

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

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

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

Ryland Homes of California, Inc. (“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 August 13, 2008, David and Holly Zierden and various homeowners (“Homeowners”) commenced litigation against Ryland relating to a certain housing development located in the City of Ramona, 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 Zierden, 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. 37-2008-00089822-CU-CD-CTL(the “Action”). (A true and correct copy of the Complaint is attached as Exhibit “A” hereto).

4. On or about March 3, 2009, Ryland filed a Cross-Complaint for Express Indemnity, Implied Indemnity, Total Indemnity, Breach of Express and Implied Warranties, Breach of Contract, Negligence, Contribution, Declaratory Relief: Duty to Defend, Declaratory Relief: Duty to Indemnify and Declaratory Relief: Contractual Duties (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 2 of the Homeowners’ claims implicate HNR. (Richard Daniels Decl., ¶ 6). Plaintiffs’ potential recovery allocated to HNR is estimated to be in the range of \$4,000.00 to \$6,000.00.

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, with regard to the project which is the subject of the Action, HNR and Ryland executed a Subcontractor Agreement whereby HNR agreed to provide materials and labor at the Project. (A true and correct copy of an exemplar 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).

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)  
1225 N. King Street, Suite 1100  
P.O. Box 397  
Wilmington, DE 19899-0397  
Phone: 302-655-6749  
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**LORBER, GREENFIELD & POLITO, LLP**

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Poway, CA 92064

Telephone: (858) 513-1020

Facsimile: (858) 513-1002

*Attorneys for Ryland Homes of California, Inc.*

Dated: November 30, 2009

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

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

**NOTICE OF MOTION OF RYLAND FOR  
RELIEF FROM THE AUTOMATIC STAY**

**PLEASE TAKE NOTICE** that on November 30, 2009, Ryland Homes of California, Inc. (“Ryland”) filed the Motion of Ryland Homes of California, Inc. 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.

**PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON DECEMBER 15, 2009 AT 1:00 P.M. (EDT) BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE 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.**

/s/ Bruce W. McCullough  
Bruce W. McCullough (Del. ID 3112)  
1225 N. King Street, Suite 1100  
P.O. Box 397  
Wilmington, DE 19899-0397  
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*Attorneys for Ryland Homes of California, Inc.*

Dated: November 30, 2009

**IN THE UNITED STATES BANKRUPTCY COURT  
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	)	
<b>Debtors.</b>	)	<b>Objection Deadline: December 8, 2009 @ 4:00 p.m.</b>
_____	)	<b>Hearing Date: December 15, 2009 @1:00 p.m.</b>

**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 August 13, 2008, David and Holly Zierden and various homeowners ("Homeowners") commenced litigation against Ryland relating to a certain housing development

located in the City of Ramona, 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 Zierden, 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. 37-2008-00089822-CU-CD-CTL (the "Action"). (A true and correct copy of the Complaint is attached as Exhibit "A" hereto).

5. On or about March 3, 2009, Ryland filed a Cross-Complaint for Express Indemnity, Implied Indemnity, Total Indemnity, Breach of Express and Implied Warranties, Breach of Contract, Negligence, Contribution, Declaratory Relief: Duty to Defend, Declaratory Relief: Duty to Indemnify and Declaratory Relief: Contractual Duties (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 two of the Homeowners' claims implicate HNR. (Richard Daniels Decl., ¶ 6). Plaintiffs' potential recovery allocated to HNR is estimated to be in the range of \$4,000.00 to \$6,000.00.

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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 have been tendered under those liability insurance policies.

9. Ryland is informed and believes and thereon states with regard to the project which is the subject of the Action, HNR and Ryland executed a Subcontractor Agreement whereby HNR agreed to provide materials and labor at the Project. (A true and correct copy of an exemplar 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.

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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.

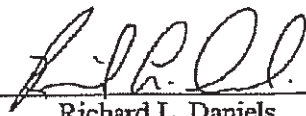
15. No issues of federal or bankruptcy laws are involved in the pending lawsuit against HNR, only questions of California state law.

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 18<sup>th</sup> day of November, 2009, at Orange, California.

  
\_\_\_\_\_  
Richard L. Daniels  
Declarant

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

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

**ORDER APPROVING MOTION OF RYLAND HOMES OF CALIFORNIA, INC.  
FOR RELIEF FROM THE AUTOMATIC STAY**

Upon consideration of the Motion of Ryland Homes of California, Inc. (“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;

**IT IS HEREBY ORDERED**, that

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 Israel E. Garcia, Esq., State Bar No. 216183

7 Attorneys for Plaintiffs,

8 DAVID & HOLLY ZIERDEN, ET AL.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SAN DIEGO

11 DAVID & HOLLY ZIERDEN; RANDY &  
12 SHERYL BETTS; JAMES BLACK; GAIL  
13 BOONE; AMANDA CAMPOS; DANIEL &  
14 TERRA CHIARAMONTE; JAMES &  
15 BRENDA DEPPERSCHMIDT; STEVE &  
16 MICHELE DUFFY; STEVE & KAREN  
17 FOSTER; MARC & MAUREEN GAGNE; JEFF  
18 & VALETTA GUTHRIE; DARRYL & DENISE  
19 HAZLITT; MICHAEL HEALEY; ALDA L.  
20 HENSON; MICHAEL HERR; CARL W. &  
21 DIANE M. JONES; RUTH LOPEZ; JAMES &  
22 ALICE MCCREA; ROGER & HEIDI-ROSE  
23 MCFADDEN; JEFF & KARISS MILLER; BILL  
24 & LINDA MORLEY; JAMES & CHRISTINE  
25 PHILLIPS; THOMAS E. & LORI SHEPPARD;  
26 LARRY & BEVERLY SOUTHERLAND;  
27 TIMOTHY & KATHRYN SPACKE; MICHAEL  
28 & JANINE THOMAS; JOHN & MADELINE  
VOLPER; CHARLES & DARBY VORCE;  
ROBERT B. & LORRAINE G. WHITE;  
MONTE WHITE;

Plaintiffs,

vs.

RYLAND HOMES OF CALIFORNIA, INC.;  
AND DOES 1- 1000, INCLUSIVE,

Defendants.

) CASE NO.:

) COMPLAINT FOR DAMAGES:

- ) 1. STRICT PRODUCTS LIABILITY  
) 2. STRICT PRODUCTS LIABILITY  
) (COMPONENT PRODUCTS)  
) 3. BREACH OF IMPLIED WARRANTY  
) (MERCHANTABILITY)  
) 4. BREACH OF CONTRACT  
) 5. NEGLIGENCE  
) 6. BREACH OF EXPRESS WARRANTY

Plaintiffs allege:

1. Plaintiffs are individuals residing in the County of San Diego, 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 San Diego, State of California, described as follows:

