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HOUSE BILL 25-1272

BY REPRESENTATIVE(S) Bird and Boesenecker, Pugliese, Armagost, Bradley, Caldwell, Camacho, Clifford, Espenosa, Gilchrist, Gonzalez R., Hartsook, Keltie, Lindstedt, Phillips, Rydin, Soper, Stewart R., Taggart, Weinberg, Winter T., Woog, Barron, Bradfield, Brooks, Duran, Froelich, Hamrick, Johnson, Lukens, Marshall, McCormick, Paschal, Richardson, Smith, Stewart K., McCluskie, Garcia Sander, Jackson, Lindsay, Mauro, Ricks;

also SENATOR(S) Coleman and Roberts, Lundeen, Frizell, Michaelson Jenet, Mullica, Pelton B., Snyder, Amabile, Baisley, Bridges, Bright, Carson, Catlin, Daugherty, Exum, Gonzales J., Hinrichsen, Kipp, Kirkmeyer, Liston, Marchman, Pelton R., Rich, Simpson.

CONCERNING HOUSING.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Short title - legislative declaration. (1) The short title of this act is the "Colorado American Dream Act".

(2) The general assembly finds that:

(a) Homeownership is a cornerstone of economic stability, but for

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many Coloradans, particularly first-time homebuyers, it has become increasingly out of reach. Surveys show that while 90% of renters aspire to own a home, more than half believe it is unattainable. This concern is personal for many, with over 4 out of 5 parents expressing concerns about whether their children will be able to afford to live in Colorado. Many Coloradans agree that increasing the variety and availability of housing options is crucial, as people want the ability to find and choose housing that fits their needs, whether it's through more accessible price points or housing types.

(b) Millennials, the largest group of homebuyers in Colorado at 38% of the market, are facing increasing challenges, as the median age of first-time homebuyers has risen from 35 to 38 in just the past year. These gaps are just a few of many that highlight the urgent need for policies that facilitate affordable and attainable homeownership, particularly through the construction of entry-level homes.

(c) Condominiums and townhomes have often served as affordable starter home options, providing the first step on the homeownership ladder for many Coloradans. Despite the clear need for these homes, however, condominium development in Colorado has drastically decreased. Before 2009, there were 1.25 new apartments for every one condominium. This has shifted radically to 14 new apartments for every condominium in recent years. The decline in condominium construction coincides with a housing shortfall of at least 100,000 homes in the state, further worsening the availability of affordable options for first-time buyers.

(d) Current construction litigation laws are often cited as a contributing factor to the high cost of construction and a deterrent for developers to pursue condominium projects. At the same time, homeowners have limited up-front assurances of high-quality construction in new homes. It is critical that policies seek to support homeowners' rights while spurring development in a key housing market.

(e) Without addressing these challenges, Colorado will continue to experience a shortage of entry-level homes for its first-time homebuyers and struggle to meet the needs of Coloradans. It is imperative that the state creates policies that encourage the entire housing ecosystem to work together to create more attainable housing options for Coloradans.

(f) This act is intended to:

(I) Promote the construction of affordable homes so that homeownership becomes a more attainable goal for a larger portion of the population;

(II) Expand prospective homeowners' access to high-quality, well-constructed homes;

(III) Ensure continued protections for homeowners when defects in their homes exist;

(IV) Reform construction litigation to reduce the excessive costs associated with entry-level home development;

(V) Strengthen Colorado's housing market by expanding opportunities for first-time homebuyers; and

(VI) Ensure that future generations of Coloradans are able to access the American dream of homeownership, which is integral to long-term financial security and generational wealth-building; and

(g) This act is rationally related to the legitimate state interest of increasing middle market housing in Colorado.

SECTION 2. In Colorado Revised Statutes, 13-20-802.5, **add** (4.5), (5.5), and (6) as follows:

13-20-802.5. Definitions. As used in this part 8, unless the context otherwise requires:

(4.5) "MULTIFAMILY CONSTRUCTION INCENTIVE PROGRAM" OR "PROGRAM" MEANS THE PROGRAM CREATED IN SECTION 13-20-803.3 (1).

(5.5) "PROGRAM CLAIM" MEANS ALL ACTIONS FOR DAMAGES, INDEMNITY, OR CONTRIBUTION BROUGHT AGAINST A CONSTRUCTION PROFESSIONAL TO ASSERT A CLAIM, COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM FOR DAMAGES OR LOSS TO, OR THE LOSS OF USE OF, REAL OR PERSONAL PROPERTY FOR WHICH THE BUILDER IS A PARTICIPANT IN THE PROGRAM OR FOR PERSONAL INJURY CAUSED BY A DEFECT IN THE

DESIGN OR CONSTRUCTION OF AN IMPROVEMENT TO REAL PROPERTY FOR WHICH THE BUILDER IS A PARTICIPANT IN THE PROGRAM.

(6) "THIRD-PARTY INSPECTION" MEANS A PROGRAM OF INSPECTIONS OF A RESIDENTIAL HOUSING UNIT PERFORMED OVER THE COURSE OF CONSTRUCTION ON THE UNIT AND DESIGNED TO ASSIST THE CONSTRUCTION PROFESSIONAL PERFORMING THE CONSTRUCTION ON THE UNIT IN IDENTIFYING AND RECTIFYING ANY INSTANCES IN WHICH THE WORK BEING PERFORMED BY THE CONSTRUCTION PROFESSIONAL DEVIATES FROM APPLICABLE BUILDING CODES OR CONSTRUCTION STANDARDS. THE CONSTRUCTION PROFESSIONAL WHO SIGNS THE BUILDING PERMIT APPLICATION SHALL, SUBSEQUENT TO FILING THE PERMIT APPLICATION AND PRIOR TO THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY, CERTIFY IN WRITING FILED WITH THE BUILDING DEPARTMENT THAT THE THIRD-PARTY INSPECTOR WAS QUALIFIED AND THE INSPECTION COMPLIES WITH THE FOLLOWING REQUIREMENTS FOR ANY COMPONENT, SYSTEM, OR IMPROVEMENT ALLEGED TO BE DEFECTIVE:

(a) THE INSPECTION WAS PERFORMED BY EITHER A LICENSED CONSTRUCTION PROFESSIONAL OR A BUILDING CODE INSPECTOR, ELECTRICAL INSPECTOR, ENERGY CONSERVATION CODE INSPECTOR, FIRE CODE INSPECTOR, OR MECHANICAL CODE INSPECTOR, IF SUCH INSPECTOR PROVIDES EVIDENCE OF SUCCESSFUL COMPLETION OF THE MOST RECENT VERSION OF THE COMMERCIAL BUILDING INSPECTOR EXAMINATION BY THE INTERNATIONAL CODE COUNCIL OR ITS SUCCESSOR ORGANIZATION:

(I) WHO HAS EXPERTISE DESIGNING, CONSTRUCTING, OR INSPECTING THE COMPONENT, SYSTEM, OR IMPROVEMENT BEING INSPECTED;

(II) (A) WHO IS AN INDEPENDENT THIRD PARTY NOT OTHERWISE EMPLOYED BY OR AFFILIATED WITH THE CONSTRUCTION PROFESSIONAL WHO WAS INVOLVED IN THE DEVELOPMENT, DESIGN, OR CONSTRUCTION OF THE COMPONENT, SYSTEM, OR IMPROVEMENT; OR

(B) WHO IS AN INSPECTOR ACTING UNDER THE DIRECTION OF AN INSURER PROVIDING A COMMERCIAL GENERAL LIABILITY POLICY OF INSURANCE PURCHASED TO INSURE THE SUBJECT RESIDENTIAL HOUSING UNIT AGAINST PROPERTY DAMAGE RESULTING FROM DEFECTS IN THE DESIGN OR CONSTRUCTION OF THE UNIT;

(III) WHO IS RESPONSIBLE FOR PERFORMING THE INSPECTION DUTIES WITH A REASONABLE DEGREE OF CARE; AND

(IV) WHO IS NOT DESIGNATED AS A NONPARTY AT FAULT PURSUANT TO SECTION 13-21-111.5 (3)(b); AND

(b) THE INSPECTION INCLUDES, FOR EACH COMPONENT, SYSTEM, OR IMPROVEMENT, A SIGNED CERTIFICATION THAT, FOR EACH COMPONENT, SYSTEM, OR IMPROVEMENT, VERIFIES THAT:

(I) THE COMPONENT, SYSTEM, OR IMPROVEMENT WAS INCLUDED IN APPROVED CONSTRUCTION DOCUMENTS AND SPECIFICATIONS, INCLUDING ADDENDUMS ISSUED DURING CONSTRUCTION, UNDER THE VALID SEAL OF AN ARCHITECT OR ENGINEER LICENSED IN COLORADO;

(II) (A) PRIOR TO INSPECTION BY THE BUILDING DEPARTMENT, THE COMPONENT, SYSTEM, OR IMPROVEMENT WAS SUBJECT TO A FIELD INSPECTION AND APPROVAL BY THE THIRD-PARTY INSPECTOR WHO CERTIFIES THAT, AT THE TIME OF INSPECTION, THE COMPONENT, SYSTEM, OR IMPROVEMENT WAS SUFFICIENTLY ACCESSIBLE TO DETERMINE COMPLIANCE WITH AND DID COMPLY WITH APPLICABLE MANUFACTURER'S INSTRUCTIONS OR RECOMMENDATIONS, APPROVED CONSTRUCTION DOCUMENTS AND SPECIFICATIONS, INCLUDING ADDENDUMS ISSUED DURING CONSTRUCTION, AND THE APPLICABLE BUILDING CODES.

(B) IF THE FIELD INSPECTION DOES NOT INCLUDE EVERY LOCATION WHERE THE COMPONENT, SYSTEM, OR IMPROVEMENT IS CONSTRUCTED, THE SIGNED CERTIFICATION MUST INCLUDE THE PERMIT NUMBER; THE DATE OF INSPECTION; THE TYPE OF INSPECTION; THE CONTRACTOR'S NAME AND LICENSE NUMBER; THE STREET ADDRESS OF THE JOB LOCATION; THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE INSPECTOR WHO PERFORMED THE INSPECTION; AND A STATEMENT THAT THE INSPECTOR INSPECTED A SUFFICIENT NUMBER OF LOCATIONS TO CONCLUDE WITH A REASONABLE DEGREE OF CERTAINTY THAT EVERY LOCATION OF THE COMPONENT, SYSTEM, OR IMPROVEMENT COMPLIES WITH THE APPLICABLE MANUFACTURER'S INSTRUCTIONS OR RECOMMENDATIONS, APPROVED CONSTRUCTION DOCUMENTS AND SPECIFICATIONS, INCLUDING ADDENDUMS ISSUED DURING CONSTRUCTION, AND THE APPLICABLE BUILDING CODES.

(III) THE CONSTRUCTION PROFESSIONAL SUCCESSFULLY REPAIRED

OR RESOLVED ANY INSTANCE OF NONCOMPLIANT DESIGN OR CONSTRUCTION IDENTIFIED DURING AN INSPECTION AND THAT THE COMPONENT, SYSTEM, OR IMPROVEMENT COMPLIES WITH THE APPLICABLE MANUFACTURER'S INSTRUCTIONS OR RECOMMENDATIONS AND APPROVED CONSTRUCTION DOCUMENTS AND SPECIFICATIONS, INCLUDING ADDENDUMS ISSUED DURING CONSTRUCTION; AND

(c) THE INSPECTION IS NOT AN INSPECTION PERFORMED BY OR ON BEHALF OF A GOVERNMENTAL AUTHORITY HAVING JURISDICTION OVER THE RESIDENTIAL HOUSING UNIT AS A CONDITION OF ANY PERMITTING OR THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY.

