai Weke St	Ewa Beach	HI	96706-6275	402R
512	1911381220000	91-1059 Kai Weke St	Ewa Beach	HI	96706-6275	405R
513	1911381230000	91-1063 Kai Weke St	Ewa Beach	HI	96706-6275	403R

ITEM	TMK	ADDRESS	CITY	STATE	ZIP	TYPE
514	1911420330000	91-1323 Kaileolea Dr	Ewa Beach	HI	96706-6290	173R
515	1911420340000	91-1321 Kaileolea Dr	Ewa Beach	HI	96706-6290	174R
516	1911420350000	91-1319 Kaileolea Dr	Ewa Beach	HI	96706-6290	171R
517	1911420360000	91-1317 Kaileolea Dr	Ewa Beach	HI	96706-6290	172R
518	1911420370000	91-1315 Kaileolea Dr	Ewa Beach	HI	96706-6290	171R
519	1911420380000	91-1311 Kaileolea Dr	Ewa Beach	HI	96706-6290	174R
520	1911420390000	91-1309 Kaileolea Dr	Ewa Beach	HI	96706-6290	173R
521	1911420400000	91-1307 Kaileolea Dr	Ewa Beach	HI	96706-6290	172R
522	1911420410000	91-1305 Kaileolea Dr	Ewa Beach	HI	96706-6290	171R
523	1911420420000	91-1303 Kaileolea Dr	Ewa Beach	HI	96706-6290	172R
524	1911420430000	91-1299 Kaileolea Dr	Ewa Beach	HI	96706-6288	172
525	1911420440000	91-1297 Kaileolea Dr	Ewa Beach	HI	96706	173
526	1911420450000	91-1295 Kaileolea St	Ewa Beach	HI	96706	172
527	1911420460000	91-1293 Kaileolea Dr	Ewa Beach	HI	96706-6288	171
528	1911420470000	91-1291 Kaileolea Dr	Ewa Beach	HI	96706-6288	174
529	1911420480000	91-1289 Kaileolea Dr	Ewa Beach	HI	96706-6288	173
530	1911420490000	91-1287 Kaileolea Dr	Ewa Beach	HI	96706-6205	174
531	1911420500000	91-1285 Kaileolea Dr	Ewa Beach	HI	96706-6288	171
532	1911420510000	91-1283 Kaileolea Dr	Ewa Beach	HI	96706-6288	172
533	1911420520000	91-1281 Kaileolea Dr	Ewa Beach	HI	96706	173
534	1911420530000	91-1100 Kai Kukuma St	Ewa Beach	HI	96706-6291	204
535	1911420540000	91-1104 Kai Kukuma St	Ewa Beach	HI	96706-6291	201
536	1911420550000	91-1108 Kai Kukuma St	Ewa Beach	HI	96706-6291	202
537	1911420560000	91-1110 Kai Kukuma St	Ewa Beach	HI	96706-6291	204R
538	1911420570000	91-1112 Kai Kukuma St	Ewa Beach	HI	96706-6291	201R
539	1911420580000	91-1114 Kai Kukuma St	Ewa Beach	HI	96706-6291	202R
540	1911420590000	91-1118 Kai Kukuma St	Ewa Beach	HI	96706	203R
541	1911420600000	91-1120 Kai Kukuma St	Ewa Beach	HI	96706-6291	204
542	1911420610000	91-1122 Kai Kukuma St	Ewa Beach	HI	96706-6292	202
543	1911420620000	91-1126 Kai Kukuma St	Ewa Beach	HI	96706-6292	201
544	1911420630000	91-1128 Kai Kukuma St	Ewa Beach	HI	96706-6292	204R
545	1911420640000	91-1130 Kai Kukuma St	Ewa Beach	HI	96706-6292	202
546	1911420650000	91-1134 Kai Kukuma St	Ewa Beach	HI	96706-6292	203R
547	1911420660000	91-1136 Kai Kukuma St	Ewa Beach	HI	96706-6292	204R
548	1911420670000	91-1138 Kai Kukuma St	Ewa Beach	HI	96706-6292	201R
549	1911420680000	91-1142 Kai Kukuma St	Ewa Beach	HI	96706-6292	202R
550	1911420690000	91-1144 Kai Kukuma St	Ewa Beach	HI	96706-6292	204
551	1911420700000	91-1146 Kai Kukuma St	Ewa Beach	HI	96706-6292	201
552	1911420710000	91-1150 Kai Kukuma St	Ewa Beach	HI	96706-6292	203R
553	1911420720000	91-1152 Kai Kukuma St	Ewa Beach	HI	96706-6292	202
554	1911420730000	91-1154 Kai Kukuma St	Ewa Beach	HI	96706-6292	201R
555	1911420740000	91-1158 Kai Kukuma St	Ewa Beach	HI	96706-6292	204R
556	1911420750000	91-1159 Kai Kukuma St	Ewa Beach	HI	96706-6294	304
557	1911420760000	91-1155 Kai Kukuma St	Ewa Beach	HI	96706-6294	305R
558	1911420770000	91-1153 Kai Kukuma St	Ewa Beach	HI	96706-6294	303R
559	1911420780000	91-1149 Kai Kukuma St	Ewa Beach	HI	96706-6294	305R
560	1911420790000	91-1147 Kai Kukuma St	Ewa Beach	HI	96706-6294	304

ITEM	TMK	ADDRESS	CITY	STATE	ZIP	TYPE
561	1911420800000	91-1145 Kai Kukuma St	Ewa Beach	HI	96706-6294	303
562	1911420810000	91-1143 Kai Kukuma St	Ewa Beach	HI	96706-6294	305
563	1911420820000	91-1139 Kai Kukuma St	Ewa Beach	HI	96706-6294	304R
564	1911420830000	91-1137 Kai Kukuma St	Ewa Beach	HI	96706-6294	305
565	1911420840000	91-1135 Kai Kukuma St	Ewa Beach	HI	96706-6294	303
566	1911420850000	91-1131 Kai Kukuma St	Ewa Beach	HI	96706-6294	305R
567	1911420860000	91-1000 Kai Lea St	Ewa Beach	HI	96706-6296	304
568	1911420870000	91-1004 Kai Lea St	Ewa Beach	HI	96706-6296	305R
569	1911420880000	91-1008 Kai Lea St	Ewa Beach	HI	96706-6296	303R
570	1911420890000	91-1012 Kai Lea St	Ewa Beach	HI	96706-6296	304R
571	1911420900000	91-1014 Kai Lea St	Ewa Beach	HI	96706-6296	305
572	1911420910000	91-1018 Kai Lea St	Ewa Beach	HI	96706-6296	304R
573	1911420920000	91-1020 Kai Lea St	Ewa Beach	HI	96706	305
574	1911420930000	91-1024 Kai Lea St	Ewa Beach	HI	96706-6296	303
575	1911420940000	91-1094 Kai Weke St	Ewa Beach	HI	96706-6297	305
576	1911420950000	91-1096 Kai Weke St	Ewa Beach	HI	96706-6297	304R
577	1911420960000	91-1100 Kai Weke St	Ewa Beach	HI	96706-6298	303R
578	1911420970000	91-1102 Kai Weke St	Ewa Beach	HI	96706-6298	305
579	1911420980000	91-1106 Kai Weke St	Ewa Beach	HI	96706-6298	304R
580	1911420990000	91-1108 Kai Weke St	Ewa Beach	HI	96706-6298	303R
581	1911421000000	91-1112 Kai Weke St	Ewa Beach	HI	96706-6298	402R
582	1911421010000	91-1114 Kai Weke St	Ewa Beach	HI	96706-6298	404
583	1911421020000	91-1116 Kai Weke St	Ewa Beach	HI	96706-6298	403
584	1911421030000	91-1120 Kai Weke St	Ewa Beach	HI	96706-6298	402
585	1911421040000	91-1124 Kai Weke St	Ewa Beach	HI	96706-6298	404R
586	1911421050000	91-1115 Kai Weke St	Ewa Beach	HI	96706-6400	501
587	1911421060000	91-1111 Kai Weke St	Ewa Beach	HI	96706-6400	503
588	1911421070000	91-1107 Kai Weke St	Ewa Beach	HI	96706-6400	502
589	1911421080000	91-1105 Kai Weke St	Ewa Beach	HI	96706-6400	503
590	1911421090000	91-1101 Kai Weke St	Ewa Beach	HI	96706-6400	502
591	1911421100000	91-1097 Kai Weke St	Ewa Beach	HI	96706-6275	503
592	1911421110000	91-1095 Kai Weke St	Ewa Beach	HI	96706-6275	402R
593	1911421120000	91-1091 Kai Weke St	Ewa Beach	HI	96706-6275	404
594	1911421130000	91-1087 Kai Weke St	Ewa Beach	HI	96706-6275	403
595	1911421140000	91-1085 Kai Weke St	Ewa Beach	HI	96706-6275	405
596	1911421150000	91-1081 Kai Weke St	Ewa Beach	HI	96706-6275	402R
597	1911421160000	91-1077 Kai Weke St	Ewa Beach	HI	96706-6275	404
598	1911421170000	91-1075 Kai Weke St	Ewa Beach	HI	96706-6275	405R
599	1911421180000	91-1071 Kai Weke St	Ewa Beach	HI	96706-6275	403R
600	1911421190000	91-1067 Kai Weke St	Ewa Beach	HI	96706-6275	404R
601	1911421200000	91-1078 Hokuiekaikai St	Ewa Beach	HI	96706-6401	304R
602	1911421210000	91-1074 Hokuiekaikai St	Ewa Beach	HI	96706-6401	305
603	1911421220000	91-1070 Hokuiekaikai St	Ewa Beach	HI	96706-6401	303
604	1911421230000	91-1068 Hokuiekaikai St	Ewa Beach	HI	96706-6401	304
605	1911421240000	91-1064 Hokuiekaikai St	Ewa Beach	HI	96706-6401	305R
606	1911421250000	91-1062 Hokuiekaikai St	Ewa Beach	HI	96706-6401	303
607	1911421260000	91-1058 Hokuiekaikai St	Ewa Beach	HI	96706-6401	304R

ITEM	TMK	ADDRESS	CITY	STATE	ZIP	TYPE
608	1911421270000	91-1056 Hokuiekekai St	Ewa Beach	HI	96706-6401	305
609	1911421280000	91-1101 Kai Kukuma St	Ewa Beach	HI	96706-6294	305R
610	1911421290000	91-1105 Kai Kukuma St	Ewa Beach	HI	96706-6294	304
611	1911421300000	91-1109 Kai Kukuma St	Ewa Beach	HI	96706-6294	303
612	1911421310000	91-1111 Kai Kukuma St	Ewa Beach	HI	96706-6294	305
613	1911421320000	91-1001 Kai Lea St	Ewa Beach	HI	96706-6295	303
614	1911421330000	91-1003 Kai Lea St	Ewa Beach	HI	96706-6295	304
615	1911421340000	91-1007 Kai Lea St	Ewa Beach	HI	96706-6295	305R
616	1911421350000	91-1009 Kai Lea St	Ewa Beach	HI	96706-6295	303
617	1911421360000	91-1011 Kai Lea St	Ewa Beach	HI	96706-6295	304R
618	1911421370000	91-1013 Kai Lea St	Ewa Beach	HI	96706-6295	305
619	1911421380000	91-1017 Kai Lea St	Ewa Beach	HI	96706-6295	303
620	1911421390000	91-1019 Kai Lea St	Ewa Beach	HI	96706	304
621	1911421400000	91-1023 Kai Lea St	Ewa Beach	HI	96706-6295	305

EXHIBIT G

AFFECTED UNIT COUNT
Ocean Pointe Shot Pin Replacement Project
April 28, 2021

OCEAN POINTE BOLT HOMES
BY AREA and MODEL TYPE

<u>Model Type</u>	<u>Area 2e</u>	<u>Area 3b</u>	<u>Area 3c</u>	<u>Area 3d</u>	<u>Area 3e</u>	<u>Total</u>
171		4	4	5	5	18
172		4	5	5	6	20
173		5	5	6	5	21
174		5	4	6	4	19
201		1	2	4	6	13
202		1	3	4	6	14
203		1	3	6	3	13
204		2	4	6	7	19
301		4	3	3		10
302		4	3	3		10
303		8	6	12	13	39
304		8	6	16	15	45
305				1	18	19
401		5	3	3		11
402		7	4	8	4	23
403		8	5	9	3	25
404		10	6	9	5	30
405				1	2	3
501		5	2	4	1	12
502		6	5	6	2	19
503		8	5	6	3	22
TH1	60					60
TH2	48					48
Th11	36					36
TH12	40					40
TH21	32					32
	216	96	78	123	108	621

CGL Endorsement - Ocean Pointe Shot Pin Replacement Project - April 28, 2021

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**AMENDMENT – DEFINITION OF “OCCURRENCE” –
HAWAII, KENTUCKY AND PENNSYLVANIA**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

Solely with respect to any premises, site or location in Hawaii, Kentucky or Pennsylvania, the definition of “occurrence” in the **DEFINITIONS** section is replaced with the following:

“Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

Faulty workmanship is not an “occurrence”. However, when faulty workmanship performed by you or on your behalf:

Causes “property damage,” such “property damage” will be considered an “occurrence” if:

1. The alleged “property damage” is to property other than “your work”; or
2. The alleged “property damage” to “your work” or any part of “your work” included in the “products-completed operations hazard” arises out of the completed operations of a subcontractor working on your behalf, and the “property damage” is unexpected or unintended from the standpoint of the insured.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

EXHIBIT I

OCEAN POINTE SHOT PIN REPLACEMENT PROJECT April 28, 2021

Exhibit I

INTENTIONALLY OMITTED

EXHIBIT J

WARRANTY

OCEAN POINTE SHOT PIN REPLACEMENT PROJECT

For a period of five (5) years following Substantial Completion of the Work performed by SageBilt ("Contractor") to the Unit identified, below pursuant to the contract between Contractor and The Class in Mitsuoka, et al., v. Haseko Homes, Inc., et al., Circuit Court of First Circuit, State of Hawai'i Civil No. 12-1-3030-11 LWC, Dispute Prevention & Resolution, Inc. ("DPR") No. 17-0447-A (*"the Lawsuit"*), by and through Class Counsel Melvin Y. Agena and Graham B. LippSmith, the Contractor warrants the Work as follows:

Contractor warrants to the owner of said Unit that its Work conforms to the requirements of the Contract Documents and is free from defects, except those inherent in the Work required by the Contract Documents. This Warranty excludes damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, normal wear and tear and excludes aesthetic conditions (e.g., cleanliness, matching of paint color and sheen, consistency of textures, and normal smoothness of drywall repairs, and the appearance of cabinetry repairs) not included in the punch list for the Unit prior to completion and acceptance of the Work therein.

The preceding warranty is limited to labor furnished by the Contractor which does not warrant any materials furnished in performance of the Work. Contractor agrees that, for a period of five (5) years following substantial completion of the Work performed by Contractor to the Unit, as identified above, that Contractor shall facilitate manufacturer warranty claims for material furnished to such Unit which is reported to be defective by (i) inspecting such material, (ii) reporting the condition to the manufacturer, (iii) initiating a warranty claim on behalf of the owner of the Unit, and (iv) performing any warranty work which is authorized by the manufacturer on terms and conditions acceptable to Contractor. Other than as set forth herein, Contractor has no obligations with respect to materials furnished in conformance with the Contract Documents.

Unit Owner: _____

Address: _____

SageBilt Inc.
"Contractor"

Date

EXHIBIT 3



Legal Notification Services

Settlement Notice Plan

Mitsuoka, et al., v. Haseko Homes, Inc., et al.

Case No. 12-1-3030-11 LWC

Circuit Court of the First Circuit, State of Hawai'i

Prepared: April 30, 2021

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Attachment A – Legal Notice c.v.

Legal Notification Services

KCC designs and implements defensible media campaigns and employs notice methods that satisfy due process requirements as well as applicable federal and state laws. KCC has been involved with some of the largest and most complex legal notification programs in the United States, Canada, and across the globe, including several significant consumer cases.

Consistent with the judicial standards set forth by Daubert and Kumho and as illustrated in the Federal Judicial Center's (FJC) Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide, KCC utilizes the same practices and statistical analyses that are relied upon in the advertising industry when we design and measure the effectiveness of the notice programs they develop.

Our Expert

Consistent with the judicial standards set forth by *Daubert* and *Kumho* and as illustrated in the FJC's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*, KCC utilizes the same practices and statistical analyses that are relied upon in the advertising industry when designing and measuring the effectiveness of the notice programs it develops.

With over fifteen years of experience, our legal notice expert, Carla A. Peak, has been involved in hundreds of effective and efficient notice programs reaching class members and claimants in both U.S. and international markets and providing notice in over 35 languages.

As a leading notice expert, Ms. Peak is responsible for the design and implementation of evidence-based legal notification programs, including the design of plain language legal notice documents. Her programs satisfy due process requirements, as well as all applicable state and federal laws, and her notices satisfy the plain language requirements of Rule 23 and adhere to the guidelines set forth in the Manual for Complex Litigation, Fourth and by the Federal Judicial Center (FJC), as well as applicable state laws.

Ms. Peak has presented on and written numerous articles about class notification programs, the design of effective notice documents as well as industry trends and innovations. She is also a certified professional in Social Media Marketing, Digital Fundamentals, Digital Sales, and Google Ads Fundamentals. The information provided represents Ms. Peak's experience and cases in which she has been involved. She holds a Bachelor of Arts in Sociology from Temple University, graduating cum laude.

Relevant Case Experience¹

KCC has designed and implemented numerous notice programs targeting homeowner class members, for example:

- *Eubank v. Pella Corporation*, No. 1:06-cv-04481 (N.D. Ill.), Honorable Sharon Johnson Coleman, (February 16, 2018): *The Court approves, as to form and content, the Notice Plan and Class Notice attached to the Settlement Agreement as Exhibit 2 and finds that the Class Notice and the Notice Plan to be implemented pursuant to the Settlement Agreement are reasonable, constitute the best notice practicable under the circumstances, constitute due and sufficient notice of the settlement and the matters set forth in said notice to all persons entitled to receive notice, and fully satisfy the requirements of due process and of Fed. R. Civ. P. 23.*
- *Nishimura v. Gentry Homes, Ltd.*, No. 11-1-1522 (Cir. Ct., Hawai'i), Honorable James H. Ashford, (October 27, 2017): *The Court finds that the Notice Plan and Class Notices fully and accurately informed the potential Class Members of all material elements of the proposed Settlement and of each Class Member's right and opportunity to object to the proposed Settlement. The Court further finds that the Administrator's mailing and distribution of the Class Notice and the publication of the Class Notices substantially in the manner and form set forth in the Notice Plan and Settlement Agreement met the requirements of the laws of the State of Hawai'i (including Hawai'i Rule of Civil Procedure 23), the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all potential Class Members.*
- *In Re: Rust-Oleum Restore Marketing, Sales Practices and Products Liability Litig.*, No. 1:15-cv-01364 (N.D. Ill.), Honorable Amy J. St. Eve, (March 6, 2017): *The Class Notice (as described in the Settlement Agreement and previously approved by the Court) fully complied with the requirements of Federal Rule of Civil Procedure 23(c)(2)(B) and due process, constituted the best notice practicable under the circumstances, and was due and sufficient notice to all persons entitled to notice of the Settlement of the Action.*
- *Charles v. Haseko Homes, Inc.*, No. 09-1-1932-08 (Cir. Ct. Hawai'i), Honorable Rhonda A. Nishimura, (February 24, 2015): *The Court approves, as to form and content, the Hurricane Straps Class Notice and the Hurricane Straps Repose Subclass Notice, and the Notice Plan that are attached as Exhibits 8-9 to the Declaration of Graham B. LippSmith ("LippSmith Dec.") and in the Declaration of Carla Peak...The Court finds that the Hurricane Straps Class Notice, the Hurricane Straps Repose Subclass Notice, and the Notice Plan will fully and accurately inform the potential Hurricane Straps Class Members and Hurricane Straps Repose Subclass Members of all material elements of the proposed Settlement, of their right to be excluded from the Hurricane Straps Class or Hurricane Straps Repose Subclass, and of each Hurricane Straps Class Member's or Hurricane Straps Repose Subclass Member's right and opportunity to object to the proposed Settlement. The Court further finds that the mailing and distribution of the Hurricane Straps Class Notice and the Hurricane Straps Repose Subclass Notice will (i) meet the requirements of the laws of the State of Hawai'i (including Haw. R. Civ. P. 23), the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law, (ii) constitute the best notice practicable under the circumstances, and (iii) constitute due and sufficient notice to all potential Hurricane Straps Class Members and Hurricane Straps Repose Subclass Members.*

¹ Includes work performed by our experts when employed at other firms.

- *Kai v. Haseko Homes, Inc.*, No. 09-1-2834-12 (Cir. Ct. Hawai'i), Honorable Gary W.B. Chang, (February 15, 2015): *The Court approves, as to form and content, the PEX Class Notice and Notice Plan attached as Exhibit 10 to the Declaration of Graham B. LippSmith ("LippSmith Dec.") and in the Declaration of Carla Peak. The Court finds that the PEX Class Notice and the Notice Plan will fully and accurately inform the potential PEX Class Members of all material elements of the proposed Settlement, of their right to be excluded from the PEX Class, and of each PEX Class Member's right and opportunity to object to the proposed Settlement. The Court further finds that the mailing and distribution of the PEX Class Notice substantially in the manner and form set forth in this Order will (i) meet the requirements of the laws of the State of Hawai'i (including Haw. R. Civ. P. 23), the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law, (ii) constitute the best notice practicable under the circumstances, and (iii) constitute due and sufficient notice to all potential Class Members.*

See **Attachment A** for additional recognition and example cases.

Expert Services

Our Legal Notification Services include, but are not limited to:

Pre-Settlement Consulting

- Review and advise clients of any potential obstacles relative to class definition or legal notification processes
- Develop a noticing plan strategy
- Provide judicial decisions that are relevant to the case or terms of the settlement

Demographic Analysis

- Define the target audience through research and analysis of class demographics
- Identify the geographic location of potential class members giving specific consideration to the class period
- Research class member media usage to define the communication channels that will be most effective

Notice Programs

- Create custom notice programs that incorporate media such as newspapers, magazines, trade journals, radio, television, social media and the internet to meet due process requirements
- Develop press releases, social media enhancements, and broadcast public service announcements (PSAs) as needed
- Track media activity to verify the adequacy of placements

Plain Language Communication

- Consider audience's level of understanding and devise communications strategy accordingly
- Design, draft and distribute plain-language notices that capture attention and are easily understood by class members
- Incorporate response mechanisms, such as a toll-free number, case website address, and/or QR code into notice documents

Expert Testimony

- Provide defensible opinions and testimony to verify the effectiveness of notice programs
- Supply proof of performance for each notice served, as required by the courts
- Provide evidence and judicial decisions to overcome objections

Media Terms & Resources

Circulation: Total number of publication copies sold through all channels of distribution (e.g., subscriptions, newsstand, bulk).

Alliance for Audited Media (AAM): A nonprofit organization that connects North America's leading media companies, advertisers and ad agencies. Founded in 1914 as the Audit Bureau of Circulations, the AAM is the preeminent source of cross-media verification and information services, providing standards, audit services and data critical to the advertising industry. The organization independently verifies print and digital circulation, mobile apps, website analytics, social media, technology platforms and audience information for newspapers, magazines and digital media companies in the U.S. and Canada.

Program Overview

Objective

To design a notice program that will effectively reach Class Members and capture their attention with notices communicated in clear, concise, plain language so that their rights and options may be fully understood. The FJC's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* considers 70-95% reach among class members reasonable.

Class Definition

The Class (or Class Members) consists of all eligible current individual and entity homeowners as of June 16, 2017 when the Circuit Court certified the Class, or their successors, who purchased homes in the development known as Ocean Pointe, located in the District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawai'i, that were designed, developed, and constructed with wind protection systems with foundation anchor bolts, said homes having been constructed after August 1, 2005 and identified at "Exhibit G—Affected Unit Count" to the April 28, 2021 AIA Document A201-2007 General Conditions of the Contract for Construction attached to the Settlement Agreement as Exhibit 2.

Strategies

The Notice Plan relies on an individual mailed notice effort that is expected to reach virtually the entire Class. In addition, notice will be placed in a leading daily newspaper with distribution in the class area. A case website and toll-free number will also be established allowing Class Members the ability to receive more information about the settlement.

Plan Delivery

The individual notice effort is expected to reach virtually the entire Class. The Notice Plan is consistent with other effective court-approved notice programs.

Notice Design

The notice documents have been designed to be noticeable, clear and concise, and written in plain, easily-understood language.

Individual/Direct Notice

Mailed Notice

- Based on information provided by the parties, the Class is estimated to include 621 Class Member homes.
- A Detailed Notice will be mailed to all 621 addresses.
- Because the mailing list is believed to be comprehensive and easy to update, it is estimated that the individual mailings will reach virtually the entire Class.
- Prior to mailing, the names and addresses will be:
 - Checked against the United States Postal Service (USPS) National Change of Address (NCOA)² database;
 - Certified via the Coding Accuracy Support System (CASS);³ and
 - Verified through Delivery Point Validation (DPV).⁴
- Notices returned as undeliverable will be re-mailed to any address available through postal service information.
 - For example, to the address provided by the USPS on returned pieces for which the automatic forwarding order has expired, but is still during the period that the USPS returns the piece with the new address indicated.
- Any returned mailing not updated by the USPS will be researched through a third party address look-up service that scours credit bureau information to obtain updated address information. If a new address is found, a new mailing will be mailed.

² The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person's name and last known address.

³ Coding Accurate Support System is a certification system used by the USPS to ensure the quality of ZIP+4 coding systems.

⁴ Records that are ZIP+4 coded are then sent through Delivery Point Validation to verify the address and identify Commercial Mail Receiving Agencies. DPV verifies the accuracy of addresses and reports exactly what is wrong with incorrect addresses.

Individual/Direct Notice – Post Final Approval

Postcard Notice

- After final approval is granted, a Postcard Notice will be mailed to all 621 addresses or updated addresses as identified in the Detailed Notice mailing.
- The Postcard Notice will inform Class Members that final approval has been granted and provide them with the information they need to schedule home repairs.
- Because the mailing list is believed to be comprehensive and easy to update, it is estimated that the individual mailings will reach virtually the entire Class.
- Prior to mailing, the names and addresses will be:
 - Checked against the United States Postal Service (USPS) National Change of Address (NCOA)⁵ database;
 - Certified via the Coding Accuracy Support System (CASS);⁶ and
 - Verified through Delivery Point Validation (DPV).⁷
- Notices returned as undeliverable will be re-mailed to any address available through postal service information.
 - For example, to the address provided by the USPS on returned pieces for which the automatic forwarding order has expired, but is still during the period that the USPS returns the piece with the new address indicated.

⁵ The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person's name and last known address.

⁶ Coding Accurate Support System is a certification system used by the USPS to ensure the quality of ZIP+4 coding systems.

⁷ Records that are ZIP+4 coded are then sent through Delivery Point Validation to verify the address and identify Commercial Mail Receiving Agencies. DPV verifies the accuracy of addresses and reports exactly what is wrong with incorrect addresses.

Daily Newspaper

To supplement the individual notice effort, a quarter page Summary Notice will appear in the *Honolulu Star-Advertiser*.



- The only daily newspaper on Oahu
- Ranked among the top 15 largest U.S. daily newspapers
- Average (M-F) daily circulation = 137,372
- Average daily issue audience = 270,764
- Provides award winning journalism covering local, state, national, and worldwide news

Response Mechanisms

Case Website

- Allows all Class Members the ability to obtain additional information and documents about the settlement
- Prominently displayed in all printed notice materials

Toll-Free Telephone Support

- Provides a simple way for Class Members to obtain additional information about the settlement
- Allows all Class Members the opportunity to learn more about the case in the form of frequently asked questions and answers
- Allows Class Members the ability to request to have more information mailed directly to them
- Prominently displayed in all printed notice materials

Notice Design Strategies

The design and content of all of the notice materials are consistent with the FJC's "illustrative" forms of model plain language notices, available at www.fjc.gov.

Detailed Notice

- Prominent "Your Rights and Options" table on first page immediately informs readers of their rights and options in the case
- Table of Contents and question and answer format allow Class Members to easily locate information
- Bold headline captures attention and speaks directly to Class Members, alerting them that they should read the Notice and why it is important
- Concise plain language without "legalese" enhances comprehension
- Content includes all essential information in simple format
- Toll-free number and case website invite response, allowing Class Members the opportunity to obtain additional information

Publication Notice

- Bold headline captures attention and speaks directly to Class Members, alerting them that they should read the Notice and why it is important
- Prominent notice size promotes attention, readership, and comprehension
- Legal significance is highlighted to ensure readers that the communication carries legitimate information from the court and not commercial advertising
- Concise plain language without "legalese" enhances comprehension
- Content includes all critical information in simple format
- Toll-free number and case website invite response, allowing Class Members the opportunity to obtain additional information

Postcard Notice

- Bold headline captures attention and speaks directly to Class members, alerting them that final approval has been received and they should call or go to the website to schedule repairs
- Legal significance is highlighted to ensure readers that the communication carries legitimate information from the court and not commercial advertising
- Concise plain language without "legalese" enhances comprehension
- Toll-free number and case website are highlighted and prominent, providing a clear call to action

Conclusion

Our recommended Notice Plan:

- Was designed by experts who are trained and experienced in their specific area of expertise
- Is consistent with other effective settlement notice programs
- Is consistent with the “desire to actually inform” due process communications standard of *Mullane*
- Provides the best notice practicable
- Meets due process requirements
- Provides the same reach and frequency evidence that Courts have approved, is recommended by the FJC, and that has withstood appellate scrutiny, other expert critiques, as well as collateral review
- Conform to all aspects of Hawai'i Rule of Civil Procedure 23
- Comports with the guidance for effective notice articulated in the *Manual for Complex Litigation 4th*
- Leaves no holes or vulnerabilities that would leave the parties open to challenge

Attachment A



KCC Legal Notification Services

KCC's Legal Notification Services team provides expert legal notice services in class action, mass tort and bankruptcy settings. We specialize in the design and implementation of notice programs with plain language notices; and expert opinions and testimony on the adequacy of notice.

With over fifteen years of experience, our legal notice expert, Carla A. Peak, has been involved in hundreds of effective and efficient notice programs reaching class members and claimants in both U.S. and international markets and providing notice in over 35 languages.

As a leading notice expert, Ms. Peak is responsible for the design and implementation of evidence-based legal notification programs, including the design of plain language legal notice documents. Her programs satisfy due process requirements, as well as all applicable state and federal laws, and her notices satisfy the plain language requirements of Rule 23 and adhere to the guidelines set forth in the Manual for Complex Litigation, Fourth and by the Federal Judicial Center (FJC), as well as applicable state laws.

Ms. Peak has presented on and written numerous articles about class notification programs, the design of effective notice documents as well as industry trends and innovations. She is also a certified professional in Social Media Marketing, Digital Fundamentals, Digital Sales, and Google Ads Fundamentals. The information provided represents Ms. Peak's experience and cases in which she has been involved. She holds a Bachelor of Arts in Sociology from Temple University, graduating cum laude. Ms. Peak can be reached at cpeak@kccllc.com.

Case Examples

- *In re: The Home Depot, Inc., Customer Data Security Breach Litig.*, No. 1:14-md-02583 (N.D. Ga.)
A national data breach class action involving over 40 million consumers who made credit or debit card purchases in a Home Depot store.
- *In re: Skelaxin (Metaxalone) Antitrust Litigation*, No. 1:12-md-02343 (E.D. Tenn.)
A multi-state antitrust settlement involving both third party payors and consumers that purchased or paid for the brand and generic version of the prescription drug metaxalone.
- *Chambers v. Whirlpool Corporation*, No. 8:11-cv-01733 (C.D. Cal.)
A national product defect case involving class members who experienced or may experience the overheating of an automatic dishwasher control board.
- *In re Trans Union Corp. Privacy Litigation*, MDL No. 1350 (N.D. Ill.)
Perhaps the largest discretionary class action notice campaign involving virtually every adult in the United States and informing them about their rights in the \$75 million data breach settlement.
- *In re Residential Schools Litigation*, No. 00-CV-192059 (Ont. S.C.J.)
The largest and most complex class action in Canadian history incorporating a groundbreaking notice program to disparate, remote aboriginal persons qualified to receive benefits in the multi-billion dollar settlement.

Judicial Recognition

Honorable Robert W. Gettleman, *Friend v. FGF Brands (USA), Inc.*, (October 23, 2020) No. 1:18-cv-07644 (N.D. Ill.):

The Court approves, as to form and content, the proposed Class Notices, attached as Exhibit B to the Settlement. The Court finds that the Settlement Class Notice Program outlined in the Declaration of Carla Peak on Settlement Notices and Notice Plan (i) is the best practicable notice; (ii) is reasonably calculated, under the circumstances, to apprise the Settlement Class of



the pendency of the Action and of their right to object to or to exclude themselves from the proposed settlement; (iii) is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice; and (iv) meets all requirements of applicable law, Federal Rule of Civil Procedure 23 and due process.

Honorable Otis D. Wright II, *In re Trader Joe's Tuna Litigation*, (October 7, 2020) No. 2:16-cv-01371 (C.D. Cal.):

Notice of the pendency of this action as a class action and of the proposed settlement was given to Settlement Class Members in a manner reasonably calculated to provide the best notice practicable under the circumstances. The form and method of notifying the Settlement Class of the pendency of the Action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Fed. R. Civ. P. 23, due process, and any other applicable law, and constituted due and sufficient notice to all persons and entities entitled thereto.

Honorable Madeline Cox Arleo, *In re Thalomid and Revlimid Antitrust Litigation*, (October 2, 2020) No. 2:14-cv-06997 (D. N.J.):

The Court finds that: (i) this constitutes the best notice practicable to the Class under the circumstances; (ii) the notice was reasonably calculated, under the circumstances, to apprise the Class of the pendency of the action and the terms of the Settlement Agreement, their right to exclude themselves from the Settlement or to object to any part thereof, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the Settlement on all persons who do not exclude themselves from the Settlement; (iii) the notice was adequate and sufficient to all persons or entities entitled to receive notice; and (iv) the notice fully satisfies the requirements of the United States Constitution (including the Due Process Clause), Federal Rule of Civil Procedure 23, and any other applicable law. Due and adequate notice of the proceedings having been given to the Settlement Class and a full opportunity having been offered to Settlement Class members to participate in the Fairness Hearing, it is hereby determined that all Settlement Class members, except those who validly opted-out, are bound by the terms of this Order.

Judge Cathy Seibel, *Cicciarella v. Califia Farms, LLC*, (July 17, 2020) No. 7:19-cv-08785 (S.D.N.Y.):

The Court finds that the Notice Plan, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under the circumstances; (ii) was reasonably calculated to provide, and did provide, due and sufficient notice to the Settlement Class regarding the existence and nature of the Action, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and the rights of Settlement Class members to exclude themselves from the Settlement Agreement, to object and appear at the Final Approval Hearing, and to receive benefits under the Settlement Agreement; and (iii) satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable law.

Judge Cathy Seibel, *Cicciarella v. Califia Farms, LLC*, (March 20, 2020) No. 7:19-cv-08785 (S.D.N.Y.):

The proposed Class Notice, Summary Settlement Notice, and notice methodology described in the Settlement Agreement and in the Declaration of Carla A. Peak and Supplement Declaration of Carla A. Peak (the "Peak Declarations") are hereby approved.

Honorable Eli J. Richardson, *Gann v. Nissan North America, Inc.*, (March 10, 2020) No. 3:18-cv-00966 (M.D. Tenn.):

Notice to the Settlement Class as required by Rule 23(e) of the Federal Rules of Civil Procedure has been provided in accordance with the Court's Preliminary Approval Order, and Summary Notice by first-class mail was given in an adequate and sufficient manner. This, coupled with all of the additional information contained in the Settlement Website, to which class members were directed by the Summary Notice, constitutes the best notice practicable under the circumstances, and satisfies all requirements of Rule 23(e) and due process.

Honorable Eli J. Richardson, *Norman v. Nissan North America, Inc.*, (March 10, 2020) No. 3:18-cv-00534 (M.D. Tenn.):



Notice to the Settlement Class as required by Rule 23(e) of the Federal Rules of Civil Procedure has been provided in accordance with the Court's Preliminary Approval Order, and Summary Notice by first-class mail was given in an adequate and sufficient manner. This, coupled with all of the additional information contained in the Settlement Website, to which class members were directed by the Summary Notice, constitutes the best notice practicable under the circumstances, and satisfies all requirements of Rule 23(e) and due process.

Honorable Eli J. Richardson, *Werthwerth v. Nissan North America, Inc.*, (March 10, 2020) No. 3:18-cv-00588 (M.D. Tenn.):

Notice to the Settlement Class as required by Rule 23(e) of the Federal Rules of Civil Procedure has been provided in accordance with the Court's Preliminary Approval Order, and Summary Notice by first-class mail was given in an adequate and sufficient manner. This, coupled with all of the additional information contained in the Settlement Website, to which class members were directed by the Summary Notice, constitutes the best notice practicable under the circumstances, and satisfies all requirements of Rule 23(e) and due process.

Judge Edmond E. Chang, *Smith v. Complyright, Inc.*, (October 7, 2019) No. 1:18-cv-04990 (E.D.N.Y.):

The Court finds that such Notice: (i) was reasonable and constituted the best practicable notice under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Litigation, the terms of the Settlement, their right to exclude themselves from the Settlement Class or object to all or any part of the Settlement, their right to appear at the Final Fairness Hearing (either on their own or through counsel hired at their own expense), and the binding effect of final approval of the Settlement on all persons who do not exclude themselves from the Settlement Class; (iii) constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), Fed. R. Civ. P. 23, and any other applicable law.

Judge George H. Wu, *Elkies v. Johnson & Johnson Services, Inc.*, (December 6, 2019) No. 2:17-cv-07320 (C.D. Cal.):

The Court finds that the distribution of Notice substantially in the manner and form set forth in the Stipulation meets the requirements of Federal Rule of Civil Procedure 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

Judge Madeline Cox Arleo, *In re Thalomid and Revlimid Antitrust Litigation*, (August 22, 2019) No. 2:14-cv-06997 (D. N.J.):

The Court finds that the form, content, and method of giving notice to the Settlement Class as described in the Motion and exhibits: (a) constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement Class members of the pendency of the action, the terms of the proposed Settlement, and their right under the proposed Settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Fed. R. Civ. P. 23, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Settlement Class members.

Judge Yvonne Gonzalez Rogers, *Abante Rooter and Plumbing, Inc. v. Alarm.com*, (August 15, 2019) No. 4:15-cv-06314 (N.D. Cal.):

The Court finds that the notice given to members of the Settlement Class pursuant to the terms of the Settlement Agreement fully and accurately informed Settlement Class members of all material elements of the Settlement and constituted valid, sufficient, and due notice to all such members. The notice fully complied with due process, Rule 23 of the Federal Rules of Civil Procedure, and with all other applicable law.

Judge John A. Houston, *In re Morning Song Bird Food Litigation*, (June 3, 2019) No. 3:12-cv-01592 (S.D. Cal.):



The Court finds and determines that dissemination and publication of the Notices as set forth in the Notice Plan in the Agreement constituted the best notice practicable under the circumstances, constituted due and sufficient notice of the Settlement and the matters set forth in the Notices to all persons entitled to receive notice, and fully satisfied the requirements of due process and of Federal Rule of Civil Procedure 23.

Judge Steven M. Gold, *Worth v. CVS Pharmacy, Inc.*, (May 28, 2019) No. 2:16-cv-0200498 (E.D.N.Y.):

This Court further approves the proposed methods for giving notice of the Settlement to the Members of the Settlement Class, as reflected in the Stipulation of Settlement and Plaintiffs' motion for preliminary approval. The Court has reviewed the notice, and the notice procedures, and finds that the Members of the Settlement Class will receive the best notice practicable under the circumstances...The Court finds that these procedures, carried out with reasonable diligence, will constitute the best notice practicable under the circumstances and will satisfy the requirements of Fed. R. Civ. P. 23(c)(2), Fed. R. Civ. P. 23(e)(1), and due process.

Judge Edmond E. Chang, *Smith v. Complyright, Inc.*, (May 24, 2019) No. 1:18-cv-04990 (E.D.N.Y.):

The Court has considered the Notice provisions in the Settlement, the Class Notice methodology set forth in the Declaration of Carla A. Peak attached as Exhibit A to the Settlement (the "Notice Program"), and the Email Notice, Postcard Notice, and Detailed Notice, attached as Exhibits C–E of the Settlement, respectively. The Court finds that the direct emailing and mailing of Notice in the manner set forth in the Notice Program is the best notice practicable under the circumstances, constitutes due and sufficient notice of the Settlement and this Order to all persons entitled thereto, and is in full compliance with the requirements of Fed. R. Civ. P. 23(c), applicable law, and due process.

Honorable Beth Labson Freeman, *In re Nexus 6P Products Liability Litigation*, (May 2, 2019) No. 5:17-cv-02185 (N.D. Cal.):

The proposed notice plan, which includes direct notice via email, publication notice, and supplemental postcard notice via U.S. Mail, will provide the best notice practicable under the circumstances. This plan, and the Notice, are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, the effect of the proposed Settlement (including the Released Claims), the anticipated motion for attorneys' fees, costs, and expenses and for service awards, and their rights to participate in, opt out of, or object to any aspect of the proposed Settlement; constitute due, adequate and sufficient notice to Settlement Class Members; and satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and all other applicable law and rules.

Honorable Ann I. Jones, *Lavinsky v. City of Los Angeles*, (April 12, 2019) No. BC542245 (Sup. Ct. Cal.):

The form, manner, and content of the Class Notice, attached to the Settlement Agreement as Exhibits C, E, F, G, and H will provide the best notice practicable to the Class under the circumstances, constitutes valid, due, and sufficient notice to all Class Members, and fully complies with California Code of Civil Procedure section 382, California Code of Civil Procedure section 1781, the Constitution of the State of California, the Constitution of the United States, and other applicable law.

Judge Robert N. Chatigny, *Lecenat v. Douglas Perlitz*, (February 11, 2019) No. 3:13-cv-01132 (D. Conn.):

The Court finds that service of the Class Notice, Radio Publication Notice and Poster Notice in this manner, including newspaper publication as provided in III.E.3 of the Settlement Agreement, constitutes the best notice practicable under the circumstances to Settlement Class Members, and complies fully with the provisions set forth in Federal Rules of Civil Procedure, Rule 23, and any and all substantive and procedural due process rights guaranteed by the United States Constitution and any other applicable law. The Court further finds that the Class Notice, Radio Publication Notice and Poster Notice clearly and concisely inform the Settlement Class Members of their rights and options with respect to the proposed settlement, in plain, easily understood language, in conformance with the requirements of Rule 23.

Judge Yvonne Gonzalez Rogers, *Slovin v. Sunrun, Inc.*, (January 29, 2019) No. 3:13-cv-01132 (D.



Conn.):

The Court has considered the proposed Exhibits B and D attached to the Settlement Agreement and finds that the form, content, and manner of notice proposed by the parties and approved herein meet the requirements of due process and Fed. R. Civ. P. 23(c) and (e), are the best notice practicable under the circumstance, constitute sufficient notice to all persons and entities entitled to notice, and satisfy the Constitutional requirements of notice. The Court approves the notices in all respects, including the proposed forms of notice and the notice provisions of the Settlement Agreement, and orders that notice be given in substantial conformity therewith. The costs of disseminating the Class Notice shall be paid from the Settlement Fund in accordance with the Settlement Agreement.

Judge George H. Wu, *Elkies v. Johnson & Johnson Services, Inc.*, (January 15, 2019), No. 2:17-cv-07320 (C.D. Cal.):

The Court finds Plaintiffs' proposed form of notice satisfies Fed. R. Civ. P. 23(c)(2)(B). Plaintiffs' form of notice provides the best notice practicable under the circumstances and satisfies due process requirements.

Judge Timothy D. DeGiusti, *In re: Samsung Top-Load Washing Machine Marketing, Sales Practices and Product Liability Litigation*, (January 8, 2019) No. 5:17-ml-02792 (W.D. Okla.):

The Court finds that the proposed notice plan is reasonably calculated, under the circumstances, to apprise Settlement Class Members of: the pendency of this Litigation; the effects of the proposed Settlement on their rights (including the Released Claims contained therein); Class Counsel's upcoming motion for attorneys' fees, expenses, and service awards; their right to submit a claim form; and their right to object to any aspect of the proposed Settlement...The Settlement Notice provides due, adequate, and sufficient notice to Settlement Class Members, and satisfies the requirements of Rule 23, due process, and all other applicable law and rules.

Judge James S. Gwin, *In re: Sonic Corp. Customer Data Breach Litigation*, (December 20, 2018) No. 1:17-md-02807 (N.D. Ill.):

The Court finds that the Notices collectively provide a sufficiently clear and concise description of the Litigation, the Settlement terms, and the rights and responsibilities of the Settlement Class Members. The Court further finds that the plan for dissemination of the Notices...is the best means practicable, and is reasonably calculated to apprise the Settlement Class Members of the Litigation and their right to participate in, object to, or exclude themselves from the Settlement.

Judge James Donato, *Brickman v. Fitbit, Inc.*, (December 17, 2018) No. 3:15-cv-02077 (N.D. Cal.):

The Court finds that the proposed Class Notice methodology, contained in Section IV of the Agreement and outlined in Plaintiffs' Unopposed Amended Motion for Preliminary Approval (Dkt. No. 263) will provide the best notice reasonably practicable to the Class Members, and will fairly advise them of their right to object, to opt out of the settlement, and of what they may receive if they remain in the Settlement Sub-Classes and to otherwise satisfy the requirements of Fed. R. Civ. P. 23 and due process requirements of the United States Constitution.

Honorable Edmond E. Chang, *Smith v. Complyright, Inc.*, (November 29, 2018) No. 1:18-cv-04990 (N.D. Ill.):

The Court has considered the Notice provisions in the Settlement, the Class Notice methodology set forth in the Declaration of Carla A. Peak attached as Exhibit A to the Settlement (the "Notice Program"), and the Email Notice, Postcard Notice, and Detailed Notice, attached as Exhibits C–E of the Settlement, respectively. The Court finds that the direct emailing and mailing of Notice in the manner set forth in the Notice Program is the best notice practicable under the circumstances, constitutes due and sufficient notice of the Settlement and this Order to all persons entitled thereto, and is in full compliance with the requirements of Fed. R. Civ. P. 23(c), applicable law, and due process. The Court approves as to form and content the Email Notice, Postcard Notice, and Detailed Notice in the forms attached as Exhibits C, D, and E, respectively, to the Settlement. The Court orders the Settlement Administrator to commence the Notice Program as soon as practicable following entry of this Order.



Honorable Amy Totenberg, *Barrow v. JPMorgan Chase Bank, N.A.*, (November 8, 2018) No. 1:16-cv-03577 (N.D. Ga.):

The Court further finds and concludes that the Class Notice and claims submission procedures set forth in the Agreement fully satisfy Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, were the best notice practicable under the circumstances, provided due and sufficient individual notice to all persons in the Settlement Class who could be identified through reasonable effort and support the Court's exercise of jurisdiction over the Settlement Class as contemplated in the Agreement and this Final Approval Order.

Judge Virginia K. Demarchi, *Hickcox-Huffman v. US Airways, Inc.*, (October 22, 2018) No. 5:10-cv-05193 (N.D. Cal.):

The Court finds that the form, content and method of disseminating notice to the Class as described in Paragraphs 10 and 15 of this Order: (i) complies with Rule 23(c)(2) of the Federal Rules of Civil Procedure as it is the best practicable notice under the circumstances, and is reasonably calculated, under all the circumstances, to apprise the members of the Class of the pendency of the Action, the terms of the Settlement, and their right to object to the Settlement or exclude themselves from the Settlement Class; (ii) complies with Rule 23(e) as it is reasonably calculated, under the circumstances, to apprise the Class Members of the pendency of the Action, the terms of the proposed Settlement, and their rights under the proposed settlement, including, but not limited to, their right to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (iii) constitutes due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and (iv) meets all applicable requirements of law, including, but not limited to, 28 U.S.C. § 1715, Fed. R. Civ. P. 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that all of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices.

Honorable Lucy H. Koh, *In re Anthem, Inc. Data Breach Litigation*, (August 15, 2018) No. 5:15-md-02617 (N.D. Cal.):

The Court finds that the Notice Plan has been fully implemented in compliance with this Court's Order, ECF No. 903, and complies with Federal Rule of Civil Procedure 23(c)(2)(B). Notice was sent by mail and email, published in two magazines, and advertised online. The various forms of Notice, which were reviewed and approved by this Court, provided clear descriptions of who is a member of the Class and Settlement Class Members' rights and options under the Settlement. The Notices explained the conduct at issue in the litigation, how to receive money from the Settlement, how to opt out of the Settlement, how to object to the Settlement, how to obtain copies of relevant papers filed in the case, and how to contact Class Counsel and the Settlement Administrator.

Judge John Bailey, *In re: Monitronics International, Inc., Telephone Consumer Protection Act Litigation*, (June 12, 2018) No. 1:13-md-02493 (N.D. W.Va.)(overruling objections and ruling in favor of the notice plan):

*The Court finds that the notices disseminated pursuant to the Notice Plan fully and accurately informed members of the Settlement Class of all material elements of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of due process, Federal Rule of Civil Procedure 23, and all applicable law. Ms. Smith objected that the notice was inadequate because it did not inform Settlement Class members of the amount of statutory damages available under the TCP A. Dkt. No. 57 at 14. This objection is overruled. Courts require that notice of a settlement "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 113-14 (2d Cir. 2005). The Notice Plan here complies with the court approved plan and fully apprised the Settlement Class of all material terms and their rights. In addition, the notices provided three telephone numbers for Settlement Class members to call if they had questions about the settlement. The Notice Plan thus complies with Rule 23 and due process and Ms. Smith's objection is overruled.*



Judge Timothy S. Black, *Rikos v. The Procter & Gamble Company*, (April 30, 2018) No. 1:11-cv-00226 (S.D. Ohio):

The Court directed that Class Notice be given to Settlement Class Members pursuant to the notice program proposed by the parties and approved by the Court. In accordance with the Court's Preliminary Approval Order and the Court-appointed notice program, the Settlement Administrator caused the Class Notice to be disseminated as ordered. The Class Notice advised Settlement Class Members of the terms of the Settlement Agreement; the Final Approval Hearing, and their right to appear at such hearing; their rights to remain in, or opt out of, the Settlement Class and to object to the Settlement Agreement; procedures for exercising such rights; and the binding effect of this Judgment, whether favorable or unfavorable, to the Settlement Class. The distribution of the Class Notice constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. § 1715, and any other applicable law.

