

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re:)	Chapter 11
)	
BUILDING MATERIALS HOLDINGS)	Case No. 09-12074 (KJC)
CORPORATION, et al.,)	Jointly Administered
)	
Debtors.	)	Objection Deadline: December 8, 2009 @ 4:00 p.m.
<hr/>	)	Hearing Date: December 15, 2009 @ 1:00 p.m.

**MOTION OF RYLAND HOMES OF CALIFORNIA, INC., *ET AL.*, FOR
RELIEF FROM AUTOMATIC STAY**

Ryland Homes; Ryland Homes of California; Ryland Homes of California, Inc.; Ryland Homes of California Co.; Ryland Homes of Southern California, Inc., Southern California Division; and M.J. Brock & Sons, Inc., dba Ryland Homes (collectively “Ryland”) hereby moves (the “Motion”) this Court for an order granting relief from the automatic bankruptcy stay so that it may proceed *only* against the available insurance assets of debtor H.N.R. Framing Systems, Inc. (“HNR”) pursuant to 11 U.S.C. § 362. In support of this Motion, Ryland relies upon the Declaration of Richard Daniels (“Richard Daniels Decl.”) and states as follows:

BACKGROUND

1. On or about June 16, 2009, HNR filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). (Richard Daniels Decl., ¶ 2).
2. Ryland is a creditor of HNR and, therefore, qualifies as a party in interest in this case. (Richard Daniels Decl., ¶ 3).
3. On or about April 4, 2008, Aaron and Kelly Blank and various homeowners (“Homeowners”) commenced litigation against Ryland relating to a certain housing development

located in the City of San Marcos, California (the “Project”), alleging numerous causes of action and seeking damages based upon strict liability, strict liability (component parts), breach of implied warranty (merchantability), breach of express and implied warranties, and negligence (the “Complaint”). This action, generally referred to as Blank, et al., v. Ryland Homes of California, Inc., et al., is currently pending in the Superior Court of the State of California, County of San Diego, Case No. 37-2008-00081383-CU-CD-CTL (the “Action”). (A true and correct copy of the Complaint is attached as Exhibit “A” hereto).

4. On or about September 5, 2008, Ryland filed a Cross-Complaint for Equitable Indemnity, Express Indemnity, Breach of Express and Implied Warranties, Breach of Contract, Negligence, Contribution, Declaratory Relief: duty to Defend, Declaratory Relief: Duty to Indemnify and Breach of Contract: Additional Insurance (the “Cross-Complaint”) against HNR, among others, based upon the alleged construction defects caused by HNR during HNR’s performance of work and/or services and/or providing of materials which were incorporated into the development, construction and/or sale of the Project. (A true and correct copy of the Cross-Complaint is attached as Exhibit “B” hereto).

5. No trial date has been set in the Litigation. Based on the information produced in discovery in the Action, it appears that approximately 41 of the Homeowners’ claims implicate HNR. Plaintiffs’ potential recovery allocated to HNR is estimated to be in the range of \$82,000 to \$123,000.00.

6. Ryland seeks recovery from HNR for indemnification and payment of the total amount of any judgment rendered against Ryland based upon the Complaint, together with Ryland’s attorneys’ fees, expenses and costs of suit incurred in defending the Litigation. Additionally, Ryland seeks recovery for any and all attorneys’ fees, experts’ fees, costs and

discovery expenses incurred by Ryland in its defense of the Litigation and in its pursuit of the Cross-Complaint. (Richard Daniels Decl., ¶ 7).

7. Ryland states, on information and belief, that HNR is insured under one or more general liability and excess liability insurance policies and that Ryland's claims can or have been tendered under those liability insurance policies. (Richard Daniels Decl., ¶ 8).

8. Ryland is informed and believes and thereon states, that on or about April 27, 2001, HNR and Ryland executed a Subcontractor Agreement whereby HNR agreed to provide materials and labor at the Project. (A true and correct copy of the subcontract is attached as Exhibit "C" to Richard Daniels Decl.). Pursuant to the subcontract HNR agreed to obtain general liability insurance with a limit of combined bodily injury and property damage of not less than \$1,000,000. (Richard Daniels Decl., ¶ 9).

9. Ryland is informed and believes and thereon states, that HNR obtained a general liability insurance policy and excess liability insurance policy, wherein the insurers agreed to pay all sums, not to exceed \$1,000,000, which HNR should become liable to pay as damages imposed upon it by law for injury sustained in the course of business (including HNR's work relating to the Project). (Richard Daniels Decl., ¶ 10).

10. Ryland is informed and believes and thereon states, that said insurance policies provide that insolvency or bankruptcy of HNR shall not release the insurance company from the payment of damages for injuries sustained during the term within the area of coverage of said policies. (Richard Daniels Decl., ¶ 11).

11. Ryland is informed and believes and thereon states, that the insurance policies at issue are not required or otherwise necessary to HNR for an effective debt liquidation under chapter 11 of the Bankruptcy Code. (Richard Daniels Decl., ¶ 12).

12. Ryland states, on information and belief, that its instant pending lawsuit against HNR will be defended at no expense to HNR. (Richard Daniels Decl., ¶ 13).

13. If Ryland is not permitted to pursue its interests in the insurance policies, then Ryland will suffer irreparable injury, loss and damage. (Richard Daniels Decl., ¶ 14).

14. No issues of federal or bankruptcy laws are involved in the pending lawsuit against HNR, only questions of California state law. (Richard Daniels Decl., ¶ 15).

RELIEF REQUESTED

15. Ryland seeks a modification of the automatic stay imposed by Bankruptcy Code section 362 for the limited purpose of allowing Ryland to pursue its claims for indemnification and damages against HNR's liability insurance policies while waiving any deductibles. (Richard Daniels Decl., ¶ 16).

16. Ryland agrees not to proceed against HNR's bankruptcy estate in the event of judgment against HNR in the Litigation in excess of HNR's insurance coverage. (Richard Daniels Decl., ¶ 17).

17. Should HNR be found liable for Ryland's damages in the Litigation, to the extent that HNR's insurance coverage does not satisfy such liability, Ryland agrees to waive its right to satisfaction of its claim and participation in any distribution of assets of HNR's estate. (Richard Daniels Decl., ¶ 18).

BASIS FOR RELIEF REQUESTED

18. The purpose of the automatic stay is "to prevent certain creditors from gaining a preference for their claims against the debtor; to forestall the depletion of the debtor's assets due to legal costs in defending proceedings against it; and, in general, to avoid interference with the orderly liquidation or rehabilitation of the debtor." St. Croix Condominium Owners v. St. Croix

Hotel, 682 F.2d 446, 448 (3d Cir. 1982). However, the automatic stay is not meant to be absolute, and in appropriate instances relief may be granted. Wedgewood Inv. Fund, Ltd. v. Wedgewood Realty Group, Ltd. (In re Wedgewood), 878 F.2d 693, 697 (3d Cir. 1989).

19. Section 362(d)(1) of the Bankruptcy Code provides that “[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay – (1) for cause, including the lack of adequate protection of an interest in property of such party in interest....” “Cause [, as defined in Section 362(d)(1),] is a flexible concept and courts often conduct a fact intensive, case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the [automatic] stay.” In re The SCO GROUP, INC., 395 B.R. 852, 856 (Bankr. D. Del. 2007) (internal citations omitted). This Court utilizes the following “three-prong balancing test to determine whether to grant relief from the stay: (1) whether any great prejudice to either the bankrupt estate or the debtor will result from continuation of the civil suit; (2) whether the hardship to the non-bankrupt party by maintenance of the stay considerably outweighs the hardship to the debtor; and (3) the probability of the creditor prevailing on the merits.” Id. at 857; Izzarelli v. Rexene (In re Rexene Prods. Co.), 141 B.R. 574, 576 (Bankr. D. Del. 1992). In particular, this Court confirmed that the legislative intent of Section 362(d)(1) was to emphasize the “importance of allowing a case to continue in the original tribunal so long as there is no prejudice to the estate.” Id.

20. Here, application of the Court’s balancing test favors granting Ryland relief from the automatic stay for three reasons. First, there will be no great prejudice to HNR or HNR’s bankrupt estate because Ryland agrees not to proceed against either HNR or its estate in excess of HNR’s insurance coverage. In addition, to the extent that HNR’s insurance coverage does not

satisfy such liability of HNR, if any, Ryland agrees to waive its right to satisfaction of its claim and participation in any distribution of assets of HNR's estate. Second, Ryland will suffer considerable hardship if the stay is not lifted because it will not be able to continue prosecution of its Cross-Complaint and will be left to defend itself without the benefit of its additional insured status under HNR's insurance policies. Third, the likelihood of Ryland prevailing on the merits is extremely high because HNR's obligations to defend, indemnify and name Ryland as an additional insured were agreed to and formalized by written contract, to which HNR has never objected. Therefore, relief from the automatic stay should be granted.

WHEREFORE, Ryland respectfully requests:

1. That the automatic stay imposed pursuant to 11 U.S.C. § 362 be modified forthwith to permit Ryland to proceed with prosecution of its Cross-Complaint against HNR and others;
2. That Ryland be allowed to assert its claims against the liability insurance policies of HNR;
3. That in the event Ryland obtains a judgment against HNR or otherwise resolves the Litigation, Ryland may receive HNR's insurance policy proceeds without any further approval by this Court; and
4. For such other and further relief as the Court may deem proper, just and equitable.

BODELL, BOVÉ, GRACE & VAN HORN, P.C.

/s/ Bruce W. McCullough
Bruce W. McCullough (Del. ID 3112)
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13985 Stowe Drive

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Facsimile: (858) 513-1002

Attorneys for Ryland Homes of California, Inc.

Dated: November 30, 2009

)	
In re:)	Chapter 11
)	
BUILDING MATERIALS HOLDINGS)	Case No. 09-12074 (KJC)
CORPORATION, et al.,)	Jointly Administered
)	
Debtors.)	Objection Deadline: December 8, 2009 @ 4:00 p.m.
)	Hearing Date: December 15, 2009 @ 1:00 p.m.

PLEASE TAKE NOTICE that on November 30, 2009, Ryland Homes; Ryland Homes of California; Ryland Homes of California, Inc.; Ryland Homes of California Co.; Ryland Homes of Southern California, Inc., Southern California Division; and M.J. Brock & Sons, Inc., dba Ryland Homes (collectively “Ryland”) filed the Motion of Ryland for Relief from the Automatic Stay (the “Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, Delaware 19801 (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that any party wishing to oppose the entry of an order approving the Motion must file a response or an objection to the Motion (“Objection”) with the Court **ON OR BEFORE DECEMBER 8, 2009 AT 4:00 P.M. (EDT)** (the “Objection Date”). At the same time, you must serve such Objection upon the undersigned counsel so as to be received by the Objection Deadline.

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DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM #5,
WILMINGTON, DELAWARE 19801. ONLY PARTIES WHO HAVE FILED A TIMELY
OBJECTION WILL BE HEARD AT THE HEARING.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY
GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR
HEARING.

BODELL, BOVÉ, GRACE & VAN HORN, P.C.

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Telephone: (858) 513-1020
Facsimile: (858) 513-1002
Attorneys for Ryland Homes of California, Inc.

Dated: November 30, 2009

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CORPORATION, et al.,)	Jointly Administered
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**DECLARATION OF RICHARD DANIELS IN SUPPORT OF MOTION OF RYLAND
HOMES OF CALIFORNIA, INC. FOR RELIEF FROM AUTOMATIC STAY**

I, Richard Daniels, declare:

1. I am an employee of Ryland Homes of California, Inc. ("Ryland"). The facts set forth herein are of my own personal knowledge except those matters stated on information and belief, and as to those I believe them to be true. If sworn I could testify competently thereto.
2. On or about June 16, 2009, H.N.R. Framing Systems, Inc. ("HNR") filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, Delaware Bankruptcy Court Case No. 09-12081 (which has since been consolidated into Case No. 09-12074).
3. Ryland is a creditor on HNR and, therefore, qualifies as a party in interest in this case.
4. On or about April 4, 2008, Aaron and Kelly Blank and various homeowners ("Homeowners") commenced litigation against Ryland relating to a certain housing development

located in the City of San Marcos, California (the "Project"), alleging numerous causes of action and seeking damages based upon strict liability, strict liability (component parts), breach of implied warranty (merchantability), breach of express and implied warranties, and negligence (the "Complaint"). This action, generally referred to as Blank, et al. v. Ryland Homes of California, Inc., et al., is currently pending in the Superior Court of the State of California, County of San Diego, Case No. 37-2008-00081383-CU-CD-CTL (the "Action"). (A true and correct copy of the Complaint is attached as Exhibit "A" hereto).

5. On or about September 5, 2008, Ryland filed a Cross-Complaint for Equitable Indemnity, Express Indemnity, Breach of Express and Implied Warranties, Breach of Contract, Negligence, Contribution, Declaratory Relief: duty to Defend, Declaratory Relief: Duty to Indemnify and Breach of Contract: Additional Insurance (the "Cross-Complaint") against HNR, among others, based upon the alleged construction defects caused by HNR during HNR's performance of work and/or services and/or providing of materials which were incorporated into the development, construction and/or sale of the Project. (A true and correct copy of the Cross-Complaint is attached as Exhibit "B" hereto).

6. No trial date has been set in the Litigation. Based on the information produced in discovery in the Action, it appears that approximately 41 of the Homeowners' claims implicate HNR. Plaintiffs' potential recovery allocated to HNR is estimated to be in the range of \$82,000.00 to \$123,000.00.

7. Ryland seeks recovery from HNR for indemnification and payment of the total amount of any judgment rendered against Ryland based upon the Complaint, together with Ryland's attorneys' fees, expenses and costs of suit incurred in defending the Litigation. Additionally, Ryland seeks recovery for any and all attorneys' fees, experts' fees, costs and

discovery expenses incurred by Ryland in its defense of the Litigation and in its pursuit of the Cross-Complaint.

8. Ryland states, on information and belief, that HNR is insured under one or more general liability and excess liability insurance policies and that Ryland's claims can or has been tendered under those liability insurance policies.

9. Ryland is informed and believes and thereon states, that on or about April 27, 1999, HNR and Ryland executed a Subcontractor Agreement whereby HNR agreed to provide materials and labor at the Project. (A true and correct copy of the subcontract is attached as Exhibit "C" hereto). Pursuant to the subcontract HNR agreed to obtain general liability insurance with a limit of combined bodily injury and property damage of not less than \$1,000,000.00.

10. Ryland is informed and believes and thereon states, that HNR obtained a general liability insurance policy and excess liability insurance policy, wherein the insurers agreed to pay all sums, not to exceed \$1,000,000.00, which HNR should become liable to pay as damages imposed upon it by law for injury sustained in the course of business (including HNR's work relating to the Project).

11. Ryland is informed and believes and thereon states that said insurance policies provide that insolvency or bankruptcy of HNR shall not release the insurance company from the payment of damages for injuries sustained during the term within the area of coverage of said policies.

12. Ryland is informed and believes and thereon states, that the insurance policies at issue are not required or otherwise necessary to HNR for effective debt liquidation under Chapter 11 of the Bankruptcy Code.

13. Ryland states, on information and belief, that its instant pending lawsuit against HNR will be defended at no expense to HNR.

14. If Ryland is not permitted to pursue its interests in the insurance policies, then Ryland will suffer irreparable injury, loss and damage.

15. No issues of federal or bankruptcy laws are involved in the pending lawsuit against HNR, only questions of California state law.

16. Ryland seeks a modification of the automatic stay imposed by Bankruptcy Code section 362 for the limited purpose of allowing Ryland to pursue its claims for indemnification and damages against HNR's liability insurance policies while waiving any deductibles.

17. Ryland agrees not to proceed against HNR's bankruptcy estate in the event of judgment against HNR in the Litigation in excess of HNR's insurance coverage.

18. Should HNR be found liable for Ryland's damages in the Litigation, to the extent that HNR's insurance coverage does not satisfy such liability, Ryland agrees to waive its right to satisfaction of its claim and participation in any distribution of assets of HNR's estate.

I declare, under penalty of perjury, and under the laws of the State of California and the United States of America, that the foregoing is true and correct and that this declaration was executed on this 18th day of November, 2009, at ORANGE, California.



Richard L. Daniels
Declarant

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In re:)	Chapter 11
)	
BUILDING MATERIALS HOLDINGS)	Case No. 09-12074 (KJC)
CORPORATION, et al.,)	Jointly Administered
)	
Debtors.)	D.I. _____
)	Hearing Date: December 15, 2009 @ 1:00 p.m.

AND NOW, this ____ day of _____, 2009 upon consideration of the Motion of Ryland Homes; Ryland Homes of California; Ryland Homes of California, Inc.; Ryland Homes of California Co.; Ryland Homes of Southern California, Inc., Southern California Division; and M.J. Brock & Sons, Inc., dba Ryland Homes (collectively “Ryland”) for Relief from the Automatic Stay (the “Motion”); and it appearing that due and adequate notice was provided under the circumstances; and after due consideration of the Motion and any responses thereto;

1. The Motion is **GRANTED**.
2. The automatic stay imposed pursuant to 11 U.S.C. § 362 is hereby modified and lifted to permit Ryland to proceed with prosecution of its Cross-Complaint against H.N.R. Framing Systems, Inc. (“HNR”) pursuant to 11 U.S.C. § 362 and others;
3. Ryland is hereby allowed to assert its claims against the liability insurance policies of HNR;

4. In the event Ryland obtains a judgment against HNR or otherwise resolves the Action, Ryland may receive HNR's insurance policy proceeds without any further approval by this Court; and,

5. This Order shall be effective immediately.

BY THE COURT:

J.

EXHIBIT A

(PLAINTIFFS' COMPLAINT)

1 **MILSTEIN, ADELMAN & KREGER, LLP**

2 2800 Donald Douglas Loop North

3 Santa Monica, California 90405

4 Telephone: (310) 396-9600

5 Fax: (310) 396-9635

6 Fred M. Adelman, Esq., State Bar No. 131658

7 Jessica R. Boston, Esq., State Bar No. 251695

8 Attorneys for Plaintiffs,

9 Aaron & Kelly Blank, et al.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

AARON & KELLY BLANK, HUSSEIN)	CASE NO.:
BADRANI, PETER & Nanci BLOY, RYAN &)	
TITA BUCK, AMADEO A. & LUZVIMINDA	)	COMPLAINT FOR DAMAGES:
C. CASTANEDA, CHRISTOPHER &)	
JENNIFER CASTIGLIONE, VALERIE CLEM,	)	1. STRICT PRODUCTS LIABILITY
MICHAEL C. & SHERRY L. DAVIS, RALPH	)	2. STRICT PRODUCTS LIABILITY
& JANNAE DESIENA, JOHN & FRAN	)	(COMPONENT PRODUCTS)
DUBROY, STEVE & SANDY ESQUIBEL,	)	3. BREACH OF IMPLIED WARRANTY
JAMES & CHRISTINE FARTHING, JAMES &	)	(MERCHANTABILITY)
TRACY FLOWERS, CAESAR & LINDA	)	4. BREACH OF CONTRACT
GALLEGO, JACQUELINE H. GARCIA, HIEU	)	5. NEGLIGENCE
GIAP, DONATO & JOSEPHINE GIRON,	)	6. BREACH OF EXPRESS WARRANTY
SIDNEY S. & FRIEDA R. GOLDMAN,)	
TERENCE L. & JODY L. HUNT, RUSSELL &)	
DIANE HYDER, FOTKA & LLJA ILIEVSKI,)	
JUDY & BEN JACOT, TOM & PENG)	
KOUSOL, ROSS KRAUTWALD, KEITH &)	
PAMELA LEAL, GREGORY & GERRI LEON,)	
LLOYD & CLAVEL LIMPIADO, JACK)	
MCCARTY, MICHAEL & JENNIFER)	
MCDOWELL, DAVID & TERRI PARSONS,)	
THOMAS & DANA PICARELLI, DAVID &)	
KIM PORTER, MANDAYAM & KATHLEEN)	
RAJAN, RONNY & CAROL REYNOLDS,)	
ELLIOT & ESTELLE ROSENBERG, VINCENT)	
& JACQUELINE SCHULTE, GRETCHEN &)	
ROBERT SENEKER, CARROLL C. &)	
ROSEMARY T. SPEIGHT, BEN STLUKA,)	
GERRI TORRES, JEFF URRY, WILLIAM &)	
KIM VICKERS, JOSEPH & BONNIE YANG,)	
JOHN R. & CAROLYN L. ZIEGLER,)	

EDWARD CARMONA & NANCY CUTTS,
SHARON ULRICH & MARGARET LEMBO,
KEVIN NGUYEN & THUVAN LE;

Plaintiffs,

vs.

M.J. BROCK & SONS INC., DBA RYLAND
HOMES; RYLAND HOMES OF CALIFORNIA,
INC.; RYLAND HOMES OF CALIFORNIA
CO.; RYLAND HOMES OF CALIFORNIA;
RYLAND HOMES; RYLAND HOMES OF
SOUTHERN CALIFORNIA, INC., SOUTHERN
CALIFORNIA DIVISION, and DOES 1-1000,
inclusive,

Defendants.

Plaintiffs allege:

1. Plaintiffs are individuals residing in the County of Sacramento, State of California.
2. The subjects of this action are the land with single family dwellings and other improvements thereon, owned by Plaintiffs respectively, (hereinafter collectively referred to as the "PROPERTY") located in the County of Sacramento, State of California, described as follows:

	FIRST NAME	LAST NAME	PROP #	STREET	CITY	STATE	ZIP	TRACT	LOT
1	Aaron & Kelly	Blank	546	Golf Glen Dr	San Marcos	Ca	92069	13782	102
2	Hussein	Badrani	612	Landmark Pl	San Marcos	Ca	92069	13810	25
3	Peter & Nanci	Bloy	312	Crownview Ct	San Marcos	Ca	92069	13795	52
4	Ryan & Tita	Buck	510	Peach Way	San Marcos	Ca	92069	13733	5
5	Amadeo A. & Luzviminda C.	Castaneda	325	Crownview Ct	San Marcos	Ca	92069	13795	38
6	Christopher & Jennifer	Castiglione	419	Landmark Ct	San Marcos	Ca	92069	13810	7
7	Valerie	Clem	321	Kentfield Dr	San Marcos	Ca	92069	13733	39
8	Michael C. & Sherry L.	Davis	720	Atwood Pl	San Marcos	Ca	92069	13786	18
9	Ralph & Jannae	Desiena	572	Golf Glen Dr	San Marcos	Ca	92069	13782	114
10	John & Fran	Dubroy	716	Atwood Pl	San Marcos	Ca	92069	13786	17
11	Steve & Sandy	Esquibel	528	Golf Glen Dr	San Marcos	Ca	92069	13782	93

1	12	James & Christine	Farthing	609	Landmark Pl	San Marcos	Ca	92069	13810	16
2	13	James & Tracy	Flowers	553	Golf Glen Dr	San Marcos	Ca	92069	13782	61
3	14	Caesar & Linda	Gallego	305	Kentfield Dr	San Marcos	Ca	92069	13733	44
4	15	Jacqueline H.	Garcia	504	Golf Glen Dr	San Marcos	Ca	92069	13782	83
5	16	Hieu	Glap	415	Landmark Ct	San Marcos	Ca	92069	13810	5
6	17	Donato & Josephine	Giron	540	Golf Glen Dr	San Marcos	Ca	92069	13782	99
7	18	Sidney S. & Frieda R.	Goldman	533	Golf Glen Dr	San Marcos	Ca	92069	13782	70
8	19	Terence L. & Jody L.	Hunt	598	Chesterfield Cir	San Marcos	Ca	92069	13782	1
9	20	Russell & Diane	Hyder	601	Chesterfield Cir	San Marcos	Ca	92069	13811	1
10	21	Fotka & Llija	Ilievski	318	Crownview Ct	San Marcos	Ca	92069	13795	49
11	22	Judy & Ben	Jacot	610	Concord Pl	San Marcos	Ca	92069	13795	5
12	23	Tom & Peng	Kousol	578	Golf Glen Dr	San Marcos	Ca	92069	13782	117
13	24	Ross	Krautwald	519	Golf Glen Dr	San Marcos	Ca	92069	13782	77
14	25	Keith & Pamela	Leal	730	Atwood Pl	San Marcos	Ca	92069	13786	21
15	26	Gregory & Gerri	Leon	624	Lancashire Pl	San Marcos	Ca	92069	13795	
16	27	Lloyd & Clavel	Limpiado	512	Peach Way	San Marcos	Ca	92069	13733	6
17	28	Jack	McCarty	564	Golf Glen Dr	San Marcos	Ca	92069	13782	111
18	29	Michael & Jennifer	McDowell	565	Lawndale Pl	San Marcos	Ca	92069	13782	44
19	30	David & Terri	Parsons	632	Chesterfield Cir	San Marcos	Ca	92069	13811	26
20	31	Thomas & Dana	Picarelli	582	Chesterfield Cir	San Marcos	Ca	92069	13782	9
21	32	David & Kim	Porter	515	Golf Glen Dr	San Marcos	Ca	92069	13782	79
22	33	Mandayam & Kathleen	Rajan	345	Kentfield Dr	San Marcos	Ca	92069	13733	29
23	34	Ronny & Carol	Reynolds	570	Chesterfield Cir	San Marcos	Ca	92069	13782	15
24	35	Elliot & Estelle	Rosenberg	631	Chesterfield Cir	San Marcos	Ca	92069	13811	11
25	36	Vincent & Jacqueline	Schulte	628	Lancashire Pl	San Marcos	Ca	92069	13795	
26	37	Gretchen & Robert	Seneker	555	Lawndale Pl	San Marcos	Ca	92069	13782	39
27	38	Carroll C. & Rosemary T.	Speight	550	Chesterfield Cir	San Marcos	Ca	92069	13782	24
28	39	Ben	Stluka	316	Crownview Ct	San Marcos	Ca	92069	13795	50

40	Gerri	Torres	632	Lancashire PI	San Marcos	Ca	92069	13795	
41	Jeff	Urry	570	Golf Glen Dr	San Marcos	Ca	92069	13782	113
42	William & Kim	Vickers	616	Landmark PI	San Marcos	Ca	92069	13810	23
43	Joseph & Bonnie	Yang	612	Concord Dr	San Marcos	Ca	92069	13795	4
44	John R. & Carolyn L.	Ziegler	618	Chesterfield Cir	San Marcos	Ca	92069	13811	32
45	Edward Carmona & Nancy Cutts		542	Chesterfield Cir	San Marcos	Ca	92069	13811	16
46	Sharon Ulrich & Margaret Lembo		425	Landmark Ct	San Marcos	Ca	92069	13810	10
47	Kevin Nguyen & Thuvan Le		712	Atwood PI	San Marcos	Ca	92069	13786	16

3. Plaintiffs are informed and believe and based thereon allege that at all times herein mentioned and material hereto that **M.J. BROCK & SONS INC., DBA RYLAND HOMES**, was and is a corporation authorized to conduct business in California and engaged in business in the County of San Diego and were the developers and/or general contractors of the PROPERTY and the project(s) within which the PROPERTY is located.

4. Plaintiffs are informed and believe and based thereon allege that at all times herein mentioned and material hereto that **RYLAND HOMES OF CALIFORNIA, INC.**, was and is a corporation authorized to conduct business in California and engaged in business in the County of San Diego and were the developers and/or general contractors of the PROPERTY and the project(s) within which the PROPERTY is located.

5. Plaintiffs are informed and believe and based thereon allege that at all times herein mentioned and material hereto that **RYLAND HOMES OF CALIFORNIA CO.**, was and is a corporation authorized to conduct business in California and engaged in business in the County of San Diego and were the developers and/or general contractors of the PROPERTY and the project(s) within which the PROPERTY is located.

1 6. Plaintiffs are informed and believe and based thereon allege that at all times herein
2 mentioned and material hereto that **RYLAND HOMES OF CALIFORNIA**, was and is a
3 corporation authorized to conduct business in California and engaged in business in the County of
4 San Diego and were the developers and/or general contractors of the PROPERTY and the project(s)
5 within which the PROPERTY is located.

6 7. Plaintiffs are informed and believe and based thereon allege that at all times herein
7 mentioned and material hereto that **RYLAND HOMES**, was and is a corporation authorized to
8 conduct business in California and engaged in business in the County of San Diego and were the
9 developers and/or general contractors of the PROPERTY and the project(s) within which the
10 PROPERTY is located.

11 8. Plaintiffs are informed and believe and based thereon allege that at all times herein
12 mentioned and material hereto that **RYLAND HOMES OF SOUTHERN CALIFORNIA, INC.,**
13 **SOUTHERN CALIFORNIA DIVISION**, was and is a corporation authorized to conduct business
14 in California and engaged in business in the County of San Diego and were the developers and/or
15 general contractors of the PROPERTY and the project(s) within which the PROPERTY is located.

16 9. The names and capacities, whether individual, corporate, associate or otherwise of
17 certain developers, builders, general contractors, subcontractors and/or their alter egos sued herein
18 as DOES 1 through 100 inclusive, are presently unknown, and Plaintiffs will amend the Complaint
19 to insert the same when ascertained. Plaintiffs are informed and believe and based thereon allege
20 that each of these Defendants was a resident of said County and State and/or have principal offices
21 or were doing business in said County and State and were and are responsible in some way for the
22 happenings and damages alleged in this complaint. Said Defendants, along with the Defendants
23 named above, will hereinafter be referred to as the "**DEVELOPER DEFENDANTS.**"
24
25
26
27
28

1 10. In order to build and construct said PROPERTY and project(s) the DEVELOPER
2 DEFENDANTS hired, retained, employed, or contracted for the services of certain persons or
3 entities to plan, design, and prepare drawings and specifications for the building of the PROPERTY
4 and project. The identities of said persons or entities, whether individual, corporate or otherwise,
5 sued herein as Does 101 through 200, are presently unknown to Plaintiffs who therefore sue such
6 persons by their fictitious names. Plaintiffs are informed and believe and thereon allege that said
7 persons or entities are wholly or in some part responsible for the occurrences set forth in the
8 complaint. These Defendants will hereinafter be referred to as the **"DESIGN DEFENDANTS."**
9

10 11. In order to build and construct said project the DEVELOPER DEFENDANTS hired,
11 retained, employed, or contracted with persons or entities to provide for labor and materials in the
12 construction of the PROPERTY and project(s). The identities of said persons or entities, whether
13 individual, corporate, or otherwise, sued herein as Does 201 through 300 are presently unknown to
14 Plaintiffs who therefore sue such persons by their fictitious names. Plaintiffs are informed and
15 believe and thereon allege that said persons or entities are wholly or in some part responsible for the
16 occurrences set forth in the Complaint in accordance with that party's individual scope of work that
17 is limited to work performed and criticized by Plaintiffs' experts. These Defendants will herein
18 after be referred to as the **"CONTRACTOR DEFENDANTS."**
19
20

21 12. Plaintiffs are informed and believe and based thereon allege that there were other
22 persons and entities involved in the planning, design, construction, maintenance, repairs, and sale of
23 the PROPERTY and project(s). The identities of said persons or entities, whether individual,
24 corporate, or otherwise, sued herein as Does 301-1000 are presently unknown to Plaintiffs who
25 therefore sue such persons by their fictitious names. Plaintiffs are informed and believe and thereon
26 allege that said persons or entities are wholly or in some part responsible for the occurrences set
27 forth in the complaint. Plaintiffs are informed and believe and based thereon allege that at all times
28

1 herein mentioned Defendants and each of them were the agents, servants, employees, assistants and
2 consultants of their co-Defendants and were as such acting within the course and scope of their
3 agency and authority of such agency and employment.

4 **FIRST CAUSE OF ACTION**

5 **STRICT PRODUCTS LIABILITY**

6 **(DEVELOPER DEFENDANTS)**

7
8 11. Plaintiffs repeat and reallege Paragraphs 1 through 10, inclusive, and incorporate the
9 same as if set forth herein at length.

10 12. DEVELOPER DEFENDANTS and each of them, at all times herein mentioned were
11 in the business of developing and mass producing and/or distributing homes in and, within the
12 County where the PROPERTIES are located, and selling them to members of the public at large.

13
14 13. Within the last ten years, the DEVELOPER DEFENDANTS and each of them,
15 developed and mass produced the PROPERTY and/or otherwise participated in the stream of
16 commerce for sale of the PROPERTY and in the projects where the PROPERTY is located.

17 14. At all times herein mentioned and material hereto, DEVELOPER DEFENDANTS
18 knew and intended that the PROPERTY would be purchased by members of the public at large, and
19 used by them without further inspection for defects.

20
21 15. Plaintiffs purchased the PROPERTY from said DEVELOPER DEFENDANTS and
22 moved into it with their families.

23 16. At the time of the purchase by Plaintiffs, the PROPERTY was defective and unfit for
24 its intended purposes because Defendants did not construct the PROPERTY in a workmanlike
25 manner as manifested by, but not limited to, numerous defects which have resulted in damage to the
26 homes and their component parts. The defects include, without limitation and to various degrees on
27 the plaintiffs' respective residences, the following:
28

1 Faulty soil compaction, faulty existing underlying soils and expansive
2 soils resulting in soil movement and damage to the structures, concrete
3 slabs, flatwork and foundation defects; plumbing defects; electrical
4 defects; drainage defects; roof defects; HVAC defects; waterproofing
5 defects; window and door defects; landscaping and irrigation defects;
6 framing, siding and structural defects; ceramic tile, vinyl flooring and
7 countertop defects; drywall defects; fence and retaining wall defects;
8 cabinet and wood trim defects; fireplace and chimney defects; tub and
9 shower door defects; painting defects; sheet metal defects; and stucco
10 defects
11

12 17. The above-specified claims involve predominantly common questions of law or fact,
13 are typical of claims attributable to other residences in tract(s) 13782, 13810, 13795, 13733, 13795,
14 13810, 13786, 13811 and adequately represent all other homeowners in the project(s) in which the
15 property is located.
16

17 18. The Plaintiffs gave and/or attempted to give DEVELOPER DEFENDANTS due and
18 timely notice of the defective quality of the above mentioned items.
19

20 19. The defects alleged herein above are defects that were not apparent by reasonable
21 inspection of the PROPERTY at the time of the purchase. The defects thereafter manifested.
22

23 20. Because of the defective conditions of the PROPERTY as herein above alleged,
24 Plaintiffs have been specifically damaged in the following ways, as well as others which will be
25 inserted with leave of court when ascertained:
26

27 A) Plaintiffs will be forced to incur expenses for the restoration and repairs of the
28 PROPERTY to cure the damage, defects and/or deficiencies. The exact amount of

1 the damages is presently unknown, except that the costs will exceed the sum of
2 \$100,000 per home.

3 B) Plaintiffs have been damaged through the diminution in value of the PROPERTY.
4 Plaintiffs are unaware of the precise amount of such damage but will establish such
5 amount at time of trial.

6 C) Plaintiffs have been forced to retain expert consultants to analyze and determine the
7 method of repairing the aforementioned defects and damage. Plaintiffs are unaware
8 of the precise amount of such damage but will establish such amount at time of trial.

9
10 21. DEVELOPER DEFENDANTS, and each of them, as developers, mass producers,
11 builders and sellers and/or otherwise within the stream of commerce are strictly liable and
12 responsible to Plaintiffs for all damage suffered as a result of the above described damage, defects
13 and deficiencies in the PROPERTY.
14

15 **SECOND CAUSE OF ACTION**

16 **STRICT PRODUCTS LIABILITY**

17 (CONTRACTOR COMPONENT PRODUCT MANUFACTURER DEFENDANTS ONLY)

18 22. Plaintiffs incorporate by reference all previous paragraphs of this complaint as
19 though set forth in full herein.

20 23. COMPONENT PRODUCT MANUFACTURER DEFENDANTS and each of them,
21 at all times herein mentioned were in the business of designing, and mass manufacturing, producing,
22 distributing, selling and reselling the SUBJECT COMPONENT PRODUCTS, within the County
23 where the PROPERTIES are located, for their installation into the PROPERTY.
24

25 24. Within the last ten years, the COMPONENT PRODUCT MANUFACTURER
26 DEFENDANTS and each of them, designed, developed, assembled, manufactured, marketed, mass
27 produced, distributed, sold and resold the SUBJECT COMPONENT PRODUCTS and/or otherwise
28

1 participated in the stream of commerce for sale of the SUBJECT COMPONENT PRODUCTS that
2 were installed into the PROPERTY.

3 25. At all times herein mentioned and material hereto, COMPONENT PRODUCT
4 MANUFACTURER DEFENDANTS knew and intended that the PROPERTY would be purchased
5 by members of the public at large, and used by them without further inspection for defects.

6 26. The SUBJECT COMPONENT PRODUCTS are finished consumer products.

7
8 27. COMPONENT PRODUCT MANUFACTURER DEFENDANTS sold the
9 SUBJECT COMPONENT PRODUCTS.

10 28. SUBJECT COMPONENT PRODUCTS were installed in the PROPERTY. Those
11 SUBJECT COMPONENT PRODUCTS include, but are not limited to the following:

12 windows, exterior/interior doors, sliding glass doors, garage
13 doors/automatic garage door opening systems, shower/tub enclosures,
14 shower doors, bathtubs, sinks, toilets, light fixtures, power distribution
15 panels, HVAC units, compressors, security systems, irrigation systems

16
17 29. PLAINTIFFS own the PROPERTIES and by doing so, purchased the SUBJECT
18 COMPONENT PRODUCTS. At all times herein mentioned and material hereto, COMPONENT
19 PRODUCT MANUFACTURER DEFENDANTS knew and intended that the PROPERTIES and
20 the SUBJECT COMPONENT PRODUCTS would be purchased by the PLAINTIFFS

21
22 30. PLAINTIFFS are lay people and lack the knowledge and understanding to inspect the
23 SUBJECT COMPONENT PRODUCTS and to understand whether said component products have
24 any defects. PLAINTIFFS lacked the ability to test the subject component products, to know
25 whether a defect did exist at the time they purchased their PROPERTIES and /or the SUBJECT
26 COMPONENT PRODUCTS.

27
28 ///

1 31. At the time each of the SUBJECT COMPONENT PRODUCTS left COMPONENT
2 PRODUCT MANUFACTURER DEFENDANTS' custody, control or possession, each SUBJECT
3 COMPONENT PRODUCTS was defective and unfit for its intended purposes because the
4 SUBJECT COMPONENT PRODUCTS contained defects in their design, parts, materials used to
5 manufacture them, and how they were manufactured, which have resulted in foreseeable damage to
6 the PROPERTIES and the parts of the SUBJECT COMPONENT PRODUCTS that were the defects
7 and parts that were not the defects.
8

9 32. The defects in the SUBJECT COMPONENT PRODUCTS design, parts and
10 materials used to manufacture them, and how they were manufactured, existed at the time the
11 SUBJECT COMPONENT PRODUCTS left the possession and control of COMPONENT
12 PRODUCT MANUFACTURER DEFENDANTS and were and are common to each of the
13 respective SUBJECT COMPONENT PRODUCTS.
14

15 33. The defects in the SUBJECT COMPONENT PRODUCTS have caused water
16 intrusion and penetration into the wall systems, cavities and the interior of PLAINTIFFS'
17 PROPERTIES and are, and have caused the following resultant PROPERTY damage, including but
18 not limited to:

- 19 a) Damage to interior drywall of PLAINTIFFS' PROPERTY;
20 b) Damage to perimeter wall systems of PLAINTIFFS' PROPERTY; and
21 c) Damage to the wall systems, cavities and the interior of PLAINTIFFS' PROPERTY.
22

23 This intrusion, penetration, and damage occurred in each named PLAINTIFFS'
24 PROPERTY.
25

26 34. PLAINTIFFS have also suffered the following damages in addition to all other
27 damage alleged in this Complaint as follows:
28

1 a) PLAINTIFFS will be forced to incur expenses for the restoration and repairs of the
2 PROPERTY to cure the damage, defects and/or deficiencies caused by the SUBJECT
3 COMPONENT PRODUCTS. PLAINTIFFS are unaware of the precise amount of such damage but
4 will establish such amount at time of trial; and

5 b) PLAINTIFFS have been damaged through the cost to repair or replace the SUBJECT
6 COMPONENT PRODUCTS. PLAINTIFFS are unaware of the precise amount of such damage but
7 will establish such amount at time of trial; and

8 c) Plaintiffs have been damaged through the diminution in value of the PROPERTY
9 caused by the SUBJECT COMPONENT PRODUCTS. Plaintiffs are unaware of the precise amount
10 of such damage but will establish such amount at time of trial; and

11 d) PLAINTIFFS have been forced to retain expert consultants to analyze and determine
12 the method of repairing the aforementioned defective SUBJECT COMPONENT PRODUCTS.
13 PLAINTIFFS are unaware of the precise amount of such damage but will establish such amount at
14 time of trial.

15 35. The defects alleged hereinabove are defects that were not apparent to PLAINTIFFS
16 by reasonable inspection of the PROPERTY and the SUBJECT COMPONENT PRODUCTS before
17 or at the time PLAINTIFFS individually purchased the SUBJECT COMPONENT PRODUCTS or
18 purchased their PROPERTY.

19 36. Because of the defective design and conditions of the SUBJECT COMPONENT
20 PRODUCTS, as herein alleged, PLAINTIFFS, and each of them, have the defective SUBJECT
21 COMPONENT PRODUCTS in their PROPERTY that need to be removed and replaced with non-
22 defective component products and have damage in and to their PROPERTY caused by the
23 SUBJECT COMPONENT PRODUCTS.

1 37. COMPONENT PRODUCT MANUFACTURER DEFENDANTS, and each of them,
2 as manufacturers, mass producers, distributors and sellers of the SUBJECT COMPONENT
3 PRODUCTS, and/or otherwise having placed their SUBJECT COMPONENT PRODUCTS within
4 the stream of commerce, are strictly liable and responsible to PLAINTIFFS for all damage(s)
5 suffered as a result of the above described defects and deficiencies in the SUBJECT COMPONENT
6 PRODUCTS.

7
8 **THIRD CAUSE OF ACTION**

9 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

10 **(DEVELOPER DEFENDANTS)**

11 38. Plaintiffs incorporate by reference all previous paragraphs of this complaint as
12 though set forth in full herein.

13 39. At all times herein mentioned and material hereto DEVELOPER DEFENDANTS
14 were and now are the merchants and sellers of newly constructed housing, the type of merchandise
15 sold to Plaintiffs as herein above alleged and described.

16
17 40. DEVELOPER DEFENDANTS, and each of them, at the time and place of the sale of
18 the PROPERTY, impliedly warranted that it was properly constructed and of merchantable quality.

19 41. The PROPERTY was not properly constructed, and not of merchantable quality in
20 that it was defective as previously alleged herein above in paragraph 16.

21 42. Original Purchaser Plaintiffs discovered the defective quality of the PROPERTY.
22 Original purchaser Plaintiffs thereafter gave DEVELOPER DEFENDANTS, and each of them, due
23 and timely notice of the defective quality of the above mentioned items.

24
25 43. The defects described herein above caused by the breaches of warranty by
26 DEVELOPER DEFENDANTS, and each of them, were defects not apparent by reasonable
27 inspection of the PROPERTY at the time of purchase. The defects and damages were latent and
28

1 were not reasonably apparent to original purchaser Plaintiffs until on or about the time of
2 notification to the DEVELOPER DEFENDANTS.

3 44. Because of the foregoing breaches of implied warranties by DEVELOPER
4 DEFENDANTS, and each of them, original purchaser Plaintiffs have been specifically damaged as
5 herein above alleged in paragraph 20.

6 **FOURTH CAUSE OF ACTION**

7 **BREACH OF CONTRACT**

8 **(DEVELOPER DEFENDANTS)**

9
10 45. Plaintiffs incorporate by reference all previous paragraphs of this complaint as
11 though set forth in full herein.

12 ///

13 46. On various dates, original purchaser Plaintiffs entered into written sales contracts
14 with DEVELOPER DEFENDANTS pursuant to which DEVELOPER DEFENDANTS, in exchange
15 for payment of certain sums, agreed to provide original purchaser Plaintiffs with quality residences
16 which were constructed in a workmanlike manner.

17
18 47. Original purchaser Plaintiffs have performed all conditions, covenants, and promises
19 required by the sales contracts in accordance with the terms and conditions of the contract.

20 48. Defendants have breached the sales contracts as set forth herein by failing to provide
21 residences constructed in a workmanlike manner as previously alleged herein above in Paragraph
22 16, as a result of which original purchaser Plaintiffs have been specifically damaged as herein above
23 alleged in Paragraph 20.

24
25 ///

26 ///

27 ///

1 **FIFTH CAUSE OF ACTION**

2 **NEGLIGENCE**

3 (ALL DEFENDANTS)

4 49. Plaintiffs incorporate by reference all previous paragraphs of this complaint as
5 though set forth in full herein.
6

7 50. The aforementioned Defendants so carelessly and negligently planned, constructed,
8 modified, inspected, and/or performed work and services at the PROPERTY so as to proximately
9 cause defects and damages to the systems, buildings, and improvements as herein above alleged in
10 paragraph 16. With regard to those Defendants identified PREVIOUSLY herein as the
11 "CONTRACTOR DEFENDANTS", Plaintiffs' allegations are limited to that Contractor's scope
12 of work that is implicated by the opinions of Plaintiffs' experts.
13

14 51. Because of the carelessness and negligence of each of the Defendants, and as a
15 proximate result thereof, Plaintiffs have been damaged as previously alleged herein above in
16 paragraph 20.
17

18 52. The defects and damages described herein above in paragraph 16 caused by the
19 negligently and carelessly performed work of the Defendants, and each of them, were defects not
20 apparent by reasonable inspection of the PROPERTY at the time of purchase.
21

22 **SIXTH CAUSE OF ACTION**

23 **BREACH OF EXPRESS WARRANTY**

24 (DEVELOPER DEFENDANTS)

25 53. Plaintiffs incorporate by reference all previous paragraphs of this complaint as
26 though set forth in full herein.

27 54. Developer defendants expressly warranted through the Real Estate Purchase
28 Contracts, and other documents that the subject properties were designed, constructed, developed,

1 inspected, and manufactured, in accordance with all the applicable Federal, State and municipal law,
2 ordinances, rules and regulations and that the subject properties were structurally sound, free of all
3 material defects and designed and constructed for the intended purposes. Defendants further
4 warranted that the homes and soils constructed thereon were in good working order and condition
5 with no deficiencies therein.

6 55. Original purchaser Plaintiffs relied on defendants express representations.

7 56. Defendants breached said warranties in that the properties were not properly
8 designed and constructed and were defective as set forth in Paragraph 16.
9

10 57. Original Purchaser Plaintiffs discovered the defective quality of the above listed
11 items involving the dwellings and pads. Original purchaser Plaintiffs thereafter gave DEVELOPER
12 DEFENDANTS that they knew of, and each of them, due and timely notice of the defective quality
13 of the above mentioned items. DEVELOPER DEFENDANTS failed and/or refused to rectify said
14 items.
15

16 58. The damages described hereinabove caused by the breaches of warranty by
17 DEVELOPER DEFENDANTS, and each of them, were not apparent by reasonable inspection of
18 the property and project at the time of purchase. The defects and damages were latent and were not
19 reasonably apparent to original purchaser plaintiffs until on or about the time of notification to the
20 DEVELOPER DEFENDANTS.
21

22 9. As a result of the foregoing acts or omissions by defendants, plaintiffs have been
23 damaged as set forth in Paragraph 20.