SECTION 3. In Colorado Revised Statutes, **add** 13-20-803.3 as follows:

13-20-803.3. Multifamily construction incentive program - created - construction defect claims against architects and engineers - statute of limitations - affirmative defenses. (1) THE MULTIFAMILY CONSTRUCTION INCENTIVE PROGRAM IS CREATED. ON AND AFTER JANUARY 1, 2026, A BUILDER OF MULTIFAMILY, ATTACHED HOUSING OF TWO OR MORE UNITS MAY PARTICIPATE IN THE PROGRAM BY:

(a) PROVIDING A WARRANTY THAT COVERS ANY DEFECT AND DAMAGE AT NO COST TO THE HOMEOWNER FOR A MINIMUM PERIOD OF:

(I) ONE YEAR FOR WORKMANSHIP AND MATERIALS;

(II) TWO YEARS FOR PLUMBING, ELECTRICAL, AND MATERIALS; AND

(III) SIX YEARS FOR MAJOR STRUCTURAL COMPONENTS;

(b) HAVING A THIRD-PARTY INSPECTION PERFORMED; AND

(c) RECORDING A NOTICE OF ELECTION TO PARTICIPATE IN THE MULTIFAMILY CONSTRUCTION INCENTIVE PROGRAM IN THE REAL PROPERTY RECORDS OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED FOR THE PROJECT INTENDED TO BE COVERED BEFORE THE UNIT IS OFFERED FOR SALE. AFTER RECORDING A NOTICE OF ELECTION TO PARTICIPATE, A BUILDER MAY WITHDRAW FROM THE PROGRAM ONLY BEFORE THE ISSUANCE OF THE LAST CERTIFICATE OF OCCUPANCY FOR THE PROJECT.

(2) (a) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, A PERSON MUST FILE WITH A COMPLAINT A CERTIFICATE OF REVIEW IN COMPLIANCE WITH SECTION 13-20-602 FOR A CONSTRUCTION DEFECT ACTION THAT IS:

(I) AGAINST A CONSTRUCTION PROFESSIONAL WHO IS AN ARCHITECT OR ENGINEER; AND

(II) FOR A PROGRAM CLAIM.

(b) THE CERTIFICATE OF REVIEW FILED IN ACCORDANCE WITH SUBSECTION (2)(a) OF THIS SECTION MUST, BASED ON FACTS KNOWN TO THE PARTY FILING THE CERTIFICATE OF REVIEW:

(I) SET FORTH THE ARCHITECT'S OR ENGINEER'S NEGLIGENCE, INCLUDING ANY ACT OR OMISSION IN PROVIDING ADVICE, EXERCISING JUDGMENT, GIVING AN OPINION, OR EXERCISING A SIMILAR PROFESSIONAL SKILL; AND

(II) DECLARE THAT THE INDIVIDUAL CONSULTED CAN DEMONSTRATE BY COMPETENT EVIDENCE THAT, AS A RESULT OF TRAINING, EDUCATION, KNOWLEDGE, AND EXPERIENCE, THE CONSULTANT IS COMPETENT TO EXPRESS AN OPINION AS TO THE NEGLIGENCE, INCLUDING AN ACT OR OMISSION, ALLEGED.

(c) IF A CLAIMANT FAILS TO FILE THE CERTIFICATE OF REVIEW REQUIRED IN THIS SUBSECTION (2), THE COURT SHALL DISMISS THE COMPLAINT AGAINST THE DEFENDANT UNLESS THE CLAIMANT SHOWS GOOD CAUSE FOR THE FAILURE.

(3) A CLAIMANT IS NOT REQUIRED TO COMPLY WITH THE CERTIFICATE OF REVIEW REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION IF:

(a) A CLAIM IS FOR CONSTRUCTION IN WHICH A GOVERNMENTAL ENTITY CONTRACTED WITH A SINGLE ENTITY TO PROVIDE BOTH DESIGN AND CONSTRUCTION SERVICES FOR THE CONSTRUCTION, REHABILITATION, ALTERATION, OR REPAIR OF A FACILITY, A BUILDING OR AN ASSOCIATED STRUCTURE, A CIVIL WORKS PROJECT, OR A HIGHWAY PROJECT; OR

(b) THE PERIOD OF LIMITATION OR REPOSE COULD REASONABLY

EXPIRE WITHIN TEN DAYS AFTER THE DATE OF FILING AND, BECAUSE OF THE TIME CONSTRAINT, THE CLAIMANT HAS ALLEGED THAT A CERTIFICATE OF REVIEW BY A THIRD-PARTY ARCHITECT OR ENGINEER COULD NOT BE PREPARED. A CLAIMANT THAT DOES NOT FILE A CERTIFICATE OF REVIEW UNDER THIS SECTION SHALL SUPPLEMENT THE COMPLAINT WITH A CERTIFICATE OF REVIEW WITHIN TWENTY-EIGHT DAYS AFTER THE FILING OF THE COMPLAINT; EXCEPT THAT A COURT MAY, ON MOTION AND FOR GOOD CAUSE, GRANT A CLAIMANT ADDITIONAL TIME TO FILE THE CERTIFICATE OF REVIEW.

(4) A DEFENDANT THAT DESIGNATES AN ARCHITECT OR ENGINEER AS A NONPARTY AT FAULT IN ACCORDANCE WITH SECTION 13-21-111.5 (3)(b) MUST FILE A SUBSEQUENT CERTIFICATE OF REVIEW THAT COMPLIES WITH SUBSECTION (2) OF THIS SECTION AND SECTION 13-20-602. THE DEFENDANT SHALL FILE A CERTIFICATE OF REVIEW AT LEAST FORTY-FIVE DAYS PRIOR TO ANY TRIAL OR PROCEEDING ON THE CLAIM. IF THE DEFENDANT FAILS TO FILE THE CERTIFICATE OF REVIEW AS REQUIRED IN THIS SUBSECTION (4), A COURT SHALL NOT CONSIDER THE NEGLIGENCE OR FAULT OF THE NONPARTY.

(5) SUBSECTIONS (2) TO (4) OF THIS SECTION DO NOT:

(a) EXTEND THE APPLICABLE PERIOD OF LIMITATION OR REPOSE; OR

(b) APPLY TO A SUIT OR ACTION FOR THE PAYMENT OF FEES ARISING OUT OF THE PROVISION OF PROFESSIONAL SERVICES.

(6) A PERSON SHALL NOT ASSERT A PROGRAM CLAIM UNLESS THE DEFECT HAS RESULTED IN ONE OR MORE OF THE FOLLOWING:

(a) ACTUAL DAMAGE TO REAL OR PERSONAL PROPERTY;

(b) ACTUAL LOSS OF THE USE OF REAL OR PERSONAL PROPERTY;

(c) ACTUAL BODILY INJURY OR WRONGFUL DEATH;

(d) AN UNREASONABLE REDUCTION IN THE CAPABILITY OF, OR AN ACTUAL FAILURE OF, A BUILDING COMPONENT TO PERFORM AN INTENDED FUNCTION OR PURPOSE; OR

(e) AN UNREASONABLE RISK OF BODILY INJURY OR DEATH TO, OR A

THREAT TO THE LIFE, HEALTH, OR SAFETY OF, THE OCCUPANTS OF THE RESIDENTIAL PROPERTY.

(7) (a) (I) If the defendant is a construction professional who is not an architect or engineer and who has provided the claimant a written warranty for the residence that complies with subsection (1)(a) of this section, and if the claimant discovered or should have discovered the alleged defect or damage within the longest applicable warranty period, the claimant must bring the suit not later than six years after the substantial completion of the improvement.

(II) If the defendant is a construction professional who is an architect or engineer, and the construction professional performed in a manner consistent with the degree of skill and care ordinarily exercised by members of the same profession currently practicing under the same or similar circumstances, the claimant must bring the suit not later than six years after the substantial completion of the improvement.

(b) If a claim involves a defect or damage that is covered by the warranty described in subsection (7)(a) of this section, the claimant shall pursue all reasonable remedies available under the warranty process before bringing an action for damages. The statute of limitations and repose shall be tolled from the date the claimant first pursued a remedy available under the warranty for no more than one year or until the completion of the warranty process, whichever is longer.

(c) Section 13-80-104 (2) and (3) applies to the limitation of claims in this subsection (7).

(8)(a) For program claims, a construction professional who makes a reasonable offer pursuant to subsection (9) of this section may be immune, in whole or in part, from an obligation, damage, loss, or liability under this part 8 related to or arising out of the construction defect, but only with respect to the portion of the claimant's damages, if any, the construction professional can demonstrate by a preponderance of the evidence were proximately

CAUSED OR INCREASED BY AN AFFIRMATIVE DEFENSE SPECIFIED IN SUBSECTIONS (8)(b) AND (8)(c) OF THIS SECTION AND NOT BY THE CONSTRUCTION DEFECT.

(b) A CONSTRUCTION PROFESSIONAL IS NOT LIABLE FOR A DAMAGE OR DEFECT TO THE EXTENT THE PROFESSIONAL CAN PROVE, AS AN AFFIRMATIVE DEFENSE, THAT THE DAMAGE OR DEFECT WAS CAUSED:

(I) BY A WEATHER CONDITION, EARTHQUAKE, OR OTHER NATURAL PHENOMENON IN EXCESS OF THE DESIGN CRITERIA EXPRESSED BY THE APPLICABLE BUILDING CODES, REGULATIONS, AND ORDINANCES IN EFFECT AT THE TIME OF ORIGINAL CONSTRUCTION;

(II) BY A HUMAN-CAUSED EVENT, SUCH AS WAR, TERRORISM, OR VANDALISM;

(III) BY A HOMEOWNER'S UNREASONABLE FAILURE TO TIMELY MITIGATE DAMAGES AS REQUIRED IN SECTION 13-20-803.5 (1);

(IV) BY THE HOMEOWNER OR THE HOMEOWNER'S AGENT, EMPLOYEE, OR CONSTRUCTION PROFESSIONAL BY VIRTUE OF THEIR FAILURE TO FOLLOW THE BUILDER'S OR MANUFACTURER'S MAINTENANCE RECOMMENDATIONS OR TO DO COMMONLY ACCEPTED HOMEOWNER MAINTENANCE OBLIGATIONS. IN ORDER TO RELY UPON THIS DEFENSE AS IT RELATES TO A CONSTRUCTION PROFESSIONAL'S RECOMMENDED MAINTENANCE SCHEDULE, THE CONSTRUCTION PROFESSIONAL MUST SHOW THAT THE HOMEOWNER HAD WRITTEN NOTICE OF THESE MAINTENANCE SCHEDULES AND RECOMMENDATIONS AND THAT THE MAINTENANCE RECOMMENDATIONS AND SCHEDULES WERE REASONABLE AT THE TIME THEY WERE ISSUED AND THAT THE DAMAGE OR DEFECT DID NOT DIRECTLY PREVENT THE HOMEOWNER FROM PERFORMING THE RECOMMENDED MAINTENANCE.

(V) AFTER SALE OR TRANSFER OF OWNERSHIP TO THE CLAIMANT, BY:

(A) THE HOMEOWNER'S OR HOMEOWNER'S AGENT'S ALTERATIONS;

(B) ORDINARY WEAR AND TEAR;

(C) MISUSE OF THE STRUCTURE OR COMPONENT;

(D) ABUSE OF THE STRUCTURE OR COMPONENT;

(E) NEGLIGENCE OF THE STRUCTURE OR COMPONENT; OR

(F) THE USE OF THE STRUCTURE OR COMPONENT FOR SOMETHING OTHER THAN THE STRUCTURE'S OR COMPONENT'S INTENDED PURPOSE.

(c) A CONSTRUCTION PROFESSIONAL MAY ASSERT AN AFFIRMATIVE DEFENSE TO THE EXTENT THAT:

(I) THE DAMAGE WAS CAUSED BY A PARTICULAR VIOLATION COVERED BY A VALID RELEASE OBTAINED BY THE CONSTRUCTION PROFESSIONAL, IF THE RELEASE IS ENFORCEABLE AGAINST THE CLAIMANT, WAS EXECUTED WITH KNOWLEDGE OF THE PARTICULAR VIOLATION, AND DOES NOT VIOLATE SECTION 13-20-806 (7); OR

(II) THE CONSTRUCTION PROFESSIONAL'S REPAIR COMPLETED PURSUANT TO SECTION 13-20-803.5 (3) WAS SUCCESSFUL IN CORRECTING THE PARTICULAR VIOLATION AND ANY DAMAGE RESULTING FROM THE VIOLATION OF THE APPLICABLE STANDARD.

(d) THE AFFIRMATIVE DEFENSES SET FORTH IN THIS SUBSECTION (8) ARE IN ADDITION TO, AND SHALL NOT LIMIT, IMPAIR, REPLACE, OR OTHERWISE AFFECT, ANY OTHER DEFENSE AVAILABLE TO A CONSTRUCTION PROFESSIONAL UNDER STATUTE OR COMMON LAW.

(9)(a) FOR PROGRAM CLAIMS, A CONSTRUCTION PROFESSIONAL AND THE INSURER, AS DEFINED IN SECTION 10-1-102 (13), PROVIDING COVERAGE RELATED TO THE CLAIM SHALL SEND OR DELIVER TO THE CLAIMANT, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY PERSONAL SERVICE:

(I) AN OFFER TO SETTLE THE CLAIM BY:

(A) PAYMENT OF A SUM CERTAIN; OR

(B) AGREEING TO REMEDY THE CLAIMED DEFECT DESCRIBED IN THE NOTICE OF CLAIM;

(II) A WRITTEN RESPONSE THAT:

(A) IDENTIFIES THE STANDARDS THAT APPLY TO THE CLAIMED DEFECT'S CONSTRUCTION OR PERFORMANCE; AND

(B) EXPLAINS WHY THE CLAIMED DEFECT DOES NOT REQUIRE REPAIR;
OR

(III) A WRITTEN RESPONSE THAT EXPLAINS THE CONSTRUCTION PROFESSIONAL'S SCOPE OF WORK AND WHY THE CLAIMED DEFECT IS NOT WITHIN THE WORK AND RESPONSIBILITY OF THE CONSTRUCTION PROFESSIONAL.

(b) A WRITTEN OFFER TO REMEDY A CONSTRUCTION DEFECT MUST INCLUDE A REPORT OF THE SCOPE OF THE INSPECTION, THE FINDINGS AND RESULTS OF THE INSPECTION, A DESCRIPTION OF THE ADDITIONAL CONSTRUCTION WORK NECESSARY TO REMEDY THE DEFECT DESCRIBED IN THE NOTICE OF CLAIM AND ALL DAMAGE TO THE IMPROVEMENT TO REAL PROPERTY CAUSED BY THE DEFECT, AND A TIMETABLE FOR THE COMPLETION OF THE REMEDIAL CONSTRUCTION WORK.

(c) THE CONSTRUCTION PROFESSIONAL SHALL PROVIDE AN OFFER PURSUANT TO SUBSECTION (9)(a)(I) OF THIS SECTION WITHIN NINETY DAYS AFTER THE DEADLINE TO INSPECT THE PROPERTY AND CLAIMED DEFECT PURSUANT TO SECTION 13-20-803.5 OR A WRITTEN RESPONSE PURSUANT TO SUBSECTION (9)(a)(II) OR (9)(a)(III) OF THIS SECTION WITHIN THIRTY DAYS AFTER THE DEADLINE TO INSPECT THE PROPERTY AND CLAIMED DEFECT PURSUANT TO SECTION 13-20-803.5. NOTWITHSTANDING ANY PROVISION IN A CONTRACT OR ANY REQUIREMENT IN THE GOVERNING DOCUMENTS, IF A CONSTRUCTION PROFESSIONAL REQUESTS AN EXTENSION TO PROVIDE AN OFFER PURSUANT TO SUBSECTION (9)(a)(I) OF THIS SECTION AND THE CLAIMANT DOES NOT AGREE TO THE REQUESTED EXTENSION, THE PARTIES SHALL DESIGNATE A MUTUALLY AGREEABLE THIRD PARTY IN WRITING TO DETERMINE WHETHER THE REQUESTED EXTENSION IS REASONABLE. NOTWITHSTANDING ANY OTHER PROVISION IN THIS SECTION, THE TOTAL TIME TO PROVIDE AN OFFER MUST NOT EXCEED TWO HUNDRED TEN DAYS AFTER THE DATE OF THE NOTICE OF CLAIM BY THE CONSTRUCTION PROFESSIONAL PROVIDING AN OFFER PURSUANT TO SUBSECTION (9)(a)(I) OF THIS SECTION.