#	HOMEOWNER(S)	PROPERTY	TRACT	LOT
1	Randy & Sheryl Betts	16754 Open View Rd , Ramona, Ca 92065	5016-1	11
2	James Black	23607 Isla Del Rey , Ramona, Ca 92065	5016-1	33
3	Gail Boone	23606 Isla Del Rey , Ramona, Ca 92065	5016-1	27
4	Amanda Campos	16807 Open View Rd , Ramona, Ca 92065	5016-1	8
5	Daniel & Terra Chiaramonte	16524 Open View Rd , Ramona, Ca 92065	5016-1	64
6	James & Brenda Depperschmidt	17061 Harvest Point Way, Ramona, Ca 92065	5016-2	149
7	Steve & Michele Duffy	23559 Green Glen Rd , Ramona, Ca 92065	5016-1	88
8	Steve & Karen Foster	16548 Open View Rd , Ramona, Ca 92065	5016-1	61
9	Marc & Maureen Gagne	23546 Daylight Pl , Ramona, Ca 92065	5016-1	78
10	Jeff & Valetta Guthrie	16815 Open View Rd , Ramona, Ca 92065	5016-1	7
11	Darryl & Denise Hazlitt	23304 Nuevo Mundo Rd , Ramona, Ca 92065	5016-2	226
12	Michael Healey	16730 Open View Rd , Ramona, Ca 92065	5016-1	45
13	Alda L. Henson	16359 Open View Rd , Ramona, Ca 92065	5016-2	172
14	Michael Herr	23322 Nuevo Mundo Rd , Ramona, Ca 92065	5016-2	227
15	Carl W. & Diane M. Jones	23610 Galeria Cir , Ramona, Ca 92065	5016-1	1
16	Ruth Lopez	17325 Rising Dale Way , Ramona, Ca 92065	5016-2	214
17	James & Alice McCrea	23509 Green Glen Rd , Ramona, Ca 92065	5016-1	84
18	Roger & Heidi-Rose Mcfadden	17205 Prairie Mile Rd , Ramona, Ca 92065	5016-2	240
19	Jeff & Kariss Miller	23592 Green Glen Rd , Ramona, Ca 92065	5016-1	66
20	Bill & Linda Morley	23413 Mountain Peak Rd, Ramona, Ca 92065	5016-2	119
21	James & Christine Phillips	16553 Open View Rd , Ramona, Ca 92065	5016-1	47
22	Thomas E. & Lori Sheppard	16742 Open View Rd , Ramona, Ca 92065	5016-1	46
23	Larry & Beverly Southerland	23422 Juniper Field Trl, Ramona, Ca 92065	5016-2	104
24	Timothy & Kathryn Spacke	16621 Open View Rd , Ramona, Ca 92065	5016-1	37
25	Michael & Janine Thomas	23577 Daylight Pl , Ramona, Ca 92065	5016-1	77
26	John & Madeline Volper	16479 Open View Rd , Ramona, Ca 92065	5016-2	116
27	Charles & Darby Vorce	23526 Forest Hill Dr , Ramona, Ca 92065	5016-1	53
28	Robert B. & Lorraine G. White	16378 Open View Rd , Ramona, Ca 92065	5016-2	162
29	Monte White	23566 Encina Corte , Ramona, Ca 92065	5016-1	16
30	David & Holly Zierden	23662 Calle Ovieda , Ramona, Ca 92065	5016-2	200

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1           3.     Plaintiffs are informed and believe and based thereon allege that at all times herein  
2 mentioned and material hereto that **RYLAND HOMES OF CALIFORNIA, INC.**, 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           4.     The names and capacities, whether individual, corporate, associate or otherwise of  
7 certain developers, builders, general contractors, subcontractors and/or their alter egos sued herein  
8 as DOES 1 through 100 inclusive, are presently unknown, and Plaintiffs will amend the Complaint  
9 to insert the same when ascertained. Plaintiffs are informed and believe and based thereon allege  
10 that each of these Defendants was a resident of said County and State and/or have principal offices  
11 or were doing business in said County and State and were and are responsible in some way for the  
12 happenings and damages alleged in this complaint. Said Defendants, along with the Defendants  
13 named above, will hereinafter be referred to as the "**DEVELOPER DEFENDANTS.**"  
14

15           5.     In order to build and construct said PROPERTY and project(s) the DEVELOPER  
16 DEFENDANTS hired, retained, employed, or contracted for the services of certain persons or  
17 entities to plan, design, and prepare drawings and specifications for the building of the PROPERTY  
18 and project. The identities of said persons or entities, whether individual, corporate or otherwise,  
19 sued herein as Does 101 through 200, are presently unknown to Plaintiffs who therefore sue such  
20 persons by their fictitious names. Plaintiffs are informed and believe and thereon allege that said  
21 persons or entities are wholly or in some part responsible for the occurrences set forth in the  
22 complaint. These Defendants will hereinafter be referred to as the "**DESIGN DEFENDANTS.**"  
23

24           6.     In order to build and construct said project the DEVELOPER DEFENDANTS hired,  
25 retained, employed, or contracted with persons or entities to provide for labor and materials in the  
26 construction of the PROPERTY and project(s). The identities of said persons or entities, whether  
27  
28

1 individual, corporate, or otherwise, sued herein as Does 201 through 300 are presently unknown to  
2 Plaintiffs who therefore sue such persons by their fictitious names. Plaintiffs are informed and  
3 believe and thereon allege that said persons or entities are wholly or in some part responsible for the  
4 occurrences set forth in the Complaint in accordance with that party's individual scope of work that  
5 is limited to work performed and criticized by Plaintiffs' experts. These Defendants will herein  
6 after be referred to as the "**CONTRACTOR DEFENDANTS.**"

7  
8 7. Plaintiffs are informed and believe and based thereon allege that there were other  
9 persons and entities involved in the planning, design, construction, maintenance, repairs, and sale of  
10 the PROPERTY and project(s). The identities of said persons or entities, whether individual,  
11 corporate, or otherwise, sued herein as Does 301-1000 are presently unknown to Plaintiffs who  
12 therefore sue such persons by their fictitious names. Plaintiffs are informed and believe and thereon  
13 allege that said persons or entities are wholly or in some part responsible for the occurrences set  
14 forth in the complaint. Plaintiffs are informed and believe and based thereon allege that at all times  
15 herein mentioned Defendants and each of them were the agents, servants, employees, assistants and  
16 consultants of their co-Defendants and were as such acting within the course and scope of their  
17 agency and authority of such agency and employment.  
18

19 **FIRST CAUSE OF ACTION**

20 **STRICT PRODUCTS LIABILITY**

21 **(DEVELOPER DEFENDANTS)**

22  
23 8. Plaintiffs repeat and reallege Paragraphs 1 through 7, inclusive, and incorporate the  
24 same as if set forth herein at length.

25  
26 9. DEVELOPER DEFENDANTS and each of them, at all times herein mentioned were  
27 in the business of developing and mass producing and/or distributing homes in and, within the  
28 County where the PROPERTIES are located, and selling them to members of the public at large.

1           10.    Within the last ten years, the DEVELOPER DEFENDANTS and each of them,  
2 developed and mass produced the PROPERTY and/or otherwise participated in the stream of  
3 commerce for sale of the PROPERTY and in the projects where the PROPERTY is located.

4           11.    At all times herein mentioned and material hereto, DEVELOPER DEFENDANTS  
5 knew and intended that the PROPERTY would be purchased by members of the public at large, and  
6 used by them without further inspection for defects.  
7

8           12.    Plaintiffs purchased the PROPERTY from said DEVELOPER DEFENDANTS and  
9 moved into it with their families.  
10

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

17           Faulty soil compaction, faulty existing underlying soils and expansive soils resulting  
18 in soil movement and damage to the structures, concrete slabs, flatwork and  
19 foundation defects; plumbing defects; electrical defects; drainage defects; roof  
20 defects; HVAC defects; waterproofing defects; window and door defects;  
21 landscaping and irrigation defects; framing, siding and structural defects; ceramic  
22 tile, vinyl flooring and countertop defects; drywall defects; fence and retaining wall  
23 defects; cabinet and wood trim defects; fireplace and chimney defects; tub and  
24 shower door defects; painting defects; sheet metal defects; and stucco defects  
25  
26

27           ///

28           ///

1       14.    The above-specified claims involve predominantly common questions of law or fact,  
2   are typical of claims attributable to other residences in tracts 5016-1, 5016-2 ("the project"), and  
3   adequately represent all other homeowners in the project(s) in which the property is located.