24 ///

25 ///

26 ///

27 ///

28 ///

1
2 WHEREFORE, Plaintiffs pray for judgment against the Defendants, and each of them, as follows:

3 FIRST, SECOND, THIRD, FOURTH, FIFTH,
4 AND SIXTH, CAUSES OF ACTION:

- 5 1. For costs of restoration and repairs to the PROPERTY in excess of
6 \$100,000 per home;
7 2. For costs of investigation;
8 3. For diminution of value of the PROPERTY according to proof at time of
9 trial;
10 4. For expert fees and costs of suit;
11 5. For loss of use of the property and relocation expenses;
12 6. For such other and further relief as the Court deems just and proper.

13
14 DATED: April 7, 2008

MILSTEIN, ADELMAN, & KREGER LLP

15
16
17 By: Fred M. Adelman, Esq.
18 Attorneys for Plaintiffs,
19 Aaron & Kelly Blank, et al.
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Attorneys for Defendant/Cross-Complainant RYLAND HOMES OF
CALIFORNIA, INC., erroneously named as
M. J. Brock & Sons, Inc., dba Ryland Homes,
Ryland Homes of California Co., Ryland
Homes of California, Ryland Homes,
Ryland Homes of Southern California, Inc.,
Southern California Division

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO - CENTRAL DIVISION

AARON & KELLY BLANK, et al.,

Plaintiffs,

v.

M.J. BROCK & SONS INC., DBA RYLAND
HOMES; et al.,

Defendants.

RYLAND HOMES OF CALIFORNIA, INC.,

Cross-Complainant,

v.

HNR FRAMING SYSTEMS, INC.; and
ROES 1 through 300, inclusive,

Cross-Defendants.

CASE NO. 37-2008-00081383-CU-CD-CTL

Judge : Ronald L. Styn

Dept. : 62

**CROSS-COMPLAINT OF
DEFENDANT RYLAND HOMES OF
CALIFORNIA, INC., FOR:**

- 1. EQUITABLE INDEMNITY;**
- 2. EXPRESS INDEMNITY;**
- 3. BREACH OF EXPRESS AND
IMPLIED WARRANTIES;**
- 4. BREACH OF CONTRACT;**
- 5. NEGLIGENCE;**
- 6. CONTRIBUTION;**
- 7. DECLARATORY RELIEF
RE: DUTY TO DEFEND;**
- 8. DECLARATORY RELIEF
RE: DUTY TO INDEMNIFY; and,**
- 9. BREACH OF CONTRACT -
ADDITIONAL INSURANCE**

Case Filed : 04/08/2008

Trial Date : None Set

COMES NOW Defendant and Cross-Complainant, RYLAND HOMES OF
CALIFORNIA, INC. (hereinafter "Cross-Complainant"), for causes of action against Cross-
Defendant, HNR FRAMING SYSTEMS, INC., and ROES 1 through 300, inclusive, and each of
them, as follows:

///

GENERAL ALLEGATIONS

1. At all times herein mentioned, Cross-Complainant RYLAND HOMES OF CALIFORNIA, INC., was and is a corporation duly-organized and existing under the laws of the State of California. At all times mentioned herein, Cross-Complainant was doing business in the County of San Diego, State of California. At all times mentioned herein, Cross-Complainant developed that certain property, "Twin Oaks," located in San Marcos, County of San Diego, State of California (hereinafter "PROPERTY") which is at issue in Plaintiffs' First Amended Complaint (hereinafter "Plaintiffs' FAC").

2. The true names and capacities, whether individual, corporate, associate, or otherwise, of Cross-Defendants herein designated by the fictitious names as ROES 1 through 300, inclusive, are unknown to Cross-Complainant, who therefore sues Cross-Defendants by such fictitious names. When the true names and capacities of Cross-Defendants have been ascertained, Cross-Complainant will amend this pleading accordingly.

3. Cross-Complainant is informed and believes and, based thereon, alleges that each of the Cross-Defendants designated by the fictitious names as ROES 1 through 300, inclusive, were corporations and/or other business entities duly-organized and existing under the laws of the State of California and are authorized to do business and were doing business in County of San Diego, State of California, at all times which are relevant to the issues herein, and entered into written and oral contracts with Cross-Complainant to perform services and/or provide materials on the subject PROPERTY which is at issue in Plaintiffs' FAC.

4. Further, Cross-Complainant herein designates fictitious names ROES 101 through 200 as individuals (the "Individual Cross-Defendants") who were or are owners, principals, directors and/or officers of the respective corporations and/or other business entities designated as Cross-Defendants ROES 1 through 100. The Individual Cross-Defendants were and are alter egos of the respective Cross-Defendants ROES 1 through 100; and, for all relevant times alleged herein, there existed a unity of interest between the Individual Cross-Defendants and the respective Cross-Defendants ROES 1 through 100.

///

1 5. Cross-Complainants herein designates fictitious names ROES 201 through 300 as
2 parties who supplied defective materials that were installed and used to construct the subject
3 PROPERTY (hereinafter the "Cross-Defendant Suppliers") which is at issue in Plaintiffs' FAC.

4 6. Cross-Complainant is informed and believes and thereon alleges that each of the
5 Cross-Defendants disputes Cross-Complainant's contentions herein and are in some manner
6 legally responsible for the acts and omissions alleged herein, and actually and proximately caused
7 and contributed to the various injuries and damages referred to herein.

8 7. Cross-Complainant is informed and believes and thereon alleges that at all times
9 herein mentioned each of the Cross-Defendants was the agent, partner, co-developer, joint
10 venturer and/or employee of each of the remaining Cross-Defendants and were at all times herein
11 mentioned acting within the course and scope of such agency and employment.

12 8. Cross-Complainant is informed and believes and thereon alleges that Cross-
13 Complainant entered into written and/or oral agreements with Cross-Defendants and each of them,
14 wherein Cross-Defendants agreed to provide, and did participate in, the design and/or
15 construction, including supplying and manufacturing labor and/or materials, and including all
16 terms and conditions as set forth in the agreements for the single-family dwellings and other
17 improvements thereon (hereinafter collectively referred to as the "PROPERTY") which are the
18 subject of the main action herein.

19 9. Cross-Complainant is informed and believes and thereon alleges that, pursuant to
20 these agreements, Cross-Defendants were to provide Cross-Complainant with the design,
21 construction, and/or materials and to furnish their best skill and judgment and to cooperate with
22 the Cross-Complainant and its authorized agents in furthering the interests of the Cross-
23 Complainant as owner and/or general contractor of the subject PROPERTY.

24 10. To the extent any Cross-Defendant herein may have filed a bankruptcy proceeding,
25 and to the extent any such proceeding is valid, Cross-Complainant does not intend to proceed
26 against any such Cross-Defendant directly or any such Cross-Defendant's assets, but rather intend
27 to obtain a judgment and then proceed only against any bankrupt Cross-Defendant's applicable
28 liability insurance policies. Accordingly, to the extent applicable, this lawsuit and any act in

furtherance thereof as to any bankrupt Cross-Defendant is authorized pursuant to *In Re: Beeney* (1992) 142 Bankr. 360, which holds that a Cross-Defendant's bankruptcy does not stay a lawsuit if it is the Cross-Complainant's intention not to pursue any assets of a bankrupt Cross-Defendant directly and to seek satisfaction of a judgment solely from available insurance proceeds.

11. Cross-Complainant refers to and incorporates herein by reference each and every paragraph of all Causes of Action as though set forth in full.

12. On or about April 8, 2008, Plaintiffs filed a Complaint alleging: (1) Strict Products Liability; (2) Strict Products Liability (Component Products); (3) Breach of Implied Warranty (Merchantability); (4) Breach of Contract; (5) Negligence; and, (6) Breach of Express Warranty causes of action against M. J. Brock & Sons, Inc., dba Ryland Homes; Ryland Homes of California, Inc.; Ryland Homes of California Co.; Ryland Homes of California; Ryland Homes; Ryland Homes of Southern California, Inc.; Southern California Division, and DOES 1-1000, inclusive.

12. Thereafter, Plaintiffs filed their First Amended Complaint (hereinafter referred to as "FAC") on or about June 6, 2008, alleging causes of action in: (1) Strict Products Liability; (2) Strict Products Liability (Component Products); (3) Breach of Implied Warranty (Merchantability); (4) Breach of Contract; (5) Negligence; and, (6) Breach of Express Warranty against M. J. Brock & Sons, Inc., dba Ryland Homes; Ryland Homes of California, Inc.; Ryland Homes of California Co.; Ryland Homes of California; Ryland Homes; Ryland Homes of Southern California, Inc.; Southern California Division, and DOES 1-1000, inclusive. Although Cross-Complainant denies any liability upon the Complaint, Cross-Complainant incorporates that pleading herein by reference.

13. Plaintiffs' FAC alleges damages as a result of alleged construction defects and consequential damage to the subject PROPERTY located in the "Twin Oaks" residential community in San Diego County, California.

FIRST CAUSE OF ACTION
[Equitable Indemnity aka Total Indemnity aka Implied Indemnity]
(As to All Cross-Defendants)

14. Cross-Complainant refers to and incorporates herein by reference each and every

paragraph of all Causes of Action as though set forth in full.

15. Cross-Complainant denies the allegations of Plaintiffs' FAC, and, without admitting the allegations contained therein, if it is found that Cross-Complainant is liable for any such damage to Plaintiffs, then Cross-Complainant is informed and believes and thereon alleges that such damage is primarily and ultimately caused by the acts, breaches and/or omissions of Cross-Defendants, and each of them, whereas Cross-Complainant's acts, if any, were secondary, passive or derivative in nature.

16. Cross-Complainant is informed and believes and thereon alleges that other Cross-Defendants have named or will name Cross-Complainant in a Cross-Complaint alleging that Cross-Complainant is liable for the damages claimed by Plaintiffs due to the alleged negligent construction of the subject PROPERTY. Cross-Complainant denies any and all allegations made by any Cross-Defendant, of any nature whatsoever and denies that it was responsible in whole or in part for any of Plaintiffs' alleged damages and assert that the damages were primarily and ultimately caused by the acts, breaches and/or omissions of Cross-Defendants, and each of them, whereas Cross-Complainant's acts, if any, were secondary, passive or derivative in nature.

17. Cross-Complainant is informed and believes and thereon alleges that the defects and damages alleged by Plaintiffs in their FAC involve defects, damage to or destruction of the subject PROPERTY, and Cross-Complainant is further informed and believes and thereon alleges that said damages were caused by the Cross-Defendants and/or their agents, and each of them, arising out of and in connection with the performance of Cross-Defendants' obligations as referred to above.

18. By reason of the foregoing, if Plaintiffs or Cross-Defendants recover against Cross-Complainant, Cross-Complainant is entitled to indemnity from the Cross-Defendants, and each of them, for injuries and damages sustained by Plaintiffs and Cross-Defendants, if any, for any sums paid by way of settlement, or in the alternative, any judgment rendered against Cross-Complainant in the action herein based upon Plaintiffs' FAC and any cause of action alleged therein.

19. In addition to damages Cross-Complainant has incurred or will incur with respect to the Complaint and Cross-Complaints filed by Plaintiffs and Cross-Defendants, and additionally,

1 damages in the form of attorneys' fees, costs and consultants' fees Cross-Complainant has incurred
2 or will incur; Cross-Complainant has incurred other damages, including, but not limited to,
3 expenses incurred in investigating and/or repairing claims made as a result of Cross-Defendants'
4 actions and inactions at the subject PROPERTY.

5 20. Cross-Complainant is informed and believes and thereon alleges that Cross-
6 Complainant entered into written and/or oral agreements with Cross-Defendants in connection
7 with the subject PROPERTY, which provide, among other things, for payment of costs and fees in
8 defending any litigation arising with respect to the subject PROPERTY which are the subject
9 matter of this litigation.

10 21. Cross-Complainant has retained the services of LORBER, GREENFIELD &
11 POLITO, LLP, to defend the action herein, thereby incurring costs, consultants' fees, attorneys'
12 fees and other litigation fees in the defense of this action and prosecution of this Cross-Complaint.
13 Cross-Complainant will seek leave of this Court to amend this Cross-Complaint to show the
14 amount of said costs and attorneys' fees when the same becomes known to Cross-Complainant.

15 **SECOND CAUSE OF ACTION**
16 **[Express Indemnity]**
(As to All Cross-Defendants)

17 22. Cross-Complainant refers to and incorporates herein by reference each and every
18 paragraph of all Causes of Action as though set forth in full.

19 23. Cross-Complainant is informed and believes and thereon alleges that Cross-
20 Defendants, and each of them as designated above, entered into written agreements with Cross-
21 Complainant which stated, among other things, that Cross-Defendants would indemnify and hold
22 Cross-Complainant free and harmless from any and all claims, losses, damages, injuries and/or
23 liabilities caused by Cross-Defendants, their agents or employees. Attached hereto as Exhibit A is
24 a true and correct copy of one such written agreement which states, in pertinent part, the
25 following:

26 5. Brock requires that all Subcontractors maintain minimum
27 insurance coverages of the types and amounts detailed on the
28 attached addendum 4 for as long as Brock's liability to its
homeowner for the work is in effect pursuant to either the
homeowner warranty given to Brock's homebuyers or applicable
law, whichever is longer; provided that this period of time shall be

no less than five (5) years after the completion of the work. Subcontractor's insurance shall cover Subcontractor and Subcontractor's agents and shall be primary, and non-contributory with respect to any valid and collectible insurance maintained by Brock. All insurance referenced on addendum 4 shall (A) name Brock as an additional insured (as per requirements shown on addendum 4); (B) apply to all operations and not be project specific, and (C) provide that the insurance may not be cancelled, non-renewed or materially changed without 30 days prior written notice to Brock. All insurance shall be placed in companies rated A-/VIII or higher by A.M. Best Company. Before any work is performed, Subcontractor shall deliver to Brock (A) a copy of the additional insured endorsement page of the required insurance policies, (B) a copy of the declaration page indicating that the required types and amounts of insurance are in effect and (C) a certificate of insurance. Subcontractor shall provide evidence of renewal of the required insurance to Brock at least 30 days prior to the expiration date of the insurance coverage. Subcontractor is responsible for loss or damages to owned or leased equipment used by Subcontractor or Subcontractor's agents on any project, and Subcontractor and Subcontractor's agents and insurers of said equipment waive any right of recovery or subrogation in favor of Brock.

6. (A) To the fullest extent permitted by law, Subcontractor shall indemnify, defend (at subcontractor's sole cost and expense and with legal counsel approved by Brock), protect and hold harmless Brock, and all affiliated companies of Brock, and their respective representatives, partners, designees, officers, directors, shareholders, employees, consultants, agents, successors and assigns, and any lender of Brock with an interest in the project (collectively, the "indemnified parties") and the property of Brock, from and against any and all claims (including, without limitation, claims for bodily injury, death, including any injury or death of an employee or owner of Subcontractor, or damage to property), damages, losses, costs and expenses (including, without limitation, attorneys' and consultants' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a "claim"; collectively, "claims") which may arise from or in any manner relate (directly or indirectly) to (I) any work performed or services provided under this agreement (including, without limitation, defects in workmanship or materials and/or design defects if the design originated with Subcontractor) or Subcontractor's presence or activities conducted on the project (including, without limitation, the negligent and/or willful acts, errors and/or omissions of Subcontractor, Subcontractor's agents, or anyone employed directly or indirectly by any of them or for whose acts they may be liable); (ii) Subcontractor's failure to enforce the drug and alcohol addendum; or (iii) Subcontractor's or Subcontractor's agents failure to comply with the legal requirements, regardless of any active or passive negligence or strict liability of an indemnified party. Subcontractor acknowledges that the indemnification obligation hereunder is intended to constitute a "Type I" indemnity under California Law and extends to and includes claims arising from the active or passive negligence of indemnified parties. Notwithstanding the foregoing, nothing herein shall be construed to require subcontractor to indemnify the indemnified parties from any claim arising from the sole negligence

or willful misconduct of the indemnified parties from any claim arising from the sole negligence or willful misconduct of the indemnified parties. Under no circumstances shall the insurance requirements and limits set forth in this agreement be construed to limit Subcontractor's indemnification obligation or other liability hereunder. Subcontractor waives any rights of subrogation against Brock and shall require subcontractor's agents to waive subrogation rights against Brock.

(B) The duty to defend is wholly independent of and separate from the duty to indemnify and exists regardless of any ultimate liability of Subcontractor to Brock. The defense obligation shall arise immediately upon written notice of a claim being provided to subcontractor. Advanced payment of defense costs shall not be a condition precedent to enforcing the rights to indemnification. The indemnification obligation shall not be a condition precedent to enforcing the rights to indemnification. The indemnification obligation shall survive the expiration or earlier termination of this agreement until such time as action against the indemnified parties for such matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

24. Cross-Complainant is informed and believes and thereon alleges that Cross-Defendants, and each of them as designated above, entered into written agreements with Cross-Complainant which stated, among other things, that each Cross-Defendant agreed to warrant and guarantee its work.

25. Cross-Complainant is informed and believes and thereon alleges that the defects and damages claimed by Plaintiffs and separately incurred by Cross-Complainant, were caused by Cross-Defendants, and each of them, arising out of and connected with the performance of Cross-Defendants' obligations pursuant to the written agreement entered into by each of them with Cross-Complainant herein.

26. Cross-Complainant is informed and believes and thereon alleges that Cross-Defendants, and each of them, entered into contracts with others in the performance of services provided in the construction of the subject PROPERTY and are responsible for all acts and omissions of its agents and employees.

27. Cross-Complainant is informed and believes and thereon alleges that Cross-Defendants, and each of them as designated above, entered into written agreements with Cross-Complainant which stated, among other things, that Cross-Defendants would be liable for attorneys' fees and costs incurred by Cross-Complainant in the event of a dispute regarding work

1 performed by Cross-Defendants.

2 28. Cross-Complainant has retained the services of LORBER, GREENFIELD &
3 POLITO, LLP, to defend the action herein, thereby incurring costs, consultants' fees, attorneys'
4 fees and other litigation fees in the defense of this action and prosecution of this Cross-Complaint.
5 Cross-Complainant will seek leave of this Court to amend this Cross-Complaint to show the
6 amount of said costs and attorneys' fees when the same becomes known to Cross-Complainant.

7 **THIRD CAUSE OF ACTION**
8 **[Breach of Express and Implied Warranties]**
9 **(As to All Cross-Defendants)**

10 29. Cross-Complainant refers to and incorporates herein by reference each and every
11 paragraph of all Causes of Action as though set forth in full.

12 30. Cross-Complainant is informed and believes and thereon alleges that Cross-
13 Defendants entered into written and/or oral agreements with Cross-Complainant which included
14 representations that the services performed and/or materials provided were merchantable and in a
15 proper condition for their intended use and purpose (i.e., improvements at the subject
16 PROPERTY).

17 31. Cross-Complainant is informed and believes and thereon alleges that Cross-
18 Defendants, and each of them, pursuant to the written and/or oral agreements, impliedly and
19 expressly warranted that the subject PROPERTY would be fit for its intended use and purpose,
20 namely that all labor performed and services provided would be in a good, workmanlike and
21 substantial manner.

22 32. Cross-Complainant relied upon said warranties and believed that the work was
23 performed in a first-class and workmanlike manner and that the labor performed and services
24 provided were properly performed by Cross-Defendants, and each of them, and their agents or
25 employees, and fit for its intended use and purpose.

26 33. Cross-Complainant is informed and believes and thereon alleges that Cross-
27 Defendants, and each of them, breached said warranties, by virtue of the claims of Cross-
28 Defendants, and the damages separately incurred by Cross-Complainant, and the allegations by
29 Plaintiffs that the design and/or construction was defective as is more particularly set forth in

1 Plaintiffs' FAC.

2 34. As a proximate result of the breach of the express and implied warranties by Cross-
3 Defendants, and each of them, Cross-Complainant alleges it will suffer damages in a sum equal to
4 any sums paid by way of settlement, or, in the alternative, judgment rendered against Cross-
5 Complainant in the action herein by Plaintiffs and Cross-Defendants, and in addition, have
6 incurred other damages separately.

7 35. This Cross-Complaint will serve as notice of such conditions, and Cross-
8 Complainant is informed and believes and thereon alleges that Cross-Defendants declined to
9 acknowledge their responsibility to repair the alleged defects as referenced above.

10 36. Cross-Complainant have retained the services of LORBER, GREENFIELD &
11 POLITO, LLP, to defend the action herein, thereby incurring costs, consultants' fees, attorneys'
12 fees and other litigation fees in the defense of this action and prosecution of this Cross-Complaint.
13 Cross-Complainant will seek leave of this Court to amend this Cross-Complaint to show the
14 amount of said costs and attorneys' fees when the same becomes known to Cross-Complainant.

15 **FOURTH CAUSE OF ACTION**
16 **[Breach of Written Contract]**
(As to All Cross-Defendants)

17 37. Cross-Complainant refers to and incorporates herein by reference each and every
18 paragraph of all Causes of Action as though set forth in full.

19 38. Cross-Complainant is informed and believes and thereon alleges that Cross-
20 Complainant entered into written contracts with Cross-Defendants, and each of them, for the
21 design, and/or construction of subject PROPERTY which is the subject matter of this litigation.
22 The agreements contemplated, among other things, that Cross-Defendants, and each of them,
23 would deliver to Cross-Complainant all labor, services performed at and/or materials provided to
24 the subject PROPERTY in a good and workmanlike manner, and that the subject PROPERTY
25 thereon would be of merchantable quality and that all labor, services and/or materials would be
26 properly performed and materials provided to the subject PROPERTY would be properly
27 constructed.

28 ///

39. Cross-Complainant is informed and believes and thereon alleges that Cross-Defendants, and each of them as designated above, entered into written agreements with Cross-Complainant which stated, among other things, that the work was to be performed in accordance with the contract and the plans and specifications. Attached hereto as Exhibit A is a true and correct copy of one such written agreement which states in pertinent part the following:

Subcontractor and Brock agree as follows:

1. (a) Subcontractor shall complete the Work in strict conformity with generally accepted building practices and the Documents. All materials incorporated into the Work shall be new, and the Work shall be completed in a good and workmanlike manner free from defects.

(b) Subcontractor has examined the Documents and is fully aware of their provisions.

(c) Subcontractor represents, warrants and covenants that the Documents are complete and sufficient to enable Subcontractor to determine the Price, to construct the Work and otherwise to fulfill its obligations hereunder. Subcontractor has visited the site and examined the conditions affecting the Work.

40. Cross-Complainant is informed and believes and thereon alleges that the defects and damages claimed by Plaintiff involves defects, damage to, or destruction of the subject PROPERTY, and Cross-Complainant herein is further informed and believes and thereon alleges that said damages were caused by Cross-Defendants, and each of them, arising out of and connected with the performance (or lack of performance) of Cross-Defendants' obligations pursuant to the written agreement entered into by each of them with Cross-Complainant herein.

41. Cross-Complainant is informed and believes and thereon alleges that Cross-Defendants, and each of them, entered into contracts with others in the performance of services and/or materials provided in the construction of the subject PROPERTY and are responsible for all acts and omissions of their agents and employees.

42. Cross-Complainant is informed and believes and thereon alleges that Cross-Defendants, and each of them as designated above, entered into written agreements with Cross-Complainant which provides for attorneys' fees and investigation costs.

43. Cross-Complainant has performed all conditions, covenants and promises required by it in accordance with the terms and conditions of the aforementioned agreements.