(d) IF A CLAIMANT UNREASONABLY REJECTS A REASONABLE WRITTEN OFFER OF SETTLEMENT MADE PURSUANT TO THIS SUBSECTION (9) AND

SUBSEQUENTLY COMMENCES AN ACTION AGAINST THE CONSTRUCTION PROFESSIONAL, THE COURT MAY AWARD ATTORNEY FEES AND COSTS TO THE CONSTRUCTION PROFESSIONAL.

(e) IF A CONSTRUCTION PROFESSIONAL FAILS TO MAKE A REASONABLE WRITTEN OFFER OF SETTLEMENT PURSUANT TO THIS SUBSECTION (9), THE LIMITATIONS ON DAMAGES AND DEFENSES TO LIABILITY PROVIDED IN SUBSECTIONS (2), (5), (6), (7), AND (8) OF THIS SECTION DO NOT APPLY, AND THE COURT MAY AWARD ATTORNEY FEES AND COSTS TO THE CLAIMANT.

(f) (I) A CONSTRUCTION PROFESSIONAL'S WRITTEN OFFER OF SETTLEMENT IS REASONABLE, AND A CLAIMANT'S REJECTION OF THE OFFER IS UNREASONABLE, IF THE CLAIMANT RECOVERS A FINAL JUDGMENT IN AN AMOUNT THAT IS LESS THAN THE AMOUNT OFFERED OR THE REASONABLE VALUE OF THE REPAIR OFFERED BY THE CONSTRUCTION PROFESSIONAL.

(II) A CONSTRUCTION PROFESSIONAL'S WRITTEN OFFER OF SETTLEMENT IS UNREASONABLE, AND A CLAIMANT'S REJECTION OF THE OFFER IS REASONABLE, IF THE CLAIMANT RECOVERS A FINAL JUDGMENT IN AN AMOUNT THAT EXCEEDS THE AMOUNT OFFERED OR THE REASONABLE VALUE OF THE REPAIR OFFERED BY THE CONSTRUCTION PROFESSIONAL.

(10) (a) WITHIN THIRTY DAYS AFTER THE REJECTION OF AN OFFER MADE PURSUANT TO SUBSECTION (9) OF THIS SECTION, A CLAIMANT SHALL PROVIDE A CONSTRUCTION PROFESSIONAL WITH A WRITTEN PROPOSAL TO HAVE THE CONSTRUCTION DEFECT REPAIRED AT THE CONSTRUCTION PROFESSIONAL'S EXPENSE OR TO SETTLE THE CLAIM.

(b) IF THE CONSTRUCTION PROFESSIONAL DOES NOT ACCEPT THE PROPOSAL PROVIDED BY THE CLAIMANT PURSUANT TO SUBSECTION (10)(a) OF THIS SECTION IN WRITING WITHIN FIFTEEN DAYS AFTER DELIVERY OF THE PROPOSAL, THE PROPOSAL IS DEEMED TO HAVE BEEN REJECTED.

(c) IF THE CONSTRUCTION PROFESSIONAL ACCEPTS THE PROPOSAL PROVIDED BY THE CLAIMANT PURSUANT TO SUBSECTION (10)(a) OF THIS SECTION, THE CONSTRUCTION PROFESSIONAL SHALL PAY THE CLAIMANT'S REASONABLE ATTORNEY FEES AND COSTS INCURRED IN INVESTIGATING THE DEFECT AND PROPOSING THE REPAIR.

(11) NOTHING IN THIS SECTION:

(a) AFFECTS THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24, OR SECTION 13-20-806 (7); OR

(b) PROHIBITS, LIMITS, OR IMPAIRS A CONTRACTUAL CLAIM OR EXPANDS THE DEFINITION OF "ACTION" IN SECTION 13-20-802.5 (1).

SECTION 4. In Colorado Revised Statutes, 13-20-803.5, **amend** (1), (3), (7), and (12); and **add** (3.5), (3.7), and (13) as follows:

13-20-803.5. Notice of claim process - duty to mitigate.

(1) (a) No later than seventy-five days before filing an action against a construction professional, or no later than ninety days before filing the action in the case of a commercial property, a claimant shall send or deliver a written notice of claim to the construction professional by certified mail, return receipt requested, or by personal service.

(b) BEFORE FILING A CLAIM PURSUANT TO THIS SUBSECTION (1) FOR PROGRAM CLAIMS, A CLAIMANT SHALL MITIGATE THE DAMAGE CAUSED BY THE ALLEGED CONSTRUCTION DEFECT. A CLAIMANT SATISFIES THE DUTY TO MITIGATE BY TAKING REASONABLE ACTION TO PREVENT FURTHER DAMAGE FROM THE CONSTRUCTION DEFECT. A CLAIMANT MUST CERTIFY IN THE COMPLAINT THAT THE CLAIMANT HAS SATISFIED THE DUTY TO MITIGATE.

(c) IF THE CLAIMANT AND CONSTRUCTION PROFESSIONAL DISPUTE WHETHER THE CLAIMANT HAS SATISFIED THE DUTY TO MITIGATE DESCRIBED IN SUBSECTION (1)(b) OF THIS SECTION, THE CLAIMANT MAY PROCEED WITH THE ACTION BUT DOES NOT RECOVER ANY DAMAGES THAT THE CONSTRUCTION PROFESSIONAL PROVES WERE CAUSED BY THE CLAIMANT'S UNREASONABLE FAILURE TO MITIGATE.

(d) A CLAIMANT DOES NOT BREACH THE DUTY TO MITIGATE IF THE COST TO MITIGATE IS UNREASONABLE UNDER THE CIRCUMSTANCES OR WAS BEYOND THE CLAIMANT'S FINANCIAL ABILITY TO PERFORM.

