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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF MULTNOMAH
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7 _____) CASE NO. _____
8 _____)
9 Plaintiff(s)) ORDER APPOINTING REFEREE
10 vs.) IN COMPLEX CONSTRUCTION CASE
11 _____) REGARDING _____
12 _____) (THE "PROJECT")
13 Defendants.)
14 _____)

15 _____ [NAME], _____ [ADDRESS], _____
16 [PHONE], _____ [FAX], having been appointed Referee pursuant to ORCP 65 on the
17 above referenced-matter, which is hereby designated a complex case under UTCR 7.030, on a
18 showing that exceptional conditions require it, to hear and determine certain pre-trial matters
19 including discovery, discovery motions, case management and settlement negotiations and to
20 report findings and make recommendations to the Court, and good cause appearing,

21 **IT IS HEREBY RECOMMENDED:**

22 1. Exceptional Conditions Requiring Reference without Agreement and Complex Case
23 Designation under UTCR 7.030 (check applicable boxes): the number of parties involved, the
24 complexity of the legal issues, the expected extent and difficulty of discovery, and the
25 anticipated length of trial

26 _____ Number of Parties Involved
27 _____ Complexity of the Legal Issues
28 _____ Expected Extent and Difficulty of Discovery

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- _____ Anticipated Length of Trial
- _____ Amount(s) in controversy
- _____ Involvement of Insurance Coverage Issues
- _____ Other (set forth in detail)

2. 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 with the Referee. The Referee shall not be responsible for hearing ORCP 21 Motions, motions for summary judgment, motions for dismissal, or other substantive motions as addressed in paragraph 5, unless by unanimous consent by all parties. The referee may not rule upon the admissibility of evidence. Further, the referee does not have the authority to put witnesses on oath nor may the referee personally examine witnesses.

3. Scheduling Teleconference. Counsel for all parties shall conduct a telephone conference no later than 30 days after service of the Complaint, Third-Party Complaint or final “third-party practice” pleadings under ORCP 22, whichever occurs last, to establish a schedule for 1) discovery deadlines, 2) dispositive motion deadlines, 3) alternative dispute resolution date, and 4) trial date. In the event this Scheduling Teleconference does not occur within the time prescribed in this Order or if the parties cannot agree on the required deadlines or dates, counsel for any party may request the Referee to conduct a Scheduling Teleconference with all counsel and the Referee shall do so on a schedule convenient to the Referee. The Referee shall be the final arbiter of the schedule subject to a party’s opportunity to apply for *de novo* review pursuant to paragraph 5. The Referee shall have the discretion to schedule additional teleconferences with the parties’ counsel for case scheduling or other purposes and will notify counsel of the call-in number and the confirmation number for such teleconferences.

4. Service of this Order. A copy of this Order and all subsequent Orders regarding this reference shall be served with any third-party practice pleading under ORCP 22C

1 **bringing in a new party for any claims related to or arising from the Project. Failure to**
2 **comply with this paragraph may result in a discovery sanction, at the discretion of the**
3 **Referee, upon motion to the Referee.**

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

17 6. Investigation and/or Destructive Testing by Plaintiff(s). Absent any stipulation by all
18 parties' counsel, Plaintiff(s) shall provide prior, written notice of the dates of all "investigation
19 and/or destructive testing" to all counsel. "Investigation and/or destructive testing" means the
20 dismantling of any of the components or materials related to the Project for the purpose of
21 analyzing, testing, inspection or other evaluation, the results or outcome of which are intended to
22 be used at trial or any other legal proceeding (including but not limited to use in connection with
23 summary judgment motions). Such notice must be sent by fax, overnight mail or hand-delivered
24 not less than fifteen (15) business days prior to the first date of any testing. Notice of the
25 specific location(s) and time(s) for all inspections and testing shall be provided to all counsel not
26 less than seven (7) working days prior to each inspection date, with subsequent updates of the
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1 location(s) and/or schedule(s) to be provided as these change. Counsel and experts for each
2 party in the case may attend to observe. The Referee shall resolve any dispute arising out of the
3 time, place and manner of investigation and/or destructive testing, upon motion of a party. If
4 timely notice is not given, all evidence obtained by Plaintiff(s), including any and all findings,
5 analyses and opinions of Plaintiff(s) and its consultant(s) and expert(s) based or derived from
6 such investigation and/or testing will be barred from use in the trial of this action upon motion of
7 the aggrieved party.
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9 7. Repairs by Plaintiff(s). Plaintiff(s) shall provide seven (7) working days prior written
10 notice to all counsel before performing any repairs involving the Project, except that Plaintiff(s)
11 may perform “emergency repairs,” so long as written notice is given to all parties within twenty-
12 four (24) hours after counsel for Plaintiff(s) has actual notice of such repairs. “Emergency
13 repairs” are those repairs which, in accordance with recognized engineering or construction
14 practices, are deemed immediately necessary to prevent imminent injury to persons or property.
15 If timely notice is not given, all evidence obtained by Plaintiff(s), including any and all findings,
16 analyses, and opinions of Plaintiff(s) and its consultant(s) and expert(s) based on or derived from
17 such repairs may be barred in the Court’s discretion from use at trial. In deciding whether such
18 evidence is excluded on this basis, the Court may consider the prejudicial effect of the lack of
19 notice to Defendants, and whether such actions were intentional, resulted from mistake,
20 inadvertence, surprise or excusable neglect. However, the Court may also consider any other
21 factors it may deem as relevant in deciding whether to exclude evidence that was procured by
22 Plaintiff(s) without proper notice to Defendants as described in this paragraph. Plaintiff(s) will
23 make all best efforts to save any removed materials, if practical and if requested by one of the
24 Defendants. Defendants will have access to such materials upon request.
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1 8. Investigation and/or Destructive Testing by Defendants. Absent a stipulation by all
2 parties, all defense investigation and/or destructive testing will be completed 180 days from
3 service of the last third party practice pleading under ORCP 22C unless otherwise ordered by the
4 Referee. Defendants shall give notice to all parties not less than 15 business days prior to the
5 first date of any investigation and/or destructive testing. To the extent practicable, Defendants
6 shall coordinate their respective investigation and/or destructive testing with other Defendants so
7 as to minimize the impact to the Project and its occupants. All arrangements for investigation
8 and/or destructive testing shall be made through counsel for Plaintiff(s). Notice of the specific
9 location(s) and time(s) for all investigation and/or destructive testing shall be provided to all
10 counsel not less than seven (7) working days prior to each inspection date, with subsequent
11 updates of the location(s) and schedule(s) to be provided as these change. Counsel and experts
12 for each party in the case may attend to observe. The Referee shall resolve any dispute arising
13 out of the time, place and manner of investigation and/or destructive testing, upon motion of a
14 party. If timely notice is not given, all evidence obtained by the investigating/testing party,
15 including any and all findings, analyses and opinions of its consultant(s) and expert(s) based or
16 derived from such investigation and/or testing will be barred from use in the trial of this action
17 upon motion of the aggrieved party.

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

- 24 1) a presentation by the Plaintiff(s) of a defect list, a.k.a. Bill of Particulars;
 - 25 2) a Defendant's statement of which of its third/fourth/etc. party defendants performed
26 the work being complained of in the Third/Fourth/etc. Party Complaint;
 - 27 3) the response of each party to the claims against it;
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- 1 4) the preparation of and a timeline for the scope of repairs proposed by Plaintiff(s);
- 2 5) a demand by a Third/Fourth/etc. Party Plaintiff to those defendants it sued in this
- 3 case;
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- 5 6) a joint defense response to the Plaintiff(s) statement of claims, defects, and damages;
- 6 7) a joint defense scope of repairs;
- 7 8) disclosure of experts;
- 8 9) exchange of expert reports;
- 9 10) depositions of experts; and/or
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- 11 11) depositions of other witnesses.

12 The parties may also stipulate to any other collaborate effort to expedite and streamline
13 the litigation. At the request of any party's counsel, the Referee shall conduct a teleconference
14 among all counsel, at the Referee's convenience, to inquire whether and to what extent all
15 counsel are willing to agree to these optional activities. Conversations and documents produced
16 and exchanged in the course of these optional expediting/streamlining activities shall be
17 considered confidential settlement communications under Oregon Evidence Code Rule 408.
18 They cannot be used for any purpose connected with the trial nor does the party's voluntary
19 participation in these optional activities subject that party, its clients or expert to any discovery
20 requirements beyond what is required in the ORCP, including, without limitation, that no party
21 shall be required to produce its expert witness for deposition.
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24 10. Insurance Issues. Where applicable, the Referee may require each party to submit
25 within 45 days from the Referee's order, the following: 1) the names of all potential insurance
26 carriers for each party, 2) copies of all reservations of rights letters from each carrier, 3) the
27 name and contact information for the adjusters for each carrier, and 4) copies of each carrier's
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1 insurance policy for each party. The Referee may increase the time for production of insurance
2 information upon the *ex parte* motion of a party. If these documents are ordered to be produced,
3 they shall be provided to any other party that requests them at the requesting party's own
4 copying expense.
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6 The Referee has the ability to advise a party that he, she or it may want to retain
7 independent insurance coverage counsel, at that party's sole expense. Regardless of whether or
8 not the Referee chooses to provide this advice, the Referee shall not be deemed to be providing
9 legal advice.
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11 11. Further Status Conferences. At such time as the Referee may find it necessary, all
12 parties shall attend further status conferences before the Referee.

13 12. Settlement Discussions. On date(s) to be determined by the Referee, the Referee
14 may order the parties to commence Mandatory Settlement Conferences with a separate mediator,
15 which shall continue from time to time thereafter at the discretion of the Referee. All counsel
16 and their principals and insurance representatives where applicable will be required to personally
17 attend with full settlement authority. The parties' experts and/or consultants may be required to
18 attend at the discretion of the Referee. The mediator will report any non-attendance at the
19 Mandatory Settlement Conference to the Referee. The Referee is authorized to hear show cause
20 motions for contempt brought by any party against another who failed to appear with counsel,
21 principals and insurance representatives where applicable at the Mandatory Settlement
22 Conferences. Said show cause motion shall be briefed under the timeline prescribed in UTCR
23 5.030. The Referee may excuse a party's attorney, principal, and/or insurance representative
24 upon the *ex parte* request of the party's counsel. The cost of the mediator's services will be split
25 in the same manner as prescribed in paragraph 14 for the Referee Fees.
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1 After the last Mandatory Settlement Conference, if the case does not settle, the Referee
2 shall prepare a report discussing the value of each of the claims, counter-claims, cross-claims
3 and third-party claims, both monetarily and legally, and shall prepare an allocation of
4 responsibility among the parties. The Referee will submit a copy of this report to the parties'
5 counsel prior to the trial of the case. Counsel shall deliver a copy of the Referee's report to their
6 respective clients and insurance representatives. The Referee will also submit a copy of this
7 report to the trial judge after trial on the merits if the court is considering the issue of attorney fee
8 awards. The Court may use the Referee's report to assist in its determination of reasonableness
9 of attorney's fees.
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12 13. Ex Parte Orders. All applications to the Referee for *Ex Parte* Orders require twenty-
13 four (24) hour telephone or fax notice to all parties affected by the motion.

14 14. Referee Fees. The Referee's fees and costs will be billed from time to time during
15 the pendency of this action. Each party shall pay an equal share of the Referee's fees and costs,
16 however, on a party's application to the Referee, the Referee, as justice requires in the Referee's
17 sole discretion, may order a different allocation of fees and costs.
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20 APPROVED AND RECOMMENDED:

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23 Dated: _____

24 Referee

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26 IT IS SO ORDERED:
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1 Dated: _____

Multnomah County Presiding Judge

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