4       15.    The Plaintiffs gave and/or attempted to give DEVELOPER DEFENDANTS due and  
5   timely notice of the defective quality of the above mentioned items.

6       16.    The defects alleged herein above are defects that were not apparent by reasonable  
7   inspection of the PROPERTY at the time of the purchase. The defects thereafter manifested.

8       17.    Because of the defective conditions of the PROPERTY as herein above alleged,  
9   Plaintiffs have been specifically damaged in the following ways, as well as others which will be  
10   inserted with leave of court when ascertained:

11       A)    Plaintiffs will be forced to incur expenses for the restoration and repairs of the  
12   PROPERTY to cure the damage, defects and/or deficiencies. The exact amount of the  
13   damages is presently unknown, except that the costs will exceed the sum of \$100,000 per  
14   home.  
15       B)    Plaintiffs have been damaged through the diminution in value of the PROPERTY.

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

21       18.    DEVELOPER DEFENDANTS, and each of them, as developers, mass producers,  
22   builders and sellers and/or otherwise within the stream of commerce are strictly liable and  
23   responsible to Plaintiffs for all damage suffered as a result of the above described damage, defects  
24   and deficiencies in the PROPERTY.  
25  
26  
27  
28

**SECOND CAUSE OF ACTION**

**STRICT PRODUCTS LIABILITY**

**(CONTRACTOR COMPONENT PRODUCT MANUFACTURER DEFENDANTS ONLY)**

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

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

21. Within the last ten years, the COMPONENT PRODUCT MANUFACTURER DEFENDANTS and each of them, designed, developed, assembled, manufactured, marketed, mass produced, distributed, sold and resold the SUBJECT COMPONENT PRODUCTS and/or otherwise participated in the stream of commerce for sale of the SUBJECT COMPONENT PRODUCTS that were installed into the PROPERTY.

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

23. The SUBJECT COMPONENT PRODUCTS are finished consumer products.

24. COMPONENT PRODUCT MANUFACTURER DEFENDANTS sold the SUBJECT COMPONENT PRODUCTS.

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

windows, exterior/interior doors, sliding glass doors, garage doors/automatic garage door opening systems, shower/tub enclosures, shower doors, bathtubs,



1 sinks, toilets, light fixtures, power distribution panels, HVAC units, compressors,  
2 security systems, irrigation systems

3 26. PLAINTIFFS own the PROPERTIES and by doing so, purchased the SUBJECT  
4 COMPONENT PRODUCTS. At all times herein mentioned and material hereto, COMPONENT  
5 PRODUCT MANUFACTURER DEFENDANTS knew and intended that the PROPERTIES and  
6 the SUBJECT COMPONENT PRODUCTS would be purchased by the PLAINTIFFS  
7

8 27. PLAINTIFFS are lay people and lack the knowledge and understanding to inspect the  
9 SUBJECT COMPONENT PRODUCTS and to understand whether said component products have  
10 any defects. PLAINTIFFS lacked the ability to test the subject component products, to know  
11 whether a defect did exist at the time they purchased their PROPERTIES and /or the SUBJECT  
12 COMPONENT PRODUCTS.  
13

14 28. At the time each of the SUBJECT COMPONENT PRODUCTS left COMPONENT  
15 PRODUCT MANUFACTURER DEFENDANTS' custody, control or possession, each SUBJECT  
16 COMPONENT PRODUCTS was defective and unfit for its intended purposes because the  
17 SUBJECT COMPONENT PRODUCTS contained defects in their design, parts, materials used to  
18 manufacture them, and how they were manufactured, which have resulted in foreseeable damage to  
19 the PROPERTIES and the parts of the SUBJECT COMPONENT PRODUCTS that were the defects  
20 and parts that were not the defects.  
21

22 29. The defects in the SUBJECT COMPONENT PRODUCTS design, parts and  
23 materials used to manufacture them, and how they were manufactured, existed at the time the  
24 SUBJECT COMPONENT PRODUCTS left the possession and control of COMPONENT  
25 PRODUCT MANUFACTURER DEFENDANTS and were and are common to each of the  
26 respective SUBJECT COMPONENT PRODUCTS.  
27

28 ///



1           30. The defects in the SUBJECT COMPONENT PRODUCTS have caused water  
2 intrusion and penetration into the wall systems, cavities and the interior of PLAINTIFFS'  
3 PROPERTIES and are, and have caused the following resultant PROPERTY damage, including but  
4 not limited to:

- 5           A) Damage to interior drywall of PLAINTIFFS' PROPERTY;  
6           B) Damage to perimeter wall systems of PLAINTIFFS' PROPERTY; and  
7           C) Damage to the wall systems, cavities and the interior of PLAINTIFFS' PROPERTY.

8           This intrusion, penetration, and damage occurred in each named PLAINTIFFS'  
9  
10 PROPERTY.

11           31. PLAINTIFFS have also suffered the following damages in addition to all other  
12 damage alleged in this Complaint as follows:

- 13           A) PLAINTIFFS will be forced to incur expenses for the restoration and repairs of the  
14 PROPERTY to cure the damage, defects and/or deficiencies caused by the SUBJECT  
15 COMPONENT PRODUCTS. PLAINTIFFS are unaware of the precise amount of  
16 such damage but will establish such amount at time of trial; and  
17  
18           B) PLAINTIFFS have been damaged through the cost to repair or replace the SUBJECT  
19 COMPONENT PRODUCTS. PLAINTIFFS are unaware of the precise amount of  
20 such damage but will establish such amount at time of trial; and  
21  
22           C) Plaintiffs have been damaged through the diminution in value of the PROPERTY  
23 caused by the SUBJECT COMPONENT PRODUCTS. Plaintiffs are unaware of the  
24 precise amount of such damage but will establish such amount at time of trial; and  
25  
26           D) PLAINTIFFS have been forced to retain expert consultants to analyze and determine  
27 the method of repairing the aforementioned defective SUBJECT COMPONENT  
28

1 PRODUCTS. PLAINTIFFS are unaware of the precise amount of such damage but  
2 will establish such amount at time of trial.

3 32. The defects alleged hereinabove are defects that were not apparent to PLAINTIFFS  
4 by reasonable inspection of the PROPERTY and the SUBJECT COMPONENT PRODUCTS before  
5 or at the time PLAINTIFFS individually purchased the SUBJECT COMPONENT PRODUCTS or  
6 purchased their PROPERTY.  
7

8 33. Because of the defective design and conditions of the SUBJECT COMPONENT  
9 PRODUCTS, as herein alleged, PLAINTIFFS, and each of them, have the defective SUBJECT  
10 COMPONENT PRODUCTS in their PROPERTY that need to be removed and replaced with non-  
11 defective component products and have damage in and to their PROPERTY caused by the  
12 SUBJECT COMPONENT PRODUCTS.  
13

14 34. COMPONENT PRODUCT MANUFACTURER DEFENDANTS, and each of them,  
15 as manufacturers, mass producers, distributors and sellers of the SUBJECT COMPONENT  
16 PRODUCTS, and/or otherwise having placed their SUBJECT COMPONENT PRODUCTS within  
17 the stream of commerce, are strictly liable and responsible to PLAINTIFFS for all damage(s)  
18 suffered as a result of the above described defects and deficiencies in the SUBJECT COMPONENT  
19 PRODUCTS.  
20

21 **THIRD CAUSE OF ACTION**

22 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

23 (DEVELOPER DEFENDANTS)

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

27 ///

28 ///

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

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

38. The PROPERTY was not properly constructed, and not of merchantable quality in that it was defective as previously alleged herein above in paragraph 13.