(3) EXCEPT AS PROVIDED IN SECTION 13-20-803.3 (9), within thirty days ~~following~~ AFTER the completion of the inspection process conducted pursuant to subsection (2) of this section, or within forty-five days ~~following~~ AFTER the completion of the inspection process in the case of a

commercial property, a construction professional may send or deliver to the claimant, by certified mail, return receipt requested, or personal service, an offer to settle the claim by payment of a sum certain or by agreeing to remedy the claimed defect described in the notice of claim. A written offer to remedy the construction defect shall include a report of the scope of the inspection, the findings and results of the inspection, a description of the additional construction work necessary to remedy the defect described in the notice of claim and all damage to the improvement to real property caused by the defect, and a timetable for the completion of the remedial construction work.

(3.5)(a) BY THE EARLIER OF WHEN A CONSTRUCTION PROFESSIONAL, OTHER THAN AN ARCHITECT OR ENGINEER, OFFERS TO SETTLE A CLAIM OR SIXTY DAYS AFTER A CONSTRUCTION PROFESSIONAL RECEIVES ACTUAL NOTICE OF CLAIM, THE CONSTRUCTION PROFESSIONAL SHALL PROVIDE THE CLAIMANT WITH THE FOLLOWING DOCUMENTS AND INFORMATION, TO THE EXTENT THE DOCUMENTS AND INFORMATION ARE WITHIN THE CONSTRUCTION PROFESSIONAL'S POSSESSION, CUSTODY, OR CONTROL:

(I) COPIES OF ALL PLANS, SPECIFICATIONS, AND SOIL REPORTS RELATED TO THE CLAIM;

(II) MAINTENANCE AND PREVENTIVE MAINTENANCE RECOMMENDATIONS RELATED TO THE CLAIM;

(III) THE NAME, LAST-KNOWN ADDRESS, AND SCOPE OF WORK OF EACH CONSTRUCTION PROFESSIONAL WHO CONTRACTED TO PERFORM WORK OR PROVIDE SERVICES AND DID PERFORM WORK OR PROVIDE SERVICES RELATED TO THE CLAIM;

(IV) ALL DOCUMENTS RELATED TO THE THIRD-PARTY INSPECTION OF THE PROPERTY AND THE NAME AND LAST-KNOWN ADDRESS OF THE INSPECTOR WHO PERFORMED THE THIRD-PARTY INSPECTION; AND

(V) COPIES OF EACH INSURANCE POLICY PURCHASED BY THE CONSTRUCTION PROFESSIONAL AND RELATED TO THE CLAIM THROUGH THE DATE OF THE NOTICE OF CLAIM AND FROM THE EARLIER START DATE OF:

(A) THE DATE THE CONSTRUCTION OF THE ALLEGED DEFECT WAS SUBSTANTIALLY COMPLETED; OR

(B) THE DATE THE CONSTRUCTION PROFESSIONAL SUBSTANTIALLY COMPLETED WORK ON THE ALLEGED DEFECT.

(b) A CONSTRUCTION PROFESSIONAL MAY CHARGE REASONABLE COPYING COSTS FOR THE DOCUMENTS DESCRIBED IN SUBSECTIONS (3.5)(a)(I), (3.5)(a)(II), (3.5)(a)(IV), AND (3.5)(a)(V) OF THIS SECTION.

(c) FAILURE TO PROVIDE THE IDENTIFYING INFORMATION REQUIRED IN SUBSECTION (3.5)(a)(III) OF THIS SECTION BY THE APPLICABLE DEADLINE FOR DESIGNATING A NONPARTY AT FAULT BARS THE CONSTRUCTION PROFESSIONAL FROM DESIGNATING THE UNIDENTIFIED CONSTRUCTION PROFESSIONAL AS A NONPARTY AT FAULT UNDER SECTION 13-21-111.5 (3)(b) IN A SUBSEQUENT ACTION. IF THE CONSTRUCTION PROFESSIONAL FAILS TO PROVIDE THE INFORMATION REQUIRED IN SUBSECTION (3.5)(a)(I) OF THIS SECTION, THE CLAIMANT NEED NOT COMPLY WITH THE CERTIFICATE OF REVIEW REQUIREMENT IN SECTION 13-20-803.3 (2).

(3.7) (a) BY THE EARLIER OF WHEN A CONSTRUCTION PROFESSIONAL WHO IS AN ARCHITECT OR ENGINEER OFFERS TO SETTLE A CLAIM OR SIXTY DAYS AFTER A CONSTRUCTION PROFESSIONAL RECEIVES ACTUAL NOTICE OF CLAIM, THE ARCHITECT OR ENGINEER SHALL PROVIDE THE CLAIMANT WITH THE FOLLOWING DOCUMENTS AND INFORMATION, TO THE EXTENT THE DOCUMENTS AND INFORMATION ARE WITHIN THE ARCHITECT'S OR ENGINEER'S POSSESSION, CUSTODY, OR CONTROL:

(I) COPIES OF ALL APPROVED CONSTRUCTION DOCUMENTS AND SPECIFICATIONS, INCLUDING ADDENDUMS ISSUED DURING CONSTRUCTION, PREPARED BY THE ARCHITECT, ENGINEER, OR CONSULTANTS;

(II) THE NAME, LAST-KNOWN ADDRESS, AND SCOPE OF WORK OF EACH ARCHITECT OR ENGINEER WHO PERFORMED WORK OR PROVIDED SERVICES AS A CONSULTANT RELATED TO THE CLAIM AND ON THE CLAIMANT'S PROPERTY; AND

(III) COPIES OF EACH INSURANCE POLICY PURCHASED BY THE ARCHITECT OR ENGINEER AND RELATED TO THE CLAIM THROUGH THE DATE OF THE NOTICE OF CLAIM AND FROM THE EARLIER START DATE OF:

(A) THE DATE THE CONSTRUCTION OF THE ALLEGED DEFECT WAS SUBSTANTIALLY COMPLETED; OR

(B) THE DATE THE ARCHITECTS AND ENGINEERS SUBSTANTIALLY COMPLETED WORK RELATED TO THE ALLEGED DEFECT.

