

SETTLEMENT AGREEMENT AND RELEASE

The parties to this Settlement Agreement and Release (hereinafter the "Agreement") are Richard and Robinette Valore, Patriot Builders LLC, Misipati ("Semi") Bird, and Developers Surety and Indemnity Company ("DSI") (hereinafter referred to individually as "Party" and collectively as the "Parties").

I. DEFINITIONS

1. "Valores" means Richard and Robinette Valore individually, their marital community, and their heirs, agents, insurers, and assigns.

2. "Patriot" means Patriot Builders LLC and its assigns, predecessors, successors, subsidiaries, affiliates, principals (including but not limited to Misipati "Semi" Bird), members, managing members, servants, employees, attorneys, agents, representatives, insurers, and reinsurers.

3. "Bird" means Misipati ("Semi") Bird, individually, his marital community, and his heirs, agents, insurers, and assigns.

4. "DSI" means Developers Surety and Indemnity Company its assigns, predecessors, successors, subsidiaries, affiliates, employees, attorneys, agents, representatives, insurers, and reinsurers.

II. RECITALS

A. Valores asserted claims against Patriot and Bird, alleging defects in the construction of their residence located at 581 Steam Gin Loop, Cle Elum, Washington ("Project").

B. DSI issued five (5) consecutive one-year insurance policies to Patriot Builders, LLC bearing Policy Nos. BIS00025549-01 (06/27/2016 to 06/27/2017), BIS00025549-02 (06/27/2017 to 06/27/2018) BIS00025549-03 (06/27/2018 to 06/27/2019), BIS00025549-04 (06/27/2019 to 06/27/2020), and BIS00025549-05 (06/27/2020 to 06/27/2021) (hereinafter collectively the "DSI Policies").

C. The purpose of this Agreement is to forever and finally settle and resolve all disputes, claims, and controversies past, present, future, contingent, or liquidated of any type or nature between the Parties related to or arising out of work performed at the Project and/or DSI's acts or omissions. This includes but is not limited to any claims brought or which could have been brought by Valores against Patriot and/or Bird such as claims for breach of contract, warranty, negligence or other tort claims, defense, indemnity, contribution, attorneys' fees, costs, or otherwise which were or could have been brought by any Party against any other Party hereto relating to the construction of the Project and any and all past, present or future claims of any nature by any party against DSI arising out of DSI's acts and omissions in responding to claims for coverage under the DSI Policies related to the Project and/or the scope of defense and indemnity coverage afforded by DSI under the DSI Policies (collectively, "Claims").

D. The Parties are desirous of avoiding the risk, expense and time involved in litigation, and therefore now agree to settle and resolve the Claims upon the following terms.

III. AGREEMENT AND RELEASE

NOW THEREFORE, in consideration of the actions, payments, and mutual promises of the Parties contained herein, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

A. Recitals. The foregoing recitals are incorporated herein and made a part hereof.

B. Settlement Amount.

Within ten (10) days of execution hereof by all Parties, DSI shall issue check on behalf of Patriot and Bird in the amount of \$70,000 ("Settlement Amount").

The settlement check shall be delivered to the Valores at 581 Steam Gin Loop, Cle Elum, Washington 98922.

C. Full and Final Releases. Upon execution of this Agreement and payment of the Settlement Amount, the Parties mutually and expressly release one another from any and all Claims that were or could have been asserted relating to or arising out of work performed at the Project and/or any claims of any nature arising out of or related to DSI's acts and omissions in responding to any claim for coverage under the DSI Policies related to the Project and/or the scope of defense and indemnity coverage afforded by DSI under the DSI Policies, whether known or unknown, present or future, contingent or liquidated, and whether in tort, statute, regulation, contract, common law, equity or otherwise.

It is hereby agreed that this Agreement is a compromise and full settlement, accord and satisfaction of all of Claims which were or could have been brought by any one or more Parties to the Agreement against any one or more Parties to the Agreement.

D. Warranty and Capacity to Release Claims. The Parties warrant that they own, possess, and/or have the authority to release all claims hereunder and that they have not sold, transferred, or assigned (either contractually or by operation of law) any of their rights against any other party to this Agreement.

E. Assumption of Risk. The Parties are unaware of any defective conditions at the Project beyond those which Valores have claimed are defective. Nevertheless, in providing the releases herein, the Parties acknowledge that they may not fully know or comprehend all damages they have suffered, but the Parties expressly agree to assume the risk that their past, present, and future damages may be greater than currently believed, and that they nevertheless desire to enter into this Agreement. In spite of this risk, the Parties agree that this Agreement shall be and remain in all respects effective and not subject to termination or rescission by virtue of any such mistake, change or difference in facts. The Parties further agree to waive and relinquish all rights they have or may have under any statute or legal decision providing that a general release does not extend to claims not known or suspected to exist at the time of executing the release, which if known by a claimant might have materially affected the settlement. The Parties hereto specifically agree that this release applies in such case to all such claims.

Dated this 16th day of November, 2023 at Acacia, California.

[Signature]
By Edward J. McKinnon
President, Claims Resource Management, Inc.
Third Party Claims Administrator for Developers Surety & Indemnity

STATE OF California

COUNTY OF Los Angeles

On this 16 day of November, 2023, before me, personally appeared Edward J. McKinnon, who executed the within and foregoing instrument, and acknowledged that he signed and sealed the same as his free and voluntary act, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

Subscribed and sworn to before me this 16 day of November, 2023.

Notary Public: [Signature]
Printed Name: Janice R Brown
Appointment expires: Mar. 26, 2024



Dated this 17 day of NOVEMBER, 2023 at RICHLAND, Washington.

MISIPATI SEMI BIRD, OWNER
(Printed name and title)

Patriot Builders LLC

Dated this 17 day of NOVEMBER, 2023 at RICHLAND, Washington.

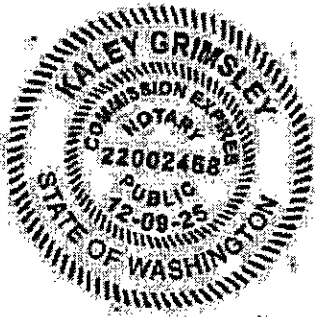
M. A. Bird
Misipati ("Semi") Bird

STATE OF WASHINGTON)

COUNTY OF KITTITAS)

On this 17th day of November, 2023, before me, personally appeared Misipati ("Semi") Bird, who executed the within and foregoing instrument, and acknowledged that he signed and sealed the same as his free and voluntary act, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

Subscribed and sworn to before me this 17th day of November, 2023.



Notary Public: Kaley Grimsley
Printed Name: Kaley Grimsley
Appointment expires: 12/09/2025

Dated this 29 day of November, 2023 at CLE ELUM, Washington.

[Signature]
Richard Valore

Dated this 29 day of November, 2023 at Cle Elum, Washington.

[Signature]
Robinette Valore

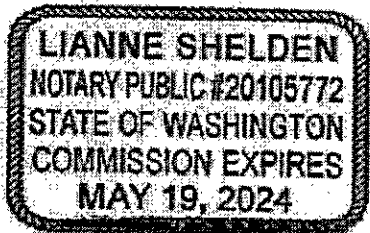
STATE OF WASHINGTON)

) ss.

COUNTY OF KITTITAS)

On this 29 day of November, 2023, before me, personally appeared Richard Valore and Robinette Valore, who executed the within and foregoing instrument, and acknowledged that they signed and sealed the same as their free and voluntary act, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

Subscribed and sworn to before me this 29 day of November, 2023.



Notary Public: [Signature]

Printed Name: Lianne Shelden

Appointment expires: May 19, 2024



WASHINGTON
Secretary of State
Corporations & Charities Division

Corporations and Charities Division

Physical/Overnight address:

801 Capitol Way S
Olympia, WA 98501-1226

Mailing address:

PO Box 40234
Olympia, WA 98504-0234
Tel: 360.725.0377
sos.wa.gov/corps

02/07/2022

PATRIOT BUILDERS, LLC
PATRIOT BUILDERS, LLC
1005 ALLENWHITE DR
RICHLAND WA 99352-8686

UBI Number: 604 227 478

Business Name: PATRIOT BUILDERS, LLC

Dear PATRIOT BUILDERS, LLC,

Thank you for your recent submission. This letter is to confirm that the following documents have been received and successfully filed:

CERTIFICATE OF DISSOLUTION

You can view and download your filed document(s) for no charge at our website, www.sos.wa.gov/ccfs

If you haven't already, please sign up for a user account on our website, www.sos.wa.gov/ccfs to file online, conduct searches, and receive status updates.

Please contact our office at corps@sos.wa.gov or (360) 725-0377 if you have any questions.

Sincerely,

Corporations and Charities Division
Office of the Secretary of State
www.sos.wa.gov/corps



WASHINGTON
Secretary of State
Corporations & Charities Division

Filed
Secretary of State
State of Washington
Date Filed: 02/07/2022
Effective Date: 02/07/2022
UBI #: 604 227 478

Certificate of Dissolution

BUSINESS INFORMATION

Business Name:

PATRIOT BUILDERS, LLC

UBI Number:

604 227 478

Business Type:

WA LIMITED LIABILITY COMPANY

Business Status:

VOLUNTARILY DISSOLVED

Principal Office Street Address:

492 MONT BLANC WAY, RICHLAND, WA, 99352-7315, UNITED STATES

Principal Office Mailing Address:

492 MONT BLANC WAY, RICHLAND, WA, 99352-7315, UNITED STATES

Expiration Date:

02/28/2022

Jurisdiction:

UNITED STATES, WASHINGTON

Formation/Registration Date:

02/23/2018

Period of Duration:

PERPETUAL

Inactive Date:

02/07/2022

Nature of Business:

CONSTRUCTION

EFFECTIVE DATE

Effective Date:

02/07/2022

DISSOLUTION ATTESTATION PROVIDED

This LLC is dissolved under RCW 25.15.265.

RETURN ADDRESS FOR THIS FILING

Attention:

Email:

Address:

UPLOAD ADDITIONAL DOCUMENTS

Do you have additional documents to upload? **No**

AUTHORIZED PERSON

I am an authorized person.

Person Type:

ENTITY

First Name:

MISIPATI

Last Name:

BIRD

Entity Name:

PATRIOT BUILDERS, LLC

Title:

This document is hereby executed under penalty of law and is to the best of my knowledge, true and correct.



< Business Lookup

License Information:

[New search](#) [Back to results](#)

Entity name: PATRIOT BUILDERS, LLC

Business name: PATRIOT BUILDERS, LLC

Entity type: Limited Liability Company

UBI #: 604-227-478

Business ID: 001

Location ID: 0001

Location: Active

Location address: 7601 W CLEARWATER AVE
STE 206
KENNEWICK WA 99336-1677

Mailing address: 7601 W CLEARWATER AVE
STE 206
KENNEWICK WA 99336-1677

Excise tax and reseller permit status: [Click here](#)

Secretary of State status: [Click here](#)

Governing People *May include governing people not registered with Secretary of State*

Governing people



Governing people

Title

BIRD, MISIPATI

Registered Trade Names

Registered trade names

Status

First issued

PATRIOT BUILDERS, LLC

Active

Mar-09-2018

The Business Lookup information is updated
nightly. Search date and time: 3/23/2024 7:55:06
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Contact us

How are we doing?

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Business Lookup

License Information:

New search Back to results

Entity name: TEAM CONCEPTS TRAINING SERVICES L.L.C.

Business name: TEAM CONCEPTS TRAINING SERVICES, LLC

Entity type: Limited Liability Company

UBI #: 603-043-310

Business ID: 001

Location ID: 0001

Location: Active

Location address: 492 MONT BLANC WAY
RICHLAND WA 99352-7315

Mailing address: PO BOX 1007
RICHLAND WA 99352-1007

Excise tax and reseller permit status: [Click here](#)

Secretary of State status: [Click here](#)

Governing People *May include governing people not registered with Secretary of State*

Governing people	Title
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Governing people

Title

BIRD, MISIPATI

The Business Lookup information is updated
nightly. Search date and time: 3/23/2024 7:55:25
AM

Contact us

How are we doing?

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BUSINESS INFORMATION

Business Name:

PATRIOT BUILDERS, LLC

UBI Number:

604 227 478

FILING HISTORY

Filing Number	Filing Date Time	Effective Date	Filing Type	Action
0016352892	02/07/2022 03:15:48 PM	02/07/2022	CERTIFICATE OF DISSOLUTION	View Documents
0016160947	01/05/2022 03:00:02 AM	01/05/2022	ANNUAL REPORT DUE DATE NOTICE	View Documents
0015375001	07/07/2021 10:27:57 AM	07/07/2021	REINSTATEMENT	View Documents
0015367174	07/03/2021 12:56:27 AM	07/03/2021	ADMINISTRATIVE DISSOLUTION	View Documents
0014729845	03/01/2021 01:51:32 AM	03/01/2021	DELINQUENT ANNUAL REPORT NOTICE	View Documents
0014494208	01/01/2021 05:54:55 AM	01/01/2021	ANNUAL REPORT DUE DATE NOTICE	View Documents
0013445904	04/27/2020 04:51:30 PM	04/27/2020	ANNUAL REPORT	View Documents
0013217780	03/01/2020 02:39:19 AM	03/01/2020	DELINQUENT ANNUAL REPORT NOTICE	View Documents
0012922901	01/01/2020 07:23:24 AM	01/01/2020	ANNUAL REPORT DUE DATE NOTICE	View Documents
0012044573	05/31/2019 05:25:02 PM	05/31/2019	ANNUAL REPORT	View Documents

Filing Number	Filing Date Time	Effective Date	Filing Type	Action
0011700048	03/01/2019 02:18:23 AM	03/01/2019	DELINQUENT ANNUAL REPORT NOTICE	View Documents
0011492538	01/01/2019 08:29:12 AM	01/01/2019	ANNUAL REPORT DUE DATE NOTICE	View Documents
0010137539	02/23/2018 09:43:34 AM	02/23/2018	INITIAL REPORT	View Documents
0010137538	02/23/2018 09:43:34 AM	02/23/2018	CERTIFICATE OF FORMATION	View Documents

[Back](#)



< Business Lookup

License Information:

[New search](#) [Back to results](#)

Entity name: BIRD CAPITAL MANAGEMENT LLC

Business name: BIRD CAPITAL MANAGEMENT, LLC

Entity type: Limited Liability Company

UBI #: 603-315-590

Business ID: 001

Location ID: 0001

Location: Active

Location address: 7601 W CLEARWATER AVE
STE 206
KENNEWICK WA 99336-1677

Mailing address: 451 WESTCLIFFE BLVD
APT D326
RICHLAND WA 99352-9327

Excise tax and reseller permit status: [Click here](#)

Secretary of State status: [Click here](#)

Governing People *May include governing people not registered with Secretary of State*

Governing people



title

Governing people

Title

BIRD, MISIPATI

Registered Trade Names

Registered trade names

Status

First issued

BIRD CAPITAL
MANAGEMENT, LLC

Active

Jun-14-2017

The Business Lookup information is updated
nightly. Search date and time: 3/23/2024 7:54:27
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Contact us

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FILED
2022 APR 21 AM 10:27
KIM LEE SAUNDERS
SUPERIOR COURT CLERK

SUPERIOR COURT OF WASHINGTON FOR KITTITAS COUNTY

RICHARD AND ROBINETTE VALORE,
Plaintiffs,

) Case No 22-2-00077-19

vs.

)
) **DECLARATION OF RICHARD AND ROBINETTE VALORE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**
)

PATRIOT BUILDERS, LLC, MISIPATI BIRD,
AND LEXINGTON INSURANCE COMPANY,
Bond No 9818277,
Defendants

We, Richard Valore and Robinette Valore, jointly declare as follows.

1 We are both residents of Kittitas County, Washington, over the age of 18, and reside at 581 Steam Gin Loop, Cle Elum, Washington. The residence is located within the Suncadia planned community

2 On August 7, 2018, we signed a contract with Patriot Builders LLC for construction of a single-family home on our lot in Suncadia. We dealt with Misipati Bird, whom we understood to be the owner of the company and the person in whose name the company's general contractor's license was issued.

3 A true and correct copy of the contract we entered into with Patriot Builders LLC is attached hereto as Exhibit 1

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1 4. Construction went forward in 2018 and 2019 and was substantially completed by October
2 1, 2020, upon which date we moved into our new house.

3 5. Unfortunately, and to our distress, after we occupied our new house, we discovered
4 numerous deficiencies and defects, some relatively minor, i.e. "punchlist" items, others relatively
5 major, i.e. deficiencies in drainage, roofing, and concrete.

6 6. As issues arose, we notified Mr Bird and he, to some extent, made efforts to remedy
7 them. This process continued for approximately six months, from October 2020 to April 2021

8 7. On April 1, 2021, we contracted for an independent home inspection at which time
9 microbial growth was discovered in our crawl space and attic. This inspection report was
10 forwarded to Mr Bird via email on April 2, 2021

11 8. Mr Bird responded to the inspection report via a text message to us sent from his phone
12 on April 2, 2021. He stated, "I will cease and desist immediately. I'll notify my insurance company
13 and attorney." This text message was the last communication we received from Mr Bird.

14 9. Mr Bird's text alarmed us sufficiently to hire a certified mold inspector to inspect our
15 crawl space and attic. He confirmed the presence of mold and identified a lack of attic venting and
16 lack of foundation drainage as the root causes. He recommended installation of footing level
17 drainage, attic ventilation, and mold remediation.

18 10. Shortly after receiving this information we retained an attorney, Paul McBride, to advise
19 us how to proceed.

20 11. Mr McBride sent a letter to Mr Bird on April 30, 2021, providing him formal notice of
21 our claim and demanding that he provide us with either an offer to repair or a monetary settlement
22 offer. Mr Bird never responded to this letter.

23 12. We also hired contractors to install foundation footing level drainage, roof ridge vents,
24 and repair of damaged concrete. These contractors confirmed there was no installed drainage at the
25 foundation footing level, nor attic exhaust ventilation. It should be noted that these items were
26 specifically called out for in our contract. These items were billed by and paid to Mr Bird.

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1 13 Our contract with Patriot Builders, Exhibit 1, provides for mandatory arbitration of all
2 disputes (Paragraph 21) Because Mr. Bird failed to respond to the letter from our attorney, we
3 implemented arbitration proceedings.

4 14 We filed our petition for arbitration with the American Arbitration Association. We
5 named both Patriot Builders LLC and Misipati Bird as respondents. Our arbitration case was
6 assigned Case No 01-21-0016-9643

7 15 Proper notice of our arbitration petition and of the date of the arbitration was served on
8 Patriot Builders LLC and on Mr. Bird. See Exhibit 4, our Response to Mr. Bird's Motion
9 challenging the arbitration award, for specific details of service.

10 16 Mr. Bird never filed any responsive documents, nor did he participate in the arbitration
11 proceedings when they went forward.

12 17 The arbitration proceeding went forward on February 25, 2022. It was conducted via
13 conference call. We provided testimony from our living room in Cle Elum to the arbitrator, Ronald
14 Leaders. Mr. Leaders participated from his office in Vashon, Washington.

15 18 We received the Arbitrator's Award on March 15, 2022. A true and correct copy of the
16 Award is attached as Exhibit 2. As set forth in the Award, Mr. Leaders found in our favor and
17 awarded us \$60,369.39 against Patriot Builders LLC and Mr. Bird.

18 19 On March 31, 2022, the arbitrator's office forwarded us a "Motion to Modify Final
19 Arbitration Award" that was filed on behalf of Patriot Builders and Mr. Bird by their attorney,
20 Jason Celski. A true and correct copy of this motion is attached as Exhibit 3

21 20 In the motion, Patriot and Bird argued, in essence, that they did not receive proper
22 notice of the arbitration.

23 21 We filed a response to this motion on April 4, 2022. Attached as Exhibit 4 is a true and
24 correct copy of our response

25 22 On April 5, 2022, we received the arbitrator's written decision denying the motion and
26 confirming the award. Attached as Exhibit 5 is a true and correct copy of the Order Denying
27 Motion and Confirming Award.

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The foregoing Declaration is signed under penalty of perjury this 20th day of April, 2022, at Cle Elum, Washington.


Richard Valore, Declarant


Robinette Valore, Declarant

PATRIOT BUILDERS, LLC
Valore Residential Construction Contract

This AGREEMENT ("Agreement") is entered into on this 5th day of August, 2018 by and between Richard and Robinette Valore ("Owner") and Patriot Builders, LLC, a Washington Limited Liability Company, ("Contractor").

1 Summary of Relationship

- 1.1 The Contractor shall furnish construction administration and management services and perform the Work using its best skill, care, and diligence as an independent contractor. The Owner shall cooperate with the Contractor by providing timely responses to Contractor's requests for information necessary to expedite the Project and by meeting the Owner's other obligations under this Agreement.

2. Scope of Work.

- 2.1 During the Pre-Construction Phase the Contractor shall assist the Owner and Architect in evaluating the feasibility of the Project and assist the Owner and Architect in value engineering the Project in an effort to save the Owner money while accomplishing their intent.

- 2.2 The owner is responsible for all Pre-Construction costs associated with design, engineering, permitting commissions and Suncadia required construction fees and dues.

- 2.3 During the Construction Phase, the Contractor shall execute the entire Work described in the Contract Documents.

3 Identification of Consultants:

The Draftsman is: Al Montgomery

The Structural Engineer is: Tri-City Engineering

4 Definitions.

- 4.1 Project or Construction Site is defined as the real property and Contractor's Work to be performed, located at 581 Steam Gin Loop, Cle Elum, WA 98922 and more particularly described in attached Exhibit "A" Proof of ownership provided by Kittitas County.

- 4.2 Contract Documents. The Contract Documents which comprise the entire Contract between Owner and Contractor concerning the Work consist of this Contract, Exhibit "A," Plans and Specifications, Change Orders and a detailed construction budget.

- 4.3 Mistakes in Contract Documents. Contractor shall immediately, upon discovery or reasonable opportunity for discovery, report to Owner and/or Owner's Architect any errors, inconsistencies or omissions in the contract.

- 4.4 Contractor's Work or Work. By the terms and conditions of this Agreement, Owner employs Contractor as an independent contractor to provide labor,

7/24/18
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material, equipment, tools, machinery, appliances, utilities, scaffoldings, and any other materials, supplies, and/or services necessary to accomplish the Contractor's Work described in the Scope of Work above

- 4.5. Modification. A Modification is 1) A written amendment to the Agreement signed by both parties, 2) a Change Order or 3) a written order for a minor change in the Work
- 4.6. Change Order. A Change Order or Cost Update is a written order issued after the execution of the Agreement, approved by the Contractor, Owner, and Lender prior to implementation of change. Change Orders may authorize a change in the Contractor's Work to be performed, an adjustment in the contract estimate and/or an adjustment in the time schedule.
- 4.7. Hazardous Materials. Any toxic or hazardous materials now or hereafter designated as hazardous by any ordinance, statute, order or other law
- 4.8. Completion of the Project. Issuance of an occupancy permit or the attaining of a satisfactory final inspection by or from the controlling jurisdiction shall constitute completion of the project.
- 4.9. Owner's Final Project Inspection. Upon notice from the Contractor of the Completion of the Project, the Owner will timely conduct a walk-through inspection to identify any and all conditions where the Contractor's Work requires correction. Any conditions shall be noted in writing (a "Punch List") and delivered to the Contractor
- 4.10. Substantial Completion. When the Contractor has completed construction of the Project and awaiting Completion of Project and Owner's Final Project Inspection.

5. Fixed Contract Price/Payment/Costs Defined.

5.1 Fixed Contract Price

5.1.1 The Owner shall pay the Contractor for the Completion of the Work of this Agreement, the Fixed Contract Price amount of Nine Hundred Sixty Six Thousand Seven Hundred Eighty Six Dollars (\$966,786.00) which consists of the Cost of the Work, as noted on the detailed construction budget, and the Contractor's fee of One Hundred Twenty Nine Thousand Dollars (\$129,000.00)

5.1.2 The contractor will collect from the customer the required 8% state tax rate for Cle Elum, WA, in the amount of Seventy Seven Thousand Three Hundred Forty Two Dollars and Eighty Eight Cents (\$77,342.88)

5.2. Payment

5.2.1 Deposit: Simultaneous with the execution of this Agreement the Owner shall pay the Contractor a deposit of Thirty Thousand Dollars (\$30,000.00) as partial payment of the Contract Sum ("Deposit"). Said Deposit shall be held by Contractor and applied to the final invoice. Owner hereby authorizes Contractor to expend whatever portion of Deposit is necessary to pay for, apply for, and/or obtain any plans, permits, surveys, tests, reports, title reports, appraisal or any other

[Handwritten initials]

reimbursable cost, fee, or expense necessary to carry out the spirit and intent of this Agreement. Upon request by Application for Payment below, Owner hereby further agrees to promptly pay any such expenditures described above incurred with respect to the Contractor's attempt to carry out the above purposes.

- 5.2.2 Contractor shall prepare and submit Applications for Payment once a month. Applications for Payment shall be submitted as a Contractor invoice describing the portion of the Contractor's Work applied for. Such Applications for Payment may include requests for deposits and down payments for materials, subcontractors, equipment and other inputs necessary to the performance of the Contractor's Work.
- 5.2.3 Immediately after an Application for Payment is presented, Owner shall notify Contractor if Owner has any concerns about the Application for Payment that Owner believes should be resolved before Owner pays the amounts specified in the Application for Payment, and, in this event, Owner and Contractor shall promptly meet to address such concerns.
- 5.2.3.1 Owner shall pay Contractor 100% of the full amount covered by the Application for Payment with 0% "Holdback."
- 5.2.3.2 Payment is due and payable within seven (7) business days of the date on the Application for Payment. Any payments more than thirty (30) days past due will bear interest at the rate of 1.5% per month.
- 5.2.3.3 Payment may be withheld for: (1) failure to perform the Work in accordance with the Contract Documents, (2) defective Work that is not corrected; or (3) failure of the Contractor to pay subcontractors or to pay for labor, materials or equipment when due.
- 5.2.4 Final Payment and Acceptance. Owner shall be required to finally accept Contractor's Work provided under this Agreement upon the occurrence of either of the following:
- 5.2.4.1 Owner's occupancy of the Project; OR
- 5.2.4.2 (a) The Owner's Final Project Inspections and written approval given by Owner; and (b) receipt of a certificate of occupancy or final inspection, and (c) at such time that all lien claims have been paid or otherwise properly removed as an encumbrance.
- 5.3 Reimbursable Costs
- 5.3.1 "Cost of the Work" shall mean those costs incurred by the Contractor in the proper performance of the Contractor's Work. The Cost of the Work shall include only items set forth as follows.
- 5.3.1.1 Wages of construction workers directly employed by the Contractor to perform the Contractor's Work, including industrial insurance, unemployment compensation applicable taxes and other employment benefits.
- 5.3.1.2 Costs, including without limitation, transportation and storage,

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4/10

of materials and equipment incorporated or to be incorporated in the completed construction.

- 5.3.1.3 Payments made or owing to Subcontractors from Contractor in accordance with the requirements of Subcontracts; or required deposits
- 5.3.1.4 Costs of all materials, temporary facilities, equipment and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site and substantially consumed in the performance of the Contractor's Work.
- 5.3.1.5 Reasonable rental costs for necessary temporary facilities, machinery, equipment and hand tools used at the Project site, whether rented from the Contractor or others.
- 5.3.1.6 The portion of premiums for insurance and bonds directly attributable to this Agreement.
- 5.3.1.7 Costs of cleanup and removal of debris from the site.
- 5.3.1.8 Contractor's superintendent, project management and administration efforts, according to the unit prices set forth in the attached Construction Budget and similar administrative charges for pricing, evaluation, consultation, selection, subcontract re-negotiation, demobilization and remobilization arising out of or relating to changes in the work or specifications, ordered by the Owner or where Owner requests evaluation of options and pricing impact for contemplated changes.
- 5.3.1.9 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons or property or concerning hazardous materials.
- 5.3.1.10 Demobilization and re-mobilization costs incurred due to suspension of Work under the terms of this Agreement.
- 5.3.1.11 Other costs incurred in the performance of the Contractor's work if and to the extent approved in advance by the Owner.