Honorable Amy Totenberg, *Barrow v. JPMorgan Chase Bank, N.A.*, (March 16, 2018) No. 1:16-cv-03577 (N.D. Ga.):

The Notice Plan, in form, method and content, complies with the requirements of Rule 23 and the Federal Rules of Civil Procedure and due process, and constitutes the best notice practicable under the circumstances.

Honorable Ann I. Jones, *Eck v. City of Los Angeles*, (February 21, 2018) No. BC577028 (Super. Ct. Cal.):

Class Notice to the Settlement Class was provided in accordance with the Preliminary Approval Order and satisfied the requirements of due process, California Code of Civil Procedure section 382 and Rule 3.766 of the California Rules of Court and (a) provided the best notice practicable, and (b) was reasonably calculated under the circumstances to apprise Settlement Class Members of the pendency of the Action, the terms of the Settlement, their right to appear at the Fairness Hearing, their right to object to the Settlement, and their right to exclude themselves from the Settlement. The Court finds that the Notice Plan set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency of the Action, certification of the Settlement Class for settlement purposes only, the terms of the Settlement Agreement, and the Final Approval Hearing, and satisfies the requirements of California law and federal due process of law.

Honorable Sharon Johnson Coleman, *Eubank v. Pella Corporation*, (February 16, 2018) No. 1:06-cv-04481 (N.D. Ill.):

The Court approves, as to form and content, the Notice Plan and Class Notice attached to the Settlement Agreement as Exhibit 2 and finds that the Class Notice and the Notice Plan to be implemented pursuant to the Settlement Agreement are reasonable, constitute the best notice practicable under the circumstances, constitute due and sufficient notice of the settlement and the matters set forth in said notice to all persons entitled to receive notice, and fully satisfy the requirements of due process and of Fed. R. Civ. P. 23.

Honorable Lynn Adelman, *Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprises Insurance Co.*, (Direct Purchaser— Jui Li Enterprise Settlement), (February 16, 2018) No. 2:09-CV-00852 (E.D. Wis.):

The Court further finds that the Notice Plan, previously approved by the Court (See ECF No. 1110) and as executed by the Court-appointed Settlement Administrator, KCC, as set forth in the Declaration of Carla A. Peak on Implementation and Overall Adequacy of Settlement Notice Plan ("Peak Declaration") is the best notice practicable under the circumstances; is valid, due and sufficient notice to all Settlement Class Members; and complied fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States. The Court further finds that the forms of Notice (Peak Declaration Exhibits 1 and 2) are written in plain language, use simple terminology, and are designed to be readily understandable and noticeable by Settlement Class Members.

Judge Yvonne Gonzales Rogers, *Abante Rooter and Plumbing Inc. v. Alarm.com Inc.*, (February 8, 2018)



No. 4:15-cv-06314 (N.D. Cal.) (overruling objections and ruling in favor of the notice plan):

The Court finds that the form and content of Plaintiffs' proposed notice program, and the methods of disseminating notice to the Classes, satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled to receive notice. The Court approves the form and content of the Email Notice, Postcard Notice, Banner Notices, and Website Notice, and finds that they clearly and concisely state in plain, easily understood language, the following required information: "(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." Fed. R. Civ. P. 23(c)(2)(B); see also Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 812 (1985) (stating that's due process requires notice to apprise party of pendency of action, afford party opportunity to appear, describe party's rights, and provide party opportunity to opt out of action). The Court approves the methods of disseminating the notice, which class action administrator Kurtzman Carson Consultants, Inc. has designed to reach approximately 90% of Class members. The combination of email notice, postal mail notice, and internet banner ads constitutes the best notice practicable under the circumstances.

Honorable Yvonne Gonzalez Rogers, *Abante Rooter v. Alarm.com Inc.* (February 2, 2018) No. 4:15-cv-06314 (N.D. Cal.):

The Court finds that the form and content of Plaintiffs' proposed notice program, and the methods of disseminating notice to the Classes, satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled to receive notice.

The Court approves the form and content of the Email Notice, Postcard Notice, Banner Notices, and Website Notice, and finds that they clearly and concisely state in plain, easily understood language, the following required information: "(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." Fed. R. Civ. P. 23(c)(2)(B)...

Judge Fernando M. Olguin, *Dodge v. PHH Corporation*, (January 29, 2018) No. 8:15-cv-01973 (C.D. Cal):

Based on the foregoing, the court finds that there is no alternative method of distribution that would be more practicable here, or any more reasonably likely to notify the class members. The court further finds that the procedure for providing notice and the content of the class notice constitute the best practicable notice to class members.

Judge Timothy S. Black, *Rikos v. The Procter & Gamble Company*, (December 20, 2017) No. 1:11-cv-00226 (S.D. Ohio):

The Court approves, as to form and content, the proposed Notice of Class Action Settlement (the "Class Notice"), which forms are attached as Exhibits 4 and 5 to the Settlement Agreement. The Court finds that the distribution of Class Notice substantially in the manner and form set forth in this Order and the Settlement Agreement meet the requirements of Federal Rules of Civil Procedure Rule 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

Honorable Kenneth R. Freeman, *Elias v. Synchrony Bank, f/k/a GE Capital Retail Bank*, (December 8, 2017) No. BC555883 (Sup. Ct. Cal.):

The Court finds that the form, manner and content of the Class Notice specified in Section 5 of the Settlement Agreement and Exhibits B and D thereto provided a means of notice reasonably calculated to apprise the Class Members of the pendency of the action and the proposed settlement, and thereby met the requirements of California Rules of Court Rule 3.769 and California Code of Civil Procedure § 382, as well as due process under the United States



Constitution, the California Constitution, and any other applicable laws, constituted the best practicable notice under the circumstances, and constituted due and sufficient notice to all Class Members entitled thereto.

Judge Denise J. Casper, *In re Solodyn (Minocycline Hydrochloride) Antitrust Litigation*, (Direct Purchasers), (November 27, 2017) No. 1:14-md-02503 (D. Mass.):

Members of the End-Payor Classes for the Sandoz and Lupin Settlements were provided with due and adequate notice of the Settlements, including their right to object to the Settlements and End-Payor Class Counsel's intent to seek from the Settlement Funds reimbursement of costs and expenses. Notice was distributed via both direct mail and publication notice. Such notice fully complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process of law. A full and fair opportunity to be heard was afforded to all members of the Settlement Classes with respect to the foregoing matters. Accordingly, the Court hereby determines that all members of the End-Payor Classes for the Sandoz and Lupin Settlements are bound by this Order and Final Judgment.

Honorable Lynn Adelman, *Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprises Insurance Co.*, (Direct Purchaser— Jui Li Enterprise Settlement), (November 21, 2017) No. 2:09-CV-00852 (E.D. Wis.):

The Court approves the forms of the Notice of proposed class action settlement attached to the Declaration of Carla A. Peak ("Peak Decl.") at Exhibit 2 (Long-Form Notice and Summary/Publication Notice). The Court further finds that the mailing and publication of the Notice in the manner set forth below and in the Peak Declaration is the best notice practicable under the circumstances; is valid, due and sufficient notice to all Settlement Class Members; and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States. The Court further finds that the forms of Notice are written in plain language, use simple terminology, and are designed to be readily understandable by Settlement Class Members.

Honorable James H. Ashford, *Nishimura v. Gentry Homes, Ltd.*, (October 27, 2017) No. 11-1-1522 (Cir. Ct., Hawai'i):

The Court finds that the Notice Plan and Class Notices fully and accurately informed the potential Class Members of all material elements of the proposed Settlement and of each Class Member's right and opportunity to object to the proposed Settlement. The Court further finds that the Administrator's mailing and distribution of the Class Notice and the publication of the Class Notices substantially in the manner and form set forth in the Notice Plan and Settlement Agreement met the requirements of the laws of the State of Hawai'i (including Hawai'i Rule of Civil Procedure 23), the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all potential Class Members.

Judge Celia Gamrath, *Truong v. Peak Campus Management LLC*, (October 16, 2017) No. 2016-CH-09735 (Cir. Ct. Cook Cnty., Ill.):

The Court finds that the Notice Plan as set forth in the Settlement Agreement and the Declaration of Carla A. Peak meets the requirements of Section 2-803 of the Illinois Code of Civil Procedure and constitutes the best notice practicable under the circumstances, including direct individual notice by U.S. Mail or, in some cases by email, to Settlement Class Members, and satisfies fully the requirements of Due Process, and any other applicable law, such that the Settlement Agreement and Final Order and Judgment will be binding on all Settlement Class Members.

Judge John Bailey, *In re Monitronics International, Inc., Telephone Consumer Protection Act Litigation*, (September 28, 2017) No. 5:11-cv-00090 (N.D. W.Va.):

The Court carefully considered the Notice Plan set forth in the Settlement Agreement and plaintiffs' motion for preliminary approval. The Court finds that the Notice Plan constitutes the best notice practicable under the circumstances, and satisfies fully the requirements of Rule 23, the requirements of due process and any other applicable law, such that the terms of the Settlement Agreement, the releases provided therein, and this Court's final judgment will be binding on all Settlement Class Members.



Judge Douglas L. Rayes, *Brill v. Bank of America, N.A.*, (September 15, 2017) No. 2:16-cv-03817 (D. Ariz.):

The record shows, and the Court finds, that the Class Notice has been given to the Settlement Class in the manner approved by the Court in its Preliminary Approval Order. The Court finds that such Class Notice (i) constituted the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency and nature of this Action, the definition of the Settlement Class, the terms of the Settlement Agreement, the rights of the Settlement Class to exclude themselves from the settlement or to object to any part of the settlement, the rights of the Settlement Class to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the Settlement Agreement on all persons who do not exclude themselves from the Settlement Class, (iii) provided due, adequate, and sufficient notice to the Settlement Class; and (iv) fully satisfied the due process requirements of the United States Constitution, Fed. R. Civ. P. 23, and any other applicable law or rule.

Honorable Ann I. Jones, *Eck v. City of Los Angeles*, (September 15, 2017) No. BC577028 (Sup. Ct. Cal.):

The form, manner, and content of the Class Notice, attached to the Settlement Agreement as Exhibits B, E, F and G, will provide the best notice practicable to the Class under the circumstances, constitutes valid, due, and sufficient notice to all Class Members, and fully complies with California Code of Civil Procedure section 382, California Code of Civil Procedure section 1781, the Constitution of the State of California, the Constitution of the United States, and other applicable law.

Honorable James Ashford, *Nishimura v Gentry Homes, LTD.*, (September 14, 2017) No. 11-11-1-1522-07-RAN (Cir. Ct. Hawai'i):

The Court finds that the Notice Plan and Class Notices will fully and accurately inform the potential Class Members of all material elements of the proposed Settlement and of each Class Member's right and opportunity to object to the proposed Settlement. The Court further finds that the mailing and distribution of the Class Notice and the publication of the Class Notices substantially in the manner and form set forth in the Notice Plan and Settlement Agreement meets the requirements of the laws of the State of Hawai'i (including Hawai'i Rule of Civil Procedure 23), the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law, constitutes the best notice practicable under the circumstances, and constitutes due and sufficient notice to all potential Class Members.

Honorable André Birotte Jr., *Rafofsky v. Nissan North America, Inc.*, (September 12, 2017) No. 2:15-cv-01848 (C.D. Cal.):

The Court finds that the Class Notice has been given to the Class in the manner approved by the Court in the Preliminary Approval Order (ECF No. 126). The Court finds that such Class Notice: (i) was reasonable and constituted the best practicable notice under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Litigation, the terms of the Settlement Agreement, their right to exclude themselves from the Class or object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense), and the binding effect of final approval of the Settlement on all persons who do not exclude themselves from the Class; (iii) constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), Fed. R. Civ. P. 23, and any other applicable law.

Honorable Charles R. Norgle, *Mullins v. Direct Digital, LLC*, (September 7, 2017) No. 1:13-cv-01829 (N.D. Ill.):

The notice, in form, method, and content, fully complied with the requirements of Rule 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons entitled to notice of the settlement..

Honorable Steve C. Jones, *Prather v. Wells Fargo Bank, N.A.*, (August 31, 2017) No. 1:15-cv-04231



(N.D. Ga.):

The Court further finds and concludes that the Class Notice and claims submission procedures set forth in the Settlement Agreement fully satisfy Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, were the best notice practicable under the circumstances, and support the Court's exercise of jurisdiction over the Settlement Class as contemplated in the Settlement and this Order.

Judge Lucy H. Koh, *In re Anthem, Inc. Data Breach Litigation*, (August 25, 2017) No. 5:15-md-02617 (N.D. Cal.):

The Court finds that the Notice and Notice Plan set forth in the Settlement Agreement satisfy the requirements of due process and Federal Rule of Civil Procedure 23 and provide the best notice practicable under the circumstances. The Notice and Notice Plan are reasonably calculated to apprise Settlement Class Members of the nature of this litigation, the scope of the Settlement Class, the terms of the Settlement Agreement, the right of Settlement Class Members to object to the Settlement Agreement or exclude themselves from the Settlement Class and the process for doing so, and of the Final Approval Hearing.

Honorable Jeffrey S. White, *In re Yapstone Data Breach*, (August 16, 2017) No. 4:15-cv-04429 (C.D. Cal.):

The Notices and the Notice Program provided the best notice practicable under the circumstances to the Settlement Class Members and fully satisfied the requirements of due process under the United States Constitution and Federal Rule of Civil Procedure 23. Based on the evidence and information supplied to the Court in connection with the Final Approval Hearing held on August 4, 2017, the Court finds that the Notices were adequate and reasonable. The Court further finds that through the Notices, the Settlement Class Members have been apprised of the nature and pendency of the Consumer Action, the terms of the Settlement Agreement, as well as their rights to request exclusion, object, and/or appear at the final approval hearing.

Honorable Consuelo B. Marshall, *Couser v. Dish One Satellite, LLC*, (May 16, 2017) No. 5:15-cv-02218 (C.D. Cal.):

The Court approves the proposed plan for giving notice to the Settlement Class directly (by post card) and through an appropriate media program and establishment of a Settlement Website, as more fully described in Plaintiffs Motion and the Agreement (the "Notice Plan"). The Notice Plan, in form, method and content, complies with the requirements of Rule 23 of the Federal Rules constitutes the best notice practicable under the circumstances.

Honorable André Birotte Jr., *Rafofsky v. Nissan North America, Inc.*, (May 1, 2017) No. 2:15-cv-01848 (C.D. Cal.):

The Court has considered the Notice in the Settlement and finds that the Notice and methodology as described in the Settlement and in the Declaration of Carla Peak attached as Exhibit B to Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Preliminary Approval of Class Action Settlement, including the exhibits attached thereto: (a) meets the requirements of due process and Fed. R. Civ. P. 23(c) and (e); (b) constitutes the best notice practicable under the circumstances to all persons entitled to notice; and (c) satisfies the constitutional requirements regarding notice. In addition, the forms of notice: (a) apprise Class Members of the pendency of the Litigation, the terms of the proposed Settlement, their rights, and deadlines under the Settlement; (b) are written in simple terminology; (c) are readily understandable by Class Members; and (d) comply with the Federal Judicial Center's illustrative class action notices. The Court approves the Notice and methodology as described in the Settlement and in the Declaration of Carla Peak in all respects.

Judge Douglas L. Rayes, *Brill v. Bank of America, N.A.*, (April 18, 2017) No. 2:16-cv-03817 (D. Ariz.):

The Court finds that the Class Notice described above is reasonable, that it constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, and that it meets the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure. Specifically, the Court finds that the Class Notice complies with Rule 23(e) of the Federal Rules of Civil Procedure as it is a reasonable manner of providing notice to those Settlement Class Members



who would be bound by the settlement. The Court also finds that the Class Notice complies with Rule 23(c)(2), as it is also the best form and manner of notice practicable under the circumstances, provides individual notice to members of the Settlement Class who can be identified through a reasonable effort, and is reasonably calculated, under all the circumstances, to apprise members of the Settlement Class of the pendency of the Action, the terms of the settlement, and their right to object to the settlement or exclude themselves from the Settlement Class.

Judge Denise J. Casper, *In re Solodyn (Minocycline Hydrochloride) Antitrust Litigation*, (Direct Purchasers), (April 14, 2017) No. 1:14-md-02503 (D. Mass.):

The proposed form of Notice to Direct Purchaser Settlement Class members of the pendency and proposed Settlements of this action as against Sandoz and Lupin only ("Settlement Notice") and the proposed method of dissemination of the Settlement Notice by first class mail satisfy the requirements of Rule 23(e) of the Federal Rules of Civil Procedure and due process, are otherwise fair and reasonable, and therefore are approved.

Judge Cecilia M. Altonaga, *Flaum v. Doctor's Associates, Inc.*, (March 22, 2017) No. 16-cv-61198 (S.D. Fla.):

The Court has considered the proposed forms of notice including the Summary Notice; Full Notice for the Settlement Website; Publication Notice; Press Release (attached as Exhibit 2, 3, 4 and 8 to the Settlement Agreement); and Settlement Claim Forms (attached as Exhibits 6 and 7 to the Settlement Agreement); and finds the forms, content, and manner of notice proposed by the Parties and approved herein meet the requirements of due process and FED. R. CIV. P. 23(c) and (e), are the best notice practicable under the circumstances, constitute sufficient notice to all persons entitled to notice, and satisfy the Constitutional requirements of notice. The Court approves the notice program in all respects (including the proposed forms of notice, Summary Notice, Full Notice for the Settlement Website, Publication Notice, Press Release and Settlement Claim Forms, and orders that notice be given in substantial conformity therewith.

Honorable Amy J. St. Eve, *In Re: Rust-Oleum Restore Marketing, Sales Practices and Products Liability Litig.*, (March 6, 2017) No. 1:15-cv-01364 (N.D. Ill.):

The Class Notice (as described in the Settlement Agreement and previously approved by the Court) fully complied with the requirements of Federal Rule of Civil Procedure 23(c)(2)(B) and due process, constituted the best notice practicable under the circumstances, and was due and sufficient notice to all persons entitled to notice of the Settlement of the Action.

Honorable Jeffrey S. White, *In re Yapstone Data Breach*, (March 2, 2017) No. 4:15-cv-04429 (C.D. Cal.):

The Court finds that the notice plan and all forms of Notice to the Class as set forth in the Settlement Agreement and Exhibits E and G thereto (the "Notice Program") is reasonably calculated to, under all circumstances, apprise the members of the Settlement Class of the pendency of this action, the certification of the Settlement Class, the terms of the Settlement Agreement, and the right of members to object to the settlement or to exclude themselves from the Class. The Notice Program is consistent with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances.

Judge Manish S. Shah, *Johnson v. Yahoo! Inc.*, (December 12, 2016) No. 1:14-cv-02028 (N.D. Ill.):

The Court approves the notice plan set forth in Plaintiff's Amended Motion to Approve Class Notice (Doc. 252) (the "Notice Plan"). The Notice Plan, in form, method, and content, complies with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and constitutes the best notice practicable under the circumstances.

Judge Joan A. Leonard, *Barba v. Shire U.S., Inc.*, (December 2, 2016) No. 1:13-cv-21158 (S.D. Fla.):

The notice of settlement (in the form presented to this Court as Exhibits E, F, and G, attached to the Settlement Agreement [D.E. 423-1] (collectively, "the Notice") directed to the Settlement Class members, constituted the best notice practicable under the circumstances. In making this determination, the Court finds that the Notice was given to potential Settlement Class members who were identified through reasonable efforts, published using several publication dates in



Better Homes and Gardens, National Geographic, and People magazines; placed on targeted website and portal banner advertisements on general Run of Network sites; included in e-newsletter placements with ADDitude, a magazine dedicated to helping children and adults with attention deficit disorder and learning disabilities lead successful lives, and posted on the Settlement Website which included additional access to Settlement information and a toll-free number. Pursuant to, and in accordance with, Federal Rule of Civil Procedure 23, the Court hereby finds that the Notice provided Settlement Class members with due and adequate notice of the Settlement, the Settlement Agreement, these proceedings, and the rights of Settlement Class members to make a claim, object to the Settlement or exclude themselves from the Settlement.

Justice Robert Stack, *Anderson v. Canada (Attorney General)*, (November 7, 2016) No. 200701T4955CCP (Supreme Ct. Newfoundland and Labrador):

The Plaintiffs intend to provide significant notice of the Settlement to class members, which will include, among other things, direct mailings to class members, direct mailings to third parties, dissemination of a short form notice in various media, and direct community outreach and meetings. The proposed notice materials are intended to be simple and easy to read and understand.

Judge William H. Pauley III, *The Dial Corporation v. News Corporation*, (November 3, 2016) No. 1:13-cv-06802 (S.D. N.Y.):

The notification provided for and given to the Class: (i) was provided and made in full compliance with the Preliminary Approval Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice that was reasonably calculated to apprise the Class of the terms of Settlement, of the proposed Plan of Allocation, of Plaintiffs Counsel's application for an award of attorney's fees, costs, and expenses incurred in connection with the Action, of Class Members' right to object to the Settlement, the Plan of Allocation, or Plaintiffs' Counsel's application for an award of attorney's fees, costs and expenses, and of the right of Class Members to appear at the Settlement Hearing; (iv) constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (v) fully satisfied the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause of the Fifth Amendment to the Constitution), and all other applicable law and rules.

Honorable Amy J. St. Eve, *In Re: Rust-Oleum Restore Marketing, Sales Practices and Products Liability Litig.*, (October 20, 2016) No. 1:15-cv-01364 (N.D. Ill.):

The Notices of Class Action and Proposed Settlement (Exhibits A and B to the Settlement Agreement) and the method of providing such Notices to the proposed Settlement Class (as described in Settlement Agreement ¶6 and in the Declaration of Carla A. Peak on Settlement Notice Plan, filed on October 19, 2016), comply with Fed. R. Civ. P. 23(e) and due process, constitute the best notice practicable under the circumstances, and provide due and sufficient notice to all persons entitled to notice of the settlement of this Action.

Honorable R. Gary Klausner, *Russell v. Kohl's Department Stores, Inc.*, (October 20, 2016) No. 5:15-cv-01143 (C.D. Cal.):

Notice of the settlement was provided to the Settlement Class in a reasonable manner, and was the best notice practicable under the circumstances, including through individual notice to all members who could be reasonably identified through reasonable effort.

Judge Fernando M. Olguin, *Chambers v. Whirlpool Corporation*, (October 11, 2016) No. 8:11-cv-01733 (C.D. Cal.):

Accordingly, based on its prior findings and the record before it, the court finds that the Class Notice and the notice process fairly and adequately informed the class members of the nature of the action, the terms of the proposed settlement, the effect of the action and release of claims, their right to exclude themselves from the action, and their right to object to the proposed settlement.

Honourable Justice Stack, *Anderson v. The Attorney General of Canada*, (September 28, 2016) No. 2007



01T4955CP (Supreme Ct. Newfound and Labrador):

The Phase 2 Notice Plan satisfies the requirements of the Class Actions Act and shall constitute good and sufficient service upon class members of the notice of this Order, approval of the Settlement and discontinuance of these actions.

Judge Mary M. Rowland, *In re: The Home Depot, Inc., Customer Data Security Breach Litig.*, (August 23, 2016) No. 1:14-md-02583 (N.D. Ga.):

The Court finds that the Notice Program has been implemented by the Settlement Administrator and the parties in accordance with the requirements of the Settlement Agreement, and that such Notice Program, including the utilized forms of Notice, constitutes the best notice practicable under the circumstances and satisfies due process and the requirements of Rule 23 of the Federal Rules of Civil Procedure.

Honorable Manish S. Shah, *Campos v. Calumet Transload Railroad, LLC*, (August 3, 2016) No. 1:13-cv-08376 (S.D. NY.):

The form, content, and method of dissemination of the notice given to the Settlement Class were adequate, reasonable, and constitute the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of the Settlements, the terms and conditions set forth therein, and these proceedings to all Persons entitled to such notice. The notice satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure ("Rule 23") and due process.

Honorable Lynn Adelman, *Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprise Company, Ltd.*, (Indirect Purchaser–Jui Li Settlement), (July 7, 2016) No. 2:09-cv-00852 (E.D. Wis.):

The Court approves the Notice Program set forth in the Declaration of Carla A. Peak. The Court approves as to form and content the Postcard Notice, Summary Publication Notice, and Detailed Notice in the forms attached as Exhibits 1–3, respectively, to the Declaration of Carla A. Peak. The Court further finds that the mailing and publication of Notice in the manner set forth in the Notice Program is the best notice practicable under the circumstances; is valid, due and sufficient notice to all Settlement Class members; and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States. The Court further finds that the forms of Notice are written in plain language, use simple terminology, and are designed to be readily understandable by Settlement Class members.

Judge William H. Pauley III, *The Dial Corporation v. News Corporation*, (June 2, 2016) No. 1:13-cv-06802 (S.D. NY.):

The form and content of the notice program described herein, and the methods set forth herein of notifying the Class of the Settlement and its terms and conditions, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and constitutional due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.

Honorable R. Gary Klausner, *Russell v. Kohl's Department Stores, Inc.*, (April 11, 2016) No. 5:15-cv-01143 (C.D. Cal.):

Here, the Notice Plan includes several ways to reach proposed Class Members, including an information website, direct mailing, direct emails, and a toll-free help line. Furthermore, the proposed Notice provides details sufficient to explain the terms of the Settlement Agreement and provide information to Class Members about their rights, releases, and application deadlines. The Notice informs Class Members of how funds will be allocated, and how Residual Funds will be handled. Class Members are also put on notice of Attorneys' Fees and Expenses awarded and an Incentive Award to the Class Representative. Finally, the Notice plainly indicates the time and place of the hearing to consider approval of the settlement and the method of objecting to or opting out of the settlement. Based on the above facts, the Court approves the proposed Notice Plan.

Judge Joan A. Leonard, *Barba v. Shire U.S., Inc.*, (April 11, 2016) No. 1:13-cv-21158 (S.D. Fla.):

The Court finds that the proposed methods for giving notice of the Settlement to members of the



Settlement Class, as set forth in this Order and in the Settlement Agreement, meet the requirements of Federal Rule of Civil Procedure Rule 23 and requirements of state and federal due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

Honorable Manish S. Shah, *Campos v. Calumet Transload Railroad, LLC*, (March 10, 2016 and April 18, 2016) No. 1:13-cv-08376 (S.D. NY.):

The Court approves the Notice Program set forth in the Declaration of Carla A. Peak, attached as Exhibit A to the Settlement. The Court approves as to form and content the Postcard Notice, Summary Notice, and Detailed Notice in the forms attached as Exhibits B, C, and D, respectively, to the Settlement. The Court further finds that the mailing and publication of Notice in the manner set forth in the Notice Program is the best notice practicable under the circumstances, constitutes due and sufficient notice of the Settlement and this Order to all persons entitled thereto, and is in full compliance with the requirements of Fed. R. Civ. P. 23, applicable law, and due process.

Judge Mary M. Rowland, *In re: The Home Depot, Inc., Customer Data Security Breach Litig.*, (March 8, 2016) No. 1:14-md-02583 (N.D. Ga.):

The Court finds that the form, content and method of giving notice to the Class as described in Paragraph 7 of this Order and the Settlement Agreement (including the exhibits thereto): (a) will constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the action, the terms of the proposed settlement, and their rights under the proposed settlement, including but not limited to their rights to object to or exclude themselves from the proposed settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including Fed. R. Civ. P. 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that the Notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Class Members.

Judge Mary M. Rowland, *In re: Sears, Roebuck and Co. Front-Loader Washer Products Liability Litig.*, (February 29, 2016) No. 1:06-cv-07023 (N.D. Ill.):

The Court concludes that, under the circumstances of this case, the Settlement Administrator's notice program was the "best notice that is practicable," Fed. R. Civ. P. 23(c)(2)(B), and was "reasonably calculated to reach interested parties," Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 318 (1950).

Honorable Lynn Adelman, *Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprises Insurance Co.*, (Indirect Purchaser—Tong Yang & Gordon Settlements), (January 14, 2016) No. 2:09-CV-00852 (E.D. Wis.):

The form, content, and methods of dissemination of Notice of the Settlements to the Settlement Class were reasonable, adequate, and constitute the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the Settlements, the terms and conditions set forth in the Settlements, and these proceedings to all persons and entities entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process requirements.

Judge Curtis L. Collier, *In re: Skelaxin (Metaxalone) Antitrust Litigation*, (December 22, 2015) No. 1:12-md-2343 (E.D. Tenn.):

The Class Notice met statutory requirements of notice under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23 and the requirement process.

Honorable Mitchell D. Dembin, *Lerma v. Schiff Nutrition International, Inc.*, (November 3, 2015) No. 3:11-CV-01056 (S.D. Cal.):

The Court finds this notice (i) constituted the best notice practicable under the circumstances, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise the putative Class Members of the pendency of the action, and of their right to object and to appear



at the Final Approval Hearing or to exclude themselves from the Settlement, (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice, and (iv) fully complied with due process principles and Federal Rule of Civil Procedure 23.

Honorable Lynn Adelman, *Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprises Insurance Co.*, (Direct Purchaser–Tong Yang & Gordon Settlements), (August 13, 2015) No. 2:09-CV-00852 (E.D. Wis.):

The Court further finds that the Notice Plan, previously approved by the Court (See ECF Nos. 619 & 641) and as executed by the Court-appointed Claims Administrator, KCC, as set forth in the Declaration of Carla A. Peak on Implementation and Overall Adequacy of Combined Settlement Notice Plan (“Peak Declaration”) is the best notice practicable under the circumstances; is valid, due and sufficient notice to all Settlement Class Members; and complied fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States. The Court further finds that the forms of Notice (Peak Declaration Exhibits 1 and 2) are written in plain language, use simple terminology, and are designed to be readily understandable and noticeable by Settlement Class Members.

Honorable Lynn Adelman, *Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprises Insurance Co.*, (Indirect Purchaser–Gordon Settlement), (August 4, 2015) No. 2:09-CV-00852 (E.D. Wis.):

The Court approves the Notice Program set forth in the Declaration of Carla A. Peak. The Court approves as to form and content the Postcard Notice, Summary Publication Notice, and Detailed Notice in the forms attached as Exhibits 2–4, respectively, to the Declaration of Carla A. Peak. The Court further finds that the mailing and publication of Notice in the manner set forth in the Notice Program is the best notice practicable under the circumstances; is valid, due and sufficient notice to all Settlement Class members; and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States. The Court further finds that the forms of Notice are written in plain language, use simple terminology, and are designed to be readily understandable by Settlement Class members.

Honorable Lynn Adelman, *Fond du Lac Bumper Exchange, Inc. v. Jui Li Enterprise Co., Ltd.* (Indirect Purchaser–Tong Yang Settlement), (May 29, 2015) No. 2:09-CV-00852 (E.D. Wis.):

The Court approves the Notice Program set forth in the Declaration of Carla A. Peak. The Court approves as to form and content the Postcard Notice, Summary Publication Notice, and Detailed Notice in the forms attached as Exhibits 2–4, respectively, to the Declaration of Carla A. Peak. The Court further finds that the mailing and publication of Notice in the manner set forth in the Notice Program is the best notice practicable under the circumstances; is valid, due and sufficient notice to all Settlement Class members; and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States. The Court further finds that the forms of Notice are written in plain language, use simple terminology, and are designed to be readily understandable by Settlement Class members.

Honorable Lynn Adelman, *Fond du Lac Bumper Exchange, Inc. v. Jui Li Enterprise Co., Ltd.* (Direct Purchaser–Gordon Settlement), (May 5, 2015) No. 2:09-CV-00852 (E.D. Wis.):

The Court approves the forms of the Notice of proposed class action settlement attached to the Declaration of Carla Peak (“Peak Decl.”) at Exhibit 1 (Long-Form Notice and Summary/Publication Notice). The Court further finds that the mailing and publication of the Notice in the manner set forth below and in the Peak Decl. is the best notice practicable under the circumstances; is valid, due and sufficient notice to all Settlement Class members; and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States. The Court further finds that the forms of Notice are written in plain language, use simple terminology, and are designed to be readily understandable by Settlement Class Members. The Notice Program set forth herein is substantially similar to the one set forth in the Court’s April 24, 2015 Order regarding notice of the Tong Yang Settlement (ECF. No. 619) and combines the Notice for the Tong Yang Settlement with that of the Gordon Settlement into a comprehensive Notice Program. To the extent differences exist between the two, the Notice Program set forth and approved herein shall prevail over that found in the April 24, 2015 Order.



Honorable José L. Linares, *Demmick v. Cellco Partnership*, (May 1, 2015) No. 2:06-CV-2163 (D. N.J.):

The Notice Plan, which this Court has already approved, was timely and properly executed and that it provided the best notice practicable, as required by Federal Rule of Civil Procedure 23, and met the “desire to actually inform” due process communications standard of Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950)... The Court thus affirms its finding and conclusion in the November 19, 2014 Preliminary Approval Order that the notice in this case meets the requirements of the Federal Rules of Civil Procedure and the Due Process Clause of the United States and/or any other applicable law. All objections submitted which make mention of notice have been considered and, in light of the above, overruled.

Honorable Lynn Adelman, *Fond du Lac Bumper Exchange, Inc. v. Jui Li Enterprise Co., Ltd.* (Direct Purchaser–Tong Yang Settlement), (April 4, 2015) No. 2:09-CV-00852 (E.D. Wis.):

The Court approves the forms of the Notice of proposed class action settlement attached to the Declaration of Carla A. Peak (“Peak Decl.”) as Exhibit 2 (Long-Form Notice and Summary/Publication Notice). The Court further finds that the mailing and publication of the Notice in the manner set forth below and in the Peak Decl. is the best notice practicable under the circumstances; is valid, due and sufficient notice to all Settlement Class Members; and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States. The Court further finds that the forms of Notice are written in plain language, use simple terminology, and are designed to be readily understandable by Settlement Class Members.

Honorable Rhonda A. Isiran Nishimura, *Charles v. Haseko Homes, Inc.*, (February 24, 2015) No. 09-1-1932-08 (Cir. Ct. Hawai‘i):

The Court approves, as to form and content, the Hurricane Straps Class Notice and the Hurricane Straps Repose Subclass Notice, and the Notice Plan that are attached as Exhibits 8-9 to the Declaration of Graham B. LippSmith (“LippSmith Dec.”) and in the Declaration of Carla Peak...The Court finds that the Hurricane Straps Class Notice, the Hurricane Straps Repose Subclass Notice, and the Notice Plan will fully and accurately inform the potential Hurricane Straps Class Members and Hurricane Straps Repose Subclass Members of all material elements of the proposed Settlement, of their right to be excluded from the Hurricane Straps Class or Hurricane Straps Repose Subclass, and of each Hurricane Straps Class Member's or Hurricane Straps Repose Subclass Member's right and opportunity to object to the proposed Settlement. The Court further finds that the mailing and distribution of the Hurricane Straps Class Notice and the Hurricane Straps Repose Subclass Notice will (i) meet the requirements of the laws of the State of Hawai‘i (including Haw. R. Civ. P. 23), the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law, (ii) constitute the best notice practicable under the circumstances, and (iii) constitute due and sufficient notice to all potential Hurricane Straps Class Members and Hurricane Straps Repose Subclass Members.

Honorable Gary W.B. Chang, *Kai v. Haseko Homes, Inc.*, (February 15, 2015) No. 09-1-2834-12 (Cir. Ct. Hawai‘i):

The Court approves, as to form and content, the PEX Class Notice and Notice Plan attached as Exhibit 10 to the Declaration of Graham B. LippSmith (“LippSmith Dec.”) and in the Declaration of Carla Peak. The Court finds that the PEX Class Notice and the Notice Plan will fully and accurately inform the potential PEX Class Members of all material elements of the proposed Settlement, of their right to be excluded from the PEX Class, and of each PEX Class Member's right and opportunity to object to the proposed Settlement. The Court further finds that the mailing and distribution of the PEX Class Notice substantially in the manner and form set forth in this Order will (i) meet the requirements of the laws of the State of Hawai‘i (including Haw. R. Civ. P. 23), the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law, (ii) constitute the best notice practicable under the circumstances, and (iii) constitute due and sufficient notice to all potential Class Members.

Honorable David O. Carter, *Cobb v. BSH Home Appliances Corp.*, (December 29, 2014) No. 8:10-CV-0711 (C.D. Cal.):

The Notice Program complies with Rule 23(c)(2)(B) because it constitutes the best notice



practicable under the circumstances, provides individual notice to all Class Members who can be identified through reasonable effort, and is reasonably calculated under the circumstances to apprise the Class Members of the nature of the action, the claims it asserts, the Class definition, the Settlement terms, the right to appear through an attorney, the right to opt out of the Class or to comment on or object to the Settlement (and how to do so), and the binding effect of a final judgment upon Class Members who do not opt out.

Honorable Christina A. Snyder, *Roberts v. Electrolux Home Products, Inc.*, (September 11, 2014) No. 8:12-CV-01644 (C.D. Cal.):

The Court considered the Settlement Notice Plan submitted by the parties, and the Declaration of Carla A. Peak of KCC describing the Notice Plan...The Court finds that the Notice itself is appropriate, and complies with Fed. R. Civ. P. 23(b)(3), 23(c)(2)(B), and 23(e), because the Settlement Notice, FAQ, and Publication Notice fairly, accurately, and reasonably informed members of the Settlement Class, in plain language, of (1) appropriate information about the nature of this litigation and the essential terms of the Settlement Agreement; (2) appropriate information about, and means for obtaining, additional information regarding this litigation and the Settlement Agreement; (3) appropriate information about, and means for obtaining and submitting, a Claim Form; (4) appropriate information about the right of members of the Settlement Class to exclude themselves from the Settlement, object to the terms of the Settlement Agreement, including Class Counsel's request for an award of attorneys' fees and costs, and the procedures to do so; and (5) appropriate information about the consequences of failing to submit a Claim Form or failing to comply with the procedures and the deadline for opting out of, or objecting to, the Settlement...Accordingly, the Court hereby finds and concludes that members of the Settlement Class have been provided the best notice practicable of the Settlement and that such notice satisfies all requirements of federal and California laws and due process. The Court finally approves the Notice Plan in all respects...Any objections to the notice provided to the Class are hereby overruled.

Honorable David O. Carter, *Cobb v. BSH Home Appliances Corp.*, (August 25, 2014) No. 8:10-CV-0711 (C.D. Cal.):

...the Court also finding that the proposed notice plan and forms of notice are the best notice practicable under the circumstances and satisfy all requirements of the Federal Rules of Civil Procedure, including Fed. R. Civ. P. 23(c)(b)(2); and for good cause shown, IT IS HEREBY ORDERED that Plaintiffs' Motion to Amend the Illinois Class Definition is GRANTED; and it is further ORDERED that Plaintiffs' Motion for Approval of Notice Plan and Proposed Forms of Notice is GRANTED.

Judge Gregory A. Presnell, *Poertner v. The Gillette Co. and The Procter & Gamble Co.*, (August 21, 2014) No. 6:12-CV-00803 (M.D. Fla.):

*This Court has again reviewed the Notice and the accompanying documents and finds that the "best practicable" notice was given to the Class and that the Notice was "reasonably calculated" to (a) describe the Action and the Plaintiff's and Class Members' rights in it; and (b) apprise interested parties of the pendency of the Action and of their right to have their objections to the Settlement heard. See *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 810 (1985). This Court further finds that Class Members were given a reasonable opportunity to opt out of the Action and that they were adequately represented by Plaintiff Joshua D. Poertner. See *Id.* The Court thus reaffirms its findings that the Notice given to the Class satisfies the requirements of due process and holds that it has personal jurisdiction over all Class Members.*

Honorable Curtis L. Collier, *In re: Skelaxin (Metaxalone) Antitrust Litigation*, (August 5, 2014) No. 1:12-md-02343 (E.D. Tenn.):

The proposed form of Notice to End-Payor Settlement Class Members of the pendency and proposed settlement of this action ("Settlement Notice") set forth in the Notice Plan and Declaration of Carla Peak and the proposed method of dissemination of the Settlement Notice ("Notice Plan")—first to Third-Party Payors and then to Consumers—satisfy the requirements of Rule 23(e) of the Federal Rules of Civil Procedure and due process, are otherwise fair and reasonable, and therefore are approved.



Honorable Christina A. Snyder, *Roberts v. Electrolux Home Products, Inc.*, (May 5, 2014) No. 8:12-CV-01644 (C.D. Cal.):

The Court finds that the Notice Plan set forth in the Settlement Agreement (§ V. of that Agreement)...is the best notice practicable under the circumstances, and constitutes sufficient notice to all persons entitled to notice. The Court further preliminarily finds that the Notice itself IS appropriate, and complies with Rules 23(b)(3), 23(c)(2)(B), and 23(e) because it describes in plain language (1) the nature of the action, (2) the definition of the Settlement Class and Subclasses, (3) the class claims, issues or defenses, (4) that a class member may enter an appearance through an attorney if the member so desires, (5) that the Court will exclude from the class any member who requests exclusion, (6) the time and manner for requesting exclusion, and (7) the binding effect of a judgment on Settlement Class Members under Rule 23(c)(3) and the terms of the releases. Accordingly, the Court approves the Notice Plan in all respects...

Honorable Jose L. Linares, *In re Hypodermic Products Antitrust Litigation*, (March 17, 2014) MDL No. 1730, No. 2:05-CV-01602 (D. N.J.):

The Class Notice provides a description of the Indirect Purchaser Class, the procedural status of the litigation, a brief description of the plan of allocation, the court approval process for the proposed Settlement, and the significant terms of the Settlement. The Class Notice also fully informed members of the Indirect Purchaser Class of their rights with respect to the Settlement, including the right to opt out of, object to the Settlement, or otherwise be heard as to the reasonableness and fairness of the Settlement. The Class Notice also informed members of the Indirect Purchaser Class of their right to object to Indirect Purchaser Plaintiffs' Lead Counsel's application for an award of attorneys' fees, an award of incentive fees, and reimbursement of expenses from the Settlement Fund....The Class Notice met the statutory requirements of notice under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23 and the requirements of due process.

Honorable William E. Smith, *Cappalli v. BJ's Wholesale Club, Inc.*, (December 12, 2013) No. 1:10-CV-00407 (D. R.I.):

The Court finds that the form, content, and method of dissemination of the notice given to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of these proceedings of the proposed Settlement, and of the terms set forth in the Stipulation and first Joint Addendum, and the notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, Constitutional due process, and all other applicable laws.

Judge Gregory A. Presnell, *Poertner v. The Gillette Co. and The Procter & Gamble Co.*, (November 5, 2013) No. 6:12-CV-00803 (M.D. Fla.):

The proposed Class Notice and Claim Form are approved as to form and content. The Court finds that the content of the Class Notice and the Claim Form satisfy the requirements of Fed. R. Civ. P. 23(c)(2), Fed. R. Civ. P. 23(e)(1), and due process and accordingly approves them...The Court finds that compliance with the Notice Plan is the best practicable notice under the circumstances and constitutes due and sufficient notice of this Order to all persons entitled thereto and is in full compliance with the requirements of Rule 23, applicable law, and due process.

Honorable Jose L. Linares, *In re Hypodermic Products Antitrust Litigation*, (November 4, 2013) No. 2:05-CV-01602 (D. N.J.):

Upon reviewing Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Conditional Class Certification and Approval of Notice Plan and the Declarations of Karin E. Fisch, Esq. and Carla A. Peak and the documents attached thereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:...Proposed forms of Notice are attached hereto as Exhibit A. The Court finds that the form fairly and adequately: (i) describes the terms and effect of the Settlement Agreement and of the Settlement; (ii) notifies the Indirect Purchaser Class concerning the proposed plan of allocation and distribution; (iii) notifies the Indirect Purchaser Plaintiffs' Lead Counsel will seek attorneys' fees not to exceed one-third of the Settlement Fund, reimbursement



of expenses and incentive fees; (iv) gives notice to the Indirect Purchaser Class of the time and place of the Fairness Hearing; and (v) describes how the recipients of the Notice may submit a claim, exclude themselves from the Settlement or object to any of the relief requested.

Judge Marilyn L. Huff, *Beck-Ellman v. Kaz USA, Inc.*, (June 11, 2013) No. 3:10-cv-02134 (S. D. Cal.):

The Notice Plan has now been implemented in accordance with the Court's Preliminary Approval Order. The Publication Notice was designed to provide potential class members with information about the Settlement and their rights, in easy-to-comprehend language... The Notice Plan was specially developed to cause class members to see the Publication Notice or see an advertisement that directed them to the Settlement Website. KCC identified that the class members belong to a demographic group known as "Pain Relief Users." The Heating Pads are considered a Pain Relief product. The publications that KCC's Notice Plan used are publications and websites whose viewers and readers include a high percentage of Pain Relief product users... The Court concludes that the Class Notice fully satisfied the requirements of Rule 23(c)(2) of the Federal Rules of Civil Procedure and all due process requirements.

Judge Tom A. Lucas, *Stroud v. eMachines, Inc.*, (March 27, 2013) No. CJ-2003-968 L (D. Ct. Cleveland Cnty, Okla.):

The Notices met the requirements of Okla. Stat. tit. 12 section 2023(C), due process, and any other applicable law; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all persons and entities entitled thereto. All objections are stricken. Alternatively, considered on their merits, all objections are overruled.

Judge Marilyn L. Huff, *Beck-Ellman v. Kaz USA, Inc.* (January 7, 2013) No. 3:10-cv-02134 (S. D. Cal.):

The proposed Class Notice, Publication Notice, and Settlement Website are reasonably calculated to inform potential Class members of the Settlement, and are the best practicable methods under the circumstances... Notice is written in easy and clear language, and provides all needed information, including: (1) basic information about the lawsuit; (2) a description of the benefits provided by the settlement; (3) an explanation of how Class members can obtain Settlement benefits; (4) an explanation of how Class members can exercise their rights to opt-out or object; (5) an explanation that any claims against Kaz that could have been litigated in this action will be released if the Class member does not opt out; (6) the names of Class Counsel and information regarding attorneys' fees; (7) the fairness hearing date and procedure for appearing; and (8) the Settlement Website and a toll free number where additional information, including Spanish translations of all forms, can be obtained. After review of the proposed notice and Settlement Agreement, the Court concludes that the Publication Notice and Settlement Website are adequate and sufficient to inform the class members of their rights. Accordingly, the Court approves the form and manner of giving notice of the proposed settlement.

Judge Tom A. Lucas, *Stroud v. eMachines, Inc.*, (December 21, 2012) No. CJ-2003-968 L (D. Ct. Cleveland Cnty, Okla.):

The Plan of Notice in the Settlement Agreement as well as the content of the Claim Form, Class Notice, Post-Card Notice, and Summary Notice of Settlement is hereby approved in all respects. The Court finds that the Plan of Notice and the contents of the Class Notice, Post-Card Notice and Summary Notice of Settlement and the manner of their dissemination described in the Settlement Agreement is the best practicable notice under the circumstances and is reasonably calculated, under the circumstances, to apprise Putative Class Members of the pendency of this action, the terms of the Settlement Agreement, and their right to object to the Settlement Agreement or exclude themselves from the Certified Settlement Class and, therefore, the Plan of Notice, the Class Notice, Post-Card Notice and Summary Notice of Settlement are approved in all respects. The Court further finds that the Class Notice, Post-Card Notice and Summary Notice of Settlement are reasonable, that they constitute due, adequate, and sufficient notice to all persons entitled to receive notice, and that they meet the requirements of due process.

Honorable Michael M. Anello, *Shames v. The Hertz Corporation*, (November 5, 2012) No. 3:07-cv-02174 (S.D. Cal.):



...the Court is satisfied that the parties and the class administrator made reasonable efforts to reach class members. Class members who did not receive individualized notice still had opportunity for notice by publication, email, or both...The Court is satisfied that the redundancies in the parties' class notice procedure—mailing, e-mailing, and publication—reasonably ensured the widest possible dissemination of the notice...The Court OVERRULES all objections to the class settlement...

Judge Ann D. Montgomery, *In Re: Uponor, Inc., F1807 Plumbing Fittings Products Liability Litigation*, (July 9, 2012) No. 11-MD-2247 (D. Minn.):

The objections filed by class members are overruled; The notice provided to the class was reasonably calculated under the circumstances to apprise class members of the pendency of this action, the terms of the Settlement Agreement, and their right to object, opt out, and appear at the final fairness hearing;...

Judge Ann D. Montgomery, *In Re: Uponor, Inc., F1807 Plumbing Fittings Products Liability Litigation*, (June 29, 2012) No. 11-MD-2247 (D. Minn.):

After the preliminary approval of the Settlement, the parties carried out the notice program, hiring an experienced consulting firm to design and implement the plan. The plan consisted of direct mail notices to known owners and warranty claimants of the RTI F1807 system, direct mail notices to potential holders of subrogation interests through insurance company mailings, notice publications in leading consumer magazines which target home and property owners, and earned media efforts through national press releases and the Settlement website. The plan was intended to, and did in fact, reach a minimum of 70% of potential class members, on average more than two notices each...The California Objectors also take umbrage with the notice provided the class. Specifically, they argue that the class notice fails to advise class members of the true nature of the aforementioned release. This argument does not float, given that the release is clearly set forth in the Settlement and the published notices satisfy the requirements of Rule 23(c)(2)(B) by providing information regarding: (1) the nature of the action class membership; (2) class claims, issues, and defenses; (3) the ability to enter an appearance through an attorney; (4) the procedure and ability to opt-out or object; (5) the process and instructions to make a claim; (6) the binding effect of the class judgment; and (7) the specifics of the final fairness hearing.

Honorable Michael M. Anello, *Shames v. The Hertz Corporation*, (May 22, 2012) No. 3:07-cv-02174 (S.D. Cal.):

The Court approves, as to form and content, the Notice of Proposed Settlement of Class Action, substantially in the forms of Exhibits A-1 through A-6, as appropriate, (individually or collectively, the "Notice"), and finds that the e-mailing or mailing and distribution of the Notice and publishing of the Notice substantially in the manner and form set forth in ¶ 7 of this Order meet the requirements of Federal Rule of Civil Procedure 23 and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

Judge Anthony Powell, *Molina v. Intrust Bank, N.A.*, (May 21, 2012) No. 10-CV-3686 (18th J.D. Ct., Kan.):

The form, content, and method of dissemination of Class Notice given to the Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceeding to all persons entitled to such notice, and said notice fully satisfied the requirements of K.S.A. § 60-223 and due process.

Judge Ronald L. Bauer, *Blue Cross of California Website Securities Litigation*, (April 5, 2012) No. JCCP 4647 (Super. Ct. Cal.):

The form, content, and method of dissemination of the notice given to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all Person entitled to such notice, and said notice satisfied the requirements of California Rules of Court,



Rule 3,766(e) and (f), and due process.

Judge Ann D. Montgomery, *In Re: Uponor, Inc., F1807 Plumbing Fittings Products Liability Litigation*, (January 18, 2012) No. 11-MD-2247 (D. Minn.):

Notice to Class members must clearly and concisely state the nature of the lawsuit and its claims and defenses, the Class certified, the Class member's right to appear through an attorney or opt out of the Class, the time and manner for opting out, and the binding effect of a class judgment on members of the Class. Fed. R. Civ. P. 23(c)(2)(B). Compliance with Rule 23's notice requirements also complies with Due Process requirements. 'The combination of reasonable notice, the opportunity to be heard, and the opportunity to withdraw from the class satisfy due process requirements of the Fifth Amendment.' Prudential, 148 F.3d at 306. The proposed notices in the present case meet those requirements.

Judge Jeffrey Goering, *Molina v. Intrust Bank, N.A.*, (January 17, 2012) No. 10-CV-3686 (18th J.D. Ct. Ks.):

The Court approved the form and content of the Class Notice, and finds that transmission of the Notice as proposed by the Parties meets the requirements of due process and Kansas law, is the best notice practicable under the circumstances, and constitutes due and sufficient notice to all persons entitled thereto.

Judge Charles E. Atwell, *Allen v. UMB Bank, N.A.*, (October 31, 2011) No. 1016-CV34791 (Cir. Ct. Mo.):

The form, content, and method of dissemination of Class Notice given to the Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all persons entitled to such notice, and said notice fully satisfied the requirements of Rule 52.08 of the Missouri Rules of Civil Procedure and due process.

Judge Charles E. Atwell, *Allen v. UMB Bank, N.A.*, (June 27, 2011) No. 1016-CV34791 (Cir. Ct. Mo.):

The Court approves the form and content of the Class Notice, and finds that transmission of the Notice as proposed by the Parties meets the requirements of due process and Missouri law, is the best notice practicable under the circumstances, and constitutes due and sufficient notice to all persons entitled thereto.

Judge Jeremy Fogel, *Ko v. Natura Pet Products, Inc.*, (June 24, 2011) No. 5:09cv2619 (N.D. Cal.):

The Court approves, as to form and content, the Long Form Notice of Pendency and Settlement of Class Action ("Long Form Notice"), and the Summary Notice attached as Exhibits to the Settlement Agreement, and finds that the e-mailing of the Summary Notice, and posting on the dedicated internet website of the Long Form Notice, mailing of the Summary Notice post-card, and newspaper and magazine publication of the Summary Notice substantially in the manner as set forth in this Order meets the requirements of Rule 23 of the Federal Rules of Civil Procedure, and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled to notice.

Judge M. Joseph Tiemann, *Billieson v. City of New Orleans*, (May 27, 2011) No. 94-19231 (Civ. D. Ct. La.):

The plan to disseminate notice for the Insurance Settlements (the "Insurance Settlements Notice Plan") which was designed at the request of Class Counsel by experienced Notice Professionals Gina Intrepido-Bowden and Carla A. Peak... IT IS ORDERED as follows: 1. The Insurance Settlements Notice Plan is hereby approved and shall be executed by the Notice Administrator; 2. The Insurance Settlements Notice Documents, substantially in the form included in the Insurance Settlements Notice Plan, are hereby approved.

Judge James Robertson, *In re Department of Veterans Affairs (VA) Data Theft Litig.*, (February 11, 2009) MDL No. 1796 (D.C.):

The Court approves the proposed method of dissemination of notice set forth in the Notice Plan, Exhibit 1 to the Settlement Agreement. The Notice Plan meets the requirements of due process



and is the best notice practicable under the circumstances. This method of Class Action Settlement notice dissemination is hereby approved by the Court.

Judge Louis J. Farina, *Soders v. General Motors Corp.*, (December 19, 2008) No. CI-00-04255 (C.P. Pa.):

The Court has considered the proposed forms of Notice to Class members of the settlement and the plan for disseminating Notice, and finds that the form and manner of notice proposed by the parties and approved herein meet the requirements of due process, are the best notice practicable under the circumstances, and constitute sufficient notice to all persons entitled to notice.

Judge Robert W. Gettleman, *In Re Trans Union Corp.*, (September 17, 2008) MDL No. 1350 (N.D. Ill.):

The Court finds that the dissemination of the Class Notice under the terms and in the format provided for in its Preliminary Approval Order constitutes the best notice practicable under the circumstances, is due and sufficient notice for all purposes to all persons entitled to such notice, and fully satisfies the requirements of the Federal Rules of Civil Procedure, the requirements of due process under the Constitution of the United States, and any other applicable law...Accordingly, all objections are hereby OVERRULED.

Judge William G. Young, *In re TJX Companies*, (September 2, 2008) MDL No. 1838 (D. Mass.):

The form, content, and method of dissemination of notice provided to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all Persons entitled to such notice, and said Notice fully satisfied the requirements of Fed. R. Civ. P. 23 and due process.

Judge David De Alba, *Ford Explorer Cases*, (May 29, 2008) JCCP Nos. 4226 & 4270 (Cal. Super. Ct.):

[T]he Court is satisfied that the notice plan, design, implementation, costs, reach, were all reasonable, and has no reservations about the notice to those in this state and those in other states as well, including Texas, Connecticut, and Illinois; that the plan that was approved -- submitted and approved, comports with the fundamentals of due process as described in the case law that was offered by counsel.

Judge Kirk D. Johnson, *Hunsucker v. American Standard Ins. Co. of Wisconsin*, (August 10, 2007) No. CV-2007-155-3 (Cir. Ct. Ark.):

Having admitted and reviewed the Affidavits of Carla Peak and Christine Danielson concerning the success of the notice campaign, including the fact that written notice reached approximately 86% of the potential Class Members, the Court finds that it is unnecessary to afford a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but failed to do so...Specifically, the Court received and admitted affidavits from Carla Peak and Christine Danielson, setting forth the scope and results of the notice campaign. Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Class Notice and settlement website as disseminated to members of the Settlement Class in accordance with provisions of the Preliminary Approval Order was the best notice practicable under the circumstances to all members of the Settlement Class.

Presentations and Articles

- *Settlement, Notice and Claims, Objectors, Cy Pres, and Attorney's Fees*, University of Michigan Law School Consumer Class Actions & Complex Litigation (736-01), Carla Peak (November 2020).
- "Class Action in a Modern Digital Age" COMMITTEE TO SUPPORT THE ANTITRUST LAWS (COSAL), Carla Peak (June 2020)



- *"Rule 23: Recent Rule Revisions."* *Class Action Litigation in 2020: What You Need to Know*, NEW JERSEY BAR ASSOCIATION, Carla Peak (February 2020).
- *"Marching to Their Own Drumbeat."* *What Lawyers Don't Understand About Notice and Claims Administration*, AMERICAN BAR ASSOCIATION 23rd Annual National Institute on Class Actions, Carla Peak (October 2019).
- *Class Action Notice and Settlement Administration*, Columbia Law School Complex Litigation Challenges and Strategies in Multijurisdictional and Aggregate Litigation (L9225), Carla Peak (March 2018).
- *"A Winning Hand or a Flop?" After 50 Years, Are Class Actions Still Legit?*, AMERICAN BAR ASSOCIATION 20th Annual National Institute on Class Actions, Carla Peak (October 2016).
- *Class Action Notice Requirements: Leveraging Traditional and Emerging Media to Reach Class Members*, STRAFFORD, Carla Peak (April 2016).
- *The Ethics of Class Action Settlements*, CHICAGO BAR ASSOCIATION, Class Litigation Committee, Carla Peak (June 2014).
- *Innovations in Notification*, CHICAGO BAR ASSOCIATION, Class Litigation Committee Spring Seminar, Carla Peak, presenter (May 2012).
- *Ethics in Legal Notification* accredited CLE Program (December 2012-November 2014).
- *Pitfalls of Class Action Notice and Settlement Administration* accredited CLE Program (March 2014).
- *The Fundamentals of Settlement Administration* accredited CLE Program (October 2012-August 2013).
- Carla Peak and Steven Weisbrot. *How to Design Your Notice to Minimize Professional Objectors*, Class Action Lawsuit Defense: Class Action Defense News, Developments and Commentary provided by BakerHostetler (www.classactionlawsuitdefense.com) (July 20, 2012).
- *Class Action Settlement Administration Tips & Pitfalls on the Path to Approval* accredited CLE Program (October 2012).
- *Legal Notice Ethics* accredited CLE Program (May 2010-January 2011).
- Carla Peak, *Is your legal notice designed to be noticed?* WESTLAW JOURNAL CLASS ACTION Vol.18 Issue 10 (2011).
- John B. Isbister, Todd B. Hilsee & Carla A. Peak, *Seven Steps to a Successful Class Action Settlement*, AMERICAN BAR ASSOCIATION, SECTION OF LITIGATION, CLASS ACTIONS TODAY 16 (2008).

Depositions and Testimony

- *Head v. Citibank, N.A.*, No. 3:18-CV-08189 (D. Ariz.), August 6, 2020
- *Palmer v. KCI USA, Inc.*, No. 4:19-CV-3084 (D. Neb.), October 14, 2020
- *Wesley v. Snap Finance LLC*, No. 2:20-cv-00148 (D. Utah), February 11, 2021

Case Examples

Case	Court
<i>In re Columbia/HCA Healthcare Corp. (Billing Practices Litig.)</i>	M.D. Tenn., MDL No. 1227
<i>Soders v. General Motors Corp. (Marketing Initiative)</i>	C.P. Pa., No. CI-00-04255
<i>Nature Guard Cement Roofing Shingles Cases</i>	Cal. Super. Ct., J.C.C.P. No. 4215
<i>Defrates v. Hollywood Entertainment Corp. (Extended Viewing Fees)</i>	Cir. Ct. Ill., St. Clair. Co., No. 02L707
<i>West v. G&H Seed Co. (Crawfish Farmers)</i>	27 th Jud. D. Ct. La., No. 99-C-4984-A
<i>Baiz v. Mountain View Cemetery (Burial Practices)</i>	Cal. Super. Ct., No. 809869-2
<i>Richison v. American Cemwood Corp. (Roofing Durability)</i>	Cal. Super. Ct., No. 005532
<i>Friedman v. Microsoft Corp. (Antitrust)</i>	Ariz. Super. Ct., No. CV 2000-000722
<i>Davis v. Am. Home Prods. Corp. (Norplant Contraceptive)</i>	Civ. D. Ct. La., Div. K, No. 94-11684
<i>Gordon v. Microsoft Corp. (Antitrust)</i>	D. Minn., No. 00-5994
<i>Fisher v. Virginia Electric & Power Co.</i>	E.D. Va., No 3:02-CV-431
<i>Bardessono v. Ford Motor Co. (15 Passenger Vans Outreach)</i>	Wash. Super. Ct., No. 32494
<i>Gardner v. Stimson Lumber Co. (Forestex Siding)</i>	Wash. Super. Ct., No. 00-2-17633-3SEA
<i>Nichols v. SmithKline Beecham Corp. (Paxil)</i>	E.D. Pa., No. 00-6222
<i>In re Educ. Testing Serv. PLT 7-12 Test Scoring</i>	E.D. La., 2:04md1643
<i>In re Serzone Products Liability</i>	S.D. W. Va., 02-md-1477
<i>Ford Explorer Cases</i>	Cal. Super. Ct., JCCP Nos. 4226 & 4270
<i>In re Lupron Marketing & Sales Practices</i>	D. Mass., MDL No.1430
<i>Morris v. Liberty Mutual Fire Ins. Co.</i>	D. Okla., NO. CJ-03-714
<i>Thibodeaux v. Conoco Philips Co.</i>	D. La., No. 2003-481
<i>Morrow v. Conoco Inc.</i>	D. La., No. 2002-3860
<i>Tobacco Farmer Transition Program</i>	U.S. Dept. of Agric.
<i>Froeber v. Liberty Mutual Fire Ins. Co.</i>	Cir. Ct. Ore., No. 00C15234
<i>Carnegie v. Household Int'l, Inc.</i>	N.D. Ill., No. 98-C-2178
<i>In re Royal Ahold Securities and "ERISA"</i>	D. Md., 1:03-md-01539
<i>First State Orthopaedics et al. v. Concentra, Inc., et al.</i>	E.D. Pa., No. 2:05-CV-04951-AB
<i>Meckstroth v. Toyota Motor Sales, U.S.A., Inc.</i>	24 th Jud. D. Ct. La., No. 583-318
<i>In re High Sulfur Content Gasoline Products Liability</i>	E.D. La., MDL No. 1632
<i>Desportes v. American General Assurance Co.</i>	Ga. Super. Ct., No. SU-04-CV-3637
<i>In re Residential Schools Litigation</i>	Ont. Super. Ct., 00-CV-192059 CPA
<i>Turner v. Murphy Oil USA, Inc.</i>	E.D. La., No. 2:05-CV-04206-EEF-JCW
<i>Carter v. North Central Life Ins. Co.</i>	Ga. Super. Ct., No. SU-2006-CV-3764-6
<i>Friedman v. Microsoft Corp. (Antitrust)</i>	Ariz. Super. Ct., No. CV 2000-000722

<i>Ciabattari v. Toyota Motor Sales, U.S.A., Inc.</i>	N.D. Cal., No. C-05-04289-BZ
<i>Peek v. Microsoft Corporation</i>	Cir. Ct. Ark., No. CV-2006-2612
<i>Reynolds v. The Hartford Financial Services Group, Inc.</i>	D. Ore., No. CV-01-1529 BR
<i>Zarebski v. Hartford Insurance Co. of the Midwest</i>	Cir. Ct. Ark., No. CV-2006-409-3
<i>In re Parmalat Securities</i>	S.D.N.Y., 1:04-md-01653 (LAK)
<i>Beasley v. The Reliable Life Insurance Co.</i>	Cir. Ct. Ark., No. CV-2005-58-1
<i>Sweeten v. American Empire Insurance Company</i>	Cir. Ct. Ark., No. 2007-154-3
<i>Gunderson v. F.A. Richard & Associates, Inc. (FARA)</i>	14th Jud. D. Ct. La., No. 2004-2417-D
<i>Gunderson v. F.A. Richard & Associates, Inc. (Focus)</i>	14th Jud. D. Ct. La., No. 2004-2417-D
<i>Hunsucker v. American Standard Ins. Co. of Wisconsin</i>	Cir. Ct. Ark., No., CV-2007-155-3
<i>Burgess v. Farmers Insurance Co., Inc.</i>	D. Okla., No. CJ-2001-292
<i>Grays Harbor v. Carrier Corporation</i>	W.D. Wash., No. 05-05437-RBL
<i>Donnelly v. United Technologies Corp.</i>	Ont. S.C.J., 06-CV-320045CP
<i>Wener v. United Technologies Corp.</i>	QC. Super. Ct., 500-06-000425-088
<i>Brookshire Bros. v. Chiquita (Antitrust)</i>	S.D. Fla., No. 05-CIV-21962
<i>Johnson v. Progressive</i>	Cir. Ct. Ark., No. CV-2003-513
<i>Bond v. American Family Insurance Co.</i>	D. Ariz., CV06-01249-PXH-DGC
<i>Angel v. U.S. Tire Recovery (Tire Fire)</i>	Cir. Ct. W. Va., No. 06-C-855
<i>In re TJX Companies Retail Security Breach</i>	D. Mass., MDL No. 1838
<i>Webb v. Liberty Mutual Insurance Co.</i>	Cir. Ct. Ark., No. CV-2007-418-3
<i>Shaffer v. Continental Casualty Co. (Long Term Care Insurance)</i>	C.D. Cal., SACV06-2235-PSG (PJWx)
<i>Palace v. DaimlerChrysler (Neon Head Gaskets)</i>	Cir. Ct. Ill., Cook Co., No. 01-CH-13168
<i>Beringer v. Certegy Check Services, Inc. (Data Breach)</i>	M.D. Fla., No. 8:07-cv-1657-T-23TGW
<i>Lockwood v. Certegy Check Services, Inc. (Data Breach)</i>	M.D. Fla., No. 2:07-CV-587-FtM-29-DNF
<i>Sherrill v. Progressive Northwestern Ins. Co.</i>	18th D. Ct. Mont., No. DV-03-220
<i>Gunderson v. F.A. Richard & Associates, Inc. (AIG)</i>	14th Jud. D. Ct. La., No. 2004-2417-D
<i>Jones v. Dominion Transmission, Inc.</i>	S.D. W. Va., No. 2:06-cv-00671
<i>Gunderson v. F.A. Richard & Associates, Inc. (Wal-Mart)</i>	14th Jud. D. Ct. La., No. 2004-2417-D
<i>In re Trans Union Corp. Privacy (Data Breach)</i>	N.D. Ill., MDL No. 1350
<i>Gunderson v. F.A. Richard & Associates., Inc. (Amerisafe)</i>	14th Jud. D. Ct. La., No. 2004-002417
<i>Bibb v. Monsanto Co. (Nitro)</i>	Cir. Ct. W.Va., No. 041465
<i>Carter v. Monsanto Co. (Nitro)</i>	Cir. Ct. W.Va., No. 00-C-300
<i>In re U.S. Department of Veterans Affairs (VA) Data Breach</i>	D. D.C., MDL 1796
<i>In re Countrywide Financial Corp. Customer Data Security Breach</i>	W.D. Ky., MDL No. 3:08-md-1998
<i>Dolen v. ABN AMRO Bank N.V. (Callable CDs)</i>	Ill. Cir. Ct., Nos. 01-L-454 & 01-L-493

<i>Griffin v. Dell Canada Inc.</i>	Ont. Super. Ct., No. 07-CV-325223D2
<i>Plubell v. Merck & Co., Inc.</i>	Cir. Ct. Mo., No. 04CV235817-01
<i>Billieson v. City of New Orleans</i>	D. Ct. La., No. 94-19231
<i>Anderson v. Government of Canada</i>	Sup. Ct. NL, No. 2008NLTD166
<i>Ko v. Natura Pet Products, Inc.</i>	N.D. Cal., No. 5:09cv02619
<i>Allen v. UMB Bank, N.A.</i>	Cir. Ct. Mo., No. 1016-CV34791
<i>Blue Cross of California Website Security Cases</i>	Sup. Ct. Cal., No. JCCP 4647
<i>Alvarez v. Haseko Homes, Inc.</i>	Cir. Ct. HI., No. 09-1-2691-11
<i>LaRocque v. TRS Recovery Services, Inc.</i>	D. Maine, No. 2:11cv00091
<i>In re: Zurn Pex Plumbing Products Liability Litig.</i>	D. Minn., MDL No. 08-1958
<i>Molina v. Intrust Bank, N.A.</i>	18 th Jud. D. Ct., 10-cv-3686
<i>In Re: Uponor, Inc., F1807 Products Liability Litigation</i>	D. Minn., MDL No. 2247
<i>Shames v. The Hertz Corporation</i>	S.D. Cal., No. 07cv2174-MMA
<i>Stroud v. eMachines, Inc.</i>	D. Ct. Cleveland Cnty, Okla., No. CJ-2003-968-L
<i>Holman v. Experian Information Solutions, Inc.</i>	N.D. Cal., No. 4:11cv00180
<i>Beck-Ellman v. Kaz USA Inc.</i>	S.D. Cal., No. 10-cv-2134
<i>Lee v. Stonebridge Life Insurance Company</i>	N.D. Cal., No. 3:11-cv-00043
<i>Steinfeld v. Discover Financial Services</i>	N.D. Cal., No. 3:12-cv-01118
<i>Cappalli v. BJ's Wholesale Club, Inc.</i>	D. R.I., No. 1:10-cv-00407
<i>Poertner v. The Gillette Co. and The Procter & Gamble Co.</i>	M.D. Fla., No. 6:12-cv-00803
<i>In re Hypodermic Products Antitrust Litigation</i>	D. N.J., No. 2:05-cv-01602
<i>McCrary v. The Elations Company, LLC (Certification Notice)</i>	C.D. Cal., No. 13-cv-00242
<i>Lerma v. Schiff Nutrition International, Inc.</i>	S.D. Cal., No. 3:11-cv-01056
<i>Charles v. Haseko Homes, Inc.</i>	Cir. Ct. HI., No. 09-1-2697-11
<i>Kai v. Haseko Homes, Inc.</i>	Cir. Ct. HI., No. 09-1-2834-12
<i>Roberts v. Electrolux Home Products, Inc.</i>	C.D. Cal., No. 8:12-cv-01644
<i>Demereckis v. BSH Home Appliances Corp. (Certification Notice)</i>	C.D. Cal., No. 8:10-cv-00711
<i>In re Skelaxin (Metaxalone) Antitrust Litigation</i>	E.D. Ten., MDL 2343, No. 1:12-cv-194
<i>Demmick v. Cellco Partnership d/b/a Verizon Wireless</i>	D. Ct. N.J., No. 06-cv-2163
<i>Cobb v. BSH Home Appliances Corporation</i>	C.D. Cal., No. 8:10-cv-00711
<i>Fond du Lac Bumper Exchange Inc. v. Jui Li Enterprise Co. Ltd. (Direct & Indirect Purchasers Classes)</i>	E.D. Wis., No. 2:09-cv-00852
<i>Thomas v. Lennox Industries Inc.</i>	N.D. Ill., No. 1:13-cv-07747
<i>In re Sears, Roebuck and Co. Front-Loading Washer Products Liability Litigation</i>	N.D. Ill., No. 1:06-cv-07023
<i>Chambers v. Whirlpool Corporation</i>	C.D. Cal., No. 8:11-cv-01733
<i>The Dial Corp. v. News Corp.</i>	S.D.N.Y., No. 1:13-cv-06802

<i>Cole v. Asurion Corporation</i>	C.D. Cal., 2:06-cv-6649
<i>Stender v. Archstone-Smith Operating Trust</i>	D. Colo., 1:07-cv-02503
<i>Campos v. Calumet Transload Railroad, LLC</i>	N.D. Ill., 1:13-cv-08376
<i>In re: The Home Depot, Inc., Customer Data Security Breach Litig.</i>	N.D. Ga., 1:14-md-02583
<i>Russell v. Kohl's Department Stores, Inc.</i>	C.D. Cal., No 5:15-cv-01143
<i>Barba v. Shire U.S., Inc.</i>	S.D. Fla., No. 1:13-cv-21158
<i>Giuliano v. SanDisk Corporation</i>	N.D. Cal., No. 4:10-cv-2787
<i>Anderson v. The Attorney General of Canada</i>	Sup. Ct. NL, No. 2007 01T4955CP
<i>Kearney v. Equilon Enterprises LLC</i>	D. Ore., No. 3:14-cv-00254
<i>Jammal v. American Family Ins. Grp.</i>	N.D. Ohio, No. 1:13-cv-00437
<i>Q+ Food, LLC v. Mitsubishi Fuso Truck of America, Inc.</i>	D. N.J., No 3:14-cv-06046
<i>In Re: Rust-Oleum Restore Marketing , Sales Practices and Products Liability Litigation</i>	N.D. Ill., No. 1:15-cv01364
<i>Johnson v. Yahoo! Inc.</i>	N.D. Ill., No. 1:14-cv02028
<i>Wells v. Abbott Laboratories, Inc.</i>	Sup. Ct. Cal., No. BC389753
<i>Rafofsky v. Nissan North America, Inc.</i>	C.D. Cal., No. 2:15-cv-01848
<i>In re Yapstone Data Breach</i>	N.D. Cal., No. 4:15-cv-04429
<i>Lavinsky v. City of Los Angeles</i>	Sup. Ct. Cal., No. BC542245
<i>Mullins v. Direct Digital LLC.</i>	N.D. Ill., No. 1:13-cv-01829
<i>In re: Solodyn (Minocycline Hydrochloride) Antitrust Litigation (Direct Purchaser Class)</i>	D. Mass., No. 1:14-md-2503
<i>Flaum v. Doctor's Associates, Inc. (d/b/a Subway)</i>	S.D. Fla., No. 16-cv-61198
<i>Eck v. City of Los Angeles</i>	Sup. Ct. Cal., No. BC577028
<i>Brill v. Bank of America, N.A.</i>	D. Ariz., No. 2:16-cv-03817
<i>In re Lidoderm Antitrust Litigation (Indirect Purchaser Class)</i>	N.D. Cal., 3:14-md-02521
<i>Luster v. Wells Fargo Dealer Services, Inc.</i>	N.D. Ga., 1:15-cv-01058
<i>Prather v. Wells Fargo Bank, N.A.</i>	N.D. Ga., 1:15-cv-04231
<i>Technology Training Associates v. Buccaneers Limited Partnership</i>	M.D. Fla., 8:16-cv-01622
<i>In re Asacol Antitrust Litigation (Direct Purchaser)</i>	D. Mass., No. 1:15-cv-12730
<i>In re Anthem, Inc. Data Breach Litigation</i>	N.D. Cal., No. 15-md-02617
<i>Nishimura v Gentry Homes, LTD.</i>	Cir. Ct. Hawai'i, 11-11-1-1522-07-RAN
<i>In re Monitronics International, Inc., TCPA Litigation</i>	N.D. W.Va., No. 5:11-cv-00090
<i>Truong v. Peak Campus Management, LLC</i>	Sup. Ct. Ill., No. 2016 CH 9735
<i>Rikos v. The Procter & Gamble Co. (Align Probiotics)</i>	S.D. Ohio, No. 11-cv-00226
<i>Abante Rooter and Plumbing, Inc. v. Alarm.com Inc. (Certification)</i>	N.D. Cal., No. 4:15-cv-06314
<i>In Re: Asacol Antitrust Litig. (Direct)</i>	D. Mass., No. 1:15-cv-12730
<i>In Re: Asacol Antitrust Litig. (Indirect-Certification)</i>	D. Mass., No. 1:15-cv-12730