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

40. The defects described herein above caused by the breaches of warranty by DEVELOPER DEFENDANTS, and each of them, were defects not apparent by reasonable inspection of the PROPERTY at the time of purchase. The defects and damages were latent and were not reasonably apparent to original purchaser Plaintiffs until on or about the time of notification to the DEVELOPER DEFENDANTS.

41. Because of the foregoing breaches of implied warranties by DEVELOPER DEFENDANTS, and each of them, original purchaser Plaintiffs have been specifically damaged as herein above alleged in paragraph 17.

#### FOURTH CAUSE OF ACTION

### BREACH OF CONTRACT

**(DEVELOPER DEFENDANTS)**

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

///

1       43. On various dates, original purchaser Plaintiffs entered into written sales contracts  
2 with DEVELOPER DEFENDANTS pursuant to which DEVELOPER DEFENDANTS, in exchange  
3 for payment of certain sums, agreed to provide original purchaser Plaintiffs with quality residences  
4 which were constructed in a workmanlike manner.

5       44. Original purchaser Plaintiffs have performed all conditions, covenants, and promises  
6 required by the sales contracts in accordance with the terms and conditions of the contract.

7       45. Defendants have breached the sales contracts as set forth herein by failing to provide  
8 residences constructed in a workmanlike manner as previously alleged herein above in paragraph  
9 13, as a result of which original purchaser Plaintiffs have been specifically damaged as herein above  
10 alleged in Paragraph 17.  
11

12                   **FIFTH CAUSE OF ACTION**

13                   **NEGLIGENCE**

14                   **(ALL DEFENDANTS)**

15  
16       46. Plaintiffs incorporate by reference all previous paragraphs of this complaint as  
17 though set forth in full herein.  
18

19       47. The aforementioned Defendants so carelessly and negligently planned, constructed,  
20 modified, inspected, and/or performed work and services at the PROPERTY so as to proximately  
21 cause defects and damages to the systems, buildings, and improvements as herein above alleged in  
22 paragraph 13. With regard to those Defendants identified PREVIOUSLY herein as the  
23 "CONTRACTOR DEFENDANTS", Plaintiffs' allegations are limited to that Contractor's scope  
24 of work that is implicated by the opinions of Plaintiffs' experts.  
25

26       ///

27  
28       ///

1 48. Because of the carelessness and negligence of each of the Defendants, and as a  
2 proximate result thereof, Plaintiffs have been damaged as previously alleged herein above in  
3 paragraph 17.

4 49. The defects and damages described herein above in paragraph 13 caused by the  
5 negligently and carelessly performed work of the Defendants, and each of them, were defects not  
6 apparent by reasonable inspection of the PROPERTY at the time of purchase.  
7

8 **SIXTH CAUSE OF ACTION**

9 **BREACH OF EXPRESS WARRANTY**

10 **(DEVELOPER DEFENDANTS)**

11 50. Plaintiffs incorporate by reference all previous paragraphs of this complaint as  
12 though set forth in full herein.  
13

14 51. Developer defendants expressly warranted through the **Real Estate Purchase**  
15 **Contracts**, and other documents that the subject properties were designed, constructed, developed,  
16 inspected, and manufactured, in accordance with all the applicable Federal, State and municipal law,  
17 ordinances, rules and regulations and that the subject properties were structurally sound, free of all  
18 material defects and designed and constructed for the intended purposes. Defendants further  
19 warranted that the homes and soils constructed thereon were in good working order and condition  
20 with no deficiencies therein.  
21

22 52. Original purchaser Plaintiffs relied on defendants express representations.

23 53. Defendants breached said warranties in that the properties were not properly  
24 designed and constructed and were defective as set forth in Paragraph 13.  
25

26 54. Original Purchaser Plaintiffs discovered the defective quality of the above listed  
27 items involving the dwellings and pads. Original purchaser Plaintiffs thereafter gave DEVELOPER  
28 DEFENDANTS that they knew of, and each of them, due and timely notice of the defective quality

1 of the above mentioned items. DEVELOPER DEFENDANTS failed and/or refused to rectify said  
2 items.

3 55. The damages described hereinabove caused by the breaches of warranty by  
4 DEVELOPER DEFENDANTS, and each of them, were not apparent by reasonable inspection of  
5 the property and project at the time of purchase. The defects and damages were latent and were not  
6 reasonably apparent to original purchaser plaintiffs until on or about the time of notification to the  
7 DEVELOPER DEFENDANTS.  
8

9 56. As a result of the foregoing acts or omissions by defendants, plaintiffs have been  
10 damaged as set forth in Paragraph 17.

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

12 FIRST, SECOND, THIRD, FOURTH, FIFTH,  
13 AND SIXTH, CAUSES OF ACTION:

- 14 1. For costs of restoration and repairs to the PROPERTY in excess of  
15 \$100,000 per home;  
16 2. For costs of investigation;  
17 3. For diminution of value of the PROPERTY according to proof at time of  
18 trial;  
19 4. For expert fees and costs of suit;  
20 5. For loss of use of the property and relocation expenses;  
21 6. For such other and further relief as the Court deems just and proper.  
22

23 DATED: August 13, 2008

MILSTEIN, ADELMAN, & KREGER LLP

24  
25  
26   
27 By: Israel E. Garcia, Esq.  
28 Attorneys for Plaintiffs,  
DAVID & HOLLY ZIERDEN, ET AL.

# **EXHIBIT B**

***(RYLAND'S CROSS- COMPLAINT)***

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Attorneys for Defendant/Cross-Complainant  
RYLAND HOMES OF CALIFORNIA, INC.

3/3/09

SUPERIOR COURT OF THE STA

COUNTY OF SAN DIEGO - CENTRAL DIVISION

DAVID & HOLLY ZIERDEN;  
et al.,

Plaintiffs,

v.

RYLAND HOMES OF CALIFORNIA,  
INC.; and  
DOES 1 - 1000, inclusive,

Defendants.

RYLAND HOMES OF CALIFORNIA,  
INC.,

Cross-Complainant,

v.

ALLIANCE MECHANICAL HEATING  
AND AIR CONDITIONING, INC.;  
AZTEC SHEET METAL, INC.;  
CAL CUSTOM MANUFACTURING,  
LLC;  
CARTER TRIM & SUPPLY, INC.;  
CHARMAC, INC.;  
CHILDRESS CONCRETE, INC.;  
E.L. WEBSTER, INC., dba THE BATH  
CO. SHOWER DOOR;  
EXECUTIVE LANDSCAPE, INC.;  
FOOTHILL DRYWALL, INC.;  
GONZALES PAINTING  
CORPORATION;  
GREAT WESTERN DRYWALL, INC.;  
H.N.R. FRAMING SYSTEMS, INC., aka

CASE NO. 37-2008-00089822-CU-CD-CTL

Judge : Ronald L. Styn  
Dept. : C-62

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

1. EXPRESS INDEMNITY;
2. IMPLIED INDEMNITY;
3. TOTAL INDEMNITY;
4. EQUITABLE INDEMNITY;
5. BREACH OF EXPRESS AND  
IMPLIED WARRANTIES;
6. BREACH OF CONTRACT;
7. NEGLIGENCE;
8. CONTRIBUTION;
9. DECLARATORY RELIEF RE: DUTY  
TO DEFEND (Civil Code, §2778);
10. DECLARATORY RELIEF RE: DUTY  
TO INDEMNIFY (Civil Code, §2778);  
and,
11. DECLARATORY RELIEF RE:  
CONTRACTUAL DUTIES

Case File : August 13, 2008  
Trial Date : None Set



HNR FRAMING SYSTEMS, INC.;  
HENRY HARTE ENTERPRISES, INC.;  
INTERIOR SPECIALISTS, INC.;  
THE IRISH SETTERS, INC.;  
JAMAR ELECTRIC, INC., aka JAMAR  
ELECTRIC SAN DIEGO, INC.;  
KENWALL FIREPLACES, INC.;  
LASCO BATHWARE, INC.;  
LEONARD'S CARPET SERVICE, INC.;  
MASCO CONTRACTOR SERVICES OF  
CALIFORNIA, INC.; dba SCHMID  
INSULATION;  
MASTER DESIGN DRYWALL, INC., dba  
PACIFIC LATH & PLASTER;  
MAYER ROOFING, INC.;  
MEDINA LANDSCAPE GRADING dba  
VICTOR MEDINA LANDSCAPE  
CONTRACTOR, INC.;  
NEW VISION DRYWALL, INC., dba  
PERFORMANCE PLUS DRYWALL;  
PARADISE ELECTRIC, INC.;  
RDS UNLIMITED;  
REM CONCEPTS, INC., dba ABC  
WINDOW COMPANY;  
SOUTHWEST T-FOUR ENTERPRISES,  
INC., dba T-FOUR TILE;  
SUN PLUMBING CO., INC.;  
TEAM HEATING & AIR  
CONDITIONING, INC.;  
WALKER WOOD PRODUCTS; and,  
ROES 1 - 500, inclusive,

Cross-Defendants.

Defendant and Cross-Complainant RYLAND HOMES OF CALIFORNIA, INC. (hereinafter  
"Cross-Complainant") hereby alleges as follows:

**GENERAL ALLEGATIONS**

1. At all times herein mentioned, Cross-Complainant RYLAND HOMES OF  
CALIFORNIA, INC., was a corporation, partnership and/or other business entity organized and  
existing under and by virtue of the laws of the State of California and authorized and doing business  
in San Diego County, in the State of California.

2. At all times herein mentioned, RYLAND HOMES OF CALIFORNIA, INC., was a  
corporation, partnership and/or other business entity organized and existing under and by virtue of  
the laws of the State of California and maintained a California Contractors State License during the

1 construction of the Rancho San Vicente Project in the City of Ramona, County of San Diego, State  
2 of California (hereinafter "the PROJECT").

3 3. Cross-Defendants, ALLIANCE MECHANICAL HEATING AND AIR  
4 CONDITIONING, INC.; AZTEC SHEET METAL, INC.; CAL CUSTOM MANUFACTURING,  
5 LLC; CARTER TRIM & SUPPLY, INC.; CHARMAC, INC.; CHILDRESS CONCRETE, INC.;  
6 E.L. WEBSTER, INC., dba THE BATH CO. SHOWER DOOR; EXECUTIVE LANDSCAPE,  
7 INC.; FOOTHILL DRYWALL, INC.; GONZALES PAINTING CORPORATION; GREAT  
8 WESTERN DRYWALL, INC.; H.N.R. FRAMING SYSTEMS, INC., aka HNR FRAMING  
9 SYSTEMS, INC.; HENRY HARTE ENTERPRISES, INC.; INTERIOR SPECIALISTS, INC.;  
10 THE IRISH SETTERS, INC.; JAMAR ELECTRIC, INC., aka JAMAR ELECTRIC SAN DIEGO,  
11 INC.; KENWALL FIREPLACES, INC.; LASCO BATHWARE, INC.; LEONARD'S CARPET  
12 SERVICE, INC.; MASCO CONTRACTOR SERVICES OF CALIFORNIA, INC.; dba SCHMID  
13 INSULATION; MASTER DESIGN DRYWALL, INC., dba PACIFIC LATH & PLASTER;  
14 MAYER ROOFING, INC.; MEDINA LANDSCAPE GRADING dba VICTOR MEDINA  
15 LANDSCAPE CONTRACTOR, INC.; NEW VISION DRYWALL, INC., dba PERFORMANCE  
16 PLUS DRYWALL; PARADISE ELECTRIC, INC.; RDS UNLIMITED; REM CONCEPTS, INC.,  
17 dba ABC WINDOW COMPANY; SOUTHWEST T-FOUR ENTERPRISES, INC., dba T-FOUR  
18 TILE; SUN PLUMBING CO., INC.; TEAM HEATING & AIR CONDITIONING, INC.;  
19 WALKER WOOD PRODUCTS; and, ROES 1 - 500, inclusive (hereinafter referred to as "Cross-  
20 Defendants"), are corporations and/or other business entities duly-organized and existing under the  
21 laws of the State of California and were doing business in San Diego County, California, at all times  
22 which are relevant to the issues herein, and entered into written and oral contracts with Cross-  
23 Complainant to perform services and/or provide materials on the PROJECT.

24 4. Cross-Complainant is presently unaware of the true names and capacities of Cross-  
25 Defendants ROES 1 through 500, inclusive. Cross-Complainant will seek leave to amend this  
26 Cross-Complaint to allege their true names and capacities once they have been identified. All  
27 references to the individually-named Cross-Defendants includes reference to the Cross-Defendants  
28 named as ROES.

5. Cross-Complainant is informed and believes, and thereon alleges that each of the Cross-Defendants, ROES 1-500, inclusive, 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 and alleged by Plaintiffs.

6. Cross-Complainant is informed and believes ROES 400-500 (collectively "PRODUCT MANUFACTURERS") are, and were, manufacturers of products installed at the PROJECT.

7. Cross-Complainant entered into written and/or oral agreements with Cross-Defendants and each of them, wherein Cross-Defendants agreed to provide design and/or construction, including labor and/or materials, in accordance with the terms and conditions as set forth in the agreements on the PROJECT.

8. Pursuant to the agreements, Cross-Defendants were to provide Cross-Complainant with the design, construction, and/or materials and were obligated 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 PROJECT.

9. 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 was at all times herein mentioned acting within the course and scope of such agency and employment.

10. On or about August 13, 2008, a Complaint was filed entitled *ZIERDEN, et al. v. RYLAND HOMES OF CALIFORNIA, INC., et al.*, within the San Diego Superior Court, Case Number 37-2008-00087822-CU-CD-CTL, seeking damage for: 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 Cross-Complainant, wherein Plaintiffs' allege Cross-Complainant is liable to Plaintiffs for design, development, construction, management and sale of the PROJECT.

///

///

**FIRST CAUSE OF ACTION**  
**[Express Indemnity]**  
**(As to All Cross-Defendants and ROES 1-500)**

11. Cross-Complainant hereby repleads each and every allegation contained in Paragraphs 1 through 10 set forth above, by this reference as though set forth in full.

12. Cross-Defendants, and each of them, entered into written agreements (hereinafter "SUBCONTRACTS") with Cross-Complainant. A representative written agreement is attached hereto as though fully set forth herein as Exhibit A to this Cross-Complaint.

13. Paragraph 6 of the SUBCONTRACTS provides that Cross-Defendants are required to indemnify Cross-Complainant and hold Cross-Complainant free and harmless from any and all claims, losses, damages, injuries and/or liabilities caused by Cross-Defendants, their agents or employees.

14. The SUBCONTRACTS also required Cross-Defendants to have adequate liability and property damage insurance coverage with \$1,000,000 general aggregate limit.

15. Under Paragraph 1 of the SUBCONTRACTS, Cross-Defendants expressly warranted and unconditionally guaranteed that their workmanship and materials shall be free of any defects in materials or workmanship.

16. The damages alleged in Plaintiffs' Complaint arise from defects and damage to, or destruction of, property, and such damages were caused by Cross-Defendants during the performance of, or connected with Cross-Defendants' performance of the SUBCONTRACTS.

17. The SUBCONTRACTS provide that in the event of a dispute, Cross-Complainant is entitled to recover its attorneys fees and costs from Cross-Defendants. Cross-Complainant has retained the services of LORBER, GREENFIELD & POLITO, LLP, to defend against Plaintiffs' Complaint, thereby incurring costs, consultants' fees, attorneys' fees and other litigation fees in the defense of this action and prosecution of this Cross-Complaint, and Cross-Complainant is entitled to recover the amount of its costs and reasonable attorneys fees from Cross-Defendant.

**SECOND CAUSE OF ACTION**  
**[Implied Contractual Indemnity]**  
**(As to Cross-Defendants SUBCONTRACTORS and ROES 1-500)**

18. Cross-Complainant hereby repleads each and every allegation contained in

1 paragraphs 1 through 17 set forth above by this reference as though set forth in full.

2 19. Cross-Complainant entered into SUBCONTRACTS and/or oral agreements with  
3 Cross-Defendants wherein Cross-Defendants agreed to provide design and/or construction,  
4 including labor and/or materials, subject to the terms and conditions in the SUBCONTRACTS  
5 and/or agreements at the PROJECT.

6 20. Pursuant to these SUBCONTRACTS and/or agreements, Cross-Defendants were  
7 required to perform with first-class workmanship, using their best skill and judgment and in  
8 compliance with industry standards at the PROJECT.

9 21. Plaintiffs' Complaint alleges deficiencies in design and/or construction of the  
10 PROJECT and damage to or destruction of the PROJECT arising out of and in connection with  
11 Cross-Defendants' performance of the SUBCONTRACTS and agreements.

12 22. Cross-Complainant denies the allegations of Plaintiffs' Complaint; and, without  
13 admitting the allegations contained therein, if found that Cross-Complainant is liable for any such  
14 damage to Plaintiffs, then such damage is primarily and ultimately caused by the acts, breaches  
15 and/or omissions of Cross-Defendants whereas Cross-Complainant's acts, if any, were secondary,  
16 passive or derivative in nature.

17 23. By reason of the foregoing, if Plaintiffs recover against Cross-Complainant, Cross-  
18 Complainant is entitled to indemnity from Cross-Defendants for injuries and damages sustained by  
19 Plaintiffs, if any, for any sums paid by way of settlement, or any judgment rendered against Cross-  
20 Complainant arising from the Plaintiffs' Complaint.

21 24. The SUBCONTRACTS provide that, in the event of a dispute arising from the  
22 SUBCONTRACTS, Cross-Defendants agree to pay Cross-Complainant for its costs and reasonable  
23 attorneys fees. Cross-Complainant has retained the services of LORBER, GREENFIELD &  
24 POLITO, LLP, to defend against Plaintiffs' Complaint, thereby incurring costs, consultants' fees,  
25 attorneys' fees and other litigation fees in the defense of this action and prosecution of this Cross-  
26 Complaint, and Cross-Complainant is entitled to recover the amount of their costs and reasonable  
27 attorneys fees from Cross-Defendants.

28 ///

**THIRD CAUSE OF ACTION**

**[Total Indemnity]**

**(As to All Cross-Defendants, including ROES 1-500)**

25. Cross-Complainant hereby repleads each and every allegation contained in paragraphs 1 through 24 by this reference as though set forth in full.

26. By reason of the foregoing, if Plaintiffs recover any sums against Cross-Complainant, then Cross-Complainant is entitled to total indemnity from Cross-Defendants for injuries and damages sustained by Plaintiffs, if any, for any sums paid by way of settlement, or judgment rendered against Cross-Complainant, arising from Plaintiffs' Complaint.

**FOURTH CAUSE OF ACTION**

**[Equitable Indemnity]**

**(As to All Cross-Defendants including ROES 1-500)**

27. Cross-Complainant hereby repleads each and every allegation contained in paragraphs 1 through 26 by this reference as though set forth in full.

28. In equity and good conscience, if Plaintiffs recover against Cross-Complainant, then Cross-Complainant is entitled to equitable indemnity, apportionment of liability, contribution from, and among, Cross-Defendants, according to their respective fault, for the injuries and damages allegedly sustained by Plaintiffs, if any, by way of sums paid by settlement or judgments rendered against Cross-Complainant arising from Plaintiffs' Complaint.

**FIFTH CAUSE OF ACTION**

**[Breach of Express and Implied Warranties]**

**(As to All Cross-Defendants, including ROES 1-500)**

29. Cross-Complainant hereby repleads each and every allegation contained in paragraphs 1 through 28 by this reference as though set forth in full.

30. Under the SUBCONTRACTS and/or oral agreements entered into by Cross-Defendants and Cross-Complainant, Cross-Defendants were required to comply with each and every term and condition contained in the SUBCONTRACTS and agreements, including the express and implied warranties that the services performed and/or materials provided were first class workmanship, the best of their kind, merchantable and in a proper condition for their intended use and purpose.

31. Cross-Complainant relied upon the warranties described above and believed that the



1 work was performed and provided in a first-class and workmanlike manner and that as a result, the  
2 PROJECT was fit for its intended use and purpose.

3 32. Based on Plaintiffs' allegations in their Complaint, Cross-Defendants breached their  
4 warranties in that their services were not provided and furnished as represented and warranted,  
5 including but not limited to, allegedly defective concrete flatwork and driveways, stucco on exterior  
6 walls and openings, windows and sliding glass doors, roofs, interior walls and ceilings, floors,  
7 drainage and plumbing systems which have allegedly caused additional damage.

8 33. As a proximate result of Cross-Defendants' breach of the express and implied  
9 warranties, Cross-Complainant alleges it will suffer damages in a sum equal to any sums paid by  
10 way of settlement or judgment against Cross-Complainant arising from Plaintiffs' Complaint.

11 34. This Cross-Complainant served notice of such conditions, and Cross-Defendants  
12 declined to acknowledge their responsibility to repair the alleged defects as referenced above.

13 35. Pursuant to the terms of the SUBCONTRACTS, Cross-Complainant is entitled to  
14 recover its reasonable attorneys fees and costs from Cross-Defendants. Cross-Complainant has  
15 retained the services of LORBER, GREENFIELD & POLITO, LLP, to defend against the  
16 Complaint, thereby incurring costs, consultants' fees, attorneys' fees and other litigation fees in the  
17 defense of this action and prosecution of this Cross-Complaint, and Cross-Complainant is entitled to  
18 recover the amount of its costs and reasonable attorneys' fees from Cross-Defendants.

19 **SIXTH CAUSE OF ACTION**

20 **[Breach of Written Contract]**

21 **(As to All Cross-Defendants and ROES 1-500)**

22 36. Cross-Complainant hereby repleads each and every allegation contained in  
23 paragraphs 1 through 35 by this reference as though set forth in full.

24 37. Cross-Complainant entered into written and/or oral agreements with Cross-  
25 Defendants and each of them, including ROES, wherein Cross-Defendants agreed to provide design  
26 and/or construction, including labor and/or materials, and including all terms and conditions as set  
27 forth in the agreements, on the property which is the subject of the main action herein.

28 38. 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

1 cooperate with the Cross-Complainant and its authorized agents in furthering the interests of the  
2 Cross-Complainant as owner and/or general contractor of the PROJECT.

3 39. Cross-Complainant entered into the SUBCONTRACTS as previously alleged in  
4 paragraph 12 of this Cross-Complaint. The SUBCONTRACTS required Cross-Defendants to  
5 perform in compliance with each of the SUBCONTRACT terms and to perform all services, labor  
6 and materials of a first class quality, and to perform in a good and workmanlike manner, and that the  
7 PROJECT would be of merchantable quality, at a minimum.

8 40. Plaintiffs' Complaint alleges defects and damages to, or destruction of, the  
9 PROJECT and any such defects and damages were caused by Cross-Defendants arising out of and  
10 connected with the performance (or lack of performance) of Cross-Defendants' obligations pursuant  
11 to the SUBCONTRACTS in that the component parts and portions of the PROJECT are improperly  
12 designed and/or constructed, thereby resulting in damages to Plaintiffs (if any).

13 41. Cross-Complainant has performed all conditions, covenants and promises required of  
14 it by the SUBCONTRACTS.

15 42. Cross-Defendants have breached the SUBCONTRACTS by failing and neglecting to  
16 properly perform the labor and services and/or supply of materials as required, and by negligently  
17 and carelessly building, supervising, designing, constructing, maintaining and/or supplying  
18 improper materials and/or improperly manufactured materials and/or products to the PROJECT,  
19 thereby causing the defects alleged by Plaintiffs in their Complaint.

20 43. As a result of Cross-Defendants' breach of the SUBCONTRACTS, Cross-  
21 Complainant has been damaged in an amount according to proof at the time of trial.

22 44. Pursuant to the terms of the SUBCONTRACTS, Cross-Complainant is entitled to  
23 recover its reasonable attorneys' fees and costs from Cross-Defendants. Cross-Complainant has  
24 retained the services of LORBER, GREENFIELD & POLITO, LLP, to defend against the  
25 Complaint, thereby incurring costs, consultants' fees, attorneys' fees and other litigation fees in the  
26 defense of this action and prosecution of this Cross-Complaint, and Cross-Complainant is entitled to  
27 recover the amount of its costs and reasonable attorneys' fees from Cross-Defendants.

28 ///



**SEVENTH CAUSE OF ACTION**

**[Negligence]**

**(As to All Cross-Defendants, including ROES 1-500)**

45. Cross-Complainant hereby repleads each and every allegation contained in paragraphs 1 through 44 by this reference as though set forth in full.

46. Cross-Defendants negligently, carelessly and wrongfully failed to use reasonable care in the design, development, manufacture, supervision, maintenance, repair, supply of materials, installation, inspection and/or construction and/or maintenance and management of the PROJECT.

47. 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 Cross-Defendants, or by expenditures which should have been made in the exercise of due care.

48. The defects and damages alleged in the Complaint occurred because of the Cross-Defendants' negligence.

49. As a direct and proximate result of Cross-Defendants' negligence, Cross-Complainant has incurred and continues to incur costs and expenses including, but not limited to, litigation costs, contractor's fees, attorneys' fees and consultants' fees to inspect, repair and mitigation damages arising out of such negligent design, construction, repair and maintenance, manufacture and/or supply of materials or products to the PROJECT in order to defend against the Complaint.

**EIGHTH CAUSE OF ACTION**

**[Contribution]**

**(As to All Cross-Defendants, including ROES 1-500)**

50. Cross-Complainant hereby repleads each and every allegation contained in paragraphs 1 through 49 by this reference as though set forth in full.

51. Cross-Complainant is entitled to contribution from Cross-Defendants for the injuries and damages allegedly sustained by Plaintiffs, if any, as a result of any settlement or judgment awarded against Cross-Complainant arising from the Complaint.

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**NINTH CAUSE OF ACTION**  
**[Declaratory Relief re: Duty to Defend]**  
**(As to All Cross-Defendants, including ROES 1-500)**

52. Cross-Complainant hereby repleads each and every allegation contained in paragraphs 1 through 51 by this reference as though set forth in full.

53. The SUBCONTRACTS require Cross-Defendants to indemnify Cross-Complainant from all liability, loss or damage related to the matters pled by Plaintiffs in the Complaint, as more fully set forth above.

54. A claim or loss within the meaning of the SUBCONTRACTS has arisen by virtue of the fact that Plaintiffs have filed the Complaint against Cross-Complainant, claiming damages for construction deficiencies with the PROJECT and that the alleged construction deficiencies claimed by Plaintiffs pertain to the work performed and/or materials provided by the Cross-Defendants.

55. Cross-Defendants have a present duty to defend Cross-Complainants against any claims, pursuant to the contracts, pursuant to *Crawford v. Weather Shield* (2008) 44 Cal.4th 541, 558, and 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. Cross-Complainants have a present legal right to be provided a defense by Cross-Defendants under Civil Code section 2778 which provides, in pertinent part, that:

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; . . .

56. Cross-Complainants have tendered, will be tendering, and by and through this First Amended Cross-Complaint, hereby tender and/or re-tender the defense of this action to all Cross-Defendants and their insurance carriers, each of whom has rejected, ignored, or failed or, Cross-

1 Complainants are informed and believe, and thereon allege, will reject, ignore and/or fail to properly  
2 accept the tender of defense in the future.

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

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

11 59. Cross-Complainant hereby seeks a declaration by the Court as to the respective rights  
12 and Cross-Defendants' duties and obligations as to the duty to defend in connection with the matters  
13 herein alleged, and a judgment in Cross-Complainant's favor as to any obligations by Cross-  
14 Defendants to Cross-Complainant herein.

15 **TENTH CAUSE OF ACTION**  
16 **[Declaratory Relief re: Duty to Indemnify]**  
**(As to all Cross-Defendants, including ROES 1-500)**

17 60. Cross-Complainant hereby repleads each and every allegation contained in  
18 paragraphs 1 through 59 by this reference as though set forth in full.

19 61. Under the indemnity agreement in the SUBCONTRACTS, as more particularly set  
20 forth in Paragraph 12, above, Cross-Defendants, and each of them, are obligated to indemnify Cross-  
21 Complainant from all liability, loss, or damage in this action relating to matters embraced by the  
22 indemnity and arising out of the scope of work of Cross-Defendants, and each of them.

23 62. A dispute has arisen and an actual controversy now exists between Cross-  
24 Complainant and the Cross-Defendants, and each of them, in that Cross-Complainant contends the  
25 subject indemnity provision is a specific, or Type I provision which provides indemnity for the  
26 negligence of Cross-Defendants, and each of them, and for the joint negligence, whether active or  
27 passive, of Cross-Complainant; while Cross-Defendants, and each of them, contend that such  
28 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 Subcontractor/Cross-Defendants to indemnify.

63. Cross-Complainant seeks a declaration by the Court as to its respective rights and 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.

**ELEVENTH CAUSE OF ACTION**  
**[Declaratory Relief re: Contractual Duties]**  
**(As to All Cross-Defendants, including ROES 1-500)**

64. Cross-Complainant hereby repleads each and every allegation contained in paragraphs 1 through 63 by this reference as though set forth in full.

65. An actual controversy has arisen and now exists between Cross-Complainant and Cross-Defendants, and each of them, concerning their respective rights, duties, and obligations under the contracts, in that Cross-Complainant claims that Cross-Defendants, and each of them, breached their duties and obligations under the contracts.

66. Cross-Complainant alleges that a declaration by the Court as to the rights, duties, and obligations of the parties herein is required in order to resolve the existing controversies and disputes so that the parties may ascertain their true obligations and discharge those obligations accordingly. Specifically, Cross-Complainant requests this Court to determine that Cross-Complainant's interpretation of the contractual provisions is correct, including the indemnity provisions, requirement for Cross-Defendants to name Cross-Complainant as an additional insured, and payment for attorneys' fees and costs, among others; that Cross-Defendants have breached that obligation; and that Cross-Defendants are obligated to defend and indemnify Cross-Complainant against any claim, demand, damages, or liability, or any other loss.

67. Cross-Complainant is entitled to contribution from Cross-Defendants, and each of them, for the injuries and damages sustained by Cross-Complainant, as a result of Cross-Defendants' actions and any judgment or settlement awarded against Cross-Complainant herein.

**PRAYER**

**WHEREFORE**, Cross-Complainant prays for judgment against Cross-Defendants as follows:

**FIRST CAUSE OF ACTION:**

1. That Cross-Complainant be entitled to express indemnity from Cross-Defendants, and each of them;

**SECOND CAUSE OF ACTION:**

2. That Cross-Complainant be entitled to implied contractual indemnity and/or apportionment, and/or contribution from Cross-Defendants herein, and each of them;

**THIRD CAUSE OF ACTION:**

3. That Cross-Complainant be entitled to total equitable contractual indemnity, apportionment, and contribution from Cross-Defendants, and each of them, in accordance with their respective faults;

**FOURTH CAUSE OF ACTION:**

4. That Cross-Complainant be entitled to equitable indemnity from Cross-Defendants, and each of them;

**FIFTH CAUSE OF ACTION:**

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

**SIXTH CAUSE OF ACTION:**

6. That Cross-Complainant be entitled to damages for breach of contract from Cross-Defendants, and each of them;

**SEVENTH CAUSE OF ACTION:**

7. That Cross-Complainant be entitled to damages for negligence from Cross-Defendants, and each of them;

**EIGHTH CAUSE OF ACTION:**

8. That Cross-Complainant be entitled to contribution from Cross-Defendants, and each of them;

**NINTH CAUSE OF ACTION:**

9. For a judicial determination of Cross-Complainant's rights and Cross-Defendants', and each of their, duty to Cross-Complainant in this action;

**TENTH CAUSE OF ACTION:**

10. For a judicial determination of Cross-Complainant's right and Cross-Defendants', and each of their, duty to indemnify Cross-Complainant in this action, pursuant to their contractual agreement;

**ELEVENTH CAUSE OF ACTION:**


11. For a Declaration of the parties' respective rights and obligations under the contract;

**AS TO ALL CAUSES OF ACTION:**

12. For costs of suit incurred herein, including, but not limited to, costs of investigation incurred in the prosecution of this Cross-Complaint;
13. For attorneys' fees incurred herein;
14. That Cross-Defendants be 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,
15. For such other and further relief as the Court may deem just and proper.

DATED: March 3, 2009.

LORBER, GREENFIELD & POLITO, LLP

By:   
J.D. Turner  
Merwan Chehab  
Attorneys for Defendant/Cross-Complainant  
RYLAND HOMES OF CALIFORNIA, INC.

# **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: HAR FRAMING SYSTEMS INC Project: TWIN OAKS MEDIUM MASTERY  
Address: 12345 CROSTWATER CIRCLE Tract: \_\_\_\_\_  
City, State, Zip: POWELL CA 92064 Trade: ROUGH CARPENTRY  
Phone: 619-486-2471 Cost Codes: \_\_\_\_\_  
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



5. 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: Yirreeder Robinson

By: Robert R. Thomas

Name: Yirreeder 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 NEGLIGENCE 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: Virreader Robinson

Name: Virreader 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 'RLL' 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: 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 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: 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 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 &amp; SONS, INC.

By: Virireader RobinsonName: Virireader 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 H. Hoon 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.

HNR FRAMING SYSTEMS INC  
Contractor Company  
[Signature] Principal 3-29-99  
Subcontractor's Signature/Title 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	<u>Occurrence Form</u>  General Aggregate Limit (other than Products/Completed Operations) \$1,000,000 Products/Completed Operations Aggregate Limit 1,000,000 Personal Injury & Advertising Injury Limit 500,000 Each Occurrence 500,000 Fire Damage Limit (any one fire) 50,000 Blasting, Collapse, Underground <sup>1</sup> 1,000,000 Contractual Liability 1,000,000
Auto Liability (owned, non-owned, and hired)	<u>Occurrence Form</u>  Bodily Injury Each Person Bodily Injury Each Accident Combined Single Limit Property Damage Each Accident \$1,000,000

<sup>1</sup>Excavation Subcontractor only.

*HRB 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  
[Signature] 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.

AMR 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), ~~redheads~~, 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

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 to 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:



6/5/97

Rough Carpentry

Tovr II Medium

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.

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)


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: 

Ryland's Initials: 

RYL001711

6/5/97

Rough Carpentry

Tovr II Medium

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.Contractors 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) ~~C~~ 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

Contractor's Initials: 

Ryland's Initials: 

RYL001712



6/5/97

Rough Carpentry

Tovr II Medium

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.

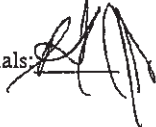
I. Install backing (blocking) at shower for 32" long, horizontal, grab bar.


**III. STANDARD PROJECT PRICING:**

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

ELEVATIONS:

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

Contractor's Initials: 

Ryland's Initials: 

RYL001713



6/5/97

Rough Carpentry

Town II Medium

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:

*RL*

Ryland's Initials:

*VR*

RYL001714

6/5/97

Rough Carpentry

Tovr II Medium

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**

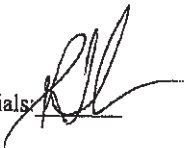
Plan 1 shall be constructed with a Den. As an option by Owner, Contractor will convert the **DEN TO A BEDROOM #3**.


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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Rough Carpentry  
Tovr II Medium  
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


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

Date: 3-29-99

Date: 4/27/99

(f:\purchase\states\scopes\rgbcarp.doc6/5/97)

Contractor's Initials: 

Ryland's Initials: 

RYL001716

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

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

**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. 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, 17<sup>th</sup> 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