

EM SUBMISSION NO.: EMA1842015  
PRESENTED: 4-22-15  
ADOPTED: 4-23-15

**BY THE EMERGENCY MANAGER:**

**RESOLUTION APPROVING THE SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS BETWEEN SMITH VILLAGE CONSTRUCTION SERVICES, LLC, AND STERLING HOMES, LLC, PLAINTIFFS, AND CITY OF FLINT, GDC-SMITH VILLAGE, LLC, ROHDE CONSTRUCTION COMPANY, INC., MARK D. ROHDE AND RUSS LAPHAM, DEFENDANTS, CASE NO. 14-103736-CK**

All parties have agreed to settlement in this matter pursuant to the attached Settlement Agreement and Release of Claims; and

Defendants, collectively, have agreed to settle this matter for a total sum of Forty-Five Thousand Dollars (\$45,000.00); and

The City of Flint's portion of the total settlement amount is Five Thousand Dollars (\$5,000.00), which shall be paid to Sargent Title Company pursuant to paragraph 3 of the Settlement Agreement and Release of Claims; and


The Department of Law wishes to settle this matter by paying its share of the total agreed upon settlement in the amount of Five Thousand Dollars (\$5,000.00), from line item 677-266.200-956.300, Suits and Settlements, and made payable to Sargent Title Company, pursuant to the attached Settlement Agreement and Release of Claims.

**IT IS RESOLVED** that the Emergency Manager hereby approves the settlement in this matter pursuant to the attached Settlement Agreement and Release of Claims, and authorizes City officials to do all things necessary to make payment to Sargent Title Company in the amount of Five Thousand Dollars (\$5,000.00) from line item 677-266.200-936.300, Suits and Settlements.

**APPROVED AS TO FORM:**

**APPROVED AS TO FINANCE:**

  
\_\_\_\_\_  
Peter M. Bade, City Attorney

  
\_\_\_\_\_  
Dawn Steele, Deputy Finance Director

  
\_\_\_\_\_  
Natasha L. Henderson, City Administrator

**EM DISPOSITION:**

ENACT

FAIL

REFER TO COUNCIL

  
\_\_\_\_\_  
Gerald Ambrose, Emergency Manager

## SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

For valuable and mutual consideration, the receipt and adequacy of which are acknowledged by the signing of this settlement agreement and release of claims (agreement) between **SMITH VILLAGE CONSTRUCTION SERVICES, LLC, and STERLING HOMES, LLC** (collectively "Plaintiffs") and **CITY OF FLINT, GDC - SMITH VILLAGE, LLC, ROHDE CONSTRUCTION COMPANY, INC., MARK D. ROHDE and RUSS LAPHAM** (collectively "Defendants"), this agreement is made to bind Plaintiffs and Defendants and those persons or entities identified in paragraphs 1.a. and 1.b. of this agreement (collectively, the "parties").

### 1. Definitions

a. As used in this agreement, Plaintiffs include Smith Village Construction Services, LLC and Sterling Homes, LLC, and each respective company's affiliated business entities, subsidiaries, parent and sister companies, predecessors, successors, affiliates, assigns, trustees, members, partners, insurers, guarantors, and all directors, officers, employees, agents, attorneys, and other representatives, if any, of these entities, and all other persons or entities claiming by or through Plaintiffs (whether directly or derivatively) against Defendants on account of those claims referred to in paragraph 3.a. of this agreement.

b. As used in this agreement, Defendant City of Flint, includes its officers, employees, agents, attorneys, departments, and any other representatives related to the City of Flint.

c. As used in this agreement, Defendant GDC-Smith Village, LLC includes the company itself and the company's affiliated business entities, subsidiaries, parent and sister companies, predecessors, successors, affiliates, assigns, members, partners, insurers, and guarantors, and all officers, employees, agents, attorneys and any other representatives of GDC-Smith Village, LLC.

d. As used in this agreement, Defendant Rohde Construction Company, Inc. includes the corporation itself and that corporation's affiliated business entities, subsidiaries, parent and sister corporations, predecessors, successors, affiliates, assigns, trustees, shareholders, partners, insurers, and guarantors, and all directors, officers, employees, agents, attorneys, and any other representatives of any of these entities.

e. As used in this agreement, Defendant Mark D. Rohde shall mean the individual himself, his family members, relatives, personal representatives, executors, administrators, heirs, successors and assigns, and all others claiming by, through Mark D. Rohde.

f. As used in this agreement, Defendant Russ Lapham shall mean the individual himself, his family members, relatives, personal representatives, executors, administrators, heirs, successors and assigns, and all others claiming by, through Russ Lapham.

2. Settlement of Dispute. The terms of this Agreement shall be a full and complete settlement of all of the issues and disputes between the parties with respect to the lawsuit entitled *Smith Village Construction Services, LLC, et al. v City of Flint, et al*, Case No. 14-103736-CK, currently pending in 7th Circuit Court for the County of Genesee (“lawsuit”).

3. Payments by the Defendants. Upon execution of this Agreement, the Defendants shall pay Plaintiff the total sum of Forty-Five Thousand Dollars (\$45,000.00), as full and final settlement of this matter (“Settlement Payment”). The Settlement Payment shall be made through Sargents Title Company who, upon Plaintiffs compliance with the Conditions Precedent to Release of Settlement Payment specified in paragraph 4. below, shall release the payments as follows:

American Wall Systems - \$6,993.00  
Braun Electric - \$2,680.00  
D.R. Nelson & Assoc - \$458.70  
Hallem Enterprises - \$3,268.00  
Just Right - \$13,903.46  
Michigan Lumber - \$9,996.51  
Stockbridge Overhead - \$2,025.00  
Sterling Homes, LLC - \$5,675.33

4. Condition Precedent to Release of Settlement Payment. Sargents Title Company shall release the Settlement Payment as specified in paragraph 3. above upon the performance of the following actions by Plaintiffs and/or their subcontractors:

a. Delivery to Sargent’s Title Company of the documents necessary to discharge the Claim of Lien recorded June 5, 2014, Instrument #201406050048694, Genesee County Register of Deeds, attached as **Exhibit A**.

b. Delivery to Sargent’s Title Company of the documents necessary to discharge the Claim of Lien recorded June 5, 2014, Instrument #201406050048695, Genesee County Register of Deeds, attached as **Exhibit B**.

c. Delivery to Sargent’s Title Company of the documents necessary to discharge the Claim of Lien recorded June 5, 2014, Instrument #201406050048696, Genesee County Register of Deeds, attached as **Exhibit C**.

d. Delivery to Sargent’s Title Company of the documents necessary to discharge the Claim of Lien recorded June 26, 2014, Instrument #201406260051677, Genesee County Register of Deeds, attached as **Exhibit D**. This shall be a condition on the release of funds to American Wall Systems only.

e. Delivery to Sargent’s Title Company of the documents necessary to discharge the Claims of Lien recorded June 13, 2014, Instrument #201406130049775 and June 25, 2014, Instrument #201406260051705, Genesee County Register of Deeds, attached as **Exhibit E**. This shall be a condition on the release of funds to Hallem Enterprises only.

5. Dismissal of the Lawsuit: Contemporaneous with the execution of this agreement, the parties authorize their respective counsel, as applicable, to execute a stipulation for dismissal with prejudice and without any award of costs or attorney fees to any party, of any and all counter-complaints, cross claims or third party claims filed in the lawsuit, attached as **Exhibit F**.

6. Plaintiffs Release to Defendants

a. In consideration of the settlement payment and the other obligations of this agreement, Plaintiffs release and forever discharge Defendants and those entities identified in paragraph 1.b.-f., including but not limited to Defendants' subsidiaries, divisions, and affiliates, and all directors, officers, employees, agents insurers, guarantors, attorneys, and other representatives of Defendants (collectively the "Defendant Releasees") from all actual and potential claims, complaints, demands, causes of action, damages, costs, expenses, fees, and other liabilities of every sort and description, direct or indirect, fixed or contingent, known or unknown, suspected or unsuspected, and whether or not liquidated, including, without limitation, claims based on preexisting acts occurring at any time up to the date of this agreement, which may result in future damages or injury arising out of, caused by, or otherwise related in any way to the lawsuit.

b. Plaintiffs represent and warrant that they have not heretofore assigned or transferred to any person or entity any of the matters released herein, and have not filed any charges or complaints against any of the Defendant Releasees with any governmental or administrative agencies or with any court or than the lawsuit. Plaintiffs covenant not to sue or file any charges against the Defendant Releasees, or any of them, with any governmental or administrative agency or with any court, with respect to any of the matters released herein. Plaintiffs shall indemnify and hold the Defendant Releasees, and each of them, harmless from and against any claim, loss, damage, cost or expense, including but not limited to payment of all legal fees incurred, for any breach of this paragraph.

7. Defendants Release to Plaintiffs

a. In consideration of the settlement payment and the other obligations of this agreement, Defendants release and forever discharge Plaintiffs and those entities identified in paragraph 1.a., including but not limited to Plaintiffs' subsidiaries, divisions, and affiliates, and all directors, officers, employees, agents insurers, guarantors, attorneys, and other representatives of Plaintiffs (collectively the "Plaintiff Releasees") from all actual and potential claims, complaints, demands, causes of action, damages, costs, expenses, fees, and other liabilities of every sort and description, direct or indirect, fixed or contingent, known or unknown, suspected or unsuspected, and whether or not liquidated, including, without limitation, claims based on preexisting acts occurring at any time up to the date of this agreement, which may result in future damages or injury arising out of, caused by, or otherwise related in any way to the lawsuit.

b. Each Defendant represents and warrants that they have not heretofore assigned or transferred to any person or entity any of the matters released herein, and have not filed any charges or complaints against any of the Plaintiff Releasees with any governmental or administrative agencies or with any court or than the lawsuit. Each Defendant covenants not to sue or file any charges against the Plaintiff Releasees, or any of them, with any governmental or

administrative agency or with any court, with respect to any of the matters released herein. Each Defendant shall indemnify and hold the Plaintiff Releasees, and each of them, harmless from and against any claim, loss, damage, cost or expense, including but not limited to payment of all legal fees incurred, for any breach of this paragraph.

c. The parties agree that the settlement payment is given as compensation and full satisfaction for any and all claims, including but not limited to attorney fees, costs, and expenses that Plaintiffs may be obligated to pay to Plaintiffs' counsel.

8. Defendants Release to One Another. Defendants release each other from any and all counter-complaints, cross claims or third party claims that any of them may have against the other that were raised, or could have been raised in the lawsuit.

9. General Provisions

a. The parties represent and warrant that they have not and will not assign, convey, or otherwise transfer any interest in any claims or other liabilities or obligations that are the subject of this agreement.

b. The parties acknowledge that they will not institute, maintain, assist in, or otherwise encourage any suit, action, administrative proceeding, or other proceedings at law, in equity, or otherwise, on account of claims released in this agreement.

c. If this agreement is breached, the breaching party will indemnify and hold the other harmless from any resulting claims, including attorney fees and costs.

d. Defendants do not concede or admit that, with respect to Plaintiffs, they have violated any law, statute, ordinance, or contract and/or has failed in any duty or obligation whatsoever and/or has committed any tort or engaged in any kind of wrongful conduct. Indeed, Defendants specifically deny that they engaged in any such conduct. Defendants enter into this agreement solely in the interest of avoiding additional costs that would result from further litigation, and Plaintiffs acknowledge that the consideration described in this agreement is adequate and sufficient and represents a full and complete settlement of any claims and/or rights.

e. The parties acknowledge that they have retained counsel of their own choosing concerning the claims released in this agreement; that the parties have read and fully understands the terms of this agreement and/or has had it reviewed and approved by the parties' counsel of choice, with adequate opportunity and time for such review; that this agreement has been the result of substantial negotiations; and that the parties are fully aware of its contents and of its legal effect. Accordingly, this agreement will not be construed against any party on the grounds that such party drafted this agreement. Instead, this agreement will be interpreted as though drafted equally by all parties. The parties enter into this agreement freely and voluntarily and with a full understanding of its terms. The parties acknowledge that, except as expressly set forth in this agreement, no representations of any kind or character have been made to them to induce their execution of this document. The parties further state that the only representations made to them to

obtain their consent to this agreement are stated in this agreement and that they are signing this agreement voluntarily and without coercion, intimidation, or threat of retaliation.

f. This agreement embodies the entire understanding of the parties and all of the terms and conditions with respect to the matters discussed in this agreement; it supersedes and annuls any and all other or former agreements, contracts, promises, or representations, whether written or oral, expressed or implied, made by, for, or on behalf of the parties; and it may not be altered, superseded, or otherwise modified except in writing signed by the party to be charged. All executed copies of this agreement are duplicate originals, equally admissible as evidence.

g. Failure by any party to enforce any of the remedies provided to it in this agreement will not be deemed a waiver of those rights.

h. The party representatives executing this agreement warrant that they are the duly authorized representatives of the respective entities designated below and are fully empowered to execute this agreement on behalf of the respective parties. The parties agree to indemnify and hold each other harmless from any claims, causes of action, liability, judgments, obligations, or costs of any nature whatsoever, including but not limited to costs and attorney fees, in connection with any such claims or the like made by or on behalf of their affiliated business entities, subsidiaries, parent and sister companies, predecessors, successors, affiliates, assigns, members, partners, insurers, and guarantors, and all officers, employees, agents, attorneys and any other representatives, or anyone claiming by or through them.

i. This agreement must be construed in accordance with the laws of the State of Michigan. If any provision of this agreement is for any reason held to be invalid or unenforceable, the provision will not affect any other provision of this agreement, but this agreement will be construed as if the invalid and/or unenforceable provision had never been contained in the agreement.

j. All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this settlement agreement.

k. Time is of the essence in this agreement.

l. No party may seek to rescind this agreement, whether for mistakes, fraud, change of circumstance or the like, unless that party has first tendered back to all other parties all consideration received from those parties.

m. All fees or charges of Sargent's Title Company associated with its participation in/facilitation of the transactions contemplated by this Agreement shall be the responsibility of Plaintiffs.

6. Date

The effective date of this agreement will be the date on which the last party signs this agreement. The parties agree that this agreement may be executed in counterparts, each of which will be deemed to constitute an executed original, even though not all signatures may appear on the same counterpart.

THIS IS A RELEASE. READ BEFORE SIGNING.

PLAINTIFF:  
**SMITH VILLAGE CONSTRUCTION  
SERVICES, LLC**

Dated: \_\_\_\_\_, 2015

By: \_\_\_\_\_

Its: Member

PLAINTIFF:  
**STERLING HOMES, LLC**

Dated: \_\_\_\_\_, 2015

By: \_\_\_\_\_

Its: Member

As attorney for Plaintiffs, I verify that I have read this settlement agreement and release of claims, that I have discussed it with Plaintiffs, and that they signed it as a settlement of all claims against Defendants.

Dated: \_\_\_\_\_, 2015

\_\_\_\_\_  
Jay A. Schwartz (P45268)  
Attorney for Plaintiffs

DEFENDANT:  
**CITY OF FLINT**

Dated: 4/22, 2015

By: [Signature]

Its: Emergency Manager

As attorney for Defendant City of Flint, I verify that I have read this settlement agreement and release of claims, that I have discussed it with the Defendant, and that it has signed this agreement as a settlement of all claims.

Dated: 4/22, 2015

[Signature]  
Anthony Chubb (P72608)  
Attorney for Defendant City of Flint

DEFENDANT:  
**GDC - SMITH VILLAGE, LLC**

Dated: \_\_\_\_\_, 2015

By: \_\_\_\_\_

Its: \_\_\_\_\_

As attorney for Defendant GDC - Smith Village, LLC, I verify that I have read this settlement agreement and release of claims, that I have discussed it with the Defendant, and that it has signed this agreement as a settlement of all claims, cross claims and counterclaims.

Dated: \_\_\_\_\_, 2015

\_\_\_\_\_  
Kevin J. Roragen (P56510)  
Sara L. Cunningham (P61465)  
Michael G. Stefanko (P71105)  
Attorneys for Defendant GDC - Smith  
Village, LLC



DEFENDANT:  
**ROHDE CONSTRUCTION  
COMPANY, INC.**

Dated: \_\_\_\_\_, 2015

By: \_\_\_\_\_  
Mark D. Rohde  
Its: President

DEFENDANT:

Dated: \_\_\_\_\_, 2015

\_\_\_\_\_  
**MARK D. ROHDE**

DEFENDANT:

Dated: \_\_\_\_\_, 2015

\_\_\_\_\_  
**RUSS LAPHAM**

As attorney for Defendants Rohde Construction Company, Inc., Mark D. Rohde and Russ Lapham, I verify that I have read this settlement agreement and release of claims, that I have discussed it with the Defendants, and that they have signed this agreement as a settlement of all claims, cross claims and counterclaims.

Dated: \_\_\_\_\_, 2015

\_\_\_\_\_  
Timothy R. Newhouse (P37048)  
Attorneys for Defendants Rohde  
Construction Company, Inc.,  
Mark D. Rohde and Russ Lapham