1 44. Cross-Defendants, and each of them, have breached the aforementioned written
2 contracts by failing and neglecting to properly perform the labor and services and/or supply of
3 materials as contemplated by the parties to the agreements, and by failing to comply with each and
4 every term of the contract the Cross-Defendants, among other things, and each of them,
5 negligently and carelessly built, supervised, designed, constructed, maintained and/or supplied
6 improper and/or manufactured improper materials and/or products to the subject PROPERTY,
7 which, among other things, have caused the defects alleged by Plaintiff in its FAC.

8 45. As a result of the breach of the aforementioned written contracts by Cross-
9 Defendants, and each of their agents or employees, Cross-Complainant has been damaged in an
10 amount according to proof at the time of trial.

11 46. Cross-Complainant is informed and believes and thereon alleges that the contracts
12 provide that the Cross-Defendants, and each of them, among other things, were to comply with
13 each and every term and condition.

14 47. Cross-Complainant has retained the services of LORBER, GREENFIELD &
15 POLITO, LLP, to defend the action herein, thereby incurring costs, consultants' fees, attorneys'
16 fees and other litigation fees in the defense of this action and prosecution of this Cross-Complaint.
17 Cross-Complainant will seek leave of this Court to amend this Cross-Complaint to show the
18 amount of said costs and attorneys' fees when the same becomes known to Cross-Complainant.

19 **FIFTH CAUSE OF ACTION**
20 **[Negligence]**
 (As to All Cross-Defendants)

21 48. Cross-Complainant refers to and incorporates herein by reference each and every
22 paragraph of all Causes of Action as though set forth in full.

23 49. Cross-Complainant is informed and believes and thereon alleges that Cross-
24 Defendants, and each of them, negligently, carelessly and wrongfully failed to use reasonable care
25 in the design, development, manufacture, management, supervision, maintenance, repair, supply of
26 materials, installation, inspection and/or construction of the subject PROPERTY, which are at
27 issue in Plaintiffs' FAC and which are more particularly described therein.

28 ///

50. Cross-Complainant is further informed and believes and thereon alleges that Cross-Defendants, and each of them, negligently, carelessly and/or willfully failed to exercise reasonable care and diligence to avoid loss and to minimize and mitigate damages which could have been prevented by reasonable efforts on the part of said Cross-Defendants, or by expenditures which should have been made in the exercise of due care.

51. Cross-Complainant is informed and believes and thereon alleges that the failures and damages alleged by Plaintiffs occurred because of the negligence of Cross-Defendants and each of them.

52. As a direct and proximate result of the negligence of Cross-Defendants, and each of them, it is herein alleged that Cross-Complainant has incurred and continues to incur costs and expenses, including, but not limited to litigation costs, contractors' fees, attorneys' fees and consultants' fees to inspect, repair and mitigate damages arising out of said negligent design, construction, repair and maintenance, manufacture and/or supply of materials or products to the subject PROPERTY in order to defend against Plaintiffs' allegations, and has separately incurred additional damages, including, but not limited to, investigative and/or repair costs for claims made as a result of the actions or inactions of Cross-Defendants at the subject PROPERTY.

SIXTH CAUSE OF ACTION

[Contribution]

(As to All Cross-Defendants)

53. Cross-Complainant refers to and incorporates herein by this reference each and every paragraph of all Causes of Action as though set forth in full.

54. Cross-Complainant is entitled to contribution from Cross-Defendants, and each of them, for the injuries and damages allegedly sustained by Plaintiffs and/or Cross-Defendants, if any, as a result of any judgment or settlement awarded against Cross-Complainant herein.

SEVENTH CAUSE OF ACTION

[Declaratory Relief re: Duty to Defend]

(As to All Cross-Defendants)

55. Cross-Complainant refers to and incorporates herein by this reference each and every paragraph of all Causes of Action as though set forth in full.

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56. Cross-Complainant is informed and believes and thereon alleges that written contracts exist between Cross-Complainant and Cross-Defendants, and each of them. Each said contract is incorporated herein by reference as though set forth in full.

57. The subject contracts contain an indemnity provision which provides, in pertinent part, that Cross-Complainant is entitled to express indemnity from Cross-Defendants.

58. A claim or loss within the meaning of the subject contract has arisen by virtue of the fact that Plaintiffs in this action have filed a First Amended Complaint against Cross-Complainant claiming damages for construction defects within the subject PROPERTY and that the construction defects claimed in Plaintiffs' FAC pertain to the scope of work performed and/or materials provided by the Cross-Defendants and each of them.

59. Cross-Defendants, and each of them, have a present duty to defend against any claims made against Cross-Complainant pursuant to the subject contract, pursuant to California Civil Code section 2778, and as a result of the assertion of a claim and/or loss arising out of the work of Cross-Defendants, and each of them. California Civil Code section 2778 provides, in pertinent part:

In the interpretation of a contract of indemnity, the following rules are to be applied, unless a contrary intention appears:

4. The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the former by the latter in respect to the matters embraced by the indemnity, but the person indemnified have the right to conduct such defenses, if he chooses to do so;

5. If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the latter suffered by him in good faith, is conclusive in his favor against the former; . . .

60. Cross-Complainant has tendered or will be tendering the defense of this action to all Cross-Defendants and their insurance carriers, each of whom have rejected, ignored, or failed, or Cross-Complainant is informed and believes and thereon alleges, will reject, ignore and/or fail to properly accept the tender of defense in the future.

61. A dispute has arisen and an actual controversy now exists between Cross-Complainant and Cross-Defendants, and each of them, in that Cross-Complainant contend that they are entitled to a present defense from Cross-Defendants, and each of them, while the Cross-Defendants, and each of them, denies such obligations under the Contract.

62. Cross-Complainant, designated above, seeks a Declaration by the Court as to its respective rights, and said Cross-Defendants' duties and obligations as to the duty to defend, in connection with the matters herein alleged, and a judgment in Cross-Complainant's favor as to any obligations by said Cross-Defendants, and each of them, to Cross-Complainant herein.

EIGHTH CAUSE OF ACTION
[Declaratory Relief re: Duty to Indemnify]
(As to All Cross-Defendants)

63. Cross-Complainant refers to and incorporates herein by this reference each and every paragraph of all Causes of Action as though set forth in full.

64. Under the indemnity agreement contained in the contracts, Cross-Defendants, and each of them, are obligated to indemnify Cross-Complainant from all liability, loss, or damage in this action relating to matters embraced by the indemnity provision and arising out of the scope of work of Cross-Defendants, and each of them.

65. A dispute has arisen and an actual controversy now exists between Cross-Complainant and the Cross-Defendants, and each of them, in that Cross-Complainant contend that the subject indemnity provision is a specific or "Type I" provision which provides indemnity for the negligence of Cross-Defendants, and each of them, and for the joint negligence, whether active or passive, of Cross-Complainant; while Cross-Defendants, and each of them, contend that such indemnity provision is vague and/or ambiguous, void and/or voidable, general instead of specific, and/or of a "Type II" variety such that any negligence by Cross-Complainant terminates the obligation of the Subcontractors/Cross-Defendants to indemnify.

66. Cross-Complainant seeks a Declaration by the Court as to its respective rights and said Cross-Defendants' duties and obligations as to the matters herein alleged, and a judgment in Cross-Complainant's favor as to the existence of a "Type I" provision.

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NINTH CAUSE OF ACTION
[Breach of Written Contract - Additional Insurance]
(As to All Cross-Defendants)

67. Cross-Complainant refers to and incorporates herein by this reference each and every paragraph of all Causes of Action as though set forth in full.

68. Cross-Complainant is informed and believes and thereon alleges that Cross-Defendants entered into written agreements with Cross-Complainant which stated, among other things, that Cross-Complainant would be named as an additional insured by the liability insurers for Cross-Defendants with specific requirements.

69. Cross-Complainant has performed all conditions, covenants and promises required of it in accordance with the terms and conditions of the aforementioned agreements.

70. Cross-Defendants, and each of them, have breached the aforementioned written contracts by failing to obtain such insurance complying with all such above requirements, leaving Cross-Complainant without such insurance coverage in whole or in part.

71. As a result of Cross-Defendants' breach of the aforementioned written contracts, Cross-Complainant has been damaged in an amount according to proof at the time of trial.

WHEREFORE, Cross-Complainant prays for judgment against Cross-Defendants, and each of them, as follows:

FIRST CAUSE OF ACTION:

1. That Cross-Complainant is entitled to equitable indemnity and/or apportionment, and/or contribution from Cross-Defendants herein, and each of them.

SECOND CAUSE OF ACTION:

2. That Cross-Complainant is entitled to express indemnity from Cross-Defendants, and each of them.

THIRD CAUSE OF ACTION:

3. That Cross-Complainant is entitled to damages for breach of express and implied warranties from Cross-Defendants, and each of them.

FOURTH CAUSE OF ACTION:

4. That Cross-Complainant is entitled to damages for breach of contract from Cross-

Defendants, and each of them.

FIFTH CAUSE OF ACTION:

5. That Cross-Complainant is entitled to damages for negligence from Cross-Defendants, and each of them.

SIXTH CAUSE OF ACTION:

6. That Cross-Complainant is entitled to contribution from Cross-Defendants, and each of them.

SEVENTH CAUSE OF ACTION:

7. For a Declaration that each Cross-Defendant has an obligation to provide a defense to Cross-Complainant in this action.

EIGHTH CAUSE OF ACTION:

8. For a judicial determination of Cross-Complainant's rights and Cross-Defendants' obligations and/or duty, under their respective contracts, to defend and indemnify Cross-Complainant in this action pursuant to its respective contractual agreements and for a Declaration and/or judgment in Cross-Complainant's favor as to the existence of a "Type I" indemnity provision.

NINTH CAUSE OF ACTION:

9. That Cross-Complainant is entitled to damages for strict liability from the manufacturing Cross-Defendants, and each of them.

TENTH CAUSE OF ACTION:

10. That Cross-Complainant is entitled to damages for breach of contract from Cross-Defendants, and each of them.

AS TO ALL CAUSES OF ACTION:

11. For costs of suit incurred herein, including, but not limited to, costs of investigation incurred in the prosecution of this Cross-Complaint;

12. For attorneys' fees incurred herein in the defense of the First Amended Complaint and in the prosecution of this Cross-Complaint;

///

13. That Cross-Defendants are required to defend, indemnify, protect, and save harmless Cross-Complainant herein from any loss, damage, costs, judgment, settlement, and expense, including, but not limited to, attorneys' fees and Court costs related to and/or connected with the claims asserted herein by Plaintiffs and/or the other Cross-Complainant and/or Cross-Defendants; and;

14. For such other and further relief as the Court may deem just and proper.

DATED: August 6, 2008.

LORBER, GREENFIELD & POLITO, LLP

By: 

J.D. TURNER

Attorneys for Defendant/Cross-Complainant
RYLAND HOMES OF CALIFORNIA, INC.,
erroneously named as M. J. Brock & Sons, Inc., dba
Ryland Homes, Ryland Homes of California Co.,
Ryland Homes of California, Ryland Homes, Ryland
Homes of Southern California, Inc., and Southern
California Division

EXHIBIT B

(RYLAND'S/HNR SUBCONTRACT)

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Attorneys for Defendant/Cross-Complainant RYLAND HOMES OF
CALIFORNIA, INC., erroneously named as
M. J. Brock & Sons, Inc., dba Ryland Homes,
Ryland Homes of California Co., Ryland
Homes of California, Ryland Homes,
Ryland Homes of Southern California, Inc.,
Southern California Division

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO - CENTRAL DIVISION

AARON & KELLY BLANK, et al.,

Plaintiffs,

v.

M.J. BROCK & SONS INC., DBA RYLAND
HOMES; et al.,

Defendants.

RYLAND HOMES OF CALIFORNIA, INC.,

Cross-Complainant,

v.

HNR FRAMING SYSTEMS, INC.; and
ROES 1 through 300, inclusive,

Cross-Defendants.

CASE NO. 37-2008-00081383-CU-CD-CTL

Judge : Ronald L. Styn

Dept. : 62

**CROSS-COMPLAINT OF
DEFENDANT RYLAND HOMES OF
CALIFORNIA, INC., FOR:**

1. **EQUITABLE INDEMNITY;**
2. **EXPRESS INDEMNITY;**
3. **BREACH OF EXPRESS AND
IMPLIED WARRANTIES;**
4. **BREACH OF CONTRACT;**
5. **NEGLIGENCE;**
6. **CONTRIBUTION;**
7. **DECLARATORY RELIEF
RE: DUTY TO DEFEND;**
8. **DECLARATORY RELIEF
RE: DUTY TO INDEMNIFY; and,**
9. **BREACH OF CONTRACT -
ADDITIONAL INSURANCE**

Case Filed : 04/08/2008

Trial Date : None Set

COMES NOW Defendant and Cross-Complainant, RYLAND HOMES OF
CALIFORNIA, INC. (hereinafter "Cross-Complainant"), for causes of action against Cross-
Defendant, HNR FRAMING SYSTEMS, INC., and ROES 1 through 300, inclusive, and each of
them, as follows:

///

GENERAL ALLEGATIONS

1. At all times herein mentioned, Cross-Complainant RYLAND HOMES OF CALIFORNIA, INC., was and is a corporation duly-organized and existing under the laws of the State of California. At all times mentioned herein, Cross-Complainant was doing business in the County of San Diego, State of California. At all times mentioned herein, Cross-Complainant developed that certain property, "Twin Oaks," located in San Marcos, County of San Diego, State of California (hereinafter "PROPERTY") which is at issue in Plaintiffs' First Amended Complaint (hereinafter "Plaintiffs' FAC").

2. The true names and capacities, whether individual, corporate, associate, or otherwise, of Cross-Defendants herein designated by the fictitious names as ROES 1 through 300, inclusive, are unknown to Cross-Complainant, who therefore sues Cross-Defendants by such fictitious names. When the true names and capacities of Cross-Defendants have been ascertained, Cross-Complainant will amend this pleading accordingly.

3. Cross-Complainant is informed and believes and, based thereon, alleges that each of the Cross-Defendants designated by the fictitious names as ROES 1 through 300, inclusive, were corporations and/or other business entities duly-organized and existing under the laws of the State of California and are authorized to do business and were doing business in County of San Diego, State of California, at all times which are relevant to the issues herein, and entered into written and oral contracts with Cross-Complainant to perform services and/or provide materials on the subject PROPERTY which is at issue in Plaintiffs' FAC.

4. Further, Cross-Complainant herein designates fictitious names ROES 101 through 200 as individuals (the "Individual Cross-Defendants") who were or are owners, principals, directors and/or officers of the respective corporations and/or other business entities designated as Cross-Defendants ROES 1 through 100. The Individual Cross-Defendants were and are alter egos of the respective Cross-Defendants ROES 1 through 100; and, for all relevant times alleged herein, there existed a unity of interest between the Individual Cross-Defendants and the respective Cross-Defendants ROES 1 through 100.

///

5. Cross-Complainants herein designates fictitious names ROES 201 through 300 as parties who supplied defective materials that were installed and used to construct the subject PROPERTY (hereinafter the "Cross-Defendant Suppliers") which is at issue in Plaintiffs' FAC.

6. Cross-Complainant is informed and believes and thereon alleges that each of the Cross-Defendants disputes Cross-Complainant's contentions herein and are in some manner legally responsible for the acts and omissions alleged herein, and actually and proximately caused and contributed to the various injuries and damages referred to herein.

7. Cross-Complainant is informed and believes and thereon alleges that at all times herein mentioned each of the Cross-Defendants was the agent, partner, co-developer, joint venturer and/or employee of each of the remaining Cross-Defendants and were at all times herein mentioned acting within the course and scope of such agency and employment.

8. Cross-Complainant is informed and believes and thereon alleges that Cross-Complainant entered into written and/or oral agreements with Cross-Defendants and each of them, wherein Cross-Defendants agreed to provide, and did participate in, the design and/or construction, including supplying and manufacturing labor and/or materials, and including all terms and conditions as set forth in the agreements for the single-family dwellings and other improvements thereon (hereinafter collectively referred to as the "PROPERTY") which are the subject of the main action herein.

9. Cross-Complainant is informed and believes and thereon alleges that, pursuant to these agreements, Cross-Defendants were to provide Cross-Complainant with the design, construction, and/or materials and to furnish their best skill and judgment and to cooperate with the Cross-Complainant and its authorized agents in furthering the interests of the Cross-Complainant as owner and/or general contractor of the subject PROPERTY.

10. To the extent any Cross-Defendant herein may have filed a bankruptcy proceeding, and to the extent any such proceeding is valid, Cross-Complainant does not intend to proceed against any such Cross-Defendant directly or any such Cross-Defendant's assets, but rather intend to obtain a judgment and then proceed only against any bankrupt Cross-Defendant's applicable liability insurance policies. Accordingly, to the extent applicable, this lawsuit and any act in

furtherance thereof as to any bankrupt Cross-Defendant is authorized pursuant to *In Re: Beeney* (1992) 142 Bankr. 360, which holds that a Cross-Defendant's bankruptcy does not stay a lawsuit if it is the Cross-Complainant's intention not to pursue any assets of a bankrupt Cross-Defendant directly and to seek satisfaction of a judgment solely from available insurance proceeds.

11. Cross-Complainant refers to and incorporates herein by reference each and every paragraph of all Causes of Action as though set forth in full.

12. On or about April 8, 2008, Plaintiffs filed a Complaint alleging: (1) Strict Products Liability; (2) Strict Products Liability (Component Products); (3) Breach of Implied Warranty (Merchantability); (4) Breach of Contract; (5) Negligence; and, (6) Breach of Express Warranty causes of action against M. J. Brock & Sons, Inc., dba Ryland Homes; Ryland Homes of California, Inc.; Ryland Homes of California Co.; Ryland Homes of California; Ryland Homes; Ryland Homes of Southern California, Inc.; Southern California Division, and DOES 1-1000, inclusive.

12. Thereafter, Plaintiffs filed their First Amended Complaint (hereinafter referred to as "FAC") on or about June 6, 2008, alleging causes of action in: (1) Strict Products Liability; (2) Strict Products Liability (Component Products); (3) Breach of Implied Warranty (Merchantability); (4) Breach of Contract; (5) Negligence; and, (6) Breach of Express Warranty against M. J. Brock & Sons, Inc., dba Ryland Homes; Ryland Homes of California, Inc.; Ryland Homes of California Co.; Ryland Homes of California; Ryland Homes; Ryland Homes of Southern California, Inc.; Southern California Division, and DOES 1-1000, inclusive. Although Cross-Complainant denies any liability upon the Complaint, Cross-Complainant incorporates that pleading herein by reference.

13. Plaintiffs' FAC alleges damages as a result of alleged construction defects and consequential damage to the subject PROPERTY located in the "Twin Oaks" residential community in San Diego County, California.

FIRST CAUSE OF ACTION
[Equitable Indemnity aka Total Indemnity aka Implied Indemnity]
(As to All Cross-Defendants)

14. Cross-Complainant refers to and incorporates herein by reference each and every

1 paragraph of all Causes of Action as though set forth in full.

2 15. Cross-Complainant denies the allegations of Plaintiffs' FAC, and, without
 3 admitting the allegations contained therein, if it is found that Cross-Complainant is liable for any
 4 such damage to Plaintiffs, then Cross-Complainant is informed and believes and thereon alleges
 5 that such damage is primarily and ultimately caused by the acts, breaches and/or omissions of
 6 Cross-Defendants, and each of them, whereas Cross-Complainant's acts, if any, were secondary,
 7 passive or derivative in nature.

8 16. Cross-Complainant is informed and believes and thereon alleges that other Cross-
 9 Defendants have named or will name Cross-Complainant in a Cross-Complaint alleging that
 10 Cross-Complainant is liable for the damages claimed by Plaintiffs due to the alleged negligent
 11 construction of the subject PROPERTY. Cross-Complainant denies any and all allegations made
 12 by any Cross-Defendant, of any nature whatsoever and denies that it was responsible in whole or
 13 in part for any of Plaintiffs' alleged damages and assert that the damages were primarily and
 14 ultimately caused by the acts, breaches and/or omissions of Cross-Defendants, and each of them,
 15 whereas Cross-Complainant's acts, if any, were secondary, passive or derivative in nature.

16 17. Cross-Complainant is informed and believes and thereon alleges that the defects
 17 and damages alleged by Plaintiffs in their FAC involve defects, damage to or destruction of the
 18 subject PROPERTY, and Cross-Complainant is further informed and believes and thereon alleges
 19 that said damages were caused by the Cross-Defendants and/or their agents, and each of them,
 20 arising out of and in connection with the performance of Cross-Defendants' obligations as referred
 21 to above.

22 18. By reason of the foregoing, if Plaintiffs or Cross-Defendants recover against Cross-
 23 Complainant, Cross-Complainant is entitled to indemnity from the Cross-Defendants, and each of
 24 them, for injuries and damages sustained by Plaintiffs and Cross-Defendants, if any, for any sums
 25 paid by way of settlement, or in the alternative, any judgment rendered against Cross-Complainant
 26 in the action herein based upon Plaintiffs' FAC and any cause of action alleged therein.

27 19. In addition to damages Cross-Complainant has incurred or will incur with respect
 28 to the Complaint and Cross-Complaints filed by Plaintiffs and Cross-Defendants, and additionally,

1 damages in the form of attorneys' fees, costs and consultants' fees Cross-Complainant has incurred
2 or will incur; Cross-Complainant has incurred other damages, including, but not limited to,
3 expenses incurred in investigating and/or repairing claims made as a result of Cross-Defendants'
4 actions and inactions at the subject PROPERTY.

5 20. Cross-Complainant is informed and believes and thereon alleges that Cross-
6 Complainant entered into written and/or oral agreements with Cross-Defendants in connection
7 with the subject PROPERTY, which provide, among other things, for payment of costs and fees in
8 defending any litigation arising with respect to the subject PROPERTY which are the subject
9 matter of this litigation.

10 21. Cross-Complainant has retained the services of LORBER, GREENFIELD &
11 POLITO, LLP, to defend the action herein, thereby incurring costs, consultants' fees, attorneys'
12 fees and other litigation fees in the defense of this action and prosecution of this Cross-Complaint.
13 Cross-Complainant will seek leave of this Court to amend this Cross-Complaint to show the
14 amount of said costs and attorneys' fees when the same becomes known to Cross-Complainant.

15 **SECOND CAUSE OF ACTION**
16 **[Express Indemnity]**
(As to All Cross-Defendants)

17 22. Cross-Complainant refers to and incorporates herein by reference each and every
18 paragraph of all Causes of Action as though set forth in full.

19 23. Cross-Complainant is informed and believes and thereon alleges that Cross-
20 Defendants, and each of them as designated above, entered into written agreements with Cross-
21 Complainant which stated, among other things, that Cross-Defendants would indemnify and hold
22 Cross-Complainant free and harmless from any and all claims, losses, damages, injuries and/or
23 liabilities caused by Cross-Defendants, their agents or employees. Attached hereto as Exhibit A is
24 a true and correct copy of one such written agreement which states, in pertinent part, the
25 following:

26 5. Brock requires that all Subcontractors maintain minimum
27 insurance coverages of the types and amounts detailed on the
28 attached addendum 4 for as long as Brock's liability to its
homeowner for the work is in effect pursuant to either the
homeowner warranty given to Brock's homebuyers or applicable
law, whichever is longer; provided that this period of time shall be

no less than five (5) years after the completion of the work. Subcontractor's insurance shall cover Subcontractor and Subcontractor's agents and shall be primary, and non-contributory with respect to any valid and collectible insurance maintained by Brock. All insurance referenced on addendum 4 shall (A) name Brock as an additional insured (as per requirements shown on addendum 4); (B) apply to all operations and not be project specific, and (C) provide that the insurance may not be cancelled, non-renewed or materially changed without 30 days prior written notice to Brock. All insurance shall be placed in companies rated A-/VIII or higher by A.M. Best Company. Before any work is performed, Subcontractor shall deliver to Brock (A) a copy of the additional insured endorsement page of the required insurance policies, (B) a copy of the declaration page indicating that the required types and amounts of insurance are in effect and (C) a certificate of insurance. Subcontractor shall provide evidence of renewal of the required insurance to Brock at least 30 days prior to the expiration date of the insurance coverage. Subcontractor is responsible for loss or damages to owned or leased equipment used by Subcontractor or Subcontractor's agents on any project, and Subcontractor and Subcontractor's agents and insurers of said equipment waive any right of recovery or subrogation in favor of Brock.

6. (A) To the fullest extent permitted by law, Subcontractor shall indemnify, defend (at subcontractor's sole cost and expense and with legal counsel approved by Brock), protect and hold harmless Brock, and all affiliated companies of Brock, and their respective representatives, partners, designees, officers, directors, shareholders, employees, consultants, agents, successors and assigns, and any lender of Brock with an interest in the project (collectively, the "indemnified parties") and the property of Brock, from and against any and all claims (including, without limitation, claims for bodily injury, death, including any injury or death of an employee or owner of Subcontractor, or damage to property), damages, losses, costs and expenses (including, without limitation, attorneys' and consultants' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a "claim"; collectively, "claims") which may arise from or in any manner relate (directly or indirectly) to (i) any work performed or services provided under this agreement (including, without limitation, defects in workmanship or materials and/or design defects if the design originated with Subcontractor) or Subcontractor's presence or activities conducted on the project (including, without limitation, the negligent and/or willful acts, errors and/or omissions of Subcontractor, Subcontractor's agents, or anyone employed directly or indirectly by any of them or for whose acts they may be liable); (ii) Subcontractor's failure to enforce the drug and alcohol addendum; or (iii) Subcontractor's or Subcontractor's agents failure to comply with the legal requirements, regardless of any active or passive negligence or strict liability of an indemnified party. Subcontractor acknowledges that the indemnification obligation hereunder is intended to constitute a "Type I" indemnity under California Law and extends to and includes claims arising from the active or passive negligence of indemnified parties. Notwithstanding the foregoing, nothing herein shall be construed to require subcontractor to indemnify the indemnified parties from any claim arising from the sole negligence

or willful misconduct of the indemnified parties from any claim arising from the sole negligence or willful misconduct of the indemnified parties. Under no circumstances shall the insurance requirements and limits set forth in this agreement be construed to limit Subcontractor's indemnification obligation or other liability hereunder. Subcontractor waives any rights of subrogation against Brock and shall require subcontractor's agents to waive subrogation rights against Brock.

(B) The duty to defend is wholly independent of and separate from the duty to indemnify and exists regardless of any ultimate liability of Subcontractor to Brock. The defense obligation shall arise immediately upon written notice of a claim being provided to subcontractor. Advanced payment of defense costs shall not be a condition precedent to enforcing the rights to indemnification. The indemnification obligation shall not be a condition precedent to enforcing the rights to indemnification. The indemnification obligation shall survive the expiration or earlier termination of this agreement until such time as action against the indemnified parties for such matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

24. Cross-Complainant is informed and believes and thereon alleges that Cross-Defendants, and each of them as designated above, entered into written agreements with Cross-Complainant which stated, among other things, that each Cross-Defendant agreed to warrant and guarantee its work.

25. Cross-Complainant is informed and believes and thereon alleges that the defects and damages claimed by Plaintiffs and separately incurred by Cross-Complainant, were caused by Cross-Defendants, and each of them, arising out of and connected with the performance of Cross-Defendants' obligations pursuant to the written agreement entered into by each of them with Cross-Complainant herein.

26. Cross-Complainant is informed and believes and thereon alleges that Cross-Defendants, and each of them, entered into contracts with others in the performance of services provided in the construction of the subject PROPERTY and are responsible for all acts and omissions of its agents and employees.

27. Cross-Complainant is informed and believes and thereon alleges that Cross-Defendants, and each of them as designated above, entered into written agreements with Cross-Complainant which stated, among other things, that Cross-Defendants would be liable for attorneys' fees and costs incurred by Cross-Complainant in the event of a dispute regarding work

1 performed by Cross-Defendants.

2 28. Cross-Complainant has retained the services of LORBER, GREENFIELD &
3 POLITO, LLP, to defend the action herein, thereby incurring costs, consultants' fees, attorneys'
4 fees and other litigation fees in the defense of this action and prosecution of this Cross-Complaint.
5 Cross-Complainant will seek leave of this Court to amend this Cross-Complaint to show the
6 amount of said costs and attorneys' fees when the same becomes known to Cross-Complainant.

7 **THIRD CAUSE OF ACTION**
8 **[Breach of Express and Implied Warranties]**
9 **(As to All Cross-Defendants)**

10 29. Cross-Complainant refers to and incorporates herein by reference each and every
11 paragraph of all Causes of Action as though set forth in full.

12 30. Cross-Complainant is informed and believes and thereon alleges that Cross-
13 Defendants entered into written and/or oral agreements with Cross-Complainant which included
14 representations that the services performed and/or materials provided were merchantable and in a
15 proper condition for their intended use and purpose (i.e., improvements at the subject
16 PROPERTY).

17 31. Cross-Complainant is informed and believes and thereon alleges that Cross-
18 Defendants, and each of them, pursuant to the written and/or oral agreements, impliedly and
19 expressly warranted that the subject PROPERTY would be fit for its intended use and purpose,
20 namely that all labor performed and services provided would be in a good, workmanlike and
21 substantial manner.

22 32. Cross-Complainant relied upon said warranties and believed that the work was
23 performed in a first-class and workmanlike manner and that the labor performed and services
24 provided were properly performed by Cross-Defendants, and each of them, and their agents or
25 employees, and fit for its intended use and purpose.

26 33. Cross-Complainant is informed and believes and thereon alleges that Cross-
27 Defendants, and each of them, breached said warranties, by virtue of the claims of Cross-
28 Defendants, and the damages separately incurred by Cross-Complainant, and the allegations by
29 Plaintiffs that the design and/or construction was defective as is more particularly set forth in

1 Plaintiffs' FAC.

2 34. As a proximate result of the breach of the express and implied warranties by Cross-
3 Defendants, and each of them, Cross-Complainant alleges it will suffer damages in a sum equal to
4 any sums paid by way of settlement, or, in the alternative, judgment rendered against Cross-
5 Complainant in the action herein by Plaintiffs and Cross-Defendants, and in addition, have
6 incurred other damages separately.

7 35. This Cross-Complaint will serve as notice of such conditions, and Cross-
8 Complainant is informed and believes and thereon alleges that Cross-Defendants declined to
9 acknowledge their responsibility to repair the alleged defects as referenced above.

10 36. Cross-Complainant have retained the services of LORBER, GREENFIELD &
11 POLITO, LLP, to defend the action herein, thereby incurring costs, consultants' fees, attorneys'
12 fees and other litigation fees in the defense of this action and prosecution of this Cross-Complaint.
13 Cross-Complainant will seek leave of this Court to amend this Cross-Complaint to show the
14 amount of said costs and attorneys' fees when the same becomes known to Cross-Complainant.

15 **FOURTH CAUSE OF ACTION**
16 **[Breach of Written Contract]**
(As to All Cross-Defendants)

17 37. Cross-Complainant refers to and incorporates herein by reference each and every
18 paragraph of all Causes of Action as though set forth in full.

19 38. Cross-Complainant is informed and believes and thereon alleges that Cross-
20 Complainant entered into written contracts with Cross-Defendants, and each of them, for the
21 design, and/or construction of subject PROPERTY which is the subject matter of this litigation.
22 The agreements contemplated, among other things, that Cross-Defendants, and each of them,
23 would deliver to Cross-Complainant all labor, services performed at and/or materials provided to
24 the subject PROPERTY in a good and workmanlike manner, and that the subject PROPERTY
25 thereon would be of merchantable quality and that all labor, services and/or materials would be
26 properly performed and materials provided to the subject PROPERTY would be properly
27 constructed.

28 ///

39. Cross-Complainant is informed and believes and thereon alleges that Cross-Defendants, and each of them as designated above, entered into written agreements with Cross-Complainant which stated, among other things, that the work was to be performed in accordance with the contract and the plans and specifications. Attached hereto as Exhibit A is a true and correct copy of one such written agreement which states in pertinent part the following:

Subcontractor and Brock agree as follows:

1. (a) Subcontractor shall complete the Work in strict conformity with generally accepted building practices and the Documents. All materials incorporated into the Work shall be new, and the Work shall be completed in a good and workmanlike manner free from defects.

(b) Subcontractor has examined the Documents and is fully aware of their provisions.

(c) Subcontractor represents, warrants and covenants that the Documents are complete and sufficient to enable Subcontractor to determine the Price, to construct the Work and otherwise to fulfill its obligations hereunder. Subcontractor has visited the site and examined the conditions affecting the Work.

40. Cross-Complainant is informed and believes and thereon alleges that the defects and damages claimed by Plaintiff involves defects, damage to, or destruction of the subject PROPERTY, and Cross-Complainant herein is further informed and believes and thereon alleges that said damages were caused by Cross-Defendants, and each of them, arising out of and connected with the performance (or lack of performance) of Cross-Defendants' obligations pursuant to the written agreement entered into by each of them with Cross-Complainant herein.

41. Cross-Complainant is informed and believes and thereon alleges that Cross-Defendants, and each of them, entered into contracts with others in the performance of services and/or materials provided in the construction of the subject PROPERTY and are responsible for all acts and omissions of their agents and employees.

42. Cross-Complainant is informed and believes and thereon alleges that Cross-Defendants, and each of them as designated above, entered into written agreements with Cross-Complainant which provides for attorneys' fees and investigation costs.

43. Cross-Complainant has performed all conditions, covenants and promises required by it in accordance with the terms and conditions of the aforementioned agreements.

44. Cross-Defendants, and each of them, have breached the aforementioned written contracts by failing and neglecting to properly perform the labor and services and/or supply of materials as contemplated by the parties to the agreements, and by failing to comply with each and every term of the contract the Cross-Defendants, among other things, and each of them, negligently and carelessly built, supervised, designed, constructed, maintained and/or supplied improper and/or manufactured improper materials and/or products to the subject PROPERTY, which, among other things, have caused the defects alleged by Plaintiff in its FAC.

45. As a result of the breach of the aforementioned written contracts by Cross-Defendants, and each of their agents or employees, Cross-Complainant has been damaged in an amount according to proof at the time of trial.

46. Cross-Complainant is informed and believes and thereon alleges that the contracts provide that the Cross-Defendants, and each of them, among other things, were to comply with each and every term and condition.

47. Cross-Complainant has retained the services of LORBER, GREENFIELD & POLITO, LLP, to defend the action herein, thereby incurring costs, consultants' fees, attorneys' fees and other litigation fees in the defense of this action and prosecution of this Cross-Complaint. Cross-Complainant will seek leave of this Court to amend this Cross-Complaint to show the amount of said costs and attorneys' fees when the same becomes known to Cross-Complainant.

FIFTH CAUSE OF ACTION
[Negligence]
(As to All Cross-Defendants)

48. Cross-Complainant refers to and incorporates herein by reference each and every paragraph of all Causes of Action as though set forth in full.

49. Cross-Complainant is informed and believes and thereon alleges that Cross-Defendants, and each of them, negligently, carelessly and wrongfully failed to use reasonable care in the design, development, manufacture, management, supervision, maintenance, repair, supply of materials, installation, inspection and/or construction of the subject PROPERTY, which are at issue in Plaintiffs' FAC and which are more particularly described therein.

///

50. Cross-Complainant is further informed and believes and thereon alleges that Cross-Defendants, and each of them, negligently, carelessly and/or willfully failed to exercise reasonable care and diligence to avoid loss and to minimize and mitigate damages which could have been prevented by reasonable efforts on the part of said Cross-Defendants, or by expenditures which should have been made in the exercise of due care.

51. Cross-Complainant is informed and believes and thereon alleges that the failures and damages alleged by Plaintiffs occurred because of the negligence of Cross-Defendants and each of them.

52. As a direct and proximate result of the negligence of Cross-Defendants, and each of them, it is herein alleged that Cross-Complainant has incurred and continues to incur costs and expenses, including, but not limited to litigation costs, contractors' fees, attorneys' fees and consultants' fees to inspect, repair and mitigate damages arising out of said negligent design, construction, repair and maintenance, manufacture and/or supply of materials or products to the subject PROPERTY in order to defend against Plaintiffs' allegations, and has separately incurred additional damages, including, but not limited to, investigative and/or repair costs for claims made as a result of the actions or inactions of Cross-Defendants at the subject PROPERTY.

SIXTH CAUSE OF ACTION

[Contribution]

(As to All Cross-Defendants)

53. Cross-Complainant refers to and incorporates herein by this reference each and every paragraph of all Causes of Action as though set forth in full.

54. Cross-Complainant is entitled to contribution from Cross-Defendants, and each of them, for the injuries and damages allegedly sustained by Plaintiffs and/or Cross-Defendants, if any, as a result of any judgment or settlement awarded against Cross-Complainant herein.

SEVENTH CAUSE OF ACTION

[Declaratory Relief re: Duty to Defend]

(As to All Cross-Defendants)

55. Cross-Complainant refers to and incorporates herein by this reference each and every paragraph of all Causes of Action as though set forth in full.

///

56. Cross-Complainant is informed and believes and thereon alleges that written contracts exist between Cross-Complainant and Cross-Defendants, and each of them. Each said contract is incorporated herein by reference as though set forth in full.

57. The subject contracts contain an indemnity provision which provides, in pertinent part, that Cross-Complainant is entitled to express indemnity from Cross-Defendants.

58. A claim or loss within the meaning of the subject contract has arisen by virtue of the fact that Plaintiffs in this action have filed a First Amended Complaint against Cross-Complainant claiming damages for construction defects within the subject PROPERTY and that the construction defects claimed in Plaintiffs' FAC pertain to the scope of work performed and/or materials provided by the Cross-Defendants and each of them.

59. Cross-Defendants, and each of them, have a present duty to defend against any claims made against Cross-Complainant pursuant to the subject contract, pursuant to California Civil Code section 2778, and as a result of the assertion of a claim and/or loss arising out of the work of Cross-Defendants, and each of them. California Civil Code section 2778 provides, in pertinent part:

In the interpretation of a contract of indemnity, the following rules are to be applied, unless a contrary intention appears:

4. The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the former by the latter in respect to the matters embraced by the indemnity, but the person indemnified have the right to conduct such defenses, if he chooses to do so;

5. If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the latter suffered by him in good faith, is conclusive in his favor against the former; . . .

60. Cross-Complainant has tendered or will be tendering the defense of this action to all Cross-Defendants and their insurance carriers, each of whom have rejected, ignored, or failed, or Cross-Complainant is informed and believes and thereon alleges, will reject, ignore and/or fail to properly accept the tender of defense in the future.

61. A dispute has arisen and an actual controversy now exists between Cross-Complainant and Cross-Defendants, and each of them, in that Cross-Complainant contend that they are entitled to a present defense from Cross-Defendants, and each of them, while the Cross-Defendants, and each of them, denies such obligations under the Contract.

62. Cross-Complainant, designated above, seeks a Declaration by the Court as to its respective rights, and said Cross-Defendants' duties and obligations as to the duty to defend, in connection with the matters herein alleged, and a judgment in Cross-Complainant's favor as to any obligations by said Cross-Defendants, and each of them, to Cross-Complainant herein.

EIGHTH CAUSE OF ACTION
[Declaratory Relief re: Duty to Indemnify]
(As to All Cross-Defendants)

63. Cross-Complainant refers to and incorporates herein by this reference each and every paragraph of all Causes of Action as though set forth in full.

64. Under the indemnity agreement contained in the contracts, Cross-Defendants, and each of them, are obligated to indemnify Cross-Complainant from all liability, loss, or damage in this action relating to matters embraced by the indemnity provision and arising out of the scope of work of Cross-Defendants, and each of them.

65. A dispute has arisen and an actual controversy now exists between Cross-Complainant and the Cross-Defendants, and each of them, in that Cross-Complainant contend that the subject indemnity provision is a specific or "Type I" provision which provides indemnity for the negligence of Cross-Defendants, and each of them, and for the joint negligence, whether active or passive, of Cross-Complainant; while Cross-Defendants, and each of them, contend that such indemnity provision is vague and/or ambiguous, void and/or voidable, general instead of specific, and/or of a "Type II" variety such that any negligence by Cross-Complainant terminates the obligation of the Subcontractors/Cross-Defendants to indemnify.

66. Cross-Complainant seeks a Declaration by the Court as to its respective rights and said Cross-Defendants' duties and obligations as to the matters herein alleged, and a judgment in Cross-Complainant's favor as to the existence of a "Type I" provision.

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NINTH CAUSE OF ACTION
[Breach of Written Contract - Additional Insurance]
(As to All Cross-Defendants)

67. Cross-Complainant refers to and incorporates herein by this reference each and every paragraph of all Causes of Action as though set forth in full.

68. Cross-Complainant is informed and believes and thereon alleges that Cross-Defendants entered into written agreements with Cross-Complainant which stated, among other things, that Cross-Complainant would be named as an additional insured by the liability insurers for Cross-Defendants with specific requirements.

69. Cross-Complainant has performed all conditions, covenants and promises required of it in accordance with the terms and conditions of the aforementioned agreements.

70. Cross-Defendants, and each of them, have breached the aforementioned written contracts by failing to obtain such insurance complying with all such above requirements, leaving Cross-Complainant without such insurance coverage in whole or in part.

71. As a result of Cross-Defendants' breach of the aforementioned written contracts, Cross-Complainant has been damaged in an amount according to proof at the time of trial.

WHEREFORE, Cross-Complainant prays for judgment against Cross-Defendants, and each of them, as follows:

FIRST CAUSE OF ACTION:

1. That Cross-Complainant is entitled to equitable indemnity and/or apportionment, and/or contribution from Cross-Defendants herein, and each of them.

SECOND CAUSE OF ACTION:

2. That Cross-Complainant is entitled to express indemnity from Cross-Defendants, and each of them.

THIRD CAUSE OF ACTION:

3. That Cross-Complainant is entitled to damages for breach of express and implied warranties from Cross-Defendants, and each of them.

FOURTH CAUSE OF ACTION:

4. That Cross-Complainant is entitled to damages for breach of contract from Cross-

1 Defendants, and each of them.

2 **FIFTH CAUSE OF ACTION:**

3 5. That Cross-Complainant is entitled to damages for negligence from Cross-
4 Defendants, and each of them.

5 **SIXTH CAUSE OF ACTION:**

6 6. That Cross-Complainant is entitled to contribution from Cross-Defendants, and
7 each of them.

8 **SEVENTH CAUSE OF ACTION:**

9 7. For a Declaration that each Cross-Defendant has an obligation to provide a defense
10 to Cross-Complainant in this action.

11 **EIGHTH CAUSE OF ACTION:**

12 8. For a judicial determination of Cross-Complainant's rights and Cross-Defendants'
13 obligations and/or duty, under their respective contracts, to defend and indemnify Cross-
14 Complainant in this action pursuant to its respective contractual agreements and for a Declaration
15 and/or judgment in Cross-Complainant's favor as to the existence of a "Type I" indemnity
16 provision.

17 **NINTH CAUSE OF ACTION:**

18 9. That Cross-Complainant is entitled to damages for strict liability from the
19 manufacturing Cross-Defendants, and each of them.

20 **TENTH CAUSE OF ACTION:**

21 10. That Cross-Complainant is entitled to damages for breach of contract from Cross-
22 Defendants, and each of them.

23 **AS TO ALL CAUSES OF ACTION:**

24 11. For costs of suit incurred herein, including, but not limited to, costs of investigation
25 incurred in the prosecution of this Cross-Complaint;

26 12. For attorneys' fees incurred herein in the defense of the First Amended Complaint
27 and in the prosecution of this Cross-Complaint;

28 ///

1 13. That Cross-Defendants are required to defend, indemnify, protect, and save
2 harmless Cross-Complainant herein from any loss, damage, costs, judgment, settlement, and
3 expense, including, but not limited to, attorneys' fees and Court costs related to and/or connected
4 with the claims asserted herein by Plaintiffs and/or the other Cross-Complainant and/or Cross-
5 Defendants; and;

6 14. For such other and further relief as the Court may deem just and proper.
7

8 DATED: August 6, 2008.

LORBER, GREENFIELD & POLITO, LLP

9
10 By: 

J.D. TURNER

11 Attorneys for Defendant/Cross-Complainant
12 RYLAND HOMES OF CALIFORNIA, INC.,
13 erroneously named as M. J. Brock & Sons, Inc., dba
14 Ryland Homes, Ryland Homes of California Co.,
15 Ryland Homes of California, Ryland Homes, Ryland
16 Homes of Southern California, Inc., and Southern
17 California Division
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27
28

EXHIBIT C

(RYLAND/HNR SUBCONTRACT)

M. J. BROCK AND SONS, INC.
SUBCONTRACTOR AGREEMENT
GENERAL TERMS

M.J. BROCK AND SONS, INC.
dba Brock Homes or Larchmont Homes or Ryland Homes

SUBCONTRACTOR:

Name: HNR FRAMING SYSTEMS INC Project: TWIN OAKS MEDIAN MOUNTAIN
Address: 12345 CROSTWATER CIRCLE Tract: _____
City, State, Zip: POWAY CA 92064 Trade: ROUGH CARPENTRY
Phone: 619-486-2471 Cost Code: _____
Fax No.: 619-486-7885 Contract: 3112 QS

This Subcontractor Agreement ("Agreement") shall govern the relationship between Subcontractor and M.J. BROCK & SONS, INC. ("BROCK") for any project ("Project") on which Subcontractor provides services to Brock. The description of any work ("Work") to be performed on any Project, and any specifics regarding the Work and the price ("Price") shall be contained on bid sheets, proposals, drawings, specifications, site plans and other documentation governing the Work (collectively, the "Documents"). All Documents are incorporated herein by reference and made a part hereof. The Documents shall be identified as being subject to this Agreement.

Subcontractor and Brock agree as follows:

1. (a) Subcontractor shall complete the Work in strict conformity with generally accepted building practices and the Documents. All materials incorporated into the Work shall be new, and the Work shall be completed in a good and workmanlike manner free from defects.
(b) Subcontractor has examined the Documents and is fully aware of their provisions.
(c) Subcontractor represents, warrants and covenants that the Documents are complete and sufficient to enable Subcontractor to determine the Price, to construct the Work and otherwise to fulfill its obligations hereunder. Subcontractor has visited the site and examined the conditions affecting the Work.
(d) Subcontractor has satisfied itself as to the location of all utilities that may affect or interfere with the Work and agrees to protect all utilities and keep them operational at all times.
2. Time is of the essence. Subcontractor shall begin the Work on the date designated by Brock and shall proceed diligently to complete the Work in accordance with the schedule set by Brock without delays to Brock or to other subcontractors.
3. (a) Subcontractor is an independent contractor. Subcontractor is not an employee of Brock for purposes of the Federal Contributions Act or the Federal Unemployment Tax Act.
(b) Subcontractor is responsible for the manner, method and means of accomplishing the Work; hiring, training, disciplining, firing and scheduling its own employees; withholding appropriate amounts for federal, state and local taxes; and providing fringe benefits to employees, including, but not limited to, workers' compensation benefits. Brock shall not be liable for wages, employment taxes, fringe benefits or workers' compensation to employees of Subcontractor, nor shall Brock have the right to cause any Subcontractor to take any disciplinary action against its employees except as specifically provided in this Agreement or to assign work to any of Subcontractor's employees.
(c) Brock reserves the right to (1) inspect all work to determine, in good faith, whether the work has been satisfactorily completed, (2) control access to each Brock work site, (3) schedule work in a logical sequence or to avoid disturbances, and (4) stop or direct work for safety reasons or to insure conformity of end product with contracted for results.
4. (a) Brock shall pay Subcontractor [weekly] [biweekly] [monthly] so long as Subcontractor is not in default, upon written certification by Brock's Homebuilding Supervisor that the portion of the Work for which payment has been requested has been completed satisfactorily. Payment shall be in accordance with the Price set forth in the Documents. Payment for additions or extra work will be made only pursuant to written change orders, which may include purchase orders, signed by the purchasing manager of Brock.
(b) Brock, in its sole discretion, may retain any payment or portion thereof or offset against future payments due to Subcontractor to assure satisfactory completion of the Work and all service work arising therefrom or to compensate Brock for any damages Brock suffers as a result of Subcontractor's default of this Agreement. All warranties made by Brock to its homebuyer, whether under the Brock warranty or applicable law, are, to the extent applicable, deemed made by Subcontractor to Brock. Any retainage shall be paid to the Subcontractor upon satisfactory final completion of the Work and service work.
(c) Subcontractor shall submit to Brock with Subcontractor's request for payment, executed lien waivers in the form provided from Subcontractor and all persons and entities furnishing any labor, equipment, materials or services on the Project in any way concerning or relating to Subcontractor's Work, including, without limitation Subcontractor's principals, consultants, employees, suppliers, subcontractors, agents and officers ("Subcontractor's Agents"). Upon completion of the Work on any Project Subcontractor shall deliver to Brock a Final Waiver and Release of Liens in form provided from Subcontractor and each of Subcontractor's Agents.
(d) Subcontractor shall be in default if any demand is made on Brock for amounts due to Subcontractor's Agents, and Brock shall have the right to withhold such amounts claimed out of any payments due to the Subcontractor or any affiliated company of Subcontractor. If any of Subcontractor's Agents files or maintains any lien or claim after payment by Brock to Subcontractor, Subcontractor agrees to cause such lien and claim to be satisfied, removed or discharged at its own expense by bond, payment or otherwise within ten (10) days from the day of filing thereof. Upon Subcontractor's failure to satisfy, remove or discharge the lien or claim, Brock shall have the right, in addition to all other rights and remedies provided under the Agreement or by law, to cause such lien or claim to be satisfied, removed or discharged by whatever means Brock chooses, at the entire cost and expense of the Subcontractor, including without limitation, legal fees. To the maximum extent permitted by law, Subcontractor agrees to indemnify, protect and save harmless Brock from and against any and all such liens and claims and actions brought or judgments rendered thereon, and from and against any and all loss, damages, liability, costs and expenses, including legal fees, which Brock may sustain or incur in connection therewith.


Subcontractor's Initials

8. All Work shall be performed by qualified tradespersons. Brock reserves the right to reject any materials which do not, in Brock's opinion, comply with the terms of this Agreement. All materials shall be installed in accordance with manufacturer's specifications or recommendations.

9. Subcontractor agrees promptly, at its expense, (a) to remedy any defect in the Work due to faulty or unacceptable material or workmanship, (b) to repair or replace any Work not in compliance with the Documents, and (c) to pay any expenses and costs, including legal fees and dispute resolution costs incurred by Brock as a result of (i) such defect or (ii) any personal injury or damage to other property caused by Subcontractor or Subcontractor's Agents. Subcontractor shall fully cooperate with Brock in responding to any warranty claims.

10. Subcontractor agrees, at the request of Brock, to take delivery or assume custody of materials purchased by Brock from manufacturers. Risk of loss of all material and equipment supplied by, delivered to or under the custody of the Subcontractor shall be upon the Subcontractor until the Work reaches final completion and is accepted by Brock.

11. Subcontractor shall keep the jobsite free of accumulations of trash and debris. At the conclusion of daily work on any housing unit, Subcontractor shall remove all trash and debris caused by its operations and leave the site broom clean.

12. Subcontractor shall abide by all directives which Brock may publish from time to time.

13. If Subcontractor fails to perform any of its obligations hereunder, Subcontractor shall be in default. If such default is not cured within two (2) days after oral or written notice, then Brock may pursue any remedy or combination of remedies available at law or equity, including, without limitation: (a) terminating this Agreement; (b) applying any retainage or other amounts due to Subcontractor to cure Subcontractor's defaults or compensate Brock for damages suffered; (c) taking any action necessary to perform the Work by other means, in which case Subcontractor shall upon demand reimburse Brock for any amounts expended by Brock to complete the Work in excess of the Price together with interest from the date paid by Brock to the date reimbursed by Subcontractor at the rate of eighteen percent (18%) per annum or the maximum amount permitted under applicable law; and (d) pursuing an action for damages and recovery of all costs and expenses, including legal fees, incurred by Brock in enforcing this Agreement. All remedies shall be cumulative and not exclusive.

14. Brock may terminate Subcontractor's performance under this Agreement at any time, at the sole option of Brock and for Brock's own convenience. In such event, Subcontractor will turn over all equipment and materials ordered, purchased for, or delivered to the Project, and Brock will pay the Subcontractor any amounts due based on the percentage of completion of the Subcontractor's Work that is in compliance with this Agreement and the Price for Work actually accomplished and equipment and materials supplied to the Project, excluding any payment for unearned profit and overhead. The payments for percentage completion shall be Subcontractor's sole remedy under this Agreement at law or in equity. Subcontractor will facilitate transfer of the Work to Brock by assigning its rights under subcontracts and purchase orders.

15. Subcontractor shall fully cooperate and coordinate performance of the Work with the work of Brock and other subcontractors of Brock. Brock may suspend or reschedule the Work. Subcontractor shall not be entitled to any damages or additional compensation for any delay caused by rescheduling or suspension of the Work other than an equivalent extension of time to perform.

16. Except in the event that either party is sued by someone other than a party hereto or it would be appropriate for complete resolution of the issues for either party to cross-claim against the other party in a legal action not initiated by either of the parties hereto, any dispute arising out of or relating to this Agreement or the breach, termination or validity thereof shall be settled by binding arbitration conducted by a neutral arbitrator. If the parties do not mutually agree on another arbitrator, the arbitrator shall be selected by the American Arbitration Association at its offices closest to the construction site related to the dispute. The arbitration shall be conducted according to the American Arbitration Association Commercial Arbitration Rules unless such other procedures are agreed upon by the parties. The parties agree to (a) allow to join into the arbitration proceeding hereunder or (b) join any other arbitration proceeding being conducted by, persons or entities related to the dispute whose involvement may be necessary to completely resolve the dispute, such as (1) a homeowner, (2) Brock's home warranty corporation, (3) Brock's and Subcontractor's insurers, and (4) Subcontractor's materialmen or subcontractors. The arbitration shall determine all rights and obligations under this Agreement and the award of the arbitrator shall be final, binding and enforceable. Subcontractor shall include a comparable arbitration provision in all of its subcontracts related to the Work.

17. (a) This Agreement (including all Documents incorporated herein) constitutes the entire Agreement between the parties, supersedes any prior negotiations, agreements or contracts, written or oral, between the parties and may not be amended without the written agreement of both parties.

(b) Subcontractor shall have no right to assign this Agreement or its right to payments hereunder.

(c) All plans, drawings, specifications and the subject matter contained therein and all other information given to Subcontractor in connection with the Work shall remain the property of Brock and shall not be used by or disclosed to anyone by Subcontractor for any purpose other than performance of the Work. Upon completion of the Work, Subcontractor shall return all documents to Brock.

(d) If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall be construed as if the invalid, illegal or unenforceable portion of the provision had never been contained herein.

(e) This Agreement shall be governed by the laws of the state of California.

IN WITNESS WHEREOF, the parties have executed and sealed this Agreement as of the date set forth above.

M.J. BROCK AND SONS, INC.

HNR FRAMING SYSTEMS, INC. (SUBCONTRACTOR)

License # 617393

Expiration Date 4/31/01

By: Virireader Robinson

By: Robert R. Thomas

Name: Virireader Robinson

Name: Robert R. Thomas

Title: Purchasing Manager

Title: PRESIDENT

5. BROCK REQUIRES THAT ALL SUBCONTRACTORS MAINTAIN MINIMUM INSURANCE COVERAGES OF THE TYPES AND AMOUNTS DETAILED ON THE ATTACHED ADDENDUM 4 FOR SO LONG AS BROCK'S LIABILITY TO ITS HOMEOWNER FOR THE WORK IS IN EFFECT PURSUANT TO EITHER THE HOMEOWNER WARRANTY GIVEN TO BROCK'S HOMEBUYERS OR APPLICABLE LAW, WHICHEVER IS LONGER; PROVIDED THAT THIS PERIOD OF TIME SHALL BE NO LESS THAN FIVE (5) YEARS AFTER THE COMPLETION OF THE WORK. SUBCONTRACTOR'S INSURANCE SHALL COVER SUBCONTRACTOR AND SUBCONTRACTOR'S AGENTS AND SHALL BE PRIMARY, AND NON-CONTRIBUTORY WITH RESPECT TO ANY VALID AND COLLECTIBLE INSURANCE MAINTAINED BY BROCK. ALL INSURANCE REFERENCED ON ADDENDUM 4 SHALL (A) NAME BROCK AS AN ADDITIONAL INSURED (AS PER REQUIREMENTS SHOWN ON ADDENDUM 4); (B) APPLY TO ALL OPERATIONS AND NOT BE PROJECT SPECIFIC, AND (C) PROVIDE THAT THE INSURANCE MAY NOT BE CANCELED, NON-RENEWED OR MATERIALLY CHANGED WITHOUT 30 DAYS PRIOR WRITTEN NOTICE TO BROCK. ALL INSURANCE SHALL BE PLACED IN COMPANIES RATED A-/VIII OR HIGHER BY A.M. BEST COMPANY. BEFORE ANY WORK IS PERFORMED, SUBCONTRACTOR SHALL DELIVER TO BROCK (A) A COPY OF THE ADDITIONAL INSURED ENDORSEMENT PAGE OF THE REQUIRED INSURANCE POLICIES, (B) A COPY OF THE DECLARATIONS PAGE INDICATING THAT THE REQUIRED TYPES AND AMOUNTS OF INSURANCE ARE IN EFFECT AND (C) A CERTIFICATE OF INSURANCE. SUBCONTRACTOR SHALL PROVIDE EVIDENCE OF RENEWAL OF THE REQUIRED INSURANCE TO BROCK AT LEAST 30 DAYS PRIOR TO THE EXPIRATION DATE OF THE INSURANCE COVERAGE. SUBCONTRACTOR IS RESPONSIBLE FOR LOSS OR DAMAGE TO OWNED OR LEASED EQUIPMENT USED BY SUBCONTRACTOR OR SUBCONTRACTOR'S AGENTS ON ANY PROJECT, AND SUBCONTRACTOR AND SUBCONTRACTOR'S AGENTS AND INSURERS OF SAID EQUIPMENT WAIVE ANY RIGHT OF RECOVERY OR SUBROGATION IN FAVOR OF BROCK.

6. (A) TO THE FULLEST EXTENT PERMITTED BY LAW, SUBCONTRACTOR SHALL INDEMNIFY, DEFEND (AT SUBCONTRACTOR'S SOLE COST AND EXPENSE AND WITH LEGAL COUNSEL APPROVED BY BROCK), PROTECT AND HOLD HARMLESS BROCK, AND ALL AFFILIATED COMPANIES OF BROCK, AND THEIR RESPECTIVE REPRESENTATIVES, PARTNERS, DESIGNEES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, CONSULTANTS, AGENTS, SUCCESSORS AND ASSIGNS, AND ANY LENDER OF BROCK WITH AN INTEREST IN THE PROJECT (COLLECTIVELY, THE "INDEMNIFIED PARTIES") AND THE PROPERTY OF BROCK, FROM AND AGAINST ANY AND ALL CLAIMS (INCLUDING, WITHOUT LIMITATION, CLAIMS FOR BODILY INJURY, DEATH, INCLUDING ANY INJURY OR DEATH OF AN EMPLOYEE OR OWNER OF SUBCONTRACTOR, OR DAMAGE TO PROPERTY), DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' AND CONSULTANTS' FEES, DISBURSEMENTS AND COURT COSTS) OF EVERY KIND AND NATURE WHATSOEVER (INDIVIDUALLY, A "CLAIM," COLLECTIVELY, "CLAIMS") WHICH MAY ARISE FROM OR IN ANY MANNER RELATE (DIRECTLY OR INDIRECTLY) TO (i) ANY WORK PERFORMED OR SERVICES PROVIDED UNDER THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, DEFECTS IN WORKMANSHIP OR MATERIALS AND/OR DESIGN DEFECTS IF THE DESIGN ORIGINATED WITH SUBCONTRACTOR) OR SUBCONTRACTOR'S PRESENCE OR ACTIVITIES CONDUCTED ON THE PROJECT (INCLUDING, WITHOUT LIMITATION, THE NEGLIGENT AND/OR WILLFUL ACTS, ERRORS AND/OR OMISSIONS OF SUBCONTRACTOR, SUBCONTRACTOR'S AGENTS, OR ANYONE EMPLOYED DIRECTLY OR INDIRECTLY BY ANY OF THEM OR FOR WHOSE ACTS THEY MAY BE LIABLE); (ii) SUBCONTRACTOR'S FAILURE TO ENFORCE THE DRUG AND ALCOHOL ADDENDUM; OR (iii) SUBCONTRACTOR'S OR SUBCONTRACTOR'S AGENTS FAILURE TO COMPLY WITH THE LEGAL REQUIREMENTS, REGARDLESS OF ANY ACTIVE OR PASSIVE NEGLIGENCE OR STRICT LIABILITY OF AN INDEMNIFIED PARTY. SUBCONTRACTOR ACKNOWLEDGES THAT THE INDEMNIFICATION OBLIGATION HEREUNDER IS INTENDED TO CONSTITUTE A "TYPE I" INDEMNITY UNDER CALIFORNIA LAW AND EXTENDS TO AND INCLUDES CLAIMS ARISING FROM THE ACTIVE OR PASSIVE NEGLIGENCE OF INDEMNIFIED PARTIES. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL BE CONSTRUED TO REQUIRE SUBCONTRACTOR TO INDEMNIFY THE INDEMNIFIED PARTIES FROM ANY CLAIM ARISING FROM THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTIES. UNDER NO CIRCUMSTANCES SHALL THE INSURANCE REQUIREMENTS AND LIMITS SET FORTH IN THIS AGREEMENT BE CONSTRUED TO LIMIT SUBCONTRACTOR'S INDEMNIFICATION OBLIGATION OR OTHER LIABILITY HEREUNDER. SUBCONTRACTOR WAIVES ANY RIGHTS OF SUBROGATION AGAINST BROCK AND SHALL REQUIRE SUBCONTRACTOR'S AGENTS TO WAIVE SUBROGATION RIGHTS AGAINST BROCK.

(B) THE DUTY TO DEFEND IS WHOLLY INDEPENDENT OF AND SEPARATE FROM THE DUTY TO INDEMNIFY AND EXISTS REGARDLESS OF ANY ULTIMATE LIABILITY OF SUBCONTRACTOR TO BROCK. THE DEFENSE OBLIGATION SHALL ARISE IMMEDIATELY UPON WRITTEN NOTICE OF A CLAIM BEING PROVIDED TO SUBCONTRACTOR. ADVANCE PAYMENT OF DEFENSE COSTS SHALL NOT BE A CONDITION PRECEDENT TO ENFORCING THE RIGHTS TO INDEMNIFICATION. THE INDEMNIFICATION OBLIGATION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT UNTIL SUCH TIME AS ACTION AGAINST THE INDEMNIFIED PARTIES FOR SUCH MATTER INDEMNIFIED HEREUNDER IS FULLY AND FINALLY BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS.

7. Subcontractor warrants and represents that it is familiar with and covenants to comply with all laws, regulations and rulings of all federal, state, county and municipal jurisdictions and agencies applicable to this Agreement and to the Work, including, without limitation, OSHA, state occupational safety and health laws, workers' compensation laws, minimum wage and overtime laws, employment discrimination laws, building codes and all regulations and rules promulgated thereunder (collectively, the "Legal Requirements"). Subcontractor shall maintain all records required for compliance with the Legal Requirements and will indemnify and save Brock harmless from any damage, fine or penalty which may be assessed against Brock and any attorneys' fees and other costs incurred by Brock by reason of the breach or alleged breach of this section by Subcontractor or Subcontractor's owners, employees, agents, subcontractors, suppliers, representatives or others engaged by or on behalf of Subcontractor (collectively, the "Subcontractor's Agents").

(a) At all times, Subcontractor shall:

(1) conduct, operate and maintain a safe, clean and healthful workplace; and

(2) provide to its employees the protective clothing, equipment, training and safety devices necessary to ensure compliance with relevant Legal Requirements.

(b) Brock may withhold from payment to Subcontractor the full amount of any fine, damages or penalty assessed or proposed to be assessed against Brock by local, state or federal authorities as well as a sum sufficient to cover any attorneys' fees and costs that are incurred by Brock as a result of Subcontractor's or Subcontractor's Agents failure to comply with applicable Legal Requirements. When and if any fine, damages or penalty is actually assessed by local, state or federal authorities and paid by Brock, Brock will deduct from the amount(s) withheld any fines, damages and penalties so paid and any costs and expenses incurred pursuant to the following subparagraph (c), and will release to Subcontractor the excess held.

(c) Either Subcontractor or Brock may contest responsibility for Subcontractor's or Subcontractor's Agents failure to comply with applicable Legal Requirements. If Brock contests responsibility under this subparagraph (c), Subcontractor shall reimburse Brock up to the full amount of any legal costs and expenses that Brock may incur which relate to Subcontractor's or Subcontractor's Agents failure to comply with applicable Legal Requirements.

(d) COMPLIANCE WITH APPLICABLE OCCUPATIONAL SAFETY AND HEALTH STANDARDS IS AN EXPRESS CONDITION OF WORK UNDER THIS AGREEMENT.


Subcontractor's Initials

SUBCONTRACTOR AGREEMENT

M.J. BROCK AND SONS, INC.
dba Brock Homes or Larchmont Homes or Ryland Homes

ADDENDUM 1

RULES AND REGULATIONS FOR SUBCONTRACTORS

The following rules and regulations apply to Subcontractors working on Brock Homes or Larchmont Homes Projects. The term "SUBCONTRACTOR" includes all of Subcontractor's Agents and suppliers.

I. General:

- A. License. At the request of Brock, SUBCONTRACTOR shall submit evidence of city or county business licenses.
- B. No Substitutions. There shall be no substitutions of materials or equipment specifications without written approval of Brock's purchasing department. This policy shall include "or equal" determination.
- C. Operation of Vehicles. The operation of vehicles in or about the Project Site by SUBCONTRACTOR (including material delivery vehicles operated by material suppliers of SUBCONTRACTOR) shall be as follows: (1) Use only the designated entries to enter the Project Site; (2) Use only established roadways and temporary roadways as authorized by BROCK; (3) No crossing of curbs or sidewalks without prior approval by BROCK; and (4) Observe speed limit of 15 miles per hour within the entire Project Site. SUBCONTRACTORS shall immediately reimburse BROCK for any damage to curbs, sidewalks, landscaping, or concrete surfaces or any other damage to the Project Site caused by SUBCONTRACTOR.
- D. Parking. SUBCONTRACTOR shall provide necessary parking areas for all workers in suitable locations as approved by BROCK. In the event BROCK has to tow vehicles owned by SUBCONTRACTOR, or SUBCONTRACTOR'S Agents, to maintain ingress and egress to the Project Site, all such towing charges will be backcharged to SUBCONTRACTOR. There shall be no parking in driveways, garages or carports of the housing units (whether completed or being constructed) or on sidewalks within the Project Site. BROCK shall have the right to fine or backcharge SUBCONTRACTOR \$100.00 per vehicle per day for violation of parking restrictions.
- E. NO UNAUTHORIZED PERSONS. THE JOB SITE IS AN EXTREMELY DANGEROUS AREA, AND NO CHILDREN OR OTHER UNAUTHORIZED PERSONS ARE ALLOWED ON THE JOB SITE AT ANY TIME.
- F. Toilet Facilities. BROCK will provide portable toilet facilities within the Project for the use of SUBCONTRACTOR. SUBCONTRACTOR and SUBCONTRACTOR'S Agents are not permitted to use the toilet facilities or bathrooms of any housing unit (completed or being constructed) within in the Project Site. BROCK shall have the right to fine or backcharge SUBCONTRACTOR \$100.00 per occurrence for any violation of these restrictions.
- G. Food and Beverages. No food or drink shall be allowed within a completed housing unit. SUBCONTRACTOR shall be responsible for the cleanup of trash generated by any eating and drinking within the Project Site.
- H. Counter-Tops. None of the finished counter-tops contained within or to be contained within each housing unit in the Project Site shall be used for the placement of tools or for use as a work surface. The placing of tools or using of such counter-tops as a work surface by SUBCONTRACTOR shall give BROCK the right to fine or backcharge SUBCONTRACTOR \$100.00 per occurrence in addition to any costs incurred to repair or replace any damaged counter-top.
- I. Pets. No pets (other than seeing-eye dogs) shall be brought to the Project Site by SUBCONTRACTOR. BROCK shall have the right to fine or backcharge SUBCONTRACTOR \$100.00 per occurrence for violations of the Pet policy.
- J. Prior Work. SUBCONTRACTORS should inspect all previous Subcontractors' work and report any discrepancies to BROCK'S Project Superintendent. DO NOT CONSTRUCT OVER FAULTY WORK.
- K. Storage. If SUBCONTRACTORS require storage for material on the job site or an area for prefabrication, SUBCONTRACTOR and BROCK'S Project Superintendent shall agree to a location for a storage area. SUBCONTRACTORS are solely responsible to provide their own controlled storage, i.e., bins, chain link fence, lighting, etc. SUBCONTRACTORS are responsible for cleaning the area on a regular basis. After the job is complete, SUBCONTRACTORS must clean the storage area and remove all containers and debris from the job site.

II. Scheduling:

- A. SUBCONTRACTORS must maintain a minimum schedule of one (1) unit per day or production rate as agreed upon by SUBCONTRACTOR and BROCK'S Project Superintendent.
- B. BROCK'S Project Superintendent will give SUBCONTRACTOR a production schedule. SUBCONTRACTOR will be required to meet the production schedule even if it requires working six (6) days per week.

M.J. Brock & Sons' Initials

Subcontractor's Initials

ADDENDUM 1

(Continued)

- C. SUBCONTRACTORS must maintain a competent foreman to be on the Project Site at all times during the work in progress. Foreman must be fully authorized to act on SUBCONTRACTOR'S behalf and be cooperative with BROCK'S Project Superintendent, BROCK'S representatives and all other Subcontractors. Foreman will accompany BROCK'S Project Superintendent on any inspection tours which may be required.
- D. Commencement of work by SUBCONTRACTOR on any house or garage unit is indicative of SUBCONTRACTOR'S agreement to complete such building or unit of work in its entirety.

III. *Warranty:*

- A. During the one-year warranty, SUBCONTRACTORS must respond to all customer service requests within 48 hours of receipt of request and must complete service within seven (7) calendar days of receipt of request.
- B. Emergencies shall be corrected immediately. The following conditions are considered as customer service emergencies requiring immediate action and service may be requested during non-working hours:
 - 1. Total stoppage of the complete plumbing system within a unit.
 - 2. A water leak which requires the main water service to be shut off to avoid serious damage to the building and/or furnishings.
 - 3. Complete loss of heat (when evening temperatures fall below 60 degrees). Complete loss of air conditioning in climate zones with temperatures greater than 90 degrees.
 - 4. Total loss of electrical service.
 - 5. Water penetration into the unit, threatening severe interior damage.
- C. SUBCONTRACTORS must utilize adequate precautionary measures to protect both the work of other subcontractors, as well as the homeowners' personal belongings. In the event that the SUBCONTRACTOR causes damage to other work in the home or the personal belongings of that homeowner, BROCK will repair or provide monetary compensation for damaged item(s) to the homeowner at the expense of the SUBCONTRACTOR.
- D. SUBCONTRACTOR will provide neat, clean warranty service personnel for work appointments who will act professionally by appearing at the time of the scheduled appointment with the homeowner, and will treat both the homeowner and the home with respect.
- E. After one (1) attempt to correct a warranty service issue, if the SUBCONTRACTOR fails to perform work satisfactorily, BROCK has the right to take necessary steps to ensure the quality of warranty work at the expense of the SUBCONTRACTOR.
- F. All areas in which warranty service work is performed shall be free from debris, dirt, stains, drips, droppings, and any other spills which may result from warranty service work. BROCK will backcharge without notice if BROCK must clean a residence because of SUBCONTRACTOR'S failure to leave the work area clean.

IV. *Models only:*

- A. Models will be constructed on an accelerated schedule. Failure of SUBCONTRACTORS to meet this schedule will be grounds for termination of contract of production work. Due to uncertain economic conditions, Phases may be delayed. SUBCONTRACTORS will not hold BROCK responsible for extra costs which may be incurred as a result of Phases being delayed. Additional work may be required due to model changes or out-of-sequence installations to expedite construction of models.

M.J. BROCK & SONS, INC.

By: Virireader Robinson

Name: Virireader Robinson

Title: Purchasing Manager

SUBCONTRACTOR

By: Robert R. Thomas

Name: Robert R. Thomas

Title: President

SUBCONTRACTOR AGREEMENT

M.J. BROCK AND SONS, INC.

dba Brock Homes or Larchmont Homes or Ryland Homes

ADDENDUM 2

SCOPE OF WORK

A handwritten signature in black ink, appearing to be "RSL" followed by a stylized flourish.

SUBCONTRACTOR AGREEMENT

M.J. BROCK AND SONS, INC.
dba Brock Homes or Larchmont Homes or Ryland Homes

ADDENDUM 5

FOR ALL FHA APPROVED PROJECTS

During the performance of this Agreement, the Subcontractor agrees as follows:

- (1) The Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The Subcontractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Subcontractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Subcontractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The Subcontractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the Subcontractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended, in whole or in part, and the Subcontractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The Subcontractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor of Subcontractor. The Subcontractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event a Subcontractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor of Subcontractor as a result of such direction by the administering agency, the Subcontractor may request the United States to enter into such litigation to protect the interests of the United States.

M.J. BROCK & SONS, INC.

By: *Vireader Robinson*

Name: Vireader Robinson

Title: Purchasing Manager

SUBCONTRACTOR

By: *Robert R. Thomas*

Name: *Robert R. Thomas*

Title: *President*

SUBCONTRACTOR AGREEMENT

M.J. BROCK AND SONS, INC.
dba Brock Homes or Larchmont Homes or Ryland Homes

ADDENDUM 3

DRUG AND ALCOHOL ADDENDUM

FOR THE SAFETY AND WELL BEING OF ALL EMPLOYEES ON BROCK CONSTRUCTION SITES, BROCK HAS A POLICY THAT NEITHER CONTROLLED SUBSTANCES NOR ALCOHOL SHALL BE DISTRIBUTED, POSSESSED OR USED ON BROCK CONSTRUCTION SITES. ANYONE FOUND TO BE IMPAIRED BY OR IN POSSESSION OF CONTROLLED SUBSTANCES OR ALCOHOL MUST IMMEDIATELY LEAVE THE BROCK CONSTRUCTION SITE OR PROPERTY. To help ensure the safety of all workers, including a worker that may be impaired, Subcontractor agrees to adhere to the following procedures:

- (1) If a Subcontractor suspects that one of Subcontractor's Agents is impaired by controlled substances or alcohol, Subcontractor is required to investigate and make inquiries of co-workers on the job site to confirm the suspected impairment. If Brock becomes aware that one of Subcontractor's Agents has been impaired on the job, Brock shall have the right, but not the duty, to request that Subcontractor's foreperson investigate. When such a request is given, orally or in writing, Subcontractor's foreperson shall immediately proceed with such investigation and shall thereafter promptly report the results to the Brock Supervisor. Brock may send formal written notification to the Subcontractor regarding any such situation, a copy of which will be placed in the Subcontractor's file.
- (2) Any worker who is impaired or reasonably believed to be impaired must be immediately removed from the job site. The Subcontractor must provide transportation for the impaired worker and not allow the impaired worker to drive him/herself from the job and endanger the public.
- (3) A repeated violation by Subcontractor or any of Subcontractor's Agents of this policy will be cause for immediate termination of this Agreement by Brock, in its sole discretion.

M.J. BROCK & SONS, INC.

By: Virivader Robinson

Name: Virivader Robinson

Title: Purchasing Manager

SUBCONTRACTOR

By: Robert R. Thomas

Name: Robert R. Thomas

Title: President

SUBCONTRACTOR AGREEMENT

M.J. BROCK AND SONS, INC.

dba Brock Homes or Larchmont Homes or Ryland Homes

ADDENDUM 4

SUBCONTRACTOR INSURANCE REQUIREMENTS

	TYPE OF COVERAGE	AMOUNT OF COVERAGE
A	Workers' Compensation	Statutory limits (set by states)
	Employer's Liability	Bodily Injury by Accident \$500,000 each accident Bodily Injury by Disease \$500,000 policy limit Bodily Injury by Disease \$500,000 each employee
B	Commercial General Liability	<u>Occurrence Form</u>
	General Aggregate Limit (other than Products/Completed Operations) Products/Completed Operations Aggregate Limit Each Occurrence Personal Injury & Advertising Injury Limit Policy to include the following coverages: Premises/Operations Products/Completed Operations Personal Injury and Advertising Injury Blanket Contractual Broad Form Property Damage Including Operations X,C,U Coverage Fire Damage Legal Liability	\$1,000,000 1,000,000 1,000,000 1,000,000
C	Auto Liability (owned, non-owned, and hired)	<u>Occurrence Form</u>
	Bodily Injury and Property Damage (Combined)	\$1,000,000 combined single limit

AN ADDITIONAL INSURED ENDORSEMENT SHOWING BROCK AS AN ADDITIONAL INSURED IS REQUIRED ON ALL POLICIES UNDER SECTIONS B AND C.

THE ONLY AND CORRECT ADDITIONAL INSURED ENDORSEMENT FORM THAT WILL BE ACCEPTED IS FORM CG 2010 11 85 (COPYRIGHT 1984).

M.J. BROCK & SONS, INC.

By: Virineader RobinsonName: Virineader RobinsonTitle: Purchasing Manager

SUBCONTRACTOR

By: Robert R. ThomasName: Robert R. ThomasTitle: President

General Contract Provisions Addendum
M. J. Brock & Sons
d.b.a. Ryland Homes San Diego

1. Unit and total pricing as shown in Scope of Work and bid sheets is understood and accepted to be the total cost for operations, including labor and materials price fluctuations through completion of the contracted lots or period. Owner's Purchasing Department must be notified 60 days prior to any proposed price changes.
2. No extras, changes or deviations from the plans will be permitted or paid for unless prior written approval is given by Owner's Purchasing Department - Owner's Project Superintendent's signature shall only indicate completion of signed work, and shall not constitute an "extra".
3. There shall be no substitutions of materials or equipment specifications without written approval by Owner's Purchasing Department. This policy shall include "or equal" determination.
4. All materials and workmanship shall meet or exceed the standards established by the Veterans Administration (VA) or Federal Housing Administration (FHA), as well as local jurisdiction agencies.
5. It is the intent of this Contract, together with the plans and specifications, to produce a finished and complete job for this craft. Omission from the plans or specifications of this Contract shall not relieve Contractor from the responsibility of making, furnishing, or installing all items required by code, or usually furnished, made, or installed in similar projects of this scope and general character, except as to any items specifically excluded in scope of work. Contractor is aware of all changes that have been made which may not be incorporated in the current set of plans and specifications. Contractor agrees that contract price for scope of work includes all changes and understands that no additional compensation will be considered. If models are existing, Contractor has walked and noted all discrepancies from plans and is accepting deviations from plans to models.
6. Contractor shall maintain a schedule determined by the Owner's Project Superintendent. A work day will consist of hours specified by Owner.
7. Commencement of performance by Contractor on any house and garage unit is indicative of Contractor's acceptance of such building or unit of work in its entirety.
8. Contractor shall guarantee Owner that the operations shall be constructed by first-class skilled mechanics only, in accordance with standard practices of the trade. Defective work, or work that is not perfectly and properly executed will not be accepted and will be repaired or replaced at the discretion of Owner's Project Superintendent immediately.
9. Contractor shall protect and be liable for any damage to adjacent property committed by Contractor.
10. Contractor shall maintain a competent foreman to be on the project at all times during the work in progress. Foreman shall be fully authorized to act on Contractor's behalf and shall be cooperative with Owner's Project Superintendent, Owner's representatives, and all other subcontractors. Foreman will accompany Owner's Project Superintendent on any inspection tours which may be required by the jurisdictional agencies.
11. Owner reserves the right to approve supervisory personnel to be used by Contractor, and Contractor agrees not to make any changes of supervisory personnel without Owner's consent. In addition, if during construction, Owner feels that supervisory personnel are not doing an adequate job, Owner reserves the right to require Contractor to provide acceptable replacement personnel.
12. Contractor shall be responsible for conducting all required safety meetings required by OSHA and local agencies. Contractor shall mitigate any hazards created by scope of work.
13. Drinking of alcoholic beverages on the job site is prohibited. Empty containers and excessive debris must be disposed of in a trash container located on site. Workers are prohibited from using the interior of any unit for coffee breaks or lunch breaks. No food or beverages are allowed inside the houses. Garages and other areas as designated by the Owner's Project Superintendent may be used. Since construction is near occupied areas, no loud radios or dogs will be tolerated. Contractor shall comply with all applicable noise abatement ordinances.
14. No parking in the driveways or garages on the project. A \$50.00 fine will be deducted from the contract for every occurrence.

15. It shall be the responsibility of the Contractor to schedule and comply with required inspections and corrections to obtain necessary approvals.
16. Contractor is aware that work may be completed on a public street and will maintain such access as required. All debris (i.e. pallets, lumber, etc.) shall be kept off of the streets at all times.
17. Invoices procedure is previously described in Contract section 4. In addition, invoices submitted must include project name, contract number, unit (phase) number, and lot numbers. Refer to Exhibit "B" for payment schedule. Invoices not completed as described may be returned unpaid at Owner's discretion. Invoices submitted for options/homeowner extras must be submitted separate of standard contract work and have a copy of "OCHR" (and RFC if applicable, for non-standard contract options or past cut-off options) attached.
18. Contractor shall submit to Owner a list of all hazardous materials which will be used in construction, or incidental to construction of this project. List shall be on Owner's form.
19. All work areas will be kept neat and clean. Debris should be place outside the house in locations specified by site superintendent. Material from each trade will be placed in these locations by the end of each work day.

20. **MODELS ONLY**

Contractor is aware that Models will be constructed on an accelerated schedule. Failure to meet this schedule or unsatisfactory performance will be grounds for termination of contract of production work. Contractor is aware that due to uncertain economic conditions Phase 1 may be delayed and will not hold Owner responsible for extra costs which may be incurred. Additional work may be required due to model changes or out-of-sequence installations to expedite construction of models. Contractor shall notify Owner's Superintendent of all "extra" work prior to commencing said work. All extras shall be paid as extras.

21. **TIME & MATERIALS** as follows:

(Labor plus material costs) x 1.15 overhead x 1.10 profit.

Contractor shall adhere to all of the following requirements for time and material work, otherwise, no additional payment will be considered:

- a) Authorization shall be given by Owner's Purchasing Department prior to commencing work.
- b) Contractor field tickets must be signed by Owner's Project Superintendent at the end of each day for work performed that day, no exceptions.

22. **CUSTOMER SERVICE RESPONSIBILITY**

Upon Notification by Ryland's Customer Service Representative, Subcontractor agrees to respond and correct problems identified by Ryland's Customer Service Representative within three (3) working days. If Subcontractor fails to respond and correct problem within the three (3) days, Ryland's Customer Service Representative will have the necessary work performed by others and Subcontractor will be backcharged for all costs. Ryland's Customer Service Representative will sign off on contracted retention when service work is completed.

HNR FRAMING SYSTEMS INC.
Contractor Company
Robert B. [Signature] President 3-29-98
Subcontractor's Signature/Title Date

LEGAL REQUIREMENTS ADDENDUM

Subcontractor warrants and represents that it is familiar with and covenants to comply with all laws, regulations and rulings of all federal, state, county and municipal jurisdictions and agencies applicable to this Agreement and to the Work, including, without limitation, OSHA, state occupational safety and health laws, workers' compensation laws, minimum wage and overtime laws, employment discrimination laws and all regulations and rules promulgated thereunder (collectively, the "Legal Requirements"). Subcontractor shall maintain all records required for compliance with the Legal Requirements and will indemnify and save Brock harmless from any damage, fine or penalty which may be assessed against Brock and any attorneys' fees and other costs incurred by Brock by reason of the breach or alleged breach of this section by Subcontractor or Subcontractor's owners, employees, agents, subcontractors, suppliers, representatives or others engaged by or on behalf of Subcontractor (collectively, the "Subcontractor's Agents").

(a) At all times, Subcontractor shall:

- (1) conduct, operate and maintain a safe, clean and healthful workplace; and
- (2) provide to its employees the protective clothing, equipment, training and safety devices necessary to insure compliance with relevant Legal Requirements.

(b) Brock may automatically withhold from payment a sum not to exceed the full amount of any fine assessed or proposed to be assessed against Brock by state or federal authorities as a result of Subcontractor's failure to comply with applicable Legal Requirements. When and if any fine is actually assessed by state or federal authorities and paid by Brock, Brock will deduct from the amount(s) withheld any fines so paid and any costs and expenses pursuant to the following subparagraph (c), and will release to Subcontractor the excess withheld.

(c) Either Subcontractor or Brock may contest responsibility for Subcontractor's failure to comply with applicable Legal Requirements. If Brock contests responsibility under this subparagraph (c), Subcontractor shall reimburse Brock up to the full amount of any legal costs and expenses that Brock may incur which relate to Subcontractor's failure to comply with applicable Legal Requirements.

(d) **COMPLIANCE WITH APPLICABLE OCCUPATIONAL SAFETY AND HEALTH STANDARDS IS AN EXPRESS CONDITION OF WORK UNDER THIS AGREEMENT.**

HAR FRAMING SYSTEMS INC
Contractor Company

[Signature]
Subcontractor's Signature/Title

3-29-99

Date

EXHIBIT 3

SUBCONTRACTOR INSURANCE REQUIREMENTS

TYPE OF COVERAGE	AMOUNT OF COVERAGE
Workers' Compensation Employer's Liability	Statutory limits (set by states) Bodily Injury by Accident \$1,000,000 each accident Bodily Injury by Disease \$1,000,000 policy limit Bodily Injury by Disease \$1,000,000 each employee
Commercial General Liability General Aggregate Limit (other than Products/Completed Operations) Products/Completed Operations Aggregate Limit Personal Injury & Advertising Injury Limit Each Occurrence Fire Damage Limit (any one fire) Blasting, Collapse, Underground ¹ Contractual Liability	<u>Occurrence Form</u> \$1,000,000 1,000,000 500,000 500,000 50,000 1,000,000 1,000,000
Auto Liability (owned, non-owned, and hired) Bodily Injury Each Person Bodily Injury Each Accident Property Damage Each Accident	<u>Occurrence Form</u> Combined Single Limit \$1,000,000

¹Excavation Subcontractor only.

H&R FRAMING SYSTEMS INC.
Contractor Company
[Signature] President 3-29-99
Subcontractor's Signature/Title Date

EXHIBIT 4

FOR ALL FHA APPROVED PROJECTS

During the performance of this Agreement, the Subcontractor agrees as follows:

- (1) The Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The Subcontractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Subcontractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Subcontractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The Subcontractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the Subcontractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be cancelled, terminated, or suspended, in whole or in part, and the Subcontractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The Subcontractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor of Subcontractor. The Subcontractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a Subcontractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor of Subcontractor as a result of such direction by the administering agency, the Subcontractor may request the United States to enter into such litigation to protect the interests of the United States.

HAR FRAMING SYSTEMS INC.
Contractor Company
John H. Har President 3-29-99
Subcontractor's Signature/Title Date

DRUG AND ALCOHOL ADDENDUM

FOR THE SAFETY AND WELL BEING OF ALL EMPLOYEES ON M. J. BROCK AND SONS, INC. CONSTRUCTION SITES, BROCK HAS A POLICY THAT NEITHER DRUGS NOR ALCOHOL SHALL BE DISTRIBUTED, POSSESSED OR USED ON BROCK CONSTRUCTION SITES. ANYONE FOUND TO BE IMPAIRED BY OR IN POSSESSION OF DRUGS OR ALCOHOL MUST IMMEDIATELY LEAVE THE BROCK CONSTRUCTION SITE OR PROPERTY. To help insure the safety of all workers, including a worker that may be impaired, Subcontractor agrees to adhere to the following procedures:

- (1) If a Brock supervisor or a Subcontractor's foreman suspects that a worker is impaired by drugs or alcohol, that person is required to investigate and make inquiries of co-workers on the job site to confirm the suspected impairment.
- (2) Any worker who is impaired or reasonably believed to be impaired must be immediately removed from the job site. The Subcontractor must provide transportation for the impaired worker and not allow them to drive themselves from the job and endanger the public.
- (3) After the impaired worker has been removed from the job site, Brock will send a formal written notification to the Subcontractor. The notification will include an explanation of all actions. A copy of the notification will be placed into the Subcontractor's file for future reference.
- (4) A repeated violation by Subcontractor or any of its employees, of this policy will be cause for immediate termination of this Agreement by Brock, in Brock's sole discretion.

AMB FRAMING SYSTEMS INC.
Contractor Company
Robert H. Jones President 3-29-99
Subcontractor's Signature/Title Date



RYLAND HOMES BILLING PROCEDURES

DATE: October, 1998

It is Ryland's objective that all invoices submitted for payment are due and payable **30 days from the date of receipt of a complete and correct invoice package**. A "complete invoice package" consists of your invoice, your original release, original release(s) from each of your suppliers, a copy of a Ryland Homes payment schedule, work order, change order or option order as determined by the type of work you are billing for (see below) and field measures when applicable. Extra work and options must be billed separately from contract work and must include releases. **Payments submitted without the required documentation will be returned and payment will be delayed.** The following guidelines should be followed when preparing invoices for submittal.

CONTRACTED ITEMS:

YOU MUST INCLUDE THE JOB NUMBER AND YOUR CONTRACT NUMBER ON YOUR INVOICE WHEN SUBMITTING FOR A CONTRACT PAYMENT. PLEASE PROVIDE AN AUDIT OF YOUR CONTRACT WITH EACH INVOICE (TOTAL AMOUNT, TOTAL BILLED TO DATE, TOTAL CURRENT BILLING, REVISIONS, ETC.)

Included in your contract package from Ryland you will find a Payment Schedule/Cost Breakdown for your use in contract billings. This form is an addendum to your contract. Please sign, date, and return the original to our office for final execution, and keep a copy for billing purposes. When billing for contract work completed, use a copy of the payment schedule. If you submit your own invoice format, you **MUST still attach a completed payment schedule to your invoice.**

NON-CONTRACT/EXTRAS:

When submitting for payment for Non-Contracted work or Extras you must include a copy of a Ryland issued, Work Order for any and all work. **PLEASE INCLUDE THE JOB NUMBER ON ALL NON-CONTRACT/EXTRA INVOICES** (excluding your contract number).

INSURANCE:

Certificates of insurance for General Liability, Auto and Workers Compensation must be approved and on file in our office before any payments can be released.

LIEN RELEASES:

A Lien Release is a legal document therefore type-o's, correction fluid, etc, render the release invalid. All releases submitted with your invoice package must be originals (wet signature). Your release must be for the EXACT amount of your invoice and dated on or after the work completion date. All releases must indicate project name and lot numbers being released.

All releases must be signed by an owner or an officer of the company-or-an authorized signer may be designated by an officer or owner of the company, in a letter addressed to Ryland.

Note: Tract numbers are not required and if noted incorrectly will cause the invoice to be returned.

SUPPLIERS:

Original releases, from all suppliers for which a Preliminary Notice was executed, must be attached to your invoice package. Your invoice will be returned to you if releases are not attached. We will not accept releases sent separately from the invoice. Suppliers' releases must, (a) be through the exact date of your invoice(s), (b) specify the lot numbers released and (c) in total, cannot exceed the amount of your invoice.

NOTE: Please advise your suppliers that they must specify which contract number and which lots they are filing preliminary lien notices for. We will return prelims to your supplier if this information is not specified.

If you have any questions with regard to these procedures, please do not hesitate to contact the accounts payable staff. Thank you for your cooperation.

Johanna Taranto
Accounts Payable Supervisor

EXHIBIT "C"
CONTRACT INSTRUCTIONS

These instructions are meant to simplify and decrease the amount of time related to the contract process. Contact us with any unclear items, only after reading the enclosed documents very carefully.

1. If you have not submitted the following forms to the San Diego Office in the past twelve months, please complete the following and return with your contract:
 - Right to Assign Contract Disclosure;
 - Ryland Homes Vendor Information Form;
 - The "CAL/OSHA Agreement";
 - A copy of your current State Contractor's License;
 - A copy of your current City Business License.

2. We must have current insurance information. Our records are valid for only one year. Our requirements are listed in Article Thirteenth & Exhibit 4 of the contract. Please be sure you get your insurance certificate into us prior to start dates. If we have not received your insurance, we will not allow you to perform work. If we do not receive Renewal Certificates prior to expiration, payments may be delayed.

An original Certificate of Insurance on "Accord" (sample enclosed) from your Insurance Carrier. Amounts and additional names insured as follows:

AMOUNTS: See Exhibit 3

ADDITIONAL
INSURED: M.J. Brock & Sons, Inc.
Brock Ventures
The Ryland Group

3. After the Contract has been initialed in our office, an executed Contract Package will be forwarded to you with the following documents:

Vendor Carbon of the Contract
Scope of Work
Exhibit "B" - Vendor Contract Confirmation
Contract Package with Instructions

4. The Scope of Work for the specific trade you are contracting with us includes all Standard & Option Pricing. This is a formal document, used as your proposal and reference. The Scope of Work must be completed with your initials at the bottom of each page, signature, date and all pricing, including options. NO EXCEPTIONS. No other paper work can be submitted in lieu of this form.
5. If after reviewing all contract documents, you feel any changes are required, STOP! DO NOT MARK CHANGES on the Contract at this point. Call the phone number above to discuss items with Purchasing Department. If no changes are required to the Contract Documents:
 - a) Sign each page where signature line is provided;
 - b) Initial all other pages;
 - c) Date each page.

6. When Complete, RETURN ALL DOCUMENTS TO:

RYLAND HOMES
15373 Innovation Drive - Ste. 300
SAN DIEGO, CA 92128

All documents are to be completed and returned within seven (7) calendar days from our postmark, or Contract may be voided at the option of M.J. Brock & Sons, Inc. dba Ryland Homes.

7. These documents are required prior to commencing work. When the documents are received, a copy of the fully executed contract and scope of work will be returned to you for your files.
8. All Contracts will be "time based". The face of the Contract will state pricing by plan and will refer to the Scope of Work and Payment Schedule Exhibits for all other pricing. Therefore, you will be required to give Ryland Homes an expiration date for your pricing instead of a phase by phase price.

CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

Upon receipt by the undersigned of a check from _____ in the sum of \$ _____ payable to _____ and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of _____ located at _____ (Owner)

_____. This release covers the (Job Description)

final payment to the undersigned for all labor, services, equipment or material furnished on the job, except for disputed claims for disputed claims for additional work in the amount of \$ _____. Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned.

Dated: _____ (Company Name)

By _____ (Title)



Building Industry Association
of San Diego County

UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

The undersigned has been paid in full for all labor, services, equipment or material furnished to

_____ on the job of _____ (Your Customer) (Owner)

located at _____ and does here by waive (Job Description)

and release any right to a mechanic's lien, stop notice, or any right against a labor and material bond on the job, except for disputed claims for extra work in the amount of \$ _____.

Dated: _____ (Company Name)

By _____ (Title)

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

FEB 16 1999

RECEIVED

EXHIBIT "A" - SCOPE OF WORK TO CONTRACT # _____

I. TRADE SPECIFIC:

A. Contractor shall furnish labor, equipment, lumber, trusses, materials, tools, services, and competent supervision to complete rough framing including exterior siding and trim in accordance with the plans specified in Contract Documents section, specifications listed herein, and all applicable codes.

B. Contract shall include, but is not limited to the following:

Layout, sill plates, wall framing, erecting, bracing, plumb and line, plates, headers, joisting, floor sheathing, nailing, cutting, stacking, loading, roof sheathing, shear panels, blocking, bracing, trusses, fascia, water heater and FAU platforms, backing, freeze blocks, siding, wood trim, edges, soffits, furring, chases, columns, posts, beams, pot shelves, pop-outs, lathing paper, corbels, garage door jambs, and rough hardware.

C. Rough hardware to include, but is not limited to the following:

Nails, screws, power driven shots, pins, washers, teco clips, angle iron, building paper including paper behind siding, glue, washers for anchor bolts, bolts (except anchor bolts), ~~red~~ heads, nuts, hold downs, tie straps, Simpson Catalog items (or Equal), special connectors, joist hangers, felting, caulking, clips, sealants, adhesives, wolmanizing solution, post anchors, and caps not imbedded in concrete.

D. Provide all hardware for wood-to-wood and wood-to-concrete connections as per plans. Substitutes will not be accepted without the engineer's written permission.

E. Framing contractor shall provide supervision at all times during work-in-progress on this job. Contractor shall supply responsible person to walk with inspector during inspections.

F. Contractor will construct per current Uniform Building Code (U.B.C.) as adopted by the City and/or County of jurisdiction.

G. Contractor may be assigned a gate on said project which is reserved for the sole and exclusive use of designated subcontractors, their employees and suppliers. Contractor's use of gates other than those reserved for Contractor, or failure to use the gate assigned to Contractor exclusively, shall constitute a breach of this Contract.

H. Contractor to create lumber list and shall order same to coincide with construction progress requirements. Contractor to notify Owner's San Diego office upon delivery of lumber to project site. Contractor assumes responsibility for all lumber, and lumber products losses including losses due to theft, pilferage, misuse, or damage.

I. ALL LUMBER SHALL BE GRADE MARKED BY A COMMONLY RECOGNIZED GRADING AGENCY:

J. Wall Studs:

1. height wall (104-1/4" stud) or less:

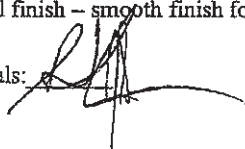
- a) Stud grade or better Douglas Fir, unless otherwise noted on plans as better grade.
- b) Mill finish - smooth finish four (4) sides (S4S).

2. Balloon frame wall studs 9'-0" - 14'-0" height:

- a) 2x 4's: standard & better grade Douglas Fir, unless otherwise noted on plans as better grade.
- b) 2x 6's: #2 or better Douglas Fir, unless otherwise noted on plans as better grade.
- c) Mill finish - smooth finish four (4) sides (S4S).

3. Balloon frame wall studs over 14'-0" height:

- a) or better Douglas Fir, unless otherwise noted on plans as better grade.
- b) Mill finish - smooth finish four (4) sides (S4S).

Contractor's Initials: 

Ryland's Initials: 

RYL001707

K. Plate:

1. x 4's:
 - a) standard & better grade Douglas Fir, unless otherwise noted on plans as better grade
 - b) Utility grade or hemlock are not acceptable
 - c) Mill finish - smooth finish four (4) sides (S4S)
2. x 6's:
 - a) or better Douglas Fir, unless otherwise noted on plans as better grade
 - b) Utility grade or hemlock are not acceptable
 - c) Mill finish - smooth finish four (4) sides (S4S)

L. Beams and Posts:

1. Concealed Beams and Posts

- a) x 4's -
 - (1) standard & better grade Douglas Fir, unless otherwise noted on plans as better grade.
 - (2) Mill finish - smooth finish four (4) sides (S4S)
- b) x 6's to 4 x 12's
 - (1) or better Douglas Fir, unless otherwise noted on plans as better grade.
 - (2) Mill finish - smooth finish four (4) sides (S4S)
- c) x 14's and larger
 - (1) better Douglas Fir, unless otherwise noted on plans as better grade
 - (2) Mill finish - smooth finish four (4) sides (S4S)
- d) x ____'s and larger
 - (1) or better Douglas Fir, unless otherwise noted on plans as better grade
 - (2) Mill finish - smooth finish four (4) sides (S4S)

2. Exposed Beams and Posts:

- a) or better Douglas Fir, unless otherwise noted on plans as better grade.
- b) Mill finish - Resawn.

M. Window and Sliding Glass Door Headers: (see "Concealed Beams and Posts" above)

N. Floor Joists:

1. (See Section: "PROJECT SPECIFIC")

O. Ceiling Joists:

1. or better Douglas Fir, unless otherwise noted on plans as better grade.
2. Mill finish - smooth finish four (4) sides (S4S)

P. Floor Sheathing:

1. N/A

Q. Roof Sheathing:

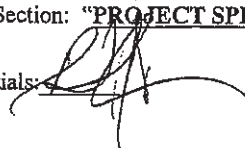
1. Oriented Strand Board (OSB) or as noted on plans or required by the jurisdictional agency.


R. Stairs:

1. (See Section: "PROJECT SPECIFIC")

S. Exterior Roof Overhang:

1. (See Section: "PROJECT SPECIFIC")

Contractor's Initials: 

Ryland's Initials: 

T. Fascia:

1. (See Section: "PROJECT SPECIFIC")

U. Exterior Plant-Ons:

1. Non-exposed plant-on trim (stuccoed-over): where called for on plans will be installed as foam by others.

V. x 4's

1. standard & better grade mixed species, unless otherwise noted on plans as better grade.

W. x 6's and larger

1. Douglas Fir, unless otherwise noted on plans as better grade.

X. Garage Door Jamb:

1. or better Douglas fir, unless otherwise noted on plans as better grade.

Y. ROOF NAILING

- a) 16" GAUGE STAPLES OR NAILED PER PLAN 

Z. Exposed lumber shall be resawn, unless otherwise noted on plans, or otherwise specified in item #8 above. Lumber shall be selected for appearance and shall be free of handling marks. Lumber shall be subject to approval by Owner.

AA. No old lumber shall be permitted.

BB. Check all beams and materials before installation for twists, cracks, and crowns. Reject any items of question or ask for approval from project superintendent.

CC. Contractor shall supply all trusses, truss calculations, truss layouts, and truss hangers. Calculations and plans shall become the property of Owner.

DD. Temporary power cords and boxes shall be provided by Owner, except for prefabrication area as described below.

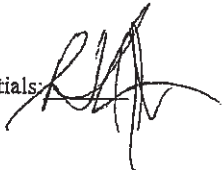
EE. In the event that an area is required by Contractor for prefabrication and/or storage of materials, Owner will provide a location only if one is available. Contractor shall provide own temporary power (power poles, drop cords, etc.), temporary sanitary facilities, security fencing, or any other items necessary at prefabrication area. Contractor shall be responsible for keeping the area clean at all times and removing any debris from the site.


FF. Coordinate this work with other subcontractors including concrete, plumber, electrician, window, heating, cabinet, metal firebox, finish carpentry, and garage door subcontractors to allow for hold-down locations, proper rough openings, backing, cutting, patching, and location of joists/trusses.

GG. Coordinate framing layout with concrete subcontractor to make best effort to determine location of mud sill plate breaks with respect to anchor bolts or hold-downs. Contractor is not, however, responsible for supplying and installing any redheads required where anchor bolts or hold-downs are not within code distance of plate break. Redheads or hold-downs shall be installed by concrete subcontractor.

HH. Verify from window subcontractor that window and sliding glass door ** rough opening dimensions are as follows:
See attached Exhibit "E".

II. Install all backing necessary for cabinets, drywall, finished garages, false beams, lath, vents and exterior boxes, wardrobes, medicine cabinets, handrails, towel bars, toilet paper holders, tub and shower enclosures, return air grill, etc. Walk-through with Owner's Project Superintendent, drywall, finish carpentry, stucco, and cabinet foremen for backing verification.

Contractor's Initials: 

Ryland's Initials: 

JJ. Cut and notch proper size and locations of heating and ventilation ducts. Plate straps at heat registers shall be provided and installed by heating subcontractor. Cut all roof penetrations. All joists and beams to be notched for hangers and hardware where needed to flush out drywall. Contractor shall install plywood sheathing from attic access to attic FAU location (where attic FAU applicable).

KK. Coordinate joists/truss layout with metal firebox subcontractor to determine layout to accommodate firebox flue without any unnecessary offsets. Note special wall and plate layout required where firebox is inset from exterior wall.

LL. Verify from finish carpentry subcontractor that rough opening sizes for solid core and hollow core doors are as follows: ** See attached exhibit "F". All door openings shall be framed to allow installation of 1" X trimmer board inside of opening. Trimmer provided and installed by finish carpentry subcontractor.

MM. GARAGE DOORS

1. (See Section: "PROJECT SPECIFIC")

NN. All rental equipment and scaffolding necessary for framing is included. Provide proper equipment to build the job safely and in a timely manner. Furnish lift for lumber handling and materials unloading as necessary during the course of the job.

OO. Lumber to be moved ahead by Contractor throughout the job.

PP. All cutting to be done on the lot and not in the street. Contractor shall take care on installing lumber without grade stamp (both ends sawn off) to insure that lumber is the correct grade for use.

QQ. Replacement cost of incorrectly cut material shall be the responsibility of the Contractor.

RR. Load, place, and nail all roof sheathing according to specifications, plans and jurisdictional agency requirements.

SS. Plate strap both sides of mudsill at electric/utility plate breaks.

TT. Contractor shall install temporary handrails on all stairways and landings, and maintain all tread, stringers, railings, etc., as needed for construction and to conform to all safety regulations. Contract price includes maintenance of temporary railings through frame inspection. Maintenance of temporary railings from frame inspection, through installation of finished railing shall be paid as an extra to this contract.

UU. FIREPLACES

1. (See Section: "PROJECT SPECIFIC")

VV. Construct all fireplaces for metal firebox with required draft stops.

WW. Contractor to install 60 minute lathing paper beneath all wood plant on details.

XX. Fascia is to be installed with a minimum of breaks and no breaks to appear over windows or doors. No butt joints shall be permitted.

YY. End of plywood roof sheathing shall be nailed to top plate or freeze blocks.

ZZ. Provide and install all exterior trim and plant-ons described above. Spackle all hammer marks at trim material. Smooth splits and cracks. Plant-ons shall be projected (keyed) out 3/4" at stucco and siding material. Exposed plant-on trim at stucco areas shall be installed over lath. Lath by contractor behind plant-ons only with a minimum of twelve inches (12") overlap.

AAA. NAILING

Contractor's Initials:



Ryland's Initials:



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1. Nails should be countersunk 1/8" on all smooth surfaced trim.
2. Nails should be hammered flush on all resawn or rough-sawn trim.
3. All nail "shiners" that do not penetrate lumber beneath, including floor and roof sheathing, shall be removed, not clipped.
4. Contractor shall remove all nails that do not drive flush to floor sheathing.
5. Nails for floor sheathing shall be ring shank or screw nail.
6. No waxed, oiled, or greased nails will be permitted.
7. All nailing shall comply with City or County specifications.
8. All exterior siding, trim, fascia, and nails exposed to weather shall be fastened with galvanized nails.

BBB. Contractor shall keep all excess lumber picked up and stacked/piled in a maximum of two (2) piles per lot so as to keep project looking neat and orderly. Scrap out ahead of rough electrical and prior to framing inspection and stack all useable material at street at least 10 feet from building.

CCC. Furnish all caulking and apply to all voids at freeze blocking or cracks or any other locations at exterior of units where caulking is required for appearance or weather-stripping. ~~Contractor to caulk all exterior wall plates including garage, both sides with mastic.~~ Caulking at plant-on trim shall be flexible. *RL*

DDD. Block all exposed beams. Block all areas at exterior where voids would appear, so as to allow backing for finish material (stucco).

EEE. All floor plywood and stair treads shall be continuously glued and nailed. Glue to be W/PL-400 or approved equal. No more than 15 minutes to elapse between laying plywood over glue and nailing.

FFF. FURRING, DROP CEILINGS, AND SOFFITS

1. (See Section: "PROJECT SPECIFIC")

GGG. Construct platform for water heater and/or FAU as shown on plans.

HHH. Chamfer all exposed beam ends and corbels.

III. Framing shall be squared, aligned and plumbed with no wedges, shims or makeshifts.

JJJ. Install z-bar backing where required.

KKK. Provide and install roof crickets. Install deck crickets to provide 1/4" per foot slope to deck drains.

LLL. Supply and install ridge boards above roof sheathing to accommodate ridge tile per roof tile manufacturer's recommendations.

MMM. Install 2" X 2" starter strip board at eaves of roof. Starter strip required for both flat tile roofs and "S" shape tile roofs. *(ONLY IF requested, in writing, by roofing Contractor)* *RL*

NNN. Contractor shall not be responsible for installing 1 1/2" X 1 1/2" battens on roofs where pitch is greater than 7:12. Battens shall be supplied and installed by roofing subcontractor. All shear paneling to be done in accordance with plans and nailed according to shear wall schedule. Includes transfer block and A-35 type clips.

OOO. All floor joist, ceiling joist and roof rafters subject to deflection shall be set with crown up and shall not be spliced between bearings.

PPP. Interior and exterior angles shall be properly framed to meet said angle exactly.

QQQ. Install garage door jambs, including stucco mold or trim, and as shown on plans.

Contractor's Initials: *RL*

Ryland's Initials: *UR*

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RRR.Balloon frame walls at plan locations.

SSS.Coordinate work with truss supplier to determine gable ends which are trussed or conventionally framed.

TTT.Install double wall shear panel, where required, after plumbing and electrical inspections.

UUU.Installed frame around heating/electrical ducts/chase in garage after ducts/chases are installed.

VVV.Supply pick-up labor to check and correct all framing work including:

WWW.Plumb and square door and window jambs. 

XXX.Correct window, door, etc. rough openings.

YYY.Check for crooked studs and straighten same (by replacement or let-in bracing) prior to start of drywall.

ZZZ.Re-nail floor sheathing to stop squeaks.

AAAA.Replace all "spongy" plywood floor sheathing.

BBBB.Aluminum windows and aluminum sliding glass doors shall be supplied and installed by others. Wood windows shall be supplied and installed by others.

CCCC.

DDDD.Wood door frames and wood doors (including solid core, hollow core, French, and pocket) shall be supplied and installed by others.

EEEE.Contractor shall coordinate with Owner's Project Superintendent to verify proper header height at kitchen window, where applicable, so that finished window sill will align with top of kitchen counter.

FFFF.PAPER FLASHING

1. (See Section: "PROJECT SPECIFIC").

GGGG.In addition to walls shown on plans as 2" X 6" framing, the following walls shown on plans as 2" X 4" shall be framed 2" X 6":

1. None.


HHHH.In addition to items excluded above, the following are specifically excluded:

1. Wood fencing detached from buildings.
2. Hold-downs not on architectural plans (may be added on post-tension).
3. Exterior wood shutter details.


III.All other exterior and wood plant ons and railings are included in this contract.

II. PROJECT SPECIFIC

A. LUMBER

1. Floor Joists:
 - a) NOT APPLICABLE
2. Stairs and Landings:
 - a) NOT APPLICABLE
3. Exterior Roof Overhang:
 - a) ~~2 X~~ ship lap starter board to be used at all overhangs. As per Plans
4. Fascia: 
 - a) All fascia material to be 2x8 re/sawn Spruce or Douglas fir with 1x6 re/sawn shadow board.
 - b) Facia is to be installed with a minimum of breaks and no breaks to over windows or doors. No butt joints shall be permitted.
 - c) Alt. Fascia: Douglas Fir 2 X detail with stucco over

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Ryland's Initials: 

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d) Alt. Foam detail by others.

B. GARAGE DOORS

1. Garage doors shall be metal "roll-up" type.
2. Install garage door jambs, including stucco mold or trim, and as shown on plans.

C. STAIRS

1. Prefab- by others, provide curb wall as per plans.

D. FIREPLACES

1. Construct all pop-outs per fireplace detail sheet.

E. FURRING, DROP CEILINGS, AND SOFFITS

1. Include all furring, drop ceilings, and soffits. Contractor shall obtain approved heating plans from Owner's Purchasing Department. Said plans may show soffits or revisions not indicated on architectural plans. Contract is to include all soffits or drops required by the Heating and Electrical Contractor and the HVAC plans.
2. Include the following dropped ceilings not shown on plans:

Plan type 1: NONE
Plan type 2: NONE
Plan type 3: NONE

F. PAPER FLASHING

Contractor will install 60 minute flashing beneath all exterior wood plant-on details. Paper is to overlap all edges of plant-on detail by twelve inches (12"). Paper beneath the fireplace detail should be left slightly loose at the bottom to allow for lathing contractor to easily tuck lower lathing paper behind it. 60 minute paper flashing is also to be installed behind all eaves which terminate into a wall.

G. Standard Construction Configuration of the homes will be per the standard plan and as follows:

1. Plan type 1: GARAGE DOOR ON LEFT (Reverse=Garage on Right)
2. Plan type 2: GARAGE DOOR ON LEFT (Reverse=Garage on Right)
3. Plan type 3: GARAGE DOOR ON LEFT (Reverse=Garage on Right)

H. All bedroom closet doors are to be framed 8' in height except in rooms with 8' ceilings where standard 80" height doors will be installed.

I. Install backing (blocking) at shower for 32" long, horizontal, grab bar.


III. STANDARD PROJECT PRICING:

Framing First Floor Walls Up (5128 - 35%):

ELEVATIONS:

	A	B	C
Plan 1	Price: \$	_____	_____
Plan 2	Price: \$	_____	_____
Plan 3	Price: \$	_____	_____

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Framing Roof Frame 1 Story; 2nd Floor Walls (5131 - 35%):

Plan 1 Price: \$ _____

Plan 2 Price: \$ _____

Plan 3 Price: \$ _____

Framing Roof Sheathing Completion (5134 - 30%):

Plan 1 Price: \$ _____

Plan 2 Price: \$ _____

Plan 3 Price: \$ _____

LABOR TOTAL:

Plan 1 Price: \$ _____

Plan 2 Price: \$ _____

Plan 3 Price: \$ _____

Lumber (to include TJI) (5146 - 100%):

Plan 1 Price: \$ _____

Plan 2 Price: \$ _____

Plan 3 Price: \$ _____

Trusses (5170 - 100%):

Plan 1 Price: \$ _____

Plan 2 Price: \$ _____

Plan 3 Price: \$ _____

TOTAL PRICE PER PLAN:

ELEVATIONS:

A

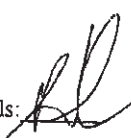

B

C

Plan 1 Price: \$ _____

Plan 2 Price: \$ _____

Plan 3 Price: \$ _____

IV. OPTION SPECIFIC (5128 - 100%):Contractor's Initials: Ryland's Initials: 

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At the direction of the Owner, Contractor will construct the following options as described on the plans and below. Please provide all option prices as either an increase or a decrease to the standard contract amount.

PATIO COVER

Plan 1 Price: \$ _____

Plan 2 Price: \$ _____

Plan 3 Price: \$ _____

DOUBLE DOORS FOR DEN (PASSAGE DOORS)

Plan 1 Price: \$ _____

Plan 2 Price: \$ _____

Plan 3 Price: \$ _____

TRANSOM WINDOW (DEN AREA)

Plan 1 Price: \$ _____

Plan 2 Price: \$ _____

Plan 3 Price: \$ _____

PLAN 1

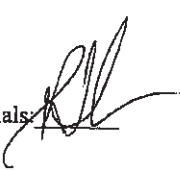
Plan 1 shall be constructed with a Den. As an option by Owner, Contractor will convert the **DEN TO A BEDROOM #3**.


At Production Price: \$ _____ Deduct After Production Price: \$ _____

PLAN 2

Laundry Room Option

At Production Price: \$ _____ After Production Price: \$ _____

Contractor's Initials: 

Ryland's Initials: 

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PLAN 3

Plan 3 shall be constructed with a Bedroom 2. As an option by Owner, Contractor will convert the **BEDROOM 2 TO A HOBBY ROOM.**

At Production Price: \$ _____ After Production Price: \$ _____

Plan 3 shall be constructed with a Study. As an option by Owner, Contractor will convert the **STUDY TO A BEDROOM 3.**

At Production Price: \$ _____ After Production Price: \$ _____

Plan 3 shall be constructed with a Study. As an option by Owner, Contractor will convert the **STUDY TO A DEN.**


At Production Price: \$ _____ After Production Price: \$ _____

AS "CONTRACTOR" OF THE ABOVE DESCRIBED WORK, I HEREBY VERIFY I HAVE READ AND AGREE TO ALL ITEMS LISTED WITHIN THIS "SCOPE OF WORK". ALL PRICES QUOTED FOR THIS WORK INCLUDE ALL ITEMS CONTAINED HEREIN. Unit and total pricing as shown herein is understood and accepted to be the total cost for operations, including labor and materials price fluctuations through completion of the project. Any request for change in pricing must be submitted in writing for approval 45 days prior to change.


CONTRACTOR SIGNATURE

Robert R. Thomas
CONTRACTOR NAME (PRINT)/TITLE

HJR Framing
CONTRACTOR COMPANY



WIREADER ROBINSON
PURCHASING MANAGER
M.J. BROCK & SONS, INC.
dba RYLAND HOMES San Diego

Date: 3-29-99

Date: 4/27/99

(\\purchase\\states\\scopes\\rghcarp.doc6/5/97)

Contractor's Initials: 

Ryland's Initials: 

RYL001716

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

**BUILDING MATERIALS HOLDINGS
CORPORATION, et al.,**

Debtors.

Chapter 11

**Case No. 09-12074 (KJC)
Jointly Administered**

Objection Deadline: December 8, 2009 @ 4:00 p.m.

Hearing Date: December 15, 2009 @ 1:00 p.m.

CERTIFICATE OF SERVICE

I, BRUCE W. McCULLOUGH, hereby certify that on this date a copy of the foregoing Motion of Ryland Homes of California, Inc., *et al.*, for Relief from Automatic Stay to be served, via first class mail, on the following:

Sean Matthew Beach, Esquire
Donald Bowman, Esquire
Young, Conaway, Stargatt & Taylor
The Brandywine Building, 17th Floor
1000 West Street
P.O. Box 391
Wilmington, DE 19899
Counsel for Debtor, Building Materials
Holding Corporation

Bradford J. Sandler, Esquire
Benesch Friedlander Coplan & Aronoff
222 Delaware Avenue, Suite 801
Wilmington, DE 19801
Counsel for Official Committee of
Unsecured Creditors

Joseph J. McMahon, Esquire
United States Trustee
844 King Street, Room 2207
Lockbox #35
Wilmington, DE 19899-0035

BODELL, BOVÉ, GRACE & VAN HORN, P.C.

/s/ Bruce W. McCullough
Bruce W. McCullough (Del. ID 3112)

Date: November 30, 2009