(b) AN ARCHITECT OR ENGINEER MAY CHARGE REASONABLE COPYING COSTS FOR THE DOCUMENTS DESCRIBED IN SUBSECTION (3.7)(a) OF THIS SECTION.

(7) If an offer by a construction professional is made and accepted OR IF A PROPOSAL MADE BY A CLAIMANT IS ACCEPTED, and if thereafter the construction professional does not comply with ~~its~~ THE offer to remedy or settle a claim for a construction defect OR WITH THE CLAIMANT'S PROPOSAL, the claimant may file an action against the construction professional for claims arising out of the defect or damage described in the notice of claim without further notice.

(12) Except as provided in THIS SECTION AND section 13-20-806, a claimant shall not recover more than actual damages in an action.

(13) AN INSURER, AS DEFINED IN SECTION 10-1-102 (13), SHALL NOT CANCEL, DENY, OR REDUCE COVERAGE BASED ON ANY CLAIM FOR BENEFITS COVERED BY AN EXISTING LIABILITY INSURANCE POLICY ISSUED TO A CONSTRUCTION PROFESSIONAL BASED ON THE CONSTRUCTION PROFESSIONAL MAKING AN OFFER TO REPAIR OR SETTLE A CONSTRUCTION DEFECT CLAIM PURSUANT TO THIS SECTION. ANY SETTLEMENT OR REPAIR AGREEMENT THAT AFFECTS COVERAGE IS SUBJECT TO INSURER APPROVAL.

SECTION 5. In Colorado Revised Statutes, **amend** 13-20-805 as follows:

13-20-805. Tolling of statutes of limitation. (1) If a notice of claim is sent to a construction professional in accordance with section 13-20-803.5 within the time prescribed for the filing of an action under ~~any~~ THE applicable statute of limitations or repose, then the statute of limitations or repose is tolled until sixty days after the completion of the notice of claim process described in section 13-20-803.5.

(2) IF AN ALLEGED CONSTRUCTION DEFECT IS BEING MITIGATED PURSUANT TO SUBSECTION 13-20-803.5, THE STATUTE OF LIMITATIONS OR REPOSE IS TOLLED FOR THE DURATION OF THE MITIGATION; EXCEPT THAT THE MAXIMUM LENGTH OF TOLLING UNDER THIS SUBSECTION (2) CANNOT EXCEED

ONE YEAR.

(3) THE TOLLING OF THE STATUTE OF LIMITATIONS OR REPOSE UNDER SUBSECTION (1) OR (2) OF THIS SECTION DOES NOT PRECLUDE THE TOLLING OF THE STATUTE OF LIMITATIONS OR REPOSE UNDER THE OTHER SUBSECTION OF THIS SECTION.

SECTION 6. In Colorado Revised Statutes, 38-33.3-303.5, **amend** (1)(d)(I)(A) and (1)(d)(III) introductory portion; and **add** (5) as follows:

38-33.3-303.5. Construction defect actions - disclosure - approval by unit owners - definitions - exemptions. (1) (d) **Approval by unit owners - procedures.** (I) (A) Notwithstanding any provision of law or any requirement in the governing documents, the executive board ~~may~~ **HAS THE RIGHT TO** initiate ~~the~~ A construction defect action ~~only~~ if authorized within the voting period by owners of units to which ~~a majority~~ **AT LEAST SIXTY-FIVE PERCENT** of votes in the association are allocated. ~~Such~~ **THE** approval is not required for an association to proceed with a construction defect action if the alleged construction defect pertains to a facility that is intended and used for nonresidential purposes and if the cost to repair the alleged defect does not exceed fifty thousand dollars. ~~Such~~ **THE** approval is not required for an association to proceed with a construction defect action when the association is the contracting party for the performance of labor or purchase of services or materials.

(III) **Vote count - exclusions.** For purposes of calculating the required ~~majority~~ vote under this subsection (1)(d) only, the following votes are excluded:

(5) AN EXECUTIVE BOARD THAT IS SUCCESSFUL UNDER A CONSTRUCTION DEFECT CLAIM OR SETTLEMENT SHALL FIRST USE NET MONETARY DAMAGES OR NET PROCEEDS RECEIVED PURSUANT TO THE CLAIM TO REPAIR THE CONSTRUCTION DEFECT.

SECTION 7. In Colorado Revised Statutes, 29-32-105, **amend** (2)(a) as follows:

29-32-105. Affordable housing commitments - local governments - tribal governments - three-year commitment cycle - expedited development approval process - eligibility for assistance from the fund.

(2) (a) In order to receive financial assistance under this ~~article~~ ARTICLE 32, or for affordable housing projects within a tribal government, municipality, a city and county, or the unincorporated area of a county to be eligible for funding, the tribal government or local government, other than a local affordable housing authority, must establish processes to enable it to provide a final decision on any application for a special permit, variance, or other development permit, INCLUDING A FOR-SALE MULTIFAMILY CONDOMINIUM PROJECT AND excluding subdivisions, of a development project, for which fifty percent or more of the residential units in the development constitute affordable housing not more than ninety calendar days after submission of a complete application, referred to herein as a "fast-track approval process."

SECTION 8. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to construction defect claims brought on or after the applicable effective date of this act.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO