

## NOTICE AND OPPORTUNITY TO CURE AGREEMENT

The Contractor \_\_\_\_\_ has been engaged by the Owner(s) \_\_\_\_\_ to construct certain improvements to real property at the following location: \_\_\_\_\_

in accordance with a Contract dated \_\_\_\_\_.

In consideration thereof, the parties agree to abide by the following terms and conditions in an effort to resolve any future construction defect claims that may be made by the Owner(s) against the Contractor arising out of the construction performed pursuant to this Contract.

1. The Owner(s) shall mail or deliver to the Contractor at the following address:

\_\_\_\_\_ a written notice of the asserted construction defect describing the defect and the circumstances of its discovery. Any additions or modifications to the description or circumstances of discovery shall require the Owner(s) to mail or deliver an additional written notice to the Contractor.

2. After furnishing the written notice, the Owner(s) shall provide the Contractor with reasonable and timely access to the premises for inspection of the asserted defect(s). Inspection shall be undertaken not more than \_\_\_\_\_ days from the date the notice is received. The Contractor shall mail or deliver a written response to the Owner(s) not more than \_\_\_\_\_ days from the inspection date at the following address:

\_\_\_\_\_ The Contractor's written response shall include either an offer to remedy or repair the asserted defect, an offer to settle the claim by monetary payment, or a denial of liability or responsibility for the asserted claim. The failure of the Contractor to inspect and/or respond as provided herein, or the denial by the Contractor of liability or responsibility, shall permit the Owner(s) to take immediate action to arbitrate any asserted construction defect as may be provided of the parties' Contract.

3. The Owner(s) agrees to accept any reasonable offer made by the Contractor to repair or replace the defective condition, or to pay monetary damages in the amount of the cost to replace or repair, but such offer shall not include payment of consequential damages. The failure of the Owner(s) to accept a reasonable offer made by the Contractor, shall limit any recovery by the Owner(s) to the express terms of the Contractor's reasonable offer. Upon acceptance by the Owner(s), the Contractor shall have \_\_\_\_\_ days to comply with the terms of the accepted offer.

4. The Owner(s) agrees to take no action to file suit or to initiate arbitration against the Contractor pertaining to the construction defect claim, unless and until the above stated procedures have been followed and the prescribed time periods have expired without resolution. Failure to adhere to these procedures and to observe the prescribed time periods

shall serve as grounds for summary dismissal, without prejudice, of any lawsuit or arbitration proceeding filed by the Owner(s) against the Contractor pertaining to the construction defect claim.

5. Any applicable statute of limitations shall be tolled for the period of time necessary to comply with the procedures and prescribed time periods set forth above. The parties specifically agree that any repair or replacement shall not serve to start an entirely new statute of limitations or warranty period. Only the remainder of the original statute of limitations or Warranty period will remain in effect upon completion of replacement or repairs.

6. Should any clause or provision of this Contract be ruled invalid or unenforceable in any court of competent jurisdiction, the remainder of the Contract shall nevertheless survive in full force and effect.

7. The parties agree that in addition to first class mail and hand delivery, all notices and other documents required or permitted to be delivered under this Contract may be sent by e-mail, text message or by fax from the sender's authorized e-mail address, telephone or fax number, to the recipient's authorized e-mail address, telephone or fax number. For documents that require a signature, scanned documents shall display a scanned signature, and faxes shall display a facsimile signature. For any e-mail or text message intended to be recognized as a signed document under this Contract, the transmitting party shall include their individual numeric code in the e-mail or text message:

Contractor Code # \_\_\_\_\_ Purchaser(s) Code # \_\_\_\_\_

Any electronically delivered transactional documents delivered in accordance with these procedures shall be binding on the parties. For all other notices or documents, an electronically generated signature or code shall not be necessary.

(Write "NO" if you do not agree to use electronic transmissions and signatures).

\_\_\_\_\_  
(Purchaser)

\_\_\_\_\_  
(Purchaser)

\_\_\_\_\_  
(Contractor)

The Purchaser(s) - authorized e-mail addresses, telephone and fax numbers:

\_\_\_\_\_  
e-mail address(es)

\_\_\_\_\_  
telephone numbers

\_\_\_\_\_  
fax numbers

The Contractor- authorized e-mail addresses, telephone and fax numbers:

\_\_\_\_\_  
e-mail address(es)

SEEN AND AGREED TO: