EFiled: Nov 24 2025 10:48AM EST
Filing ID 77849347
Case Number 414,2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

REYBOLD CONSTRUCTION COMPANY, a Delaware corporation, REYBOLD VENTURE GROUP XI-A, LLC, a Delaware limited liability company, REYBOLD VENTURE GROUP XI-B, LLC, a Delaware limited liability company, REYBOLD VENTURE GROUP XI-APT, LLC, a Delaware limited liability company, successor-by-merger to Reybold Venture Group XI-D, LLC, a Delaware limited liability company, REYBOLD VENTURE GROUP XI-E, LLC, a Delaware limited liability company, and REYBOLD VENTUREGROUP XI-F, LLC, a Delaware limited liability company,	)	No. 414, 2025
Plaintiffs Below, Appellants	)	Superior Court Below
v.	)	Civil Action N22C-06-206 PRW
LENNAR CORPORATION, a Delaware Corporation, and CAL-ATLANTUC GROUP, LLC, a Delaware limited liability Company,	)	
Defendants Appellees.	)	

APPELLANTS' OPENING BRIEF

/s/ JEFFREY M. WEINER, ESQUIRE #403
JEFFREY M. WEINER, ESQUIRE #403
1332 N. King Street
Wilmington, Delaware 19801
(302) 652-0505
LegalW@AOL.com
Counsel for Reybold Plaintiffs Below/Appellants

November 24, 2025

TABLE OF CONTENTS

Exhibits

TABLE OF CITATIONS

NATURE OF PROCEEDINGS

In this action, the parties essentially asserted breach of contract and related claims against each other. In particular, the parties dispute whether any amounts were due and owing under a 2/25/15 Settlement Agreement (Agreement") relating to a residential community development.

On 6/28/22, the Reybold Plaintiffs ("Plaintiffs") filed their Complaint (Docket ("D") #1) against Defendant Lennar Corp. ("Lennar") alleging Breach of contract. (A1) (A1080-A1277)

On 8/22/22, Lennar filed an Answer (D #8) (A2) (A1278-A1296) denying that "it is the correct party in interest," and on 9/23/22, in response to Reybolds' Interrogatory, identified an entity named "CalAtlantic Group, LLC" ("CAGLLC" or "CalAtlantic"). (A2)

On 11/06/22, Plaintiffs filed their Amended Complaint (D#15) adding CAGLLC as a Defendant. (A3) (A1297-A1306)

On 1/30/23, Plaintiffs filed their Second Amended Complaint (D#25) (A5) (A1307-A1337) adding $217,442.17 principal to the original $496,584.25 for a total claim of $714,584.25.

On 2/17/23, Defendants Lennar and CAGLLC filed their Answer (D#29) (A6) (A1338-A1445) denying any breach and alleged damages and filed Counterclaims asserting breach of contract/breach of good faith and fair dealing,

unjust enrichment and declaratory judgment. CAGLLC denied that any amounts are due and owing to Reybold and that Reybold's claims were overstated, among other things.

On 3/08/23, Plaintiffs filed their Reply to the Counterclaims of Defendants (D#32) (A6) (A1446-A1454) denying any breach and alleged damages.

On 9/09/24, the Reybold Plaintiffs filed their Motion for Partial Summary Judgment (D#70) (A13), on 9/23/24, the Lennar/CAG Defendants filed their Motion for Summary Judgment (D#79) (A13), on 10/23/24, the Reybold Plaintiffs filed their Answering Brief in Opposition (D#82) (A16), on 10/23/24 the Lennar/CAG Defendants filed their Answer in Opposition (D#84) (A19), on 10/30/24 the Reybold Plaintiffs filed their Reply (D#87) (A21) and on 11/19/24 the Lennar/CAG Defendants filed their Reply (D#92) (A21).

By Order dated 1/04/25, the Court granted Reybold's Motion that CAGLLC be deemed a properly-named Defendant and granted Lennar's Motion that Lennar be dismissed as a party. (D#95) (A21&A22) (A1644&A1645) (Exhibit A).

Subsequently Lennar moved for an award of attorney fees and expenses (D#108) (A108&A109) which the Court did not grant.

On 2/24/25 the Court conducted the Pretrial Conference (D#109) (A23) and on 2/25/25, the Court entered the Pretrial Order. (D#110) (A23).

A Bench trial proceeded on March 11 to 13, 2025. (D#114) (A23)

On 6/16/25, the parties submitted their Post-Trial Opening Briefs (D#127 (A25) and D#130 (A26)) and on 7/11/24, the parties submitted their Post-Trial Answer Briefs. (D#132 (A25) and #136 (A25)).

On 8/13/25, the Court issued its Decision After Trial. (D#137) (A25) (A2068-A2100) (Exhibit B).

On 8/18/25 the Reybold Plaintiffs filed for Re-argument (D#138) (A26), which the Lennar/CAG Defendants opposed on 8/22/24 (D#142) (A26) and which the Court denied on 8/27/24. (D#143) (A26) (A2101-A2107) (Exhibit C).

On 9/11/25, the Court entered an Order of Final Judgment. (D#145) (A26) (A2108&A2109)

On 9/30/25, the Reybold Plaintiffs filed their Notice of Appeal.

Lennar and CAGLLC did not file a Cross Appeal as to the Court not granting Lennar fees and expenses and/or the Decision After Trial / Order of Final Judgment.

This is the Reybold Appellants' Opening Brief in support of their appeal.

SUMMARY OF ARGUMENT

I. The Trial Court erred in rejecting the 15% Management Fee which was reflected in: (1) Virtually all invoices commencing April 2006 through October 2014 accepted and paid by the original lot owners Atlantic Meridian Crossing ("AMC"), Meridian Crossing Fund Closing ("MFC"), The Provident Bank ("Provident Bank") / Bergen Delaware Realty, LLC ("Bergen//Delaware") and (Cornell Homes") / The Ryland Group, Inc. ("Ryland") prior to the 2/25/15 Agreement; (2) Virtually all invoices from November 2014 through June 2017 accepted and paid Ryland/CAGInc., parties to the Agreement immediately after the 2/25/15 Agreement; (3) Virtually all invoices from June 2017 through May September and December 2019 accepted and paid by Lennar/CAGLLC and affiliates not parties to the Agreement; (4) Virtually all invoices from June 2019 through June to August, October and November 2019 and January 2020 through April 2020 received but not paid by CAG/Lennar without any contemporaneous complaint as to the 15% fee; and (5) Challenged by CAG/Lennar for the first time more than 7.5 years after the 2/25/15 Agreement as 14th affirmative defense in its 8/22/22 Answer that "management fees do not have any basis in the Agreement".

II. The Trial Court erred in finding that the 2/25/15 Agreement, specifically, Article 17. Third Party Lots, did not require Lennar/CAGLLC, as successors to Ryland, to pay the costs to topcoat the private roadways/alleyways

and, based thereon, denying Reybold recovery for the $302,223, including 15% fee, Reybold paid to pay the costs to topcoat the private roadways/alleyways located within and around the 236 lots previously owned by MCFC, Cornell/Ryland/CAGInc., Provident/Bergen, and CAGLLC which was always the responsibility of the owner of those lots and was expressly incorporated into the Agreement.

III. The Trial Court erred by interpreting the phrase "the date of turnover" in paragraph 14.p of the 2/25/15 Agreement as excusing Lennar/CAGLLC from paying their proportionate share of the three years warranty expense after the open space was deeded to the maintenance corporation.

IV. The Trial Court held that in its eyes, neither party walks away prevailing on the majority of its claims; however, if this Court reverses on the topcoating issue or two or more of the other issues on appeal thereby entitling Reybold to an award of its attorney fees and costs.

V. The Trial Court erred in failing to consider as an alternative to piercing the corporate veil Lennar's liability as the parent entity based upon commingling CAGLLC's assets and operations.

STATEMENT OF FACTS

1. Reybold is the Developer of a residential community of Dwelling Units (as defined in the Declaration) including approved residential building lots and related site improvements and common facilities located in Bear, Delaware, and known as "Meridian Crossing" and "Meridian Crossing II", as shown on the record Recorded Major Land Development Plan for Meridian Crossing ("RMLDP"), prepared by Landmark Engineering, Inc. dated 11/01/02 and recorded in the Office of the Recorder of Deeds in Instrument No. 20030626-0076831, as amended ("MRLDP") (PX#1) (A28-A119) (Complaint ("C") paragraph 3) (DX#13).

2. The RMLDPs for Meridian Crossing consist of: (a) Lots; (b) Public Streets; (c) Private alleys; and (d) Open Space (PX#1) (A28-A119).

3. In connection with the approval of the Plan, New Castle County (the "County") required Reybold to execute certain Land Development Improvement Agreements (collectively, the "LDIA") and to post certain letters of credit as financial security to secure the completion of site improvements as shown on the Plan (PX#2) (A120-A171). The LDIA included in PART III – PERFORMANCE GUARANTEE Section L. Warranty against defects that "Twenty percent of the entire performance guarantee shall serve as a warranty that all improvements are free from defects for a period of three years after the later: (1) of the date of

COUNTY's inspection and acceptance of the final improvement to be constructed, or (2) the date of the transfer of title to the final improvements..." (Emphasis Added) (PX#2 P.12-15) (A131-134).

4. Pursuant to the LDIA and the County's Unified Development Code (the "UDC"), following inspection and approval by the County, open space for a community must be turned over to the community's maintenance corporation ("Turnover") in accordance with certain time frames and procedures set forth therein (PX#2 P.2&3) (A121&A122).

5. Subsequent to execution and delivery of the LDIA and the posting of such security, in March 2006, Reybold conveyed 236 Lots to Meridian Crossing Funding Company, Inc. ("MCFC"), a now dissolved Delaware corporation, and MCFC posted certain bonds with the County, replacing security previously posted by Reybold, to secure the completion of site improvements in connection with MCFC Lots in the Community (PX#3) (A172-190).

6. Commencing 3/31/06 and continuing to 6/07/07, MCFC conveyed 33 lots to NVR trading as Ryan Homes, and Ryan Homes constructed houses and conveyed the 33 lots to third person purchasers (PX#13 P.1) (A329).

7. Commencing April 2006 and continuing monthly thereafter, Reybold invoiced maintenance and improvements (Clubhouse) to Atlantic Meridian

Crossing ("AMC") and virtually all of these invoices reflected the 15% management fee (PX#4) (A190-A238).

8. Subsequent to the posting of such security, title to the Lots conveyed by Reybold to MCFC (net of certain out-sales to third party purchasers), on 6/23/10 Provident Bank ("Provident") filed a Foreclosure Complaint against MCFC (N10L-06-233). A judgment was entered on 7/13/2011, and on 1/04/12 the 203 lots were purchased back by Provident at Sheriff's Sale (PX#5) (A239), whereupon Reybold invoiced open space maintenance and improvements to Provident and virtually all of these invoices reflected the 15% management fee (PX#6) (A240-A258).

9. The 203 lots descended by Sheriff's Deed to Bergen Delaware Realty, LLC ("Bergen"), an entity formed by Provident for purpose of taking title, and thereafter, on 8/16/12, Bergen agreed to sell the 203 lots to The Ryland Group, Inc. ("Ryland") as more fully described hereinafter. *Bergen Delaware Realty, LLC v. The Ryland Group, Inc.*, 2015 WL 9480019 (Dec. 29, 2015 D. New Jersey).

10. In July 2013, Ryland acquired the operations and assets of Cornell Homes ("Cornell") (PX#7) (A259).

11. As of 9/26/13, Bergen was the owner in fee simply of 203 Lots in the Community (PX#8) (A260-A267).

12. On 9/26/13, Bergen conveyed fee simple title to each of its 203 Lots to Ryland (hereinafter the "Ryland Lots" and each a "Ryland Lot") (PX#8) (A260-A267).

13. By letter dated 9/30/13, Reybold advised Bergen of the amounts due in connection with Bergen's selling of its 203 lots to Ryland (PX#9) (A-268-A273).

14. Commencing October 2013 through December 2014, after Bergen conveyed the 203 lots to Ryland, Reybold invoiced Cornell/Ryland for maintenance and improvements, if any, including the 15% management fee (PX#11 (A284-A304) and PX#12 (A305-328)).

15. Thereafter, a dispute developed as to certain fees and sums alleged by Reybold to be due and owing from Bergen and/or Meridian Crossing Provident, LLC ("MCP") and/or Ryland for certain community-related costs incurred by Reybold and improvements to the common areas of the community completed by or for Reybold, including but not limited to, improvements to the open space and other common amenities and facilities, the construction of a pool, and an undetermined amount for stormwater pond construction and maintenance (PX#13 P.2 Para.J) (A330).

16. On 10/15/24, Ryland entered into a Construction Agreement with DelDOT in which Ryland acknowledged its responsible for bonding and constructing certain public streets in Meridan Crossing (PX#10) (A412-A415).

17. The parties commenced negotiating a Release and Settlement Agreement, and by email sent on 6/26/14, Reybold forwarded to Cornell/Ryland the October 2013 to January 2014 the Clubhouse and Open Space invoices (PX#12 P.1 to 16 and by email sent on 2/24/15 the September 30, 2013 letter (PX#12 P.17-24) (A305-A328) all including the 15% management fee on maintenance/improvements.

18. On or about 2/25/15, a Release and Settlement Agreement ("Agreement") (Complaint Exhibit A) ("Agreement") was entered into by and between The Ryland, MCP, Bergen, the Reybold Plaintiffs and Meridian Crossing Homeowner's Association. Ryland, MCP, Bergen, Reybold or Plaintiffs hereafter may be referred to collectively as the "Parties" (PX#13) (A329-A411).

19. The Background of the Agreement provided the sum total of the Disputed Amounts through the Effective Date is Eight Hundred Sixty-Nine Thousand Five Hundred Eighteen and 54/100 Dollars ($869,518.54) as described and identified in Exhibit A *annexed hereto and by this reference made a part hereof (Italics to reflect emphasis)* (PX#13, P.2 para. K) (A330).

20. Exhibit A, annexed and made part of the Agreement, was Reybold's September 30, 2013 letter reflecting open space maintenance and any improvements from January 2012 through September 2013, and the August 31, 2013 and September 30, 2013 invoices all reflecting the 15% management fee on open space maintenance and any improvements (PX#13, p.29 to 36) (A-357-A364).

21. In addition, set forth in the Agreement were the following provisions titled 9 (Ryland Contribution toward Future Reybold Improvements), 14 (Ryland Covenants):

9. "Ryland Contribution toward Future Reybold Improvements. ....Reybold agrees that Ryland's Proportionate Share for the Future Reybold Improvements shall be based on actual costs. The actual cost of the Future Reybold Improvements will be determined by the lowest reasonable bid from competent contractors selected by Reybold, or if Reybold elects to perform such work itself or by contractors selected without the use of competitive bidding, the actual costs shall be based on reasonable and competitive rates. Ryland shall pay Ryland's Proportionate Share obligation for each Future Reybold Improvement within thirty (30) days after receipt of: (i) a certification from Reybold that such Future Reybold Improvement has been completed in full in accordance with the requirements of authorities having jurisdiction over the Community under Applicable Laws; and (ii) full and complete copies of invoices, receipts and other documentation reasonably requested by Ryland to evidence the actual cost for completion of such Future Reybold Improvement." (A335)

14. p. "....The Common Facility Fees shall be based on actual costs. The actual cost of the Common Facility Fees will be determined by the lowest reasonable bid from competent contractors selected by Reybold, or if Reybold elects to perform such work itself or by contractors selected without the use of competitive bidding, the actual costs shall be based on reasonable and competitive rates. Ryland shall pay Ryland's Proportionate Share obligation for each Common Facility Fee within thirty (30) days after receipt of: (i) a certification from Reybold

that all work in connection with such Common Facility Fee has been completed in full in accordance with the requirements of authorities having jurisdiction over the Community under Applicable Laws; and (ii) full and complete copies of invoices, receipts and other documentation reasonably requested by Ryland to evidence the actual cost for the work serving as the basis for the Common Facility Fee in question. Reybold agrees: (i) that to avoid double billing of amounts billed to and paid by Ryland relating to operation of the pool and clubhouse pursuant to this paragraph, amounts billed to and paid by Ryland pursuant to this paragraph relating to operation of the pool and clubhouse (A345&A346).

22. (a) Exhibit H of the Agreement set forth the road (public streets eventually to be turned over to DelDOT) allocations: Exhibit H-2 (A381) set forth Reybold's responsibility; Exhibit H-3 (A382) set forth Ryland's responsibility; and Exhibit H-4 (A383) reflected all road allocation between Reybold and Ryland;

(b) Located within the 236 MCF lots reduced to 203 lots based upon the 33 conveyances were other private roadways / alleyways (Vega, Canis, Cetus, Horizon, Virgo, Draco, Castor, and L), which are not referenced in public roadways set forth in Exhibit H (A380); and

(c) Article 17. Third-Party Lots of the Agreement explicitly provided that: "Ryland agrees to assume responsibility for both the top coating of the roadways and the turnover to New Castle County of the sewer facilities that are associated with the Third-Party Lots." (A348)

23. In 2015, Ryland and Standard Pacific Group merged becoming CalAtlantic Group Inc. ("CAGInc.") (PX#14) (A412-A415).

24. Commencing with November 2014 and continuing through June 2017, Reybold invoiced Cornell/Ryland $168,879.94 for its proportionate share of maintenance and related expenses. These invoices consisted of a Reybold cover page reflecting the total due and owing, a detailed itemization by work category and amount, including the 15% Fee, and the invoice for each entry (PX#16) (A416-A491).

25. In August 2016, Daniel Stewart ("Stewart") was hired as CAGInc.'s Land Development Manager ("LDM") (PX#16 P.4) (A494) (A492-A506). Based upon the work having been performed, he approved for payment and CAGInc. paid by checks: (a) #67758 10/17/16 $17,034.41; (b) #67850 11/01/16 $16,443.25; (c) #69251 1/17/17 $4,598.46; (d) #69964 2/28/17 $6,829.47; and (e) #82000878 8/31/17 $11,787.58 (PX#16 P.5-7) (A494&A495).

26. From July 2017 to November 2017, Reybold invoiced Ryland $20,693.95 but CAGInc. did not pay these invoices (PX#17) (A507-A516).

27. In the winter of 2018, it was reported in the media generally that the CAGInc. had merged into Lennar (DX#14 P.1191); specifically, on 2/12/18, Cheetah Cub Group Corp., a wholly owned subsidiary of Lennar, was formed and merged with and into CAGInc and then converted and changed its name to CAGLLC (DX#15 P.1403 para.23) (A1343).

28. In February, 2018, Stewart became Lennar's Director of Land

Development ("DLD") (PX#16 P.4) and based upon the work having been performed, he approved for payment the invoices set forth hereinafter by: (a) CAGInc.'s check #8299415 dated 3/01/18; (b) U.S. Homes Corp check #1191650 dated 3/28/19 $15,064.38; (c) Lennar's ACH dated 9/05/19 $149,414.40; and (d) Lennar's ACH dated 1/21/20 $5,074,58 (PX#16 P.8&9) (A495).

29. December 2017 and continuing through March 2019, Reybold invoiced Lennar to the attention of Joel Goldfinger, then a Division Controller and subsequent Lennar's Vice President of Finance (PX#16 P.9) $111,361.20 for maintenance and improvements (PX#18) (A517-A547) and Lennar paid:

(a) $15,064.38 on 3/28/19 for maintenance from January to March 2018 through U.S. Homes, Corp, a Lennar subsidiary, by check with the signature of Diane Bessette, Lennar's Chief Financial Officer;

(b) $20,693.95 by ACH on 9/05/19 for maintenance representing the July to November 2017 Ryland Invoices;

(c) $128,720.45 by ACH on 9/05/19 for maintenance and related expenses and improvements for December 2017, and April 2018 through March 2019;

(d) $5,074.58 by ACH on 1/21/20 representing maintenance for April 2019 and May 2019;

(e) $2,469.51 representing maintenance for December 2019; and

(f) Each of these invoices included the 15% management fee. (PX#18 (A517-A547), PX#19 (A548-A551), PX#20 (A552-A654) and PX#21 (A663-A669)). There is not any evidence that Lennar complained that these invoices should be addressed to CAGLLC.

30. Commencing with June 2019, with the exception of $2,469.51 paid on May 7, 2020 for open space maintenance in December 2019, Reybold invoiced Lennar but Lennar failed to pay Maintenance and Improvements, as follows:

(a) $166,244.611 from June 2019 through December 2019;

(b) $179,679.35 from January 2020 through December 2020;

(c) $138,493.24 from January 2021 through August 2021 (PX#24) (A692-A694); and

(d) Each of these invoices included the 15% management fee. There is not any evidence that Lennar complained that there was a 15% management fee and/or that these invoices should be addressed to CAGLLC.

31. By letter dated 6/19/19, Reybold sent Stewart, Lennar's LDM additional copies of the invoices for improvements from July to December 2018 (PX#20) (A552-A654).

32. By email dated 6/24/19, Reybold sent Stewart, Lennar's LDM, additional copies of invoices for maintenance from December 2017 to March 2019 (PX#21) (A663).

33. The last 6 house conveyances by CAG were 3 in April, 2020, 3 in May, 2020 and the last and final on September 18, 2020 (PX#37) (A655-A662).

34. After one year had passed without CAG paving the alleyways, Reybold followed up and had two conversations with CAG about paving the alleyways and there were two different views of it. "...he (Chase) felt it was just proportionate to the open space. And I (Heisler) told him it was a cost and their responsibility" (3/12/25 AM p.90 L.22 to p.91 L.4) (A1793&A1794).

35. By email sent 11/10/21, Gary Chase, Lennar's Senior LDM, advised that "Lennar is not responsible for this work directly as the alleyways are considered open space requirements" as a result of which Reybold eventually paid $262,803.08 for topcoating Lennar's private alleys (invoicing $302,333,53 reflecting the 15% fee) in order to continue to receive permits for Reybold's lots (A1344).

36. On 11/16/21, Reybold and the County executed the "Developer Completion Agreement", which explicitly identified the open space by 38 tax parcel numbers (PX#22) (A670-A689) and in approximately January 2022, the open space was deeded ("turn-over") to the Maintenance Corporation subject to the Developer's three-year warranty," (PX#26) (A711-A769).

37. By email sent on 11/19/21, Reybold provided Stewart and Chase with additional copies of the improvement invoices January 2020 to August 2021 and maintenance from February to August 2021 (PX#23) (A690&A691).

38. By email sent on 1/31/22, Reybold provided Lennar with an itemization of payments made and copies of the outstanding invoices (PX#27) (A770-A912).

39. By email and 3 letters dated 6/27/22 Reybold provided Stewart:

(a) Additional copies of the invoices for maintenance from September 2021 to March 2022 (PX#29 P.1 to 137);

(b) Additional copies of the invoices for improvements from September 2021 to March 2022 and revised March 2021, April 2021 and August 2021(PX#29 138 to 256); and

(c) Invoices for private alleyways for August 2021, December 2021 through February 2022 and April 2022 (PX#28) (A913) (PX#136) (A915-A936) (PX#135) (A937-A1021) (PX#29 P.257 to 314) (PX#29) (A1022-A1079).

40. Commencing July 2022, Reybold invoiced Lennar $3,861.64 for maintenance from September 2021 through February 2022, but Lennar/CAG failed to pay.

41. Commencing July 2022, Reybold invoiced Lennar $30,369.63 for Improvements from September 2021 through April 2022 but Lennar/CAG failed to pay.

42. Commencing July 2022, Reybold invoiced Lennar $183,215.90 for paving of the private alleys from December 2021 to April 2022 but Lennar/CAG failed to pay (PX#135) (A0937-1021).

43. Each of the invoices referenced in paragraphs 33, 39 to 41and 42 included the 15% management fee. There is not any evidence that Lennar complained that there was a 15% management fee, and/or that these invoices should be addressed to CAGLLC.

44. On 8/22/22, Lennar filed an Answer (D #8) for the first time denying that "it is the correct party in interest" and on 9/23/22, in response to Reybolds' Interrogatory identified an entity called "CalAtlantic Group, LLC" (A1293).

45. On September 22, 2022, Defendant Lennar disclosed that:

"Cheetah Cub Group Corp., a wholly owned subsidiary of Lennar Corporation, was formed on February 12, 2018 merged with and into CalAtlantic Group, Inc. and CalAtlantic Group, Inc. was subsequently converted from a corporation to a limited liability company and changed its name to CalAtlantic Group, LLC." (DX#15, P.1403 para.23) (A1343)

ARGUMENT

I. 15% MANAGEMENT FEE

A. Question presented: Did the 2/25/15 Agreement entitle Reybold to recover a 15% Management Fee in addition to its actual costs? Argument Preserved at A2089-A2091 (within A2069-A2100) and A2108-A2109.

B. Standard of Review: Contract interpretation is question of law subject to de novo review. *Daniel v. Hawkins,*268 A.3d 631, 645 (Del. 2023).

C. Merits of the Argument: The Trial Court erred in rejecting the 15% Fee which was reflected in: (1) Virtually all invoices commencing April 2006 through October 2014 accepted and paid by the original lot owners Atlantic Meridian Crossing ("AMC"), Meridian Crossing Fund Closing ("MFC"), The Provident Bank ("Provident Bank") / Bergen Delaware Realty, LLC ("Bergen/Delaware") and (Cornell Homes") / The Ryland Group, Inc. ("Ryland") prior to the 2/25/15 Agreement; (2) Virtually all invoices from November 2014 through June 2017 accepted and paid Ryland/CAGInc., parties to the Agreement immediately after the 2/25/15 Agreement; (3) Virtually all invoices from June 2017 through May September and December 2019 accepted and paid by Lennar/CAGLLC and affiliates not parties to the Agreement; (4) Virtually all invoices from June 2019 through June to August, October and November 2019 and January 2020 through April 2020 received but not paid by CAG/Lennar without any contemporaneous

complaint; and (5) Challenged by CAG/Lennar for the first time more than 7.5 years after the 2/25/15 Agreement as 13th affirmative defense in its 8/22/22 Answer that "management fees do not have any basis in the Agreement".

Prior to 2/25/15 Agreement –

Commencing April 2006 and continuing monthly thereafter, Reybold invoiced maintenance and improvements (Clubhouse) to Atlantic Meridian Crossing ("AMC") and virtually all of these invoices reflected a 15% Overhead Charge (PX#4) (A190-A238).

Commencing in February 2012, after the foreclosure and Sheriff's sale, and continuing monthly thereafter, Reybold invoiced Provident Bank/Bergen Delaware for maintenance and improvements and virtually all of these invoices reflected the 15% fee (PX#6) (A240-A258).

Commencing October 2013 through December 2014, after Bergen conveyed the 203 lots to Ryland, Reybold invoiced Cornell/Ryland for maintenance and improvements, if any, including the 15% fee ("PX#11(A284-A304) and PX#12 (A305-A328).

In summary, Reybold's invoices to AMC/MCF, Provident/Bergen, and Cornell/Ryland for maintenance or any improvement including the 15% fee and was paid by AMF/MFC, Provident/Bergen, and Cornell/Ryland prior to the 2/25/15 Agreement.

2/25/15 Agreement

On or about 2/25/15, a Release and Settlement Agreement ("Agreement") was entered into by Ryland, MCP, Bergen, and Reybold (PX#13) (A329-A411).

The Background of the Agreement provided the sum total of the Disputed Amounts through the Effective Date is Eight Hundred Sixty-Nine Thousand Five Hundred Eighteen and 54/100 Dollars ($869,518.54) as described and identified in Exhibit A *annexed hereto and by this reference made a part hereof (Italics to reflect emphasis)* (PX#13, p.2) (A330).

Exhibit A, annexed and made part of the Agreement, was Reybold's September 30, 2013 letter reflecting open space maintenance and any improvements from January 2012 through September 2013, and the August 31, 2013 and September 30, 2013 invoices all reflecting the 15% fee on open space maintenance and any improvements (PX#13, p.29 to 36) (A357-A364).

Post 2/25/15 Agreement- The Parties thereto

Reybold respectfully submits that the Trial Court erred in failing to hold that the parties to the Agreement acknowledged the 15% fee was included therein –by attaching and incorporating invoices reflecting the 15%fee and thereafter by Reybold by continuing to include same in its invoices and Cornell/Ryland in paying without issue the 15% Fee included and reflected in invoices for more than the next two- and one-half years.

A construction given to an agreement by the acts and conduct of the parties with knowledge of its terms, before any controversy has arisen as to its meanings, is entitled to great weight. For example, in *Radio Corp of America v. Philadelphia Storage Battery Co.*, 23 Del. Ch. 329, 339 (Del. 1939), the Court of Chancery opined:

"It is a familiar rule that when a contract is ambiguous, a construction given to it by the acts and conduct of the parties with knowledge of its terms, before any controversy has arisen as to its meaning, is entitled to great weight, and will, when reasonable, be adopted and enforced by the courts. The reason underlying the rule is that it is the duty of the court to give effect to the intention of the parties where it is not wholly at variance with the correct legal interpretation of the terms of the contract, and a practical construction placed by the parties upon the instrument is the best evidence of their intention."); *Shields Development Co. v. Shields*, 1981 WL 7636, at *4 (Del. Ch. Dec. 8, 1981) ("Even if it be considered as ambiguous, it is the general rule that a construction given by acts and conducts of the parties before any controversy has arisen is entitled to great weight and will be adopted and enforced when reasonable."); *Pepsi-Cola Bottling Co. of Asbury Park v. Pepsico, Inc.*, 297 A.2d 28, 33 (Del. 1972) ("The prohibition against amendment except by written change may be waived or modified in the same way in which any other provision of a written agreement may be waived or modified, including a change in the provisions of the written agreement by the course of conduct of the parties."); *Texas Pacific Land Corp. v. Horizon Kinetics, LLC*, 306 A.3d 530, 567 (Del. Ch. Dec. 1, 2023) ("[A]ny course of performance accepted or acquiesced in without objection" is given great weight in the interpretation of the agreement. [W]hen a contract is ambiguous, a construction given to it by the acts and conduct of the parties with knowledge of its terms, before any controversy has arisen as to its meaning, is entitled to great weight, and will, when reasonable, be adopted and enforced by the courts.") (citations and quotations omitted). See also *Ostroff v. Quality Services Laboratories, Inc.*, 2007 WL 121404 @ 11 (Del. Chan. Jan. 5, 2007).

Commencing with November 2014 and continuing through June 2017, Reybold invoiced Cornell/Ryland $168,879.94 for its proportionate share of

maintenance and related expenses. These invoices include the 15% Fee reflected in each itemization (PX#15) (A416-A491).

Cornell/Ryland, a party to the Agreement, and CAG Inc paid $160,599.52 of the $168,879.94 (PX#24) (A692) and thereby acknowledging that the 15% Fee was inherent in the 2/25/15 Agreement.

Thus, Reybold respectfully submits that the Trial Court erred in failing to recognize that Cornell/Ryland ratified the 15% fee by paying invoices for more than two and one-half years after the 2/25/15 Agreement payments for without issue and/or alternatively erred in failing to recognize that any provision in the Agreement deeming oral modifications unenforceable was amended and/or waived by the party's performance.

In *Pepsi-Cola Bottling Co. of Asbury Park v. Pepsico, Inc.,* 297 A.2d 28, 33 (Del.1972), this Court held that part performance may prove modification or waiver of an agreement. "[A] written agreement between contracting parties, despite its terms, is not necessarily only to be amended by formal written agreement.... [P]arties have a right to renounce or amend the agreement in any way they see fit and by any mode of expression they see fit. They may, by their conduct, substitute a new oral contract without a formal abrogation of the written agreement." and that any "prohibition against amendment by except by written change may be waived or modified in the same was in which any other provision of a written agreement may be waived or

modified including a change in the provisions of the written agreement by the course of conduct of the parties".

These principles have been followed by Chancery and Superior Courts for more than one-half a century:

"While integration clauses proscribe the Court's consideration of all oral and written communications and agreements that occurred prior to the agreement when interpreting it, they do nothing to prevent the Court's consideration of subsequent promises, communications, or modifications to the express agreement and therefore do not bar a finding of waiver, estoppel, or acquiescence". *Preferred Financial Services, Inc. v. A&R Bail Bonds, LLC,* 2019 WL 315331, at *4 (Del. Super., Jan. 2, 2019) *In Re Coinmint, LLC,* 261 A.3d 867 (Del. Ch. 2021); *Simon Prop. Group, L.P. v. Brighton Collectibles, LLC,* 2021 WL 6058522 at *8 (Del. Super., Dec. 21, 2021).

Post 2/25/15 Agreement – Lennar/CAG

Reybold respectfully submits that the Trial Court erred in failing to hold that Lennar/CAG, not parties to the Agreement, acknowledged, ratified, and agreed to the 15% fee all invoices from June 2017 through May, September and December 2019 with the 15% fee reflected therein.

From December 2017 and continuing through March 2019:

(a) Commencing with July 2017 to November 2017, Reybold invoiced

Cornell/Ryland $20,693.95 (PX#17 (A507-A516) and PX#18(A517-A547)) for its proportionate share of maintenance and related expenses. These invoices reflected the 15% Fee.

Lennar, not a party to the Agreement, paid the $20,693.95 by ACH sent 9/05/19 (PX#24) (A693) without objection, and thereby ratified and/or accepted by its conduct to the 15% Fee.

(b) Commencing January 2018 to March 2018, Reybold invoiced Lennar $15,064.38 for its proportionate share of maintenance and related expenses and improvements including the 15% Fee (PX#18) (A517-A547).

U.S. Homes. Corp., a Lennar subsidiary, by check dated 3/28/19 with the signature of Diane Bessette, Lennar's Chief Financial Officer, paid $15,064.38 (PX#24) (A692) without objection and thereby ratified and accepted by its conduct the 15% Fee.

(c) Commencing with December 2017, April 2018 through March 2019, Reybold invoiced Lennar $128,720.45 for its proportionate share of maintenance and related expenses and Improvements including the 15% Fee (PX#18 (A517-A547) and PX#20 (A552-A654)).

Lennar, not a party to the Agreement, by ACH sent on 9/05/19 paid $128,720.45 (PX#24) (A693) without objection and thereby ratified and accepted by its conduct the 15% Fee as compliant with the Agreement.

(d) Commencing with April and May 2019, Reybold invoiced Lennar $5,074.58, representing its proportionate share of maintenance and related expenses including the 15% Fee (PX#19) (A548-A551).

Lennar, not a party to the Agreement, by ACH sent 9/05/19 paid $5,074.58 (PX#24) (A693) without objection, and thereby ratified and accepted by its conduct the 15% Fee.

(e) Commencing with December 2019, Reybold invoiced Lennar $2,469.51 for its proportionate share of maintenance and related expenses including the 15% Fee.

Lennar, not a party to the Agreement, paid $2,469.51 (PX#24) (A693) without objection and thereby ratified and accepted by its conduct the 15% Fee.

In summary, Reybold submits that the Trial Court erred as a matter of Delaware and general law that CAG/Lennar's continued payment of invoices with the 15% Fee constitutes ratification and/or modification by its consent to the 15% Fee. *Shah v. American Solutions, Inc.*, 2012 WL 1413593 (Del. Super. Mar. 8, 2012) ("At the conclusion of that contract, Plaintiff alleges American Solutions not only orally agreed to continue paying for his services on a monthly basis, but ratified the agreement by actually paying. Then, without warning, despite Plaintiff upholding his part of the agreement, American Solutions began paying for only half of Plaintiff's services and eventually stopped paying Plaintiff altogether. At

this stage in the proceedings, Plaintiff has pled sufficient facts to support a claim for breach of contract against American Solutions."); *CIT Tech. Financing Services, Inc. v. Franklin First Financial, Ltd.*, 132 A.D. 3d 715, 716 (N.Y. App. Div. 2d Dept. 2015) ("In any event, FFF [residential mortgage provider] ratified the lease by making monthly payments thereon for over two years with knowledge of the material facts."); *Great America Financial Services Corp. v. Natalya Rodionova Medical Care, P.C.*, 956 N.W.2d 148, 156 (Iowa 2021) ("We recognize that questions regarding acceptance, rejection, and ratification often raise factual issues that preclude summary judgment. But here, on the undisputed facts, NRMC had possession of the equipment and paid invoices over a seven-month period...If NRMC wished to reject the goods, or did not wish to be a party to contract with GreatAmerica, NRMC could have done so in a reasonable time. But as a matter of law, the failure to reject goods over a seven-month period and the payment of periodic invoices amounts to a ratification that cannot be unwound by a tardy effort to reject the goods."). See also *Sitco Enterprises, LLC v. Tervita Corp.*, 2018 WL 3032579, at *11 (S.D. Tex. June 19, 2018) (internal citations and quotations omitted), in which the United States District Court for the Southern District of Texas held that a parent company could be held liable when it ratifies contractual obligations and accepts the benefits of the subsidiary's contract.

In addition, commencing June 2019 through April 2022, Reybold's invoices to Lennar included the 15% Fee and at no time did Lennar complain of the inclusion of the 15% Fee.

In fact, the first time CAG/Lennar questioned the 15% Fee was more than seven and one-half years after the 2/25/15 Agreement on 8/22/22 in its Answer (D #8) asserting as its 14th affirmative defense that "management fees do not have any basis in the Agreement".

In summary, Reybold was entitled to $47,272.86 in management fees based upon common facility ($67,606.45 x 15% = $10,140.97) and improvements ($247,545.95 x 15% = $37,131.89).

II. PRIVATE ALLEYWAYS

A. Question presented: Did the Agreement require Lennar/CAGLLC, as successors to Ryland, to pay the costs for topcoating the private roadways /alleyways located within and around the 236 third party lots and, if so, upon Lennar's refusal was Reybold entitled to recover those for topcoating? Argument Preserved at A2091-A2093 (within A2069-A2100) and A2101-2107 and A2108-A2109.

B. Standard of Review: Contract interpretation is question of law subject to de novo review. *Daniel v. Hawkins,*268 A.3d 631, 645 (Del. 2023).

C. Merits of the Argument: The Trial Court erred in finding that the 2/25/15 Agreement, specifically, Article 17. Third Party Lots, did not require Lennar/CAGLLC, as successors to Ryland, to pay the costs to topcoat the private roadways/alleyways and, based thereon, denying Reybold recovery of $302,223.53 reflecting $256,890 paid plus $45,333.53 15% management fee for topcoating the private roadways/alleyways located within and around the 236 lots previously owned by MCFC, Cornell/Ryland/CAGInc., Provident/Bergen, and CAGLLC which was always the responsibility of the owner of those lots and was expressly incorporated into the Agreement.

Located within Meridian Crossing are 12 private roadways/alleyways including 8 (Vega, Canis, Cetus, Horizon, Virgo, Draco, Castor, and Lyra) private

roadway/alleyways located within or around the original 236 lots conveyed out to other builders (A914).

Prior to conveying any lots in Meridian Crossing, Reybold had installed the base asphalt coat and curbs in all 12 private alleyways.

In March 2006, Reybold conveyed 236 lots to MCF (PX#3) and from 3/31/06 to 6/07/07 MCF conveyed 33 of these lots to NVR (trading as Ryan Homes), and NVR constructed and sold houses to third parties from 3/31/06 through 6/06/07 (PX#13) (A172-A190).

On 6/23/10 Provident Bank ("Provident") filed a Foreclosure Complaint against MCF (N10L-06-233). A judgment was entered on 7/13/2011, and on 1/04/12 the 203 lots were purchased back by Provident at Sheriff's Sale (PX#5) (A239).

The 203 lots descended by Sheriff's Deed to Bergen Delaware Realty, LLC ("Bergen"), an entity formed by Provident for purpose of taking title, and thereafter, on 8/16/12, Bergen agreed to sell the 203 lots to The Ryland Group, Inc. ("Ryland") as more fully described hereinafter. *Bergen Delaware Realty, LLC v. The Ryland Group, Inc.*, 2015 WL 9480019 (Dec. 19, 2015 D. New Jersey).

In July 2013, Ryland acquired the operations and assets of Cornell Homes ("Cornell") (PX#7) (A259).

As of 9/26/13, Bergen was the owner in fee simply of 203 Lots in the Community (PX#8) (A260-A267).

On 9/26/13, Bergen conveyed fee simple title to each of its 203 Lots to Ryland (hereinafter the "Ryland Lots" and each a "Ryland Lot") (PX#8) (A260-A267).

Greg Lingo ("Lingo") was Operational Vice President of The Ryland Group. At trial Lingo testified and explained that: (1) "There is really no way to top coat that area (alleyways) ...until the homes are built (3/12/25 P.75 L17-22) "; (2) "there's a lot of trucks and damage that's done to an alley during the construction of a house" (3/12/25 P.76 LL3-6) (A2045)); and (3) "typically we have the builder responsible for the top coat of the alley after the home is built" 3/12/25 P.75 L20-22) (A2044).

Lingo executed the 2/25/15 Agreement on behalf of Ryland.

The Court erred in failing to give Lingo's explanation as to why the builder, here Ryland, as oppose to the developer, here Reybold, was responsible for topcoating the private alleyways. See *Radio Corp of America v. Philadelphia Storage Battery Co.*, 23 Del. Ch. 329, 339 (Del. 1939), the Court of Chancery opined:

"It is a familiar rule that when a contract is ambiguous, a construction given to it by the acts and conduct of the parties with knowledge of its terms, before any controversy has arisen as to its meaning, is entitled to great weight, and will, when reasonable, be adopted and enforced by the courts. The reason underlying the rule is that it is the duty

of the court to give effect to the intention of the parties where it is not wholly at variance with the correct legal interpretation of the terms of the contract, and a practical construction placed by the parties upon the instrument is the best evidence of their intention."); *Shields Development Co. v. Shields*, 1981 WL 7636, at *4 (Del. Ch. Dec. 8, 1981) ("Even if it be considered as ambiguous, it is the general rule that a construction given by acts and conducts of the parties before any controversy has arisen is entitled to great weight and will be adopted and enforced when reasonable."...".

As of the effective date and in BACKGROUND Article B of the 2/25/15 Agreement, the 236 lots previously conveyed were acknowledged and referred to therein as the "Third Party Lots." (PX#13, page 1) (A329).

Exhibit H of the 2/25/15 Agreement sets forth the public roads (streets) eventually to be turned over to DelDOT). Exhibit H-2 set forth Reybold's responsibility; Exhibit H-3 set forth Ryland Homes' responsibility; and Exhibit H-4 reflected all public roads streets as allocated between Reybold and Ryland Homes (PX#13 pages 53 to 55) (A381-A383). At the time of trial in March, 2025, Lennar/ CAG was just finishing up the Ryland public streets (A1688&A1689).

The 8 private roadways/alleyways located within the original 236 and remaining 203 lots are not referenced in Exhibit H of the 2/25/15 Agreement.

Instead, Article 17. Third Party Lots of the 2/25/15 Agreement explicitly provided that "Ryland agrees to assume responsibility for both the topcoating of the roadways and the turnover to New Castle County of the sewer facilities that are associated with the Third-Party Lots." (Emphasis Added). Since Ryland was already bound by contract with DelDOT and Exhibit H to construct the other

roadways, Article 17 memorialized Ryland's obligation to topcoat the above 8 private roadways/alleyways (A348).

At trial CAG failed to offer any explanation as to the purpose of Article 17 of the 2/25/15 Agreement other than to memorialize Ryland's obligation to topcoat the private roadways/alleyways and turnover to New Castle County the sewer facilities associated with the Third-Party Lots.

CAG conveyed the last 6 house conveyances by CAG were 3 in April, 2020, 3 in May, 2020 and the last and final on September 18, 2020 (Reybold Trial Exhibit #37) (A655-A662).

After one year had passed without CAG paving the alleyways, Reybold followed up and had two conversations with CAG about paving the alleyways and there were two different views of it. "...he (Chase) felt it was just proportionate to the open space. And I (Heisler) told him it was a cost and their responsibility" (3/12/25 AM p.90 L.22 to p.91 L.4) (A1793-1794).

By email sent 11/10/21, Chase/Lennar, advised that "Lennar is not responsible for this work directly as the alleyways are considered open space requirements" (DX#2 page 089). Although taking that open space position, CAG/Lennar still failed to pay $72,352.31 (23.94% of $302,223.53) their 23.94% proportionate share of alleyways that they erroneously alleged were part of open space improvements in light of the fact that the Record Major Land Development

Plan (PX#1) (A28-A119), the Land Development Improvement Agreements (PX#2) (A120-A171) (parenthetically the Developer Completion Agreement executed less than 1 week later (PX#22) (A670-A689)) refer to and identify the open space by 38 tax parcel numbers, not one of which is above the other roadways.

Heisler testified at trial that as a result of Lennar's refusal to pave these roadways/alleyways, Reybold had to pay for paving Lennar's private alleys in order to continue to receive permits for Reybold's lots (3/12/25 P.91 L.4 to P.95 L.12) (A1793-A1798) commencing in December, 2021 and continuing through May 2022, Reybold paved the alleyways and invoiced CAG $183,215.90 ($159,318.17 plus $23,897.73 management fee) and $119,007.65 ($103,484.91 plus $15,522.74 management fee (Reybold Trial Exhibit #135 and #136) ($262,803.08 paving + $ 39,420.45 management fee= $302,233.53) (PX#135 (A937-1021) & #136 (A1020-A1079).

Lastly, in Article 17. Third Party Lots of the 2/25/15 Agreement Ryland agreed to assume not just responsibility for topcoating the roadways but also for "the turnover to New Castle County of the sewer facilities that are associated with the Third Party Lots". The record is devoid of any challenge by Lennar/CAG of its inherited responsibility from Ryland for turnover the sewer facilities to New Castle County.

In summary, Reybold was entitled to $302,233.53 (representing $262,803.08 paving + $39,420/45 management fee) for paying Lennar/CAG's private alleyways.

III. TURNOVER

A. Question presented: Did the Agreement require Lennar/CAGLLC to contribute to the continuing three-year warranty expense after the open space had been deeded to the maintenance corporation and, if so, is Reybold entitled to recover Lennar/CAGLLC's proportionate share? Argument preserved at A2093-A2094 (within A2069-A2100) and A2108-A2109.

B. Standard of Review: Contract interpretation is question of law subject to de novo review. *Daniel v. Hawkins,*268 A.3d 631, 645 (Del. 2023)

C. Merits of the Argument: The Trial Court erred by interpreting the phrase "the date of turnover" in paragraph 14.p of the 2/25/15 Agreement as excusing Lennar/CAGLLC from paying their proportionate share of the three years warranty expense after the open space was deeded to the maintenance corporation

At trial, Reybold sought to recover $124,227.79 based upon the warranty on the improvements from January 2022 to April 2024 (PX72-PX#99) and $2,523.48 representing maintenance invoiced in January and February 2022 (PX#132&PX133).

In connection with the approval of the Plan, commencing in June 2003, New Castle County (the "County") required Reybold to execute certain Land Development Improvement Agreements (collectively, the "LDIA") and to post certain letters of credit as financial security to secure the completion of site improvements as shown on the Plan (PX#2) (A120-A171).

The 2003 LDIA also included in PART III – PERFORMANCE GUARANTEE Section L. Warranty against defects that "Twenty percent of the entire performance guarantee shall serve as a warranty that all improvements are free from defects for a period of three years after the later: (1) of the date of COUNTY's inspection and acceptance of the final improvement to be constructed, or (2) the date of the transfer of title to the final improvements…" (PX#2, p.14) (A133)

The 2/25/15 Agreement in Background explicitly provided:

B. In connection with the approval of the Plan, New Castle County (the "County") required Rebold to execute certain Land Development Improvement Agreements (collectively, the "LDIA") and to post certain letters of credit as financial security to secure the compellation of the improvements as shown on the Plan…) (PX#13, p.1) (A120)

C. Pursuant to the County's Unified Development Code (the "UDC"), following inspection and approval by the County, open space for a community must be turned over to the community's maintenance corporation ("Turnover") in accordance with certain time frames and procedures set forth therein." (Emphasis Added). (PX#13, p, 2) (A121).

On November 16, 2021, consistent therewith, Reybold and the County executed the "Developer Completion Agreement," (PX#22) (A670-A689) and in approximately January 2022, the open space was deeded ("turn-over") to the Maintenance Corporation/ subject to the Developer's three-year warranty (PX#26 (A711-A769).

The turnover concluded Reybold's responsibility for improvements to and maintenance of the open space and the 2/25/15 Agreement assured Ryland, and in turn, Lennar/CAG, that their liability to Reybold concluded concurrent therewith.

However, nothing explicitly or implicitly could eliminate Reybold's LDIA warranty of all improvements for three more years and Lennar/CAG's concurrent post turnover liability was included by the phrase "time frames and procedures set forth therein" in the 2/25/15 Agreement.

No logical explanation was offered as to why Lennar/CAG would not continue to bear the same proportionate share of the responsibility for the three-year warranty that they bore under the 2/25/15 Agreement from February 2015 through January 2022.

Moreover, at trial, CAG acknowledged that generally CAG was well aware of LDIA's three-year performance guarantee. Specifically, Stewart testified two of the three developments in which CalAtlantic was concurrently involved in approximately 2018 to 2020 was Summit Bridge - Colony East and Colony West (3/13/25 p.40 L.21) (A2012)). In fact, CalAtlantic performed work for the open space under a LDIA Agreement in another development (3/13/25 P.43 L9-17 (A2015)) and was well aware of a three-year performance guarantee (3/13/25 P.45 L19 (A2016)).

In summary, the Trial Court erred in holding that CAG's liability concluded with the deeding of the open space to the maintenance corporation and, therefore, did not continue for the 3 year warranty despite the 2/25/15 Agreement explicitly referencing the time frames under LDIA in connection with any turnover as a result of which Reybold is entitled to recover $143,996.26 representing 141,496.79 ($513,954.44 x 23.94% = $123,040.69 + $18,456.10 ($123,040.69 x 15%) ($105,593.62 + 15% $18,634.17) based upon the warranty on the improvements from January 2022 to April 2024 (PX72-PX#99) (A2110-A2364) and $2,499.47 ($9,078.75 x 23.94% - $2,173.45 + 326.02 ($2,173.45 x 15%) based upon maintenance invoiced in January and February 2022 (PX#132&PX133) (A-2365-2376).

IV. ATTORNEY FEES

A. Question presented: Would Reybold be the prevailing party for the litigation as a whole thereby entitled to recover its attorney fees and costs if this Court reverse? Argument Preserved at A2096-A2097 (within A2069-A2100) and A2108-A2109.

B. Standard of Review: Contract interpretation is question of law subject to de novo review. *Daniel v. Hawkins,*268 A.3d 631, 645 (Del. 2023).

C. Merits of the Argument: The Trial Court held that in its eyes, neither party walks away prevailing on the majority of its claims; however, if this Court reverses on the topcoating issues or two or more of the other issues on appeal thereby entitling Raybould to an award of its attorney fees and costs.

Section 15. Remedies Subsection (b) of the 2/25/15 Agreement explicitly provided:

> "The prevailing Party in such litigation shall be entitled to an award of all attorney fees and costs actually incurred in connection with the initiation and prosecution of that litigation."

Delaware generally follows the American Rule, under which litigants are responsible for their own attorneys' fees, regardless of the outcome of the lawsuit." *Bako Pathology LP v Bakotic*, 288 A.3d 252, 280 (Del. 2022) (quoting *Alaska Elec. Pension Fund v. Brown*, 998 A.2d 412, 417 (Del. 2010). An exception to the American Rule applies "in contract litigation that

involves a fee shifting provision." *Mahani v. Edix Media Grp., Inc.*, 935 A.2d 242, 245 (Del. 2007); see also *Bako Pathology LP*, 288 A.3d at 280 (Del. 2013. In those cases, Delaware courts generally enforce a contractual agreement to shift fees. *Bako Pathology LP.*, 288 A.3d at 280 (quoting *SIGA Techs, Inc. v PharmAthene, Inc.*, 67 A.3d 330, 352 (Del. 2013). Absent "qualifying language that fees are to be awarded claim-by-claim or on some other partial basis, a contractual provision entitling the prevailing party to fees will usually be applied in an all-or-nothing manner." *AFH Hldg. V. Advisory, LLC v. Emmaus Life Scis., Inc.*, 2014 WL 1760935, at *2 (Del. Super Apr.16, 2014) (quoting *West Willow Bay Ct., LLC v. Robino-Bay Ct. Plaza, LLC*, 2009 WL 458779, at *8 (Del. Ch., Feb. 23, 2009). In such an all-or-nothing case, the Court analyzes the "predominance in the litigation" to determine the prevailing party. *Duncan v. STICPL, LLC,* 2020 WL 829374, at *15 (Del. Super. Feb. 19, 2020) (citing *Mrs. Fields Brand, Inc. v. Interbake Foods LLC*, 2018 WL 300454, at @2 (Del. Ch. Jan. 5,2018). "To establish predominance, the party must prevail on the case's chief issue[s]. *Id.* (Citing 2009 *Caiola Fam. Tr. V PWA, LLC*, 2015 WL 6007596, at *33 (Del. Ch., Oct. 14, 2015); see also id. (Noting that there can be more than one chief issue in a case). *Navient Solutions, LLC v. BPG Office Partners XIII Iron Hill LLC*, 2023 WL 23120644, at *16 (Del. Super. Apr. 27, 2023).

The Reybold Plaintiffs respectfully submit that if this Court reverses on the topcoating issue or on any other two issues on appeal, Reybold will be the prevailing and contractually entitled to an award of their attorney fees and costs incurred beyond Court costs.

V. LENNAR PROPER PARTY

A. Question presented: Did the Trial Court err in granting Lennar summary judgment by failing to consider a parent corporation's liability for a subsidiary's actions based upon commingling of assets and operations as an alternative to piercing the corporate veil? Argument Preserved at A1644-1645 and A2108-A2109.

B. Standard of Review: This Court reviews a Trial Court's decision on a motion for summary judgment de novo, applying the same standard as the Trial Court. *Paul v Deloitte & Touche,* LLP, 974 A.2d 140, 145 (Del. 2009)

C. Merits of the Argument: The Trial Court erred in failing to consider as an alternative to piercing the corporate veil Lennar's liability as the parent entity based upon commingling CAGLLC's assets and operations.

In *O'Leary v. Telecom Resources Service., LLC*, 2011 WL 379300 at *7 (Del. Super. Jan. 14, 2011), the Superior Court identify the "extreme circumstances" including the commingling of assets and operations, in which a parent corporation can be held liable for a subsidiary's action:

> "...Fraud is one circumstance under which a parent company can be held liable for a subsidiary's action. Another circumstance is when the subsidiary is merely an instrumentality or alter ego of the parent corporation. The degree of control that would be required to "pierce the veil" and hold the parent corporation liable would be a degree of control by the parent corporation that the subsidiary no longer has legal or independent significance of its own. The key to this degree of control is an absence of corporate formalities separating the parent and the

subsidiary, "such as where the assets of the two entities are commingled and their operations intertwined." (Internal citations omitted)

In addition, this principle that a parent, as an agent, can be responsible for the acts of its subsidiary was recognized by this Court in footnote 35 in *Bhole, Inc. v. Shore Investments, Inc.* 67 A.3d 444, 455 (Del. 2013).

The undisputed facts in this case established that the assets of Lennar and CAGLLC were commingled and their operations intertwined.

On or about 2/12/18, Lennar had Cheetah Cub Group Corp. formed as a wholly owned subsidiary and then merged with and into CAGInc. and converted and changed its name to CAGLLC (DX#15, para.23) (A1343).

In February 2018, Stewart became not CAGLLC's but Lennar's LDM (PX#16 P.4) (A494), and based upon the work having been performed, approved for payment the invoices set forth hereinafter by: (a) CAGInc.'s check #8299415 dated 3/01/18; (b) U.S. Homes Corp. check #1191650 dated 3/28/19 $15,064.38; (c) Lennar's ACH dated 9/05/19 $149,414.40; and (d) Lennar's ACH dated 1/21/20 $5,074,58 (PX#16 P.8&9) (A495).

Commencing December 2017 and continuing through March 2019, Reybold invoiced, without objection, Lennar, not CAGLLC, to the attention of Joel Goldfinger, then a Lennar Division Controller and subsequent Lennar's Vice President of Finance $131,765 for maintenance and improvements (PX#16 P.9) (A495), and Lennar, not CAGLLC, paid:

a) $15,064.38 on 3/28/19 for maintenance from January to March 2018 through the U.S. Homes, Corp., a Lennar subsidiary, by check with the signature of Diane Bessette, not CAGLLC's but Lennar's Chief Financial Officer (PX#24 (A692);

b) $20,693.95 by Lennar ACH on 9/05/19 for maintenance representing the July to November 2017 Ryland Invoices (PX#24) (A693);

c) $128,720.45 by Lennar ACH on 9/05/19 for maintenance and related expenses and improvements for December 2017, April 2018 through March 2019 (PX#24) (A693);

d) $5,074.58 by Lennar ACH on 1/21/20 representing maintenance for April 2019 (PX#24) (A693);

e) $2,469.51 by Lennar ACH on 5/07/20 representing maintenance for December, 2019 (PX#24) (A693).

Commencing with June 2019, with the exception of $2,469.51 paid on 5/07/20 for maintenance in December 2019, Reybold invoiced Lennar, not CAG LLC, without objection from Lennar, but Lennar failed to pay the Maintenance and Improvements.

By letter dated 6/19/19, Reybold sent Stewart, as Lennar's LDM, invoices for improvements from July to December 2018. Each of these invoices included the 15% management fee (PX#20) (A552-A654).

By email dated 6/24/19, Reybold sent Stewart, as Lennar's LDM, invoices for maintenance from December 2017 to March 2019 (PX#21) (A663-669).

There is not any evidence that Stewart objected to either the 6/19/19 and/or the 6/24/19 email being sent to him in his Lennar capacity and not to CAGLLC.

By email sent 11/10/20, November 10, 2020, Chase, as Lennar's Senior LDM advised Reybold that "**Lennar** is not responsible for this work directly as the alleyways are considered open space requirements." (Emphasis Added).

By email sent on 11/19/21, Reybold provided Stewart, as Lennar's LDM, and Chase, as Lennar's Senior LDM, with improvement invoices from January 2020 to August 2021 and maintenance from February to August 2021 (PX#21) (A690&A691).

By email sent on 1/31/22, Reybold provided Lennar with an itemization of payments made and outstanding invoices. (PX#27) (A770-A912).

By email and 3 letters dated 6/27/22, Reybold provided Stewart, as Lennar's LDM: (a) Invoices for maintenance from September 2021 to March 2022; (b) Invoices for improvements from September 2021 to March 2022 and revised March 2021, April 2021, and August 2021 (PX#29); and (c) Invoices for private alleyways for August 2021, December 2021 through February 2022, and April 2022 (PX#28) (A913) (PX#136) (A915-A936) (PX#135) (A937-A1021) (PX#29) (A1002-A1079).

There is not any evidence that Stewart, Chase or anyone else with Lennar ever objected to Reybold's emails and letters being addressed to them in their Lennar Capacity and not to CAGLLC.

In addition, not a single CAGLL document nor CAGLLC person was ever identified.

On 6/28/22 Reybold filed its Compliant (A1080-1277) naming only Lennar as a Defendant and on 8/22/22, Lennar filed an Answer (DX#8) (A1278-1296) for the first time denying that "it is the correct party in interest," and subsequently on in response to Reybolds' interrogatory, identified an entity called CAGLLC.

Reybold respectfully submit, at a minimum, the above facts, inter alia, create a dispute as to material facts as to whether Lennar exercised the degree of control over CAGLLC such that CAGLLC no longer had any legal or independent significance as a result of which the Trial Court erred in granting Lennar summary judgment.

CONCLUSION

The Reybold Appellants respectfully submit that based upon the undisputed facts and as a matter of law the Trial Court erred in not awarding Reybold:

1. $47,272.86 in management fees based upon (common facility of $67,606.45 x 15% = $10,140.97 and improvements ($247,545.95 x 15% = $37,131.89);

2. $302,233.53 (representing $262,803.08 paving + $39,420/45 management fee) for paying Lennar/CAG's private alleyways; and

3. $143,996.26 representing 141,496.79 ($513,954.44 x 23.94% = $123,040.69 + $18,456.10 ($123,040.69 x 15%) based upon the warranty on the improvements from January 2022 to April 2024 and $2,499.47 ($9,078.75 x 23.94% = $2,173.45 + $326.02 ($2,173.45 x 15%) 523.48 ($2,144.96 + 15% $378.52) based upon maintenance invoiced in January and February 2022.

In addition, should this Court reverse as to #1 and #3 above Or #2 above alone, Reybold under any standards would be the prevailing party and contractually entitled to an award of their attorney fees and costs incurred beyond Court costs as a result of which Reybold requests that any reversal be combined with an instruction upon remand to award Reybold fees and costs incurred beyond Court costs.

Lastly a dispute as to material facts as to whether Lennar exercised the

degree of control over CAGLLC such that CAGLLC no longer had any legal or independent significance as a result of which the Trial Court erred in granting Lennar summary judgment as a result of which Reybold requests that any reversal be combined with trial upon Lennar's responsibility unless mooted by CAGLLX's payment of any judgment.

Respectfully Submitted.

/s/ JEFFREY M. WEINER, ESQUIRE #403
JEFFREY M. WEINER, ESQUIRE #403
1332 N. King Street
Wilmington, Delaware 19801
(302) 652-0505
LegalW@AOL.com
Counsel for Reybold Plaintiffs below/Appellants

November 24, 2025