5.4 Non-reimbursable Costs

- 5.4.1 The Cost of the Work shall not include
 - 5.4.1.1 Expenses of the Contractor's head office.
 - 5.4.1.2 Overhead, general and administrative expenses, excepts as may be expressly included in the preceding section on Reimbursable Costs
 - 5.4.1.3 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Contractor's work.
 - 5.4.1.4 Costs due to the fault or negligence of the Contractor, Subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, costs for the correction of damaged, defective or non-conforming work, disposal and

replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Contractor's work

5.4.1.5 Any cost not expressly described in the preceding section on Cost of the Work.

5.5 Discounts, Rebates and Refunds

5.5.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner and the Contractor shall make provisions so that they can be treated as a deduction. Contractor will endeavor, where practicable to arrange prompt payment discounts with suppliers and subcontractors

5.6 Accounting Records

5.6.1 The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper management under this Agreement. The Contractor shall preserve such records for a period of three years after final payment, or for such longer period as may be required by law

6. Time Schedule.

- 6.1 The anticipated Commencement Date of the project is September 15, 2018. The Contractor's Work to be performed under this Agreement shall be commenced according to the section 7.2.1 below
- 6.2 Anticipated date of Substantial Completion is June 30, 2019. The Contractor shall strive to achieve Substantial Completion of the Contractor's Work according to the approved Contract Schedule, as modified, subject to interruptions and delays not the responsibility of the Contractor
- 6.3 Contract Time Limits. Time limits stated in the Contract Documents are of the essence of the Agreement.
- 6.4 If the Contractor is delayed at any time in progress of the Contractor's Work by changes ordered in the Contractor's Work, by labor disputes, fire, unusual delay in deliveries, abnormal or adverse weather conditions not reasonably anticipated, unavoidable casualties, acts of God, or any other causes beyond the Contractor's control, then the Contract Time shall be extended as is made necessary by the delay.
- 6.5 Owner Agrees to Cooperate with Contractor. Owner agrees to cooperate with the Contractor with regard to selection of material, clarification of specifications or any other decisions, which the Contractor deems necessary to expedite the Work. Such cooperation shall include arrangements for architectural detailing or related services deemed necessary by the Contractor. The Owner shall promptly respond to Contractor's requests for information or decisions in order not to delay the Work.

7 Contractor Responsibilities.

7.1 Pre-Construction Phase. During the Pre-Construction Phase the Contractor working with the Owner's Architect (and other consultants) shall develop a preliminary evaluation of the Project. Some responsibilities may not apply.

7.1.1 Consultation. The Contractor, through regular meetings and consultation with the Architect and the Owner will evaluate the site use and intended improvements, as well as the selection of materials, building systems and equipment. The Contractor shall provide recommendations on construction feasibility actions designed to minimize adverse effects of labor or material shortages, time requirements for procurement, installation and construction; and cost estimates.

7.1.2 Preliminary Project Schedule ["PPS"] As the Project requirements are sufficiently identified as described above, the Contractor shall prepare, and periodically update, a preliminary Project Schedule for the Architect's review and the Owner's approval. The Contractor shall seek the Architect's approval of the portion of the PPS relating to the performance of the Architect's services. As design proceeds, the PPS shall be developed to indicate proposed activity sequences and durations, including the following: milestone dates for receipt and approval of necessary information; submittal of the Contract Estimate; preparation and processing of shop drawings and samples; delivery of materials or equipment requiring long lead times; Owner's occupancy requirements showing portions of the Project having occupancy priority; and estimated date of Substantial Completion. If PPS updates indicate that prior approved schedules may not be met, the Contractor shall make recommendations to the Owner and Architect.

7.1.3 Phased-Construction. The Contractor shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, taking into consideration such factors as economies, weather, time of performance, availability of labor and materials, and provisions for temporary facilities.

7.1.4 Cost Estimates

7.1.4.1 Preliminary Cost Estimate. Once Schematic Design Documents are prepared by the Architect and approved by the Owner, the Contractor shall prepare a Preliminary Cost Estimate using area, volume or similar conceptual cost estimating techniques.

7.1.4.2 Once Design Development Documents have been prepared by Architect and approved by Owner, the Contractor shall prepare a further detailed estimate with supporting data for approval by the Owner. During the preparation of Construction Documents, Contractor shall update and refine this estimate at appropriate intervals as mutually agreed to by Owner and Contractor.

7.1.4.3 If any estimate exceeds any previously approved estimate or the Project budget, Contractor shall make recommendations to Owner and Architect.

7.1.5 Extent or Responsibility. The contractor agrees to exercise reasonable skill.

and judgment in the preparation of schedules and estimates but cannot warrant or guarantee any schedule or estimate (or line item therein). All recommendations and advice of the Contractor concerning design alternatives should be subject to the review of the Architect and the Owner's other professional consultants. Contractor is not providing architectural services.

- 7.1.6 Contract Estimate and Contract Time. In accordance with the PPS, the Contractor shall prepare and submit a Contract Estimate using current approved information to update the latest Preliminary Cost Estimate. The Contract Estimate shall be the sum of the then-estimated Cost of the Work, and the Contractor's Fee, and is the baseline estimate against which the actual Cost of the Work will be measured. Upon Owner's request, the Contractor shall provide the Owner with updates and projections of the ultimate Cost of the Work.
- 7.1.6.1 To the extent that any portion of the drawings and specifications are not finalized at the time the Contract Estimate is prepared, it is understood and agreed that such portion of the Contract Estimate is still preliminary and subject to changes in scope, systems, kinds and quality of materials, finishes, and equipment.
- 7.1.6.2 The Contract Estimate shall include
- 7.1.6.2.1 A current list of the approved drawings and specifications.
- 7.1.6.2.2 A list of clarifications, conditions and assumptions utilized by the Contractor in the preparation of the Contract Estimate.
- 7.1.6.2.3 A statement of the expected date of commencement of the Construction Phase and the estimated date of Substantial Completion, with a schedule of the construction document issuance dates and other known factors upon which the estimated date of Substantial Completion is based.
- 7.1.6.2.4 A statement as to whether the above time shall be considered the Contract Time for the purposes of this Agreement.
- 7.1.6.3 The Owner shall review the Contract Estimate with the Owner's professional consultants as necessary. The Owner shall promptly notify the Contractor of any problems with the information presented and if acceptable, approve the Contract Estimate in writing.
- 7.1.6.4 The Owner shall authorize and cause the Architect to timely revise the drawings and specifications to the extent reasonably deemed necessary by the Contractor to reflect the assumptions and clarifications upon which the Contract Estimate is based.

7.2 Construction Phase

- 7.2.1 The Construction Phase shall commence on the earlier of 1) the Owner's approval of the Contract Estimate and issuance of a written Notice to Proceed or 2) the Owner's first authorization to the Contractor to award a subcontract, or to issue a purchase order for materials or equipment required for the Work. The date of commencement of the Work shall mean the date of

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commencement of the Construction Phase.

- 7.2.2 Contractor shall supervise and direct Contractor's Work, using Contractor's best skills and efforts. Contractor shall be solely responsible for and have control over the construction means and methods and for coordinating all portions of the Contractor's Work, unless the Contract Documents give specific instructions concerning these matters.
- 7.2.3 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 other submittals until the respective submittal has been approved by the Architect.
- 7.2.4 Unless otherwise provided in the Contract Documents, Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Contractor's Work.
- 7.2.5 Unless otherwise provided in the Contract Documents, Contractor shall pay all sales, use, business and occupation, and other similar taxes which are legally enacted when bids were received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.
- 7.2.6 Contractor shall schedule and conduct meetings at which the Owner, Contractor, Architect and appropriate Subcontractors can discuss the status of the Work.
- 7.2.7 The Contractor shall maintain a daily log containing a record of weather, Subcontractors on site, deliveries, meetings, inspections, and such other relevant data as the Owner may reasonably require.
8. **Subcontractors.** A Subcontractor is a person or entity who has a direct contract with Contractor to perform a portion of the Contractor's Work on Construction Site. Contracts between Contractor and Subcontractors shall require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract Documents, and to assume toward Contractor all obligations and responsibilities which Contractor, by the Contract Documents, assumes toward Owner.
9. **Contractor's Warranties.**
- 9.1. **One year Warranty Against Material Defects.** The Contractor's Work is warranted to be free of material defects as to materials used or workmanship performed for a period of one (1) year after the Completion of the Project, unless expressly excluded below; and, claims by Owner under the above warranty must be delivered to Contractor in writing within sixty (60) days of discovery but in all cases no later than one (1) year after the Completion of the Project.
- 9.2. **Consumer Products and Personal Property Disclaimer.** Owner specifically acknowledges that Contractor does not provide any warranty whatsoever with regard to personal property and consumer products, including, but not limited to,

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heating system components, appliances, other equipment components supplied to the building, and any other consumer products as defined in the Magnuson-Moss Warranty Act (Public Law 93-637) ("Consumer Products") Owner acknowledges the opportunity prior to the sale, to examine all current written warranties pertaining to all Consumer Products specified or to be sold pursuant to this Agreement and has therefore examined same to the extent desired and received copies to the extent desired. Notwithstanding the foregoing, Contractor will assign and deliver to Owner all manufacturer or supplier warranty materials applicable to said personal property, Consumer Products, or equipment components at the time of final payment. IT IS UNDERSTOOD AND AGREED THAT THE MANUFACTURERS WARRANTIES SHALL BE EXCLUSIVE AS TO ALL ITEMS INSTALLED IN OR AROUND THE PROJECT WHICH ARE COVERED BY SEPARATE MANUFACTURERS' OR SUPPLIERS' WARRANTIES, WHETHER OR NOT SAID ITEMS ARE CONSUMER PRODUCTS AND THAT THE CONTRACTOR DOES NOT GIVE ANY WARRANTY EXPRESS OR IMPLIED AS TO THE MERCHANTABILITY OR FITNESS OF SUCH ITEMS OR AS TO THEIR FITNESS FOR ANY PURPOSE.

- 9.3 Special Disclaimers. Contractor expressly does not warrant the following conditions after Owner's Final Project Inspection.
- 9.3.1 Concrete, mortar or grout expansion or settlement cracks.
 - 9.3.2 Floor squeaks.
 - 9.3.3 Cracks in sheetrock, chips, scratches or marks in tile, woodwork, walls, porcelain, brick, mirrors, fixtures and glass that are the result of the Owner's use or occupancy.
 - 9.3.4 Carpet stains or spots not identified at the time of Owner's Final Project Inspection.
 - 9.3.5 Warping of doors or millwork caused by changes in temperature or humidity.
 - 9.3.6 Reasonable wear and tear.
 - 9.3.7 Normal maintenance items.
- 9.4 Contractor does not warrant installation of materials or fixtures provided by Owner.
- 9.5 No other warranties. THERE ARE NO OTHER TERMS, CONDITIONS, COVENANTS, REPRESENTATIONS OR WARRANTIES EXPRESS OR IMPLIED ARISING OUT OF COMMON OR STATUTORY LAW WITH REGARD TO QUALITY, QUANTITY, FITNESS, HABITABILITY OR OTHERWISE WITH RESPECT TO THIS AGREEMENT AND THE CONSTRUCTION SITE OTHER THAN THOSE CONTRACTOR'S WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION ON CONTRACTOR WARRANTIES.

10. Owner Duties.

- 10.1 The Owner shall pay for and retain a qualified Architect or Draftsman to provide Basic Services including normal structural, mechanical and electrical engineering services other than cost estimating services. The Owner shall authorize and cause the Architect to timely provide additional services requested by the Contractor and necessary to carry out this Agreement.

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- 10.2 The Owner shall require the Architect/ Draftsman to visit the Construction Site at intervals appropriate to the stage of the Work to inform the Owner about the progress and sufficiency of the Work, to timely identify any Work that requires correction, and to determine whether the Work is in conformance with the Contract Documents. However, this Agreement does not require the Architect to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.
- 10.3 The Owner shall require that interpretations and decisions of the Architect be consistent with the intent of and reasonably inferable from the Contract Documents, and be in writing

11 Owner Representations and Warranties. The Owner represents and warrants that:

- 11.1 Owner has fee simple title to the Construction Site free and clear of all encumbrances that would obstruct the prosecution of this Agreement.
- 11.2 The boundary lines of the Construction Site are as represented by Owner to Contractor for the purpose of the Project.
- 11.3 All requirements of applicable zoning codes, building restrictions, Shoreline Management Act, building restrictions, and all other governmental regulations are satisfied by the designed plans.
- 11.4 Suitable road access to the Construction Site is currently available and will remain available to Contractor for the duration of the Work on the Project.
- 11.5 The geological and all other subsurface conditions of the Construction Site are suitable for the construction and use of the building(s) and improvements to be constructed pursuant to this Agreement.
- 11.6 All necessary utilities are available at the boundary of the Construction Site.
- 11.7 The building plans provided by the Owner are adequate for their intended purpose.
- 11.8 The Owner is currently financially capable of meeting the financial requirements of the Project as they become due and upon request, shall provide satisfactory evidence to the Contractor of this material fact whether in the form of financial statements or a written commitment from a qualified construction lender

12. Clean Up. Contractor shall keep the Construction Site reasonably free of trash and construction debris.

13. Changes In the Work.

13.1 Changes Initiated by Owner

- 13.1.1 Recognizing the highly customized nature of the work changes may become necessary at any time. Without invalidating this Agreement, the Owner may order changes to the Contractor's Work. Such changes may adjust the project specifications, costs and/or time shall be set forth in written Change

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Orders as noted in section 4.4.6

13.2. Other Changes

13.2.1 Under some circumstances it may not be possible or practicable to price and prepare written Change Orders in advance of the Work without disrupting the schedule. Under such circumstances, if changes to the Contractor's Work are necessary or requested by the Owner, the Contractor is entitled to an adjustment of the Contract Time and/or adjustment to the Contract Price. Contractor shall prepare and transmit a written Notice of Change to Owner within one week (7) days after the occurrence of the event(s) giving rise to such adjustment. Such Notice of Change is sufficient if it states that the adjustment to the Contract Price is based on the change in Reimbursable Costs necessitated by the change. The effectiveness of all such Change Orders is subject to the reasonable approval of the Owner. Any such Notice of Change submitted to the Owner, which are not objected to in writing within ten (10) days of notice shall be deemed a waiver of any objection to the validity of the Change Order.

14. Indemnification. So long as Owner is not in default of this Contract, Contractor agrees to defend, indemnify and hold Owner harmless from any and all claims, damages, expenses, including attorney's fees, demands, losses and liabilities to any property or by any and all persons or entities (including without limitation any subcontractor and their respective employees, agents, licensees or representatives) arising out of, resulting from or connected with work performed or to be performed under this Agreement to the extent caused by the negligent acts or omissions of the Contractor, any subcontractor or subcontractor's agents or employees to the fullest extent permitted by law at any time from the date of this Agreement until Completion of the Project or acceptance of possession by the Owner, whichever comes first.

15. Insurance.

15.1. Owner

15.1.1 Owner shall, during the term of this Agreement, procure, pay for and maintain a Builder's Risk Insurance Policy against damage or destruction by fire and full extended coverage including vandalism and malicious mischief, covering all improvements to be erected under this Agreement and all materials for the same which are on or about the Construction Site, in an amount equal to the full insurable value of such improvements and materials. Such Insurance policy shall name lender (if applicable) and Contractor as additional insureds with respect to their representative interests in the Construction Site, and without limitation, the improvements constructed or placed thereon, materials provided, stored or fabricated, and the fruits of this Agreement.

15.2. Contractor

15.2.1 Contractor shall provide a Certificate of Insurance to Owner prior to commencement of construction evidencing that Contractor has in effect liability insurance in an amount of not less than \$1,000,000. Said Certificate shall require the Insurer to provide Owner with a minimum 30-day notice of cancellation or material change in the insurance coverage. In addition, Owner shall be named as an additional insured on Contractor's policy and

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Contractor's insurance policy shall be primary and non-contributory to Owner's insurance. Said insurance shall protect Owner against claims for bodily injury or property damage which may arise out of or result from activities related to construction. Whether such activities are performed by Contractor, or by subcontractor or by anyone directly or indirectly employed by them, or by anyone for whose acts any of them may be liable, including without limitation (i) claims for damages because of bodily injury occupational sickness or disease, or death of any employee, (ii) claims for damages because of bodily injury, sickness or disease, or death of any person or other than employees; and (iii) claim for damages because of bodily injury or death of any person or property damages arising out of the ownership, maintenance or use of any boat and/or motor vehicle.

15.2.2 Contractor shall also maintain worker's compensation insurance to the extent required under all applicable provisions of Washington law and represents and warrants that any and all hired/utilized subcontractors shall also maintain workers compensation insurance in the amounts legally required.

15.2.3 Contractor shall maintain a contractor's bond in the minimum amount of Twelve Thousand Dollars (\$12,000) or such different amount as is required by Washington State Department of Licensing, Contractors Registration Division.

16. Liens.

16.1 Owner acknowledges receipt of the statutory Notice to Customer (per RCW 18.27.114) providing information about Washington's lien laws and contractor registration.

16.2 Owner acknowledges that suppliers commonly send "pre-lien" notices to the Owner as part of their reasonable business practices.

16.3 Contractor shall be responsible to Owner for the release of any and all liens arising from Contractor's performance of this Agreement to the extent such liens do not arise as a result of any delay in payment by the Owner to the Contractor.

17. Permits, Licenses and Inspections. Owner agrees to apply for, pay for, and make a good faith effort to obtain any necessary building permits, surveys, Suncadia Design Review approvals, and other governmental permits, or licenses which may be required in connection with the Work to be performed under this Agreement. Contractor shall comply with and conform to all applicable governmental laws and regulations in its performance of this Agreement. Contractor agrees to make a good faith effort to obtain any necessary inspections required in connection with the Work to be performed under this Agreement.

18. Termination of the Agreement.

18.1 Owner

18.1.1 Pre-construction Phase. During the Pre-Construction Phase, Owner may terminate for convenience upon thirty (30) days written notice, subject to payment of all labor, project feasibility, project management or other costs chargeable by Contractor under this Agreement.

18.1.2 Construction Phase. Upon the commencement of the Construction Phase

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under the terms of this Agreement, if Contractor defaults or persistently fails to perform the Contractor's Work in accordance with the Contract Documents or substantially fails to perform a provision of this Agreement, Owner may provide Contractor with written notice of Contractor's default and if Contractor fails to cure the alleged default within 14 days, Owner may immediately terminate this Agreement upon written notice to Contractor without prejudice to any other remedy Owner may possess, and Owner may take possession of the construction site and of all materials thereon and may complete the Contractor's Work in a reasonable and expedient manner.

18.2 Contractor

18.2.1 Suspension of Work: If Owner fails to make payment when due, Contractor without prejudice to any other rights or remedies, may suspend Work upon three (3) days written notice to Owner. All costs of demobilization and re-mobilization are to be borne by Owner as Reimbursable Costs under this Agreement.

18.2.2 If Owner (a) fails to make any payment for a period of seven (7) days without reasonable cause, OR (b) if for reasons under the Owner's control, the Owner delays the progress of the Project for more than thirty (30) days without reasonable cause, Contractor may upon seven (7) days additional written notice to Owner, at its option, suspend all work on the Project and/or terminate this Agreement and recover from Owner payment for all work executed and for proven loss with respect to materials, equipment, tools, construction equipment, machinery, value of project management performed, mobilization and demobilization.

19. Investigation/Knowledge of Conditions. Subsurface Conditions/Utilities. Contractor has made no independent study or analysis of subsurface conditions, or latent conditions of the Site. It is agreed that all risks related to such conditions are allocated to the Owner by this Agreement. In the event of discovery of any unusual or abnormal subsurface conditions, the Contractor shall so notify the Owner, together with an estimate of the resulting increases in the costs of construction; whereupon at the Owner's election, this Agreement may be terminated or the Owner elect to pay such increased costs in a timely manner upon completion of that phase or portion of construction affected. In the event of termination, the Contractor shall be paid for all work executed and for proven loss with respect to materials, equipment, tools, construction equipment, machinery, value of project management performed, mobilization and demobilization, including reasonable overhead, profit and other costs applicable to the Project.

20. Notice Provisions. Notices to the parties under this Agreement shall be in writing and shall be effective when: (i) actually delivered in person; (ii) upon receipt or refusal if mailed by certified or registered mail, postage pre-paid, return receipt requested, (iii) three days after being deposited in the U.S. First Class mail and addressed to the party at the address stated in this agreement or such other address as any party may designate by written notice to the other party(ies), or (iv) upon confirmed facsimile or email transmission.

21. Dispute Resolution.

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- 21.1 Arbitration. Any dispute or claim arising out of or relating to this Agreement, or breach or performance thereof, shall be arbitrated under the then current American Arbitration Association Construction Industry Arbitration Rules. An award in arbitration is binding and may be entered as a judgment in a court of competent jurisdiction.
- 21.2 Attorney's fees. In any action or proceeding between the Owner and Contractor, the prevailing party is entitled to an award of reasonable attorney's fees and costs.

22. Modification. This Agreement may not be modified or amended except by written documents signed by both parties.

23. Miscellaneous Provisions.

- 23.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents.
- 23.2 Waiver/non-waiver. Any delay in the enforcement of any provision of this Agreement in one instance shall not constitute a waiver of the right to later enforce such provision in the future.
- 23.3 Captions. The captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision contained herein.
- 23.4 Severability. If any provision of this Agreement shall be held to be invalid or unenforceable to any extent, the remainder of this Agreement shall remain in full force and effect.
- 23.5 Assignment. Neither Owner nor Contractor shall assign this Agreement or any benefits, obligations, rights or amounts payable or due hereunder without the prior written consent of the other party to this Agreement.
- 23.6 Hazardous Materials. Contractor has not made any investigation of the Construction Site with regard to the existence of any Hazardous Materials. The Owner hereby represents and warrants that there are no Hazardous Materials upon or under the Construction Site or within any improvements located upon the Construction Site, if applicable. Owner hereby agrees to indemnify, defend and hold Contractor harmless from any damages, claims and/or expenses arising out of the discovery of any such Hazardous Materials on or under the Construction Site preexisting this Agreement. Contractor may at its sole option terminate this Agreement without any liability whatsoever if any hazardous materials are discovered on or under Construction site.
- 23.7 Interpretation. This Agreement shall not be construed against the party drafting it. The parties acknowledge the opportunity to seek independent counsel with respect to the meaning and effect of the language herein.

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23.8 Governing Law/Venue. This Agreement shall be governed by the laws of the State of Washington. Venue for disputes is Kittitas County, Washington.

CONTRACTOR
Patriot Builders, LLC
1005 Allenwhite Drive
Richland, WA 99352
(509) 205-9411


Misipati Semir Bird, Principal

DATE: 8/10/2018

OWNER(S)


Richard Valore, Owner


Robinette Valore, Owner

DATE: 8/7/2018

Dick & Robin Valore Construction		
Cost Breakdown		
Description	Projected Cost	Projected Cost
Soft Costs		\$ 276,22
Cost per SF		
Plans: Architectural		
Plans: Engineering		
Suncadia Design Review Fees		
Land Cost		
Kittitas County Permitting		
Construction Costs		
Sitework		Projected Cost
Foundation Material and Labor		\$ 18,990.00
Drainage & Utilities		\$ 28,950.00
Flatwork		\$ 9,800.00
Flatwork		\$ 18,675.00
Framing Material		\$ 79,500.00
Framing Labor		\$ 87,988.00
Siding material and Labor (includes Tonge & Groove porch cedar)		\$ 49,895.00
Exterior Doors		\$ 8,500.00
Windows and Siders		\$ 28,998.00
Roofing		\$ 19,895.00
Masonry Material & Labor		\$ 23,995.00
Electrical Rough and Trim		\$ 23,500.00
Structured Audio/Security/Smart Wiring		\$ 4,500.00
Plumbing with Fixtures		\$ 28,000.00
HVAC		\$ 28,798.00
Fireplace & Chimney Cap		\$ 5,795.00
Insulation (including roofing)		\$ 24,898.00
Drywall		\$ 23,995.00
Interior/Exterior Painting Material and Labor		\$ 17,989.00
Garage Doors		\$ 6,995.00
Gutters		\$ 2,500.00
Interior Trim Materials		\$ 32,000.00

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Interior Trim Labor	\$	28,000.00
Shelving	\$	5,800.00
Cabinets/Vanities/Jewelry	\$	22,998.00
Countertops	\$	14,989.00
Bath Hardware	\$	2,800.00
Mirrors	\$	2,500.00
Shower Doors	\$	6,895.00
Door Hardware	\$	3,500.00
Light Fixtures	\$	7,980.00
Carpet	\$	12,500.00
Tile Labor	\$	7,500.00
Tile Material	\$	6,800.00
Hardwood Labor	\$	5,900.00
Hardwood Material	\$	7,500.00
Fire Sprinkler System	\$	10,500.00
Appliances	\$	12,995.00
Steel Framing	\$	13,985.00
Equipment (hoist, scaffolding, forklift, etc.)	\$	7,500.00
Site Management Labor	\$	55,000.00
MISC. Commissions and Fees	\$	15,000.00
Other Costs	Projected Cost	
Landscaping & Builders	\$	14,988.00
Total Hard Construction Costs	\$	837,786.00
Builder Fee	\$	129,000.00
Total Construction Cost	\$	966,786.00
Sales Tax 8.2%		8.00%
Sales Tax Total	\$	77,342.88
Total Project Cost	\$	1,044,128.95

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Valore - Patriot Builders, LLC Spec Sheet

The following specifications are the basic construction materials standards for Patriot Builders. The Valore build will have a contemporary lodge design with a modern flair. Finishes will reflect the aforementioned design which may require changing products within the same price range, but more modern, to avoid additional cost.

- All construction shall meet or exceed local, state, and federal building codes.
- These specifications are to be used in conjunction with plot plan and marketing plans.
- All written specifications take precedent over construction drawings.
- These specifications are intended for the express use of the seller and are subject to change at any time prior to sale of a home.

Utilities:

- Underground water, power, telephone, TV cable, Internet, and natural gas
- Underground to sanitary sewer system

Heating & Air Conditioning

- Heating: Carrier natural gas furnace - the 59SC5A080S17-16 gas furnace features a high efficiency 95% AFUE rating.
- Air Conditioner: Carrier 24ACC648A003 high efficiency 16 SEER AC
- Water Heater: Whirlpool 50-Gallon 10-Year Tall Natural Gas Water Heater

Electrical:

- Standard 200 AMP underground service, with can and decorative lights to code. Wiring for (3) telephone outlets, (3) video outlets, and (1) network outlet, DSL and Digital Satellite Service capabilities.
- Valore home will have upgraded structured wiring for 7.1 entertainment system and smart TVs. Wired for whole house WIFI.

Roof drainage

Natural runoff to grade - away washed rock swale system

Footing Drains.

- 4" perforated PVC surrounded with 1-1/2 washed rock, covered with filter fabric located at the perimeter of the foundation footing connected to storm drainage system.

Landscaping:

- Professionally designed front yard. Front yard will include Suncadia grass seed mix, bark, trees, shrub. Rear yards will include bark areas only. Grass areas will be prepared with topsoil and Suncadia grass seed mix.

Concrete

Foundation 2.5-3" crawl space.

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- Steel reinforced concrete footings and walls engineered per plan.
- Anchor bolts 5/8" dia. by 10" long will be installed per code, securing the house to the foundation. Hurricane straps used on walls as required.
- Garage: Steel trowel finish. Minimum strength of 3000 psi at 28 days.
 - o Garage floors will be sloped to provide positive drainage to front of garage.
- Exterior Driveways, walkways & patios will be exposed aggregate.
- Patio concrete to extend across to the master suite.

Framing:

- Wood in contact with concrete - Pressure treated or cedar
- Structural framing wood - TJI joists; Stud grade vertical members.
- Flooring - 3/4" T&G, nailed, glued and screwed to joists
- Exterior House Walls - 2" x 6" sheathed with 7/16" OSB
- Roof - Engineered trusses and wood over framing sheathed with 7/16" OSB
 - o Trusses - Engineered and manufactured from structural rated wood.
 - o Structural headers and girders are used for longer spans.
- Gable porch added with exposed rafters.
- Note: Tongue & Groove soffitting is an upgrade.

House Wrap.

- Standard (type) house wrap underlayment standard for entire building envelope

Insulation, Upgraded:

- 6-mil poly vapor barrier in crawl space. Polycel foam caulk per code
- WALLS R-21 Batts
- UNDER FLOORS R-30 Batts
- CATHEDRAL CEILING R-49 Batts
- FLAT CEILING R-49 Blown
- Wrap duct work, exhaust fans
- Tenting sprinklers system
- Sound reduction is optional

Siding:

- Tight-knot cedar board with 1x2 tight-knot cedar batten (per original plan). Solid tight-knot cedar trim boards (per plan)

Paint:

- Interior - 1 coat flat wall paint to ceilings and walls (including garage) 1 coat satin in all standard wet areas kitchen, laundry, and baths.
- Exterior - Semi-transparent stain on body and solid stain on all trim. Clear coat on all timbers. Satin on garbage room doors and garage doors

Drywall

17
 12/12/12
 KAC
 12

Finished

• Drywalled with square corners, orange peel texture and pva vapor barrier. Garage finished with square corners and texture, same as house.

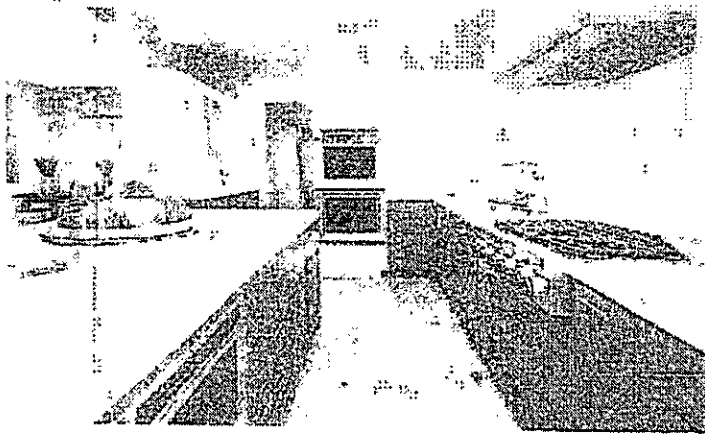
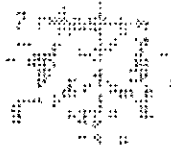
Millwork:

- Base: 5 1/4" tall MDF throughout home (per plan). 3 1/4" MDF Casing throughout. Painted a grey enamel based on customer's paint code.
- Stair newels and trim will be espresso stained hemlock to accent the aforementioned (based on customer stain preference).
- Open rail details at entry stair (per plan), with sloped knee wall and hemlock Craftsman starter post. Includes stained Hemlock 6210 rail, standard wrought iron balusters with decorative "knuckle" detail (1-2-1 sequence).

Cabinets:

American Woodmark cabinets Reading Collection in kitchen and bathrooms – custom fitted. See picture attachments. White uppers and grey base cabinets. Island is in solid grey color.

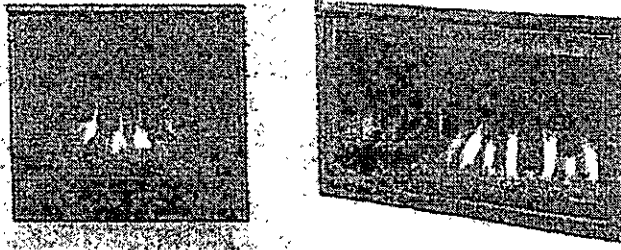
Back side



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Gas Fireplace

- HeatnGlo DV3732 LP fireplace (Builders Model) includes Blower and gas piping or Cosmo 32 Rectangle version
- Direct Vent Gas Fireplace
- Safety Screen Included
- Larger fireplaces are an upgrade

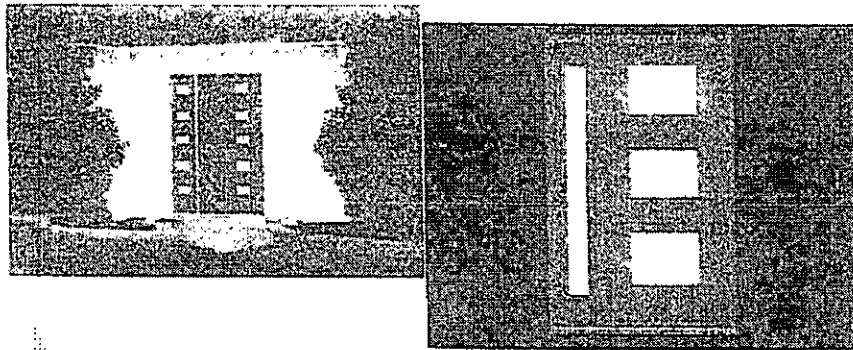


Windows

- Milgard tan vinyl Montecito, DG, Low-E, Argon, Screens, as needed, tempered as needed.

Exterior Doors

- 8' Contemporary (similar to picture) solid core - stained



Hardware

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K
20

- Kwikset oil rubbed bronze lever hardware. A dead-bolt will be installed on all entry doors. All baths/powder rooms and master bedroom will be installed with privacy locks. Oil rubbed bronze knobs at all cabinet doors and drawers.

Mirrors & Shower Doors:

- 3/16" plate glass mirrors with swiped edges. Mirror width shall be vanity width. Mirror height shall be backsplash to 84".
- Master bath to have 3/8" glass shower enclosure.

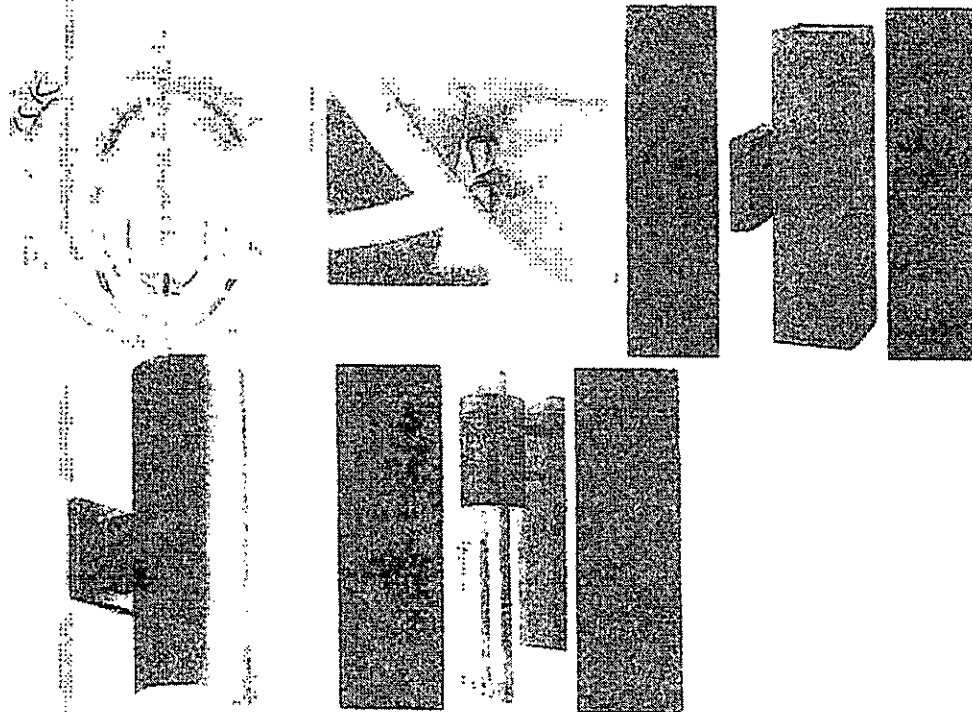
Closets:

- All closets to have wire shelving.

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 plates
 in master

Lighting:

Modern Decorative light fixtures shall be installed in the entry, dining room, kitchen island, all baths, exterior garage, and exterior doors per plan. Ceiling half dome fixtures in walk in closets and utility room. 6" recessed lighting with white trims shall be installed throughout the home unless area is noted above as having a decorative light fixture.



Garage to House Door

Handwritten initials:
 KAC
 RC

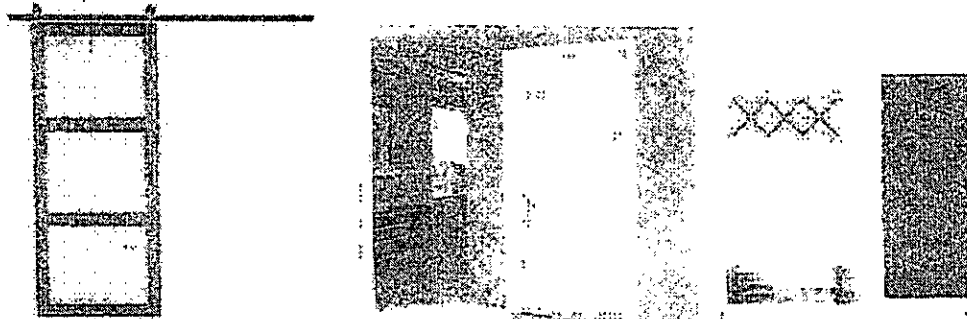
Solid core, fire rated to match interior two panel doors:

Garage Door:

- o Wayne Dalton 8'x8' 9100 insulated carriage style:

Interior Doors:

- o 5-Panel Shaker Contemporary 3-Panel Frosted Barn Door



Roofing:

- o Composition GAF Monaco Or Camelot II shingles using 6 to 7 nails per shingle to achieve 130 mph wind rating.
- o 50 Year GAF Deluxe Warranty with GAF Roof only
- o New pipe boots, flapper vents, and ridge venting.
- o Color: Charcoal

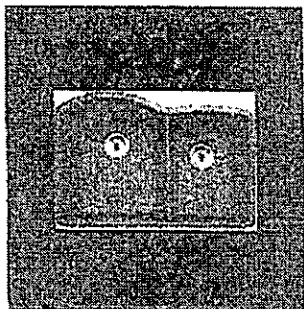
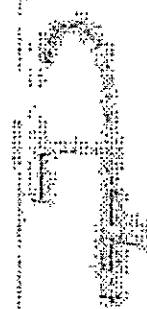
Plumbing:

o Hose bibs, Rough in for ice maker, recessed water and drain box for washer, insulated pipes:

(Upgrade to hot water recirculation system — add \$1,000)

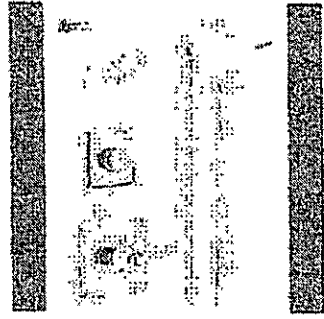
- o Kitchen: Under mount Stainless Steel — Delta 9178 Kitchen Faucet (granite upgrade included)

Handwritten initials/signature

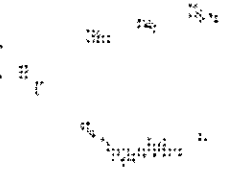


Faucet and Granite Sink Upgraded for Valore.
 Garbage Disposal, Waste King Legend Series 1/2 HP Continuous Feed Garbage Disposal with
 Power Cord - (L-2600).

Bathroom:
 Saxton 8 in. Widespread 2-Handle High Arc Bathroom Faucet and Showerhead in Tuscan Bronze.
 (All Bathrooms)



- Powder Room Vanity
- American Woodmark with Quartz Counter
- Master Bath and Guest Room Sinks - Kohler Archer Drop-In Vitreous China Bathroom Sink in
 White with Overflow Drain; Quartz counter American Woodmark Cabinets



BRU
 BUC

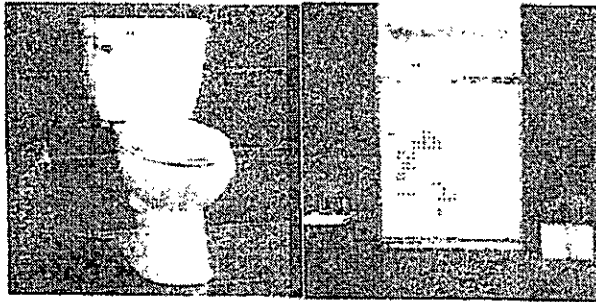
Bathroom Toilet.

American Standard

Miseno MNO1503C High Efficiency Elongated Toilet in White Comfort Height Design

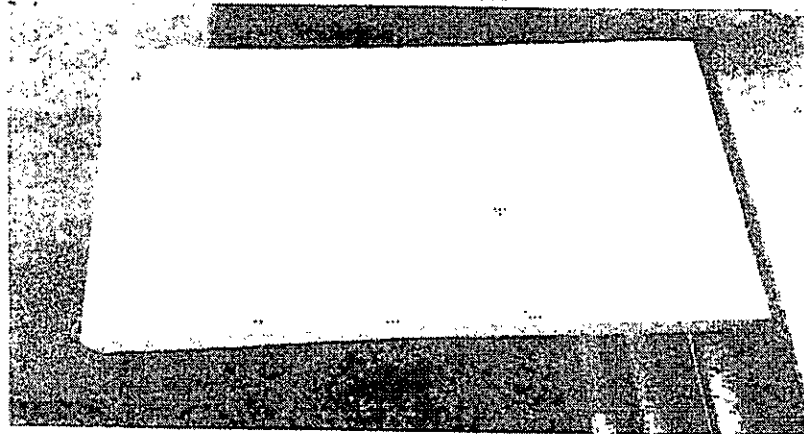
Tub Shower

☐ Combination will be installed in the upstairs bathroom



Hard Surfaces.

- ☐ Kitchen and Vanity countertops are granite slab Venitian Gold
- ☐ Great Room and Hall Flooring is engineered wood flooring (see pictures)
- ☐ Wet room floors and showers are tile (see picture)
- ☐ Backsplashes are mosaic glass
- ☐ Bedrooms are carpet



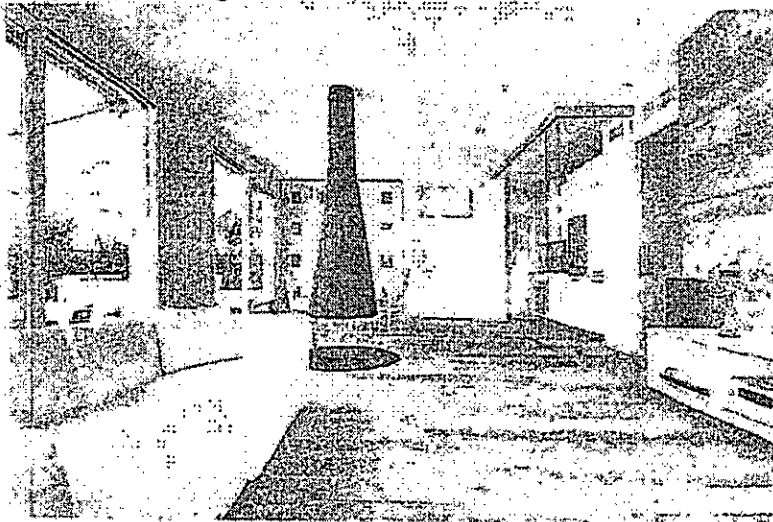
Quartz upgrade (Cultured Marble look)

Wood Flooring

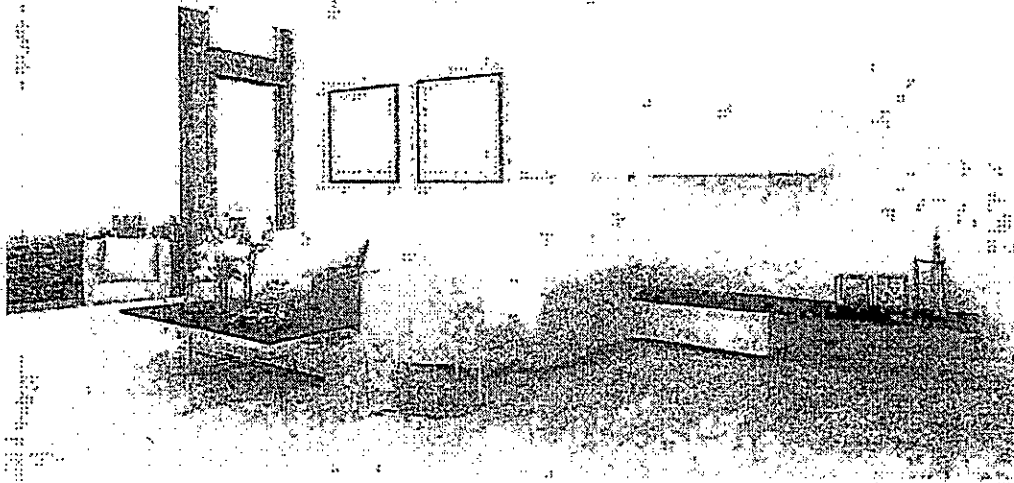
- ☐ Engineered hardwood for weather/temperature and animal resiliency. Grey/Taupe color

Handwritten signature and date:
KFD
7/26

- Wood flooring will be installed throughout the main floor public areas to include kitchen, hall, livingroom, and dining room



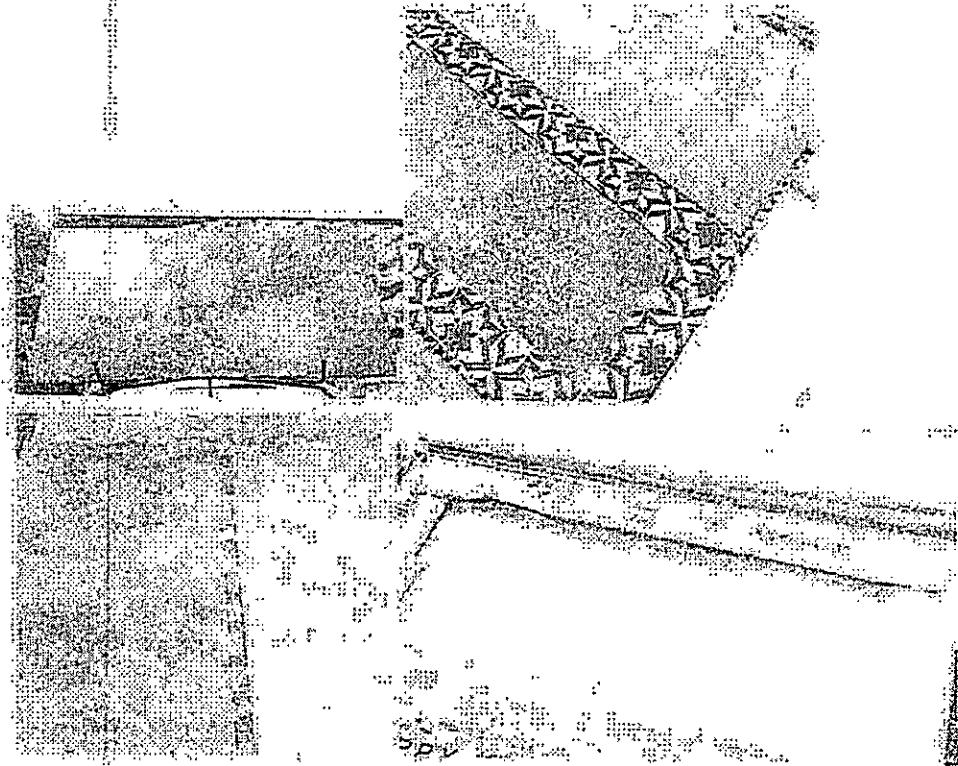
Stairs too



Tile Flooring.

- Large concrete look tile for wet rooms. See photos
- Installed in laundry, mud room, bathrooms, and master shower wall.

KP
200



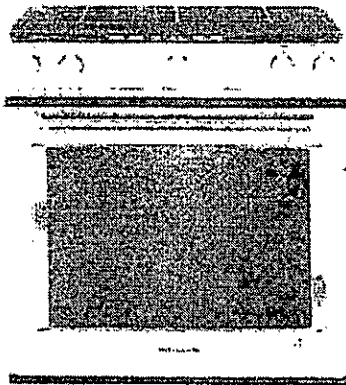
Carpet:

(Carpet will be installed in all bedrooms and throughout the upstairs living space.)

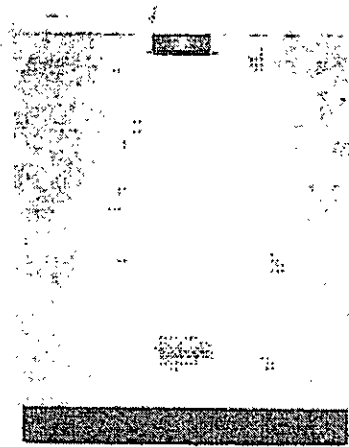
Appliances:

Range: KitchenAid 5-Burner 5.8-cu-ft Slide-in Convection Gas Range (Stainless Steel) (Common 30-in, Actual 29.875-in)

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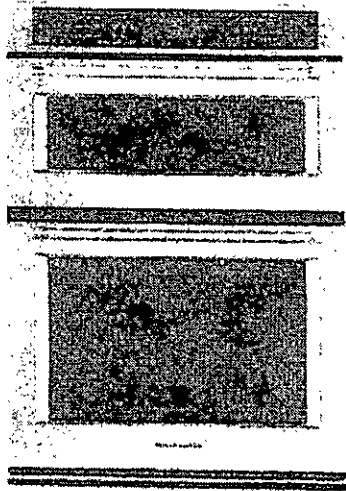


Dishwasher KitchenAid 46-Decibel Built-in Dishwasher (Stainless Steel) (Common 24-in, Actual 23 875-in) ENERGY STAR

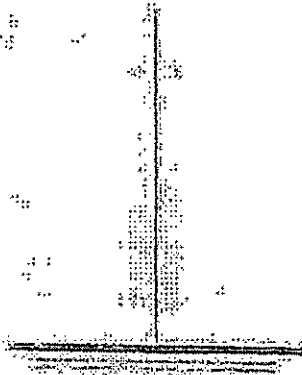


Built-In Cooking KitchenAid Self-Cleaning Convection Microwave Wall Oven Combo (Common 30-in, Actual 30-in)

221
76



Refridgerator, KitchenAid 20-cu ft Counter-Depth French Door Refrigerator with Ice Maker (Stainless Steel) ENERGY STAR



REC
REC

Driveway – Patios – Walks:

- Concrete patio, and front porch. Asphalt parking pad to road and walk to front porch.

Landscaping: Upgraded for Valore:

- Suncadia natural grass mixture to blend with surrounding areas.
- Boulder wall installation for custom driveway.
- Boulder decorative for plantings.

2/21
KPL
2/21



AMERICAN
ARBITRATION
ASSOCIATION

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION

P.O. Box 19609
Johnston, RI 02919

March 15, 2022

Richard Valore
581 Steam Gin Loop
Cle Elum, WA 98922
Via Email to: rvalore@msn.com

Patriot Builders
7601 West Clearwater Avenue, Suite 206
Kennewick, WA 99336
Via Email to: semi@patriotbuilt.com
Via Certified Mail # 9489 0090 0027 6215 9911 53

Case Number: 01-21-0016-9643

Richard and Robinette Valore

-vs-

Patriot Builders and Misipati Bird

Dear Parties:

By direction of the arbitrator, we herewith transmit to you the duly executed Award in the above matter.

This serves as a reminder that there is to be no direct communication with the arbitrator. All communication shall be directed to the American Arbitration Association (the AAA).

A financial reconciliation has been conducted and each party will receive a separate financial accounting for this matter. If a party had any unused compensation deposits, we have issued a refund check that should arrive in the mail shortly.

If a party has an outstanding balance, that party will receive an invoice/statement each month until the balance is paid. Invoice/statements will only reflect credits made as of the date of mailing. You may register, view your balance and make payments on our website at www.adr.org.

Note that the financial reconciliation reflects costs as they were incurred during the course of the proceeding. Any apportionment of these costs by the arbitrator, pursuant to the Rules, will be addressed in the award and will be stated as one party's obligation to reimburse the other party for costs incurred. Any outstanding balances the parties may have with the AAA for the costs incurred during the arbitration proceedings remain due and payable to the AAA even after the final award is issued, and regardless of the apportionment of these costs between the parties in the award.

In the normal course of our administration, the AAA may maintain certain documents in our electronic records system. Such electronic records are not routinely destroyed and do not constitute a complete case file.

Pursuant to the AAA's current policy, in the normal course of our administration, the AAA may maintain certain electronic case documents in our electronic records system. Such electronic documents may not constitute a complete case file. Other than certain types of electronic case documents that the AAA maintains indefinitely, electronic case documents will be destroyed 18 months after the date of this letter.

We appreciate your selection of the AAA as your alternative dispute resolution provider in this matter. As always, please do not hesitate to contact me if you have any questions.

Sincerely,

Pro Se Manager 8
Manager of ADR Services
Email ProSeManager8@adr.org

cc:

Misipati Bird
Robin Valore

Ronald R. Leaders, Esq.

**AMERICAN ARBITRATION ASSOCIATION
CONSTRUCTION INDUSTRY ARBITRATION TRIBUNAL
Fast Track Procedures**

<p>RICHARD AND ROBINETTE VALORE Claimants</p> <p style="text-align:center">v</p> <p>PATRIOT BUILDERS LLC AND MISIPATI BIRD, Individual</p> <p>Respondents</p>	<p>Case No. 01-21-0016-9643</p> <p>FINAL ARBITRATION AWARD</p>
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I, Ronald Leaders, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the subject arbitration agreement between the above-named parties and dated August 10, 2018, having been duly sworn and having heard the proofs and allegations of the Claimants, appearing as *pro se*, at an evidentiary hearing held via conference call on February 25, 2022, and the Respondents having failed to appear after due notice by mail in accordance with the Rules of the American Arbitration Association, hereby AWARD as follows.

BACKGROUND INFORMATION PERTAINING TO EVIDENTIARY HEARING

I. An evidentiary hearing was held in this matter on February 25, 2022, by telephone conference call. Claimants participated. Respondents did not participate. Respondents were properly given notice of the evidentiary hearing by the AAA Case Administrator. Respondent did not submit any exhibits or pleading to be considered by the Arbitrator at the hearing. Respondents did not request a postponement of the hearing. The hearing proceeded in accordance with Construction Arbitration Rule R-40 in the absence of Respondents. The hearing was commenced at 8:45 am (after waiting 15 minutes for Respondents to arrive and participate) and was concluded at 10:15 am. All evidence and testimony offered by the Claimants were allowed and considered by the arbitrator.

2. Pursuant to Arbitration Rule R-40, the Arbitrator concluded that the record is not complete at the conclusion of the evidentiary hearing. The Arbitrator requested either party to provide documentation as to the status of the Washington Department of Licensing bond taken out by Patriot Builders, LLC. Claimant provided confirmation from Lexon Insurance Company (the bond surety) and from Washington State Labor & Industries that the bond was in effect and had not been cancelled. Respondents were copied on this submission from Claimants.
3. The Arbitrator also requested documents from Respondents relating to the compliance of Patriot Builders LLC and its managing member, Mr. Bird, with the statutory requirements of winding up its activities as a result of the LLC filing of its Certificate of Dissolution on February 7, 2022. Respondents did not submit any documents in response to this request.
4. The Arbitrator closed the hearing as of March 4, 2022, which was confirmed by the AAA Case Administrator on March 7, 2022.

STATEMENT OF MATERIAL FACTS

5. Claimants desired to build a new residence on land they had previously purchased at 581 Steam Gin Loop, Cle Elum, Washington in the Suncadia development (the "Project").
6. Claimants contacted Suncadia and was provided with a list of featured builders which Suncadia represented had previously built homes in Suncadia. Claimants reviewed the qualifications of four featured Suncadia builders and selected Patriot Builders LLC ("LLC") to be their builder. Mispati Bird was the primary contact of LLC with the Claimants.
7. A construction contract and specifications sheet, dated August 10, 2018, was entered between the Claimants and the LLC (the "Contract"). The Contract was a fixed price contract in the amount of \$966,786.00 plus Washington State sales tax. The project was financed through Home Street Bank, which reviewed and approved all LLC progress and final payment applications. In one instance, Home Street Bank did not approve an

LLC payment application for completion of external staining and interior painting as complete, when the work had not been completed.

8. These claims involve work not performed by the LLC relating to the failure to install a foundation level drainage, failure to install roof ventilation and failure to install exposed aggregate concrete, all as specified and required under the Contract.
9. The LLC was obligated under the Contract to provide a minimum of \$1 million of liability insurance and a \$12,000.00 contractor's bond. The LLC also agrees to provide a one year warranty on work performed with the warranty period commencing on project completion.
10. The Contract provided for an estimated date of Substantial Completion of June 30, 2019. This date was delayed due to Covid-related delays and supply chain problems. Claimants took occupancy on October 1, 2020.
11. Beginning with a rain event on October 11, 2020, and continuing into the Spring of 2021, water intrusion into the basement and crawl space occurred. The LLC's site representative and Mr. Bird were advised of the situation. Mr. Bird promised that he would correct the problems as it was his responsibility.
12. Mr. Bird arranged for contractors with French drain experience from the Tri-Cities area to address the issue. Mr. Valore inquired of these repair contractors why they were not installing a French drain at the foundation level, and they advised Mr. Valore that they were instructed to only install a simple surface level drain with pool liner to address the water intrusion problem. One of the contractors recognized the repair would not be adequate by joking that he hoped the homeowners would enjoy their Koi pond. The repair proved to be inadequate as confirmed by inspections and repair contractors retained by Claimants to fix the problem.
13. On April 30, 2021, attorney Paul McBride sent a form Notice of Claim to the LLC and Mr. Bird of the discrepancies and defects which the LLC and Mr. Bird needed to correct. The LLC or Mr. Bird did not respond to this Notice of Claim and did not initiate any required repair work as requested by the Notice of Claim. I find that the Notice of Claim satisfied the Claimants' obligations under RCW 64.50.020.
14. I find that the LLC acting through Mr. Bird failed to comply with its warranty.

obligations, entitling Claimants to breach of contract recovery for defective or deficient work performed by the LLC.

15. I find that the LLC also breached its contract to properly install a foundation footing drain system and roof ventilation as required under the Contract specifications and accepted construction practices in the Suncadia area.

CLAIMS AGAINST THE LLC

16. **Footing Drains.** Claimants were required to engage a repair contractor to install proper foundation footing drains as specified and as required to avoid the water intrusion problem experienced in the basement and crawl space. LLC attempts to address the water intrusion were unsatisfactory and did not attempt to install any footing level drainage as required by the contract and accepted construction practices. As a result of the lack of proper foundation footing drains, Claimants incurred additional property damage due to collateral damage to the driveway to install the proper drain system, replacement of crawl space vapor barrier due to water damage, and replacement of crawl space HVAC flex vent due to water damage. The LLC was provided an opportunity to correct its defective work but did not do so. The costs incurred by Claimants to address the damages resulting from a failure to install a specified foundation drain were reasonably incurred and were reasonable.

17. Claimants are entitled to recovery of their claimed damages in the amount of \$24,865.49

18. **Roofing.** Claimants were required to purchase and install roof ventilation required to be installed per contract, but which was not installed although contractor invoiced for and was paid for the work. The costs incurred by Claimants to perform the work were reasonably incurred and were reasonable in amount.

19. Claimants are entitled to recovery of their claimed damages in the amount of \$2,560.26.

20. **Concrete.** Contract specifications called for exposed aggregate for exterior walkways, patio, and driveway, but this was not installed for patio. The patio concrete was to

27. Construction Arbitration Rule R-48 c also authorizes the Arbitrator to assess these arbitration fees and compensation expenses among the parties as the Arbitrator deems appropriate. Under these circumstances, it is appropriate to assess all proceeding fees and compensation against the Respondents.
28. Claimants are entitled to recovery of their claimed costs and expenses in the amount of \$2,800 00
- 29 **Negligent Construction.** Claimants have asserted a claim of negligent construction against the LLC. Under Washington law, a claim of negligent construction is not recognized when a contract is in place to govern the rights, duties, and obligations of the parties. *Stuart v Caldwell Banker Commercial Group, Inc.*, 109 Wn.2d 406(1987). Claimants' claim for negligent construction is denied.

CLAIM AGAINST MISIPATI BIRD AS AN INDIVIDUAL

30. Claimants have made a claim for recovery of damages against Misipati Bird as an individual. The LLC was the contracting party in this matter. Mr. Bird executed the Contract as "principal" of the LLC. Based on the State of Washington corporate records publicly available, Mr. Bird is the managing member of the LLC.
31. Claimants have not alleged any individual actions which create individual liability during the performance of the construction work. It appears all actions between Mr. Bird and the Claimants involved Mr. Bird acting in his capacity of managing member of the LLC.
32. The general rule under Washington law is that an LLC member does not have individual liability for any LLC liabilities. However, several exceptions exist under which LLC members may have individual liability for LLC acts or liabilities. LLC members may be individually liable for their individual tortious acts, but no evidence was provided to indicate that actions of Mr. Bird during the performance of the construction contract (excluding any winding up responsibilities discussed below) were tortious so as to create any individual liability to the Claimants.

33. Another exception allowing individual member liability for actions of the LLC arises under the doctrine of piercing the limited liability company veil if respecting the limited liability company form would work injustice. A claimant seeking to disregard the LLC liability protections must show the limited liability company form was used to violate or evade a duty and that the limited liability company form must be disregarded to prevent loss to an innocent party. *Chadwick Farms Owners Ass'n v FHC, LLC*, 166 Wn.2d 178 (2009).
34. The LLC was formed February 23, 2018, during the period in which Claimants were interviewing potential contractors and approximately six months prior to the execution of the Contract. Suncadia had indicated that Mr Bird and Patriot Builders had constructed other prior projects at Suncadia, but Mr Bird did not participate in the hearing to explain why he formed a new limited liability company to perform the contract for the Claimants. The LLC was administratively dissolved on July 3, 2021, for failure to file an annual report. The Contract required the LLC to provide commercial insurance coverage. LLC cancelled its commercial liability insurance on July 30, 2021, after renewing the policy on June 27, 2021. The insurance was cancelled prior to the occupancy by the Claimants and prior to the expiration of the Contract's warranty period. LLC's contractor's license was cancelled on July 30, 2021, due to cancellation of its required insurance. The LLC filed a Certificate of Dissolution on February 7, 2022, several days after Claimants filed an expanded Statement of Damages in this arbitration proceeding on February 4, 2022. Taken as a whole, these events provide an inference that Mr Bird created the LLC, cancelled the insurance and dissolved the LLC in an effort to minimize or avoid financial responsibility for any claims or liabilities arising from the Contract. Mr Bird did not participate in the evidentiary hearing to provide testimony or other evidence to refute this inference.
35. During early 2021, the Claimants and the LLC acting through Mr. Bird worked to address many punchlist items and more serious construction deficiencies, including the water intrusion and mold remediation issues. In early April 2021, the Claimants sent to Mr. Bird the mold remediation report. One day later on April 2, 2021, Mr Bird texted Claimants that "I will cease and desist immediately. I'll notify my insurance company

and attorney ” There were no further communications from the LLC or Mr. Bird on the outstanding issues with the Claimants after April 2, 2021. The deficiencies and punchlist items remained unaddressed by the LLC or Mr. Bird.

36. After April 2, 2021, Mr. Bird as the LLC managing member remained aware of the substantial claims which the Claimants would be making against the LLC if the LLC did not address those claims and deficiencies. Instead of using the financial resources of the LLC's commercial insurance policy to help address the issues (as he indicated he planned to do on April 2, 2021), the insurance policy was instead cancelled on July 30, 2021. The LLC filing of its Certificate of Dissolution several weeks prior to the evidentiary hearing and several days after Claimants confirmed their damages suggests a course of action in which Mr. Bird as the LLC managing member was seeking to avoid financial liability by taking corporate actions to minimize or eliminate LLC financial resources which may be subjected to the Claimants' damage claims.
37. After the evidentiary hearing was concluded, the Arbitrator requested the LLC provide financial and accounting records to allow evaluation of whether the LLC winding up actions were consistent with statutory requirements and to evaluate if LLC assets and financial resources were being depleted to avoid payment of any liability claims. These requests were made to allow the Arbitrator to evaluate whether the conditions allowing disregard of the limited liability company form was present. The LLC and Mr. Bird did not provide any post-hearing documentation of accounting and financial records as requested by the Arbitrator to evaluate whether there was a basis for individual liability of Mr. Bird. The failure to provide the requested post-hearing is considered another element in assessing all facts and circumstances with a negative inference that the requested information would not have supported a defense from Mr. Bird that he does not have individual liability.
38. Another exception allowing individual member liability for actions of the LLC arises if a member responsible for winding up the affairs of the LLC does so improperly. Following and during the period of winding up, the LLC that is dissolved must pay or make reasonable provision for paying all claims and obligations known to the company.

RCW 25 15.300(2), Chadwick Forms Owners Ass'n v FHC, LLC, 166 Wn.2d 178 (2009).

- 39 After the evidentiary hearing was concluded, the Arbitrator requested the LLC provide financial and accounting records to allow evaluation of whether the LLC winding up actions were consistent with statutory requirements and to evaluate if LLC assets and financial resources were being depleted to avoid payment of any liability claims. These requests were made to allow the Arbitrator to evaluate whether the conditions allowing disregard of the limited liability company form was present. The LLC and Mr. Bird did not provide any post-hearing documentation of accounting and financial records as requested by the Arbitrator to evaluate whether there was a basis for individual liability of Mr. Bird relating to winding up of the LLC. The failure to provide the requested post-hearing submissions is considered another element in assessing all facts and circumstances with a negative inference that the requested information would not have supported a claim from Mr. Bird that he does not have individual liability.
- 40 Considering the evidence and testimony, reasonable inferences drawn by the Arbitrator from the actions of the LLC and Mr. Bird and the failure of the LLC or Mr. Bird to provide the requested financial and accounting information requested by the Arbitrator in his February 25, 2022 post-hearing order for supplemental information, the Arbitrator has determined that Misipati Bird is individually liable to the Claimants for all damages and amounts owed by the LLC to the Claimants.

INTEREST

- 41 Claimants are entitled to pre-award interest on those claims which are liquidated in amount and for which entitlement was established during the evidentiary hearing. Claimants did not specifically request recovery of interest in their Demand for Arbitration. However, it is noted that Claimants were proceeding pro se in this matter and did not have the assistance of legal counsel. Construction Arbitration Rule R-48-d states the Arbitrator may award interest as the Arbitrator may deem appropriate. The damages requested for mold remediation were not documented as having been paid and

are therefore not subject to any award of pre-award interest. The remaining damage claims for drainage, roofing, concrete, mold inspection and AAA administrative fees are liquidated in amounts and are subject to pre-award interest, given the circumstances of this dispute.

42. The Contract provides at section 5.2.3.2 that past due payments will be entitled to 1.5% interest per month. While this provision is contained in the contractor payment section, the provision expresses an intention that past due payments or amounts owed, including advances made by Claimants to perform work invoiced but not performed by the LLC, should be entitled to recovery of interest. The Arbitrator deems the Washington statutory legal interest rate of twelve percent (12%) per annum to be the appropriate pre-award interest rate.
43. The amount of pre-award interest on liquidated claims from the date of payment through the date of this Award, is \$2,925.46
44. Claimants are entitled to recovery of post-award interest in the amount of twelve percent (12%) per annum commencing at 15 days after the date of this Award.

ATTORNEYS' FEES, COSTS AND EXPENSES

45. The Contract provides at section 21.2 that the prevailing party in any dispute is entitled to an award of reasonable attorney's fees and costs. The Claimants are determined to be the prevailing parties in this dispute on all claims and issues at issue in this proceeding. Claimants have not requested attorney's fees and no award of attorney's fees is included in this Award.
46. The administrative fees and expenses of the American Arbitration Association totaling \$1,550.00 shall be borne by Respondents, and the compensation of the arbitrator totaling \$1,250.00 shall be borne by the Respondents. Therefore, Respondents Patriot Builders LLC and Misipati Bird shall reimburse the sum of \$2,800.00 to Claimants Richard Valore and Robinette Valore. To avoid any ambiguity, this reimbursement of arbitration fees and expenses is included in the total Award amount of \$60,369.46

DAMAGES

Summary of Claims and damages awarded to Claimants Richard Valore and Robinette Valore are summarized as follows:

• Drainage Claim	\$24,452.00
• Roofing Claim	2,560.00
• Concrete Claim	5,300.00
• Mold remediation and inspection	22,332.00
• Reimbursement of AAA Fees and Payment	2,800.00
• Pre-award Interest	<u>2,925.46</u>
• Total Damages Awarded	\$60,369.46

FINAL AWARD

Accordingly, the Arbitrator hereby awards to Richard Valore and Robinette Valore from Patriot Builders LLC the amount of SIXTY THOUSAND THREE HUNDRED SIXTY-NINE AND 46/100 DOLLARS (\$60,369.46).

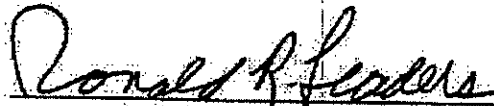
In addition, the Arbitrator hereby awards to Richard Valore and Robinette Valore from Misipati Bird, an individual, the amount of SIXTY THOUSAND THREE HUNDRED SIXTY-NINE AND 46/100 DOLLARS (\$60,369.46).

The above sums are to be paid on or before 15 calendar days from the date of this Award.

This Final Arbitration Award is in full settlement of all claims submitted in this arbitration. Any claims not expressly addressed are denied.

I, Ronald R. Leaders, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

DATED this 9th day of March 2022



Ronald R. Leaders, Arbitrator

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AMERICAN ARBITRATION ASSOCIATION
CONSTRUCTION INDUSTRY ARBITRATION TRIBUNAL
Fast Track Procedures

RICHARD AND ROBINETTE VALORE
Claimants,

Case No: 01-21-0016-9643

v.

MOTION TO MODIFY FINAL
ARBITRATION AWARD

PATRIOT BUILDERS LLC AND MISIPATI
BIRD, Individual

Respondent(s).

COMES NOW Respondents through their attorney of record, Jason Celski of CELSKI LAW FIRM P.L.L.C., and moves this agency for an order reconsidering the Final Arbitration Award dated March 9, 2022.

I. MODIFICATION STANDARD

Pursuant to the American Arbitration Association Construction Industry Arbitration Rules and Mediation Procedures, a party may move the arbitrator to modify the final arbitration award no more than twenty days after the final award has been sent to the parties. Pursuant to R-51, the arbitrator is not empowered to redetermine the merits of any claim already decided but may correct errors in the final award.

MOTION TO MODIFY ARBITRATION - 1
AWARD

CELSKI LAW FIRM P.L.L.C.
6725 W Clearwater Avenue
Kennewick, WA 99336
(509) 735-5683

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II. FACTS AND ARGUMENT

Insufficient notice, Respondent(s) did not receive proper notice of Claimants' initiation of arbitration. A motion to modify or set aside the Final Arbitration Award is appropriate.

Respondents maintain that notice of Claimants' initiation of arbitration was insufficient. Respondents did not receive proper notice of the arbitration claim. Respondents affirm that mail pertaining to this issue had been sent to a prior business address of 7601 W. Clearwater Avenue, Suite 206, Kennewick, Washington. Documentation sent to this address was set to be forwarded since Respondent's business was winding up. This caused a delivery delay and therefore mail sent to Respondents was not received until after the evidentiary hearing had been held.

The evidence contained within the Final Arbitration Award shows that Respondent(s) did not have proper notice. Respondents did not appear at the evidentiary hearing, nor was any response received by the arbitrator for post-hearing requests. Therefore, Respondents were in essence found to be in default with a final arbitration award being produced subsequent to the evidentiary hearing. Insufficient notice led to Respondents' failure to appear and arbitration proceeding without their presence or knowledge.

RCW 7.04A.090 mandates:

(1) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties, or in the absence of agreement, by mail certified or registered, return receipt requested and obtained or by service as authorized for the initiation of a civil action. The notice must describe the nature of the controversy and the remedy sought.

1 Claimants failed to comply with RCW 7.04A.090 in that, no certified mail with return receipt
2 was received by Respondents initiating arbitration prior to the evidentiary hearing. Further, to
3 initiate a civil action, personal service is required and no personal service was perfected in this
4 matter

5 Due to the lack of notice of the initiation of arbitration, Respondents also failed to appear at a
6 Preliminary Telephone Management Hearing pursuant to F-7 of the Construction Industry
7 Arbitration Rules and Mediation Procedures. This failure to appear should have warranted
8 further investigation by the arbitrator to ensure proper service had been perfected. The improper
9 notice(s) in this matter substantially prejudiced the rights of the Respondents.

10 Respondents move for an order modifying or in the alternative, setting aside the Final
11 Arbitration Award allowing these parties to participate in a meaningful arbitration which will
12 allow Respondents to provide adequate evidence to support its position.

13
14 **III. CONCLUSION**

15 For the reasons stated above, Respondents respectfully request that the Arbitrator enter an order
16 modifying or in the alternative, setting aside the Final Arbitration Award entered on March 9,
17 2022 and find that there was improper notice of the initiation of arbitration by claimants setting
18 aside the award.

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21 DATED this 24 day of March, 2022.

22
23 **CELSKI LAW FIRM PLLC**

24
25 Jason A. Celski WSBA No. 37848
26 Attorney for Respondents

MOTION TO MODIFY ARBITRATION - 3
AWARD

CELSKI LAW FIRM P.L.L.C.
6725 W. Clearwater Avenue
Kennewick, WA 99336
(509) 735-5683

Valore Response to Motion to Modify Award

To: Pro Se Manager 8, Jason Celski, etc.

Subject: Valore Response to Motion to Modify Award of Case #01-21-0016-9643

Thank you for allowing us to respond to the motion to modify the final arbitration award. Below, is our rebuttal to this request.

Agreement to Arbitrate

The Respondent's assertion there is an absence of an arbitration agreement in place between the parties is incorrect. The Respondent and Claimant agreed to

"Arbitrate any dispute or claim arising out of or relating to this Agreement, or breach or performance thereof, shall be arbitrated under the then current American Arbitration Association Construction Industry Arbitration Rules. An award in arbitration is binding and may be entered as a judgment in a court of competent jurisdiction."

This is called out specifically in Paragraph 21 of the Patriot Builders, LLC, Valore Residential Construction Contract signed by both parties on August 10, 2018, and August 7, 2018, respectively. When both parties signed this contract, they agreed to follow the rules spelled out in the American Arbitration Association (AAA) Construction Industry Arbitration Rules and Procedures.

Inadequate time to prepare for Arbitration.

The allegation contained in the motion to modify is that communication with the Respondent was not accomplished through certified sources which delayed the Respondent's ability to prepare for the Evidentiary Hearing. This is incorrect.

The AAA Construction Industries Arbitration Rules state

R-44. Service of Notice

b) "The AAA, the arbitrator and the parties may also use overnight delivery, electronic fax transmission (fax), or electronic mail (email) to give the notices required by these rules. Where all parties and the arbitrator agree, notices may be transmitted by other methods of communication."

The Claimant filed an initial arbitration demand through the appropriate matter of record (AAA Website) on October 18, 2021. This included payment of the initial administrative fees. An email (attached) was sent to the Respondent's business email (semi@patriotbuilt.com) and personal email (misipati@frontier.com) the same day making the Respondent aware of the filing. In addition, the filing document, summary of controversy, damages and remedy sought were attached. The assigned filing number of the complaint was also included for the Respondent's information (reference R-4, Filing Requirements under Arbitration Agreement in a Contract). Email was the accepted and standard mode of communication between the Respondent and Claimant during the over two-year construction process. The Claimant continued this form of communication through the warranty period and through the filing of the Dispute with the AAA on October 18, 2021.

At this point, the AAA assumed responsibility of communication between the parties. Formal notification of the filing along with additional instructions on the rules, etc. was sent from the AAA to

both the Respondent and Claimant via email on Wednesday, November 10, 2021. Those emails were delivered to semi@patriotbuilt.com, misipati@frontier.com, rvalore@msn.com and rvalore@gmail.com – all known email addresses for the parties in question.

F-6. Service of Notice for Hearing

"In addition to notice being provided according to the means specified in R-44, parties shall accept notice of hearings, including preliminary hearings, by telephone, email, AAA WebFile, fax, or mail."

Email notification was utilized in all instances of communication with the Claimant and Respondent by the AAA as per the rules cited above. In four key events during the arbitration process, the AAA chose to use certified mail in addition to email. The address used for AAA written communication with the Respondent was the L&I Registered Principal Business address of record at the time of filing - 7601 W Clearwater Ave., Suite 206, Kennewick, WA 99336. Claimant cannot validate for the AAA if the certified mail option was received – claimant was not notified otherwise.

- December 2, 2021 - Notification of Payment Delinquency: Respondent's Arbitration fee of \$625.00 for case 01-21-0016-9643 was sent via email to semi@patriotbuilt.com and rvalore@msn.com and by certified mail (#9489-0090-0027-6215-9913-13) to the L&I Registered Principal Business address of 7601 W Clearwater Avenue, Suite 206, Kennewick, Washington, 99336. One would think the Respondent might draw the conclusion there is a Dispute.
- January 19, 2022 - Notification of Evidentiary Hearing scheduled for February 25, 2022. The AAA sent via email to semi@patriotbuilt.com, and rvalore@msn.com and certified mail (9489-0090-0027-6215-9864-49) delivered to the L&I Registered Principal Business Address of 7601 W Clearwater Avenue Suite 206, Kennewick, Washington, 99336. It should be noted this notification was sent 37 days prior to the hearing.
- February 16, 2022 - Delivery of Claimant Evidence. Claimant utilized UPS Overnight courier (tracking number 1Z17927E0399989551) to deliver evidence to the Primary Registered Business address of 7601 W Clearwater Avenue, Suite 206 in Kennewick, Washington, 99336. The package was scheduled to be delivered on February 17, 2022. The courier was unable to complete the delivery as no forwarding address was posted for this site. The Claimant was notified via phone of the non-delivery. It was agreed to keep the package in the UPS office while the Claimant searched for another Registered Business address. The Claimant discovered the new Primary Registered Business address of 492 Mont Blanc Way, Richland Washington, 99352. This new address had not been communicated to the AAA or the Claimant. The 492 Mont Blanc Way, Richland Washington, 99352 address was relayed to UPS and the Evidence package was delivered to that address on February 18, 2022, at 3:30 pm. The same tracking number was used. To ensure receipt of the Evidence Package to the Respondent, the Claimant took additional steps and sent a second Evidence Package overnight via FedEx Courier on February 17, 2022 to the new Registered Business address of 492 Mont Blanc Way, Richland, WA, 99352 (tracking number 289962332603). This package was delivered on February 18, 2022, at 3:38 pm. Both the FedEx and UPS delivery packages arrived two days before the required delivery due date set by the Arbitrator.
- February 25, 2022. The Evidentiary Hearing was held, Claimants were in attendance, Respondent was not. Arbitrator requested additional evidence from both parties. An email was sent to both rvalore@msn.com and semi@patriotbuilt.com and a copy to the AAA directly.

from the Arbitrator in order to expedite the request for additional information required by noon, Friday, March 4, 2022. The AAA followed up with a certified letter (9489-0090-0027-6215-9849-02) to the Respondent's Principal Business address of 7601 West Clearwater Avenue, Suite 206, Kennewick, WA 99336 and emails to both Respondent and Complainant cited above to ensure all were aware of an action.

- March 15, 2022: Transmittal of Award by the AAA was communicated via email to rhvalore@msn.com and semi@patriotbuilt.com. The award was also sent certified mail (9489-0090-0027-6215-9911-53) to the principal business address of the Respondent at 7601 West Clearwater Avenue, Suite 206, Kennewick, WA 99336.

Claimant's Summary

The request for modification of Arbitration Award should be denied.

1. There is an agreement to Arbitration in place as evidenced by the signed contract.
2. Notification of dispute was served by accepted methods identified in R-44 of the American Arbitration Association (AAA) Construction Industry Arbitration rules and procedures.
3. Notification of all meetings, hearings, request for additional information and award were served by accepted methods identified in F-6 of the American Arbitration Association (AAA) Construction Industry Arbitration rules and procedures.
4. Notice was delivered 37 days in advance of the Evidentiary Hearing served by accepted methods identified in F-6 of the American Arbitration Association (AAA) Construction Industry Arbitration rules and procedures. Two accepted methods were used to insure delivery.
5. Evidence was delivered to Respondent by methods identified in F-6 of the American Arbitration Association (AAA) Construction Industry Arbitration rules and procedures 2 days in advance of the Arbitrator's delivery deadline given to Claimant.
6. A request for a delay or postponement of the Evidentiary Hearing could have been submitted by the Respondent at any time during the proceedings, none was requested.

AMERICAN ARBITRATION ASSOCIATION
Construction Industry Arbitration Tribunal

In the Matter of the Arbitration between,

Case Number 01-21-0016-9643

Richard and Robinette Valore, Claimants

-vs-

Patriot Builders and Misipati Bird, Respondents

DISPOSITION FOR APPLICATION OF MODIFICATION OF AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated August 10, 2018 and having been duly sworn, and having duly heard the proofs and allegations of the Parties, and having previously rendered an Award dated March 9, 2022, and Respondents Patriot Builders and Misipati Bird having filed an application for MODIFICATION dated March 29, 2022, and Claimants Richard and Robinette Valore having responded by letter dated April 4, 2022, do hereby DECIDE, as follows:

1. Respondents asserts that Respondents did not receive proper notice of Claimants' initiation of arbitration. Respondents reference a portion of RCW 7.04A.090 pertaining to the proper method of providing notice of an initiation of an arbitration proceeding, which Respondents argue requires notice by mail certified or registered, requested and obtained or by service as authorized for the initiation of a civil action.
2. However, RCW 7.04A.090 perm its notice of the initiation of an arbitration to be provided in the agreed manner between the parties. The parties agreed to comply with the Construction Arbitration Rules of the American Arbitration Association in their construction contract, so the AAA Rules control the proper method for providing notice.
3. Rule R-44 permits notices by mail, by personal service, by fax or by email.
4. The Final Award considered the adequacy of notice to Respondents and determined that Respondents had been provided due notice by mail in accordance with the Rules of the American Arbitration Association.
5. Rule R-51 limits the authority of the Arbitrator to modify a final award to the correction of any clerical, typographical, technical, or computational errors in the Award. As Respondents correctly points out in his application, the Arbitrator is not empowered to redetermine the merits of any claim already decided.
6. Respondents' Application of Modification of Award requests the Arbitrator to reconsider a substantive issue already determined in the Final Award and is therefore outside the limited authority of the Arbitrator to modify the Final Award.

Respondents' Application of Modification of the Final Award is denied.

In all other respects the Award dated March 9, 2022, is reaffirmed and remains in full force and effect.

I, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

April 4, 2022
Date


ARBITRATOR