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5 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
6 FOR THE COUNTY OF CLACKAMAS  
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8 \_\_\_\_\_ )  
9 \_\_\_\_\_ )  
10 \_\_\_\_\_, ) Case No. \_\_\_\_\_  
11 vs. Plaintiff(s), )  
12 \_\_\_\_\_ )  
13 \_\_\_\_\_, ) ORDER DESIGNATING CASE COMPLEX  
14 \_\_\_\_\_ ) LITIGATION AND APPOINTING  
15 Defendant(s). ) REFEREE REGARDING  
16 \_\_\_\_\_ )  
17 \_\_\_\_\_ ) (THE "PROJECT")  
18 \_\_\_\_\_ )

19 THIS MATTER coming before the Court on Motion of \_\_\_\_\_  
20 [MOVING PARTY], \_\_\_\_\_ [NAME], \_\_\_\_\_  
21 \_\_\_\_\_ [ADDRESS], \_\_\_\_\_ [PHONE], \_\_\_\_\_  
22 [FAX], shall be appointed Referee pursuant to ORCP 65 on the above referenced matter,  
23 which is hereby designated a complex case under UTCR 7.030, on a showing that  
24 exceptional conditions require it, to hear and determine certain pre-trial matters including  
25 motions regarding pleadings, discovery, discovery motions, case management and settlement  
26 negotiations and to report findings and make recommendations to the Court, and good cause  
appearing.

Scope of Order. This Order Appointing Referee, as may be modified and  
supplemented by further orders of this Court, shall govern all further discovery, case  
management, and settlement matters in this action. All such matters shall be set for hearing  
and heard before the Referee. Before setting such matters, available dates must be verified

1 with the Referee. Before setting such matters, available dates must be verified with the  
2 Referee. The Referee shall be responsible for hearing ORCP 21 motions but shall not hear  
3 motions for summary judgment, or other substantive motions as addressed in the Hearings  
4 Review paragraph, unless by unanimous consent by all parties. The Referee may not rule  
5 upon the admissibility of evidence. Further, the Referee does not have the authority to put  
6 witnesses on oath nor may the Referee personally examine witnesses.

7 Scheduling Teleconference. Counsel for all parties shall conduct a telephone  
8 conference no later than 90 days after service of the Complaint, or 30 days after Third-Party  
9 Complaint or final “third-party practice” pleadings under ORCP 22, whichever occurs last, to  
10 establish a schedule for: 1) discovery deadlines including a deadline for Plaintiff to submit a  
11 defect list, aka Bill of Particulars and for Defendant(s) to submit a statement of which of its  
12 third/fourth/etc. party defendants performed the work complained of in the third/fourth/etc.  
13 party complaint; 2) dispositive motion deadlines; 3) alternative dispute resolution date; and  
14 4) trial date. In the event this Scheduling Teleconference does not occur within the time  
15 prescribed in this Order or if the parties cannot agree on the required deadlines or dates,  
16 counsel for any party may request the Referee to conduct a Scheduling Teleconference with  
17 all counsel and the Referee shall do so on a schedule convenient to the Referee. The Referee  
18 shall be the final arbiter of the schedule subject to a party’s opportunity to apply for *de novo*  
19 review pursuant to the Hearings Review paragraph. The Referee shall have the discretion to  
20 schedule additional teleconferences with the parties’ counsel for case scheduling or other  
21 purposes and will notify counsel of the call-in number and the confirmation number for such  
22 teleconferences.

23 Service of this Order. A copy of this Order and all subsequent Orders regarding this  
24 reference shall be served with any third-party practice pleading under ORCP 22C bringing in  
25 a new party for any claims related to or arising from the Project. Failure to comply with this  
26 paragraph may result in a discovery sanction, at the discretion of the Referee, upon motion to  
the Referee.

1           Hearings: Review. All matters of any kind pertaining to pleadings, discovery, case  
2 management and settlement matters shall be noticed to be heard before the Referee. The time  
3 limitations applicable to serving the Referee with a motion to compel or to produce, and  
4 oppositions and replies thereto shall be as set forth in all court rules with respect to timely  
5 filings of similar motions with the Court, unless shortened by the Referee. Such motions may  
6 be heard by the Referee, at the discretion of the Referee, for good cause shown, on a  
7 shortened time and on an informal basis. Matters involving substantive legal issues not  
8 related to discovery, case management, pleading issues or settlement matters, shall be  
9 submitted to the Court upon proper motion and notice, unless by unanimous consent of all  
10 parties to submit such matters to the Referee. Rulings of the Referee may be reviewed by  
11 applying to the Presiding Court or its designee. A party must file its motion for review  
12 within 10 days of service of the ruling from the Referee. If the request is not filed within that  
13 time period, the ruling of the Referee will become final and subject to enforcement by order  
14 of the Court confirming the ruling.

15           Investigation and/or Destructive Testing by Plaintiff(s). Absent a stipulation by all  
16 parties' counsel, Plaintiff(s) shall provide prior written notice of the dates of all  
17 "investigation and/or destructing testing" to all counsel. "Investigation and/or destructive  
18 testing" means the dismantling of any of the components or materials related to the Project  
19 for the purpose of analyzing, testing, inspection or other evaluation, the results or outcome of  
20 which are intended to be used at trial or any other legal proceeding (including but not limited  
21 to use in connection with summary judgment motions). Such notice must be sent by fax,  
22 overnight mail or hand delivered not less than fifteen (15) business days prior to the first date  
23 of any testing. Notice of the specific location(s) and time(s) for all inspections and testing  
24 shall be provided to all counsel not less than seven (7) working days prior to each inspection  
25 date, with subsequent updates of the location(s) and/or schedule(s) to be provided as these  
26 change. Counsel and experts for each party in the case may attend to observe. The Referee  
shall resolve any dispute arising out of the time, place and manner of investigation and/or

1 destructive testing, upon motion of a party. If timely notice is not given, all evidence  
2 obtained by Plaintiff(s), including any and all findings, analyses and opinions of Plaintiff(s)  
3 and its consultant(s) and expert(s) based or derived from such investigation and/or testing  
4 will be barred from use in the trial of this action upon motion of the aggrieved party.

5 Repairs by Plaintiff(s). Plaintiff(s) shall provide seven (7) working days prior written  
6 notice to all counsel before performing any repairs involving the Project, except that  
7 Plaintiff(s) may perform “emergency repairs”, so long as written notice is given to all parties  
8 within twenty-four (24) hours after counsel for Plaintiff(s) has actual notice of such repairs.  
9 “Emergency repairs” are those repairs which, in accordance with recognized engineering or  
10 construction practices, are deemed immediately necessary to prevent imminent injury to  
11 persons or property. If timely notice is not given, all evidence obtained by Plaintiff(s),  
12 including any and all findings, analyses, and opinions of Plaintiff(s) and its consultant(s) and  
13 expert(s) based on or derived from such repairs may be barred in the Court’s discretion from  
14 use at trial. In deciding whether such evidence is excluded on this basis, the Court may  
15 consider the prejudicial effect of the lack of notice to Defendants, and whether such actions  
16 were intentional, resulted from mistake, inadvertence, surprise or excusable neglect.  
17 However, the Court may also consider any other factors it may deem as relevant in deciding  
18 whether to exclude evidence that was procured by Plaintiff(s) without proper notice to  
19 Defendants as described in this paragraph. Plaintiff(s) will make all best efforts to save any  
20 removed materials, if practical and if requested by one of the Defendants. Defendants will  
21 have access to such materials upon request.

22 Investigation and/or Destructive Testing by Defendants. Absent a stipulation by all  
23 parties, all defense investigation and/or destructive testing will be completed 180 days from  
24 service of the last third-party practice pleading under ORCP 22C unless otherwise ordered by  
25 the Referee. Defendants shall give notice to all parties not less than 15 business days prior to  
26 the first date of any investigation and/or destructive testing. To the extent practicable,  
Defendants shall coordinate their respective investigation and/or destructive testing with

1 other Defendants so as to minimize the impact to the Project and its occupants. All  
2 arrangements for investigation and/or destructive testing shall be made through counsel for  
3 Plaintiff(s). Notice of the specific location(s) and time(s) for all investigation and/or  
4 destructive testing shall be provided to all counsel not less than seven (7) working days prior  
5 to each inspection date, with subsequent updates of the location(s) and schedule(s) to be  
6 provided as these change. Counsel and experts for each party in the case may attend to  
7 observe. The Referee shall resolve any dispute arising out of the time, place and manner of  
8 investigation and/or destructive testing, upon motion of a party. If timely notice is not given,  
9 all evidence obtained by the investigating/testing party, including any and all findings,  
10 analyses and opinions of its consultant(s) and expert(s) based or derived from such  
11 investigation and/or testing will be barred from use in the trial of this action upon motion of  
12 the aggrieved party.

13 Optional Provisions. Upon stipulation by all parties, the Referee may facilitate an  
14 expedited and streamlined discovery process that may include:

- 15 1. The response of each party to the claims against it;
- 16 2. The preparation of and a timeline for the scope of repairs proposed by  
17 Plaintiff(s);
- 18 3. A demand by a Third/Fourth/etc. Party Plaintiff to those defendants it sued in  
19 this case;
- 20 4. A joint defense response to the Plaintiff's(s') statement of claims, defects, and  
21 damages;
- 22 5. A joint defense scope of repairs;
- 23 6. Disclosure of experts;
- 24 7. Exchange of expert reports;
- 25 8. Depositions of experts; and/or
- 26 9. Depositions of other witnesses.

The parties may also stipulate to any other collaborate effort to expedite and

1 streamline the litigation. At the request of any party's counsel, the Referee shall conduct a  
2 teleconference among all counsel, at the Referee's convenience, to inquire whether and to  
3 what extent all counsel are willing to agree to these optional activities. Conversations and  
4 documents produced and exchanged in the course of these optional expediting/streamlining  
5 activities shall be considered confidential settlement communications under Oregon Evidence  
6 Code Rule 408. They cannot be used for any purpose connected with the trial nor does the  
7 party's voluntary participation in these optional activities subject that party, its clients or  
8 expert to any discovery requirements beyond what is required in the ORCP, including,  
9 without limitation, that no party shall be required to produce its expert witness for deposition.

10 Insurance Issues. Where applicable, the Referee may require each party to submit  
11 within 45 days from the Referee's order, the following: 1) the names of all potential  
12 insurance carriers for each party; 2) copies of all reservations of rights letters from each  
13 carrier; 3) the name and contact information for the adjusters for each carrier; and 4) copies  
14 of each carrier's insurance policy for each party. The Referee may increase the time for  
15 production of insurance information upon the *ex parte* motion of a party. If these documents  
16 are ordered to be produced, they shall be provided to any other party that requests them at the  
17 requesting party's own copying expense.

18 The Referee has the ability to advise a party that, she or it may want to retain  
19 independent insurance coverage counsel, at that party's sole expense. Regardless of whether  
20 or not the Referee chooses to provide this advice, the Referee shall not be deemed to be  
21 providing legal advice.

22 Further Status Conferences. At such time as the Referee may find it necessary, all  
23 parties shall attend further status conferences before the Referee.

24 Settlement Discussions. On date(s) to be determined by the Referee, the Referee may  
25 order the parties to commence Mandatory Settlement Conferences with a separate mediator,  
26 which shall continue from time to time thereafter at the discretion of the Referee. If all  
parties agree the Referee may serve as the mediator for settlement conference purposes. All

1 counsel and their principals and insurance representatives where applicable will be required  
2 to personally attend with full settlement authority. The parties' experts and/or consultants  
3 may be required to attend at the discretion of the Referee. The mediator will report any non-  
4 attendance at the Mandatory Settlement Conference to the Referee. The Referee is  
5 authorized to hear show cause motions for contempt brought by any party against another  
6 who failed to appear with counsel, principals and insurance representatives where applicable  
7 at the Mandatory Settlement Conferences. Said show cause motion shall be briefed under the  
8 timeline prescribed in UTCR 5.030. The Referee may excuse a party's attorney, principal,  
9 and/or insurance representative upon the *ex parte* request of the party's counsel. The cost of  
10 the mediator's services will be split in the same manner as prescribed in the paragraph below  
11 for the Referee Fees.

12 After the last Mandatory Settlement Conference, if the case does not settle, the  
13 Referee shall prepare a report discussing the value of each of the claims, counter-claims,  
14 cross-claims and third-party claims, both monetarily and legally, and shall prepare an  
15 allocation of responsibility among the parties. The Referee will submit a copy of this report  
16 to the parties' counsel prior to the trial of the case. Counsel shall deliver a copy of the  
17 Referee's report to their respective clients and insurance representatives. The Referee will  
18 also submit a copy of this report to the trial judge after trial on the merits if the Court is  
19 considering the issue of attorney fee awards. The Court may use the Referee's report to assist  
20 in its determination of reasonableness of attorneys' fees.

21 Ex Parte Orders. All applications to the Referee for *Ex Parte* Orders require twenty-  
22 four (24) hour telephone or fax notice to all parties affected by the motion.

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