<i>Houze v. Brasscraft Manufacturing Co. (EZ-FLO)</i>	Sup. Ct. Ca., No. BC493276
<i>Brown v. The Attorney General of Canada and Riddle v. Her Majesty the Queen (Sixties Scoop)</i>	O.S.C.J., No. cv-09-00372025
<i>Barrow v. JPMorgan Chase Bank, N.A.</i>	N.D. Ga., No. 1:16-cv-03577
<i>Dodge v. PHH Corporation</i>	C.D. Ca., No. 8:15-cv-01973
<i>Eubank v. Pella Corporation</i>	N.D. Ill., No. 1:06-cv-04481
<i>Ross v. Her Majesty the Queen; Ross v. Attorney General of Canada; Roy v. Attorney General of Canada and Satalic v. Attorney General of Canada (LGBT Purge)</i>	F.C., No. T-370-17; O.S.C.J., No. CV-16-5653275; Q.C.S.C., No. 500-06-000819-165; and F.C., No. T-2110-16
<i>In re Arby's Restaurant Group, Inc. Data Security Litigation</i>	N.D. Ga., No. 1:17-cv-1035
<i>In re Experian Data Breach Litigation</i>	C.D. Cal., No. 15-cv-1592
<i>Holt v. Foodstate, Inc.</i>	D. N.H., No. 1:17-cv-00637
<i>In re IKO Roofing Shingles Products Liability Litigation</i>	C.D. Ill., No. 2:09-md-02104
<i>Woodward v. Lee Labrada (weight-loss supplement)</i>	C.D. Cal. No. 5:16-cv-00189
<i>In re Samsung Top-Load Washing Machine Marketing, Sales Practices and Product Liability Litigation</i>	W.D. Okla., No. 5:17-ml-02792
<i>In re Trader Joe's Tuna Litigation</i>	C.D. Cal., No. 2:16-cv-01371
<i>Hickcox-Huffman v. US Airways, Inc.</i>	N.D. Cal, No. 5:10-cv-05193
<i>Abante Rooter and Plumbing, Inc. v. Alarm.com Inc. (Settlement)</i>	N.D. Cal., No. 4:15-cv-06314
<i>Smith v. Complyright, Inc.</i>	N.D. Ill., No. 1:18-cv-4990
<i>Schneider v. Chipotle Mexican Grill, Inc.</i>	N.D. Cal., No. 3:16-cv-02200
<i>Holt v. Foodstate, Inc.</i>	D. N.H., No. 1:17-cv-00637
<i>Lecenat v. Douglas Perlitz</i>	D. Conn., No. 3:13-cv-01132
<i>Elkies v. Johnson & Johnson Services, Inc.</i>	C.D. Cal., No. 2:17-cv-07320
<i>In re Morning Song Bird Food Litigation</i>	S.D. Cal., No. 3:12-cv-01592
<i>In re Nexus 6P Products Liability Litigation</i>	N.D. Cal., No 5:17-cv-02185
<i>Worth v. CVS Pharmacy, Inc.</i>	E.D.N.Y., No. 2:16-cv-0200498
<i>Abante Rooter and Plumbing, Inc. v. OH Insurance Agency Alarm.com Inc. (Settlement)</i>	N.D. Ill., No. 1:15-cv-09025
<i>Soukhaphonh v. Hot Topic, Inc.</i>	C.D. Cal., No. 2:16-cv-05124
<i>Weeks v. Google LLC</i>	N.D. Cal., No. 5:18-cv-00801
<i>In re: Sonic Corp. Customer Data Breach Litigation</i>	N.D. Ohio, No. 1:17-md-02807
<i>Brickman v. Fitbit, Inc.</i>	N.D. Cal., No. 3:15-cv-02077
<i>Cicciarella v. Califia Farms, LLC</i>	S.D.N.Y, No. 7:19-cv-08785
<i>Gann v. Nissan North America, Inc.</i>	M.D. Tenn., No. 3:18-cv-00966
<i>Weckworth v. Nissan North America, Inc.</i>	M.D. Tenn., No. 3:18-cv-00588
<i>Norman v. Nissan North America, Inc.</i>	M.D. Tenn., No. 3:18-cv-00534
<i>Suchanek v. Sturm Foods, Inc.</i>	S.D. Ill., No. 3:11-cv-00565
<i>In re Thalomid and Revlimid Antitrust Litigation</i>	D. N.J., No. 2:14-cv-06997

<i>Slovin v. Sunrun, Inc.</i>	N.D. Cal., No. 4:15-cv-05340
<i>Owens v. Bank of America, N.A.</i>	S.D. Fla., No. 19-cv-20614
<i>Blondell v. Bruce Bouton</i>	E.D. N.Y., No. 1:17-cv-00372
<i>Olsen v. ContextLogic Inc.</i>	Cir. Ct. Ill., No. 2019-CH-06737
<i>Yoby v. City of Cleveland</i>	C.P. Ohio, No. CV-15-852708
<i>Lloyd v. Eaze Solutions, Inc.</i>	N.D. Cal., No. 3:18-cv-05176
<i>Ramsey v. 41 E. Chestnut Crab Partners, LLC</i>	Cir. Ct. Ill., No. 2019-CH-2759
<i>Fliegelman v. Greyhound Lines, Inc.</i>	Sup. Ct. Cal., No. 56-2020-00540432
<i>Madya v. Ohio Department of Public Safety</i>	Ct. Claims Ohio, No. 2019-00426JD
<i>Pine v. A Place for Mom Inc.</i>	W.D. Wash., No. 2:17-cv-01826
<i>McCurley v. Royal Seas Cruises, Inc.</i>	S.D. Cal., No. 17-cv-986
<i>Wakefield v. Visalus, Inc.</i>	D. Ore., No. 3:15-cv-01857
<i>Hand v. Beach Entertainments KC</i>	W.D. Mo., No. 4:18-cv-00668
<i>Loftus v. SunRun, Inc.</i>	N.D. Cal., No. 3:19-cv-01608
<i>Friend v. FGF Brands (USA), INC.</i>	N.D. Ill., No. 1:18-cv-07644
<i>Foshee v. Delta Air Lines, Inc.</i>	N.D. Fla., No. 4:19-cv-00612

EXHIBIT 4

Mitsuoka, et al. v. Haseko Homes, Inc., et al.
Notice Administrator
P.O. Box 404000
Louisville, KY 40233-4000

HAU

«Barcode»

Postal Service: Please do not mark barcode

Control#: HAU-«ClaimID»-«MailRec»

«First1» «Last1»

«CO»

«Addr2»

«Addr1»

«City», «St» «Zip»

«Country»

If you own a home in the Ocean Pointe development in Honolulu, Hawai‘i, you may qualify for home repairs and your rights may be affected by a class action settlement.

A judge authorized the dissemination of this Notice. This is not a solicitation from a lawyer.

- A Settlement has been reached with Haseko Homes, Inc., Haseko Construction, Inc., Ke Noho Kai Development, LLC, and Fairway’s Edge Development, LLC (“Defendants”) in a class action lawsuit claiming that the Defendants failed to install adequate wind resistance systems, including that shot pins were defective and corroding.
- You may be a part of the **Class**, which includes all eligible current individual and entity homeowners as of June 16, 2017 when the Circuit Court certified the Class, or their successors, who purchased homes in the development known as Ocean Pointe, located in the District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawai‘i, that were designed, developed, and constructed with wind protection systems with foundation anchor bolts, said homes having been constructed after August 1, 2005. The Ocean Pointe homes that are part of the **Class** are specifically identified in an exhibit entitled “Ocean Pointe Bolt Homes” accessible on the class website (www.HasekoClass.com).
- Your rights are affected whether you act or do not act. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING	If you do nothing, you will be enrolled in the Shot Pin Repair Program and will be eligible for Shot Pin repairs. You will be notified by postcard if the Court grants final approval of the Settlement and be provided information for the Contractor so that you and the Contractor can schedule your repairs.
OBJECT TO THE SETTLEMENT BY DATE	You can object to the Settlement by writing to the Court about why you do not like it.
ATTEND THE COURT’S FAIRNESS HEARING DATE	You can ask to speak to the Court about the fairness of the Settlement.

- Your rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Repairs will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

WHAT THIS NOTICE CONTAINS

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BASIC INFORMATION

1. Why was this Notice issued?

A court authorized this Notice because you have a right to know about the proposed Settlement of this class action lawsuit and about all of your options before the Court decides whether to grant final approval to the Settlement. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, and who can get them.

First Circuit Court Judge Lisa W. Cataldo is overseeing this class action. The cases are known as *Mitsuoka, et al., v. Haseko Homes, Inc., et al.*, Circuit Court of the First Circuit, State of Hawai'i Civil No. 12-1-3030-11 LWC and *Mitsuoka, et al., v. Haseko Homes, Inc., et al.*, DPR No. 17-0447-A (collectively, the "Lawsuit"). The Lawsuit claimed that the Defendants failed to install adequate wind resistance systems, including that shot pins were defective and corroding. The three homeowners who sued are called the Plaintiffs. The companies they sued, Haseko Homes, Inc., Haseko Construction, Inc., Ke Noho Kai Development, LLC, and Fairway's Edge Development, LLC, are called the Defendants.

2. What is this lawsuit about?

This lawsuit is about the wind resistance systems, including shot pins, installed in certain Ocean Pointe homes. Plaintiffs claim that the Defendants installed inadequate wind resistance systems.

The Defendants deny any and all liability and assert that the wind resistance systems, including shot pins, are adequate.

3. What is a class action?

In a class action, a Class Representative or Class Representatives sue on behalf of all people who have similar claims. The people included in the class action are called a Class and the Class consists of Class Members. The claims of the Class and Class Members are resolved together by one Court.

In this case, Tadashi Mitsuoka, Victoria Mitsuoka, and John G. Stewart have been appointed by the Court as Class Representatives to represent the Class.

4. Why is there a Settlement?

You may recall receiving a notice in 2018 indicating that this lawsuit was certified as a class action and that Judge Virginia L. Crandall compelled the claims of the Class to binding arbitration before Louis Chang, Jerry Hiatt, and Sidney Ayabe (“the Panel”). Since that time, the Plaintiffs and Defendants (“Settling Parties”) engaged in Arbitration. After extensive analysis of the evidence and legal issues presented to them leading into and during the Arbitration’s evidentiary phase, the Panel issued its Partial Final Arbitration Decision and Award on February 8, 2021. The Partial Final Arbitration Decision and Award is accessible on the class website (www.HasekoClass.com). The Partial Final Arbitration Decision and Award is not a final award and has not been confirmed or otherwise reviewed by a court of competent jurisdiction. It is not a final judgment or determination. Defendants expressed their intention to oppose the Partial Final Arbitration Decision and Award, including any confirmation proceedings related thereto, whether before the Panel, the Circuit Court and/or on appeal. As part of the Settlement, the Panel has entered a Stipulation and Order which provides that the Partial Final Arbitration Decision and Award is set aside, vacated, expunged, *nunc pro tunc*, and of no force or effect for any purpose, including, but not limited to, for any purported collateral estoppel, res judicata or other preclusive effect purposes, effective only upon final approval by the Circuit Court of the settlement reached by the Parties and the deposit of the settlement payment into the Settlement Fund as discussed below.

Prior to commencing the evidentiary phase of the Arbitration, the Settling Parties also engaged in extensive, arm’s-length Settlement discussions and negotiations, both in several formal joint sessions before Keith W. Hunter of DPR (“the Mediator”) and in numerous other informal discussions with the Mediator. The Settling Parties formally mediated with the Mediator in January 2020, September 2020, and February 2021. Following the Panel’s February 8, 2021 Partial Final Arbitration Decision and Award, and given the Defendants’ position set forth above, the Settling Parties each engaged in additional Settlement discussions through the Mediator to successfully resolve the lawsuit.

WHO IS INCLUDED IN THE SETTLEMENT

5. How do I know if I am included in the Settlement?

Everyone who fits the following description is a “Class Member” and is included in the Settlement: *All eligible current individual and entity homeowners as of June 16, 2017 when the Circuit Court certified the Class, or their successors, who purchased homes in the development known as Ocean Pointe, located in the District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawai‘i, that were designed, developed, and constructed with wind protection systems with foundation anchor bolts, said homes having been constructed after August 1, 2005 and identified at “Exhibit G—Affected Unit Count” to the April 28, 2021 AIA Document A201-2007 General Conditions of the Contract for Construction.* The Ocean Pointe homes that are part of the Class are specifically identified in an exhibit accessible on the class website (www.HasekoClass.com), which is entitled “Ocean Pointe Bolt Homes.”

6. I’m still not sure if I am included. What should I do?

If you are still not sure whether you are included in the Class, you can visit the website or contact the Law Offices of Melvin Y. Agena at 1-808-536-6647.

THE SETTLEMENT BENEFITS – WHAT YOU GET IF YOU QUALIFY

7. What does the Settlement provide?

Defendants have agreed to create a \$20,000,000 Settlement Fund. The Settlement Fund will be used to pay for the Shot Pin Repair Program and the costs of notice and administration (up to \$11,508,150.00), as well as for attorney fees, taxes, costs, Class Representative incentive awards, any amount required by the Special Master, and all other expenses (up to \$8,491,850.00).

If any money remains after making the payments listed above, the balance of the Settlement Fund will first be used to make any additional repairs to Class Member homes related to the Shot Pins as determined by Class Counsel. Additional remaining funds will next be used to pay for any reasonable costs associated with the administration of the Settlement, including to increase Class Member awareness and participation in the Shot Pin Repair Program. Finally, any remaining funds will be given to one or more charitable entities serving Hawai‘i that would qualify for *cy pres* distributions as approved by the Court.

8. What can I get from the Settlement?

Class Members will be automatically enrolled in the Shot Pin Repair Program.

9. Tell me more about the Shot Pin Repair Program.

The Contractor estimates it will take up to 16 months to complete the Shot Pin Repair Program for the entire Class once it begins. As part of the program, the Contractor will replace existing metal nails embedded in concrete foundations with stainless steel anchors to provide a durable, complete foundation load path connection. Most work will be performed from the outside of homes; however in some instances it may necessary to perform repairs from the inside of homes.

Complete details, as well as information about the court-approved Structural Engineer that will review the details of the program and confirm that it complies will all applicable standards and building codes, the Construction Manager that will assist in the administration and management of the program and ensure Contractor compliance, and the Contractor that will perform the repairs are provided in the Settlement Agreement and Release and corresponding Exhibits all of which are available at www.HasekoClass.com.

10. What rights am I giving up in exchange for the Settlement benefits?

If the Settlement is approved and becomes final, all of the Court's orders will apply to you and legally bind you.

11. What are the Released Claims?

If and when the Settlement becomes final, Class Members will release, acquit, and forever discharge the Defendants from any and all past, present, and future claims, controversies, disputes, actions, causes of action, suits, liability or liabilities, obligations, judgments, liens, debts, rights, involving, relating to, resulting from, arising out of, connected or traceable to the Lawsuit. The Class Claims include rights to appeal, losses, demands, or damages, of whatever name or nature, any and all claims for general damages, special damages, exemplary damages, statutory damages, damages based upon a multiplication of compensatory damages, punitive damages, diminution in value, damages of every kind or nature whatsoever resulting from, arising out of, connected or traceable to, or in any way relating to, either directly or indirectly, the Lawsuit, including any and all claims asserted therein, for property damage, for contribution, for defense or indemnity (whether written, contractual, in an insurance policy, or otherwise), for reimbursement or recoupment, for attorney fees, for litigation costs, and for any and all other additional losses, whether based on any theory in contract, tort, warranty, including, but not limited, the Home Builder's Limited Warranty, PWC Form No. 117 Rev. 05/02, federal, state or local statute, building code(s), whether in law or equity, whether contingent or uncertain, whether latent or patent, whether known or unknown, and whether anticipated or not, in any manner involving, resulting from, arising out of, connected or traceable to, or in any way relating to, either directly or indirectly, the Lawsuit, including any and all claims and alleged construct defects asserted therein.

The Released Claims specifically include, but are not limited to, claims that the Defendants failed to install adequate wind resistance systems in the Subject Homes, including that shot pins were defective and corroding. The Released Claims do not include claims for bodily injury.

More details about the claims you will be releasing are described in paragraphs 34, 44, and 77-82 of the Settlement Agreement and Release, available at www.HasekoClass.com.

OBJECTING TO THE SETTLEMENT

You can tell the Court if you do not agree with the Settlement or any part of it.

12. How do I tell the Court that I do not like the Settlement?

If you are a Class Member, you can object to the Settlement if you do not like it or a portion of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must prepare, sign and mail a written objection stating that you object to the Settlement in *Mitsuoka, et al., v. Haseko Homes, Inc., et al.*, Civil No. 12-1-3030-11 LWC. Your objection must include: (1) your full name, current address, and telephone number; (2) the address of the home or structure included in the Settlement, if different than your current address; (3) the name of the owner of the home or structure, if different from you; (4) a statement that you have reviewed the definitions of the Class, you understand that you are a member of the Class and state that you have not previously opted out of the Class; (5) all legal and factual bases for the objection being made; (6) copies of any documents that you wish to submit relating to your objection; (7) whether you intend to appear at the Fairness Hearing and, if so, whether you will bring your own attorney; and (8) your signature or the signature of the home or structure owner. To be valid, your objection must be sent via first-class mail to the Settlement Administrator at the address below with a postmark no later than **Month 00, 2021**.

Mitsuoka, et al. v. Haseko Homes, Inc., et al.
Notice Administrator
P.O. Box 404000
Louisville, KY 40233-4000

13. May I come to the Court to speak about my objection?

Yes. You or your attorney may speak at the Final Approval Hearing about your objection. To do so, you must include a statement in your objection indicating that you or your attorney intend to appear at the Final Approval Hearing.

THE LAWYERS REPRESENTING YOU AND OTHER CLASS MEMBERS

14. Do I have a lawyer in this case?

Yes. The Court appointed Melvin Y. Agena of the Law Offices of Melvin Y. Agena, Graham B. LippSmith and Celene Chan Andrews of LippSmith LLP, and Kenneth S. Kasdan and Sharla Manley of Kasdan Turner Thomson Booth LLC to represent you and other Class Members. Together these lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

15. How will Class Counsel be paid?

Class Counsel will ask the Court for an award of attorneys' fees, costs and expenses of up to \$8,491,850.00, which includes service awards of \$10,000 per structure owned by the Class Representatives (totaling \$20,000); up to \$6,666,666.67 in attorney fees; up to \$314,133.33 in Hawai'i general excise tax for the City and County of Honolulu on the attorney fees; and up to \$1,491,050.00 in reimbursement of litigation costs and any Special Master costs. The Court may award less than these amounts. If approved, these fees, costs, expenses, and awards will be paid from the Settlement Fund.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak at the hearing if you give the required notice, but you do not have to.

16. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at : 0 .m. on **DATE**, at the Circuit Court of the First Circuit, State of Hawai'i, Ka'ahumanu Hale, 777 Punchbowl Street, Honolulu, Hawai'i 96813-5093, to consider whether the Settlement is fair, reasonable, and adequate and decide whether to approve it. If there are objections, the Court will consider them. The Court will listen to people who have given the required notice that they would like to speak at the hearing (*see* Questions 17 and 18, below). The Court may also decide the amount of fees, costs and expenses for Class Counsel and the payment amount to the Class Representatives. At or after the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. You will be notified by postcard if the Court grants final approval of the Settlement and be provided information for the Contractor so that you and the Contractor can schedule your repairs.

17. Do I have to come to the hearing?

No. Class Counsel is working on your behalf and will answer any questions Judge Cataldo or the Court may have about the Settlement. But you are welcome to come at your own expense. If you file an objection to the Settlement, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, signed it and provided all of the required information (*see* Question 12) the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

18. May I speak at the hearing?

Yes. You may ask the Court to speak at the Fairness Hearing. To do so, you must file a written request with the Court saying that it is your "Notice of Intent to Appear at the Fairness Hearing in *Mitsuoka, et al., v. Haseko Homes, Inc.*, et al., Civil No. 12-1-3030-11 LWC." You must include your name, address, phone number, and signature. If you plan to have your own attorney speak for you at the hearing, you must also include the name, address and telephone number of the attorney who will appear. Your written request must be filed with the Claims Administrator by **Month 00, 2021** (*see* Question 12).

IF YOU DO NOTHING

19. What happens if I do not do anything?

If you do nothing and the Court approves the Settlement, your Ocean Pointe home or structure will be enrolled in the Shot Pin Repair Program. You will be bound by the terms of the Settlement.

If the Court grants final approval of the Settlement, you will receive a postcard notice of the final approval with the contact information for the Contractor so that you and the Contractor can schedule your repairs.

GETTING MORE INFORMATION

20. Is more information about the Settlement available?

This Notice summarizes the Settlement. More details are in the Settlement Agreement and Release, and its Exhibits, available at www.HasekoClass.com. If you have questions, call toll-free **1-000-000-0000**; visit www.HasekoClass.com; or write to *Mitsuoka, et al. v. Haseko Homes, Inc.*, et al., Notice Administrator, P.O. Box 404000, Louisville, KY 40233-4000. You may also contact Class Counsel through the Law Offices of Melvin Y. Agena, 1-808-536-6647.

DATE:

EXHIBIT 5

If you own a home in the Ocean Pointe development in Honolulu, Hawai'i, you may qualify for home repairs and your rights may be affected by a class action settlement.

A Settlement has been reached with Haseko Homes, Inc., Haseko Construction, Inc., Ke Noho Kai Development, LLC, and Fairway's Edge Development, LLC ("Defendants") in a class action lawsuit/arbitration about the adequacy of the wind resistance systems, including shot pins, installed on certain Ocean Pointe homes.

Who's included? The Settlement includes all eligible current individual and entity homeowners as of June 16, 2017 when the Circuit Court certified the Class, or their successors, who purchased certain homes in the development known as Ocean Pointe, located in the District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawai'i, that were designed, developed, and constructed with wind protection systems with foundation anchor bolts (the "Class"). These homes were constructed after August 1, 2005.

What does the Settlement provide? Defendants' insurance carrier will create a \$20,000,000 Settlement Fund that will be used to pay for a Shot Pin Repair Program (up to \$11,508,150.00), including the costs of notice and administration, as well as for attorney fees, taxes, costs, Class Representative incentive awards, any amount required by the Special Master, and all other expenses (up to \$8,491,850.00). If any money remains after making the payments listed above, the balance of the Settlement Fund will first be used to make any additional repairs to Class Member homes related to the Shot Pins as determined by Class Counsel, then, for any reasonable costs associated with the administration of the Settlement, including to increase Class Member awareness and participation in the Shot Pin Repair Program, and finally, given to one or more charitable entities serving Hawai'i that would qualify for *cy pres* distributions as approved by the Court.

Tell me more about the Shot Pin Repair Program. Class Members will be automatically enrolled in the Shot Pin Repair Program. The Shot Pin Repair Program will repair Class Member homes by replacing existing metal nails embedded in concrete foundations with stainless steel anchors to provide a durable, complete foundation load path connection.

Who represents me? The Court appointed Melvin Y. Agena of the Law Offices of Melvin Y. Agena, Graham B. LippSmith and Celene Chan Andrews of LippSmith LLP, and Kenneth S. Kasdan and Sharla Manley of Kasdan Turner Thomson Booth LLC to represent you and other Class Members. Together, these lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

Your other options. If you are included and you do nothing, you will automatically be enrolled in the Shot Pin Repair Program and your rights will be affected. You will also release Defendants from any and all claims relating to the Lawsuit, including, but not limited to, claims that the Defendants failed to install adequate wind resistance systems in the Subject Homes and that shot pins were defective and corroding. More information on the Released Claims can be found in the settlement and release agreement on the Class website. You will be notified by postcard if the Court grants final approval of the Settlement and be provided information for the Contractor so that you and the Contractor can schedule your repairs. If you are included, you may object to it or ask for permission for you or your own lawyer to appear and speak at the hearing—at your own cost—but you don't have to. Objections and requests to appear are due by **Month _____, 2021**. More information about these options is in the detailed Notice available at www.HasekoClass.com, by calling toll-free 1-____-____, or by writing to *Mitsuoka, et al. v. Haseko Homes, Inc., et al.*, Notice Administrator, P.O. Box 404000, Louisville, KY 40233-4000.

The Court's Fairness Hearing. The Court will hold a hearing at ____:0__m. on Month____, 2021, at the Circuit Court of the First Circuit, State of Hawai'i, Ka'ahumanu Hale, 777 Punchbowl Street, 4th Floor, Courtroom 16, Honolulu, Hawai'i 96813-5093, to consider whether to approve: the Settlement; a request of up to \$8,491,850.00, which includes service awards of \$10,000 per structure owned by the Class Representatives (totaling \$20,000); up to \$6,666,666.67 in attorney fees; up to \$314,133.33 in Hawai'i general excise tax for the City and County of Honolulu on the attorney fees; and up to \$1,491,050.00 in reimbursement of litigation costs and any Special Master costs. You or your own lawyer may appear at the hearing at your own expense.

Want More Information? Call toll-free 1-____-____; visit www.HasekoClass.com; or write to *Mitsuoka, et al. v. Haseko Homes, Inc., et al.*, Notice Administrator, P.O. Box 404000, Louisville, KY 40233-4000.

1-____-____

www.HasekoClass.com

EXHIBIT 6

If you own a home in the Ocean Pointe development in Honolulu, Hawai‘i, you may qualify for home repairs and your rights may be affected by a class action settlement.

A Settlement has been reached with Haseko Homes, Inc., Haseko Construction, Inc., Ke Noho Kai Development, LLC, and Fairway’s Edge Development, LLC (“Defendants”) in a class action lawsuit/arbitration about the adequacy of the wind resistance systems, including shot pins, installed on certain Ocean Pointe homes.

Who’s included? The Settlement includes all eligible current individual and entity homeowners as of June 16, 2017 when the Circuit Court certified the Class, or their successors, who purchased certain homes in the development known as Ocean Pointe, located in the District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawai‘i, that were designed, developed, and constructed with wind protection systems with foundation anchor bolts (the “Class”). These homes were constructed after August 1, 2005.

What does the Settlement provide? Defendants’ insurance carrier will create a \$20,000,000 Settlement Fund that will be used to pay for a Shot Pin Repair Program (up to \$11,508,150.00), including the costs of notice and administration, as well as for attorney fees, taxes, costs, Class Representative incentive awards, any amount required by the Special Master, and all other expenses (up to \$8,491,850.00). If any money remains after making the payments listed above, the balance of the Settlement Fund will first be used to make any additional repairs to Class Member homes related to the Shot Pins as determined by Class Counsel, then, for any reasonable costs associated with the administration of the Settlement, including to increase Class Member awareness and participation in the Shot Pin Repair Program, and finally, given to one or more charitable entities serving Hawai‘i that would qualify for *cy pres* distributions as approved by the Court.

Tell me more about the Shot Pin Repair Program. Class Members will be automatically enrolled in the Shot Pin Repair Program. The Shot Pin Repair Program will repair Class Member homes by replacing existing metal nails embedded in concrete foundations with stainless steel anchors to provide a durable, complete foundation load path connection.

Who represents me? The Court appointed Melvin Y. Agena of the Law Offices of Melvin Y. Agena, Graham B. LippSmith and Celene Chan Andrews of LippSmith LLP, and Kenneth S. Kasdan and Sharla Manley of Kasdan Turner Thomson Booth LLLC to represent you and other Class Members. Together, these lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

Your other options. If you are included and you do nothing, you will automatically be enrolled in the Shot Pin Repair Program and your rights will be affected. You will also release Defendants from any and all claims relating to the Lawsuit, including, but not limited to, claims that the Defendants failed to install adequate wind resistance systems in the Subject Homes and that shot pins were defective and corroding. More information on the Released Claims can be found in the settlement and release agreement on the Class website. You will be notified by postcard if the Court grants final approval of the Settlement and be provided information for the Contractor so that you and the Contractor can schedule your repairs. If you are included, you may object to it or ask for permission for you or your own lawyer to appear and speak at the hearing—at your own cost—but you don’t have to. Objections and requests to appear are due by **Month , 2021**. More information about these options is in the detailed Notice available at www.HasekoClass.com, by calling toll-free 1-____-____-____, or by writing to *Mitsuoka, et al. v. Haseko Homes, Inc., et al.*, Notice Administrator, P.O. Box 404000, Louisville, KY 40233-4000.

The Court’s Fairness Hearing. The Court will hold a hearing at **: 0 _m. on Month , 2021**, at the Circuit Court of the First Circuit, State of Hawai‘i, Ka‘ahumanu Hale, 777 Punchbowl Street, 4th Floor, Courtroom 16, Honolulu, Hawai‘i 96813-5093, to consider whether to approve: the Settlement; a request of up to \$8,491,850.00, which includes service awards of \$10,000 per structure owned by the Class Representatives (totaling \$20,000); up to \$6,666,666.67 in attorney fees; up to \$314,133.33 in Hawai‘i general excise tax for the City and County of Honolulu on the attorney fees; and up to \$1,491,050.00 in reimbursement of litigation costs and any Special Master costs. You or your own lawyer may appear at the hearing at your own expense.

Want More Information? Call toll-free 1-____-____-____; visit www.HasekoClass.com; or write to *Mitsuoka, et al. v. Haseko Homes, Inc., et al.*, Notice Administrator, P.O. Box 404000, Louisville, KY 40233-4000.

EXHIBIT 7

Legal Notice

Final Court Approval for Ocean Pointe Shot Pin Settlement.

*Shot Pin Repair Program
will begin within 60 days.*

Go to www.HasekoClass.com
or call 1-____-____-____
to schedule your home repairs.

HAU

Mitsuoka v. Haseko Homes, Inc.

Notice Administrator

P.O. Box 404000

Louisville, KY 40233-4000

«Barcode»

Claim#: HAU-«ClaimID»-«MailRec»

«First1» «Last1»

«CO»

«Addr1»

«Addr2»

«City», «St» «Zip»

The Settlement with Haseko Homes, Inc., Haseko Construction, Inc., Ke Noho Kai Development, LLC, and Fairway's Edge Development, LLC about wind resistance systems installed on homes in the Ocean Pointe development has received final approval from the Court. The Shot Pin Repair Program will begin within 60 days.

**You MUST go to www.HasekoClass.com
or call 1-____-____-____ to schedule your home repairs.**

As part of the program, the Contractor will replace existing metal nails embedded in concrete foundations with stainless steel anchors to provide a durable, complete foundation load path connection. Most work will be performed from the outside of homes; however in some instances it may be necessary to perform repairs from the inside of homes.

Cooperation with the Contractor is greatly appreciated as scheduling timetables may change and scheduling constraints may arise. It could take *up to* 16 months to complete repairs on all 621 Ocean Pointe homes in the Shot Pin Repair Program once it begins.

EXHIBIT 8

LAW OFFICES OF MELVIN Y. AGENA

MELVIN Y. AGENA 2632
55 Merchant Street, Suite 1850
Honolulu, Hawai'i 96813
Tel: (808) 536-6647

LIPPSMITH LLP

GRAHAM B. LIPPSMITH 9593
CELENE CHAN ANDREWS 9902
55 Merchant Street, Suite 1850
Honolulu, Hawai'i 96813
Tel: (213) 344-1820

KASDAN TURNER THOMSON BOOTH LLLC

KENNETH S. KASDAN 10710
SHARLA MANLEY 8868
1003 Bishop Street, Suite 1180
Honolulu, Hawai'i 96813
Tel: (808) 369-8393

Attorneys for Claimants and the Class

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

TADASHI MITSUOKA, VICTORIA
MITSUOKA and JOHN G. STEWART,
individually and on Behalf of a Class of All
Persons Similarly Situated,

Plaintiffs,

vs.

HASEKO HOMES, INC., a Hawai'i
corporation, HASEKO CONSTRUCTION,
INC., a Hawai'i corporation, KE NOHO KAI
DEVELOPMENT, LLC, a Hawai'i
corporation; SPINNAKER PLACE
DEVELOPMENT, LLC, a Hawai'i
corporation; FAIRWAY'S EDGE
DEVELOPMENT, LLC, a Hawai'i
Corporation; and DOES 1-10,

Defendants.

CIVIL NO. 12-1-3020-11 LWC
(Construction Defects)

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
SETTLEMENT, APPROVAL OF
NOTICE PLAN, AND APPOINTMENT
OF ADDITIONAL CLASS COUNSEL**

**ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT, APPROVAL
OF NOTICE PLAN, AND APPOINTMENT OF ADDITIONAL CLASS COUNSEL**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

WHEREAS Plaintiffs and the Class Representatives John Stewart, Tadashi Mitsuoka, and Victoria Mitsuoka on behalf of themselves and all other Class Members (“the Class”), and Defendants Haseko Homes, Inc., Haseko Construction, Inc., Ke Noho Kai Development, LLC, and Fairway’s Edge Development, LLC (jointly, “Haseko”) (collectively, “Settling Parties”) have applied to the Court pursuant to Hawai‘i Rule of Civil Procedure 23 for an Order granting preliminary approval of the proposed settlement of this class action (“Lawsuit”) in accordance with the [DATE] Settlement Agreement and Release (including its exhibits) on file with the Court (“Settlement”), which sets forth the terms and conditions for a proposed settlement of the Lawsuit,¹ for entry of an order granting final approval of the Settlement, and for entry of the Final Judgment implementing the terms of the Settlement;

WHEREAS, on June 16, 2017, the Court entered its Order Granting Plaintiffs’ Motion for Class Certification (“Class Certification Order”), certifying the following class:

All eligible[] current individual and entity homeowners who purchased homes in the development known as Ocean Pointe, located in the District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawai‘i, that were designed, developed, and constructed with wind protection systems with foundation anchor bolts, said homes having been constructed after August 1, 2005 and identified in Exhibit 3 to Plaintiffs’ Motion for Class Certification.

WHEREAS, the Court’s Class Certification Order excluded from the Class, “(a) judges who have presided over this case; (b) persons employed by Haseko; (c) government entities and agencies; and (d) affiliates of Haseko.”

WHEREAS, Exhibit 3 to Plaintiffs’ Motion for Class Certification identified the 621

¹ Terms not defined in this Order shall have the definitions ascribed to them in the [DATE] Settlement Agreement and Release.

homes in the Class by, *inter alia*, street address, TMK number, area and lot number (“Subject Homes”);

WHEREAS, to ensure that the class notices are sent to the current owners of the Subject Homes, the Settlement confirms, in an abundance of caution, that the Class consists of “[a]ll eligible current individual and entity homeowners as of June 16, 2017 when the Circuit Court certified the Class, or their successors, who purchased homes in . . . Ocean Pointe”;

WHEREAS, the Settlement includes the same Subject Homes;

WHEREAS the Court has read and considered the Settlement;

WHEREAS the Court has also read and considered the Settling Parties and Dispute Prevention & Resolution, Inc. (“DPR”) Arbitration Panel’s (“Panel”) Stipulation and Order Setting Aside, Vacating, and Expunging, *Nunc Pro Tunc*, the Partial Final Arbitration Decision and Award Dated February 8, 2021, which was issued by the Panel on [DATE] (“Stipulation and Order on Partial Award”), as well as the Partial Final Arbitration Decision and Award Dated February 8, 2021;

WHEREAS the Court has read and considered the Class’ Motion for Preliminary Approval of Settlement, Approval of Notice Plan, and Appointment of Additional Class Counsel, all memoranda and declarations in support thereof, and has heard argument of counsel thereon;

WHEREAS, based on the above submissions and presentations, the Court finds that the proposed Settlement is within the range of possible approval and that notifying the Class about the terms and conditions of the proposed Settlement and scheduling a formal final approval is worthwhile; and

WHEREAS Class Counsel intends to file a Motion for Final Approval of Settlement along with a Motion for Attorney Fees, Costs, and All Other Expenses to be heard after the Notice Plan has been accomplished; and

WHEREAS all terms of the proposed Settlement are subject to this Court’s decisions on Class Counsel’s Motion for Final Approval of Settlement and Motion for Attorney Fees, Costs, and All Other Expenses.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

Class Definition, Class Representatives, and Class Counsel

1. Pursuant to Hawai‘i Rule of Civil Procedure 23, the Class Certification Order, and the Settlement, the Class definition is as follows:

All eligible[] current individual and entity homeowners as of June 16, 2017 when the Circuit Court certified the Class, or their successors, who purchased homes in the development known as Ocean Pointe, located in the District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawai‘i, that were designed, developed, and constructed with wind protection systems with foundation anchor bolts, said homes having been constructed after August 1, 2005 and identified in Exhibit 3 to Plaintiffs’ Motion for Class Certification.

Exhibit 3 to Plaintiffs’ Motion for Class Certification and attached to the Order Granting Plaintiffs’ Motion for Class Certification identifies the same 621 Class Member Structures/Subject Homes listed at “Exhibit G—Affected Unit Count” to the April 28, 2021 AIA Document A201-2007 General Conditions of the Contract for Construction attached to the Settlement as Exhibit 2. The Class excludes, “(a) judges who have presided over this case; (b) persons employed by Haseko; (c) government entities and agencies; and (d) affiliates of Haseko.”

2. The Court’s Class Certification Order appointed the Mitsuokas to serve as Class Representatives. On October 12, 2020, the Panel granted the Class’ Motion to Add John G. Stewart As a Class Representative, naming Mr. Stewart as a Plaintiff in the Lawsuit and appointing him to serve as an additional Class Representative. The Mitsuokas and Mr. Stewart have thus far adequately served as Class Representatives and will continue to serve as Class Representatives through completion of the Settlement approval proceedings and, if the Settlement is ultimately approved, through completion of the Settlement.

3. The Court's Class Certification Order also appointed Melvin Y. Agena of the Law Offices of Melvin Y. Agena, and Graham B. LippSmith and Celene Chan Andrews, then of Kasdan LippSmith LLC and now of LippSmith LLP, to serve as Class Counsel.² Mr. Agena, Mr. LippSmith, and Ms. Andrews have also thus far adequately served as Class Counsel and will continue to do so through completion of the Settlement approval proceedings and, if the Settlement is ultimately approved, through completion of the Settlement.

4. Kenneth S. Kasdan and Sharla Manley, now with the law firm of Kasdan Turner Thomson Booth LLC, have served as co-counsel for the Class in the Lawsuit, along with Messrs. Agena and LippSmith, and Ms. Chan Andrews. The Court finds Mr. Kasdan and Ms. Manley also meet the criteria for class counsel required by Hawai'i Rule of Civil Procedure 23 and authorities interpreting it. Accordingly, the Court hereby appoints Mr. Kasdan and Ms. Manley to serve as additional Class Counsel.

5. Pursuant to Hawai'i Rule of Civil Procedure 23, the Panel previously appointed Kurtzman Carson Consultants LLC ("KCC") to serve as the Administrator for the Class certification notice process, which KCC completed in early 2019. Among other procedures, the Panel's order on Class notice required KCC to mail the approved Class notice to the Class Member Structures at issue herein, which specifically provided:

- a. Class Members who do not opt out will "Stay in this lawsuit. Give up rights. Await the outcome. Share in possible money or benefits obtained in this lawsuit.";
- b. "If money damages or benefits are obtained, those who do not opt out of the class will be notified about how to ask for a share."; and
- c. "If you are a Class Member and you do nothing, you are choosing to stay in the **Class**. If you stay in the **Class**, you will be legally bound by all of the decisions that the Court and arbitrators make. This means that if the Plaintiffs obtain money or benefits from the Haseko Defendants – either as a result of a judgment or a settlement –

² Glenn K. Sato of the Law Office of Glenn K. Sato was also appointed as Class Counsel. Mr. Sato and his firm withdrew as counsel on January 30, 2020.

you will be eligible for a share. This also means that regardless of whether the Plaintiffs win or lose the lawsuit, you will not be able to start a new lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Haseko Defendants concerning the legal claims and issues being alleged in this lawsuit ever again.” (emphasis in original).

6. No Class members timely excluded nor sought to belatedly exclude themselves from the Lawsuit.

7. The Settlement Class definition does not materially alter the original, applicable Class definition in the Lawsuit. The Settlement Class definition confirms that the Class consists of the current owners of the Subject Homes.

8. KCC shall continue to serve as the Administrator for approval proceedings on the Settlement and, if ultimately approved, the Settlement’s administration.

Preliminary Findings on the Proposed Settlement

9. Pursuant to Hawai‘i Rule of Civil Procedure 23, the Court preliminarily finds that the proposed Settlement, including its proposed allocations of and methodology for distributing the Settlement Fund for Class Member benefits, to pay the Administrator’s costs, and to pay Attorney Fees, Costs, and Other Expenses, is within the range of possible approval and appears to have resulted from serious, informed, non-collusive negotiations conducted at arm’s length by the Settling Parties and their counsel.

10. In making these preliminary findings, the Court considered the nature of the claims, the benefits the Settlement would provide, the information available to the Settling Parties, and the proposed allocation of the Settlement Fund. The terms of the Settlement do not have any obvious deficiencies and do not improperly grant preferential treatment to any individual Class Member. In addition, the Court notes that the Settling Parties reached the proposed Settlement after substantial discovery, motion practice, arbitration proceedings, and multiple formal and informal settlement discussions before the respected third-party mediator Keith Hunter of DPR. Accordingly, the Court preliminarily finds that the Settling Parties entered

into the proposed Settlement in good faith, that the proposed Settlement meets the standards for preliminary review and approval, and the Settlement appears to be sufficiently fair, reasonable, and adequate to warrant KCC's execution of the Notice Plan that will provide notice to the Class and scheduling a hearing for final approval of the proposed Settlement.

Approval, Appointment, and Retention of Contractor, Construction Manager, and Structural Engineer

11. The Court has reviewed and considered the Class' submissions on the proposed Contractor for the Shot Pin Repair Program, SageBilt, Inc. Specifically, the Court has considered the following:

- a. The Contractor's background and qualifications;
- b. A summary of the Contractor's services for the Shot Pin Repair Program;
- c. A summary of opinions the Contractor rendered concerning the sufficiency of the Shot Pin Repair Program; and
- d. A summary of the Contractor's total fees and costs for all services in the Shot Pin Repair Program.

12. Based on the above information, the Court finds that the Contractor is qualified and will perform adequate services for the Class in the Shot Pin Repair Program. Therefore, the Court appoints the Contractor for the Shot Pin Repair Program, and approves its scope of work.

13. The Court has reviewed and considered the Class' submissions on the proposed Construction Manager for the Shot Pin Repair Program, Iopono Holdings Group, LLC, d/b/a/ Bergeman Group. Specifically, the Court has considered the following:

- a. The Construction Manager's background and qualifications;
- b. A summary of the Construction Manager's services for the Shot Pin Repair Program;
- c. A summary of opinions the Construction Manager rendered concerning the sufficiency of the Shot Pin Repair Program; and

d. A summary of the Construction Manager's total fees and costs for all services in the Shot Pin Repair Program.

14. Based on the above information, the Court finds that the Construction Manager is qualified and will perform adequate services for the Class in the Shot Pin Repair Program. Therefore, the Court appoints the Construction Manager for the Shot Pin Repair Program, and approves its scope of work.

15. Finally, the Court has reviewed and considered the Class' submissions on the proposed Structural Engineer for the Shot Pin Repair Program, Engineering Design Group, Inc. Specifically, the Court has considered the following:

- a. The Structural Engineer's background and qualifications;
- b. A summary of the Structural Engineer's services for the Shot Pin Repair Program;
- c. A summary of opinions the Structural Engineer rendered concerning the sufficiency of the Shot Pin Repair Program; and
- d. A summary of the Structural Engineer's total fees and costs for all services in the Shot Pin Repair Program.

16. Based on the above information, the Court finds that the Structural Engineer is qualified and will perform adequate services for the Class in the Shot Pin Repair Program. Therefore, the Court appoints the Structural Engineer for the Shot Pin Repair Program, and approves its scope of work.

17. Upon an application by Class Counsel or on its own, the Court may consider and appoint any additional or replacement Contractor, Construction Manager, or Structural Engineer.

Final Approval Hearing on Settlement

18. The Court hereby sets the Final Approval Hearing for _____, 2021 at _____ a.m. The Court may approve the proposed Settlement at or after the Final Approval Hearing with such modifications to which the Settling Parties may consent and

without further notice to the Class. At the Final Approval Hearing, the Court will consider, among other things:

- a. Whether the proposed Settlement is fair, reasonable, and adequate;
- b. Whether the Court should enter its Final Order granting final approval the Settlement and Final Judgment implementing its terms;
- c. Whether the Notices and the Notice Plan implemented pursuant to the Settlement and this Preliminary Approval Order (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Lawsuit, the nature of the proposed Settlement (including Class Counsels' request for awards of attorney fees and reimbursement of costs), their right to object to the proposed Settlement and their right to appear at the Final Approval Hearing; (iii) were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice; and (iv) met all applicable requirements of Hawai'i Rule of Civil Procedure 23, the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law;
- d. Whether the Court should approve the releases in the Settlement;
- e. Whether the Class Representatives and Class Counsel adequately represented the Class for the purposes of entering into and implementing the proposed Settlement and will continue to adequately represent the Class for carrying out the Settlement;
- f. Whether the Court should grant Class Counsel's request for an award of Attorney Fees, Costs, and All Other Expenses;
- g. Whether the Court should grant the request for Class Representative incentive awards; and
- h. Any other matters that the Court may deem appropriate to consider.

Approval, Appointment, and Retention of the Administrator, the Notice Plan, and the

Administration of the Settlement

19. The Court approves the retention of KCC to serve as the Administrator for the Settlement, including but not limited to implementation and management of the Notice Plan, Class Member verification process, and Settlement Escrow.

20. The Court also approves the proposed Notice Plan and settlement administration to be completed by the Administrator, including among other tasks:

- a. Distributing the Class Notice;
- b. Arranging for publication of the Class Notice;
- c. Posting the Notice on the Administrator's website;
- d. Facilitating Class Member inquiries;
- e. Answering written inquiries from Class Members and/or forwarding such inquiries to Class Counsel;
- f. Providing additional copies of the Notice(s) upon request;
- g. Receiving and maintaining on behalf of the Court any objections to the Settlement received from Class Members;
- h. Assisting in the coordination and inclusion of authorized Class Members for participation in the Settlement; and
- i. Otherwise administering and implementing the Settlement.

21. The Administrator estimates its total costs for all of its administration tasks to date and through completion of Settlement will not exceed \$74,500.00. The Settlement further provides that the Administrator's costs shall be paid from the Settlement Fund. The estimated amount for the Administrator's costs and payment therefor from the Settlement Fund appear to be fair, reasonable, and adequate.

Notices to the Class

22. The Court approves, as to form and content, the Notice Plan and Class Notices attached as Exhibits 1-4 to the Settlement. The Court finds that the Notice Plan and Class

Notices will fully and accurately inform the Class Members of all material elements of the proposed Settlement and of each Class Member's right and opportunity to object to the proposed Settlement. The Court further finds that the mailing and distribution of the Notice and the publication of the Class Notices substantially in the manner and form set forth in the Notice Plan and Settlement meets the requirements of Hawai'i Rule of Civil Procedure 23, the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law, constitutes the best notice practicable under the circumstances, and constitutes due and sufficient notice to all Class Members.

23. The Settling Parties and their counsel may by agreement effectuate any amendments or modifications of the proposed Notice Plan and/or Class Notice, and any verification documents without notice to or approval by the Court if such changes are not materially inconsistent with this Order and do not materially limit the rights of Class Members.

Communications with Class Members

24. Because Class Members might contact Haseko about the Settlement, if contacted, Haseko shall respond, if at all, to Class Members in a manner materially consistent with the following:

Haseko supports the Settlement. If you have any question regarding the details of the Settlement, please log onto the settlement website at www.HasekoClass.com or contact Class Counsel through the Law Offices of Melvin Y. Agena, (808) 536-6647.

25. The Settling Parties will not solicit, facilitate, or assist in any way, Objections by Class Members.

Objections

26. All Class Members who intend to object to the fairness, reasonableness and adequacy of the Settlement ("Objections") must mail a timely written Objection to the

Administrator by first-class mail with postage paid. The Administrator will then serve any Objections received on Class Counsel, Defense Counsel, and all other parties due notice in this case by U.S. Mail. The Administrator will then also file any such Objections with the Court by filing such documents directly or arranging for such documents to be filed by Class Counsel.

27. Objections must be postmarked no later than thirty (30) days after the date of the mailing of the Notice. The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether an Objection has been timely submitted. In his/her/its Objections, an objecting Class Member must:

- a. Set forth his/her/its full name, current address, and telephone number;
- b. Identify the address of the Structure giving rise to standing to make an Objection and establish the sender's status as a Class Member, if the sender's current address is different;
- c. Identify the owner of the Class Member Structure;
- d. State that the objector has reviewed the definitions of the Class and understands that he/she/it is a member of the Class;
- e. Set forth a complete statement of all legal and factual bases for any Objection that the objector wishes to assert; and
- f. Provide copies of any documents that the objector wishes to submit relating to his/her/its position.

28. In addition to the requirements set forth in above paragraph, objecting Class Members must state in writing whether he/she/it intends to appear at the Final Approval Hearing(s) either with or without separate counsel. No Class Member shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) or to object to the Settlement, and no written Objections or briefs submitted by any Class Member shall be received or considered by the Court at the Final Approval Hearing, unless written Notice of the Class Member's intention to appear at the Final Approval Hearing and copies of any

written Objections or briefs were postmarked or served on the Administrator on or before thirty (30) days after the date of the mailing of the Settlement Notice.

29. In addition to their obligations to serve and file timely Objections received, the Administrator will also serve any Notices of a Class Member's intention to appear at the Final Approval Hearing and associated briefing received on Class Counsel, Defense Counsel, and all other parties due notice in this case by U.S. Mail. The Administrator will also file any such Notices of a Class Member's intention to appear at the Final Approval Hearing and associated briefing with the Court by filing such documents directly or arranging for such documents to be filed by Class Counsel or Defense Counsel.

30. All Class Members who fail to serve timely written objections in the manner specified in the Court's Order Granting Motion for Preliminary Approval of Settlement, Approval of Notice Plan, and Appointment of Additional Class Counsel and the Settlement will be deemed to have waived any objections, will be foreclosed from making any objection, whether by appeal or otherwise, to the Settlement and Motion for Attorney Fees, Costs, and All Other Expenses, will be bound by the terms of the Settlement and the Final Judgment, and will be foreclosed forever from making any objection to the fairness or adequacy or any other aspect of the proposed Settlement and Motion for Attorney Fees, Costs, and All Other Expenses unless otherwise allowed by the Court.

Exclusions/Opt Outs

31. No Class Member may opt out or exclude himself/herself/itself from the Settlement. The opportunity to opt out from the Class expired upon completion of the original Notice Plan in early 2019. Since no Class Members opted out at that time, all Class Members are bound by the orders of this Court in this Lawsuit.

Filing Papers Concerning Settlement

32. All papers in support of or in opposition to the proposed Settlement shall be filed as follows, with courtesy copies sent to the Court's Chambers:

- a. Motion for Final Approval of Settlement—No later than 14 days prior to the date initially set for the Final Approval Hearing; and
- b. Motion for Attorney Fees, Costs, and All Other Expenses—No later than 14 days prior to the date initially set for the Final Approval Hearing.

Stipulation and Order on Partial Award

33. Pursuant to the Panel's Order on Partial Award, which was previously issued by the Panel on [DATE], and subject to final approval and implementation of the Settlement, the Partial Award is not and shall not be construed as a judgment or a final determination.

34. Pursuant to the Panel's Order on Partial Award, the Partial Award, including any and all factual findings and legal conclusions therein, are set aside, vacated, expunged, *nunc pro tunc* by the Panel, and have been determined by the Panel to be of no force or effect for any purpose including, but not limited to, for any purported collateral estoppel or other preclusive effect purposes, effective only upon the Court's final approval of the Settlement and Steadfast's payment on behalf of Haseko of the Settlement Fund into the Settlement Escrow.

35. The Settling Parties may only disclose the Partial Award in the following limited circumstances: to the Circuit Court as part of any motion for preliminary approval; to Class Members as part of the Court-approved class notice; and on the Lawsuit website published and maintained by the Administrator to effectuate the Notice Plan.

36. If the Settlement fails for any reason, for example but not exclusively, if the Court does not approve the Settlement or a Settling Party materially breaches the Settlement, the Panel's jurisdiction over the Lawsuit shall be fully reinstated, that the Partial Award remains enforceable, and that the Class shall have twenty business days from reinstatement of the Panel's jurisdiction to file their declaration and any supporting documents in support of their claims for costs, attorney fees, and general excise tax for the City and County of Honolulu.

Termination of Settlement

37. This Order shall become null and void, and shall be without prejudice to the rights of the Settling Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if (i) the Court declines to grant final approval of the proposed Settlement (or Settling Parties' later written modification thereof) pursuant to the terms of the Settlement; or (ii) the Settling Parties terminate the proposed Settlement in accordance with its terms or the Settlement does not become effective as required by its terms for any other reason. In such event, the Settlement shall become null and void and of no further force and effect, and shall not be used or referred to for any purpose whatsoever.

Use of Order

38. This Order shall be of no force or effect if the Court does not grant Final Approval to the Settlement. The Settlement shall not be construed or used as an admission, concession, or declaration by or against Haseko of any fault, wrongdoing, breach, or liability. Nor shall this Order be construed or used as an admission, concession, or declaration by or against Plaintiffs or other Class Members that their claims lack merit or that the relief requested in the Lawsuit is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he, she, or it might have.

Service of Papers

39. Settling Parties' Counsel shall promptly furnish each other with copies of any and all objections or written requests for exclusion that come into their possession.

Continuance of Final Approval Hearing

40. The Court reserves the right to continue the date of the Final Approval Hearing without further notice to Class Members.

Retention of Jurisdiction

41. The Court retains the exclusive jurisdiction to consider all further applications arising out of or connected with the Settlement. This Court, and only this Court, shall have exclusive jurisdiction to enforce or resolve any disputes related to the Settlement, including, but not limited to any and all disputes arising out of applications for, claims concerning, claims related to, and/or allocations of Attorney Fees, Costs, and All Other Expenses by Class Counsel; and any and all disputes arising out of claims by any other attorneys seeking attorney fees, costs, other expenses, or awards resulting from or in any way related to or arising out of this Lawsuit, the Settlement, and/or the Court's award of Attorney Fees, Costs, and All Other Expenses from the Settlement Fund.

APPROVED AS TO FORM:

MELVIN Y. AGENA
GRAHAM B. LIPPSMITH
CELENE S. CHAN
KENNETH S. KASDAN
SHARLA MANLEY
Attorneys for Plaintiffs and the Class

DATED: _____, 2021

MELVYN M. MIYAGI
ROSS T. SHINYAMA
Attorneys for Haseko Homes, Inc.
Haseko Construction, Inc.
Ke Noho Kai Development, LLC
Fairway's Edge Development, LLC

DATED: _____, 2021

APPROVED AND SO ORDERED:

By: _____
Honorable Lisa W. Cataldo
Judge of the Circuit Court

DATED: _____, 2021

EXHIBIT 9

LAW OFFICES OF MELVIN Y. AGENA

MELVIN Y. AGENA 2632
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KASDAN TURNER THOMSON BOOTH LLLC

KENNETH S. KASDAN 10710
SHARLA MANLEY 8868
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Honolulu, Hawai‘i 96813
Tel: (808) 369-8393

Attorneys for Claimants and the Class

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI‘I

TADASHI MITSUOKA, VICTORIA
MITSUOKA and JOHN G. STEWART,
individually and on Behalf of a Class of All
Persons Similarly Situated,

Plaintiffs,

vs.

HASEKO HOMES, INC., a Hawai‘i
corporation, HASEKO CONSTRUCTION,
INC., a Hawai‘i corporation, KE NOHO KAI
DEVELOPMENT, LLC, a Hawai‘i
corporation; SPINNAKER PLACE
DEVELOPMENT, LLC, a Hawai‘i
corporation; FAIRWAY’S EDGE
DEVELOPMENT, LLC, a Hawai‘i
Corporation; and DOES 1-10,

Defendants.

CIVIL NO. 12-1-3020-11 LWC
(Construction Defects)

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF SETTLEMENT,
AND AWARDED CLASS
REPRESENTATIVE INCENTIVES,
ATTORNEY FEES, COSTS, AND ALL
OTHER EXPENSES**

**ORDER GRANTING FINAL APPROVAL OF SETTLEMENT, AND AWARDING
CLASS REPRESENTATIVE INCENTIVES, ATTORNEY FEES, COSTS, AND ALL
OTHER EXPENSES**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

WHEREAS Plaintiffs and the Class Representatives John Stewart, Tadashi Mitsuoka, and Victoria Mitsuoka on behalf of themselves and all other Class Members (“the Class”), and Defendants Haseko Homes, Inc., Haseko Construction, Inc., Ke Noho Kai Development, LLC, and Fairway’s Edge Development, LLC (jointly, “Haseko”) (collectively, “Settling Parties”) have applied to the Court pursuant to Hawai‘i Rule of Civil Procedure 23 for an Order granting final approval of the proposed settlement of this class action (“Lawsuit”) in accordance with the [DATE] Settlement Agreement and Release (including its exhibits) on file with the Court (“Settlement”), which sets forth the terms and conditions for a proposed settlement of the Lawsuit¹ and for entry of the Final Judgment implementing the terms of the Settlement. The Class also applied for an Order awarding Class Representative incentives, attorney fees, costs, and all other expenses;

WHEREAS, on June 16, 2017, the Court entered its Order Granting Plaintiffs’ Motion for Class Certification (“Class Certification Order”), certifying the following class:

All eligible[] current individual and entity homeowners who purchased homes in the development known as Ocean Pointe, located in the District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawai‘i, that were designed, developed, and constructed with wind protection systems with foundation anchor bolts, said homes having been constructed after August 1, 2005 and identified in Exhibit 3 to Plaintiffs’ Motion for Class Certification.

WHEREAS, the Court’s Class Certification Order excluded from the Class, “(a) judges who have presided over this case; (b) persons employed by Haseko; (c) government entities and

¹ Terms not defined in this Order shall have the definitions ascribed to them in the [DATE] Settlement Agreement and Release.

agencies; and (d) affiliates of Haseko.”

WHEREAS, Exhibit 3 to Plaintiffs’ Motion for Class Certification identified the 621 homes in the Class by, *inter alia*, street address, TMK number, area and lot number (“Subject Homes”);

WHEREAS, to ensure that the class notices are sent to the current owners of the Subject Homes, the Settlement confirms, in an abundance of caution, that the Class consists of “[a]ll eligible current individual and entity homeowners as of June 16, 2017 when the Circuit Court certified the Class, or their successors, who purchased homes in . . . Ocean Pointe”;

WHEREAS, the Settlement includes the same Subject Homes;

WHEREAS the Court has read and considered the Settlement;

WHEREAS the Court has also read and considered the Settling Parties and Dispute Prevention & Resolution, Inc. (“DPR”) Arbitration Panel’s (“Panel”) Stipulation and Order Setting Aside, Vacating, and Expunging, *Nunc Pro Tunc*, the Partial Final Arbitration Decision and Award Dated February 8, 2021, which was issued by the Panel on [DATE] (“Stipulation and Order on Partial Award”), as well as the Partial Final Arbitration Decision and Award Dated February 8, 2021;

WHEREAS the Court has read and considered the Class’ Motion for Final Approval of Settlement, the Class’ Motion to Award Class Representative Incentives, Attorney Fees, Costs, and All Other Expenses, and all memoranda and declarations in support thereof. The Court has also heard argument of counsel thereon;

WHEREAS, based on the above submissions and presentations as well as the Settling Parties submissions and presentations in support of the earlier Motion for Preliminary Approval of Settlement, Approval of Notice Plan, and Appointment of Additional Class Counsel, the Court finds that the proposed Settlement is fair, reasonable, and adequate and, therefore, grants its final approval; and

WHEREAS all disbursements from the Settlement Fund pursuant to the Settlement shall be subject to further review and approval by the Court.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

Class Definition, and Continuing Appointment of Class Representatives, Class Counsel, Administrator, Contractor, Construction Manager, and Structural Engineer

1. Pursuant to Hawai‘i Rule of Civil Procedure 23, the Class Certification Order, and the Settlement, the Class Definition is as follows:

All eligible[] current individual and entity homeowners as of June 16, 2017 when the Circuit Court certified the Class, or their successors, who purchased homes in the development known as Ocean Pointe, located in the District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawai‘i, that were designed, developed, and constructed with wind protection systems with foundation anchor bolts, said homes having been constructed after August 1, 2005 and identified in Exhibit 3 to Plaintiffs’ Motion for Class Certification.

Exhibit 3 to Plaintiffs’ Motion for Class Certification and attached to the Order Granting Plaintiffs’ Motion for Class Certification identifies the same 621 Class Member Structures/Subject Homes listed at “Exhibit G—Affected Unit Count” to the April 28, 2021 AIA Document A201-2007 General Conditions of the Contract for Construction attached to the Settlement as Exhibit 2. The Class excludes “(a) judges who have presided over this case; (b) persons employed by Haseko; (c) government entities and agencies; and (d) affiliates of Haseko.”

2. No Class members timely excluded nor sought to belatedly exclude themselves from the Lawsuit.

3. The Settlement Class definition does not materially alter the original, applicable Class definition in the Lawsuit. The Settlement Class definition confirms that the Class consists of the current owners of the Subject Homes.

4. The Mitsuokas and Mr. Stewart have thus far adequately served as Class Representatives and will continue to serve as Class Representatives through completion of the Settlement.

5. Melvin Y. Agena of the Law Offices of Melvin Y. Agena, and Graham B. LippSmith and Celene Chan Andrews of LippSmith LLP, and Kenneth S. Kasdan and Sharla Manley of Kasdan Turner Thomson Booth LLC have thus far adequately served as Class Counsel and will continue to as Class Counsel through completion of the Settlement.

6. KCC shall continue to serve as the Administrator through completion of the Settlement.

7. SageBilt, Inc. shall continue to serve as the Contractor for the Shot Pin Repair Program.

8. Iopono Holdings Group, LLC, d/b/a Bergeman Group shall continue to serve as the Construction Manager for the Shot Pin Repair Program.

9. Engineering Design Group, Inc. shall continue to serve as the Structural Engineer for the Shot Pin Repair Program.

10. Upon an application by Class Counsel or on its own, the Court may consider and appoint any additional or replacement Contractor, Construction Manager, or Structural Engineer.

Preliminary Findings on the Proposed Settlement

11. Pursuant to Hawai'i Rule of Civil Procedure 23, the Court finds that the proposed Settlement, including its proposed allocations of and methodology for distributing the Settlement Fund for Class Member benefits, to pay the Administrator's costs, and to pay Attorney Fees, Costs, and Other Expenses, is fair, reasonable, and adequate and resulted from serious, informed, non-collusive negotiations conducted at arm's length by the Settling Parties and their counsel.

12. In making these final findings, the Court considered the nature of the claims, the benefits the Settlement provides, the information available to the Settling Parties, and the proposed allocation of the Settlement Fund. The terms of the Settlement do not have any obvious

deficiencies and do not improperly grant preferential treatment to any individual Class Member. In addition, the Court notes that the Settling Parties reached the proposed Settlement after substantial discovery, motion practice, arbitration proceedings, and multiple formal and informal settlement discussions before the respected third-party mediator Keith Hunter of DPR. Accordingly, the Court finds that the Settling Parties entered into the proposed Settlement in good faith, that the proposed Settlement meets the standards for preliminary review and approval, and the Settlement appears to be sufficiently fair, reasonable, and adequate to warrant final approval of the Settlement.

Final Approval Hearing on Settlement

13. On _____, 2021 at _____ a.m., the Court held its hearing on the Motion for Final Approval of Settlement pursuant to Hawai'i Rule of Civil Procedure 23. During and upon conclusion of the Final Approval Hearing, the Court considered the following factors and made the following findings:

- a. The Settlement is fair, reasonable, and adequate;
- b. The Court should enter its Final Order granting final approval the Settlement and Final Judgment implementing its terms;
- c. The Notices and the Notice Plan implemented pursuant to the Settlement and the Court's Preliminary Approval Order (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Lawsuit, the nature of the proposed Settlement (including Class Counsels' request for awards of attorney fees and reimbursement of costs), their right to object to the proposed Settlement and their right to appear at the Final Approval Hearing; (iii) were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice; and (iv) met all applicable requirements of Hawai'i Rule of Civil Procedure 23, the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law;

d. The releases in the Settlement are fair, reasonable, adequate, and approved in light of the Settlement benefits. The Administrator shall allocate and distribute the following amount of the Settlement Fund for the Shot Pin Repair Program pursuant to the terms of and procedures provided in the Settlement:

For services by the Contractor:	Up to \$9,703,000.00
For services by the Construction Manager:	Up to \$1,600,000.00
For services by the Structural Engineer:	Up to \$130,650.00

Total for Shot Pin Repair Program:	\$11,508,150.00
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e. The Class Representatives and Class Counsel adequately represented the Class for the purposes of entering into and implementing the Settlement and will continue to adequately represent the Class for carrying out the Settlement;

f. The Class' request for awards of Class Representative incentive awards, Attorney Fees, Costs, and All Other Expenses is substantiated, fair, reasonable, and adequate. Accordingly, the Court awards the following global amounts that the Court shall more specifically allocate to individual persons and attorney firms upon the Court's consideration and approval of the Class' anticipated Motion to Allocate and Distribute Settlement Funds:

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Incentive awards to Class Representatives:	\$ _____
	(\$ _____ per Structure)
Attorney Fees to Class Counsel:	\$ _____
Hawai‘i General Excise Tax for City and County of Honolulu to Class Counsel:	\$ _____
Reimbursement of litigation costs and any Special Master fees to Class Counsel:	\$ _____
Total for Attorney Fees, Costs, and All Other Expenses:	\$ _____

The Notice Plan, and the Administration of the Settlement

14. The Court previously approved the Administrator’s Notice Plan. Pursuant to the Notice Plan, the Administrator accomplished the following:

- a. Distributed the Class Notice;
- b. Arranged for publication of the Class Notice;
- c. Posted the Notice on the Administrator’s website;
- d. Facilitated Class Member inquiries;
- e. Answered any written inquiries from Class Members and/or forwarding such inquiries to Class Counsel;
- f. Provided additional copies of the Notice(s) upon any request;
- g. Received and maintained on behalf of the Court any objections to the Settlement received from Class Members;
- h. Assisting in the coordination and inclusion of authorized Class Members for participation in the Settlement; and
- i. Otherwise administering and implementing the Settlement.

15. In the Order Granting Preliminary Approval of Settlement, the Court approved, as to form and content, the Notice Plan and Class Notices attached as Exhibits 1-4 to the Settlement. The Notice Plan and Class Notices fully and accurately informed the Class Members of all material elements of the proposed Settlement and of each Class Member's right and opportunity to object to the proposed Settlement. The Court further finds that the mailing and distribution of the Notice and the publication of the Class Notices substantially in the manner and form set forth in the Notice Plan and Settlement met the requirements of Hawai'i Rule of Civil Procedure 23, the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law, constitutes the best notice practicable under the circumstances, and constitutes due and sufficient notice to all Class Members.

16. The Administrator shall continue to assist in the coordination and inclusion of Class Members for participation in the Settlement and continue to otherwise administer and implement the Settlement.

17. The Administrator estimated its total costs for all of its administration tasks to date and through completion of Settlement would not exceed \$74,500.00. This amount is fair, reasonable, and adequate and, therefore, approved for payment from the Settlement Fund.

Communications with Class Members

18. Because Class Members might contact Haseko about the Settlement, if contacted, Haseko shall continue to respond, if at all, to Class Members in a manner materially consistent with the following:

Haseko supports the Settlement. If you have any question regarding the details of the Settlement, please log onto the settlement website at www.HasekoClass.com or contact Class Counsel through the Law Offices of Melvin Y. Agena, (808) 536-6647.

Objections

19. _____ Class Members timely objected to the fairness, reasonableness, and/or adequacy of the Settlement.

20. All Class Members who failed to serve timely written objections in the manner specified in the Court's Order Granting Motion for Preliminary Approval of Settlement, Approval of Notice Plan, and Appointment of Additional Class Counsel and the Settlement are deemed to have waived any objections, are foreclosed from making any objection, whether by appeal or otherwise, to the Settlement and Motion for Award of Class Representative Incentives, Attorney Fees, Costs, and All Other Expenses, are bound by the terms of the Settlement and the Final Judgment, and are foreclosed forever from making any objection to the fairness or adequacy or any other aspect of the Settlement and the Motion for Award of Class Representative Incentives, Attorney Fees, Costs, and All Other Expenses.

Exclusions/Opt Outs

21. No Class Member may opt out or exclude himself/herself/itself from the Settlement. The opportunity to opt out from the Class expired upon completion of the original Notice Plan in early 2019. Since no Class Members opted out at that time, all Class Members are bound by the orders of this Court in this Lawsuit.

Stipulation and Order on Partial Award

22. Pursuant to the Panel's Order on Partial Award, which was previously issued by the Panel on [DATE], and subject to final approval and implementation of the Settlement, the Partial Award is not and shall not be construed as a judgment or a final determination.

23. Pursuant to the Panel's Order on Partial Award, the Partial Award, including any and all factual findings and legal conclusions therein, are set aside, vacated, expunged, *nunc pro tunc* by the Panel, and have been determined by the Panel to be of no force or effect for any purpose including, but not limited to, for any purported collateral estoppel or other preclusive

effect purposes, effective only upon the Court's final approval of the Settlement and Steadfast's payment on behalf of Haseko of the Settlement Fund into the Settlement Escrow.

24. If the Settlement fails for any reason, for example but not exclusively, a Settling Party materially breaches the Settlement, the Panel's jurisdiction over the Lawsuit shall be fully reinstated, that the Partial Award remains enforceable, and that the Class shall have twenty business days from reinstatement of the Panel's jurisdiction to file their declaration and any supporting documents in support of their claims for costs, attorney fees, and general excise tax for the City and County of Honolulu.

Termination of Settlement

25. This Order shall become null and void, and shall be without prejudice to the rights of the Settling Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order if the Settling Parties terminate the proposed Settlement in accordance with its terms or if the Settlement does not become effective as required by its terms for any other reason. In such event, the Settlement shall become null and void and of no further force and effect, and shall not be used or referred to for any purpose whatsoever.

Use of Order

26. Neither this Order nor this Settlement shall be construed or used as an admission, concession, or declaration by or against Haseko of any fault, wrongdoing, breach, or liability. Nor shall this Order be construed or used as an admission, concession, or declaration by or against Plaintiffs or other Class Members that their claims lack merit or that the relief requested in the Lawsuit is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he, she, or it might have.

Retention of Jurisdiction

27. The Court retains the exclusive jurisdiction to consider all further applications arising out of or connected with the Settlement. This Court, and only this Court, shall have exclusive jurisdiction to enforce or resolve any disputes related to the Settlement, including, but not limited to any and all disputes arising out of applications for, claims concerning, claims related to, and/or allocations of Attorney Fees, Costs, and All Other Expenses by Class Counsel; and any and all disputes arising out of claims by any other attorneys seeking attorney fees, costs, other expenses, or awards resulting from or in any way related to or arising out of this Lawsuit, the Settlement, and/or the Court's award of Attorney Fees, Costs, and All Other Expenses from the Settlement Fund.

APPROVED AS TO FORM:

MELVIN Y. AGENA
GRAHAM B. LIPPSMITH
CELENE S. CHAN
KENNETH S. KASDAN
SHARLA MANLEY
Attorneys for Plaintiffs and the Class

DATED: _____, 2021

MELVYN M. MIYAGI
ROSS T. SHINYAMA
Attorneys for Haseko Homes, Inc.
Haseko Construction, Inc.
Ke Noho Kai Development, LLC
Fairway's Edge Development, LLC

DATED: _____, 2021

APPROVED AND SO ORDERED:

By: _____
Honorable Lisa W. Cataldo
Judge of the Circuit Court

DATED: _____, 2021

EXHIBIT 10

LAW OFFICES OF MELVIN Y. AGENA

MELVIN Y. AGENA 2632
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KASDAN TURNER THOMSON BOOTH LLLC

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Honolulu, Hawai‘i 96813
Tel: (808) 369-8393

Attorneys for Claimants and the Class

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI‘I

TADASHI MITSUOKA, VICTORIA
MITSUOKA and JOHN G. STEWART,
individually and on Behalf of a Class of All
Persons Similarly Situated,

Plaintiffs,

vs.

HASEKO HOMES, INC., a Hawai‘i
corporation, HASEKO CONSTRUCTION,
INC., a Hawai‘i corporation, KE NOHO KAI
DEVELOPMENT, LLC, a Hawai‘i
corporation; SPINNAKER PLACE
DEVELOPMENT, LLC, a Hawai‘i
corporation; FAIRWAY’S EDGE
DEVELOPMENT, LLC, a Hawai‘i
Corporation; and DOES 1-10,

Defendants.

CIVIL NO. 12-1-3020-11 LWC
(Construction Defects)

[PROPOSED] FINAL JUDGMENT

FINAL JUDGMENT

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to and in accordance with Hawai'i Rule of Civil Procedure 58, and with the Court being fully advised in the premises, and with good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED, and DECREED that FINAL JUDGMENT IS ENTERED pursuant to and in accordance with the Court's _____, 2021 Order Granting Final Approval of Settlement and Awarding Class Representative Incentives, Attorney Fees, Costs, and All Other Expenses ("Final Settlement Order");

Final judgment is entered as to all counts, claims, and crossclaims of this action, including all counts and remedies claimed in the operative First Amended Class Action Complaint, filed March 8, 2013 in the above-captioned action and as were also claimed in the compelled class action arbitration designated as *Mitsuoka, et al. v. Haseko Homes, Inc., et al.*, Dispute Prevention & Resolution Inc. No. 17-0447-A;

This class action involved 621 Homes in areas 2E and 3B-3E of the Ocean Pointe Development ("Subject Homes") and alleged that the wind protection systems in the Subject Homes developed and built by Defendants Haseko Homes, Inc., Haseko Construction, Inc., Ke Noho Kai Development, LLC, and Fairway's Edge Development, LLC (jointly, "Haseko") were defective, including allegations that the Shot Pins in the Subject Homes were defective and corroding. The Settlement has been approved and is hereby implemented, and there are no remaining Class Member Claims or parties;

All Class Members who failed to serve timely written objections in the manner specified in the Court's Order Granting Motion for Preliminary Approval of Settlement, Approval of Notice Plan, and Appointment of Additional Class Counsel and the Settlement are deemed to have waived any objections, are foreclosed from making any objection, whether by appeal or otherwise, to the Settlement and Motion for Award of Class Representative Incentives, Attorney Fees, Costs, and All Other Expenses, are bound by the terms of the Settlement and the Final Judgment, and are foreclosed forever from making any objection to the fairness or adequacy or

any other aspect of the Settlement and the Motion for Award of Class Representative Incentives, Attorney Fees, Costs, and All Other Expenses;

The Haseko Defendants shall have the right to record in the Office of the Assistant Registrar of the Land Court of the State of Hawai‘i and/or the Bureau of Conveyances of the State of Hawai‘i, as applicable, an executed copy of this Settlement and/or Final Orders and Judgment against each Class Member Structure, and all terms and conditions of this Settlement, including the release, acquittal and discharge of Haseko Defendants set forth herein, shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in or to any Class Member Structure or any portion thereof without the execution, delivery or recordation of any further instrument, the acquisition of any such right or interest in any Class Member Structure shall be deemed to constitute the acceptance of all terms and conditions of this Settlement by such person or entity, and upon the transfer or any such right or interest in an Class Member Structure, the same shall be subject to and the transferee shall assume and be bound and obligated to observe all of the terms and conditions contained in the Settlement; and

No Class Member validly objected to the Settlement; accordingly this action is DISMISSED WITH PREJUDICE pursuant to the Settlement, with all parties in the Lawsuit to bear their own fees and costs except as is set forth in the Settlement, herein, and in the prior orders of this Court.

APPROVED AS TO FORM:

MELVIN Y. AGENA
GRAHAM B. LIPPSMITH
CELENE S. CHAN
KENNETH S. KASDAN
SHARLA MANLEY
Attorneys for Plaintiffs and the Class

DATED: _____, 2021

MELVYN M. MIYAGI
ROSS T. SHINYAMA
Attorneys for Haseko Homes, Inc.
Haseko Construction, Inc.
Ke Noho Kai Development, LLC
Fairway's Edge Development, LLC

DATED: _____, 2021

APPROVED AND SO ORDERED:

By: _____
Honorable Lisa W. Cataldo
Judge of the Circuit Court

DATED: _____, 2021