

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

In re:

Building Materials Holdings
Corporation, et al.,

Debtors.

Chapter 11

Case No. 09-12074 (KJC)
Jointly Administered

**DECLARATION OF YVETTE M. DUMAS IN SUPPORT OF K. HOVNANIAN AT
BRIDGEPORT, INC.'S MOTION FOR RELIEF FROM AUTOMATIC STAY**

I, Yvette M. Dumas, declare as follows:

1. I am an attorney at law duly admitted to practice before the courts of the State of California. I am a senior associate with the law firm of Wood, Smith, Henning & Berman, LLP, attorneys for K. Hovnanian at Bridgeport, Inc. ("K. Hovnanian"). I know the following facts to be true of my own knowledge, and if called to testify, I can competently do so,

2. On or about June 16, 2009, H.N.R. Framing Systems, Inc., a subsidiary of Building Materials Holding Corporation ("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 09-12074).

3. K. Hovnanian is a creditor of HNR and, therefore, qualifies as a party in interest in this case.

4. On or about June 9, 2008, Anthony Trolinger and various homeowners (collectively, the "Homeowners") commenced litigation against K. Hovnanian relating to a certain housing development located in San Diego, California (the "Project"), alleging numerous causes of action and seeking damages based upon strict liability, breach of express and implied warranties, and negligence (the "Complaint"). A true and correct copy of the Complaint is attached hereto as Exhibit "A". The matter is known as Case No. 37-2008-00085314-CU-CD-CTL in the Superior Court of the State of California, County of San Diego (the "Litigation").

5. On or about February 17, 2009, K. Hovnanian filed a Cross-Complaint for equitable indemnity, express indemnity, breach of express and implied warranties, breach of written contract, negligence, contribution, declaratory relief, and total indemnity (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 in the development, construction and/or sale of the Project. A true and correct copy of the Cross-Complaint is attached hereto as Exhibit "B".

6. The Litigation is set to proceed to trial on October 1, 2010. Based on the information produced in discovery in the Litigation, it appears that Plaintiffs' claims implicate HNR.

7. K. Hovnanian seeks recovery from HNR for indemnification and payment of the total amount of any judgment rendered against K. Hovnanian based upon the Complaint, together with K. Hovnanian's attorneys' fees, expenses and costs of suit incurred in defending the Litigation. Additionally, K. Hovnanian seeks recovery for any and all attorneys' fees, experts' fees, costs and discovery expenses incurred by K. Hovnanian in its defense of the Litigation and in its pursuit of the Cross-Complaint.

8. K. Hovnanian believes that HNR is insured under one or more general and excess liability insurance policies and that K. Hovnanian's claims can or have been tendered under those liability insurance policies.

9. I am informed and believe that on or about May 4, 1998, HNR and K. Hovnanian executed a Subcontract Agreement whereby HNR agreed to provide materials and labor at the Project. A true and correct copy of the subcontract is attached hereto as Exhibit "C". The parties entered into subcontract extensions to include all of the properties in the Litigation. Additionally, 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.

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

11. K. Hovnanian believes 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. K. Hovnanian believes 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.

13. K. Hovnanian believes that its instant pending lawsuit against HNR will be defended at no expense to HNR.

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

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

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

17. K. Hovnanian 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 K. Hovnanian's damages in the Litigation, to the extent that HNR's insurance coverage does not satisfy such liability, K. Hovnanian 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 under the laws of the State that the foregoing is true and correct.

Executed this 6th day of April, 2010, at Newport Beach, California.



YVETTE M. DUMAS

EXHIBIT A

S.M.

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

R. HOVNANIAN AT BRIDGEPORT, INC., a California Corporation; and DOES 1 through 200, inclusive,

Legal Dept.
RECEIVED
JUN 19 2008
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SUM-100
FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

By

FILED

Clerk of the Superior Court

JUN 09 2008

By: L. McALISTER, Deputy

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ANTHONY TROLINGER and STEPHANIE TROLINGER, individually and on behalf of all those similarly situated; JOIN ACKER, JENNIFER ALBERT and SAM STARNES; RANDY ASHMAN and IMELDA ASHMAN; FUH-SHENG CHEN and SHU-CHUN CHIU; ROSIE ELSKAMP and DAVID GREEN; MICHAEL JOHNSON; DOUGLAS KLINE and NANCY VERDIN; JACQUELINE LUQUIN and LUIS LUQUIN; DENNIS LYON; FRANCES MARXEN; JERRY RICHARDSON and BETTY RICHARDSON; (Please see attachment 1, incorporated herein by reference.)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of San Diego

330 W. Broadway

330 W. Broadway

San Diego, CA 92101

Central

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

William H. Naumann, Esq. SBN #95771

(858) 625-3900 (858) 625-3901

Naumann, Levine, and Silldorf LLP

8910 University Center Lane, Suite 600

San Diego, CA 92122

DATE:

(Fecha) JUN 09 2008

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons. (POS-010)).

NOTICE TO THE PERSON SERVED: You are served.

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 415.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

Page 1 of 1

PETITIONER/PLAINTIFF: Trolinger, et al.
RESPONDENT/DEFENDANT: K. Hovnanian at Bridgeport

CASE NUMBER:

Attachment 1 - Plaintiffs Continued

ISMAEL SIMBULAN and CORAZON SIMBULAN; PHYLLIS SPITAL, LLC, a California
Limited Liability Company; DIANA TOTMAN and BRYAN TOTMAN; ROBERT WETZEL and
MARY WETZEL; and FRANCISCO ZABALETA and LETICIA LOPEZ

1 WILLIAM H. NAUMANN, ESQ. SBN #95771
2 CHRISTOPHER B. CARNEAL, ESQ. SBN #243653
3 NAUMANN, LEVINE & SILLDORF, LLP
4 8910 UNIVERSITY CENTER LANE, SUITE 600
5 SAN DIEGO, CA 92122
6 TELEPHONE: (858) 625-3900
7 FACSIMILE: (858) 625-3901

8 ATTORNEYS FOR PLAINTIFFS

9
10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SAN DIEGO

12 ANTHONY TROLINGER and STEPHANIE) Case No.
13 TROLINGER, individually and on behalf of)
14 all those similarly situated; LOIS ACKER;) [CLASS ACTION]
15 JENNIFER ALBERT and SAM STARNES;)
16 RANDY ASHMAN and IMELDA) COMPLAINT FOR CONSTRUCTION
17 ASHMAN; FUH-SHENG CHEN and SHU-) DEFECTS:
18 CHUN CHIU; ROSIE ELSKAMP and)
19 DAVID GREEN; MICHAEL JOHNSON;) 1. STRICT LIABILITY;
20 DOUGLAS KLINE and NANCY VERDIN;) 2. NEGLIGENCE;
21 JACQUELINE LUQUIN and LUIS) 3. BREACH OF IMPLIED WARRANTIES;
22 LUQUIN; DENNIS LYON; FRANCES) 4. BREACH OF EXPRESS WARRANTIES
23 MARXEN; LARRY RICHARDSON and)
24 BETTY RICHARDSON; ISMAEL)
25 SIMBULAN and CORAZON SIMBULAN;)
26 PHYLLIS SPITAL, LLC, a California)
27 Limited Liability Company; DIANA)
28 TOTMAN and BRYAN TOTMAN;)
ROBERT WETZEL and MARY WETZEL;)
and FRANCISCO ZABALETA and)
LETICIA LOPEZ,)

Plaintiffs,

v.

K. HOVNANIAN AT BRIDGEPORT, INC., a
California Corporation; and DOES 1 through
200, inclusive,

Defendants.

1 Plaintiffs, for the causes of action against defendants, and each of them, demand a jury trial
2 for each cause of action and allege as follows:

3 I.
4 INTRODUCTORY ALLEGATIONS

5 1. ANTHONY TROLINGER and STEPHANIE TROLINGER, as owners of 2926 West
6 Canyon Avenue, San Diego, CA 92123, a home within the residential single-family housing
7 development known as "Bridgeport at Stonecrest Village" (hereinafter referred to as the "Real
8 Property"), bring this action jointly and on behalf of all other homeowners similarly situated.

9 2. LOIS ACKER is owner of 2858 West Canyon Avenue, San Diego, CA 92123, a home
10 within the Real Property.

11 3. JENNIFER ALBERT and SAM STARNES are owners of 2908 West Canyon Avenue,
12 San Diego, CA 92123, a home within the Real Property.

13 4. RANDY ASHMAN and IMELDA ASHMAN are owners of 2854 West Canyon Avenue,
14 San Diego, CA 92123, a home within the Real Property.

15 5. FUH-SHENG CHEN and SHU-CHUN CHIU are owners of 2832 West Canyon Avenue,
16 San Diego, CA 92123 a home within the Real Property.

17 6. ROSIE ELSKAMP and DAVID GREEN are owners of 2942 West Canyon Avenue, San
18 Diego, CA 92123, a home within the Real Property.

19 7. MICHAEL JOHNSON is owner of 2942 West Canyon Avenue, San Diego, CA 92123, a
20 home within the Real Property

21 8. DOUGLAS KLINE and NANCY VERDIN are owners of 2880 West Canyon Avenue,
22 San Diego, CA 92123, a home within the Real Property.

23 9. JACQUELINE LUQUIN and LUIS LUQUIN are owners of 2890 West Canyon Avenue,
24 San Diego, CA 92123, a home within the Real Property;

25 10. DENNIS LYON is owner of 2838 West Canyon Avenue, San Diego, CA 92123, a home
26 within the Real Property.

27 11. FRANCES MARXEN is owner of 2806 West Canyon Avenue, San Diego, CA, 92123, a
28 home within the Real Property.

1 12. LARRY RICHARDSON and BETTY RICHARDSON are owners of 2888 West Canyon
2 Avenue, San Diego, CA 92123, a home within the Real Property.

3 13. ISMAEL SIMBULAN and CORAZON SIMBULAN are owners of 2884 West Canyon
4 Avenue, San Diego, CA 92123, a home within the Real Property.

5 14. PHYLLIS SPITAL, LLC, a California Limited Liability Company, is owner of 2904 West
6 Canyon Avenue, San Diego, CA 92123, a home within the Real Property, and owner of 2924 West
7 Canyon Avenue, San Diego, CA 92123, a home within the Real Property.

8 15. DIANA TOTMAN and BRYAN TOTMAN are owners of 2960 West Canyon Avenue,
9 San Diego, CA 92123, a home within the Real Property.

10 16. ROBERT WETZEL and MARY WETZEL are owners of 2870 West Canyon Avenue, San
11 Diego, CA 92123, a home within the Real Property.

12 17. FRANCISCO ZABALETA and LETICIA LOPEZ are owners of 2872 West Canyon
13 Avenue, San Diego, CA 92123, a home within the Real Property.

14 18. The class that Plaintiffs ANTHONY TROLINGER and STEPHANIE TROLINGER seek
15 to represent consists of all homeowners in the Real Property development designed and constructed
16 by Defendants. For all purposes as set forth in the Complaint, "Plaintiffs" shall include by
17 reference both the named plaintiffs and each prospective class member for the reasons discussed
18 infra.

19 19. This is an action to recover damages associated with construction defects in property
20 owned by Plaintiffs and class members within the residential development commonly known as
21 Bridgeport at Stonecrest Village, located in San Diego, California. The allegations contained herein
22 are pled cumulatively, each paragraph incorporating the pleadings set forth before and after it, and
23 the titles and headings are for convenience only. Plaintiffs and class members seek to recover the
24 cost to repair defects and related damage, reimbursement for past repairs, and costs to investigate
25 the extent of latent construction defects and damage and determine the proper repairs.

26 20. Plaintiffs are informed and believe and based thereon allege that the items generally
27 referred to and particularly described herein are "latent deficiencies" within the meaning of
28 California Code of Civil Procedure ("C.C.P") §337.15, in that they are not apparent by reasonable

1 inspection. Plaintiffs at all times mentioned relied on the skill of Defendants, and each of them, in
2 producing improvements and lots that are reasonably fit for their intended purpose. Plaintiffs are
3 still not fully aware of all the causes or the full extent of these latent deficiencies, nor the amount of
4 resultant damage due to the loss being continual, progressive, and latent in nature. Plaintiffs are lay
5 individuals who have required expert consultations to assist in review of property conditions.

6 **II.**
7 **CLASS ACTION ALLEGATIONS**

8 21. Plaintiffs seek to bring this action on behalf of similarly situated individuals (but not those
9 who have other pending lawsuits for the same issues against Defendants) on each following basis:

10 (a) Plaintiffs allege based on information and belief that the class, consisting of the
11 owners of approximately 60 properties, and estimated to comprise approximately 120
12 individual owners, is sufficiently numerous that joinder of all homeowner class members
13 individually would be impractical and burdensome.

14 (b) Plaintiffs allege based on information and belief that this action involves questions
15 of law and fact common to the entire class in that all class members have suffered
16 damages due to either original construction defects and/or related stigma.

17 (c) Plaintiffs allege based on information and belief that their claims are typical of the
18 class members so that as class representatives, they can fairly and adequately protect the
19 interests of all members of the class.

20 (d) Plaintiffs allege based on information and belief that there is a well-defined
21 community of interest, subject to clear ascertainment; to wit, those specific homes located
22 within the Real Property development designed and built by the same defendants in the
23 same period of time pursuant to the same home mass-production schedule, employing the
24 same subcontractors, using the same set of building plans and using the same materials,
25 component parts, manufactured products, and construction practices, which are
26 incorporated into the mass-produced units. Plaintiffs allege based on information and
27 belief that this development is well defined in defendants' records, and in public records
28 filed with the County of San Diego.

1 (e) Plaintiffs allege based on information and belief that common questions of law and
2 fact predominate over all other factual and legal issues regarding the claims of the class
3 members, and that the interests of justice and efficiency will be best served by bringing
4 this action as a class action with regard to the aforementioned interests.

5 22. Plaintiffs allege based on information and belief that the same defendants are responsible
6 for the claims which would be filed by each class member in the absence of class action. Plaintiffs
7 allege based on information and belief that the nature of the construction defects and damage is the
8 same for all class members; damage due to defective and improper water intrusion and infiltration
9 from breaches in the building envelopes of the mass-produced residential dwellings built by
10 defendants; through windows, decks, slabs, roofs and slab cracks.

11 23. Plaintiffs allege based on information and belief that their claims are typical of the class of
12 homeowner members generally, and the anticipated affirmative defenses of the defendants are also
13 typical of each other. Plaintiffs allege based on information and belief that the original design,
14 actual construction, materials and workmanship is typical in that the homes exhibit, inter alia,
15 similar construction defects in the mass grading, soils preparation, slab construction and assemblies,
16 window products and assemblies, deck materials and assemblies, building pad preparation, lot
17 drainage and a common failure to follow the approval plans and specifications.

18 24. Plaintiffs allege based on information and belief that nature and scope of repair of
19 damages are typical in that the residential dwellings exhibit similar water damage from leaking
20 roofs, windows, decks and slabs, including but not limited to drywall staining, deterioration, stucco
21 cracking, staining and discoloration of floorings, microbial growth, and slab cracks; and will require
22 repairs similar in method, scope and cost to address the damage as well as the underlying
23 construction defects.

24 25. Plaintiffs allege based on information and belief that the causes of construction defects are
25 typical in that the damages claimed by both plaintiffs and class members resulted from failure of the
26 defendants to design and construct building pads, drainage systems, windows, decks, and slabs in
27 conformity with the approved plans and specifications, applicable building codes and/or industry
28 standards.

1 BRIDGEPORT, INC. and DOES 1 through 50, inclusive, (hereinafter sometimes collectively
2 referred to as "Developer Defendants") were and are co-developers and agents of one another in the
3 development, design, construction, marketing and sale of the subject property.

4 32. Plaintiffs are informed and believe that Developer Defendants were and are alter egos of
5 one another in that there is such a unity of interest and ownership between each Developer
6 Defendant that their separate personalities no longer exist, and failure to disregard the corporate
7 entity would sanction a fraud or promote injustice.

8 33. Defendant DOES 1 through 200, inclusive, whether individual, corporate, associate, alter
9 ego, or otherwise, are fictitious names of defendants whose true names and capacities, at this time,
10 are unknown to plaintiffs. Plaintiffs allege upon information and belief that at all times herein
11 mentioned, each defendant sued herein as a DOE was acting for itself or its agent, servant,
12 employee, and/or alter ego of its co-defendants, and in doing the things hereinafter mentioned, was
13 acting in the course and scope of its authority as such agent, servant, employee, and/or alter-ego,
14 and with the full knowledge, permission and consent, either express or implied, of its co-
15 defendants. Plaintiffs allege upon information and belief that each of said fictitiously named
16 defendants, whether acting for itself or as agents, corporations, associations, or otherwise, is in
17 some way liable or responsible to Plaintiffs on the facts hereinafter alleged, and caused injuries and
18 damages proximately thereby. At such times as defendants' true names and capacities become
19 known to plaintiffs, Plaintiffs will seek leave of this court to amend this Complaint to insert said
20 true names and capacities of defendants.

21 34. Defendants, including DOES 1-200, individually and jointly, were involved in the
22 business of designing, developing, building, constructing, repairing, maintaining, installing,
23 manufacturing, supplying and/or selling the subject Real Property, which was done in an improper
24 fashion resulting in said Real Property suffering construction defects including, but not limited to:
25 improperly designed, constructed and manufactured graded lots, drainage, waterproofing systems,
26 decks, foundations, slabs, window products and installation; stucco systems, and substantial
27 damage as a direct and proximate consequence thereof, including to the walls, floor coverings,
28 stucco systems, windows, framing, and doors.

1 35. Plaintiffs allege based on information and belief that the Developer Defendants, and each
2 of them, failed to inform or disclose to purchasers of the Real Property the improper fashion in
3 which the Real Property was designed, developed, built, constructed, installed, repaired and/or
4 maintained, which information has only recently been discovered by Plaintiffs, and each of them.
5 The improper fashion in which the Real Property was designed, developed, and/or constructed, and
6 resultant damage, combined with defendants' omissions, affirmative misrepresentations, and
7 failures to act have all resulted in substantial damage to plaintiffs and diminution in value of said
8 Real Property.

9
10 **IV.**
FIRST CAUSE OF ACTION
Strict Liability

11 **(Alleged against Developer Defendants, including DOES 1 through 50, and DOES 51-75)**

12 36. Plaintiffs reallege and incorporate by reference the foregoing and subsequent paragraphs
13 as though fully set forth herein again.

14 37. Plaintiffs allege based on information and belief that Developer Defendants, including
15 DOES 1-50, were mass producers, mass developers, and mass constructors of homes; and that
16 DOES 51-75 were suppliers of materials incorporated into the Real Property.

17 38. Plaintiffs allege based on information and belief that Developer Defendants, within ten
18 (10) years of the filing of this action, commenced to develop and construct the above-described
19 Real Property and structures thereon for use as single family residential dwelling units; and that at
20 all times herein mentioned said Defendants intended to and did act as builders, designers,
21 developers, financiers, manufacturers, marketers, planners, sellers, and/or mass producers of the
22 Real Property.

23 39. Plaintiffs allege based on information and belief that the above-described Real Property
24 and structures were not constructed in a proper fashion, in that the drainage systems of the lots were
25 improperly prepared such that the residential slabs are in perpetually wet conditions; that the subject
26 dwellings were defectively built, permitting water intrusion; that these defects were and are latent,
27 allowing water intrusion into floors, slabs, framing, and walls, creating pervasive and increasing
28 damage including dry rot and microbial growth, and discoloration of flooring, the cause of which

1 was not reasonably susceptible to discovery by lay persons; and that the Real Property and
2 structures thereon have suffered substantial damage as a direct and proximate consequence.

3 40. Plaintiffs allege based on information and belief that said defective conditions are
4 associated with inadequate design, construction, development and/or manufacturing of the subject
5 Real Property and structures and/or the products used in construction, and include but are not
6 limited to, the following deficiencies:

7 (a) Failed drainage systems allowing rain, irrigation, and subterranean water to
8 accumulate on and into the soils and to flow onto and into individual homes, damaging
9 their interiors and exteriors, as well as individual foundation slabs;

10 (b) Breaches in the window, roof, and deck assemblies, permitting water intrusion into
11 the plywood and framing, so that the framing swelled, causing damage to stucco and
12 windows, and causing dry rot of wood framing and plywood and microbial growth;

13 (c) Such other and further deficiencies and defective conditions, the nature of which are
14 presently unknown to Plaintiffs at this time but which will be shown at the time of trial.

15 41. Plaintiffs allege based on information and belief that the above-described defective
16 condition of the subject Real Property and structures arose out of, was attributable to, and is directly
17 and proximately caused by the above-described latent deficiencies in the manufacturing, design,
18 planning, development, supervision, construction, improvement, and/or location of the subject Real
19 Property and structures and/or their component parts, and that prior to the time of their discovery of
20 the facts set forth herein, Plaintiffs could not reasonably have discovered the existence of the above-
21 described defective condition by the exercise of reasonable diligence.

22 42. Developer Defendants and DOES 51-75, and each of them, knew or reasonably should
23 have known that Plaintiffs would rely on their skill, judgment, and expertise in selecting,
24 investigating, surveying, evaluating, testing, compacting, grading and preparing the site of the Real
25 Property, and/or in designing engineering, inspecting, manufacturing, and constructing the Real
26 Property, structures, and/or component parts to be reasonably fit for their intended purpose and be
27 free of defects.

28 43. As builders, designers, developers, financiers, manufacturers, marketers, planners, sellers,

1 and/or mass producers of the Real Property and its component parts and systems, Developer
2 Defendants and DOES 51-75, and each of them, knew that the Real Property would be sold and
3 leased to and used by members of the general public for the purpose of residential dwelling units
4 and said Defendants knew or reasonably should have known that the persons who purchased said
5 units would do so without inspection for the defects set forth herein.

6 44. Within the last three years, Plaintiffs discovered that the subject Real Property and
7 structures were defective as herein alleged, were not fit for their intended purposes, and were not
8 manufactured, prepared, designed, evaluated, located, engineered, or produced in a reasonably
9 workmanlike manner. As a result of these defects, the Real Property and structures suffered
10 damage.

11 45. Developer Defendants and DOES 51-75, as developers and sellers of the Real Property
12 and/or suppliers of materials incorporated into the Real Property, are strictly liable and responsible
13 to Plaintiffs for all damages suffered as a result of the above-described defective conditions.

14 46. As a direct and proximate result of the defects set forth herein, Plaintiffs have suffered
15 damages in an amount not precisely known, but reasonably believed to be in excess of the Court's
16 minimum jurisdiction, for the cost of repair and/or cost of reconstruction and/or lost value to the
17 Real Property and structures thereon. Said damage will be demonstrated in a precise manner and
18 according to proof at the time of trial.

19 V.

20 **SECOND CAUSE OF ACTION**

21 **Negligence**

22 **(Alleged against all Defendants, including DOES 1 through 200)**

23 47. Plaintiffs reallege and incorporate by reference the foregoing paragraphs as though fully
24 set forth herein again.

25 48. Defendants, as builders, developers, designers, suppliers of products/materials,
26 subcontractors, and/or general contractors, performed works of labor, supplied materials, equipment
27 and services necessary for construction, including supervision of construction of the Real Property
28 and the subject structures with the knowledge that said Real Property and structures would be used
as single family residences. In doing so, said defendants caused the Real Property and structures to

1 be constructed through their own works of labor and in supplying of materials, equipment,
2 supervision, and services upon the Real Property.

3 49. Defendants, and each of them, owed a duty to Plaintiffs to exercise reasonable care in
4 performing their functions, duties, and responsibilities in the capacities described above and knew
5 or should have known that the purchasers and/or users would suffer damages if they failed to
6 perform their duties in a reasonable and workmanlike fashion.

7 50. Plaintiffs are informed and believe, and based thereon allege that Defendants, and each of
8 them, failed and neglected to perform their functions, duties, and responsibilities in their capacities
9 described above in a reasonably workmanlike manner, within the prevailing standard of care, and
10 breached their individual duties of care to the Plaintiffs.

11 51. Defendants, and each of them named herein, as developer, builder, contractor,
12 subcontractor, supplier, or otherwise involved with the development, design, and/or construction of
13 the subject property, had a non-delegable duty to comply with local ordinances, state regulations,
14 and statutes adopted by the City and County of San Diego and State of California, including but not
15 limited to the Uniform Building Code and Health and Safety Code. Plaintiffs are informed and
16 believe and thereon allege that Defendants, and each of them, violated the ordinances, regulations
17 and statutes governing the development and construction of the subject property; that the violations
18 proximately caused damages to Plaintiffs as herein alleged; that the damages claimed were an
19 occurrence of the nature which the ordinances, regulations and statutes were designed to prevent;
20 and that the herein-mentioned ordinances, regulations and laws were adopted for express purpose of
21 protecting the general public in the purchase of new residential construction; and that Plaintiffs are
22 members of the class of persons to be protected.

23 52. Plaintiffs are informed and believe and thereon allege that Defendants owed Plaintiffs a
24 duty of care, in that the construction of mass-produced residential lots and homes was intended to
25 affect the class of persons of which Plaintiffs are comprised; that it was foreseeable that defective
26 construction would damage Plaintiffs; that such damage was of a kind that was highly certain to
27 occur due to defective construction; that the connection between Defendants' conduct and
28 Plaintiffs' injuries was close, direct, and proximate; that the failure to use due care in construction

1 of mass produced housing is morally blameworthy given the lack of sophistication of purchasers,
2 the high degree of licensing and regulation of the construction industry, and the high personal and
3 social cost related to defective residential construction; and the importance of a policy permitting
4 recovery by the general public, a class to which Plaintiffs belong, in order to prevent future harm.

5 53. As a direct and proximate result of the foregoing negligence, carelessness, unworkmanlike
6 conduct, actions, and/or omissions by Defendants, and each of them, Plaintiffs have suffered in an
7 amount precisely unknown, but expected to be in excess of the Court's minimum jurisdiction, for
8 the costs of repair and/or reconstruction, and loss of value to their residences as a consequence of
9 the defective conditions. Plaintiffs are presently unaware of the precise amount of damages, which
10 will be established at trial according to proof.

11 VI.

12 **THIRD CAUSE OF ACTION**

13 **Breach of Implied Warranties**

14 **(Alleged by Original Homeowner Plaintiffs only against Developer Defendants,
15 including DOES 1 through 50)**

16 54. Plaintiffs incorporate by reference the foregoing and subsequent paragraphs as though
17 fully set forth herein again.

18 55. Those Plaintiffs having purchased homes within the Real Property directly from
19 Developer Defendants (hereinafter collectively referred to as "Original Homeowner Plaintiffs")
20 allege based on information and belief that the Real Property and structures built thereon have been
21 inadequately constructed, developed, designed, supervised, located, and/or otherwise improved
22 such that the structures, and parts thereof, have evidence of substantial water intrusion and damage
23 so that the Real Property and structures in their present condition are defective, not of merchantable
24 quality and not fit for the purpose of permitting residents to reside therein and thereon in a normal
25 and usual fashion.

26 56. Developer Defendants by virtue of their constructing, developing, designing,
27 manufacturing, locating, and building said structures on said Real Property impliedly warranted that
28 the subject structures and Real Property were developed, designed, supervised, tested, planned,
constructed, located, and/or improved in a reasonably workmanlike manner and would be of

1 merchantable quality and fit for the purpose of use as single family residences.

2 57. Original Homeowner Plaintiffs relied upon said implied warranties and reasonably
3 believed in good faith that the structures and Real Property were of merchantable quality, were
4 constructed, developed, designed, manufactured, built, located, and/or improved in a reasonably
5 workmanlike manner and were of merchantable quality and fit for the purpose of being used as
6 single family residences.

7 58. Aforesaid structures and Real Property are not of merchantable quality, were not
8 constructed, developed, designed, manufactured, built, located, and/or improved in a workmanlike
9 manner, and are not fit for the purpose of being used as single family residences, but instead, are
10 defective, as is now known, in that the structures and Real Property have become saturated and
11 damaged by water intrusion and due to improper drainage, and the structures and Real Property
12 sub-structures were not properly or adequately designed and/or constructed to provide proper
13 drainage and to prevent water intrusion. As a proximate consequence, cracks, dry-rot, water
14 staining, and other damage has occurred to the structures and Real Property. Original Homeowner
15 Plaintiffs believe and thereupon allege that the structures and Real Property may be additionally
16 defective in a manner and to an extent presently unknown, but which will be inserted by
17 amendment herein or established at the time of trial.

18 59. Original Homeowner Plaintiffs allege based on information and belief that the above-
19 described defective conditions of the structures and Real Property arose out of, was attributable to,
20 and is directly and proximately caused by the above-described latent deficiencies in the design,
21 planning, development, manufacturing, supervision, construction, and/or improvement of the
22 subject Real Property and structures, and that prior to the time of said Plaintiffs' discovery of the
23 facts set forth herein, they could not reasonably have discovered the existence of the above-
24 described defective conditions by the exercise of reasonable diligence.

25 60. As a direct and proximate result of the defects set forth herein and the breach of the
26 aforesaid implied warranties, Original Homeowner Plaintiffs have suffered in an amount precisely
27 unknown, but expected to be in excess of the Court's minimum jurisdiction, to be established at
28 time of trial in costs of repair and/or reconstruction and loss of value to said Plaintiffs' residences as

1 a consequence of the defective condition of the Real Property and structures.

2 61. Original Homeowner Plaintiffs gave Developer Defendants, and each of them, reasonable
3 notice of the defective conditions after each was discovered. Despite such notice, Developer
4 Defendants declined and failed to acknowledge responsibility for the same or to otherwise cause the
5 appropriate restoration to the structures and/or Real Property or to recompense said Plaintiffs for the
6 cost of repair and/or loss of value of said structures and Real Property.

7 **VII.**

8 **FOURTH CAUSE OF ACTION**

9 **Breach of Express Warranties**

10 **(Alleged by Original Homeowner Plaintiffs only against Developer Defendants,**
11 **including DOES 1 through 50)**

12 62. Plaintiffs incorporate by reference the foregoing and subsequent paragraphs as though
13 fully set forth herein again.

14 63. Original Homeowner Plaintiffs allege that Developer Defendants and their agents made
15 numerous express warranties to them regarding the construction of the Real Property, the manner in
16 which construction would be performed, the improvements which would be included, the upgrades
17 which would be provided at an additional cost, and the superior condition of the finished product.
18 Said warranties were included within the following inter alia; marketing materials in both printed
19 and audio form, purchase contracts and addenda, plans and specifications, and homeowner warranty
20 manuals. One such express warranty appears in the Homeowner's Manual provided to all Original
21 Homeowner Plaintiffs by Developer Defendants. Included within said Homeowner's Manual is a
22 "HOMEOWNER'S LIMITED WARRANTY," which explicitly states, among other things, the
23 following:

24 (a) "Your new home has been constructed with regard to comprehensive building
25 requirements and the high quality standards of the municipality in which it is built."

26 (b) "The Seller warrants the roof and roof flashing to be free from leaks and structural
27 defects."

28 (c) "The Seller warrants the structural components of the plumbing system..."

(d) "The Seller warrants your home as originally constructed to be free from

1 unreasonable soils erosion and water puddling caused by improper water drainage.”

2 (e) “The Seller warrants walls, floors, ceilings, driveways, brick, stone, stucco, drywall,
3 masonry, plaster, concrete or cement, ceramic tile, grouting, wood cabinets, molding,
4 siding and other rigid materials or surfaces to be free from unreasonable cracking or
5 leaks...”

6 64. Developer Defendants failed to provide said Plaintiffs with homes which conformed to the
7 express warranties made to them, and likewise failed to take subsequent steps under the express
8 warranties to investigate, repair and/or otherwise correct the defective conditions and damages to
9 the homes.

10 65. As a direct and proximate result of said conduct by Developer Defendants, Original
11 Homeowner Plaintiffs have suffered substantial damages in an amount to be proven at the time of
12 trial.

13 **VIII.**
14 **PRAYER**

15 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them,
16 as follows:

- 17 1. General damages in an amount not currently known, in excess of this Court's
18 Jurisdictional minimum, which will be shown according to proof at the time of trial;
19 2. Investigative costs to be established according to proof at trial;
20 4. For costs of suit incurred herein; and
21 5. For such other and further relief as the Court may deem just and proper.

22
23 DATED: June 6, 2008

NAUMANN, LEVINE & SILLDORF, LLP

24 

25 WILLIAM H. NAUMANN, ESQ.
26 CHRISTOPHER B. CARNEAL, ESQ.
27 Attorneys for Plaintiffs
28

F I L E D

Clerk of the Superior Court

JUN 09 2008

By: L. McALISTER, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

Anthony Trolinger et al

Plaintiffs,

vs.

K Hovnanian at Bridgeport Inc

Defendants

Case No: 37-2008-00085314-CU-CD-CTL

**ELECTRONIC FILING
AND SERVICE ORDER**

I. GENERAL

A. APPLICATION OF ORDER.

The Court hereby designates the above action an Electronic Filing (EFile) case, as described and governed by this Order. This case is assigned to the electronic filing and service system as created by a Service Agreement executed on August 13, 1999, between LexisNexis fka CourtLink, fka JusticeLink, and the Superior Court of California, County of San Diego, (hereinafter referred to as "SDSC" or "Court"), or any successor system. All parties to the above case shall be deemed to consent to the entry of this Order and agree to be bound by its provisions by entering into an EFile Subscriber Agreement with LexisNexis or the then-current vendor ("the Vendor").

Electronic Filing & Service Order

1 B. DEFINITIONS.

2 The following terms in this Order shall be defined as follows pursuant to
3 California Rules of Court, Rule 2050:

4 1. EFile – Electronic transmission to a court of a document in
5 electronic form. The Court will utilize a third party vendor. An EFile
6 consists of either an EDocument, an Elmage, or both.

7 2. EService – Electronic transmission of a document to a party's
8 electronic notification address for the purpose of effecting service. The
9 Court will utilize a third party vendor. Upon completion of any
10 transmission to the Vendor's system, a certified receipt is issued to the
11 sender acknowledging receipt by the Vendor system. Once the Vendor
12 has served all recipients, proof of electronic service is returned to the
13 sender.

14 3. EDocument – A document is a pleading, a paper, a declaration, an
15 exhibit, or another filing submitted by a party or by an agent of a party on
16 the party's behalf.

17 4. Elmage – An electronic file of a document that has been scanned
18 or converted to a graphical or image format.

19 C. ASSIGNMENT BY THE VENDOR OF PERSONAL IDENTIFICATION
20 NUMBERS.

21 Upon receipt by the Vendor of a properly executed EFile Subscriber Agreement,
22 the Vendor shall assign to the party's designated representative(s) a confidential
23 Personal Identification Number (PIN) which must be used to electronically file,
24 serve, receive, review, and retrieve pleadings, orders, and other documents filed
25 in the assigned case. No PIN holder shall knowingly authorize or permit his/her
 PIN to be utilized by anyone other than authorized attorneys or employees of the
 attorneys' law firm, or designated co-counsel, unless it has been established in

1 writing, and furnished to LexisNexis, that designated counsel may file
2 documents on behalf of the assigning counsel.

3 **II. ELECTRONIC FILING OF PLEADINGS AND OTHER DOCUMENTS.**

4 As of the filing of the initial complaint, except as expressly provided herein, or as
5 expressly authorized by the Court, all pleadings, motions, memoranda of law,
6 declarations, orders, or other documents filed in the above-entitled case shall be
7 filed electronically through the system. Documentary evidence produced during
8 discovery shall likewise be served electronically through LexisNexis, unless a
9 document depository is being utilized.

10 **A. SUBSEQUENT PLEADINGS.**

11 The clerk shall not accept or file any pleadings or instruments in paper form.
12 Parties must EFile a document either:

- 13 (1) Through the Vendor's system from the filing attorney's office; or
- 14 (2) In person, by electronically filing through the Public Access
15 Terminal located at the San Diego Superior Court, Hall of Justice,
16 Room 241. Parties filing in this manner shall be responsible for
17 furnishing the pleading or instrument on an IBM formatted 3 1/2"
18 computer disk, CD ROM, or any other disk compatible with the
19 Superior Court's computer system to be uploaded in person; or
- 20 (3) By faxing all documents and attachments to Vendor. Vendor shall
21 then convert said documents and attachments to electronic form,
22 file them with the Court, and serve designated parties as provided
23 herein. Parties choosing to file via facsimile through Vendor shall
24 be charged fees reflecting Vendor's then-current published rates
25 for filing and service in this manner.

B. MAINTENANCE OF ORIGINAL DOCUMENTS.

1 An original of all documents filed electronically, including original signatures, shall
2 be maintained by the party filing the document pursuant to California Rules of
3 Court Rule 2057.

4 C. COURTESY COPIES.

5 Parties will be required to submit one courtesy hard copy of specific documents
6 requiring court review or action directly to the department. Refer to San Diego
7 Superior Court Best Practices page on the LexisNexis web site at
8 <http://www.lexisnexis.com/fileandserve/rules/#SanDiego>

9 D. TIME FOR FILING AND EFFECT OF USE OF EFILE.

10 Any pleading filed electronically shall be considered as filed with the Clerk of the
11 Superior Court when it is first transmitted to the Vendor and the transmission is
12 completed ("authorized date and time" received by filing party) except that any
13 document filed after 5:00 p.m. (Pacific Time) on a day the court is open for
14 business shall be deemed to have been filed on the next court day. Vendor is
15 hereby appointed the agent of the Clerk of the Superior Court as to the electronic
16 filing, receipt, service, and/or retrieval of any pleading or document in EFile.
17 Upon receipt and filing of a document the Vendor shall issue a confirmation that
18 the document has been received and filed. The confirmation shall serve as proof
19 the document has been filed.

20 E. SYSTEM OR USER FILING ERRORS.

21 If it is shown that the electronic filing is not filed with the court because of (1) an
22 error in the transmission of the document to the Vendor which was unknown to
23 the sending party, or (2) a failure to process the electronic filing when received by
24 the Vendor, the court may enter an order permitting the document to be filed
25 nunc pro tunc.

III. FORM/FORMAT OF ELECTRONICALLY FILED DOCUMENTS.

Electronic Filing & Service Order

1 A. FORMAT.

2 All electronically filed documents shall, to the extent practicable, be formatted in
3 accordance with the applicable rules governing formatting of paper pleadings,
4 and in such other or further format as the Court may require from time to time.
5 Pleadings, briefs or other instruments may exceed page limitation rules to a
6 maximum of two (2) additional pages when the additional pages are attributable
7 to the electronic conversion or filing process. The date and time of the hearing or
8 trial in connection with which the document is submitted shall be designated on
9 the cover page of each document.

10 B. REQUIREMENT FOR SIGNATURES ON DOCUMENTS

11 Every pleading, document, and instrument filed in the EFile system shall be
12 deemed to have been signed by the attorney or declarant pursuant to California
13 Rules of Court Rule 2057. The typed name of a signing attorney should appear
14 under the signature line.

15 C. ELECTRONIC TITLE OF PLEADINGS AND OTHER DOCUMENTS.

16 The electronic title of each electronically filed pleading or other document shall
17 include:

- 18 (1) the case number;
- 19 (2) the party or parties filing the paper;
- 20 (3) the nature of the paper;
- 21 (4) the party or parties against whom relief, if any, is sought, and
- 22 (5) the nature of the relief sought (i.e., John Doe's Motion to Compel
23 Discovery from Jim Smith").

24 The electronic title shall be used for administrative purposes only. The caption
25 and signature page of any document filed shall comply with the California Rules
 of Court.

1
2 **IV. ELECTRONIC SERVICE OF PLEADINGS AND OTHER DOCUMENTS.**

3 All parties shall make service upon other parties electronically through the EFile
4 system. Parties, or their designated counsel, shall receive all documents EFiled
5 and EServed upon them via access to the Vendor's system. The exception to

6 this general order is a Motion for Determination of Good Faith Settlement. Said
7 motions shall be served pursuant to Code of Civil Procedure section 877.6(a)(2)
8 unless otherwise ordered by the Court.

9 **A. EFFECT OF ELECTRONIC SERVICE.**

10 The electronic service of a pleading or other document shall be considered as
11 valid and effective service on all participants and shall have the same legal effect
12 as an original paper document.

13 **B. SERVICE ON PARTIES; DESIGNATED ATTORNEY.**

14 An abbreviated service list will be used for all CourtLink filings and services.

15 Each firm shall designate to the Court the single attorney whose name will
16 appear on the abbreviated list. The designated "service" attorney will be
17 responsible for timely distribution of all EServed filings to co-counsel within their
18 own firms.

19 **C. SERVICE ON PARTIES; TIME TO RESPOND OR ACT.**

20 EServe shall be deemed complete at the time a document has been received
21 by Vendor's system as reflected by the authorized date and time appearing on
22 the electronic transmittal. Notwithstanding any prior order of this Court, any
23 period of notice or any right or duty to do any act or make any response within
24 any period or on a date certain after the service of the document, which time
25 period or date is prescribed by statute or rule of court, shall be extended after
26 service by electronic transmission by two (2) court days in lieu of the 5 days for
mailing as set forth in Code of Civil Procedure Section 1013. This extension

1 shall not apply to extend the time for filing notice of intention to move for new
2 trial, or to move to vacate judgment pursuant to California Code of Civil
3 Procedure, section 663a, or notice of appeal. (California Rules of Court, Rule
4 2060)

5 **C. SYSTEM OR USER SERVICE ERRORS.**

6 If electronic service on a party does not occur because of (1) an error in the
7 transmission of the document to a party which error was unknown to the serving
8 party or Vendor, (2) a failure to process the electronic filing for service when
9 received by the Vendor, OR (3) the party was erroneously excluded from the
10 service list, the party to be served, in the absence of extraordinary
11 circumstances, shall be entitled to an order extending the date for any response
12 or the period within which any right, duty or other act must be performed.

13 **V. CONVENTIONAL FILING OF DOCUMENTS.**

14 Notwithstanding the foregoing, the following types of documents may be filed
15 conventionally and need not be filed electronically, unless expressly required by
16 the Court.

17 **A. DOCUMENTS FILED UNDER SEAL**

18 A motion to file documents under seal shall be filed and served electronically.
19 However, the documents to be filed under seal shall be filed in paper form.

20 **B. EXHIBITS AND REAL OBJECTS.**

21 Exhibits to declarations that are real objects, i.e., construction materials, core
22 samples, etc. or other documents, i.e. plans, manuals, etc, which otherwise may
23 not be comprehensibly viewed in an electronic format may be filed and served
24 conventionally, in paper form.

25 **B. LODGMENTS.**

1 Documents attached to a Notice of Lodgment may be lodged and served
2 conventionally in paper form. However, the actual document entitled "Notice of
3 Lodgment" shall be filed electronically.

4
5 **VI. COLLECTION OF FEES.**

6 **A. COURT FEES.**

7 Statutory filing fees will be paid to LexisNexis for electronic transfer to the San
8 Diego Superior Court's bank account through the U.S. Federal Reserve Bank's
9 Automated Clearing House (ACH) payment system. Parties will be billed on a
10 monthly basis by LexisNexis. LexisNexis may terminate or suspend access
11 rights for users of the Service who fail to pay all amounts owed to LexisNexis in a
12 timely manner. LexisNexis will notify the Court of any non-paying users.

13 **B. VENDOR FEES.**

14 Fees charged by Vendor to parties or attorneys for access to and electronic
15 transmission of documents are solely the property of Vendor and are in addition
16 to any charges associated with statutory filing fees of the Superior Court.

17
18 **VII. SERVICE OF ELECTRONIC FILING ORDER ON NEW PARTIES.**

19 Any litigant filing a complaint or adding a party to this case by filing of an
20 amended complaint, cross-complaint, complaint in intervention,
21 interpleader or other initiating document shall be obligated to serve this
22 Electronic Filing Order at the same time the pleading is served.

23
24 **VIII. ELECTRONIC FILING AND SERVICE OF ORDERS AND OTHER PAPERS.**

25 The Court may issue, file, and serve notices, orders, and other documents
electronically, subject to the provisions of this Order.

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DATED: 06-09-08

Ronald L Styn

Judge of the Superior Court

Electronic Filing & Service Order

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): William H. Naumann, Esq. SBN #95771 Naumann, Levine & Silldorf LLP 8910 University Center Lane, Suite 600 San Diego, CA 92122 TELEPHONE NO.: (858) 625-3900 FAX NO.: (858) 625-3901 ATTORNEY FOR (Name): <u>Plaintiffs</u>		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: 330 W. Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central		
CASE NAME: <u>Trolinger, et al. v. K. Hovnanian at Bridgeport</u>		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36)	<input type="checkbox"/> Other employment (15) Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02)	<input type="checkbox"/> Other judicial review (39) Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input checked="" type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|---|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input checked="" type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|---|
3. Remedies sought (check all that apply):
 a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): _____
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 9th, 2008

William H. Naumann, Esq. SBN #95771

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers.

If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases.

In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)-Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice-Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PI/PD/WD Tort (35)
Employment
Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach-Seller
Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case-Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ-Administrative Mandamus
Writ-Mandamus on Limited Court Case Matter
Writ-Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal-Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 333 West Broadway	
MAILING ADDRESS: 233 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 556-6005	
PLAINTIFF(S) / PETITIONER(S): Anthony Trolinger et al.	
DEFENDANT(S) / RESPONDENT(S): K. Hovnanian at Bridgeport Inc	
TROLINGER VS. K HOVNANIAN AT BRIDGEPORT INC	
NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2008-00085314-CU-CD-CTL

Judge: Ronald L. Styn

Department: C-62

COMPLAINT/PETITION FILED: 06/09/2008

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 37-2008-00085314-CU-CD-CTL CASE TITLE: Trolinger vs. K. Hovnanian at Bridgeport Inc

NOTICE TO LITIGANTS/ADR INFORMATION PACKAGE

You are required to serve a copy of this Notice to Litigants/ADR Information Package and a copy of the blank Stipulation to Alternative Dispute Resolution Process (received from the Civil Business Office at the time of filing) with a copy of the Summons and Complaint on all defendants in accordance with San Diego Superior Court Rule 2.1.5, Division II and CRC Rule 201.9.

ADR POLICY

It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR -- i.e. the court's mediation or arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

ADR OPTIONS

1) CIVIL MEDIATION PROGRAM: The San Diego Superior Court Civil Mediation Program is designed to assist parties with the early resolution of their dispute. All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participate in the program. Limited civil collection cases are not eligible at this time. San Diego Superior Court Local Rule 2.31, Division II addresses this program specifically. Mediation is a non-binding process in which a trained mediator 1) facilitates communication between disputants, and 2) assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities. The mediator is not the decision-maker and will not resolve the dispute -- the parties do. Mediation is a flexible, informal and confidential process that is less stressful than a formalized trial. It can also save time and money, allow for greater client participation and allow for more flexibility in creating a resolution.

Assignment to Mediation, Cost and Timelines: Parties may stipulate to mediation at any time up to the CMC or may stipulate to mediation at the CMC. Mediator fees and expenses are split equally by the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to the court's payment schedule for county-referred mediation: \$150.00 per hour for each of the first two hours and their individual rate per hour thereafter. Parties may select any mediator, however, the court maintains a panel of court-approved mediators who have satisfied panel requirements and who must adhere to ethical standards. All court-approved mediator fees and other policies are listed in the Mediator Directory at each court location to assist parties with selection. **Discovery:** Parties do not need to conduct full discovery in the case before mediation is considered, utilized or referred. **Attendance at Mediation:** Trial counsel, parties and all persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause.

2) JUDICIAL ARBITRATION: Judicial Arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The arbitrator's award may either become the judgment in the case if all parties accept or if no trial de novo is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date.

Assignment to Arbitration, Cost and Timelines: Parties may stipulate to binding or non-binding judicial arbitration or the judge may order the matter to arbitration at the case management conference, held approximately 150 days after filing, if a case is valued at under \$50,000 and is "at issue". The court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. In addition, if parties select an arbitrator from the court's panel, the court will pay the arbitrator's fees. Superior Court

3) SETTLEMENT CONFERENCES: The goal of a settlement conference is to assist the parties in their efforts to negotiate a settlement of all or part of the dispute. Parties may, at any time, request a settlement conference before the judge assigned to their case; request another assigned judge or a pro tem to act as settlement officer; or may privately utilize the services of a retired judge. The court may also order a case to a mandatory settlement conference prior to trial before the court's assigned Settlement Conference judge.

4) OTHER VOLUNTARY ADR: Parties may voluntarily stipulate to private ADR options outside the court system including private binding arbitration, private early neutral evaluation or private judging at any time by completing the "Stipulation to Alternative Dispute Resolution Process" which is included in this ADR package. Parties may also utilize mediation services offered by programs that are partially funded by the county's Dispute Resolution Programs Act. These services are available at no cost or on a sliding scale based on need. For a list of approved DRPA providers, please contact the County's DRPA program office at (619) 238-2400.

ADDITIONAL ADR INFORMATION: For more information about the Civil Mediation Program, please contact the Civil Mediation Department at (619) 515-8908. For more information about the Judicial Arbitration Program, please contact the Arbitration Office at (619) 531-3818. For more information about Settlement Conferences, please contact the Independent Calendar department to which your case is assigned. Please note that staff can only discuss ADR options and cannot give legal advice.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central		FOR COURT USE ONLY
PLAINTIFF(S): Anthony Trolinger et al.		
DEFENDANT(S): K. Hovnanian at Bridgeport Inc		
SHORT TITLE: TROLINGER VS. K HOVNANIAN AT BRIDGEPORT INC		
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION PROCESS (CRC 3.221)		CASE NUMBER: 37-2008-00085314-CU-CD-CTL

Judge: Ronald L. Slyn

Department: C-62

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management time-lines.

- | | |
|---|---|
| <input type="checkbox"/> Court-Refered Mediation Program | <input type="checkbox"/> Court-Ordered Nonbinding Arbitration |
| <input type="checkbox"/> Private Neutral Evaluation | <input type="checkbox"/> Court-Ordered Binding Arbitration (Stipulated) |
| <input type="checkbox"/> Private Mini-Trial | <input type="checkbox"/> Private Reference to General Referee |
| <input type="checkbox"/> Private Summary Jury Trial | <input type="checkbox"/> Private Reference to Judge |
| <input type="checkbox"/> Private Settlement Conference with Private Neutral | <input type="checkbox"/> Private Binding Arbitration |
| <input type="checkbox"/> Other (specify): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate: (mediation & arbitration only) _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

(Attach another sheet if additional names are necessary). It is the duty of the parties to notify the court of any settlement pursuant to California Rules of Court, 3.1385. Upon notification of the settlement the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court and all un-served, non-appearing or actions by names parties are dismissed.

IT IS SO ORDERED.

Dated: 06/08/2008

JUDGE OF THE SUPERIOR COURT

EXHIBIT B

SUMMONS ON CROSS-COMPLAINT
(CITACION JUDICIAL)NOTICE TO DiJ;LiNgc."m"; CROSS-DEFENDANT:

(A VIS O AL DEMANDADO):

AMERICAN ROOF GUARD, INC., a business entity of unknown form; HNR

FRAMING SYSTEMS, INC., a business entity of unknown form; SEE

ADDITIONAL PARTIES A TTACHMENT TO SUMMONS

YOU ARE BEING SUED BY PL~I~ITIH: CROSS-COMPLAINANT: (LO

ESTA DEMANDANDO EL DEMANDANTE):

K. HOVNANIAN AT BRIDGEPORT, INC.

~ I LED

Clerk of the SUPrior Court

MAR 03 2009

" ' ~DePuty

You have 30 CALENDAR DAYS after this summons and legal paper. > are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp). your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org). the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp). or by contacting your I-I court or county bar association.

Tiene 30 Días DE CALENDAR (O después de que le entreguen esta eltaelon y papalas legales para presentar una respuesta por escrito en esta corte y haer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le de un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego County Superior Court
330 W. Broadway
P.O. Box 12274
San Diego, CA 92112
Central Division

CASE NUMBER:

(Número del C-Q):

37-2008-00085314-CU-CD-CTL

Judge: Ronald L. Styn

Dept 62

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, fin):

Tawnya L. Southern, Esq. Bar No. 171987

(949) 757-4500

(949) 757-4550 fax

Wood, Smith, Henning & Berman LLP

5000 Birch Street, Suite 8500

Newport Beach, CA 92660

DATE: MAR 03 2009

(Fecha)

Clerk, by

(Secretario)

SON

, Deputy

(Adjunto)

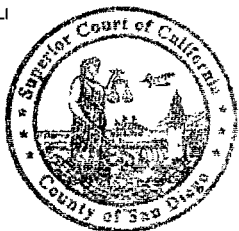
(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.2. ☐ as the person sued under the fictitious name of (specify):3. ☐ on behalf of (specify);under ☐ CCP 416.10 (corporation)☐ CCP 416.20 (defunct corporation)☐ CCP 416.40 (association or partnership)☐ other (specify):☐ CCP 416.60 (minor)☐ CCP 416.70 (conservatee)☐ CCP 416.90 (authorized person)4. ☐ by personal delivery on (date):

[SEAL]



SHORT TITLE:

TROLINGER, et al. v. K. HOVNANIAN AT BRIDGEPORT, INC., et al.

CASE NUMBER.

37 -2008-00085314-CU-CD-
CTL

INSTRUCTIONS FOR USE

.. This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons. ... If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties

Attachment form is attached,"

List additional parties (*Check only one box. Use a separate page for each type of paTty.*):

☐ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant
MAGNESITE SPECIALTIES, INC., a business entity of unknown form; MERLE WILLIAMS & SONS CORP, a business entity of unknown form; MISSION SHEET METAL CORP, a business entity of unknown form; SAN MARINO PLASTERING, INC., a business entity of unknown form; SOUTH SHORES LANDSCAPING aka SOUTH SHORES RESIDENTIAL AND COMMERCIAL DEVELOPMENT CORPORATION, a business entity of unknown form; JELD-WEN, INC. dba SUMMIT WINDOWS & PATIO DOORS, a business entity of unknown form; and ROES 1 through 100, inclusive

SUMMONS ON CROSS-COMPLAINT
(CITACION JUDICIAL)

NOTICE TO ~~DEFENDANT~~: CROSS-DEFENDANT:
(AVISO AL DEMANDADO):

AMERICAN ROOF GUARD, INC., a business entity of unknown form; HNR
 FRAMING SYSTEMS, INC., a business entity of unknown form; **SEE**
ADDITIONAL PARTIES ATTACHMENT TO SUMMONS

YOU ARE BEING SUED BY ~~PLAINTIFF~~: CROSS-COMPLAINANT:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
 K. HOVNANIAN AT BRIDGEPORT, INC.

FOR COURT USE ONLY
 (SOLO PARA USO DE LA CORTE)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más Información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
 (El nombre y dirección de la corte es):

San Diego County Superior Court
 330 W. Broadway
 P.O. Box 12274
 San Diego, CA 92112
 Central Division

CASE NUMBER:
 (Número del Caso):
37-2008-00085314-CU-CD-CTL
 Judge: Ronald L. Styn
 Dept: 62

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
 Tawnya L. Southern, Esq. Bar No. 171987 (949) 757-4500 (949) 757-4550 fax
 Wood, Smith, Henning & Berman LLP
 5000 Birch Street, Suite 8500
 Newport Beach, CA 92660

DATE: Clerk, by _____, Deputy
 (Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
 (Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

[SEAL]

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
 under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
 ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
 ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
 ☐ other (specify):
4. ☐ by personal delivery on (date):

Page 1 of 1

SHORT TITLE:
TROLINGER, et al. v. K. HOVNANIAN AT BRIDGEPORT, INC., et al.

CASE NUMBER:
37-2008-00085314-CU-CD-CTL

INSTRUCTIONS FOR USE

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- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff ☐ Defendant ☐ Cross-Complainant ☒ Cross-Defendant

MAGNESITE SPECIALTIES, INC., a business entity of unknown form; MERLE WILLIAMS & SONS CORP, a business entity of unknown form; MISSION SHEET METAL CORP, a business entity of unknown form; SAN MARINO PLASTERING, INC., a business entity of unknown form; SOUTH SHORES LANDSCAPING aka SOUTH SHORES RESIDENTIAL AND COMMERCIAL DEVELOPMENT CORPORATION, a business entity of unknown form; JELD-WEN, INC. dba SUMMIT WINDOWS & PATIO DOORS, a business entity of unknown form; and ROES 1 through 100, inclusive

Tawnya L. Southern (State Bar No. 171987)
Yvette M. Dumas (State Bar No. 220268)
WOOD, SMITH, HENNING & BERMAN LLP
5000 Birch Street, Suite 8500
Newport Beach, California 92660
Phone: (949) 757-4500 ♦ Fax: (949) 757-4550

Attorneys for Defendant and Cross-Complainant, K. HOVNANIAN AT BRIDGEPORT, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO - CENTRAL

ANTHONY TROLINGER and STEPHANIE TROLINGER, individually and on behalf of those similarly situated; LOIS ACKER; JENNIFER ALBERT and SAM STARNES; RANDY ASHMAN and IMELDA ASHMAN; FUH-SHEN CHEN and SHU-CHUN CHIU; ROSIE ELSKAMP and DAVID GREEN; MICHAEL JOHNSON; DOUGLAS KLINE and NANCY VERDIN; JACQUELINE LUQUIN and LUIS LUQUIN; DENNIS LYON; FRANCES MARXEN; LARRY RICHARDSON and BETTY RICHARDSON; ISMAEL SIMBULAN and CORAZON SIMBULAN; PHYLLIS SPITAL, LLC, a California Limited Liability Company; DIANA TOTMAN and BRYAN TOTMAN; ROBERT WETZEL and MARY WETZEL; and FRANCISCO ZABALETA and LETICIA LOPEZ,

Plaintiffs,

v.

K. HOVNANIAN AT BRIDGEPORT, INC.,
a California Corporation; and DOES 1
through 200, inclusive,

Defendants.

K. HOVNANIAN AT BRIDGEPORT, INC.,

Cross-Complainant,

v.

CASE NO. 37-2008-00085314-CU-CD-CTL

**CROSS-COMPLAINT OF K.
HOVNANIAN AT BRIDGEPORT, INC.
FOR:**

1. **EQUITABLE INDEMNITY;**
2. **EXPRESS INDEMNITY;**
3. **BREACH OF EXPRESS AND IMPLIED WARRANTIES;**
4. **BREACH OF WRITTEN CONTRACT;**
5. **NEGLIGENCE;**
6. **CONTRIBUTION;**
7. **DECLARATORY RELIEF, Duty to Defend;**
8. **DECLARATORY RELIEF, Duty to Indemnify;**
9. **DECLARATORY RELIEF, Contractual Duties and Obligations;**
10. **DECLARATORY RELIEF; and**
11. **TOTAL INDEMNITY**

Complaint Filed: June 9, 2008

[Assigned for All Purposes to Judge Ronald L. Styn,
Dept. 62]

Discovery Cutoff:	None Set
Motion Cutoff:	None Set
Trial Date:	None Set

1 AMERICAN ROOF GUARD, INC., a
2 business entity of unknown form; HNR
3 FRAMING SYSTEMS, INC., a business
4 entity of unknown form; MAGNESITE
5 SPECIALTIES, INC., a business entity of
6 unknown form; MERLE WILLIAMS &
7 SONS CORP, a business entity of
8 unknown form; MISSION SHEET METAL
9 CORP, a business entity of unknown form;
10 SAN MARINO PLASTERING, INC., a
11 business entity of unknown form; SOUTH
12 SHORES LANDSCAPING aka SOUTH
13 SHORES RESIDENTIAL AND
14 COMMERCIAL DEVELOPMENT
15 CORPORATION, a business entity of
16 unknown form; JELD-WEN, INC. dba
17 SUMMIT WINDOWS & PATIO DOORS, a
18 business entity of unknown form; and
19 ROES 1 through 100, inclusive,

20 Cross-Defendants.

21 Cross-Complainant, K. HOVNANIAN AT BRIDGEPORT, INC. (hereinafter "K.
22 HOVNANIAN" and/or "Cross-Complainant") files this Cross-Complaint for causes of
23 action against Cross-Defendants, and each of them, and alleges as to each of the parties
24 as follows:

25 GENERAL ALLEGATIONS

26 1. Cross-Complainant K. HOVNANIAN, was at all times herein mentioned, a
27 California corporation, duly organized, licensed and existing under and pursuant to the
28 laws of the State of California and qualified to do business in, among others, San Diego
County, State of California. K. HOVNANIAN was the owner/builder of the subject
residential project commonly known as "Bridgeport at Stonecrest," aka "Bridgeport – San
Diego" in the City of San Diego, County of San Diego, California (hereinafter "Subject
Project"). K. HOVNANIAN is a third-party beneficiary to all subcontracts with the
subcontractor cross-defendants. At the time of construction, the general contractor of the
Subject Project was duly licensed with the State of California as a general building
contractor.

2. K. HOVNANIAN is informed and believes, and thereon alleges, that the

1 Cross-Defendants, AMERICAN ROOF GUARD, INC., a business entity of unknown form;
2 HNR FRAMING SYSTEMS, INC., a business entity of unknown form; MAGNESITE
3 SPECIALTIES, INC., a business entity of unknown form; MERLE WILLIAMS & SONS
4 CORP, a business entity of unknown form; MISSION SHEET METAL CORP, a business
5 entity of unknown form; SAN MARINO PLASTERING, INC., a business entity of unknown
6 form; SOUTH SHORES LANDSCAPING aka SOUTH SHORES RESIDENTIAL AND
7 COMMERCIAL DEVELOPMENT CORPORATION, a business entity of unknown form;
8 JELD-WEN, INC. dba SUMMIT WINDOWS & PATIO DOORS, a business entity of
9 unknown form; and ROES 1-100, inclusive (hereinafter "Cross-Defendants") were at all
10 times herein mentioned believed to be duly licensed and qualified to do business in San
11 Diego County, State of California. The Cross-Defendants performed work on the Subject
12 Project, including the subject residences, which are implicated in the operative First
13 Amended Complaint of Plaintiffs, ANTHONY TROLINGER, et al. (hereinafter "Plaintiffs").

14 3. On or about October 24, 2008, Plaintiffs filed a First Amended Complaint in
15 San Diego County Superior Court, Case No. 37-2008-00085314-CU-CD-CTL. Although
16 Cross-Complainant denies each and every allegation of Plaintiffs' operative First
17 Amended Complaint, the allegations of said operative First Amended Complaint are
18 incorporated herein as though fully set forth. A true and correct copy of Plaintiffs' First
19 Amended Complaint is attached hereto as **Exhibit "A"**, and incorporated herein as
20 though fully set forth hereat.

21 4. At all times herein mentioned, Cross-Defendants, ROES 1-100 inclusive, all
22 of whom will be designated at a later date, were business entities of unknown form, doing
23 business in San Diego County, State of California. Cross-Complainant is presently
24 unaware of the true names and capacities and liability of Cross-Defendants named
25 herein as ROES 1 through 100, inclusive, and Cross-Complainant will seek leave of court
26 to amend this Cross-Complaint to allege their true names and capacities after the same
27 have been ascertained. Cross-Complainant is informed and believes and thereon
28 alleges that each of the Cross-Defendants, including ROES 1 through 100, inclusive,

1 disputes Cross-Complainant's contentions herein and is in some manner legally
2 responsible for the acts and omissions alleged herein, and actually and proximately
3 caused and contributed to the various injuries and damages referred to herein.

4 5. Cross-Complainant is informed and believes and thereon alleges that
5 Cross-Defendants, and each of them, are, and at all times herein mentioned were, either
6 individuals, sole proprietorships, partnerships, registered professionals, corporations, or
7 other legal entities which are/were licensed to do, living or and doing business, in San
8 Diego County, State of California, at all times relevant to the subject matter of this action.
9 Cross-Complainant is informed and believes and thereon alleges that the Cross-
10 Defendants, and each of them, including ROES 1 through 100, participated in the
11 supervision, inspection, maintenance and/or construction (work and/or services) of the
12 Subject Project, including the subject residences. Additionally, the work of the Cross-
13 Defendants is implicated by the allegations in the Plaintiffs' operative First Amended
14 Complaint.

15 6. Cross-Complainant is informed and believes and thereon alleges that at all
16 times herein mentioned each of the Subcontractor Cross-Defendants, including ROES 1
17 through 100, was the agent, partner, co-developer, joint venturer, lender, predecessor in
18 interest, successor in interest, and/or employee of each of the remaining Subcontractor
19 and ROES, and were at all times herein mentioned acting within the course and scope of
20 such agency and/or employment. Cross-Complainant is informed and believes and
21 thereon alleges that Cross-Complainant entered into written and/or oral agreements with
22 the Cross-Defendants, and each of them, including ROES 1 through 100, wherein the
23 Cross-Defendants agreed to perform construction, including labor and materials, and/or
24 other at issue work, and including all terms and conditions, among other things, on the
25 Subject Project, including the subject residences (hereinafter "Subject Property"), which
26 is the subject of the main action herein, San Diego County Superior Court, Case No. 37-
27 2008-00085314-CU-CD-CTL.

28 7. Cross-Complainant is informed and believes and thereon alleges that

1 pursuant to these agreements, the Cross-Defendants were to provide Cross-Complainant
2 with the engineering, development, inspection, design, labor, materials, and/or
3 construction (work and/or services), and to furnish their best skill and judgment and to
4 cooperate with the Cross-Complainant and its authorized agents in furthering the
5 interests of the Cross-Complainant. Plaintiffs filed a First Amended Complaint in the San
6 Diego County Superior Court, Case No. 37-2008-00085314-CU-CD-CTL against K.
7 HOVNANIAN, among others, wherein Plaintiffs allege that K. HOVNANIAN is liable for
8 damages caused by construction defects, among other issues, as is more particularly
9 alleged in the operative First Amended Complaint of Plaintiffs.

10 8. K. HOVNANIAN does not intend to waive any right of equitable indemnity or
11 contractual indemnity that may be applicable in this action. By the filing of this Cross-
12 Complaint, K. HOVNANIAN expressly does not waive any right to compel SB800
13 compliance and/or to petition for and/or move to compel arbitration to resolve the issues
14 set forth herein or in Plaintiffs' operative First Amended Complaint.

15 9. Unless otherwise stated, this Cross-Complaint is not intended to resolve
16 and/or implicate any work and or defects related to a covered subcontractor relative to a
17 wrap insurance program, if any.

18 **FIRST CAUSE OF ACTION**

19 **(Equitable Indemnity)**

20 **(As to All Cross-Defendants, including ROES 1-100)**

21 10. Cross-Complainant refers to and incorporates by reference each and every
22 allegation of the foregoing paragraphs of this Cross-Complaint as though set forth herein
23 in full hereat.

24 11. In equity and good conscience, if Plaintiffs recover against Cross-
25 Complainant, then Cross-Complainant is entitled to equitable indemnity, apportionment of
26 liability, contribution among, and from, the Cross-Defendants, and each of them,
27 according to their respective fault, for the injuries and damages allegedly sustained by
28 Plaintiffs, if any, by way of sums paid by settlement, or in the alternative, any judgments

1 rendered against Cross-Complainant in the action herein based upon Plaintiffs' First
2 Amended Complaint.

3 12. Cross-Complainant expressly denies the allegations of Plaintiffs' operative
4 First Amended Complaint and any wrongdoing on its part. Should Cross-Complainant
5 nevertheless be found liable for any alleged wrongdoings with respect to the allegations
6 of Plaintiffs' operative Complaint, the acts and/or omissions of Cross-Complainant were
7 passive and secondary, while those of Cross-Defendants, and each of them, were active,
8 primary and superseding. Thus, as a direct, proximate and foreseeable result of the
9 wrongdoing of Cross-Defendants herein, and each of them, Cross-Complainant is entitled
10 to total equitable indemnity from any and all liability adjudged against it by Plaintiffs.

11 13. As a direct, proximate and foreseeable result of the filing of Plaintiffs'
12 operative First Amended Complaint, Cross-Complainant has been compelled to incur
13 attorney's fees, court costs and the expense of this cross-action, and Cross-Complainant
14 will seek leave of court to amend this Cross-Complaint to set forth the amount of said
15 damages when the same have been ascertained.

16 14. Should Plaintiffs recover any amount of damages against Cross-
17 Complainant by way of judgment, settlement or otherwise, then Cross-Complainant, by
18 reason of the foregoing and in equity and good conscience, is entitled to an equitable
19 apportionment of the liability of Cross-Defendants, and each of them, on a comparative
20 fault basis and a judgment against Cross-Defendants, and each of them, under the
21 doctrine of implied indemnity and in an amount equal to their respective liabilities as so
22 apportioned.

23 **SECOND CAUSE OF ACTION**

24 **(Express Indemnity)**

25 **(As to All Cross-Defendants, including ROES 1-100)**

26 15. Cross-Complainant refers to and incorporates by reference each and every
27 allegation of the foregoing paragraphs and all causes of action in this Cross-Complaint as
28 though set forth herein in full hereat.

1 16. Cross-Complainant is informed and believes and thereon alleges that
2 Cross-Defendants, and each of them, including ROES 1-100, entered into written
3 agreements with Cross-Complainant which contain, among other things, express
4 indemnity and guarantee clauses, the terms which shall be according to proof as to each
5 Cross-Defendant at the of time trial. An exemplar contract with indemnity clauses are set
6 forth in full as **Exhibit "B"**. Specifically, the subcontract agreements provide as follows:

7 "1. PARTIES: This Subcontract ('Subcontract') is between Contractor and
8 Subcontractor. Any references to "Owner" shall refer to K. HOVNANIAN
AT BRIDGEPORT, INC."

9 "10. INDEMNIFICATION: The insurance maintained by
10 Subcontractor pursuant to Section 9, above, shall insure the
11 performance of Subcontractor's indemnification obligations as set
12 forth herein, but nothing in Section 9 or the insurance referred to
13 therein shall in any way limit the indemnification provided
14 hereunder. To the fullest extent permitted by law, Subcontractor
15 shall indemnify and save Contractor and Owner harmless from and
16 against all costs, expenses, liabilities and claims for any damages,
17 including those to persons (including personal injury, bodily injury or
18 death) or to property arising out of Subcontractor's execution of the
19 Work, whether caused by delay of Subcontractor, defective
20 workmanship or materials or delays caused thereby, regardless of
21 whether such damage is caused in part by a party indemnified
22 hereunder, and any and all costs, expenses, attorneys' fees and
23 liabilities incurred by Contractor or Owner in defending against such
24 claims, whether the same proceed to judgment or not, and
25 Subcontractor at is own expense agrees, upon written request by
26 Contractor, to defend any such suit or action brought against
27 Contractor. The foregoing indemnity shall not apply to the extent
28 any loss is caused by the sole negligence or willful misconduct of
Contractor or Owner. In the prosecution of any successful claim or
suit by Contractor for the enforcement of this Subcontract, or any of
the monetary or other obligations of Subcontractor hereunder,
Subcontractor agrees to pay to Contractor any reasonable
attorneys' fees and any cost of suit incurred by Contractor or
Owner."

23 "7. DEFECTS: Subcontractor agrees to indemnity, defense and hold
24 Contractor harmless from any and all costs, claims, expenses, liabilities and
25 damages (including attorney fees) caused by defective workmanship and/or
26 material, any delays caused thereby, Subcontractor shall also pay and
27 reimburse Contractor for any and all costs, claims, expenses, liabilities and
28 damages."

26 "8. GUARANTEE: Subcontractor guarantees all materials and
27 workmanship....Subcontractor shall also guarantee Contractor against
28 liability, loss or damage...

17. K. HOVNANIAN is a third-party beneficiary to all subcontracts with the

1 subcontractor cross-defendants. Cross-Complainant is informed and believes and
2 thereon alleges that the defects and damages claimed by Plaintiffs involves defects and
3 damage to, or destruction of, property and Cross-Complainant herein is further informed
4 and believes, and thereon alleges that said damages were caused by Cross-Defendants,
5 and each of them, arising out of and connected with the performance of
6 Cross-Defendants' obligations pursuant to the written agreement entered into by each of
7 them with Cross-Complainant herein.

8 18. Cross-Complainant has retained the services of WOOD, SMITH, HENNING
9 & BERMAN LLP to defend the action herein, thereby incurring costs, consultants' fees,
10 attorneys' fees and other litigation fees in the defense of this action and prosecution of
11 this Cross-Complaint. Cross-Complainant will seek leave of this court to amend this
12 Cross-Complaint to show the amount of said costs and attorneys' fees when the same
13 become known to Cross-Complainant.

14 THIRD CAUSE OF ACTION

15 (Breach of Express and Implied Warranties)

16 (As to All Cross-Defendants, including ROES 1-100)

17 19. Cross-Complainant refers to and incorporates by reference each and every
18 allegation of the foregoing paragraphs and all causes of action in this Cross-Complaint as
19 though set forth herein in full hereat.

20 20. Cross-Complainant is informed and believes and thereon alleges that
21 Cross-Defendants, and each of them, including ROES 1-100, entered into written and/or
22 oral agreements with Cross-Complainant and was to comply, with each and every term
23 and condition.

24 21. Cross-Complainant is informed and believes and thereon alleges that
25 Cross-Defendants, and each of them, pursuant to the written and/or oral agreements,
26 impliedly and expressly warranted that the Subject Property would be fit for its intended
27 use and purpose, namely that all labor performed and services provided would be in
28 good, workmanlike and substantial manner.

1 22. Cross-Complainant relied upon said warranties and believed that the work
2 was performed in a first-class and workmanlike manner and the labor performed and
3 services provided were properly performed by Cross-Defendants, and each of them, as
4 designated above, and their agents, or employees, and for its intended use and purpose.

5 23. If the allegations contained in the operative First Amended Complaint prove
6 true at time of trial, arbitration or otherwise (although specifically denied), then Cross-
7 Complainant is informed and believes and thereon alleges that Cross-Defendants, and
8 each of them, breached said warranties in that Plaintiffs have alleged that the
9 engineering, design and construction was defective, and that, as a consequence of said
10 defects, the Subject Property has experienced damages, which are more particularly
11 alleged in the First Amended Complaint.

12 24. If Plaintiffs' allegations prove true at time of trial, arbitration or otherwise
13 (although specifically denied), then as a proximate result of the breach of the express and
14 implied warranties, the Cross-Defendants and each of them as designated above, have
15 breached the aforementioned written contracts. As a result, Cross-Complainant alleges
16 that it will suffer damages in a sum equal to any sums paid by way of settlement, or, in
17 the alternative, judgment rendered against Cross-Complainant in the action herein based
18 upon Plaintiffs' First Amended Complaint on file herein.

19 25. Notice of defects was served on Cross-Complainant via the Plaintiffs' First
20 Amended Complaint. This Cross-Complaint, as well as prior tenders to the at issue
21 Cross-Defendants, serve as notice of such conditions, and Cross-Complainant is
22 informed and believes and thereon alleges that Cross-Defendants, including ROES
23 1-100, declined to repair the alleged defects as referenced above (and K. HOVNANIAN
24 no longer has control over the residences).

25 26. Cross-Complainant is informed and believes and thereon alleges that
26 Cross-Defendants, and each of them as designated above, entered into written
27 agreements with Cross-Complainant and was to comply, among other things, with each
28 and every term and condition.

1 Cross-Defendants, and each of them as designated above, entered into written
2 agreements with Cross-Complainant and which stated, among other things, an indemnity
3 requirement clause, the terms of which are subject to proof at the time of trial and are set
4 forth herein. Cross-Defendants, and each of them, were required to indemnify Cross-
5 Complainant with respect to the claims made and costs incurred on behalf of Cross-
6 Complainant, in defending against Plaintiffs' allegations as are more particularly
7 described in the operative pleadings.

8 32. Cross-Complainant is informed and believes and thereon alleges, that
9 Cross-Defendants and each of them, as designated above, entered into written
10 agreements with Cross-Complainant and was to comply, with each and every term and
11 condition. Cross-Complainant has performed all conditions, covenants and promises
12 required by it in accordance with the terms and conditions of the aforementioned
13 agreements.

14 33. Cross-Complainant is informed and believes, and thereon alleges, that the
15 damages claimed by Plaintiffs involve construction defect complaints and Cross-
16 Complainant is further informed and believes, and thereon alleges, that if the allegations
17 contained in the operative Complaint prove true at time of trial or otherwise (although
18 specifically denied), then said damages were caused by Cross-Defendants and each of
19 them as designated above, entered into contracts with others in the performance of
20 services provided in the construction of the homes in this action and are responsible for
21 all acts and omissions of their agents and employees.

22 34. If the allegations contained in the operative Complaint prove true at time of
23 trial or otherwise (although specifically denied), then Cross-Defendants and each of them
24 as designated above, have breached the aforementioned written contracts by failing and
25 neglecting to properly perform the labor and services as contemplated by the parties to
26 the agreements, and by failing to comply with each and every term of the contract
27 including the requirement that Cross-Defendants indemnify Cross-Complainant. Further,
28 the guarantee has been breached.

1 35. If the allegations contained in the operative Complaint prove true at time of
2 trial or otherwise (although specifically denied), then Cross-Defendants, among other
3 things, and each of them, negligently and carelessly constructed, provided products
4 and/or materials, built, supervised and/or maintained the subject residences, thereby
5 causing the damages alleged by Plaintiffs in the operative Complaint.

6 36. Cross-Complainant is also informed and believes and thereon alleges that
7 Cross-Defendants each of them, including ROES 1 through 100, entered into written
8 agreements with Cross-Complainant which provided among other things, for the following
9 language in paragraph 9. The requirements, include but are not limited to, paragraph
10 9(b) states, "Subcontractor shall have its insurance company name, by endorsement,
11 Contractor, Owner and K. Hovnanian Developments of California, Inc., and the respective
12 shareholders, directors, officers, employees and agents as additional insureds on the
13 policies other than Worker's Compensation..."

14 37. Cross-Defendants and each of them as designated above, have breached
15 (according to proof) some or all the express provisions by among other things, failing and
16 neglecting to procure the required insurance and/or to name Cross-Complainant as an
17 additional insured on the policies of insurance.

18 38. As a result of Cross-Defendants' breach of the aforementioned written
19 contracts, Cross-Complainant has been damaged in an amount according to proof at the
20 time of trial. Cross-Complainant has retained the services of WOOD, SMITH, HENNING
21 & BERMAN LLP to defend the action herein, thereby incurring costs, consultants' fees,
22 attorneys' fees and other litigation fees in the defense of this action and prosecution of
23 this Cross-Complaint. Cross-Complainant will seek leave of this Court to amend this
24 Cross-Complaint to show the amount of said costs and attorneys' fees when the same
25 become known to Cross-Complainant.

26 ///

27 ///

28 ///

FIFTH CAUSE OF ACTION

(Negligence)

(As to all Cross-Defendants, including ROES 1-100)

39. Cross-Complainant refers to and incorporates by reference each and every allegation of the foregoing paragraphs and all Causes of action in this Cross-Complaint as though set forth herein in full hereat.

40. Should the allegations contained in the operative First Amended Complaint prove true at time of trial, arbitration or otherwise (although specifically denied), Cross-Complainant is informed and believes and thereon alleges that Cross-Defendants, and each of them, negligently, carelessly and wrongfully failed to use reasonable care in the design, engineering, development, manufacture, supervision, maintenance, repair, supply of materials, installation, inspection and/or construction of the Subject Property that is at issue in Plaintiffs' First Amended Complaint and which is more particularly described therein.

41. If the allegations contained in the operative First Amended Complaint prove true at time of trial, arbitration or otherwise (although specifically denied), then Cross-Complainant is further informed and believes and thereon alleges that Cross-Defendants, and each of them, including ROES 1 through 100, negligently and carelessly failed to exercise reasonable care and diligence to avoid loss and to minimize and mitigate damages which could have been prevented by reasonable efforts on the part of said Cross-Defendants, or by expenditures which should have been made in the exercise of due care.

42. Should the allegations contained in the operative First Amended Complaint prove true at time of trial, arbitration or otherwise (although specifically denied), then Cross-Complainant is informed and believes and thereon alleges that the failures and damages alleged by Plaintiffs occurred due to the negligence of Cross-Defendants and each of them.

43. As a direct and proximate result of said negligence of Cross-Defendants,

1 and each of them, it is herein alleged that Cross-Complainant has incurred and continues
2 to incur costs and expenses including but not limited to litigation costs, contractor's fees,
3 attorneys' fees and consultants' fees to inspect, repair and mitigate damages arising out
4 of said negligent design, construction, repair and maintenance and to defend against
5 Plaintiffs' action herein.

6 **SIXTH CAUSE OF ACTION**

7 **(Contribution)**

8 **(As to all Cross-Defendants, including ROES 1-100)**

9 44. Cross-Complainant refers to and incorporates by reference each and every
10 allegation of the foregoing paragraphs and all causes of action in this Cross-Complaint as
11 though set forth herein in full hereat.

12 45. By reason of the foregoing allegations, Cross-Complainant will be damaged
13 to the extent that it must pay any sum, or any sum in excess of a proportionate amount of
14 their liability, if any, assessed by the trier of fact. Accordingly, if Cross-Complainant is
15 held liable for any part of the claims asserted against them, Cross-Complainant is entitled
16 to contribution from Cross-Defendants, and each of them, for the injuries and damages
17 allegedly sustained by Plaintiffs, if any, as a result of any judgment or settlement awarded
18 against Cross-Complainant herein.

19 **SEVENTH CAUSE OF ACTION**

20 **(Declaratory Relief re: Duty to Defend)**

21 **(As to all Cross-Defendants, including ROES 1-100)**

22 46. Cross-Complainant refers to and incorporates by reference each and every
23 allegation of the foregoing paragraphs and all causes of action in this Cross-Complaint as
24 though set forth herein in full hereat.

25 47. A written contract exists between Cross-Complainant and each of the
26 Cross-Defendants, and each of them, including ROES 1 through 100. Each said contract
27 is incorporated herein by reference as though fully set forth at this point.

28 48. The subject contracts each contain express indemnity and insurance

1 provisions, the terms of which are according to proof at time of trial, and are partially set
2 forth in the preceding Causes of Action (and an exemplar is attached as **Exhibit "B"**).

3 49. A claim or loss within the meaning of the subject express indemnity and
4 insurance clauses contained in the said mentioned contracts has arisen by virtue of the
5 fact that the Plaintiffs in this action has filed a First Amended Complaint against Cross-
6 Complainant, claiming damages for construction deficiencies with the Subject Property
7 and that said construction deficiencies claimed in Plaintiffs' First Amended Complaint
8 pertain to the services provided, scope of work performed and/or materials provided by
9 Cross-Defendants, and each of them as referenced above.

10 50. Cross-Defendants, and each of them, have a present duty to defend
11 against any claims made against Cross-Complainant pursuant to the subject contract,
12 pursuant to Civil Code section 2778, and various case law, including but not limited to
13 *Crawford v. Weather Shield*, Cal. Sup. St. S141541 (published July 21, 2008), and as a
14 result of the assertion of a claim and/or loss arising out of the work of the
15 Cross-Defendants, and each of them as referenced above. Cross-Complainant has a
16 present legal right to be provided a defense by the Cross-Defendants, and each of them
17 as referenced above. Civil Code section 2778 provides, in pertinent part, that:

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

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

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

25 51. Cross-Complainant has tendered the defense of this action to all the
26 Cross-Defendants, and each of them, as referenced above, each of whom has, to date
27 (according to proof), rejected, ignored, or failed to properly accept the tender of defense,
28 and/or fully-defend K. HOVNANIAN.

1 57. Cross-Complainant seeks a Declaration by the Court as to its respective
2 rights and said Cross-Defendants' duties and obligations as to the matters herein alleged,
3 and a judgment in Cross-Complainant's favor as to the existence of a Type I indemnity
4 provision, or the strictest form of indemnity allowed by the court.

5 **NINTH CAUSE OF ACTION**

6 **(Declaratory Relief re: Contractual Duties and Obligations)**

7 **(As to all Cross-Defendants, including ROES 1-100)**

8 58. Cross-Complainant refers to and incorporates by reference each and every
9 allegation of the foregoing paragraphs and all causes of action in this Cross-Complaint as
10 though set forth herein in full hereat.

11 59. An actual controversy has arisen and now exists between Cross-
12 Complainant and Cross-Defendants, and each of them, including ROES 1-100,
13 concerning their respective rights, duties, and obligations under the contract, in that
14 Cross-Complainant claims that Cross-Defendants, and each of them, breached their
15 duties and obligations under the contracts.

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

27 61. Cross-Complainant is entitled to contribution from Cross-Defendants, and
28 each of them, for the injuries and damages sustained by Cross-Complainant, as a result

1 of Cross-Defendants' actions and any judgment or settlement awarded against Cross-
2 Complainant herein.

3 **TENTH CAUSE OF ACTION**

4 **(Declaratory Relief)**

5 **(As to All Cross-Defendants, Including ROES 1-100)**

6 62. Cross-Complainant refers to and incorporates herein by this reference each
7 and every paragraph of all causes of action as though fully set forth hereat.

8 63. By reason of the foregoing allegations, an actual controversy has arisen
9 and now exists between Cross-Complainant and Cross-Defendants, and each of them,
10 concerning the respective rights, duties, and obligations of each Cross-Defendant to
11 Cross-Complainant by virtue of the claims for implied and express contractual rights to
12 indemnity, total or equitable indemnity rights and contribution rights, which exists
13 between Cross-Complainant and each Cross-Defendant.

14 64. Cross-Complainant alleges that a declaration by the Court as to the rights,
15 duties and obligations of the parties herein is required in order to resolve the existing
16 controversies and disputes so that the parties may ascertain their true obligations and
17 discharge those obligations accordingly.

18 **ELEVENTH CAUSE OF ACTION**

19 **(Total Indemnity)**

20 **(As to All Cross-Defendants, Including ROES 1-100)**

21 65. Cross-Complainant refers to and incorporates herein by reference each and
22 every preceding paragraph and all preceding Causes of Action as though fully set forth
23 herein.

24 66. By reason of the foregoing, if Plaintiffs recover any sums against Cross-
25 Complainant, then Cross-Complainant is entitled to total indemnity from Cross-
26 Defendants, and each of them, for damages sustained by Plaintiffs, if any, for any sums
27 paid by way of settlement, or in the alternative, judgment rendered against Cross-
28 Complainant, in the action herein based upon Plaintiffs' operative Complaint.

1 WHEREFORE, Cross-Complainant K. HOVNANIAN AT BRIDGEPORT, INC.
2 prays for judgment against Cross-Defendants, and each of them, as follows:

3 **FIRST CAUSE OF ACTION:**

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

6 **SECOND CAUSE OF ACTION:**

7 2. That Cross-Complainant be entitled to total express indemnity from
8 Cross-Defendants and ROES 1-50, and each of them;

9 **THIRD CAUSE OF ACTION:**

10 3. That Cross-Complainant be entitled to damages for breach of express and
11 implied warranties from Cross-Defendants and ROES 1-50, and each of them;

12 **FOURTH CAUSE OF ACTION:**

13 4. That Cross-Complainant be entitled to damages for breach of contract by the
14 Cross-Defendants and ROES 1-50, and each of them;

15 **FIFTH CAUSE OF ACTION:**

16 5. That Cross-Complainant be entitled to damages for negligence from all
17 Cross-Defendants, and each of them;

18 **SIXTH CAUSE OF ACTION:**

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

21 **SEVENTH CAUSE OF ACTION:**

22 7. For a Declaration that Cross-Defendants, and ROES 1-50, inclusive, have
23 an obligation under their respective contracts to provide a defense to Cross-Complainant
24 in this action;

25 **EIGHTH CAUSE OF ACTION:**

26 8. For a Declaration that Cross-Defendants, and ROES 1-50, inclusive, have
27 an obligation under their respective contracts to indemnify Cross-Complainant in this
28 action and that the indemnity provision therein is a Type I indemnity provision, or the

1 strictest form of indemnity available;

2 **NINTH CAUSE OF ACTION:**

3 9. For a judicial determination of Cross-Complainant's rights and Cross-
4 Defendants', and ROES 1-50, inclusive, obligations under their respective contracts to
5 defend and indemnify Cross-Complainant in this action pursuant to their respective
6 contractual agreements;

7 **TENTH CAUSE OF ACTION:**

8 10. That Cross-Complainant be entitled to declaratory relief from
9 Cross-Defendants, and each of them;

10 **ELEVENTH CAUSE OF ACTION:**

11 11. That Cross-Complainant be entitled to total indemnity from Cross
12 Defendants, and each of them;

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

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

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

18 14. That Cross-Defendants be required to defend, indemnify, protect, and save
19 harmless Cross-Complainant herein from any loss, damage, costs, judgment, settlement,
20 and expense, including, but not limited to, attorneys' fees and Court costs related to
21 and/or connected with the claims asserted herein by Plaintiff and/or the other Cross-
22 Complainants.

23 DATED: February 13, 2009

WOOD, SMITH, HENNING & BERMAN LLP

24
25 By: 

TAWNYAL L. SOUTHERN
YVETTE M. DUMAS

Attorneys for Defendant and Cross-Complainant,
K. HOVNANIAN AT BRIDGEPORT, INC.

WOOD, SMITH, HENNING & BERMAN LLP
Attorneys at Law
5000 BIRCH STREET, SUITE 8500
NEWPORT BEACH, CALIFORNIA 92660
TELEPHONE (949) 757-4500 • FAX (949) 757-4550

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EXHIBIT "A"

**SUMMONS
(CITACION JUDICIAL)**FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**

K. HOVNANIAN AT BRIDGEPORT, INC., a California Corporation; and DOES 1 through 200, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**ANTHONY TROLINGER and STEPHANIE TROLINGER; LOIS ACKER; JENNIFER ALBERT and SAM STARNES; RANDY ASHMAN and IMELDA ASHMAN; SARA BERNAL; FUH-SHENG CHEN and SHU-CHUN CHIU; LESA CHRISTENSON; CYNTHIA CORNELIUS; ROSIE ELSKAMP and DAVID GREEN; NATALIE EYMAN; MICHAEL JOHNSON;
(Please see Attachment 1)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of San Diego
330 W. Broadway
330 W. Broadway
San Diego, CA 92101
CentralCASE NUMBER:
(Número del Caso): 37-2008-00085314-CU-CD-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Howard J. Silldorf, Esq. SBN# 99132 (858) 625-3900 (858) 625-3901
Silldorf and Levine, LLP
8910 University Center Lane
San Diego, CA 92122

DATE:

(Fecha)

Clerk, by _____, Deputy

(Secretario)

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

- ☐ by personal delivery on (date):

Page 1 of 1

PETITIONER/PLAINTIFF: Trolinger, at al.	CASE NUMBER.
RESPONDENT/DEFENDANT: K. Hovnanian at Bridgeport	37-2008-00085314-CU-CD-CTL

Attachment 1 - Plaintiffs Continued

DOUGLAS KLINE, as Trustee of the DOUGLAS E. KLINE LIVING TRUST DATED MAY 4, 2004, and NANCY VERDIN; JACQUELINE LUQUIN and LUIS LUQUIN; DENNIS LYON; FRANCES MARXEN; LARRY RICHARDSON and BETTY RICHARDSON; ISMAEL SIMBULAN and CORAZON SIMBULAN, as Trustees of the ISMAEL A. SIMBULAN AND CORAZON S. SIMBULAN TRUST DATED OCTOBER 5, 2002; PHYLLIS SPITAL, LLC, a California Limited Liability Company; DIANA TOTMAN and BRYAN TOTMAN; DEBORAH TRAVERS, as Trustee of the DEBORAH J. TRAVERS TRUST DATED JUNE 10, 1998; ROBERT WETZEL and MARY WETZEL; and FRANCISCO ZABALETA and LETICIA LOPEZ;

1 HOWARD J. SILLDORF, ESQ. SBN #99132
THERESA M. FILICIA, ESQ. SBN #128968
2 **SILLDORF & LEVINE, LLP**
8910 UNIVERSITY CENTER LANE, SUITE 600
3 SAN DIEGO, CA 92122
4 TELEPHONE: (858) 625-3900
FACSIMILE: (858) 625-3901

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6 ATTORNEYS FOR PLAINTIFFS

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

10 ANTHONY TROLINGER and STEPHANIE
TROLINGER; LOIS ACKER; JENNIFER
11 ALBERT and SAM STARNES; RANDY
ASHMAN and IMELDA ASHMAN; SARA
12 BERNAL; FUH-SHENG CHEN and SHU-
CHUN CHIU; LESA CHRISTENSON;
13 CYNTHIA CORNELIUS; ROSIE
ELSKAMP and DAVID GREEN; NATALIE
14 EYMAN; MICHAEL JOHNSON;
DOUGLAS KLINE, as Trustee of the
15 DOUGLAS E. KLINE LIVING TRUST
DATED MAY 4, 2004, and NANCY
16 VERDIN; JACQUELINE LUQUIN and
LUIS LUQUIN; DENNIS LYON;
17 FRANCES MARXEN; LARRY
RICHARDSON and BETTY
18 RICHARDSON; ISMAEL SIMBULAN and
CORAZON SIMBULAN, as Trustees of the
20 ISMAEL A. SIMBULAN AND CORAZON
S. SIMBULAN TRUST DATED OCTOBER
21 5, 2002; PHYLLIS SPITAL, LLC, a
California Limited Liability Company;
22 DIANA TOTMAN and BRYAN TOTMAN;
DEBORAH TRAVERS, as Trustee of the
23 DEBORAH J. TRAVERS TRUST DATED
24 JUNE 10, 1998; ROBERT WETZEL and
MARY WETZEL; and FRANCISCO
25 ZABALETA and LETICIA LOPEZ,

26 Plaintiffs,

27 v.
28

) Case No. 37-2008-00085314-CU-CD-CTL

)

)

) **FIRST AMENDED COMPLAINT FOR
CONSTRUCTION DEFECTS:**

)

) **1. STRICT LIABILITY;**

) **2. NEGLIGENCE;**

) **3. BREACH OF IMPLIED WARRANTIES;**

) **4. BREACH OF EXPRESS WARRANTIES**

)

) Action filed: June 9, 2008

)

) Judge: Ronald L. Styn

) Dept.: C-62

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1 K. HOVNANIAN AT BRIDGEPORT, INC., a)
California Corporation; and DOES 1 through)
2 200, inclusive,)
3)
Defendants.)
4 _____)

5 Plaintiffs, for the causes of action against Defendants, and each of them, demand a jury trial
6 for each cause of action and allege as follows:

7 I.
8 **INTRODUCTORY ALLEGATIONS**

9 1. ANTHONY TROLINGER and STEPHANIE TROLINGER, are owners of 2926 West
10 Canyon Avenue, San Diego, CA 92123, a home within the residential single-family housing
11 development known as "Bridgeport at Stonecrest Village" (hereinafter referred to as the "Real
12 Property").

13 2. LOIS ACKER is owner of 2858 West Canyon Avenue, San Diego, CA 92123, a home
14 within the Real Property.

15 3. JENNIFER ALBERT and SAM STARNES are owners of 2908 West Canyon Avenue,
16 San Diego, CA 92123, a home within the Real Property.

17 4. RANDY ASHMAN and IMELDA ASHMAN are owners of 2854 West Canyon Avenue,
18 San Diego, CA 92123, a home within the Real Property.

19 5. SARA BERNAL is owner of 2828 West Canyon Avenue, San Diego, CA 92123, a home
20 within the Real Property.

21 6. FUH-SHENG CHEN and SHU-CHUN CHIU are owners of 2832 West Canyon Avenue,
22 San Diego, CA 92123 a home within the Real Property.

23 7. LESA CHRISTENSON is owner of 2826 West Canyon Avenue, San Diego, CA 92123 a
24 home within the Real Property, and LESA CHRISTENSON is owner of 2842 West Canyon
25 Avenue, San Diego, CA 92123 a home within the Real Property.

26 8. CYNTHIA CORNELIUS is owner of 2810 West Canyon Avenue, San Diego, CA 92123
27 a home within the Real Property.

28 9. ROSIE ELSKAMP and DAVID GREEN are owners of 2942 West Canyon Avenue, San

1 Diego, CA 92123, a home within the Real Property.

2 10. NATALIE EYMAN is owner of 2862 West Canyon Avenue, San Diego, CA 92123 a
3 home within the Real Property.

4 11. MICHAEL JOHNSON is owner of 2942 West Canyon Avenue, San Diego, CA 92123, a
5 home within the Real Property

6 12. DOUGLAS KLINE is Trustee of the DOUGLAS E. KLINE LIVING TRUST DATED
7 MAY 4, 2004, owner of 2880 West Canyon Avenue, San Diego, CA 92123, a home within the Real
8 Property. NANCY VERDIN is also owner of 2880 West Canyon Avenue.

9 13. JACQUELINE LUQUIN and LUIS LUQUIN are owners of 2890 West Canyon Avenue,
10 San Diego, CA 92123, a home within the Real Property;

11 14. DENNIS LYON is owner of 2838 West Canyon Avenue, San Diego, CA 92123, a home
12 within the Real Property.

13 15. FRANCES MARXEN is owner of 2806 West Canyon Avenue, San Diego, CA, 92123, a
14 home within the Real Property.

15 16. LARRY RICHARDSON and BETTY RICHARDSON are owners of 2888 West Canyon
16 Avenue, San Diego, CA 92123, a home within the Real Property.

17 17. ISMAEL SIMBULAN and CORAZON SIMBULAN are Trustees of the ISMAEL A.
18 SIMBULAN AND CORAZON S. SIMBULAN TRUST DATED OCTOBER 5, 2002, owner of
19 2884 West Canyon Avenue, San Diego, CA 92123, a home within the Real Property.

20 18. PHYLLIS SPITAL, LLC, a California Limited Liability Company, is owner of 2904 West
21 Canyon Avenue, San Diego, CA 92123, a home within the Real Property, and owner of 2924 West
22 Canyon Avenue, San Diego, CA 92123, a home within the Real Property.

23 19. DIANA TOTMAN and BRYAN TOTMAN are owners of 2960 West Canyon Avenue,
24 San Diego, CA 92123, a home within the Real Property.

25 20. DEBORAH TRAVERS is Trustee of the DEBORAH J. TRAVERS TRUST DATED
26 JUNE 10, 1998, owner of 2846 West Canyon Avenue, San Diego, CA, 92123, a home within the
27 Real Property.

28 21. ROBERT WETZEL and MARY WETZEL are owners of 2870 West Canyon Avenue, San

1 Diego, CA 92123, a home within the Real Property.

2 22. FRANCISCO ZABALETA and LETICIA LOPEZ are owners of 2872 West Canyon
3 Avenue, San Diego, CA 92123, a home within the Real Property.

4 23. This is an action to recover damages associated with construction defects in property
5 owned by Plaintiffs within the residential development commonly known as Bridgeport at
6 Stonecrest Village, located in San Diego, California. The allegations contained herein are pled
7 cumulatively, each paragraph incorporating the pleadings set forth before and after it, and the titles
8 and headings are for convenience only. Plaintiffs seek to recover the cost to repair defects and
9 related damage, reimbursement for past repairs, and costs to investigate the extent of latent
10 construction defects and damage and determine the proper repairs.

11 24. Plaintiffs are informed and believe and based thereon allege that the items generally
12 referred to and particularly described herein are "latent deficiencies" within the meaning of
13 California Code of Civil Procedure ("C.C.P.") §337.15, in that they are not apparent by reasonable
14 inspection. Plaintiffs at all times mentioned relied on the skill of Defendants, and each of them, in
15 producing improvements and lots that are reasonably fit for their intended purpose. Plaintiffs are
16 still not fully aware of all the causes or the full extent of these latent deficiencies, nor the amount of
17 resultant damage due to the loss being continual, progressive, and latent in nature. Plaintiffs are lay
18 individuals who have required expert consultations to assist in review of property conditions.

19 **II.**

20 **ALLEGATIONS AS TO DEFENDANTS**

21 25. Plaintiffs allege based on information and belief that defendant K. HOVNANIAN AT
22 BRIDGEPORT, INC., is a California Corporation that was and is doing business in the County of
23 San Diego, State of California, and acted as the owner/developer/seller of the Real Property
24 described herein.

25 26. Plaintiff is informed and believes and thereon alleges that K. HOVNANIAN AT
26 BRIDGEPORT, INC. and DOES 1 through 50, inclusive, (hereinafter sometimes collectively
27 referred to as "Developer Defendants") were and are co-developers and agents of one another in the
28 development, design, construction, marketing and sale of the subject property.

1 27. Plaintiffs are informed and believe that Developer Defendants were and are alter egos of
2 one another in that there is such a unity of interest and ownership between each Developer
3 Defendant that their separate personalities no longer exist, and failure to disregard the corporate
4 entity would sanction a fraud or promote injustice.

5 28. Defendant DOES 1 through 200, inclusive, whether individual, corporate, associate, alter
6 ego, or otherwise, are fictitious names of defendants whose true names and capacities, at this time,
7 are unknown to plaintiffs. Plaintiffs allege upon information and belief that at all times herein
8 mentioned, each defendant sued herein as a DOE was acting for itself or its agent, servant,
9 employee, and/or alter ego of its co-defendants, and in doing the things hereinafter mentioned, was
10 acting in the course and scope of its authority as such agent, servant, employee, and/or alter-ego,
11 and with the full knowledge, permission and consent, either express or implied, of its co-
12 defendants. Plaintiffs allege upon information and belief that each of said fictitiously named
13 defendants, whether acting for itself or as agents, corporations, associations, or otherwise, is in
14 some way liable or responsible to Plaintiffs on the facts hereinafter alleged, and caused injuries and
15 damages proximately thereby. At such times as defendants' true names and capacities become
16 known to plaintiffs, Plaintiffs will seek leave of this court to amend this Complaint to insert said
17 true names and capacities of defendants.

18 29. Defendants, including DOES 1-200, individually and jointly, were involved in the
19 business of designing, developing, building, constructing, repairing, maintaining, installing,
20 manufacturing, supplying and/or selling the subject Real Property, which was done in an improper
21 fashion resulting in said Real Property suffering construction defects including, but not limited to:
22 improperly designed, constructed and manufactured graded lots, drainage, waterproofing systems,
23 decks, foundations, slabs, window products and installation; stucco systems, and substantial
24 damage as a direct and proximate consequence thereof, including to the walls, floor coverings,
25 stucco systems, windows, framing, and doors.

26 30. Plaintiffs allege based on information and belief that the Developer Defendants, and each
27 of them, failed to inform or disclose to purchasers of the Real Property the improper fashion in
28 which the Real Property was designed, developed, built, constructed, installed, repaired and/or

1 maintained, which information has only recently been discovered by Plaintiffs, and each of them.
2 The improper fashion in which the Real Property was designed, developed, and/or constructed, and
3 resultant damage, combined with defendants' omissions, affirmative misrepresentations, and
4 failures to act have all resulted in substantial damage to plaintiffs and diminution in value of said
5 Real Property.

6
7 **III.**
FIRST CAUSE OF ACTION
Strict Liability

8 **(Alleged against Developer Defendants, including DOES 1 through 50, and DOES 51-75)**

9 31. Plaintiffs reallege and incorporate by reference the foregoing and subsequent paragraphs
10 as though fully set forth herein again.

11 32. Plaintiffs allege based on information and belief that Developer Defendants, including
12 DOES 1-50, were mass producers, mass developers, and mass constructors of homes; and that
13 DOES 51-75 were suppliers of materials incorporated into the Real Property.

14 33. Plaintiffs allege based on information and belief that Developer Defendants, within ten
15 (10) years of the filing of this action, commenced to develop and construct the above-described
16 Real Property and structures thereon for use as single family residential dwelling units; and that at
17 all times herein mentioned said Defendants intended to and did act as builders, designers,
18 developers, financiers, manufacturers, marketers, planners, sellers, and/or mass producers of the
19 Real Property.

20 34. Plaintiffs allege based on information and belief that the above-described Real Property
21 and structures were not constructed in a proper fashion, in that the drainage systems of the lots were
22 improperly prepared such that the residential slabs are in perpetually wet conditions; that the subject
23 dwellings were defectively built, permitting water intrusion; that these defects were and are latent,
24 allowing water intrusion into floors, slabs, framing, and walls, creating pervasive and increasing
25 damage including dry rot and microbial growth, and discoloration of flooring, the cause of which
26 was not reasonably susceptible to discovery by lay persons; and that the Real Property and
27 structures thereon have suffered substantial damage as a direct and proximate consequence.

28 35. Plaintiffs allege based on information and belief that said defective conditions are

1 associated with inadequate design, construction, development and/or manufacturing of the subject
2 Real Property and structures and/or the products used in construction, and include but are not
3 limited to, the following deficiencies:

4 (a) Failed drainage systems allowing rain, irrigation, and subterranean water to
5 accumulate on and into the soils and to flow onto and into individual homes, damaging
6 their interiors and exteriors, as well as individual foundation slabs;

7 (b) Breaches in the window, roof, and deck assemblies, permitting water intrusion into
8 the plywood and framing, so that the framing swelled, causing damage to stucco and
9 windows; and causing dry rot of wood framing and plywood and microbial growth;

10 (c) Such other and further deficiencies and defective conditions, the nature of which are
11 presently unknown to Plaintiffs at this time but which will be shown at the time of trial.

12 36. Plaintiffs allege based on information and belief that the above-described defective
13 condition of the subject Real Property and structures arose out of, was attributable to, and is directly
14 and proximately caused by the above-described latent deficiencies in the manufacturing, design,
15 planning, development, supervision, construction, improvement, and/or location of the subject Real
16 Property and structures and/or their component parts, and that prior to the time of their discovery of
17 the facts set forth herein, Plaintiffs could not reasonably have discovered the existence of the above-
18 described defective condition by the exercise of reasonable diligence.

19 37. Developer Defendants and DOES 51-75, and each of them, knew or reasonably should
20 have known that Plaintiffs would rely on their skill, judgment, and expertise in selecting,
21 investigating, surveying, evaluating, testing, compacting, grading and preparing the site of the Real
22 Property, and/or in designing engineering, inspecting, manufacturing, and constructing the Real
23 Property, structures, and/or component parts to be reasonably fit for their intended purpose and be
24 free of defects.

25 38. As builders, designers, developers, financiers, manufacturers, marketers, planners, sellers,
26 and/or mass producers of the Real Property and its component parts and systems, Developer
27 Defendants and DOES 51-75, and each of them, knew that the Real Property would be sold and
28 leased to and used by members of the general public for the purpose of residential dwelling units

1 and said Defendants knew or reasonably should have known that the persons who purchased said
2 units would do so without inspection for the defects set forth herein.

3 39. Within the last three years, Plaintiffs discovered that the subject Real Property and
4 structures were defective as herein alleged, were not fit for their intended purposes, and were not
5 manufactured, prepared, designed, evaluated, located, engineered, or produced in a reasonably
6 workmanlike manner. As a result of these defects, the Real Property and structures suffered
7 damage.

8 40. Developer Defendants and DOES 51-75, as developers and sellers of the Real Property
9 and/or suppliers of materials incorporated into the Real Property, are strictly liable and responsible
10 to Plaintiffs for all damages suffered as a result of the above-described defective conditions.

11 41. As a direct and proximate result of the defects set forth herein, Plaintiffs have suffered
12 damages in an amount not precisely known, but reasonably believed to be in excess of the Court's
13 minimum jurisdiction, for the cost of repair and/or cost of reconstruction and/or lost value to the
14 Real Property and structures thereon. Said damage will be demonstrated in a precise manner and
15 according to proof at the time of trial.

16 **IV.**
17 **SECOND CAUSE OF ACTION**
18 **Negligence**

19 **(Alleged against all Defendants, including DOES 1 through 200)**

20 42. Plaintiffs reallege and incorporate by reference the foregoing paragraphs as though fully
21 set forth herein again.

22 43. Defendants, as builders, developers, designers, suppliers of products/materials,
23 subcontractors, and/or general contractors, performed works of labor, supplied materials, equipment
24 and services necessary for construction, including supervision of construction of the Real Property
25 and the subject structures with the knowledge that said Real Property and structures would be used
26 as single family residences. In doing so, said defendants caused the Real Property and structures to
27 be constructed through their own works of labor and in supplying of materials, equipment,
28 supervision, and services upon the Real Property.

44. Defendants, and each of them, owed a duty to Plaintiffs to exercise reasonable care in

1 performing their functions, duties, and responsibilities in the capacities described above and knew
2 or should have known that the purchasers and/or users would suffer damages if they failed to
3 perform their duties in a reasonable and workmanlike fashion.

4 45. Plaintiffs are informed and believe, and based thereon allege that Defendants, and each of
5 them, failed and neglected to perform their functions, duties, and responsibilities in their capacities
6 described above in a reasonably workmanlike manner, within the prevailing standard of care, and
7 breached their individual duties of care to the Plaintiffs.

8 46. Defendants, and each of them named herein, as developer, builder, contractor,
9 subcontractor, supplier, or otherwise involved with the development, design, and/or construction of
10 the subject property, had a non-delegable duty to comply with local ordinances, state regulations,
11 and statutes adopted by the City and County of San Diego and State of California, including but not
12 limited to the Uniform Building Code and Health and Safety Code. Plaintiffs are informed and
13 believe and thereon allege that Defendants, and each of them, violated the ordinances, regulations
14 and statutes governing the development and construction of the subject property; that the violations
15 proximately caused damages to Plaintiffs as herein alleged; that the damages claimed were an
16 occurrence of the nature which the ordinances, regulations and statutes were designed to prevent;
17 and that the herein-mentioned ordinances, regulations and laws were adopted for express purpose of
18 protecting the general public in the purchase of new residential construction; and that Plaintiffs are
19 members of the class of persons to be protected.

20 47. Plaintiffs are informed and believe and thereon allege that Defendants owed Plaintiffs a
21 duty of care, in that the construction of mass-produced residential lots and homes was intended to
22 affect the class of persons of which Plaintiffs are comprised; that it was foreseeable that defective
23 construction would damage Plaintiffs; that such damage was of a kind that was highly certain to
24 occur due to defective construction; that the connection between Defendants' conduct and
25 Plaintiffs' injuries was close, direct, and proximate; that the failure to use due care in construction
26 of mass produced housing is morally blameworthy given the lack of sophistication of purchasers,
27 the high degree of licensing and regulation of the construction industry, and the high personal and
28 social cost related to defective residential construction; and the importance of a policy permitting

1 recovery by the general public, a class to which Plaintiffs belong, in order to prevent future harm.

2 48. As a direct and proximate result of the foregoing negligence, carelessness, unworkmanlike
3 conduct, actions, and/or omissions by Defendants, and each of them, Plaintiffs have suffered in an
4 amount precisely unknown, but expected to be in excess of the Court's minimum jurisdiction, for
5 the costs of repair and/or reconstruction, and loss of value to their residences as a consequence of
6 the defective conditions. Plaintiffs are presently unaware of the precise amount of damages, which
7 will be established at trial according to proof.

8 **V.**

9 **THIRD CAUSE OF ACTION**

10 **Breach of Implied Warranties**

11 **(Alleged by Original Homeowner Plaintiffs only against Developer Defendants,
12 including DOES 1 through 50)**

13 49. Plaintiffs incorporate by reference the foregoing and subsequent paragraphs as though
14 fully set forth herein again.

15 50. Those Plaintiffs having purchased homes within the Real Property directly from
16 Developer Defendants (hereinafter collectively referred to as "Original Homeowner Plaintiffs")
17 allege based on information and belief that the Real Property and structures built thereon have been
18 inadequately constructed, developed, designed, supervised, located, and/or otherwise improved
19 such that the structures, and parts thereof, have evidence of substantial water intrusion and damage
20 so that the Real Property and structures in their present condition are defective, not of merchantable
21 quality and not fit for the purpose of permitting residents to reside therein and thereon in a normal
22 and usual fashion.

23 51. Developer Defendants by virtue of their constructing, developing, designing,
24 manufacturing, locating, and building said structures on said Real Property impliedly warranted that
25 the subject structures and Real Property were developed, designed, supervised, tested, planned,
26 constructed, located, and/or improved in a reasonably workmanlike manner and would be of
27 merchantable quality and fit for the purpose of use as single family residences.

28 52. Original Homeowner Plaintiffs relied upon said implied warranties and reasonably
believed in good faith that the structures and Real Property were of merchantable quality, were

1 constructed, developed, designed, manufactured, built, located, and/or improved in a reasonably
2 workmanlike manner and were of merchantable quality and fit for the purpose of being used as
3 single family residences.

4 53. Aforesaid structures and Real Property are not of merchantable quality, were not
5 constructed, developed, designed, manufactured, built, located, and/or improved in a workmanlike
6 manner, and are not fit for the purpose of being used as single family residences, but instead, are
7 defective, as is now known, in that the structures and Real Property have become saturated and
8 damaged by water intrusion and due to improper drainage, and the structures and Real Property
9 sub-structures were not properly or adequately designed and/or constructed to provide proper
10 drainage and to prevent water intrusion. As a proximate consequence, cracks, dry-rot, water
11 staining, and other damage has occurred to the structures and Real Property. Original Homeowner
12 Plaintiffs believe and thereupon allege that the structures and Real Property may be additionally
13 defective in a manner and to an extent presently unknown, but which will be inserted by
14 amendment herein or established at the time of trial.

15 54. Original Homeowner Plaintiffs allege based on information and belief that the above-
16 described defective conditions of the structures and Real Property arose out of, was attributable to,
17 and is directly and proximately caused by the above-described latent deficiencies in the design,
18 planning, development, manufacturing, supervision, construction, and/or improvement of the
19 subject Real Property and structures, and that prior to the time of said Plaintiffs' discovery of the
20 facts set forth herein, they could not reasonably have discovered the existence of the above-
21 described defective conditions by the exercise of reasonable diligence.

22 55. As a direct and proximate result of the defects set forth herein and the breach of the
23 aforesaid implied warranties, Original Homeowner Plaintiffs have suffered in an amount precisely
24 unknown, but expected to be in excess of the Court's minimum jurisdiction, to be established at
25 time of trial in costs of repair and/or reconstruction and loss of value to said Plaintiffs' residences as
26 a consequence of the defective condition of the Real Property and structures.

27 56. Original Homeowner Plaintiffs gave Developer Defendants, and each of them, reasonable
28 notice of the defective conditions after each was discovered. Despite such notice, Developer

1 Defendants declined and failed to acknowledge responsibility for the same or to otherwise cause the
2 appropriate restoration to the structures and/or Real Property or to recompense said Plaintiffs for the
3 cost of repair and/or loss of value of said structures and Real Property.

4
5 **VI.**
FOURTH CAUSE OF ACTION
Breach of Express Warranties

6 **(Alleged by Original Homeowner Plaintiffs only against Developer Defendants,**
7 **including DOES 1 through 50)**

8 57. Plaintiffs incorporate by reference the foregoing and subsequent paragraphs as though
9 fully set forth herein again.

10 58. Original Homeowner Plaintiffs allege that Developer Defendants and their agents made
11 numerous express warranties to them regarding the construction of the Real Property, the manner in
12 which construction would be performed, the improvements which would be included, the upgrades
13 which would be provided at an additional cost, and the superior condition of the finished product.
14 Said warranties were included within the following inter alia; marketing materials in both printed
15 and audio form, purchase contracts and addenda, plans and specifications, and homeowner warranty
16 manuals. One such express warranty appears in the Homeowner's Manual provided to all Original
17 Homeowner Plaintiffs by Developer Defendants. Included within said Homeowner's Manual is a
18 "HOMEOWNER'S LIMITED WARRANTY," which explicitly states, among other things, the
19 following:

- 20 (a) "Your new home has been constructed with regard to comprehensive building
21 requirements and the high quality standards of the municipality in which it is built."
22 (b) "The Seller warrants the roof and roof flashing to be free from leaks and structural
23 defects."
24 (c) "The Seller warrants the structural components of the plumbing system..."
25 (d) "The Seller warrants your home as originally constructed to be free from
26 unreasonable soils erosion and water puddling caused by improper water drainage."
27 (e) "The Seller warrants walls, floors, ceilings, driveways, brick, stone, stucco, drywall,
28 masonry, plaster, concrete or cement, ceramic tile, grouting, wood cabinets, molding,

1 siding and other rigid materials or surfaces to be free from unreasonable cracking or
2 leaks...”

3 59. Developer Defendants failed to provide said Plaintiffs with homes which conformed to the
4 express warranties made to them, and likewise failed to take subsequent steps under the express
5 warranties to investigate, repair and/or otherwise correct the defective conditions and damages to
6 the homes.

7 60. As a direct and proximate result of said conduct by Developer Defendants, Original
8 Homeowner Plaintiffs have suffered substantial damages in an amount to be proven at the time of
9 trial.

10 VII.

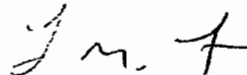
11 PRAYER

12
13 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them,
14 as follows:

- 15 1. General damages in an amount not currently known, in excess of this Court's
16 Jurisdictional minimum, which will be shown according to proof at the time of trial;
17 2. Investigative costs to be established according to proof at trial;
18 4. For costs of suit incurred herein; and
19 5. For such other and further relief as the Court may deem just and proper.

20
21 DATED: October 24, 2008

SILLDORF & LEVINE, LLP

22 

23 _____
24 HOWARD J. SILLDORF, ESQ.
25 THERESA M. FILICIA, ESQ.
26 Attorneys for Plaintiffs
27
28

WOOD, SMITH, HENNING & BERMAN LLP

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EXHIBIT "B"



SUBCONTRACT AGREEMENT

REC'D JUN 03 1998

COMMUNITY: **K. HOVNANIAN AT BRIDGEPORT**
May 4, 1998

Contract No. **722-0010**

Trade: **ROUGH CARPENTRY**

Contractor:
K. HOVNANIAN COMPANIES OF CALIFORNIA, INC.
Contract r's License No. B-700788
Attn: Jorge D. Alvarez, Director of Purchasing
3991 Mac Arthur Blvd. Ste 300
Newport Beach, Ca 92660
Phone: 714/680-1130
Fax: 714/758-8722

Subcontractor:
HNR FRAMING SYSTEMS, INC.
JERRY SMITH

Address:
12345 Crosthwaite Circle
Poway, Ca. 92084
Phone: 619/488-2471
Fax: 619/488-7351

Tract No: PRD 98-7949 (95-0204)
Job No: 722.001/722.005

Subcontractor's License No. **617393**
Expires: **12/31/98** Class: **1**

Phase: Models : Cost Code: A-0701 Contract Price: \$ 75,823.00
Phase: One : Cost Code: A-0701 Contract Price: \$ 374,415.00

TOTAL CONTRACT: \$ 450,238.00

1. **PARTIES:** This Subcontract ("Subcontract") is between Contractor and Subcontractor. Any references to "Owner" shall refer to K. HOVNANIAN AT BRIDGEPORT, INC.

2. **DESCRIPTION OF WORK:** Subcontractor will furnish FOB jobsite and pay for all equipment, tools, machinery, scaffolding, permits, supervision, materials (all materials shall be new unless otherwise specified by Contractor) and sales taxes to construct and complete upon the project described above, in a good, workmanlike and substantial manner, all in accordance with (and reasonably inferable from) the "Contract Documents" described in Exhibit "A" attached hereto, and as set forth in Exhibits "A" and "B" attached hereto (collectively, the "Work"). Subcontractor shall perform the Work in strict compliance with the Contract Documents and all applicable laws, building codes, ordinances, rules and regulations.

3. **SUBCONTRACT PRICE:** For the complete performance of the Work, and so long as Subcontractor is not in default under this Subcontract, Contractor shall pay Subcontractor the "Subcontract Price" as set forth in Exhibit "B". The Subcontract Price is intended to include all increases in costs, foreseen or unforeseen, including, without limitation, taxes, labor, materials, and transportation costs, all of which are to be borne by Subcontractor. All loss or damage arising from any Work performed under this Subcontract through unforeseen or unusual obstructions, difficulties or delays which may be encountered in the prosecution of same, or through the action of the elements, shall be borne by Subcontractor.

4. **GENERAL PROVISIONS:** Subcontractor agrees to perform the work in accordance with this Subcontract and the General Provisions of the Subcontract (including paragraphs 1 through 39 inclusive) and Exhibits A and B attached hereto and incorporated herein.

5. **SUBCONTRACTOR'S AUTHORIZED REPRESENTATIVES:** The only persons authorized to execute this Subcontract or changes (including change orders) hereto are as follows:

ROBERT THOMAS JERRY SMITH Kevin Milam

"CONTRACTOR"

K. HOVNANIAN COMPANIES OF CALIFORNIA, INC.,
a Calif mia corporation

By: Jorge D. Alvarez
Its: Purchasing Mgr.
(Print Name and Title)

Date: 5-28-98

HNR FRAMING SYSTEMS, INC.
a CALIFORNIA CORPORATION

By: Robert Thomas
Its: ROBERT THOMAS PRES.
(Print Name and Title)

Date: 5-12-98

GENERAL PROVISIONS OF THE SUBCONTRACT AGREEMENT

1. **SUBCONTRACTOR'S INVESTIGATION:** Subcontractor acknowledges that it has made an independent investigation of the project, the soil conditions at the project and all other conditions affecting the Work to be performed and materials to be furnished which might affect the progress of the Work. Subcontractor has satisfied itself as to these conditions and hereby accepts them as is. The Subcontract Price includes payment for all Work which may be performed by Subcontractor to overcome any unanticipated underground or concealed conditions. Any information which may have been furnished to Subcontractor by Owner, Owner's architect or engineer or Contractor about underground conditions or other job conditions is for the convenience of Subcontractor only, and Contractor does not warrant that the conditions are as so indicated. No estimate or bid of Subcontractor preceding this Subcontract, and no oral agreement or conversation with any representative of Contractor, either before or after the execution of this Subcontract, shall affect or modify any of the terms or obligations contained herein.
2. **CONTRACT DOCUMENTS:** The Contract Documents are intended to supplement each other. In case of conflict, however, the Contract Documents shall be interpreted to impose on Subcontractor the same duties as are imposed on Contractor under the Agreement between Owner and Contractor (if applicable). In case of conflict not resolved by application of the foregoing rule, the provisions of this Subcontract shall control. Subcontractor certifies and acknowledges to Contractor that Subcontractor has read and understands this Subcontract.
3. **ALTERNATES:** Subcontractor shall not deviate from the requirements of the Contract Documents as to materials and equipment to be furnished or method of performing the Work unless prior written approval has been obtained from Contractor. Subcontractor warrants that any alternate equipment, material or method proposed by Subcontractor (and approved in writing by Contractor) will achieve all performance standards established by the Contract Documents.
4. **CHANGES AND EXTRA WORK:** Contractor may order Subcontractor to delete from or add to or change the Work called for by the Contract Documents, and such order shall not affect the validity of this Subcontract, but Subcontractor shall promptly perform the Work as changed or modified. The Subcontract Price set forth in this Subcontract shall be deemed to be full compensation for all Work and materials furnished by Subcontractor whether specifically called for by the Contract Documents. Therefore, NO ADDITIONAL COMPENSATION SHALL BE PAID TO SUBCONTRACTOR UNLESS CONTRACTOR AND SUBCONTRACTOR SIGN A WRITTEN CHANGE ORDER IN ADVANCE. CONTRACTOR'S SUPERINTENDENT'S SIGNATURE ON WORK TICKET SIGNIFIES ONLY THAT THE WORK HAS BEEN COMPLETED AND IS NOT TO BE CONSTRUED AS AN AUTHORIZATION FOR PAYMENT. Unless otherwise requested by Contractor in writing, Subcontractor, prior to commencement of revised Work, shall submit to Contractor, within seven (7) days after receipt of Contractor's above-referenced order, written copies of Subcontractor's costs or credit proposal for such revised Work. Subcontractor will support all claims for extras with a detailed breakdown showing differences in quality, and value of labor and material involved. The time for performance of the Work will remain fixed unless expressly otherwise agreed to in the change order. Upon the issuance of a change order, the Subcontract Price shall be adjusted upward or downward as agreed upon by Contractor and Subcontractor. However, if the parties cannot agree as to the adjustment to the Subcontract Price, Subcontractor shall follow Contractor's order as to work to be changed, added, or deleted, and the amount to be added or subtracted from the Subcontract Price shall be determined by Arbitration in accordance with Section 20.
5. **TIME SCHEDULE AND COMMENCEMENT OF WORK:** Subcontractor agrees to commence the Work immediately when notified by Contractor, and to conduct the Work continuously and with reasonable diligence in strict accordance with Contractor's time schedule. Should said time schedule be changed, Subcontractor shall proceed as directed by Contractor and cooperate in related work and in no manner interfere with the work of Contractor or other subcontractors. Subcontractor acknowledges that upon Contractor's request, Subcontractor will perform the Work six (6) days a week (excluding Sundays), and the Subcontract Price shall not be adjusted as a result of Contractor's request. Subcontractor shall provide, at its expense, such additional shifts or overtime as Contractor may require, should Contractor deem such additional shifts or overtime necessary to meet time schedules. The time for performing the Work shall be extended, at Contractor's discretion exercised as set forth below, for delays caused by acts of Contractor, adverse weather conditions and general strikes which actually delay the performance of the Work, but only in strict accord with the following procedure. No extension of time shall be applicable unless and until Subcontractor gives written notice to Contractor specifying the grounds on which such extension is requested and referring to this Section 5. If written notice of such delay is given to Contractor within three (3) days of the event which caused Subcontractor to request the extension, and Contractor finds in its reasonable discretion that such grounds actually exist, then an extension of time for such cause shall be granted in writing for the period of the delay. Subcontractor's failure to give Contractor such notice shall constitute a waiver of Subcontractor's right to request a delay. Extension of time shall be Subcontractor's sole remedy for any such occurrence. Except as extended pursuant to the procedure of this paragraph, Subcontractor shall comply with Contractor's construction schedule. In the event that the production schedule cannot be maintained by Subcontractor, Subcontractor agrees to cause weekend and/or overtime work to be performed at Subcontractor's expense (that is, within the Subcontract Price of Exhibit "B") so as to maintain the production schedule as noted herein. Subcontractor acknowledges that the project may be phased and completed in increments so that Subcontractor's work may not necessarily overlap from one increment phase to the next.



Contractor's Initials

GENERAL PROVISIONS TO SUBCONTRACT AGREEMENT
COMMUNITY: BRIDGEPORT - SAN DIEGO
SUBCONTRACTOR: HNR FRAMING SYSTEMS

SUBCONTRACT NO. 722-0010

6. **FAILURE TO PERFORM:** Subcontractor agrees, upon notification from Contractor that Subcontractor's performance of this Subcontract is in any respect unsatisfactory, to promptly furnish materials and employ sufficient personnel to complete the Work as may be required by Contractor, or upon failure to do so within two (2) days after such notice, Subcontractor hereby authorizes Contractor, for the purpose of completing this Subcontract, to eject Subcontractor; to take possession of all materials in course of preparations, wherever located and all rights under sub-subcontracts; to go into the open market and secure materials and employment necessary to complete the Work, and Subcontractor shall be responsible for any and all additional costs thereof. The foregoing is in addition to all the rights and remedies Contractor may have, under this Subcontract, at law or in equity.

7. **DEFECTS:** Subcontractor agrees to indemnify, defend and hold Contractor harmless from any and all costs, claims, expenses, liabilities and damages (including attorneys' fees) caused by defective workmanship and/or material, and delays caused thereby. Subcontractor shall also pay and reimburse Contractor for any and all such costs, claims, expenses, liabilities and damages.

8. **GUARANTEE:** Subcontractor guarantees all materials and workmanship and agrees to replace at its sole costs and expense, and to the satisfaction of Contractor, any and all materials adjudged defective or improperly installed. Subcontractor shall also guarantee Contractor against liability, loss or damage to any and all parts to the Work arising from said installation. Said guarantee shall be for a period of one (1) year from date of Contractor's and/or the ultimate homeowner's (whichever is later) acceptance of the project (unless a longer period is required by the Contract Documents). Upon Contractor's notification, Subcontractor shall proceed with due diligence (within five (5) days), at its own expense, to replace any defective material or perform any labor necessary to correct any defect in the Work. Upon failure of Subcontractor to do so, Contractor may, at Subcontractor's expense, furnish such materials or labor as necessary to bring the Work up to the required standard. In the event of an emergency, Subcontractor will correct, at his own expense, any such emergencies within 12 hours of notification.

9. **INSURANCE:**

(a) Before Subcontractor does any Work at or prepares or delivers material to the project, Subcontractor shall provide Certificates of Insurance evidencing coverage as follows: (i) Workers' Compensation with a policy limit of not less than \$1,000,000. (ii) Commercial General and Automobile Bodily Injury and Property Damage Liability, including: Premises/Operations and Products/Completed Operations coverage (which Products/Completed Operations coverage shall be maintained in effect on an annual renewal basis for at least two (2) years following final completion and acceptance of the Work by Contractor and Owner) written on an OCCURRENCE basis with a policy limit of not less than \$1,000,000. (iii) Contractually Assumed Liability specifically covering Subcontractor for liabilities, losses, costs and damages, including attorneys' fees, assumed by Subcontractor under the provisions of this Subcontract. (iv) when the Work of Subcontractor involves any subsurface activities, Subcontractor shall provide liability coverage for explosion, collapse and underground hazard (XCU). (v) if requested by Contractor, the above described insurance shall be on a "per location" or "per project" basis.

(b) Subcontractor shall have its insurance company name, by endorsement, Contractor, Owner and K. Hovnanian Developments of California, Inc., and the respective shareholders, directors, officers, employees and agents as additional insureds on the policies other than Worker's Compensation, with the following clause added: "The insurance afforded to each Additional Insured is primary insurance. If the Additional Insured has other insurance which is applicable to the loss on an excess or contingent basis, the amount of Additional Insured's coverage under this policy shall not be reduced by the existence of such other insurance".

(c) Each of the above required Certificates shall provide that the coverage therein afforded shall not be canceled or reduced except by written notice to Contractor given at least thirty (30) days prior to the effective date of such cancellation or reduction. In the event the coverage evidenced by any such Certificate is canceled or reduced, Subcontractor shall procure and furnish to Contractor before the effective date of such cancellation, new Certificates conforming to the above requirements.

(d) Should Subcontractor fail to obtain the insurance coverage required under this Subcontract, or should Subcontractor fail to timely renew the insurance coverage required under this Subcontract, Contractor shall have the right, at Contractor's election: (i) to obtain such coverage on Subcontractor's behalf, at Subcontractor's expense, from any insurance carrier selected by Contractor in Contractor's sole discretion; or (ii) to terminate this Subcontract. Contractor shall have the right to offset the costs of premiums for such insurance against any sums payable to Subcontractor under this Subcontract.

Certificates of insurance complying with the above requirements, as well as copies of the applicable endorsements, shall be delivered to each of the additional insureds named in clauses i) through iii) of subparagraph (b) prior to entry on the property by Subcontractor pursuant to this Agreement. The certificates applicable to general liability coverage shall evidence the "2010" industry standard endorsement for completed operations. The requirements for the foregoing insurance shall not derogate from the provisions for indemnification by Subcontractor as may be provided elsewhere in this Agreement.


Contractor's Initials

**GENERAL PROVISIONS TO SUBCONTRACT AGREEMENT
COMMUNITY: BRIDGEPORT - SAN DIEGO
SUBCONTRACTOR: HNR FRAMING SYSTEMS**

SUBCONTRACT NO. 722-0010

10. INDEMNIFICATION: The insurance maintained by Subcontractor pursuant to Section 9, above, shall insure the performance of Subcontractor's indemnification obligations as set forth herein, but nothing in Section 9 or the insurance referred to therein shall in any way limit the indemnification provided hereunder. To the fullest extent permitted by law, Subcontractor shall indemnify and save Contractor and Owner harmless from and against all costs, expenses, liabilities and claims for any damages, including those to persons (including personal injury, bodily injury or death) or to property arising out of Subcontractor's execution of the Work, whether caused by delay of Subcontractor, defective workmanship or materials or delays caused thereby, regardless of whether such damage is caused in part by a party indemnified hereunder, and any and all costs, expenses, attorneys' fees and liabilities incurred by Contractor or Owner in defending against such claims, whether the same proceed to judgment or not, and Subcontractor at its own expense agrees, upon written request by Contractor, to defend any such suit or action brought against Contractor. The foregoing indemnity shall not apply to the extent any loss is caused by the sole negligence or willful misconduct of Contractor or Owner. In the prosecution of any successful claim or suit by Contractor for the enforcement of this Subcontract, or any of the monetary or other obligations of Subcontractor hereunder, Subcontractor agrees to pay to Contractor any reasonable attorneys' fees and any cost of suit incurred by Contractor or Owner.

11. NO ASSIGNMENT OR SUBCONTRACTING: Subcontractor shall not, without the prior written consent of Contractor, which may be granted or withheld in Contractor's sole and absolute discretion, assign, transfer, nor sublet any portion of the Work, nor assign any payments to others. Subcontractor will not subcontract any of the Work without the prior written consent of Contractor, which may be granted or withheld in Contractor's sole and absolute discretion.

12. CLEAN-UP AND STORAGE: Subcontractor agrees to comply with all instructions from Contractor with respect to conditions at the site, and to remove all of Subcontractor's rubbish, debris, and unnecessary materials, tools and equipment, or upon failure to do so, to pay the actual cost of such removal. Storage of all materials shall be under the direction of Contractor, but at the expense, if any, of Subcontractor. Subcontractor shall assume all liability for materials furnished by it on the job until installed or inspected.

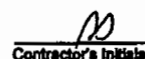
13. JOB SITE SAFETY: Subcontractor agrees to provide its employees with safe appliances and equipment, to provide them with a safe place to work, to perform the Work in a safe manner with high regard for the safety of its employees and others, and to comply with the safety provisions of the California Labor Code, and any regulations issued thereunder and any regulations issued pursuant to the Occupational Safety and Health Act (OSHA 29 CFR PART 1926 - Standards of the Construction Industry). Without limiting the generality of that provision, Contractor requires all personnel at construction sites to wear hard hats, safety goggles and back braces, and Subcontractor agrees to comply with that policy. Subcontractor shall assume the defense of and indemnify and save harmless Contractor and its officers and employees, directly or indirectly arising from the performance or non-performance of the Work, regardless of responsibility for negligence, and from any and all claims, loss, damage, injury, death and liability howsoever the same may be caused, including injury to or death of Subcontractor's employees, resulting directly or indirectly from the nature of the Work, regardless of responsibility for negligence. Subcontractor shall also hold Contractor harmless from any penalties assessed against Contractor by any federal or state agency responsible for job safety where such penalty is assessed because of violation committed by Subcontractor. Subcontractor's aforesaid indemnity and save harmless agreement shall not be applicable to any loss, damage or expense, for liability for damages, for death or bodily injury to persons or injury to property arising from the sole negligence or willful misconduct of Contractor, his agents, servants or independent Contractors, other than Subcontractor, who are directly responsible to Contractor. Should Subcontractor, Subcontractor's employees, subcontractors or their employees fail to comply within 24 hours from the time Contractor issues Subcontractor a written notice of noncompliance or within the time of an abatement period specified by any governmental agency, whichever period is shorter, Contractor may give notice of default to Subcontractor. Failure of Subcontractor to cure such default within 24 hours after such notice shall give Contractor the following options:

(1) Without terminating this Subcontract or the obligation of Subcontractor, Contractor may perform such portion of the Work or may furnish any material, equipment, or other item required, as Contractor, in its sole discretion, may deem necessary to avoid noncompliance with any applicable safety or health laws. The cost of such work or materials, equipment or other items shall be deducted from the Subcontract Price, and, in the event the cost of such work or materials or other items exceeds the unpaid balance of the Subcontract Price, the excess shall be immediately due and owing from Subcontractor to Contractor.

(2) Without terminating this Subcontract, Contractor may eject Subcontractor from the jobsite and Contractor shall have the further option of (a) completing the Work, or any portion thereof, itself, or; (b) having the Work, in part, completed by others. The foregoing right to eject Subcontractor shall not be construed to deny Contractor any other right or remedy, which it may have under this Subcontract, at law or in equity. Subcontractor shall be liable for all damages suffered by Contractor by reason of Subcontractor's default, and exercise of the option by Contractor to eject Subcontractor shall not relieve Subcontractor of such liability. Should injuries occur, Subcontractor shall be required to furnish Contractor written notice of occurrence accompanied by the accident report.

14. TRADE UNIONS: (APPLICABLE FOR UNION SUBCONTRACTORS AND SUPPLIERS ONLY): It is agreed by the parties hereto that a substantial and material consideration for the acceptance of Subcontractor, and the subcontracting of the Work herein defined, is a guarantee and warranty herein made by Subcontractor that a valid collective bargaining agreement is, and for the duration of this Subcontract will remain, in full force and effect between Subcontractor and the appropriate Building and Construction Trades Union, or Unions, AFL-CIO, or with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, or an affiliate thereof.


Subcontractor's Initials


Contractor's Initials

GENERAL PROVISIONS TO SUBCONTRACT AGREEMENT
COMMUNITY: BRIDGEPORT - SAN DIEGO
SUBCONTRACTOR: HNR FRAMING SYSTEMS

SUBCONTRACT NO. 722-0010

It is agreed that all Work performed by Subcontractor shall be rendered in accordance with each and all of the terms and provisions of the aforesaid collective bargaining agreements including, but not limited to, hourly rates of pay and payments to trust funds as required by said collective bargaining agreements.

In the event that Subcontractor or any of its subcontractors causes or is involved in any labor trouble on the job or they are listed by the administrative office of the appropriate health and welfare, pension, vacation or apprenticeship funds as being delinquent in payment or payments to said fund or funds, regardless of the job in connection with which the alleged delinquency occurred, they will be deemed to be in default under this Subcontract and may be ejected from the job.

In the event that Contractor should be affected by a lockout agreement, Contractor may comply with such lockout agreement, deny Subcontractor access to the job for the period of the lockout, and Subcontractor shall not be entitled to additional compensation by reason of any such lockout.

15. LABOR AND MATERIAL: Subcontractor shall pay all valid charges for labor and materials used on the Work covered by this Subcontract. If Contractor is required to pay for any labor or materials ordered by Subcontractor on the project, Subcontractor shall immediately reimburse Contractor.

16. LIENS: Subcontractor agrees to pay, when due, all claims for labor and/or materials and/or subcontracts applied on or furnished hereunder, and to prevent the filing of any lien of mechanics' or materialmen, or attachments, garnishments, or suits involving the title of the property upon which the improvements are erected. Subcontractor agrees that within three (3) days after written or oral demand is addressed to it at the address herein contained by United States mail, to cause the effect of any such suit or lien to be removed from the premises (by recording appropriate lien release bonds) and in the event Subcontractor shall fail to do so, Contractor is authorized to use whatever means it may deem best to cause said lien, attachment, or suit together with its effect upon the title, to be removed, discharged, satisfied, compromised or dismissed and the costs thereof, together with reasonable attorney's fees, shall become immediately due Contractor. Subcontractor may litigate any lien or suit above described provided it causes the effect thereof to be removed from the premises above mentioned, and shall further do such things as may be necessary to cause Contractor not to suffer a withholding of any monies due to Contractor from Owner (if applicable) by reason of such liens, or suits, and shall execute and deliver to Contractor such affidavits, contracts, bills, records, accounts, etc., as Contractor may deem necessary for its protection in such event.

17. INSOLVENCY OR BANKRUPTCY: In the event Subcontractor becomes insolvent, is unable to pay its obligations as they become due, or files a petition in bankruptcy, this Subcontract may be terminated at the option of Contractor. Subcontractor hereby authorizes all financial institutions, materialmen and individuals to disclose to Contractor Subcontractor's financial status, credit and manner of meeting obligations. Subcontractor shall file with Contractor within thirty (30) days after the execution of this Subcontract, a full and complete financial statement of Subcontractor's present financial status. A public accountant shall certify the financial statement. Subcontractor shall immediately notify Contractor of any material change in Subcontractor's financial condition.

18. BACKCHARGES, CROSS-CHARGES AND TERMINATION RIGHTS IN CONNECTION WITH OTHER WORK: In the event that Subcontractor has entered into one or more contracts with Contractor to provide construction services in connection with other projects:

(a) If pursuant to such other contract arrangement Subcontractor is liable to Contractor for any costs, expenses, liabilities, claims or other damages, then in such event Contractor may "backcharge" all amounts due or becoming due pursuant to such other contract(s) against payments otherwise due to Subcontractor pursuant to this Subcontract.

(b) If pursuant to this Subcontract Subcontractor is liable to Contractor for any costs, expenses, liabilities, claims or other damages, then in such event Contractor may "cross-charge" all amounts due or becoming due pursuant to this Subcontract against payments otherwise due to Subcontractor pursuant to such other contracts.

(c) If Subcontractor is in default in such other contract arrangement Contractor, in its sole discretion, may elect to terminate this Subcontract with twenty-four hour advance notice, without penalty. If Subcontractor is in default on this Subcontract, Contractor, in its sole discretion, may elect to terminate any or all other such contract arrangements with twenty-four hour advance notice, without penalty.

19. RELEASES - PROOF OF PAYMENT: Prior to Contractor being required to make any payments hereunder, Subcontractor will furnish to Contractor, in the form set forth on Schedule 1 hereto or such other form as may be satisfactory to Contractor (and consistent with California Civil Code Section 3282), releases and proof showing that all labor, materials, equipment, union, health, welfare and pension fund payments, payroll taxes and similar items for work or material furnished under this Subcontract have been paid in full. Contractor may elect to make payments to Subcontractor in the form of checks made payable jointly to Subcontractor and its suppliers, workmen or sub-subcontractors, and the endorsement of Subcontractor to such a check shall constitute acknowledgment of payment by Contractor to Subcontractor of the full face amount of the check.


Contractor's Initials

**GENERAL PROVISIONS TO SUBCONTRACT AGREEMENT
COMMUNITY: BRIDGEPORT - SAN DIEGO
SUBCONTRACTOR: HNR FRAMING SYSTEMS**

SUBCONTRACT NO. 722-0010

20. ARBITRATION: If the agreement between Owner and Contractor calls for arbitration, and an arbitration concerning or related to the Work is commenced between Owner and Contractor (if applicable), Subcontractor will, upon demand of Contractor become a party to such arbitration proceedings and shall submit to any award which may be rendered therein. Subject to the foregoing, if any question arises regarding the Work or regarding the rights and obligations of Contractor and Subcontractor under the terms of this Subcontract or the Contract Documents, such questions shall be subject to arbitration.

21. ATTORNEYS' FEES: In the event either party to this Subcontract shall institute any action or proceeding against the other party to this Subcontract, which action or proceeding concerns a controversy arising out of this Subcontract, the prevailing party in such action or proceeding shall be entitled to reimbursement from the unsuccessful party for all costs and attorneys' fees arising out of such action or proceeding. In addition to the foregoing award of attorneys' fees to the prevailing party, in any lawsuit on this Subcontract, the prevailing party shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Subcontract into any judgment on this Subcontract. The parties' covenants set forth in this Section 21 shall survive and be enforceable following termination of this Subcontract.

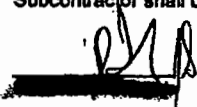
22. NOTICES: Any notice required or permitted under this Subcontract may be given by ordinary mail, postage prepaid, at the address contained in this Subcontract, but such address may be changed by written notice given by one party to the other from time to time. Notice shall be deemed received two (2) days following deposit in the U.S. mail.

23. PAYMENT: Subcontractor covenants and agrees that a condition precedent to any payment due Subcontractor hereunder is receipt by Contractor of payment from Owner pursuant to the Owner and Contractor Agreement. Subcontractor understands that any invoices presented to Contractor more than 6 months after the work has been completed will be considered null and void and no further moneys will be due to Subcontractor.

24. NO OFFSET: The Work under this Subcontract shall be fully and timely completed, and Subcontractor waives any right to refuse to perform the Work based upon a claim of offset or failure of payment under any other contract or agreement with Contractor or Owner.

25. HAZARDOUS MATERIALS: Subcontractor shall not cause or permit any "Hazardous Materials" (as defined herein) to be brought upon, kept or used in or about the project except to the extent such Hazardous Materials: (i) are necessary for the prosecution of the Work; (ii) are required pursuant to the Contract Documents; and (iii) have been approved in writing by Contractor. Any Hazardous Materials allowed to be used on the project shall be used, stored and disposed of in compliance with all applicable laws relating to such Hazardous Materials, including, without limitation, the provisions of the Safe Drinking Water and Toxic Enforcement Act ("Proposition 65"). Any unused or surplus Hazardous Materials, as well as any other Hazardous Materials which have been placed, released or discharged on the project by Subcontractor or any of its employees, agents, suppliers or sub-subcontractors, shall be removed from the project at the earlier of: (i) the completion of the Work requiring the use of such Hazardous Materials; (ii) the completion of the Work as a whole; or (iii) within twenty-four (24) hours following Contractor's demand for such removal. Such removal shall be undertaken by Subcontractor at its sole cost and expense, and shall be performed in accordance with all applicable laws. Any damage to the Work, the project or any adjacent property resulting from the improper use, or any discharge or release, of Hazardous Materials shall be remedied by Subcontractor at its sole cost and expense, and in compliance with all applicable laws. Subcontractor shall immediately notify Contractor and Owner of any release or discharge of any Hazardous Materials on the project. Subcontractor shall provide Contractor with copies of all warning labels on products which Subcontractor or any of its sub-subcontractors will be using in connection with the Work, and Subcontractor shall be responsible for making any and all disclosures required under applicable "Community Right-to-Know" laws or Proposition 65. Subcontractor shall not clean or service any tools, equipment, vehicles, materials or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue and waste materials resulting from any such cleaning or servicing shall be collected and removed from the project in accordance with all applicable laws and regulations. Subcontractor shall immediately notify Contractor and Owner of any citations, orders or warnings issued to or received by Subcontractor, or of which Subcontractor otherwise becomes aware, which relate to any Hazardous Materials on the project. Without limiting any other indemnification provisions pursuant to law or specified in this Subcontract, Subcontractor shall indemnify, defend (at Subcontractor's sole cost, and with legal counsel approved by Contractor and Owner) and hold Contractor and Owner harmless from and against any and all claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs and expenses in removing or remediating the effect of any Hazardous Materials on, under, from or about the project, arising out of or relating to, directly or indirectly, Subcontractor's failure to comply with any of the requirements of this Section 25. As used herein, the term "Hazardous Materials" means any hazardous or toxic substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or listed by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and any amendments thereto, and any substances, materials or wastes that are or become regulated under federal, state or local law, including but not limited to petroleum, asbestos and PCBs.

26. LIST OF SUPPLIERS: Subcontractor shall, within ten (10) days of execution of this Subcontract, provide Contractor with a written list of names and addresses of all suppliers who will supply Subcontractor in connection with the Work. The written list of suppliers shall, upon receipt by Contractor, be attached to this Subcontract as an addendum, and shall be made a part hereof. Subcontractor shall have no right to change the suppliers without first obtaining written permission of Contractor. Subcontractor warrants that the list of suppliers who will supply Subcontractor shall be the only suppliers for Subcontractor for the Work.



Contractor's Initials

27. TERMINATION OF SUBCONTRACT:

(a) Upon notification from Contractor by telephone and confirmed in writing that Subcontractor's performance under this Subcontract in any respect is unsatisfactory, or upon notification that Subcontractor has failed to comply fully with the terms of this Subcontract, or that Subcontractor's Work needs correction or has been damaged, Subcontractor shall promptly take all action necessary to fully comply with the terms of the Contract Documents and the requirements of Contractor. Should Subcontractor fail to do so within twenty-four (24) hours after notification by telephone, Contractor may terminate this Subcontract. In the event of such termination, Subcontractor hereby authorizes Contractor to perform and complete the Work and in connection therewith, Contractor may (a) eject Subcontractor; (b) take possession of all materials, appliances, tools and equipment already on the job site, as well as all materials in the course of preparation, wherever located, and all rights under sub-subcontractors of Subcontractor; and (c) go into the open market and secure materials and employ workers necessary to complete the Work, at Subcontractor's expense. Subcontractor shall not be entitled to receive any further payment hereunder as a result of such termination.

(b) Contractor reserves the right to terminate this Subcontract in the event that fire or other catastrophe destroys the project. In the event of such termination, Subcontractor shall be entitled only to payment of a pro-rata portion of the Subcontract Price, which reflects the value of Work actually completed in proportion to the Subcontract Price. There shall be deducted from such sums as provided in this Section the amount of any payments made to Subcontractor prior to the date of termination of this Subcontract. Subcontractor shall not be entitled to any claim, or claim of lien against Contractor or against Owner for any additional compensation or damages in the event of such termination. This Subcontract shall become null and void and of no effect in the event Contractor shall not be awarded the prime contract for the project, or in the event financing for the project is or becomes unavailable, or if for any reason beyond its control, Contractor shall be unable to undertake performance of said prime contract, or if the project architect or Owner objects to Subcontractor.

(c) Contractor reserves the right to terminate this Subcontract without cause at any time by delivering two (2) days prior written notice of such termination to Subcontractor. Such termination may be for any reason whatsoever or for no reason. Such termination shall be effective two (2) days after the date of the written notice of termination from Contractor. In the event Contractor so terminates this Subcontract, Contractor shall promptly pay Subcontractor for all Work actually completed by Subcontractor in conformity with this Subcontract prior to Subcontractor's receipt of Contractor's notice of termination and for all materials ordered (unless such orders are cancelable) or procured and delivered to the site by Subcontractor pursuant to this Subcontract prior to Subcontractor's receipt of Contractor's notice of termination hereof, provided Subcontractor promptly delivers to Contractor: said materials; invoices or other evidence of payment therefor; properly executed mechanics' lien releases; and any and all other instruments and documents deemed reasonably necessary by Contractor to ensure that the project is free from mechanics' liens, including without limitation joint endorsement by Subcontractor and any materialmen of checks in payment for such materials. Except as expressly provided above, Subcontractor shall not be entitled to recover, and hereby waives any claim for, any compensation or damages from Contractor in the event of any such termination of the Subcontract, including without limitation lost profits or consequential damages.

(d) Should Subcontractor delay the progress of the job, whether or not otherwise in compliance with the provisions of Section 5 hereof, Contractor may, upon two (2) days written notice, eject Subcontractor from the job and employ another subcontractor or Contractor's own forces to perform the Work required by this Subcontract. In such event, in addition to all other rights and remedies Contractor may have, all costs and damages incurred by Contractor as a result thereof shall be the responsibility of Subcontractor. In the event that Subcontractor delays the progress of the job, Subcontractor will pay to Contractor the amount of any loss or damage which Contractor may sustain as a result, including any liquidated or unliquidated damages charged by Owner against Contractor (if applicable) because of the delay caused by Subcontractor. In the event the job is delayed by more than one subcontractor, Contractor shall apportion damages for the delay caused by subcontractors upon a fair and reasonable basis, and the determination of Contractor shall be binding upon Subcontractor, provided such determination is made in good faith. Such amounts due from Subcontractor may at Contractor's election be subject to the backcharge and crosscharge provisions of Section 18.

(e) In the event this Subcontract should be terminated by Contractor pursuant to subsection (a) or (d) of this Section or if Contractor elects the remedies pursuant to Section 6 herein, then except as may be required by law Contractor shall not be obligated to make any further payments to Subcontractor until completion of the Work by Contractor and/or a replacement for Subcontractor selected by Contractor, and then only in the amount, if any, that represents the portion of the Work actually completed by Subcontractor prior to such termination. Notwithstanding the foregoing, in the event that the cost of completing the Work following termination of Subcontractor exceeds the "Subcontract Price" as set forth on Exhibit "B", Subcontractor shall, within ten (10) business days following written demand by Contractor, remit such excess amount to Contractor in full.

28. CUTTING, FITTING AND PATCHING; WORK OF OTHERS: As part of the Subcontract Price, Subcontractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly, and to fit it to receive or be received by the work of other contractors or subcontractors, shown upon or reasonably implied by the Contract Documents. Subcontractor agrees to protect the work of others from damage as a result of Subcontractor's operations. Should Subcontractor damage the work or installations of Contractor or any other subcontractor, Subcontractor shall promptly pay to Contractor or such subcontractor, as the case may be, all costs incurred in repairing the damage.


Contractor's Initials

**GENERAL PROVISIONS TO SUBCONTRACT AGREEMENT
COMMUNITY: BRIDGEPORT - SAN DIEGO
SUBCONTRACTOR: HNR FRAMING SYSTEMS**

SUBCONTRACT NO. 722-0010

29. USE OF CONTRACTOR'S EQUIPMENT: The use of any of Contractor's equipment, rigging, blocking, hoist or scaffolding by Subcontractor, given, loaned or rented to Subcontractor by Contractor, shall be upon the understanding that Subcontractor uses the equipment, rigging, blocking, hoist or scaffolding at Subcontractor's own risk and takes the same "as is", and Subcontractor assumes all responsibility for and agrees to hold Contractor and Owner harmless from any claims or damages whatsoever resulting from the use thereof, whether such damage results to Subcontractor or its own employees or properties or to other persons or the employees or property of other persons. Nothing herein contained shall be deemed to permit any such use by Subcontractor without the prior written consent of Contractor.

30. PERMITS AND LAWS: Subcontractor shall promptly obtain, at its expense, and before commencing the Work, all permits and licenses required for the Work. Subcontractor shall comply, at its expense, with all laws, ordinances, rules, regulations, orders and requirements of the City, County, State and Federal government, and of any Board or Commission or any other duly qualified body having jurisdiction, which shall or might affect or apply to the Work, and Subcontractor shall exhibit each such permit or license to Contractor upon its request. Subcontractor hereby certifies that Subcontractor is in full compliance with the provisions of the Immigration Reform and Control Act of 1986 in the hiring of its employees, has instituted procedures for concurrence with laws relating to toxic and hazardous materials (including, without limitation "Proposition 65" and federal and state hazard communication standard or "right to know" laws) and Subcontractor agrees to indemnify, hold harmless and defend Contractor and Owner against any and all claims, liabilities, losses, costs, expenses or damages arising out of Subcontractor's failure to comply with any such laws. It is hereby understood that Contractor is entering into the Contract Documents based on the representation that Subcontractor is licensed under the laws of the State of California to perform the Work, and Contractor would not enter into the Contract Documents if this representation were false.

31. DEATH OF SUBCONTRACTOR: If Subcontractor is a sole proprietor, his death shall automatically terminate this Subcontract.

32. TITLE: The title to all work completed and in the course of construction and of all materials on the job site shall, as between Subcontractor and Contractor, be in Contractor.

33. GENERAL CONDITIONS:

(a) Subcontractor agrees that Contractor and Owner are not liable for failure of the Contract Documents to meet the requirements of the applicable local Building Departments; and Subcontractor acknowledges that it is familiar with said requirements and shall complete the Work accordingly.

(b) Subcontractor agrees to keep its portion of the job site free and clean at all times and to haul from the site any debris, surplus material or fixtures and tools caused or brought on the site by Subcontractor or its suppliers or sub-subcontractors. Empty containers and excessive debris will be kept clear from jobsite. Each individual doing or conducting business at Contractor's jobsite is responsible for picking up and discarding his or her personal trash so as to leave the work area, dwelling and lot completely free of such debris. Subcontractor will require each individual working at Contractor's job site to be responsible for picking up and discarding his or her personal trash so as to leave the work area, dwelling and lot completely free from such debris. The term "personal trash" includes such items as discarded cans, bottles, containers, wrappers, or any other trash of a personal nature. Moreover, subcontractor shall pick up, discard, and at all times keep the work place free of all personal trash generated by subcontractor's employees, subcontractor's suppliers, or agents, whether or not the individuals representing subcontractor at the job site meet the obligations imposed pursuant to this subsection. Such trash will be placed in trash receptacles/containers provided by contractor.

(c) Superintendent shall approve all material storage locations and containers prior to delivery. Approved containers shall be maintained continuously in a presentable condition, acceptable to Superintendent.

(d) Subcontractor agrees to protect the work of others and Subcontractor shall be charged for any and all damages or delays caused by Subcontractor. Backcharges for work damaged by other trades will not be accepted unless they have been verified by the Project Superintendent within three (3) days of the occurrence.

(e) Subcontractor shall not substitute any materials (including wherever "or equal" is called for in the Contract Documents) without the prior written consent of Contractor. In the event that such substitutions and/or equals are made without such prior written consent, Subcontractor shall be responsible for the replacement of such substitutions and/or equals at Subcontractor's cost, at Contractor's option.

(f) The Subcontract price includes any and all requirements as set forth by any local, state or national handicapped ordinances (such as the California State Handicapped Commission, the American with Disabilities Act, etc.), whether or not shown in the Subcontract documents.

(g) The Subcontract price includes any and all requirements as set forth by any local, state or national energy ordinances (such as the California State Energy Commission, Title 24, etc.), whether or not shown in the Subcontract documents.


Superintendent's Initials


Contractor's Initials

GENERAL PROVISIONS TO SUBCONTRACT AGREEMENT
COMMUNITY: BRIDGEPORT - SAN DIEGO
SUBCONTRACTOR: HNR FRAMING SYSTEMS

SUBCONTRACT NO. 722-0010

(h) Subcontractor shall furnish promptly upon request by Contractor all samples, drawings, schedules, etc. required in connection with his work, but approval of any of the same shall not relieve Subcontractor of his/her responsibility in complying with any other requirements of the Subcontract documents, unless Subcontractor specifically notes said non-compliance and asks, and receives, written approval thereof. If requested by Contractor, Subcontractor will furnish, prior to final payment and at no extra cost to Contractor, complete "as-built" drawings to include all details requested by Contractor.

(i) Contractor shall be the sole judge as to sufficiency and efficiency of the workmen, supplies, materials, tools and equipment furnished by Subcontractor. Subcontractor shall employ competent foremen and experienced mechanics and shall not employ any unfit person or any person not skilled in the work assigned to him/her. Subcontractor's foreman must speak English and must be approved by Contractor, and may not be changed (unless said foreman ceases employment with Subcontractor) without Contractor's approval. Moreover, Subcontractor agrees to change said foreman at Contractor's request, for any reason or for no reason. When Subcontractor is not present at the site, it shall be represented by its foreman, and shall be bound by all instructions given to such representative by Contractor. Subcontractor further agrees that said foreman or another such representative of Subcontractor will faithfully attend all project meetings and "tailgate" safety meetings scheduled by Contractor's Superintendent. In addition to the English speaking foreman, Subcontractor shall also have an English speaking person on the job at all times.

(j) Subcontractor may be assigned a gate(s) that will be reserved for the sole and exclusive use of designated subcontractors, their employees and suppliers. Subcontractor's use of gate(s) other than those reserved for him/her, or his/her failure to use the gate(s) assigned to him/her exclusively shall constitute a material breach of this Agreement.

(k) Any extra work related to this trade necessary for the presentation of the models and sales office, including, but not limited to: Extra walls, extra doors and trim, extra windows, extra electrical outlets and/or light fixtures, extra plumbing, extra H.V.A.C. equipment, extra drywall/plaster treatments, etc. shall be considered as part of this contract and at no extra cost to the builder.

(l) Should this Subcontractor be the Subcontractor of record at the start of the last phase of construction, he/she will retrofit, if necessary, the sales office, models and design center to what would have been their original (production) condition as per plans and specifications and at no additional cost to Contractor.

(m) Subcontractor is responsible for all material against theft and/or damage until installed and accepted by Contractor and/or Owner.

(n) All "punch-list" items to be completed within five (5) days after notification from Contractor.

(o) Subcontractor agrees that a material reason for being awarded this Subcontract is its warranty and guarantee that all materials and supplies as specified and labor to complete, per Contractor's schedule, herein will be available in sufficient supply and on schedule to meet the terms of this Subcontract.

(p) Loud broadcast music, animals, children, alcoholic beverages, controlled substances and firearms are not allowed on the jobsite.

(q) Subject to local regulations, work shall be limited to the following: 7:00 a.m. to dusk each working day.

(r) It shall be the responsibility of Subcontractor to request Superintendent to schedule and conduct required inspections and to obtain necessary approvals.

(s) Subcontractor agrees that if the Work is being completed on a public through street, Subcontractor shall maintain such access as required.

(t) In the event that this contract is for phases other than the models and others have built said models, Subcontractor hereby agrees that unless otherwise specified in this Contract, its materials, workmanship and installation will exactly match said models.

(u) **APPLICABLE FOR UNION SUBCONTRACTORS ONLY:** If required by Contractor, Subcontractor will sign an Independent Contractor's Agreement to enable Subcontractor to remain on the job and working should a Union disruption occur. At no time will Subcontractor leave the job and cease work on the project. Subcontractor agrees to comply with Contractor's "Two-Gate System".

34. NO SIGNS: Subcontractor shall not place, permit to be placed, nor maintain any signs or other advertisement in, on, or about the vicinity of the Work, without the written consent of Contractor.


Subcontractor's Initials


Contractor's Initials

**GENERAL PROVISIONS TO SUBCONTRACT AGREEMENT
COMMUNITY: BRIDGEPORT - SAN DIEGO
SUBCONTRACTOR: HNR FRAMING SYSTEMS**

SUBCONTRACT NO. 722-0010

36. MOVE-IN PREPARATION: In the event that pick-up, installation, adjustment or other elements of work relating to the Work are required to be performed subsequent to substantial completion under this Subcontract, Subcontractor shall complete such items to Contractor's satisfaction on the exact schedule required by Contractor. In the event that Subcontractor should fail to so complete such items, or should indicate in any manner that it will not meet the required schedule, such event(s) shall be deemed authority for Contractor to perform such work elements on Subcontractor's behalf and at Subcontractor's cost and expense; Subcontractor shall then remit such amounts due within ten (10) days following written demand.

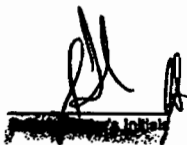
36. INDEPENDENT INSPECTION: Contractor may avail itself, although it is under no obligation to do so, of an independent testing/inspection service. Subcontractor shall comply, at his own expense, with all the recommendations/corrections notices of said service, if such a service is used.

37. SUBCONTRACTOR'S GUARANTY: If this box is checked (☐) then Contractor's "Standard Form Subcontract Guaranty" shall be attached hereto as Schedule 2 and this Subcontract Agreement shall not be deemed approved by Contractor and shall not become effective until Subcontractor delivers a copy of that form to Contractor, executed by a person whom Contractor has approved as the guarantor, which approval may be given or withheld in Contractor's sole and absolute discretion.

38. TIME OF ESSENCE: Time is of the essence for all provisions of this Subcontract in which time is an element.

39. VERIFICATION OF LICENSE: (Note: This paragraph is not part of the contract agreement and is included herein for Contractor's administrative purposes only). Subcontractor's license number, name on license, expiration date, and class/trade (☐) not checked, in reliance on Subcontractor's information; (☐) checked on _____, 19____, by: _____.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTOR'S STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT IS FILED WITHIN THREE YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA, 95816




Contractor's Initials

SCHEDULE 1

CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Upon receipt by the undersigned of a check from K. Hovnanian at Bridgeport, Inc.
Maker of Check) in the sum of \$ _____

(Amount of Check) payable to _____
(Payee or Payees of Check), 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 K. Hovnanian @ Bridgeport, Inc. (Owner), located at K. Hovnanian at Bridgeport - San Diego (Job Description) to the following extent. This release covers a progress payment for labor, services, equipment, or material furnished to K. Hovnanian Companies of California (Your Customer) through _____ (Date) only, and does not cover any retention retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

Date: _____
(Company Name)

By: _____

Title: _____


~~Signature of K. Hovnanian~~

SCHEDULE 1

UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

The undersigned has been paid and has received a progress payment in the sum of \$_____ for labor, services, equipment, or material furnished to K. Hovnanian at Bridgeport, Inc. (Your Customer) on the job of _____ (Owner) located at K. Hovnanian at Bridgeport - San Diego (Job Description), and does hereby release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or materials furnished to K. Hovnanian at Bridgeport, Inc. (Your Customer) through _____ (Date) only, and does not cover any retention retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

Date: _____

(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.



Subscribed and sworn to before me on _____ at _____

SCHEDULE 1

CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

Upon receipt by the undersigned of a check from K. Hovnanian at Bridgeport, Inc.

(Maker of Check) in the sum of \$ _____

(Amount of Check) payable to _____

(Payee or Payees of Check) 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 K. Hovnanian @ Bridgeport, Inc.
(Owner) located at K. Hovnanian at Bridgeport - at San Diego (Job Description).

This release covers the final payment to the undersigned for all labor, services, equipment or material furnished on the job, except 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.

Date: _____

(Company Name)

By: _____

Title: _____


Subscribed and sworn to before me on _____

SCHEDULE 1

UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

The undersigned has been paid in full for all labor, services, equipment or material furnished to K. Hovnanian at Bridgeport, Inc.
(Your Customer) on the job of K. Hovnanian at Bridgeport, Inc.
(Owner) located at K. Hovnanian at Bridgeport - San Diego
(Job Description) and does hereby waive 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 \$ _____.

Date: _____
(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.



Subcontractor Initials

EXHIBIT "A" TO SUBCONTRACT AGREEMENT

This Exhibit "A" is attached hereto and hereby made a part of this Subcontract No. 722-0010 with HNR FRAMING SYSTEMS, INC. for FRAMING work performed at BRIDGEPORT, Tract No: PRD 96-7944.

1. THE CONTRACT DOCUMENTS CONSIST OF THE FOLLOWING:

- 1.1 This Subcontract, including its General Provisions, and Exhibits "A" and "B" attached hereto.
- 1.2 Specifications and Drawings prepared by Knitter & Associates Architects, dated April 8, 1998, ~~(together with all revisions through May 4, 1998)~~ *[Signature]*

2. CUSTOMER SERVICE:

- 2.1 All Subcontractors must respond to call for repair of homeowner walk-through items within 24 hours or be subject to a backcharge to have another Subcontractor complete this necessary work.
- 2.2 The above referenced walk-through is prior to the close of escrow. If any additional escrow costs are incurred due to a delay in response time, these costs are also subject to backcharge.

3. EXTRAS/QUALITY:

- 3.1 Subcontract has made himself aware of all jobsite conditions and has satisfied himself that the plans and specifications are correct. It is hereby agreed that this contract together with the plans and specifications constitute a complete job void of extras.
- 3.2 THERE WILL BE NO EXTRAS without the prior approval in writing from Contractor. All work done without pre-approval in writing will be done at no cost to Contractor.
- 3.2 Quality will be Contractor's primary requirement of this Subcontractor for fulfillment of this contract. Delays in the production of other Subcontractors caused by the quality of this Subcontractor's production being unacceptable to Contractor will be subject to backcharges to correct the work of this Subcontract and/or Subcontractors impacted by this Subcontract agreement.

4. PRODUCTION:

- 4.1 Schedules are posted in the Superintendent's office and are to be met. This Subcontractor is to arrive as scheduled by Contractor's Superintendent and to maintain the production rate that is requested by Contractor's Superintendent.

5. DELAYS:

- 5.1 Delays due to quality or production will be cause for termination or liquidated damages as described in this Subcontract.

6. EXCEPTIONS TO SECTIONS 4 AND 5 OF THE GENERAL PROVISIONS SHALL BE ALLOWED ONLY AS FOLLOWS:

- 6.1 This Subcontractor may either refuse to start or continue production, or qualify the rate of production or quality of his product on all or part of a lot, if asked by Superintendent to perform this Subcontractor's responsibility in a manner that is unacceptable to the stated commitment to quality. (i.e. applies drywall to unacceptable framing or paints unacceptable drywall or other finish products).
- 6.2 This refusal or qualification must be presented in writing to Contractor's Superintendent at the time of refusal or qualification. Refusal or qualification must also be presented in writing to the Project Director/Community Builder within one (1) working day. This presentation to Contractor's Project Director/Community Builder must define the tract, lot number and list specific defects per lot to be valid.

7. LUMP SUM CONTRACT:

- 7.1 It is understood and agreed by the parties hereto that the Subcontractor is providing his services and performing his work as described herein on a "lump sum" basis. There shall be no further need for either party to be concerned with quantities or unit prices other than Contractor required additions.

8. MEETINGS:

- 8.1 Prior to commencement of any work on the job, Subcontractor is to attend a pre-job conference held with job Subcontractors at the direction of the Contractor.
- 8.2 Meet with framer and Job Superintendent during framing layout and instruct as to rough-in dimensions for each plan type. Subcontractor will verify that framing is correct when the first unit of each plan is completed.

[Signature]
Subcontractor's Initials

[Signature]
Contractor's Initials

9. RULES:

- 9.1 Subcontractor hereby acknowledges, that Contractor has established the following rules concerning workmen's behavior on the job, and Subcontractor agrees that it and its workmen will abide by such rules and that any infraction thereof is a cause for termination of this Subcontract:
- (a) No dogs or pets permitted on jobsite
 - (b) No loud or boisterous noises or music from radios, etc....
 - (c) No use of alcohol or narcotics
 - (d) No head phones, etc....
 - (e) Subcontractor agrees to cooperate and abide with the above restrictions.

10. PROTECTION OF WORK:

- 10.1 Subcontractor shall protect the work of all other subcontractors during the course of its work and shall be fully responsible for the protection of all existing structures, landscaping and adjacent property owned by others.
- 10.2 Subcontractor is to take reasonable precautions to protect his work. Any damage to other trades work is to be disclosed to Contractor immediately upon its occurrence. Failure to do so will result in a backcharge for all similar damage done prior to such failure.

11. RIGHT TO EXAMINE:

- 11.1 Contractor has the right to control entry and exit on the job and examine vehicles. Subcontractor agrees to cooperate and abide with said restrictions.

12. UNACCEPTABLE WORK:

- 12.1 Unacceptable work will be removed and replaced or properly repaired per Contractor's direction at Subcontractor's expense.

13. SUPERVISION:

- 13.1 Subcontractor should have a qualified English speaking supervisor on the jobsite at all times while work is performed, including supervision of "Pieceworkers". Said supervisor or foreman shall have a First Aid kit available and accessible at all times.

14. PRIORITIES:

- 14.1 Contractor shall establish priorities and sequence, not Subcontractor.

15. AVAILABILITY:

- 15.1 Home phone availability of Subcontractor's principal (s) is a requirement of this contract. The names and phones of said principals are:

Bob Thomas	619-659-0969	(President)
Dave Marsh	619-443-5554	(General Supervisor)

16. INSPECTIONS:

- 16.1 Provide representative to inspect all work after completion of production and make any and all necessary corrections, i.e. walk the houses, make your own punch list and do the pick-up without having to be called and given such a list by Contractor.

17. BACKCHARGES:

- 17.1 Contractor will charge a 10% administration fee on all backcharge.

18. **SAFETY:** Contractor is committed to safety in the workplace. To this end all subcontractors at the site must insure that they, their employees, subcontractors and suppliers utilize, without limitations, the devices listed below. These Safety Guidelines are not designed or meant to take the place of the "Occupational Safety and Health Standards for the Construction Industry - 29 CFR Part 1926 (OSHA regs.). OSHA regulations are THE guidelines to be followed in performing the Subcontractor's responsibilities.

18.1 FALL PROTECTION - EXTERIOR:

- 18.1a **ROOFS - TOE BOARDS/SLIDE GUARDS:** When there is a fall hazard of 6' or more, a fall protection system is required. At a minimum, the sheathers and roofers will use 6" slide guards vertically installed across the length of the eave. Contractor shall provide metal safety brackets to be installed by the framer at the edge of all pitched roofs and at intervals not to exceed 13' as successive rows of sheathing are installed. For roofs in excess of 9:12 pitch the slide guards will be installed at 4' intervals. The framer shall also supply and install all other necessary supports, toe boards, etc. Once the sheathing is completed, the framer shall remove the slide guards and will move them to and install them in the next homes being constructed, or if the final phase of construction, the framer will store



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them in the garage of each individual home. Roofing contractors will use a "Personal Arrest Fall System" on roofs with slopes greater than 8:12 and on roofs with slopes greater than 4:12 where the eave to lower level distance is 25' or more. A "Personal Fall Arrest System" consists of: an anchorage, connectors, a body harness, a deceleration device, lifeline or suitable combination.

- 18.1b **GUARDRAILS:** Must be provided at openings where the walking/working surface is 6' or more above the adjacent surface, at landings where the walking/working surface is 6' or more above the adjacent surface, at decks where the walking/working surface is 6' or more above the adjacent surface and at open-sided platforms where the walking/working surface is 6' or more above the adjacent surface. Guardrail must comply with the following guidelines: The top edge of rail must be 42" (+/- 3") above the walking/working surface, mid rails installed between the top rail and the walking/working surface when there is no wall or parapet at least 21" high. The top rails must be capable of withstanding without failure a force of at least 200 lbs. applied within 2" of the top edge. Said force shall be applied in any outward or downward direction at any point along the top rail. The mid rail must be capable of withstanding without failure a force of at least 150 lbs. Said force shall be applied in any outward or downward direction at any point along the mid rail or other members. Toe boards must be erected along the edges of any overhead walking/working surface to protect persons working below. Toe boards must be a minimum 3.5" high from the top edge to the level of the walking/working surface, shall have no more than 1/4" clearance above the walking/working surface and shall be solid or have openings no greater than 1" in size. The guardrail systems shall be so surfaced so as to prevent injury from punctures or lacerations, and to prevent snagging of clothing. The ends of all top rails, mid-rails and toe boards shall not overhang the terminal posts, except where such overhang does not constitute a projection hazard.
- 18.1c **STEPS (18" ACCESS/EGRESS):** No point of access can have a step greater than 18" high. Front or main entrances shall be backfilled to maintain a maximum step up of 18" or temporary stairs installed. In dropped garages, concrete subcontractor shall immediately pour the required steps and/or landings. Secondary entrances over 18" high shall have a top and mid rail shall be installed to prevent access or egress. If these entrances become "regular access or egress ways", ramps or steps as described above must be provided.
- 18.1d **SCAFFOLDING:** Must sit on firm, solid ground. When ground condition requires mudsills, the mudsills shall be used under minimum 4" X 4" metal plates. Said mudsills shall be made of minimum 2" X 6" lumber. No bricks, blocks, scrap lumber, etc. shall be used to level the scaffolding. Height adjustments are to be made using screw jacks with 4" X 4" metal plates. Scaffolding over 10' high must have guard rails, mid rails and toe boards on all open sides. Access to scaffold platforms shall be by the use of ladders. No one is to climb up the sides of the scaffold to reach the upper levels. To avoid tipping or sliding, scaffolds are to be securely tied into the buildings at BOTH top and bottom. If this Subcontractor uses another subcontractor's scaffold, it will be this Subcontractor's responsibility to insure that the scaffolding meet all safety standards.

18.2 **FALL PROTECTION - INTERIOR:**

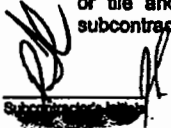
- 18.2a **RAILINGS:** Contractor shall provide metal safety stanchions to be installed by the framer around all stairways, landings, decks, open-sided platforms and hallways. Said stanchions must be lagged-in, not nailed. When lagged-in properly, the stanchions will withstand a force of at least 200 lbs. applied within 2" of the top edge. The framer shall also supply and install all other necessary supports, rails, etc. In general, the guardrails shall be installed as follows: When the stanchions are installed properly, the top rail shall be 42" (+/- 3") above the walking/working level. Mid-rails shall be installed midway between the top edge of the guardrail system and the walking/working surface when there is no wall or parapet at least 21" high. Toe boards shall be erected along the edges of the overhead walking/working surface. Toe boards shall be at least 3.5" high from the top of the walking/working surface, shall have no more than 1/4" clearance above the walking/working surfaces and shall be solid or have openings no larger than 1" in size. Railings must be continuous and shall be located a minimum of 3" out from any walls. The guardrail systems shall be so surfaced so as to prevent injury from punctures or lacerations, and to prevent snagging of clothing. The ends of all top rails, mid-rails and toe boards shall not overhang the terminal posts, except where such overhang does not constitute a projection hazard. Stairs with an open side of more than 3 risers must have guardrails as described above.

The subcontractor that installs the permanent handrail/stairway shall then remove this safety railing at the completion of the job and will store the metal stanchions in the garage of each individual home. In the event that the Subcontractor performing the work outlined in this Agreement has to temporarily remove said safety railings for the purpose of proceeding with his portion of the work, it will be this Subcontractor's responsibility to immediately restore said safety railings to their original condition.

- 18.2b **FLOOR OPENINGS:** Any floor openings where the least dimension is greater than 2" must be guarded by rails as described above or covered. Coverings are to be secured and marked (outlined and X'ed) with bright orange or yellow spray paint.
- 18.2c **WALL OPENINGS:** Any openings on a wall greater than 18" X 30" must be guarded if there is a 6' fall to the adjacent surface.



- 18.2d **DOORS WITH FALL HAZARD:** All doors 6' or more from an adjacent surface must be protected with railings as described above.
- 18.2e **SCAFFOLDS:** Same as per 18.1d.
- 18.3 **TRENCHING AND EXCAVATION:** When an excavation or trench is 4' deep or greater, Subcontractor must install exit ladders within 25' of workmen. If the excavation or trench is 5' deep or greater, in addition to the ladders, a protective system must be used to strictly conform to all OSHA requirements, including, but not limited to properly sloping, benching, shoring or using trench boxes. If this Subcontractor uses another subcontractor's trenches, it will be this Subcontractor's responsibility to insure that the trenches meet all safety standards. Subcontractor must determine the appropriate protective system allowed based on the soils classification (Type A, B or C soil).
- If the excavation or trench could pose a fall hazard, prudence and common sense must prevail. If an excavation or trench is over 5' deep and has sloped, multiple bench or plateau walls of sufficient angle to prevent injury, the use of orange clearing fence may not be necessary. However, if soils conditions are such that the excavation could collapse, orange clearing fencing shall be provided. Where excavations or trenches are over 5' deep and the walls are vertical, orange clearing fencing should be installed around the hazard.
- 18.3 **COMBUSTIBLE STORAGE:** Combustibles and flammables must be stored in an appropriate area that is identified. Combustible and flammable liquids must be stored in an approved metal safety container that has a flash arrestor (a UL or Factory Mutual -FM- approved storage container).
- 18.4 **MATERIAL STORED PROPERLY:** Materials must be stored in a manner that will not pose a hazard, and must also be stacked in a manner that will resist falling over.
- 18.5 **WORK AREAS / PASSAGEWAYS:** Must be clear of debris form and scrap lumber, lumber with nails (nails to be bent over), etc.
- 18.6 **LUMBER WITH NAILS:** Nails protruding from lumber must be bent over.
- 18.7 **ELECTRICAL:**
- 18.7a **EXTENSION CORDS CONDITION:** Few and minor repairs are allowed to outer insulation jacket.
- 18.7b **PROPER GROUNDING:** Extension cords and any electrical tool that is not double insulated must have a ground prong.
- 18.7c **GFI PROTECTION:** All electrical equipment must be protected by a GFCI. The only exception allowed is when the equipment is plugged into a generator of less than 5KW.
- 18.7d **PANEL BOXES:** Covers must be installed at all times, whether powered or not.
- 18.8 **LADDERS:**
- 18.8a **CONDITION:** Ladders must be in good condition with no broken side rails or steps and no "homemade" repairs.
- 18.8b **PROPER USE:** Ladders must be used according to manufacturer's safe use instructions, such as, but not limited to: Stepladders must be opened and resting on all 4 feet of a level, solid surface. When using a ladder to go from one level to another, the ladder must be secured and extend at least 3' above the upper landing platform.
- 18.8c **JOB-MADE LADDERS:** The use of job-made ladders is prohibited.
- 18.9 **LP TANKS STORAGE:** All LP tanks must be:
- Stored on a firm, level surface.
Secured from falling over.
In an area that protects the tanks from being struck by equipment and vehicles.
Stored more than 10' from any building and/or structure if there are 500 lbs. or more stored.
Stored 7' or more from any heaters.
- 18.10 **USE OF LP TANKS AND HEATERS:** Heaters shall be located at least 7' from the LP tank and at least 6' from walls and other combustibles. Heaters shall be set on non-combustible materials. The area must be well ventilated and the heaters must be checked every 45 minutes when in use.
- 18.11 **HARD HATS:** Subcontractors shall follow OSHA 1926.10 "Individuals working in areas where there is a possible danger of head injury from impact, or from falling or flying objects, or from electrical burns shall be protected by protective helmets. Subcontractors such as roofers, carpet installers, painters and tile installers might not be exposed to the above hazards when actually performing direct installation of roofing, carpet paint or tile and would be exempt from wearing a protective helmet at that time. However, should those subcontractors leave the roof, home, etc. they will be required to wear a hard hat."


Subcontractor's Initials

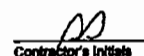
19. STORM WATER POLLUTION PREVENTION PLAN (SWPPP):


- 19.1 We, as the owner, have developed a Storm Water Pollution Prevention Plan (SWPPP) in accordance with our understanding of the State requirements. You as a Contractor are directed to comply with SWPPP and the NPDES general permit for any work done on this site. Any person who violates any permit condition of the general permit may be subject to substantial penalties in accordance with Section 309 of the Clean Water Act and Porter-Cologne Water Quality Control Act. A copy of the General Construction Activity Storm Water Permit and the Storm Water Pollution Plan developed for this site available for your review at the construction office.

20. SCOPE OF WORK:

- 20.1 Furnish and install FRAMING, as per plans, specifications, all applicable code inspector requirements, FHAVA requirements and as per Contractor's requirements, including, but not limited to the following:
- 20.2 Subcontractor shall furnish all labor, materials, installation, freight, handling, loading and unloading, tools, equipment, scaffolding, safety apparatus, storing, specialty equipment and testing as necessary to fulfill this agreement as per the provisions of the subject specifications and as complemented or altered by the subject plans. The following is designed to indicate in a general way the Scope of Work and is subject to qualifications and additions as set out elsewhere in this contract. While this Subcontract attempts to list in detail all the items and services to be furnished and/or installed by this Subcontractor, it is agreed that an exact list is impossible to compile. Therefore, Subcontractor agrees that all items, materials, labor, equipment, etc. normally and usually included and necessary for a complete and operable system as per all industry standards and governmental agencies requirements, whether included in the contract documents or not, are a part of this job. The end result shall be to relieve Contractor of any further costs, extras, burden or expense of all the work covered under this agreement.
- 20.3 Prior to commencement of work, it is the Subcontractor's responsibility to confirm with the Project Superintendent that the Subcontractor has obtained the most current approved plans. All work to be scheduled with the Superintendent.
- 20.4 Subcontractor agrees to furnish K. Hovnanian Companies with a copy of their State of California contractor's license and the appropriate City and/or County Business License before commencement of work.
- 20.5 Subcontractor agrees to furnish K. Hovnanian Companies' applicable Community Builder's office with a copy of Subcontractor's Safety Procedure Manual prior to the commencement of the work herein.
- 20.6 Subcontractor understands that plans and specifications may not fully reflect the actual job conditions, therefore, the subcontractor or his/her agent(s) should inspect and verify existing conditions. Subcontractor shall notify Contractor in writing of any below-standard conditions before commencement of work. Unless such a notification is given, it is hereby understood that Subcontractor has accepted the job conditions "as is".
- 20.7 Contractor reserves the right to modify sequence and/or mix. Unit prices set forth in Exhibit "B" shall remain the same.
- 20.8 In essence, this contract provides for a "complete job", that is, all items shown on the contract documents and covered by the contract specifications. All items not specifically indicated or called, but necessary for the completion and operation of the work covered by this contract shall be included as part of this contract.
- 20.9 Subcontractor agrees to provide all supervision necessary to purchase, order, receive and distribute all materials onto the jobsite. Bulk lumber to be unloaded and distributed house-to-house by Subcontractor, Subcontractor shall provide all necessary equipment to load or unload materials. Unloaded materials shall not block access to City vehicles, including fire and trash removal. Subcontractor shall store lumber on the site as approved by Contractor, and storage and continued maintenance of such materials shall be in a safe manner so as not to create an "attractive nuisance" to children or others, and in accordance with all safety rules and regulations. At all times Subcontractor shall be solely responsible for the safety, protection (including theft) and maintenance of all such materials. Subcontractor shall not store such materials so as to create delays in the work of others and shall relocate any such materials within 24 hours after being notified to do so by the Contractor.
- 20.10 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, water heater platforms, backing, freeze block, wood trim, edges, soffits, furring, chases, columns, posts, beams, pot shelves, pop-outs, corbels and rough hardware.
- 20.11 Rough hardware to include, but is not limited to: Nails, shots, building paper, glue, washers for anchor bolts, bolts (except anchor bolts, nuts, hold-downs), tie straps, Simpson catalog items, special connectors, joist hangers, felting, caulking, clips, sealant, adhesives, post anchors, and caps not imbedded in concrete. 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.
- 20.12 Subcontractor shall meet with Contractor's Concrete subcontractor to determine the layout of all bolts and tie downs and shall provide the Contractor's Concrete subcontractor with a detailed bolt and tie-down layout.


Subcontractor's Initials


Contractor's Initials

- 20.13 Subcontractor shall create lumber list and shall order it to coincide with construction progress requirements. Subcontractor to notify the Community Builder and get his/her approval prior to delivering lumber to project site. Subcontractor assumes responsibility for all lumber, and lumber products losses, including losses due to theft, pilferage, misuse, or damage. Subcontractor agrees that no more materials shall be delivered to the job site other than those materials needed to diligently complete the work in progress. In the event that Subcontractor causes extra or additional materials to be delivered to the job site without Contractor's express, written approval, Subcontractor agrees that Contractor shall not be obligated to pay for such extra or additional materials.
- 20.14 All lumber shall be grade marked:
- a. Studs - Douglas Fir, stud grade.
 - b. Lumber used for aesthetic purposes shall be subject to approval by Contractor.
 - c. Plate - All plate material to be Douglas Fir construction standard, utility grade is not acceptable.
 - d. Beams - #1 Douglas Fir, or better, unless otherwise noted.
 - e. Joists - #2 Douglas Fir, or better, unless otherwise noted.
 - f. All exposed lumber shall be resawn, selected for appearance and free of handling marks.
 - g. 7/16" OSB sheathing
 - h. Sub floor - 3/4" T & G OSB or equal.
- NOTE: The above are minimum grades. Subcontractor shall check all applicable codes, plans and structural engineering calculations for more stringent specifications.
- 20.15 Check all beams and materials before installation for twists, cracks and crowns.
- 20.16 Subcontractor shall supply all truss calculations, "I" joist calculations, layouts and changes. Calculations and plans shall become the property of Contractor.
- 20.17 Temporary power cords and boxes shall be provided by Subcontractor.
- 20.18 In the event that Subcontractor shall require an area for prefabrication and/or storage of materials, Contractor will provide a location only if one is available. Contractor shall provide temporary power (power poles). Temporary sanitary facilities, or any other items necessary at prefabrication area to be provided by Subcontractor. Subcontractor shall be responsible for cleaning the area and removing any debris from the site.
- 20.19 It is hereby understood that the structures covered herein are to be built as shown on the approved plans and any variations or discrepancies noted shall be immediately brought to the attention of Contractor's representative and resolved. (No deviation regarding the structural integrity of building.)
- 20.20 Subcontractor shall coordinate their work with other subcontractors including plumber, electrician, heating, window/sliding glass door installer, cabinet subcontractor and finish carpenter to allow for proper rough openings, backing, cutting, and patching.
- 20.21 Subcontractor shall coordinate with plumber and/or tub/shower subcontractor as to backing required for the installation of tub/showers.
- 20.22 Contractor will furnish window and sliding glass door rough opening dimensions. Contractor will furnish rough opening sizes for solid core and hollow core doors from finish carpentry subcontractor. Subcontractor shall frame said openings as per the rough dimensions provided.
- 20.23 Subcontractor shall cut, notch and head for all trades, including plumbing, H.V.A.C., electrical and sheet metal subcontractors, for proper size and locations of ducts and as per UBC and City specifications. Cut all roof penetrations. All joists and beams to be notched for hangers and hardware where needed to flush out drywall, headers, beams and subflooring. Provide shafts, soffits, furring, runs, chases and openings where required for fireplaces, plumbing, H.V.A.C., electrical and kitchen cabinets as shown on plans or as per Contractor's instructions, or as needed to accommodate other trades or governmental officials. Meet with all necessary subcontractors to establish height of blocking where critical switches, plugs and plumbing occur. Layout blocks to avoid same. Provide proper stud spacing for electrical panels, sub panels and utility phases at houses and garages as required. *SUBCONTRACTOR DOES NOT BUILD AIR DUCTS* 
- 20.24 Skilled mechanics shall do all cutting and framing of wood members required to accommodate structural members, head-outs for toilets, tubs, and other required mechanical.
- 20.25 Install & tighten all bolts, nuts, washers and connections immediately. Do not leave for pick-up.
- 20.26 Subcontractor agrees to supply and install 2x6, 2x8, 2x10 and/or solid blocked backing as required for other trades; i.e.: drywall, lather, sheet metal, cabinets, electrical, finish carpenter, roofer, shower doors, and bath accessories such as towel bars, toilet paper holders, etc. Any pre-cut arches shall be included as part of this subcontract.
- 20.27 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 or crane for lumber handling and materials unloading as necessary during the course of the job.

- 20.28 Lumber to be moved ahead by Subcontractor throughout the job.
- 20.29 All cutting to be done on the lot or in specified yard, not in the street.
- 20.30 Replacement cost of incorrectly cut material shall be the responsibility of the Subcontractor.
- 20.31 Load, place and nail all roof sheathing and/or starter board. Sheathing and/or starter board shall be flush with top of fascia in the case of Composition Shingles, higher than the sheathing (as per roof tile manufacturer's recommendations) in the case of cement tile to provide for kick-up at first tile course. All shiners shall be removed, not clipped.
- 20.32 Subcontractor shall install temporary handrails on all stairs, landings and openings, and wrap treads on all stairways and landings, and maintain all treads, stringers, railings, etc., as needed for construction and to conform to all OSHA safety regulations. Maintain handrails through completion of frame inspection. Subcontractor shall also provide slide guards or tie-offs for sheathers.
- 20.33 Subcontractor agrees to construct temporary stair barricades and handrails and toe board to comply with Cal-Osha and the U.B.C.
- 20.34 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. All fascia and barge shall be mitered at the joints. All barge shall receive "bird-break" cuts at splices. The use of corrugated-faced hammers shall not be permitted in the nailing of exposed wood. No "golf balls" or hammer marks shall be accepted in exposed areas.
- 20.35 All framing shall be constructed with all joints true, tight, and well nailed or bolted as required. All horizontal members subject to bending shall be set with crown up and shall not be spliced between bearing. Wherever feasible, all members shall have solid bearing without being shimmed, however, if solid bearing is not feasible, first floor walls and second floor walls shall be shimmed as necessary to provide level plate for second floor/ceiling. Interior and exterior angles shall be properly framed to receive interior and exterior finish work. All fascias shall be properly mitered at the joints.
- 20.36 Provide and install all exterior siding, trim and plant-ons (with the exclusion of any foam plant-ons). Spackle all hammer marks at trim material. Smooth splits and cracks. Spackle rafter tails where roof sheathing nails are clipped or countersunk. Furnish and install the necessary felt underlayment.
- 20.37 Scrap out ahead of rough electrical and prior to framing inspection and stack all useable material at street at least 10 feet from buildings.
- 20.38 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. Subcontractor to caulk all exterior wall plates with mastic.
- 20.39 Block all exposed beams. Block all areas at exterior where voids would appear, so as to allow backing for finish material (stucco).
- 20.40 Framing work shall include all repair and/or replacement of framing due to boring and notching by mechanical or electrical trades. Joints of all paneling, siding, sheathing, etc. shall occur at studs or shall be solidly blocked. Subcontractor shall drill, cut screen and install freeze blocks with wire screens at all volume ceilings to provide for proper ventilation.
- 20.41 Subcontractor will check for crooked studs and straighten same prior to drywall. Subcontractor will cross-sight all doors and plumb rough openings to proper dimensions and remove all plates. Subcontractor agrees to frame access/crawl holes as required on all plans.
- 20.42 Subcontractor shall furnish all labor and materials necessary to glue down all subflooring and nail same with approved type screw nails or ring-shank. Type of glue to be approved by contractor and glue shall only be applied on floor joist just prior to the plywood subfloor being laid and nailed. No more than 1/2 hour shall elapse between laying plywood over glue and nailing. Remove all nails that do not penetrate into floor joists or that do not drive flush to plywood. Special care shall be taken so that subflooring will be properly installed and nailed to eliminate deflection and future floor squeaks.
- 20.43 Include all furring, drop ceilings, soffits and chases as required.
- 20.44 Provide platform for water heater and/or F.A.U. as shown on plans. Subcontractor will remove scrap and trash from under said platforms.
- 20.45 All posts and beams at unit interiors not wrapped with drywall shall be resawn.
- 20.46 Subcontractor shall adhere to tolerances in framing +/- 1/2" in areas that constitute critical dimensions. The Project Superintendent shall determine areas of concern where more strict tolerances shall be applied. All walls must be plumb and true, all floors must be level.
- 20.47 Framing shall be squared, aligned and plumb with no wedges, shims or makeshifts.



EXHIBIT "A" TO SUBCONTRACT AGREEMENT
COMMUNITY: BRIDGEPORT - SAN DIEGO
SUBCONTRACTOR: HNR FRAMING SYSTEMS

SUBCONTRACT NO. 722-0010

- 20.48 All curb-mounted walls (with the exception of garage walls) will be furred out as necessary to meet existing width of curb.
- 20.49 Install z-bar backing or other flashing where required for siding to maintain schedule. All exterior trim shall be properly installed and flashed with 60# min. paper or mastic to assure a proper water tight installation.
- 20.50 Subcontractor agrees to fabricate and install exterior decorative trim, including shutters, as required, on all elevations.
- 20.51 Provide and install roof crickets.
- 20.52 Sheathing shall be secured at right angles to the floor and/or roof joints. Sheathing shall meet flush at all butt joints. Nail borders at 6" o/c maximum unless otherwise noted or required by public authority.
- 20.53 All shear paneling to be done in accordance with plans and nailed according to shear wall schedule. Includes transfer blocks and loco clips. Particular attention will be taken with regards to shear panels and special shear nailing for and backing for special drywall nailing. In the case where shear panel(s) is(are) indicated in only one side of a window and/or door, the other side of the window and/or door shall either be sheathed or furred to match the side with the shear panel.
- 20.54 All floor joist, ceiling joist and roof rafters subject to deflection shall be set with crown up and shall not be spliced between bearings, and blocked, screwed and glued.
- 20.55 Subcontractor shall install continuous 3/4" plywood decking catwalk in attic from the attic access to the heating unit(s). Said catwalk and decking should be not less than 3'-0" wide and flooring in front of heating unit(s) shall extend the length of the working space of the unit(s) at a width of not less than 3'-0" wide.
- 20.56 Interior and exterior angles shall be properly framed and backed out to receive interior and exterior finish work.
- 20.57 Subcontractor shall provide solid backing at high wall and ceiling areas for upper and island upper cabinets. Subcontractor shall provide solid backing for stair handrails.
- 20.58 Subcontractor agrees to knock out all braces, prepare all door and window openings and to cut all bottom plates in a timely manner as to accommodate other trades as required.
- 20.59 Balloon frame walls as per plans.
- 20.60 Supply pick-up labor to check all framing work and replace all crooked, twisted, or bowed studs, etc., as needed.
- 20.61 No work will be considered final until accepted by all pertinent governing agencies and by Contractor.
- 20.62 Install double wall shear panel after plumbing and electrical inspections where required.
- 20.63 Frame around heating ducts in garage after ducts are installed.
- 20.64 Re-nail floors after final inspection by City, as needed, to stop squeaks. (Screws to be used if needed). Note: While not a part of this contract, Subcontractor may choose to screw plywood floors instead of nailing them so as to minimize future service calls.
- 20.65 All requirements for Title 24 (pertaining to framing) shall be included. Particular attention will be given to exterior walls:
a) Studs must be flush with the edge of plates.
b) Plates must be tightly caulked to concrete with resilient non-hardening caulking.
c) All intersections of exterior walls must be a tight fit.
- 20.66 Authorized extra work must be billed within thirty (30) days of completion of said work. Failure to comply will result in non-payment of extra work.
- 20.67 No waxed, oiled, or greased nails will be permitted. All nailing shall comply with City specifications. All exterior trim, fascia, etc., shall be fastened with galvanized nails.
- 20.68 Subcontractor to supply ridge cap, hip and material for roofing subcontractor.
- 20.69 Subcontractor shall assume full responsibility for any lumber installed to assure full compliance with City, County and Contractor's requirements. Subcontractor shall provide all labor and equipment to remove and replace lumber unacceptable after installation. Subcontractor shall make all corrections at no cost to Contractor.
- 20.70 Subcontractor shall hold prices for labor through completion of this job and as per Exhibit "B"
- 20.71 Roof systems as per plans.


Subcontractor's Initials


Contractor's Initials

EXHIBIT "A" TO SUBCONTRACT AGREEMENT
COMMUNITY: **BRIDGEPORT - SAN DIEGO**
SUBCONTRACTOR: **HNR FRAMING SYSTEMS**

SUBCONTRACT NO. 722-0010

20.72 Prior to Subcontractor receiving the framing inspection draw, Subcontractor shall provide Contractor with a set of redlined plans indicating all changes that have been made, if any, noted and initialed.

20.73 Pick-up to be done as each house is completed.

20.74 Wherever a balcony, patio deck, walkway, deck terrace, etc. is constructed, such surface must always be constructed in such a manner as to have positive drainage of no less than 1/4" per foot, irrespective of whether such slope is specified in the construction documents. In the event that such plans or other documents do not show drainage, it is imperative that Subcontractor call such omission to the Contractor's attention, but in any event, Subcontractor shall be obligated under this contract to provide the proper slope unless relieved of said obligation, in writing, by Contractor.

20.75 All windows in kitchens and baths that have a tile stool shall be set on a 1" X 1" filler.

20.76 Add backing on all four sides for all H.V.A.C. registers and return air grills.

20.77 Provide headers at all optional openings.

20.78 Construct stairs as per plans.

21. SPECIFIC CONDITIONS

21.1 Floor systems to be TJI systems.

21.2 Interior non-bearing studs will be installed @ 24" o/c.

21.3 Drywall clips will be used at corners and at ceilings in lieu of wood backing.

21.4 All decorative 1/2 round trim at exterior is included.

21.5 All materials and labor to construct Sales Office as per plans and specifications prepared by Austin Johnson are included at no cost to Contractor.

22. CONTRACT PRICE:

22.1 Prices are as follows:

<u>PLAN</u>	<u>LABOR</u>	<u>LUMBER</u>	<u>TJI's & TRUSSES</u>	<u>PLAN TOTALS</u>
1A	\$ 10,349.00	\$ 9,480.00	\$ 5,778.00	\$ 25,607.00
1B	\$ 10,196.00	\$ 9,041.00	\$ 5,962.00	\$ 25,199.00
1C	\$ 10,159.00	\$ 9,591.00	\$ 5,934.00	\$ 25,683.00
2A	\$ 10,412.00	\$ 8,361.00	\$ 4,691.00	\$ 23,465.00
2B	\$ 10,419.00	\$ 8,471.00	\$ 4,741.00	\$ 23,631.00
2C	\$ 9,958.00	\$ 8,295.00	\$ 4,709.00	\$ 22,962.00
3A	\$ 11,068.00	\$ 9,214.00	\$ 5,404.00	\$ 25,685.00
3B	\$ 10,783.00	\$ 9,379.00	\$ 5,433.00	\$ 25,595.00
3C	\$ 11,076.00	\$ 9,930.00	\$ 5,502.00	\$ 26,507.00

23. ALTERNATE PRICE:

23.1 To provide and install exterior shutters per current plans and specifications:

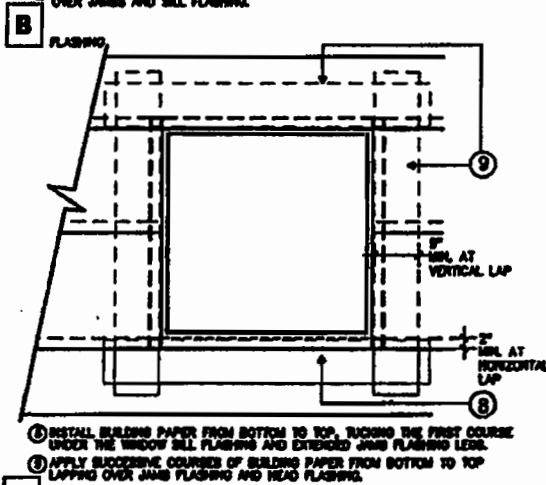
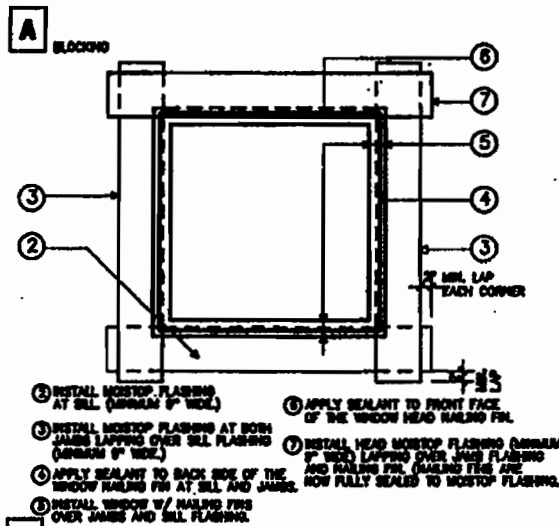
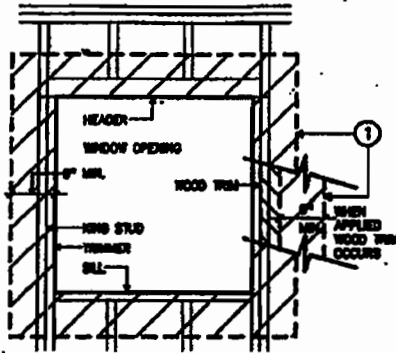
23.2 Alternate pricing as follows:

<u>PLAN</u>	<u>TOTAL</u>	<u>PLAN</u>	<u>TOTAL</u>
1A	\$ 280.00	3A	\$ 280.00
1B	\$ 420.00	3B	\$ 280.00
1C	\$ 280.00	3C	\$ N/A
2A	\$ 280.00		
2B	\$ 280.00		
2C	\$ N/A		

23.3 Labor prices are locked for the duration of job.




Contractor's Initials

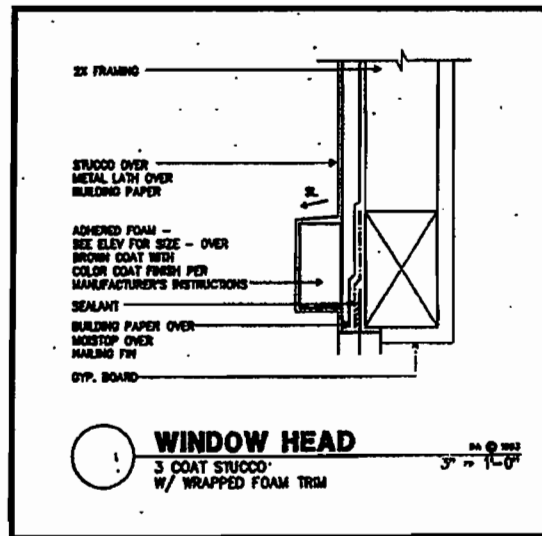


WINDOW FLASHING

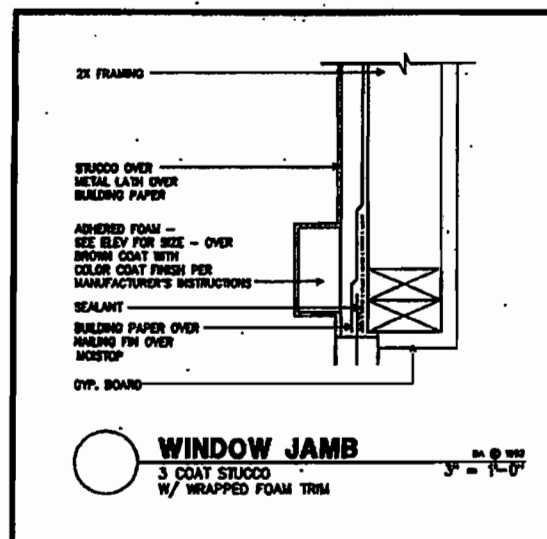
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EXAMPLE 2

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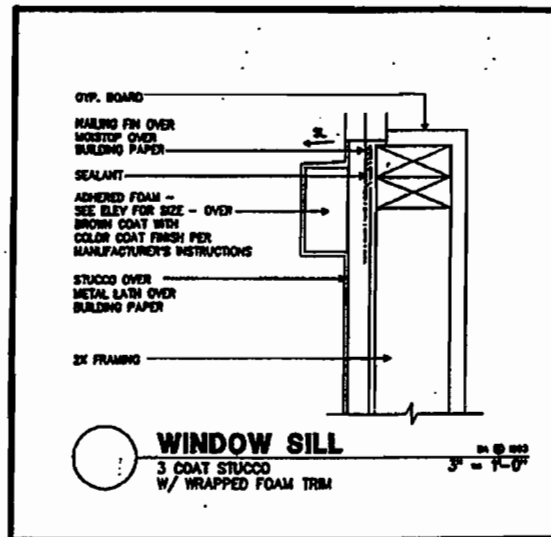


EXAMPLE 4

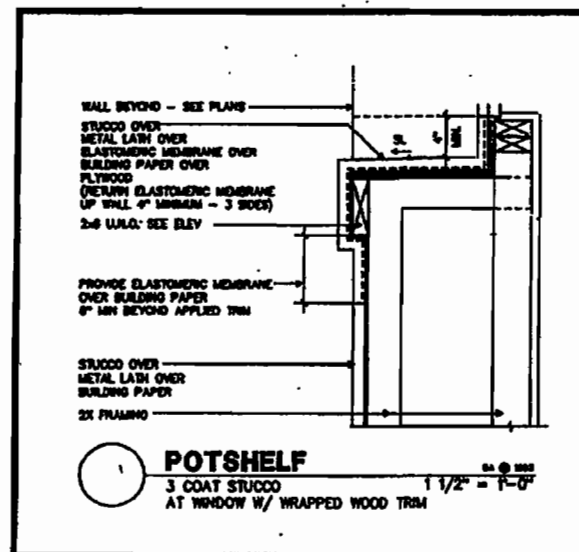


EXAMPLE 5

PSL



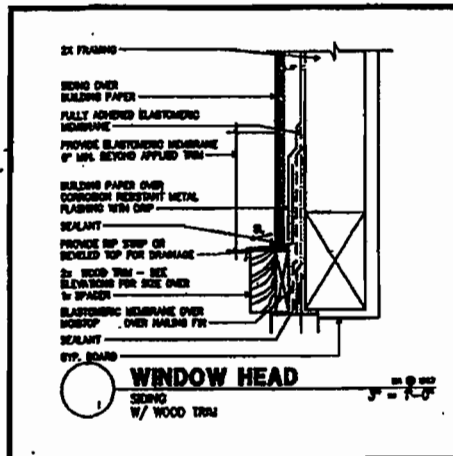
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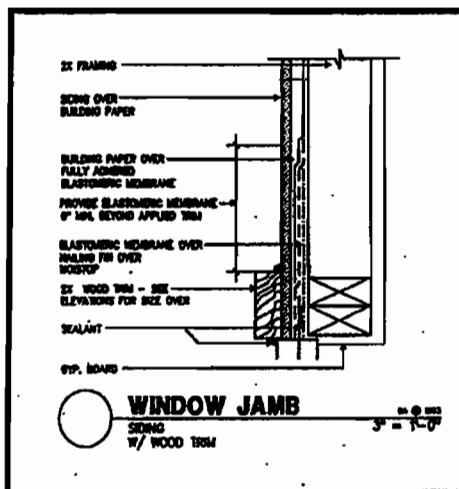
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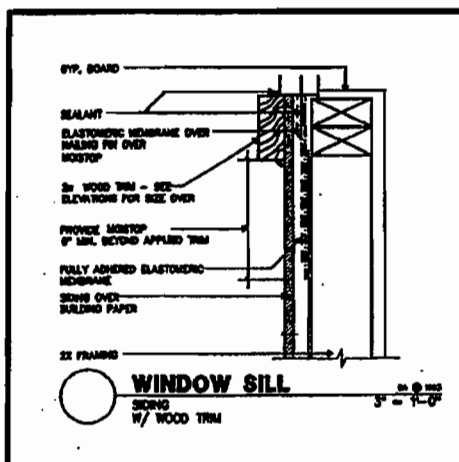
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 Contractor's Initials



EXAMPLE 8



EXAMPLE 9



EXAMPLE 10

Subcontractor's Initials

Contractor's Initials

EXHIBIT "B" TO SUBCONTRACT AGREEMENT
PAYMENT EXHIBIT
BRIDGEPORT

Contract #722-0010
Cost Code: A-0701

This Exhibit "B" is attached to and made a part of that Subcontract No. 722-0010 for FRAMING between K. Hovnanian Companies of California, Inc. and HNR FRAMING SYSTEMS Tract No: PRD96-7949.

So long as Subcontractor is not in default under this Subcontract, payments will be made for Work completed at the time and in the amounts set forth below. Contractor agrees to pay Subcontractor a monthly progress payment in an amount equal to ninety percent (90%) of all labor and materials which have been properly placed in position and accepted by Contractor and Owner, subject to the schedule as shown on Exhibit B payment schedule. Subcontractor shall submit progress payment requests to Contractor for Work completed.

(a) As a condition precedent to receiving payment for Work that has been completed, Subcontractor shall prepare and present to Contractor, for its approval, each of the following:

1. An invoice for work completed with a copy of Exhibit "B" schedule of this form attached and marked to show all payment items completed in the current billing period. Consecutively number, sign and date each invoice.
2. Complete and attach the appropriate releases, in the form of schedule (1) of this subcontract, to comply with Civil Code 3282 (d) (1) executed by all persons who may have mechanic lien, stop notice or labor and material bond rights against the property and arising out of work performed or materials supplied under this subcontract.
3. All work, including contract work, change orders or customer service extras, must be billed within 30 days of the completed work.
4. All billings for extras and/or optional work shall be attached with a copy of the Change Order and/or Purchase Order for the respective extra work and submitted to the Owner for processing with all other attachments as noted herein. No extra and/or option billing will be processed without proper back-up. Extras must be billed separately from contract billings.
5. Backcharges for work damaged by other trades will not be accepted unless they have been verified by the Project Superintendent within three (3) days of the occurrence.
6. Contractor is not required to make any payments to Subcontractor unless Subcontractor shall previously have provided: (i) the Certificates of Insurance required by Paragraph 12 of this Subcontract; and (ii) evidence of payment (as applicable) to all labor unions and union trust funds.

(b) All invoices not billed in accordance with this agreement shall be returned unpaid with an explanation to the Subcontractor. Contractor may withhold progress payments, in whole or in part in order to protect Contractor and/or Owner from loss because of:

1. defective work not remedied, missing materials not furnished, clean-up not performed;
2. claims filed or reasonable evidence indicating probable filing of claims, including claims not covered by insurance until such claims are accepted by carrier;
3. failure of Subcontractor to make payments properly to its subcontractors or for labor, materials, or equipment, transportation or shipping costs, taxes, fees, payments to labor unions and union trust funds or other claims arising out of the Work;
4. reasonable doubt that the Work can be completed for the unpaid balance of the Subcontract Price;
5. damage to another subcontractor, or to Contractor or Owner;
6. reasonable indication that the Work will not be completed on schedule;
7. unsatisfactory prosecution of the Work by Subcontractor;
8. failure to deliver written guarantees or warranties; or
9. failure to obtain the approvals required by any authority having jurisdiction.

When the above grounds are removed by Subcontractor, payments will be made for the amounts withheld because of them. Contractor may require that Subcontractor furnish releases in a form satisfactory to Contractor for all claims made under (b) 2 and (b) 3, above, together with supporting invoices, receipts or other records to substantiate the amounts owing as paid as Contractor may require.

(c) Any and all funds payable to Subcontractor hereunder are hereby declared to constitute trust funds in the hands of Subcontractor, to be applied first to the payments of claims of its subcontractors, architects, engineers, surveyors, laborers and materialmen arising out of the described Work, to claims for utilities furnished and taxes imposed, and to the payment premiums on surety bonds and other bonds filed and premiums on insurance accruing during the construction of the described Work, before application to any other purpose.

(d) Any payment made hereunder or advances made by Contractor prior to full completion and final acceptance of the Work shall not be construed as evidence or acceptance of any of Subcontractor's Work by Contractor or Owner. If construction loan funds are deposited in a joint control account, Subcontractor agrees to accept payments from such account and any order given by Contractor to Subcontractor thereon shall be deemed payment on part of Contractor and a release of Contractor in the amount of any such order. Contractor shall have the right to make payments to Subcontractor thereunder by checks payable jointly to Subcontractor and its suppliers, vendors or any of them.

(e) Final payment and amounts retained by Contractor shall not be released to Subcontractor until both (i) the expiration of thirty-five (35) days after the ~~notice of completion has been recorded on the property~~, and (ii) Owner has approved and accepted subcontractors work under this contract.

completion of our work


Subcontractor




Contractor Initials
ExhibitB Master Exhibit B .doc

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 5000 Birch Street, Suite 8500, Newport Beach, California 92660.

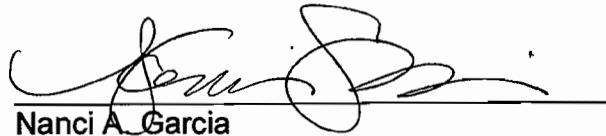
On February 17, 2009, I served the following document(s) described as **K. HOVNANIAN AT BRIDGEPORT, INC.'S CROSS-COMPLAINT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED LIST

BY ELECTRONIC SERVICE: I caused the above-entitled document(s) to be served through LexisNexis File & Serve addressed to all parties appearing on the LexisNexis File & Serve electronic service list for the above-entitled case. The file transmission was reported as completed and a copy of the "LexisNexis File & Serve Filing Receipt" page(s) will be maintained with the original document(s) in our office.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 17, 2009, at Newport Beach, California.



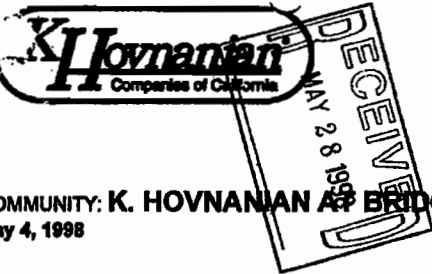
Nanci A. Garcia

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SERVICE LIST
Trolinger, et al. v. K. Hovnanian at Bridgeport, Inc.
Case No. 37-2008-0085314-CU-CD-CTL

Howard J. Silldorf, Esq.
Jean-Claude Lapuyade, Esq.
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The Aventine
8910 University Center Lane, Suite 600
San Diego, CA 92122
Tel: (858) 625-3900
Direct Line: (858) 362-9607
Fax: (858) 625-3901
Attorneys for PLAINTIFFS

EXHIBIT C



SUBCONTRACT AGREEMENT

REC'D JUN 03 1998

COMMUNITY: K. HOVNANIAN AT BRIDGEPORT
May 4, 1998

Contract No. 722-0010

Trade: ROUGH CARPENTRY

Contractor:
K. HOVNANIAN COMPANIES OF CALIFORNIA, INC.
Contractor's License No. B-700788
Attn: Jorge D. Alvarez, Director of Purchasing
3991 Mac Arthur Blvd. Ste 300
Newport Beach, Ca 92660
Phone: 714/680-1130
Fax: 714/756-8722

Subcontractor:
HNR FRAMING SYSTEMS, INC.
JERRY SMITH

Address:
12345 Crosthwaite Circle
Poway, Ca. 92084
Phone: 619/486-2471
Fax: 619/486-7351

Tract No: PRD 98-7949 (95-0204)
Job No: 722.001/722.005

Subcontractor's License No. 617393
Expires: [REDACTED] Class: [REDACTED]

Phase: Models ; Cost Code: A-0701 Contract Price: \$ 75,823.00
Phase: One ; Cost Code: A-0701 Contract Price: \$ 374,415.00

TOTAL CONTRACT: \$ 450,238.00

1. **PARTIES:** This Subcontract ("Subcontract") is between Contractor and Subcontractor. Any references to "Owner" shall refer to K. HOVNANIAN AT BRIDGEPORT, INC.

2. **DESCRIPTION OF WORK:** Subcontractor will furnish FOB jobsite and pay for all equipment, tools, machinery, scaffolding, permits, supervision, materials (all materials shall be new unless otherwise specified by Contractor) and sales taxes to construct and complete upon the project described above, in a good, workmanlike and substantial manner, all in accordance with (and reasonably inferable from) the "Contract Documents" described in Exhibit "A" attached hereto, and as set forth in Exhibits "A" and "B" attached hereto (collectively, the "Work"). Subcontractor shall perform the Work in strict compliance with the Contract Documents and all applicable laws, building codes, ordinances, rules and regulations.

3. **SUBCONTRACT PRICE:** For the complete performance of the Work, and so long as Subcontractor is not in default under this Subcontract, Contractor shall pay Subcontractor the "Subcontract Price" as set forth in Exhibit "B". The Subcontract Price is intended to include all increases in costs, foreseen or unforeseen, including, without limitation, taxes, labor, materials, and transportation costs, all of which are to be borne by Subcontractor. All loss or damage arising from any Work performed under this Subcontract through unforeseen or unusual obstructions, difficulties or delays which may be encountered in the prosecution of same, or through the action of the elements, shall be borne by Subcontractor.

4. **GENERAL PROVISIONS:** Subcontractor agrees to perform the work in accordance with this Subcontract and the General Provisions of the Subcontract (including paragraphs 1 through 39 inclusive) and Exhibits A and B attached hereto and incorporated herein.

5. **SUBCONTRACTOR'S AUTHORIZED REPRESENTATIVES:** The only persons authorized to execute this Subcontract or changes (including change orders) hereto are as follows:

ROBERT THOMAS

JERRY SMITH

Kevin Milam

"CONTRACTOR"

K. HOVNANIAN COMPANIES OF CALIFORNIA, INC.,
a California corporation

By: Jorge D. Alvarez

Its: Purchasing Mgr.

(Print Name and Title)

Date: 5-28-98

"SUBCONTRACTOR"

HNR FRAMING SYSTEMS, INC.
a California corporation

By: Robert Thomas

Its: ROBERT THOMAS PRES.

(Print Name and Title)

Date: 5-12-98

GENERAL PROVISIONS OF THE SUBCONTRACT AGREEMENT

1. **SUBCONTRACTOR'S INVESTIGATION:** Subcontractor acknowledges that it has made an independent investigation of the project, the soil conditions at the project and all other conditions affecting the Work to be performed and materials to be furnished which might affect the progress of the Work. Subcontractor has satisfied itself as to these conditions and hereby accepts them as is. The Subcontract Price includes payment for all Work which may be performed by Subcontractor to overcome any unanticipated underground or concealed conditions. Any information which may have been furnished to Subcontractor by Owner, Owner's architect or engineer or Contractor about underground conditions or other job conditions is for the convenience of Subcontractor only, and Contractor does not warrant that the conditions are as so indicated. No estimate or bid of Subcontractor preceding this Subcontract, and no oral agreement or conversation with any representative of Contractor, either before or after the execution of this Subcontract, shall affect or modify any of the terms or obligations contained herein.
2. **CONTRACT DOCUMENTS:** The Contract Documents are intended to supplement each other. In case of conflict, however, the Contract Documents shall be interpreted to impose on Subcontractor the same duties as are imposed on Contractor under the Agreement between Owner and Contractor (if applicable). In case of conflict not resolved by application of the foregoing rule, the provisions of this Subcontract shall control. Subcontractor certifies and acknowledges to Contractor that Subcontractor has read and understands this Subcontract.
3. **ALTERNATES:** Subcontractor shall not deviate from the requirements of the Contract Documents as to materials and equipment to be furnished or method of performing the Work unless prior written approval has been obtained from Contractor. Subcontractor warrants that any alternate equipment, material or method proposed by Subcontractor (and approved in writing by Contractor) will achieve all performance standards established by the Contract Documents.
4. **CHANGES AND EXTRA WORK:** Contractor may order Subcontractor to delete from or add to or change the Work called for by the Contract Documents, and such order shall not affect the validity of this Subcontract, but Subcontractor shall promptly perform the Work as changed or modified. The Subcontract Price set forth in this Subcontract shall be deemed to be full compensation for all Work and materials furnished by Subcontractor whether specifically called for by the Contract Documents. Therefore, NO ADDITIONAL COMPENSATION SHALL BE PAID TO SUBCONTRACTOR UNLESS CONTRACTOR AND SUBCONTRACTOR SIGN A WRITTEN CHANGE ORDER IN ADVANCE. CONTRACTOR'S SUPERINTENDENT'S SIGNATURE ON WORK TICKET SIGNIFIES ONLY THAT THE WORK HAS BEEN COMPLETED AND IS NOT TO BE CONSTRUED AS AN AUTHORIZATION FOR PAYMENT. Unless otherwise requested by Contractor in writing, Subcontractor, prior to commencement of revised Work, shall submit to Contractor, within seven (7) days after receipt of Contractor's above-referenced order, written copies of Subcontractor's costs or credit proposal for such revised Work. Subcontractor will support all claims for extras with a detailed breakdown showing differences in quality, and value of labor and material involved. The time for performance of the Work will remain fixed unless expressly otherwise agreed to in the change order. Upon the issuance of a change order, the Subcontract Price shall be adjusted upward or downward as agreed upon by Contractor and Subcontractor. However, if the parties cannot agree as to the adjustment to the Subcontract Price, Subcontractor shall follow Contractor's order as to work to be changed, added, or deleted, and the amount to be added or subtracted from the Subcontract Price shall be determined by Arbitration in accordance with Section 20.
5. **TIME SCHEDULE AND COMMENCEMENT OF WORK:** Subcontractor agrees to commence the Work immediately when notified by Contractor, and to conduct the Work continuously and with reasonable diligence in strict accordance with Contractor's time schedule. Should said time schedule be changed, Subcontractor shall proceed as directed by Contractor and cooperate in related work and in no manner interfere with the work of Contractor or other subcontractors. Subcontractor acknowledges that upon Contractor's request, Subcontractor will perform the Work six (6) days a week (excluding Sundays), and the Subcontract Price shall not be adjusted as a result of Contractor's request. Subcontractor shall provide, at its expense, such additional shifts or overtime as Contractor may require, should Contractor deem such additional shifts or overtime necessary to meet time schedules. The time for performing the Work shall be extended, at Contractor's discretion exercised as set forth below, for delays caused by acts of Contractor, adverse weather conditions and general strikes which actually delay the performance of the Work, but only in strict accord with the following procedure. No extension of time shall be applicable unless and until Subcontractor gives written notice to Contractor specifying the grounds on which such extension is requested and referring to this Section 5. If written notice of such delay is given to Contractor within three (3) days of the event which caused Subcontractor to request the extension, and Contractor finds in its reasonable discretion that such grounds actually exist, then an extension of time for such cause shall be granted in writing for the period of the delay. Subcontractor's failure to give Contractor such notice shall constitute a waiver of Subcontractor's right to request a delay. Extension of time shall be Subcontractor's sole remedy for any such occurrence. Except as extended pursuant to the procedure of this paragraph, Subcontractor shall comply with Contractor's construction schedule. In the event that the production schedule cannot be maintained by Subcontractor, Subcontractor agrees to cause weekend and/or overtime work to be performed at Subcontractor's expense (that is, within the Subcontract Price of Exhibit "B") so as to maintain the production schedule as noted herein. Subcontractor acknowledges that the project may be phased and completed in increments so that Subcontractor's work may not necessarily overlap from one increment phase to the next.


Contractor's Initials

**GENERAL PROVISIONS TO SUBCONTRACT AGREEMENT
COMMUNITY: BRIDGEPORT - SAN DIEGO
SUBCONTRACTOR: HNR FRAMING SYSTEMS**

SUBCONTRACT NO. 722-0010

6. FAILURE TO PERFORM: Subcontractor agrees, upon notification from Contractor that Subcontractor's performance of this Subcontract is in any respect unsatisfactory, to promptly furnish materials and employ sufficient personnel to complete the Work as may be required by Contractor, or upon failure to do so within two (2) days after such notice, Subcontractor hereby authorizes Contractor, for the purpose of completing this Subcontract, to eject Subcontractor; to take possession of all materials in course of preparations, wherever located and all rights under sub-subcontracts; to go into the open market and secure materials and employment necessary to complete the Work, and Subcontractor shall be responsible for any and all additional costs thereof. The foregoing is in addition to all the rights and remedies Contractor may have, under this Subcontract, at law or in equity.

7. DEFECTS: Subcontractor agrees to indemnify, defend and hold Contractor harmless from any and all costs, claims, expenses, liabilities and damages (including attorneys' fees) caused by defective workmanship and/or material, and delays caused thereby. Subcontractor shall also pay and reimburse Contractor for any and all such costs, claims, expenses, liabilities and damages.

8. GUARANTEE: Subcontractor guarantees all materials and workmanship and agrees to replace at its sole costs and expense, and to the satisfaction of Contractor, any and all materials adjudged defective or improperly install d. Subcontractor shall also guarantee Contractor against liability, loss or damage to any and all parts to the Work arising from said installation. Said guarantee shall be for a period of one (1) year from date of Contractor's and/or the ultimate homeowner's (whichever is later) acceptance of the project (unless a longer period is required by the Contract Documents). Upon Contractor's notification, Subcontractor shall proceed with due diligence (within five (5) days), at its own expense, to replace any defective material or perform any labor necessary to correct any defect in the Work. Upon failure of Subcontractor to do so, Contractor may, at Subcontractor's expense, furnish such materials or labor as necessary to bring the Work up to the required standard. In the event of an emergency, Subcontractor will correct, at his own expense, any such emergencies within 12 hours of notification.

9. INSURANCE:

(a) Before Subcontractor does any Work at or prepares or delivers material to the project, Subcontractor shall provide Certificates of Insurance evidencing coverage as follows: (i) Workers' Compensation with a policy limit of not less than \$1,000,000. (ii) Commercial General and Automobile Bodily Injury and Property Damage Liability, including: Premises/Operations and Products/Completed Operations coverage (which Products/Completed Operations coverage shall be maintained in effect on an annual renewal basis for at least two (2) years following final completion and acceptance of the Work by Contractor and Owner) written on an OCCURRENCE basis with a policy limit of not less than \$1,000,000. (iii) Contractually Assumed Liability specifically covering Subcontractor for liabilities, losses, costs and damages, including attorneys' fees, assumed by Subcontractor under the provisions of this Subcontract. (iv) when the Work of Subcontractor involves any subsurface activities, Subcontractor shall provide liability coverage for explosion, collapse and underground hazard (XCU). (v) If requested by Contractor, the above described insurance shall be on a "per location" or "per project" basis.

(b) Subcontractor shall have its insurance company name, by endorsement, Contractor, Owner and K. Hovnanian Developments of California, Inc., and the respective shareholders, directors, officers, employees and agents as additional insureds on the policies other than Worker's Compensation, with the following clause added: "The insurance afforded to each Additional Insured is primary insurance. If the Additional Insured has other insurance which is applicable to the loss on an excess or contingent basis, the amount of Additional Insured's coverage under this policy shall not be reduced by the existence of such other insurance".

(c) Each of the above required Certificates shall provide that the coverage therein afforded shall not be canceled or reduced except by written notice to Contractor given at least thirty (30) days prior to the effective date of such cancellation or reduction. In the event the coverage evidenced by any such Certificate is canceled or reduced, Subcontractor shall procure and furnish to Contractor before the effective date of such cancellation, new Certificates conforming to the above requirements.

(d) Should Subcontractor fail to obtain the insurance coverage required under this Subcontract, or should Subcontractor fail to timely renew the insurance coverage required under this Subcontract, Contractor shall have the right, at Contractor's election: (i) to obtain such coverage on Subcontractor's behalf, at Subcontractor's expense, from any insurance carrier selected by Contractor in Contractor's sole discretion; or (ii) to terminate this Subcontract. Contractor shall have the right to offset the costs of premiums for such insurance against any sums payable to Subcontractor under this Subcontract.

Certificates of Insurance complying with the above requirements, as well as copies of the applicable endorsements, shall be delivered to each of the additional insureds named in clauses i) through iii) of subparagraph (b) prior to entry on the property by Subcontractor pursuant to this Agreement. The certificates applicable to general liability coverage shall evidence the "2010" industry standard endorsement for completed operations. The requirements for the foregoing insurance shall not derogate from the provisions for indemnification by Subcontractor as may be provided elsewhere in this Agreement.


Contractor's Initials

10. **INDEMNIFICATION:** The insurance maintained by Subcontractor pursuant to Section 9, above, shall insure the performance of Subcontractor's indemnification obligations as set forth herein, but nothing in Section 9 or the insurance referred to therein shall in any way limit the indemnification provided hereunder. To the fullest extent permitted by law, Subcontractor shall indemnify and save Contractor and Owner harmless from and against all costs, expenses, liabilities and claims for any damages, including those to persons (including personal injury, bodily injury or death) or to property arising out of Subcontractor's execution of the Work, whether caused by delay of Subcontractor, defective workmanship or materials or delays caused thereby, regardless of whether such damage is caused in part by a party indemnified hereunder, and any and all costs, expenses, attorneys' fees and liabilities incurred by Contractor or Owner in defending against such claims, whether the same proceed to judgment or not, and Subcontractor at its own expense agrees, upon written request by Contractor, to defend any such suit or action brought against Contractor. The foregoing indemnity shall not apply to the extent any loss is caused by the sole negligence or willful misconduct of Contractor or Owner. In the prosecution of any successful claim or suit by Contractor for the enforcement of this Subcontract, or any of the monetary or other obligations of Subcontractor hereunder, Subcontractor agrees to pay to Contractor any reasonable attorneys' fees and any cost of suit incurred by Contractor or Owner.

11. **NO ASSIGNMENT OR SUBCONTRACTING:** Subcontractor shall not, without the prior written consent of Contractor, which may be granted or withheld in Contractor's sole and absolute discretion, assign, transfer, nor sublet any portion of the Work, nor assign any payments to others. Subcontractor will not subcontract any of the Work without the prior written consent of Contractor, which may be granted or withheld in Contractor's sole and absolute discretion.

12. **CLEAN-UP AND STORAGE:** Subcontractor agrees to comply with all instructions from Contractor with respect to conditions at the site, and to remove all of Subcontractor's rubbish, debris, and unnecessary materials, tools and equipment, or upon failure to do so, to pay the actual cost of such removal. Storage of all materials shall be under the direction of Contractor, but at the expense, if any, of Subcontractor. Subcontractor shall assume all liability for materials furnished by it on the job until installed or inspected.

13. **JOB SITE SAFETY:** Subcontractor agrees to provide its employees with safe appliances and equipment, to provide them with a safe place to work, to perform the Work in a safe manner with high regard for the safety of its employees and others, and to comply with the safety provisions of the California Labor Code, and any regulations issued thereunder and any regulations issued pursuant to the Occupational Safety and Health Act (OSHA 29 CFR PART 1926 - Standards of the Construction Industry). Without limiting the generality of that provision, Contractor requires all personnel at construction sites to wear hard hats, safety goggles and back braces, and Subcontractor agrees to comply with that policy. Subcontractor shall assume the defense of and indemnify and save harmless Contractor and its officers and employees, directly or indirectly arising from the performance or non-performance of the Work, regardless of responsibility for negligence, and from any and all claims, loss, damage, injury, death and liability howsoever the same may be caused, including injury to or death of Subcontractor's employees, resulting directly or indirectly from the nature of the Work, regardless of responsibility for negligence. Subcontractor shall also hold Contractor harmless from any penalties assessed against Contractor by any federal or state agency responsible for job safety where such penalty is assessed because of violation committed by Subcontractor. Subcontractor's aforesaid indemnity and save harmless agreement shall not be applicable to any loss, damage or expense, for liability for damages, for death or bodily injury to persons or injury to property arising from the sole negligence or willful misconduct of Contractor, his agents, servants or independent Contractors, other than Subcontractor, who are directly responsible to Contractor. Should Subcontractor, Subcontractor's employees, subcontractors or their employees fail to comply within 24 hours from the time Contractor issues Subcontractor a written notice of noncompliance or within the time of an abatement period specified by any governmental agency, whichever period is shorter, Contractor may give notice of default to Subcontractor. Failure of Subcontractor to cure such default within 24 hours after such notice shall give Contractor the following options:

(1) Without terminating this Subcontract or the obligation of Subcontractor, Contractor may perform such portion of the Work or may furnish any material, equipment, or other item required, as Contractor, in its sole discretion, may deem necessary to avoid noncompliance with any applicable safety or health laws. The cost of such work or materials, equipment or other items shall be deducted from the Subcontract Price, and, in the event the cost of such work or materials or other items exceeds the unpaid balance of the Subcontract Price, the excess shall be immediately due and owing from Subcontractor to Contractor.

(2) Without terminating this Subcontract, Contractor may eject Subcontractor from the jobsite and Contractor shall have the further option of (a) completing the Work, or any portion thereof, itself, or; (b) having the Work, in part, completed by others. The foregoing right to eject Subcontractor shall not be construed to deny Contractor any other right or remedy, which it may have under this Subcontract, at law or in equity. Subcontractor shall be liable for all damages suffered by Contractor by reason of Subcontractor's default, and exercise of the option by Contractor to eject Subcontractor shall not relieve Subcontractor of such liability. Should injuries occur, Subcontractor shall be required to furnish Contractor written notice of occurrence accompanied by the accident report.

14. **TRADE UNIONS: (APPLICABLE FOR UNION SUBCONTRACTORS AND SUPPLIERS ONLY):** It is agreed by the parties hereto that a substantial and material consideration for the acceptance of Subcontractor, and the subcontracting of the Work herein defined, is a guarantee and warranty herein made by Subcontractor that a valid collective bargaining agreement is, and for the duration of this Subcontract will remain, in full force and effect between Subcontractor and the appropriate Building and Construction Trades Union, or Unions, AFL-CIO, or with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, or an affiliate thereof.




Contractor's Initials

GENERAL PROVISIONS TO SUBCONTRACT AGREEMENT
COMMUNITY: BRIDGEPORT - SAN DIEGO
SUBCONTRACTOR: HNR FRAMING SYSTEMS

SUBCONTRACT NO. 722-0010

It is agreed that all Work performed by Subcontractor shall be rendered in accordance with each and all of the terms and provisions of the aforesaid collective bargaining agreements including, but not limited to, hourly rates of pay and payments to trust funds as required by said collective bargaining agreements.

In the event that Subcontractor or any of its subcontractors causes or is involved in any labor trouble on the job or they are listed by the administrative office of the appropriate health and welfare, pension, vacation or apprenticeship funds as being delinquent in payment or payments to said fund or funds, regardless of the job in connection with which the alleged delinquency occurred, they will be deemed to be in default under this Subcontract and may be ejected from the job.

In the event that Contractor should be affected by a lockout agreement, Contractor may comply with such lockout agreement, deny Subcontractor access to the job for the period of the lockout, and Subcontractor shall not be entitled to additional compensation by reason of any such lockout.

15. LABOR AND MATERIAL: Subcontractor shall pay all valid charges for labor and materials used on the Work covered by this Subcontract. If Contractor is required to pay for any labor or materials ordered by Subcontractor on the project, Subcontractor shall immediately reimburse Contractor.

16. LIENS: Subcontractor agrees to pay, when due, all claims for labor and/or materials and/or subcontracts applied on or furnished hereunder, and to prevent the filing of any lien of mechanics' or materialmen, or attachments, garnishments, or suits involving the title of the property upon which the improvements are erected. Subcontractor agrees that within three (3) days after written or oral demand is addressed to it at the address herein contained by United States mail, to cause the effect of any such suit or lien to be removed from the premises (by recording appropriate lien release bonds) and in the event Subcontractor shall fail to do so, Contractor is authorized to use whatever means it may deem best to cause said lien, attachment, or suit together with its effect upon the title, to be removed, discharged, satisfied, compromised or dismissed and the costs thereof, together with reasonable attorney's fees, shall become immediately due Contractor. Subcontractor may litigate any lien or suit above described provided it causes the effect thereof to be removed from the premises above mentioned, and shall further do such things as may be necessary to cause Contractor not to suffer a withholding of any monies due to Contractor from Owner (if applicable) by reason of such liens, or suits, and shall execute and deliver to Contractor such affidavits, contracts, bills, records, accounts, etc., as Contractor may deem necessary for its protection in such event.

17. INSOLVENCY OR BANKRUPTCY: In the event Subcontractor becomes insolvent, is unable to pay its obligations as they become due, or files a petition in bankruptcy, this Subcontract may be terminated at the option of Contractor. Subcontractor hereby authorizes all financial institutions, materialmen and individuals to disclose to Contractor Subcontractor's financial status, credit and manner of meeting obligations. Subcontractor shall file with Contractor within thirty (30) days after the execution of this Subcontract, a full and complete financial statement of Subcontractor's present financial status. A public accountant shall certify the financial statement. Subcontractor shall immediately notify Contractor of any material change in Subcontractor's financial condition.


18. BACKCHARGES, CROSS-CHARGES AND TERMINATION RIGHTS IN CONNECTION WITH OTHER WORK: In the event that Subcontractor has entered into one or more contracts with Contractor to provide construction services in connection with other projects:

(a) If pursuant to such other contract arrangement Subcontractor is liable to Contractor for any costs, expenses, liabilities, claims or other damages, then in such event Contractor may "backcharge" all amounts due or becoming due pursuant to such other contract(s) against payments otherwise due to Subcontractor pursuant to this Subcontract.

(b) If pursuant to this Subcontract Subcontractor is liable to Contractor for any costs, expenses, liabilities, claims or other damages, then in such event Contractor may "cross-charge" all amounts due or becoming due pursuant to this Subcontract against payments otherwise due to Subcontractor pursuant to such other contracts.

(c) If Subcontractor is in default in such other contract arrangement Contractor, in its sole discretion, may elect to terminate this Subcontract with twenty-four hour advance notice, without penalty. If Subcontractor is in default on this Subcontract, Contractor, in its sole discretion, may elect to terminate any or all other such contract arrangements with twenty-four hour advance notice, without penalty.

19. RELEASES - PROOF OF PAYMENT: Prior to Contractor being required to make any payments hereunder, Subcontractor will furnish to Contractor, in the form set forth on Schedule 1 hereto or such other form as may be satisfactory to Contractor (and consistent with California Civil Code Section 3262), releases and proof showing that all labor, materials, equipment, union, health, welfare and pension fund payments, payroll taxes and similar items for work or material furnished under this Subcontract have been paid in full. Contractor may elect to make payments to Subcontractor in the form of checks made payable jointly to Subcontractor and its suppliers, workmen or sub-subcontractors, and the endorsement of Subcontractor to such a check shall constitute acknowledgment of payment by Contractor to Subcontractor of the full face amount of the check.


Contractor's Initials

**GENERAL PROVISIONS TO SUBCONTRACT AGREEMENT
COMMUNITY: BRIDGEPORT - SAN DIEGO
SUBCONTRACTOR: HNR FRAMING SYSTEMS**

SUBCONTRACT NO. 722-0010

20. ARBITRATION: If the agreement between Owner and Contractor calls for arbitration, and an arbitration concerning or related to the Work is commenced between Owner and Contractor (if applicable), Subcontractor will, upon demand of Contractor become a party to such arbitration proceedings and shall submit to any award which may be rendered therein. Subject to the foregoing, if any question arises regarding the Work or regarding the rights and obligations of Contractor and Subcontractor under the terms of this Subcontract or the Contract Documents, such questions shall be subject to arbitration.

21. ATTORNEYS' FEES: In the event either party to this Subcontract shall institute any action or proceeding against the other party to this Subcontract, which action or proceeding concerns a controversy arising out of this Subcontract, the prevailing party in such action or proceeding shall be entitled to reimbursement from the unsuccessful party for all costs and attorneys' fees arising out of such action or proceeding. In addition to the foregoing award of attorneys' fees to the prevailing party, in any lawsuit on this Subcontract, the prevailing party shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Subcontract into any judgment on this Subcontract. The parties' covenants set forth in this Section 21 shall survive and be enforceable following termination of this Subcontract.

22. NOTICES: Any notice required or permitted under this Subcontract may be given by ordinary mail, postage prepaid, at the address contained in this Subcontract, but such address may be changed by written notice given by one party to the other from time to time. Notice shall be deemed received two (2) days following deposit in the U.S. mail.

23. PAYMENT: Subcontractor covenants and agrees that a condition precedent to any payment due Subcontractor hereunder is receipt by Contractor of payment from Owner pursuant to the Owner and Contractor Agreement. Subcontractor understands that any invoices presented to Contractor more than 6 months after the work has been completed will be considered null and void and no further moneys will be due to Subcontractor.

24. NO OFFSET: The Work under this Subcontract shall be fully and timely completed, and Subcontractor waives any right to refuse to perform the Work based upon a claim of offset or failure of payment under any other contract or agreement with Contractor or Owner.

25. HAZARDOUS MATERIALS: Subcontractor shall not cause or permit any "Hazardous Materials" (as defined herein) to be brought upon, kept or used in or about the project except to the extent such Hazardous Materials: (i) are necessary for the prosecution of the Work; (ii) are required pursuant to the Contract Documents; and (iii) have been approved in writing by Contractor. Any Hazardous Materials allowed to be used on the project shall be used, stored and disposed of in compliance with all applicable laws relating to such Hazardous Materials, including, without limitation, the provisions of the Safe Drinking Water and Toxic Enforcement Act ("Proposition 65"). Any unused or surplus Hazardous Materials, as well as any other Hazardous Materials which have been placed, released or discharged on the project by Subcontractor or any of its employees, agents, suppliers or sub-subcontractors, shall be removed from the project at the earlier of: (i) the completion of the Work requiring the use of such Hazardous Materials; (ii) the completion of the Work as a whole; or (iii) within twenty-four (24) hours following Contractor's demand for such removal. Such removal shall be undertaken by Subcontractor at its sole cost and expense, and shall be performed in accordance with all applicable laws. Any damage to the Work, the project or any adjacent property resulting from the improper use, or any discharge or release, of Hazardous Materials shall be remedied by Subcontractor at its sole cost and expense, and in compliance with all applicable laws. Subcontractor shall immediately notify Contractor and Owner of any release or discharge of any Hazardous Materials on the project. Subcontractor shall provide Contractor with copies of all warning labels on products which Subcontractor or any of its sub-subcontractors will be using in connection with the Work, and Subcontractor shall be responsible for making any and all disclosures required under applicable "Community Right-to-Know" laws or Proposition 65. Subcontractor shall not clean or service any tools, equipment, vehicles, materials or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue and waste materials resulting from any such cleaning or servicing shall be collected and removed from the project in accordance with all applicable laws and regulations. Subcontractor shall immediately notify Contractor and Owner of any citations, orders or warnings issued to or received by Subcontractor, or of which Subcontractor otherwise becomes aware, which relate to any Hazardous Materials on the project. Without limiting any other indemnification provisions pursuant to law or specified in this Subcontract, Subcontractor shall indemnify, defend (at Subcontractor's sole cost, and with legal counsel approved by Contractor and Owner) and hold Contractor and Owner harmless from and against any and all claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs and expenses in removing or remediating the effect of any Hazardous Materials on, under, from or about the project, arising out of or relating to, directly or indirectly, Subcontractor's failure to comply with any of the requirements of this Section 25. As used herein, the term "Hazardous Materials" means any hazardous or toxic substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or listed by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and any amendments thereto, and any substances, materials or wastes that are or become regulated under federal, state or local law, including but not limited to petroleum, asbestos and PCBs.

26. LIST OF SUPPLIERS: Subcontractor shall, within ten (10) days of execution of this Subcontract, provide Contractor with a written list of names and addresses of all suppliers who will supply Subcontractor in connection with the Work. The written list of suppliers shall, upon receipt by Contractor, be attached to this Subcontract as an addendum, and shall be made a part hereof. Subcontractor shall have no right to change the suppliers without first obtaining written permission of Contractor. Subcontractor warrants that the list of suppliers who will supply Subcontractor shall be the only suppliers for Subcontractor for the Work.




Contractor's Initials

27. TERMINATION OF SUBCONTRACT:

(a) Upon notification from Contractor by telephone and confirmed in writing that Subcontractor's performance under this Subcontract in any respect is unsatisfactory, or upon notification that Subcontractor has failed to comply fully with the terms of this Subcontract, or that Subcontractor's Work needs correction or has been damaged, Subcontractor shall promptly take all action necessary to fully comply with the terms of the Contract Documents and the requirements of Contractor. Should Subcontractor fail to do so within twenty-four (24) hours after notification by telephone, Contractor may terminate this Subcontract. In the event of such termination, Subcontractor hereby authorizes Contractor to perform and complete the Work and in connection therewith, Contractor may (a) eject Subcontractor; (b) take possession of all materials, appliances, tools and equipment already on the job site, as well as all materials in the course of preparation, wherever located, and all rights under sub-subcontractors of Subcontractor; and (c) go into the open market and secure materials and employ workers necessary to complete the Work, at Subcontractor's expense. Subcontractor shall not be entitled to receive any further payment hereunder as a result of such termination.

(b) Contractor reserves the right to terminate this Subcontract in the event that fire or other catastrophe destroys the project. In the event of such termination, Subcontractor shall be entitled only to payment of a pro-rata portion of the Subcontract Price, which reflects the value of Work actually completed in proportion to the Subcontract Price. There shall be deducted from such sums as provided in this Section the amount of any payments made to Subcontractor prior to the date of termination of this Subcontract. Subcontractor shall not be entitled to any claim, or claim of lien against Contractor or against Owner for any additional compensation or damages in the event of such termination. This Subcontract shall become null and void and of no effect in the event Contractor shall not be awarded the prime contract for the project, or in the event financing for the project is or becomes unavailable, or if for any reason beyond its control, Contractor shall be unable to undertake performance of said prime contract, or if the project architect or Owner objects to Subcontractor.

(c) Contractor reserves the right to terminate this Subcontract without cause at any time by delivering two (2) days prior written notice of such termination to Subcontractor. Such termination may be for any reason whatsoever or for no reason. Such termination shall be effective two (2) days after the date of the written notice of termination from Contractor. In the event Contractor so terminates this Subcontract, Contractor shall promptly pay Subcontractor for all Work actually completed by Subcontractor in conformity with this Subcontract prior to Subcontractor's receipt of Contractor's notice of termination and for all materials ordered (unless such orders are cancelable) or procured and delivered to the site by Subcontractor pursuant to this Subcontract prior to Subcontractor's receipt of Contractor's notice of termination hereof, provided Subcontractor promptly delivers to Contractor: said materials; invoices or other evidence of payment therefor; properly executed mechanics' lien releases; and any and all other instruments and documents deemed reasonably necessary by Contractor to ensure that the project is free from mechanics' liens, including without limitation joint endorsement by Subcontractor and any materialmen of checks in payment for such materials. Except as expressly provided above, Subcontractor shall not be entitled to recover, and hereby waives any claim for, any compensation or damages from Contractor in the event of any such termination of the Subcontract, including without limitation lost profits or consequential damages.

(d) Should Subcontractor delay the progress of the job, whether or not otherwise in compliance with the provisions of Section 5 hereof, Contractor may, upon two (2) days written notice, eject Subcontractor from the job and employ another subcontractor or Contractor's own forces to perform the Work required by this Subcontract. In such event, in addition to all other rights and remedies Contractor may have, all costs and damages incurred by Contractor as a result thereof shall be the responsibility of Subcontractor. In the event that Subcontractor delays the progress of the job, Subcontractor will pay to Contractor the amount of any loss or damage which Contractor may sustain as a result, including any liquidated or unliquidated damages charged by Owner against Contractor (if applicable) because of the delay caused by Subcontractor. In the event the job is delayed by more than one subcontractor, Contractor shall apportion damages for the delay caused by subcontractors upon a fair and reasonable basis, and the determination of Contractor shall be binding upon Subcontractor, provided such determination is made in good faith. Such amounts due from Subcontractor may at Contractor's election be subject to the backcharge and crosscharge provisions of Section 18.

(e) In the event this Subcontract should be terminated by Contractor pursuant to subsection (a) or (d) of this Section or if Contractor elects the remedies pursuant to Section 6 herein, then except as may be required by law Contractor shall not be obligated to make any further payments to Subcontractor until completion of the Work by Contractor and/or a replacement for Subcontractor selected by Contractor, and then only in the amount, if any, that represents the portion of the Work actually completed by Subcontractor prior to such termination. Notwithstanding the foregoing, in the event that the cost of completing the Work following termination of Subcontractor exceeds the "Subcontract Price" as set forth on Exhibit "B", Subcontractor shall, within ten (10) business days following written demand by Contractor, remit such excess amount to Contractor in full.

28. CUTTING, FITTING AND PATCHING; WORK OF OTHERS: As part of the Subcontract Price, Subcontractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly, and to fit it to receive or be received by the work of other contractors or subcontractors, shown upon or reasonably implied by the Contract Documents. Subcontractor agrees to protect the work of others from damage as a result of Subcontractor's operations. Should Subcontractor damage the work or installations of Contractor or any other subcontractor, Subcontractor shall promptly pay to Contractor or such subcontractor, as the case may be, all costs incurred in repairing the damage.


Contractor's Initials

**GENERAL PROVISIONS TO SUBCONTRACT AGREEMENT
COMMUNITY: BRIDGEPORT - SAN DIEGO
SUBCONTRACTOR: HNR FRAMING SYSTEMS**

SUBCONTRACT NO. 722-0010

29. USE OF CONTRACTOR'S EQUIPMENT: The use of any of Contractor's equipment, rigging, blocking, hoist or scaffolding by Subcontractor, given, loaned or rented to Subcontractor by Contractor, shall be upon the understanding that Subcontractor uses the equipment, rigging, blocking, hoist or scaffolding at Subcontractor's own risk and takes the same "as is", and Subcontractor assumes all responsibility for and agrees to hold Contractor and Owner harmless from any claims or damages whatsoever resulting from the use thereof, whether such damage results to Subcontractor or its own employees or properties or to other persons or the employees or property of other persons. Nothing herein contained shall be deemed to permit any such use by Subcontractor without the prior written consent of Contractor.

30. PERMITS AND LAWS: Subcontractor shall promptly obtain, at its expense, and before commencing the Work, all permits and licenses required for the Work. Subcontractor shall comply, at its expense, with all laws, ordinances, rules, regulations, orders and requirements of the City, County, State and Federal government, and of any Board or Commission or any other duly qualified body having jurisdiction, which shall or might affect or apply to the Work, and Subcontractor shall exhibit each such permit or license to Contractor upon its request. Subcontractor hereby certifies that Subcontractor is in full compliance with the provisions of the Immigration Reform and Control Act of 1986 in the hiring of its employees, has instituted procedures for concurrence with laws relating to toxic and hazardous materials (including, without limitation "Proposition 65" and federal and state hazard communication standard or "right to know" laws) and Subcontractor agrees to indemnify, hold harmless and defend Contractor and Owner against any and all claims, liabilities, losses, costs, expenses or damages arising out of Subcontractor's failure to comply with any such laws. It is hereby understood that Contractor is entering into the Contract Documents based on the representation that Subcontractor is licensed under the laws of the State of California to perform the Work, and Contractor would not enter into the Contract Documents if this representation were false.

31. DEATH OF SUBCONTRACTOR: If Subcontractor is a sole proprietor, his death shall automatically terminate this Subcontract.

32. TITLE: The title to all work completed and in the course of construction and of all materials on the job site shall, as between Subcontractor and Contractor, be in Contractor.

33. GENERAL CONDITIONS:

(a) Subcontractor agrees that Contractor and Owner are not liable for failure of the Contract Documents to meet the requirements of the applicable local Building Departments; and Subcontractor acknowledges that it is familiar with said requirements and shall complete the Work accordingly.

(b) Subcontractor agrees to keep its portion of the job site free and clean at all times and to haul from the site any debris, surplus material or fixtures and tools caused or brought on the site by Subcontractor or its suppliers or sub-subcontractors. Empty containers and excessive debris will be kept clear from jobsite. Each individual doing or conducting business at Contractor's jobsite is responsible for picking up and discarding his or her personal trash so as to leave the work area, dwelling and lot completely free of such debris. Subcontractor will require each individual working at Contractor's job site to be responsible for picking up and discarding his or her personal trash so as to leave the work area, dwelling and lot completely free from such debris. The term "personal trash" includes such items as discarded cans, bottles, containers, wrappers, or any other trash of a personal nature. Moreover, subcontractor shall pick up, discard, and at all times keep the work place free of all personal trash generated by subcontractor's employees, subcontractor's suppliers, or agents, whether or not the individuals representing subcontractor at the job site meet the obligations imposed pursuant to this subsection. Such trash will be placed in trash receptacles/containers provided by contractor.

(c) Superintendent shall approve all material storage locations and containers prior to delivery. Approved containers shall be maintained continuously in a presentable condition, acceptable to Superintendent.


(d) Subcontractor agrees to protect the work of others and Subcontractor shall be charged for any and all damages or delays caused by Subcontractor. Backcharges for work damaged by other trades will not be accepted unless they have been verified by the Project Superintendent within three (3) days of the occurrence.

(e) Subcontractor shall not substitute any materials (including wherever "or equal" is called for in the Contract Documents) without the prior written consent of Contractor. In the event that such substitutions and/or equals are made without such prior written consent, Subcontractor shall be responsible for the replacement of such substitutions and/or equals at Subcontractor's cost, at Contractor's option.

(f) The Subcontract price includes any and all requirements as set forth by any local, state or national handicapped ordinances (such as the California State Handicapped Commission, the American with Disabilities Act, etc.), whether or not shown in the Subcontract documents.

(g) The Subcontract price includes any and all requirements as set forth by any local, state or national energy ordinances (such as the California State Energy Commission, Title 24, etc.), whether or not shown in the Subcontract documents.


Subcontractor's Initials


Contractor's Initials

GENERAL PROVISIONS TO SUBCONTRACT AGREEMENT
COMMUNITY: BRIDGEPORT - SAN DIEGO
SUBCONTRACTOR: HNR FRAMING SYSTEMS

SUBCONTRACT NO. 722-0010

(h) Subcontractor shall furnish promptly upon request by Contractor all samples, drawings, schedules, etc. required in connection with his work, but approval of any of the same shall not relieve Subcontractor of his/her responsibility in complying with any other requirements of the Subcontract documents, unless Subcontractor specifically notes said non-compliance and asks, and receives, written approval thereof. If requested by Contractor, Subcontractor will furnish, prior to final payment and at no extra cost to Contractor, complete "as-built" drawings to include all details requested by Contractor.

(i) Contractor shall be the sole judge as to sufficiency and efficiency of the workmen, supplies, materials, tools and equipment furnished by Subcontractor. Subcontractor shall employ competent foremen and experienced mechanics and shall not employ any unfit person or any person not skilled in the work assigned to him/her. Subcontractor's foreman must speak English and must be approved by Contractor, and may not be changed (unless said foreman ceases employment with Subcontractor) without Contractor's approval. Moreover, Subcontractor agrees to change said foreman at Contractor's request, for any reason or for no reason. When Subcontractor is not present at the site, it shall be represented by its foreman, and shall be bound by all instructions given to such representative by Contractor. Subcontractor further agrees that said foreman or another such representative of Subcontractor will faithfully attend all project meetings and "tailgate" safety meetings scheduled by Contractor's Superintendent. In addition to the English speaking foreman, Subcontractor shall also have an English speaking person on the job at all times.

(j) Subcontractor may be assigned a gate(s) that will be reserved for the sole and exclusive use of designated subcontractors, their employees and suppliers. Subcontractor's use of gate(s) other than those reserved for him/her, or his/her failure to use the gate(s) assigned to him/her exclusively shall constitute a material breach of this Agreement.

(k) Any extra work related to this trade necessary for the presentation of the models and sales office, including, but not limited to: Extra walls, extra doors and trim, extra windows, extra electrical outlets and/or light fixtures, extra plumbing, extra H.V.A.C. equipment, extra drywall/plaster treatments, etc. shall be considered as part of this contract and at no extra cost to the builder.

(l) Should this Subcontractor be the Subcontractor of record at the start of the last phase of construction, he/she will retrofit, if necessary, the sales office, models and design center to what would have been their original (production) condition as per plans and specifications and at no additional cost to Contractor.

(m) Subcontractor is responsible for all material against theft and/or damage until installed and accepted by Contractor and/or Owner.

(n) All "punch-list" items to be completed within five (5) days after notification from Contractor.

(o) Subcontractor agrees that a material reason for being awarded this Subcontract is its warranty and guarantee that all materials and supplies as specified and labor to complete, per Contractor's schedule, herein will be available in sufficient supply and on schedule to meet the terms of this Subcontract.

(p) Loud broadcast music, animals, children, alcoholic beverages, controlled substances and firearms are not allowed on the jobsite.

(q) Subject to local regulations, work shall be limited to the following: 7:00 a.m. to dusk each working day.

(r) It shall be the responsibility of Subcontractor to request Superintendent to schedule and conduct required inspections and to obtain necessary approvals.

(s) Subcontractor agrees that if the Work is being completed on a public through street, Subcontractor shall maintain such access as required.

(t) In the event that this contract is for phases other than the models and others have built said models, Subcontractor hereby agrees that unless otherwise specified in this Contract, its materials, workmanship and installation will exactly match said models.

(u) **APPLICABLE FOR UNION SUBCONTRACTORS ONLY:** If required by Contractor, Subcontractor will sign an Independent Contractor's Agreement to enable Subcontractor to remain on the job and working should a Union disruption occur. At no time will Subcontractor leave the job and cease work on the project. Subcontractor agrees to comply with Contractor's "Two-Gate System".

34. **NO SIGNS:** Subcontractor shall not place, permit to be placed, nor maintain any signs or other advertisement in, on, or about the vicinity of the Work, without the written consent of Contractor.


Subcontractor's Initials


Contractor's Initials

GENERAL PROVISIONS TO SUBCONTRACT AGREEMENT
COMMUNITY: BRIDGEPORT - SAN DIEGO
SUBCONTRACTOR: HNR FRAMING SYSTEMS

SUBCONTRACT NO. 722-0010

35. MOVE-IN PREPARATION: In the event that pick-up, installation, adjustment or other elements of work relating to the Work are required to be performed subsequent to substantial completion under this Subcontract, Subcontractor shall complete such items to Contractor's satisfaction on the exact schedule required by Contractor. In the event that Subcontractor should fail to so complete such items, or should indicate in any manner that it will not meet the required schedule, such event(s) shall be deemed authority for Contractor to perform such work elements on Subcontractor's behalf and at Subcontractor's cost and expense; Subcontractor shall then remit such amounts due within ten (10) days following written demand.

36. INDEPENDENT INSPECTION: Contractor may avail itself, although it is under no obligation to do so, of an independent testing/inspection service. Subcontractor shall comply, at his own expense, with all the recommendations/corrections notices of said service, if such a service is used.

37. SUBCONTRACTOR'S GUARANTY: If this box is checked (☐) then Contractor's "Standard Form Subcontract Guaranty" shall be attached hereto as Schedule 2 and this Subcontract Agreement shall not be deemed approved by Contractor and shall not become effective until Subcontractor delivers a copy of that form to Contractor, executed by a person whom Contractor has approved as the guarantor, which approval may be given or withheld in Contractor's sole and absolute discretion.

38. TIME OF ESSENCE: Time is of the essence for all provisions of this Subcontract in which time is an element.

39. VERIFICATION OF LICENSE: (*Note:* This paragraph is not part of the contract agreement and is included herein for Contractor's administrative purposes only). Subcontractor's license number, name on license, expiration date, and class/trade (☐) not checked, in reliance on Subcontractor's information; (☐) checked on _____, 19____, by: _____.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTOR'S STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT IS FILED WITHIN THREE YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA, 95816


Contractor's Initials


Contractor's Initials

SCHEDULE 1

CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Upon receipt by the undersigned of a check from K. Hovnanian at Bridgeport, Inc.
Maker of Check) in the sum of \$ _____

(Amount of Check) payable to _____
(Payee or Payees of Check), 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 K. Hovnanian @ Bridgeport, Inc. (Owner), located at K. Hovnanian at Bridgeport - San Diego (Job Description) to the following extent. This release covers a progress payment for labor, services, equipment, or material furnished to K. Hovnanian Companies of California (Your Customer) through _____ (Date) only, and does not cover any retention retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

Date: _____

(Company Name)

By: _____

Title: _____

A handwritten signature, possibly "JH", is written over a rectangular stamp. The stamp contains the text "OFFICE OF THE COUNTY CLERK" and "COUNTY OF SAN DIEGO" in a circular arrangement around a central emblem.

SCHEDULE 1

UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

The undersigned has been paid and has received a progress payment in the sum of \$_____ for labor, services, equipment, or material furnished to K. Hovnanian at Bridgeport, Inc. (Your Customer) on the job of _____ (Owner) located at K. Hovnanian at Bridgeport - San Diego (Job Description), and does hereby release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or materials furnished to K. Hovnanian at Bridgeport, Inc. (Your Customer) through _____ (Date) only, and does not cover any retention retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

Date: _____

(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.



Subscribed and sworn to before me on _____ at _____

SCHEDULE 1

CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

Upon receipt by the undersigned of a check from K. Hovnanian at Bridgeport, Inc.
(Maker of Check) in the sum of \$ _____
(Amount of Check) payable to _____
(Payee or Payees of Check) 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 K. Hovnanian @ Bridgeport, Inc.
(Owner) located at K. Hovnanian at Bridgeport - at San Diego (Job Description).

This release covers the final payment to the undersigned for all labor, services, equipment or material
furnished on the job, except 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 th
undersigned.

Date: _____
(Company Name)

By: _____

Title: _____

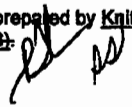

Subcontractor: Wills

UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

EXHIBIT "A" TO SUBCONTRACT AGREEMENT

This Exhibit "A" is attached hereto and hereby made a part of this Subcontract No. 722-0010 with HNR FRAMING SYSTEMS, INC. for FRAMING work performed at BRIDGEPORT, Tract No: PRD 96-7944.

1. THE CONTRACT DOCUMENTS CONSIST OF THE FOLLOWING:

- 1.1 This Subcontract, including its General Provisions, and Exhibits "A" and "B" attached hereto.
- 1.2 Specifications and Drawings prepared by Knitter & Associates Architects, dated April 8, 1998, ~~(together with all revisions through May 4, 1998)~~ 

2. CUSTOMER SERVICE:

- 2.1 All Subcontractors must respond to call for repair of homeowner walk-through items within 24 hours or be subject to a backcharge to have another Subcontractor complete this necessary work.
- 2.2 The above referenced walk-through is prior to the close of escrow. If any additional escrow costs are incurred due to a delay in response time, these costs are also subject to backcharge.

3. EXTRAS/QUALITY:

- 3.1 Subcontract has made himself aware of all jobsite conditions and has satisfied himself that the plans and specifications are correct. It is hereby agreed that this contract together with the plans and specifications constitute a complete job void of extras.
- 3.2 THERE WILL BE NO EXTRAS without the prior approval in writing from Contractor. All work done without pre-approval in writing will be done at no cost to Contractor.
- 3.2 Quality will be Contractor's primary requirement of this Subcontractor for fulfillment of this contract. Delays in the production of other Subcontractors caused by the quality of this Subcontractor's production being unacceptable to Contractor will be subject to backcharges to correct the work of this Subcontract and/or Subcontractors impacted by this Subcontract agreement.

4. PRODUCTION:

- 4.1 Schedules are posted in the Superintendent's office and are to be met. This Subcontractor is to arrive as scheduled by Contractor's Superintendent and to maintain the production rate that is requested by Contractor's Superintendent.

5. DELAYS:

- 5.1 Delays due to quality or production will be cause for termination or liquidated damages as described in this Subcontract.

6. EXCEPTIONS TO SECTIONS 4 AND 5 OF THE GENERAL PROVISIONS SHALL BE ALLOWED ONLY AS FOLLOWS:

- 6.1 This Subcontractor may either refuse to start or continue production, or qualify the rate of production or quality of his product on all or part of a lot, if asked by Superintendent to perform this Subcontractor's responsibility in a manner that is unacceptable to the stated commitment to quality. (i.e. applies drywall to unacceptable framing or paints unacceptable drywall or other finish products).
- 6.2 This refusal or qualification must be presented in writing to Contractor's Superintendent at the time of refusal or qualification. Refusal or qualification must also be presented in writing to the Project Director/Community Builder within one (1) working day. This presentation to Contractor's Project Director/Community Builder must define the tract, lot number and list specific defects per lot to be valid.

7. LUMP SUM CONTRACT:

- 7.1 It is understood and agreed by the parties hereto that the Subcontractor is providing his services and performing his work as described herein on a "lump sum" basis. There shall be no further need for either party to be concerned with quantities or unit prices other than Contractor required additions.

8. MEETINGS:

- 8.1 Prior to commencement of any work on the job, Subcontractor is to attend a pre-job conference held with job Subcontractors at the direction of the Contractor.
- 8.2 Meet with framer and Job Superintendent during framing layout and instruct as to rough-in dimensions for each plan type. Subcontractor will verify that framing is correct when the first unit of each plan is completed.


Subcontractor's Name


Contractor's Initials

9. RULES:

- 9.1 Subcontractor hereby acknowledges, that Contractor has established the following rules concerning workmen's behavior on the job, and Subcontractor agrees that it and its workmen will abide by such rules and that any infraction thereof is a cause for termination of this Subcontract:
- (a) No dogs or pets permitted on jobsite
 - (b) No loud or boisterous noises or music from radios, etc....
 - (c) No use of alcohol or narcotics
 - (d) No head phones, etc....
 - (e) Subcontractor agrees to cooperate and abide with the above restrictions.

10. PROTECTION OF WORK:

- 10.1 Subcontractor shall protect the work of all other subcontractors during the course of its work and shall be fully responsible for the protection of all existing structures, landscaping and adjacent property owned by others.
- 10.2 Subcontractor is to take reasonable precautions to protect his work. Any damage to other trades work is to be disclosed to Contractor immediately upon its occurrence. Failure to do so will result in a backcharge for all similar damage done prior to such failure.

11. RIGHT TO EXAMINE:

- 11.1 Contractor has the right to control entry and exit on the job and examine vehicles. Subcontractor agrees to cooperate and abide with said restrictions.

12. UNACCEPTABLE WORK:

- 12.1 Unacceptable work will be removed and replaced or properly repaired per Contractor's direction at Subcontractor's expense.

13. SUPERVISION:

- 13.1 Subcontractor should have a qualified English speaking supervisor on the jobsite at all times while work is performed, including supervision of "Pieceworkers". Said supervisor or foreman shall have a First Aid kit available and accessible at all times.

14. PRIORITIES:

- 14.1 Contractor shall establish priorities and sequence, not Subcontractor.

15. AVAILABILITY:

- 15.1 Home phone availability of Subcontractor's principal (s) is a requirement of this contract. The names and phones of said principals are:

_____	Bob Thomas	619-659-0969	(President)
_____	Dave Marsh	619-443-5554	(General Supervisor)

16. INSPECTIONS:

- 16.1 Provide representative to inspect all work after completion of production and make any and all necessary corrections, i.e. walk the houses, make your own punch list and do the pick-up without having to be called and given such a list by Contractor.


17. BACKCHARGES:

- 17.1 Contractor will charge a 10% administration fee on all backcharge.

18. **SAFETY:** Contractor is committed to safety in the workplace. To this end all subcontractors at the site must insure that they, their employees, subcontractors and suppliers utilize, without limitations, the devices listed below. These Safety Guidelines are not designed or meant to take the place of the "Occupational Safety and Health Standards for the Construction Industry - 29 CFR Part 1926 (OSHA regs.). OSHA regulations are THE guidelines to be followed in performing the Subcontractor's responsibilities.

18.1 FALL PROTECTION - EXTERIOR:

- 18.1a **ROOFS - TOE BOARDS/SLIDE GUARDS:** When there is a fall hazard of 6' or more, a fall protection system is required. At a minimum, the sheathers and roofers will use 6" slide guards vertically installed across the length of the eave. Contractor shall provide metal safety brackets to be installed by the framer at the edge of all pitched roofs and at intervals not to exceed 13' as successive rows of sheathing are installed. For roofs in excess of 9:12 pitch the slide guards will be installed at 4' intervals. The framer shall also supply and install all other necessary supports, toe boards, etc. Once the sheathing is completed, the framer shall remove the slide guards and will move them to and install them in the next homes being constructed, or if the final phase of construction, the framer will store



Contractor's Initials

them in the garage of each individual home. Roofing contractors will use a "Personal Arrest Fall System" on roofs with slopes greater than 8:12 and on roofs with slopes greater than 4:12 where the eave to lower level distance is 25' or more. A "Personal Fall Arrest System" consists of: an anchorage, connectors, a body harness, a deceleration device, lifeline or suitable combination.

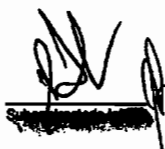
- 18.1b **GUARDRAILS:** Must be provided at openings where the walking/working surface is 6' or more above the adjacent surface, at landings where the walking/working surface is 6' or more above the adjacent surface, at decks where the walking/working surface is 6' or more above the adjacent surface and at open-sided platforms where the walking/working surface is 6' or more above the adjacent surface. Guardrail must comply with the following guidelines: The top edge of rail must be 42" (+/- 3") above the walking/working surface, mid rails installed between the top rail and the walking/working surface when there is no wall or parapet at least 21" high. The top rails must be capable of withstanding without failure a force of at least 200 lbs. applied within 2" of the top edge. Said force shall be applied in any outward or downward direction at any point along the top rail. The mid rail must be capable of withstanding without failure a force of at least 150 lbs. Said force shall be applied in any outward or downward direction at any point along the mid rail or other members. Toe boards must be erected along the edges of any overhead walking/working surface to protect persons working below. Toe boards must be a minimum 3.5" high from the top edge to the level of the walking/working surface, shall have no more than 1/4" clearance above the walking/working surface and shall be solid or have openings no greater than 1" in size. The guardrail systems shall be so surfaced so as to prevent injury from punctures or lacerations, and to prevent snagging of clothing. The ends of all top rails, mid-rails and toe boards shall not overhang the terminal posts, except where such overhang does not constitute a projection hazard.
- 18.1c **STEPS (18" ACCESS/EGRESS):** No point of access can have a step greater than 18" high. Front or main entrances shall be backfilled to maintain a maximum step up of 18" or temporary stairs installed. In dropped garages, concrete subcontractor shall immediately pour the required steps and/or landings. Secondary entrances over 18" high shall have a top and mid rail shall be installed to prevent access or egress. If these entrances become "regular access or egress ways", ramps or steps as described above must be provided.
- 18.1d **SCAFFOLDING:** Must sit on firm, solid ground. When ground condition requires mudsills, the mudsills shall be used under minimum 4" X 4" metal plates. Said mudsills shall be made of minimum 2" X 6" lumber. No bricks, blocks, scrap lumber, etc. shall be used to level the scaffolding. Height adjustments are to be made using screw jacks with 4" X 4" metal plates. Scaffolding over 10' high must have guard rails, mid rails and toe boards on all open sides. Access to scaffold platforms shall be by the use of ladders. No one is to climb up the sides of the scaffold to reach the upper levels. To avoid tipping or sliding, scaffolds are to be securely tied into the buildings at BOTH top and bottom. If this Subcontractor uses another subcontractor's scaffold, it will be this Subcontractor's responsibility to insure that the scaffolding meet all safety standards.

18.2 **FALL PROTECTION - INTERIOR:**

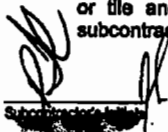
- 18.2a **RAILINGS:** Contractor shall provide metal safety stanchions to be installed by the framer around all stairways, landings, decks, open-sided platforms and hallways. Said stanchions must be lagged-in, not nailed. When lagged-in properly, the stanchions will withstand a force of at least 200 lbs. applied within 2" of the top edge. The framer shall also supply and install all other necessary supports, rails, etc. In general, the guardrails shall be installed as follows: When the stanchions are installed properly, the top rail shall be 42" (+/- 3") above the walking/working level. Mid-rails shall be installed midway between the top edge of the guardrail system and the walking/working surface when there is no wall or parapet at least 21" high. Toe boards shall be erected along the edges of the overhead walking/working surface. Toe boards shall be at least 3.5" high from the top of the walking/working surface, shall have no more than 1/4" clearance above the walking/working surfaces and shall be solid or have openings no larger than 1" in size. Railings must be continuous and shall be located a minimum of 3' out from any walls. The guardrail systems shall be so surfaced so as to prevent injury from punctures or lacerations, and to prevent snagging of clothing. The ends of all top rails, mid-rails and toe boards shall not overhang the terminal posts, except where such overhang does not constitute a projection hazard. Stairs with an open side of more than 3 risers must have guardrails as described above.

The subcontractor that installs the permanent handrail/stairway shall then remove this safety railing at the completion of the job and will store the metal stanchions in the garage of each individual home. In the event that the Subcontractor performing the work outlined in this Agreement has to temporarily remove said safety railings for the purpose of proceeding with his portion of the work, it will be this Subcontractor's responsibility to immediately restore said safety railings to their original condition.

- 18.2b **FLOOR OPENINGS:** Any floor openings where the least dimension is greater than 2" must be guarded by rails as described above or covered. Coverings are to be secured and marked (outlined and X'ed) with bright orange or yellow spray paint.
- 18.2c **WALL OPENINGS:** Any openings on a wall greater than 18" X 30" must be guarded if there is a 6' fall to the adjacent surface.


Contractor's Initials

- 18.2d **DOORS WITH FALL HAZARD:** All doors 6' or more from an adjacent surface must be protected with railings as described above.
- 18.2e **SCAFFOLDS:** Same as per 18.1d.
- 18.3 **TRENCHING AND EXCAVATION:** When an excavation or trench is 4' deep or greater, Subcontractor must install exit ladders within 25' of workmen. If the excavation or trench is 5' deep or greater, in addition to the ladders, a protective system must be used to strictly conform to all OSHA requirements, including, but not limited to properly sloping, benching, shoring or using trench boxes. If this Subcontractor uses another subcontractor's trenches, it will be this Subcontractor's responsibility to insure that the trenches meet all safety standards. Subcontractor must determine the appropriate protective system allowed based on the soils classification (Type A, B or C soil).
- If the excavation or trench could pose a fall hazard, prudence and common sense must prevail. If an excavation or trench is over 5' deep and has sloped, multiple bench or plateau walls of sufficient angle to prevent injury, the use of orange clearing fence may not be necessary. However, if soils conditions are such that the excavation could collapse, orange clearing fencing shall be provided. Where excavations or trenches are over 5' deep and the walls are vertical, orange clearing fencing should be installed around the hazard.
- 18.3 **COMBUSTIBLE STORAGE:** Combustibles and flammables must be stored in an appropriate area that is identified. Combustible and flammable liquids must be stored in an approved metal safety container that has a flash arrestor (a UL or Factory Mutual -FM- approved storage container).
- 18.4 **MATERIAL STORED PROPERLY:** Materials must be stored in a manner that will not pose a hazard, and must also be stacked in a manner that will resist falling over.
- 18.5 **WORK AREAS / PASSAGEWAYS:** Must be clear of debris form and scrap lumber, lumber with nails (nails to be bent over), etc.
- 18.6 **LUMBER WITH NAILS:** Nails protruding from lumber must be bent over.
- 18.7 **ELECTRICAL:**
- 18.7a **EXTENSION CORDS CONDITION:** Few and minor repairs are allowed to outer insulation jacket.
- 18.7b **PROPER GROUNDING:** Extension cords and any electrical tool that is not double insulated must have a ground prong.
- 18.7c **GFI PROTECTION:** All electrical equipment must be protected by a GFCI. The only exception allowed is when the equipment is plugged into a generator of less than 5KW.
- 18.7d **PANEL BOXES:** Covers must be installed at all times, whether powered or not.
- 18.8 **LADDERS:**
- 18.8a **CONDITION:** Ladders must be in good condition with no broken side rails or steps and no "homemade" repairs.
- 18.8b. **PROPER USE:** Ladders must be used according to manufacturer's safe use instructions, such as, but not limited to: Stepladders must be opened and resting on all 4 feet of a level, solid surface. When using a ladder to go from one level to another, the ladder must be secured and extend at least 3' above the upper landing platform.
- 18.8c **JOB-MADE LADDERS:** The use of job-made ladders is prohibited.
- 18.9 **LP TANKS STORAGE:** All LP tanks must be:
- Stored on a firm, level surface.
Secured from falling over.
In an area that protects the tanks from being struck by equipment and vehicles.
Stored more than 10' from any building and/or structure if there are 500 lbs. or more stored.
Stored 7' or more from any heaters.
- 18.10 **USE OF LP TANKS AND HEATERS:** Heaters shall be located at least 7' from the LP tank and at least 6' from walls and other combustibles. Heaters shall be set on non-combustible materials. The area must be well ventilated and the heaters must be checked every 45 minutes when in use.
- 18.11 **HARD HATS:** Subcontractors shall follow OSHA 1926.10 "Individuals working in areas where there is a possible danger of head injury from impact, or from falling or flying objects, or from electrical burns shall be protected by protective helmets. Subcontractors such as roofers, carpet installers, painters and tile installers might not be exposed to the above hazards when actually performing direct installation of roofing, carpet paint or tile and would be exempt from wearing a protective helmet at that time. However, should those subcontractors leave the roof, home, etc. they will be required to wear a hard hat."


Subcontractor's Initials

19. STORM WATER POLLUTION PREVENTION PLAN (SWPPP):

- 19.1 We, as the owner, have developed a Storm Water Pollution Prevention Plan (SWPPP) in accordance with our understanding of the State requirements. You as a Contractor are directed to comply with SWPPP and the NPDES general permit for any work done on this site. Any person who violates any permit condition of the general permit may be subject to substantial penalties in accordance with Section 309 of the Clean Water Act and Porter-Cologne Water Quality Control Act. A copy of the General Construction Activity Storm Water Permit and the Storm Water Pollution Plan developed for this site available for your review at the construction office.

20. SCOPE OF WORK:

- 20.1 Furnish and install FRAMING, as per plans, specifications, all applicable code inspector requirements, FHAVA requirements and as per Contractor's requirements, including, but not limited to the following:
- 20.2 Subcontractor shall furnish all labor, materials, installation, freight, handling, loading and unloading, tools, equipment, scaffolding, safety apparatus, storing, specialty equipment and testing as necessary to fulfill this agreement as per the provisions of the subject specifications and as complemented or altered by the subject plans. The following is designed to indicate in a general way the Scope of Work and is subject to qualifications and additions as set out elsewhere in this contract. While this Subcontract attempts to list in detail all the items and services to be furnished and/or installed by this Subcontractor, it is agreed that an exact list is impossible to compile. Therefore, Subcontractor agrees that all items, materials, labor, equipment, etc. normally and usually included and necessary for a complete and operable system as per all industry standards and governmental agencies requirements, whether included in the contract documents or not, are a part of this job. The end result shall be to relieve Contractor of any further costs, extras, burden or expense of all the work covered under this agreement.
- 20.3 Prior to commencement of work, it is the Subcontractor's responsibility to confirm with the Project Superintendent that the Subcontractor has obtained the most current approved plans. All work to be scheduled with the Superintendent.
- 20.4 Subcontractor agrees to furnish K. Hovnanian Companies with a copy of their State of California contractor's license and the appropriate City and/or County Business License before commencement of work.
- 20.5 Subcontractor agrees to furnish K. Hovnanian Companies' applicable Community Builder's office with a copy of Subcontractor's Safety Procedure Manual prior to the commencement of the work herein.
- 20.6 Subcontractor understands that plans and specifications may not fully reflect the actual job conditions, therefore, the subcontractor or his/hers agent(s) should inspect and verify existing conditions. Subcontractor shall notify Contractor in writing of any below-standard conditions before commencement of work. Unless such a notification is given, it is hereby understood that Subcontractor has accepted the job conditions "as is".
- 20.7 Contractor reserves the right to modify sequence and/or mix. Unit prices set forth in Exhibit "B" shall remain the same.
- 20.8 In essence, this contract provides for a "complete job", that is, all items shown on the contract documents and covered by the contract specifications. All items not specifically indicated or called, but necessary for the completion and operation of the work covered by this contract shall be included as part of this contract.
- 20.9 Subcontractor agrees to provide all supervision necessary to purchase, order, receive and distribute all materials onto the jobsite. Bulk lumber to be unloaded and distributed house-to-house by Subcontractor. Subcontractor shall provide all necessary equipment to load or unload materials. Unloaded materials shall not block access to City vehicles, including fire and trash removal. Subcontractor shall store lumber on the site as approved by Contractor, and storage and continued maintenance of such materials shall be in a safe manner so as not to create an "attractive nuisance" to children or others, and in accordance with all safety rules and regulations. At all times Subcontractor shall be solely responsible for the safety, protection (including theft) and maintenance of all such materials. Subcontractor shall not store such materials so as to create delays in the work of others and shall relocate any such materials within 24 hours after being notified to do so by the Contractor.
- 20.10 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, water heater platforms, backing, freeze block, wood trim, edges, soffits, furring, chases, columns, posts, beams, pot shelves, pop-outs, corbels and rough hardware.
- 20.11 Rough hardware to include, but is not limited to: Nails, shots, building paper, glue, washers for anchor bolts, bolts (except anchor bolts, nuts, hold-downs), tie straps, Simpson catalog items, special connectors, joist hangers, felting, caulking, clips, sealant, adhesives, post anchors, and caps not imbedded in concrete. 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.
- 20.12 Subcontractor shall meet with Contractor's Concrete subcontractor to determine the layout of all bolts and tie downs and shall provide the Contractor's Concrete subcontractor with a detailed bolt and tie-down layout.


Subcontractor's Initials


Contractor's Initials

- 20.13 Subcontractor shall create lumber list and shall order it to coincide with construction progress requirements. Subcontractor to notify the Community Builder and get his/her approval prior to delivering lumber to project site. Subcontractor assumes responsibility for all lumber, and lumber products losses, including losses due to theft, pilferage, misuse, or damage. Subcontractor agrees that no more materials shall be delivered to the job site other than those materials needed to diligently complete the work in progress. In the event that Subcontractor causes extra or additional materials to be delivered to the job site without Contractor's express, written approval, Subcontractor agrees that Contractor shall not be obligated to pay for such extra or additional materials.
- 20.14 All lumber shall be grade marked:
- a. Studs - Douglas Fir, stud grade.
 - b. Lumber used for aesthetic purposes shall be subject to approval by Contractor.
 - c. Plate - All plate material to be Douglas Fir construction standard, utility grade is not acceptable.
 - d. Beams - #1 Douglas Fir, or better, unless otherwise noted.
 - e. Joists - #2 Douglas Fir, or better, unless otherwise noted.
 - f. All exposed lumber shall be resawn, selected for appearance and free of handling marks.
 - g. 7/16" OSB sheathing
 - h. Sub floor - 1/2" T & G OSB or equal.
- NOTE: The above are minimum grades. Subcontractor shall check all applicable codes, plans and structural engineering calculations for more stringent specifications.
- 20.15 Check all beams and materials before installation for twists, cracks and crowns.
- 20.16 Subcontractor shall supply all truss calculations, "I" joist calculations, layouts and changes. Calculations and plans shall become the property of Contractor.
- 20.17 Temporary power cords and boxes shall be provided by Subcontractor.
- 20.18 In the event that Subcontractor shall require an area for prefabrication and/or storage of materials, Contractor will provide a location only if one is available. Contractor shall provide temporary power (power poles). Temporary sanitary facilities, or any other items necessary at prefabrication area to be provided by Subcontractor. Subcontractor shall be responsible for cleaning the area and removing any debris from the site.
- 20.19 It is hereby understood that the structures covered herein are to be built as shown on the approved plans and any variations or discrepancies noted shall be immediately brought to the attention of Contractor's representative and resolved. (No deviation regarding the structural integrity of building.)
- 20.20 Subcontractor shall coordinate their work with other subcontractors including plumber, electrician, heating, window/sliding glass door installer, cabinet subcontractor and finish carpenter to allow for proper rough openings, backing, cutting, and patching.
- 20.21 Subcontractor shall coordinate with plumber and/or tub/shower subcontractor as to backing required for the installation of tub/showers.
- 20.22 Contractor will furnish window and sliding glass door rough opening dimensions. Contractor will furnish rough opening sizes for solid core and hollow core doors from finish carpentry subcontractor. Subcontractor shall frame said openings as per the rough dimensions provided.
- 20.23 Subcontractor shall cut, notch and head for all trades, including plumbing, H.V.A.C., electrical and sheet metal subcontractors, for proper size and locations of ducts and as per UBC and City specifications. Cut all roof penetrations. All joists and beams to be notched for hangers and hardware where needed to flush out drywall, headers, beams and subflooring. Provide shafts, soffits, furring, runs, chases and openings where required for fireplaces, plumbing, H.V.A.C., electrical and kitchen cabinets as shown on plans or as per Contractor's instructions, or as needed to accommodate other trades or governmental officials. Meet with all necessary subcontractors to establish height of blocking where critical switches, plugs and plumbing occur. Layout blocks to avoid same. Provide proper stud spacing for electrical panels, sub panels and utility chases at houses and garages as required. *SUBCONTRACTOR DOES NOT BUILD AIR DUCTS*
- 20.24 Skilled mechanics shall do all cutting and framing of wood members required to accommodate structural members, head-outs for toilets, tubs, and other required mechanical.
- 20.25 Install & tighten all bolts, nuts, washers and connections immediately. Do not leave for pick-up.
- 20.26 Subcontractor agrees to supply and install 2x6, 2x8, 2x10 and/or solid blocked backing as required for other trades; i.e.: drywall, lather, sheet metal, cabinets, electrical, finish carpenter, roofer, shower doors, and bath accessories such as towel bars, toilet paper holders, etc. Any pre-cut arches shall be included as part of this subcontract.
- 20.27 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 or crane for lumber handling and materials unloading as necessary during the course of the job.

- 20.28 Lumber to be moved ahead by Subcontractor throughout the job.
- 20.29 All cutting to be done on the lot or in specified yard, not in the street.
- 20.30 Replacement cost of incorrectly cut material shall be the responsibility of the Subcontractor.
- 20.31 Load, place and nail all roof sheathing and/or starter board. Sheathing and/or starter board shall be flush with top of fascia in the case of Composition Shingles, higher than the sheathing (as per roof tile manufacturer's recommendations) in the case of cement tile to provide for kick-up at first tile course.. All shiners shall be removed, not clipped.
- 20.32 Subcontractor shall install temporary handrails on all stairs, landings and openings, and wrap treads on all stairways and landings, and maintain all treads, stringers, railings, etc., as needed for construction and to conform to all OSHA safety regulations. Maintain handrails through completion of frame inspection. Subcontractor shall also provide slide guards or tie-offs for sheathers.
- 20.33 Subcontractor agrees to construct temporary stair barricades and handrails and toe board to comply with Cal-Osha and the U.B.C.
- 20.34 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. All fascia and barge shall be mitered at the joints. All barge shall receive "bird-break" cuts at splices. The use of corrugated-faced hammers shall not be permitted in the nailing of exposed wood. No "golf balls" or hammer marks shall be accepted in exposed areas.
- 20.35 All framing shall be constructed with all joints true, tight, and well nailed or bolted as required. All horizontal members subject to bending shall be set with crown up and shall not be spliced between bearing. Wherever feasible, all members shall have solid bearing without being shimmed, however, if solid bearing is not feasible, first floor walls and second floor walls shall be shimmed as necessary to provide level plate for second floor/ceiling. Interior and exterior angles shall be properly framed to receive interior and exterior finish work. All fascias shall be properly mitered at the joints.
- 20.36 Provide and install all exterior siding, trim and plant-ons (with the exclusion of any foam plant-ons). Spackle all hammer marks at trim material. Smooth splits and cracks. Spackle rafter tails where roof sheathing nails are clipped or countersunk. Furnish and install the necessary felt underlayment.
- 20.37 Scrap out ahead of rough electrical and prior to framing inspection and stack all useable material at street at least 10 feet from buildings.
- 20.38 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. Subcontractor to caulk all exterior wall plates with mastic.
- 20.39 Block all exposed beams. Block all areas at exterior where voids would appear, so as to allow backing for finish material (stucco).
- 20.40 Framing work shall include all repair and/or replacement of framing due to boring and notching by mechanical or electrical trades. Joints of all paneling, siding, sheathing, etc. shall occur at studs or shall be solidly blocked. Subcontractor shall drill, cut screen and install freeze blocks with wire screens at all volume ceilings to provide for proper ventilation.
- 20.41 Subcontractor will check for crooked studs and straighten same prior to drywall. Subcontractor will cross-sight all doors and plumb rough openings to proper dimensions and remove all plates. Subcontractor agrees to frame access/crawl holes as required on all plans.
- 20.42 Subcontractor shall furnish all labor and materials necessary to glue down all subflooring and nail same with approved type screw nails or ring-shank. Type of glue to be approved by contractor and glue shall only be applied on floor joist just prior to the plywood subfloor being laid and nailed. No more than 1/2 hour shall elapse between laying plywood over glue and nailing. Remove all nails that do not penetrate into floor joists or that do not drive flush to plywood. Special care shall be taken so that subflooring will be properly installed and nailed to eliminate deflection and future floor squeaks.
- 20.43 Include all furring, drop ceilings, soffits and chases as required.
- 20.44 Provide platform for water heater and/or F.A.U. as shown on plans. Subcontractor will remove scrap and trash from under said platforms.
- 20.45 All posts and beams at unit interiors not wrapped with drywall shall be resawn.
- 20.46 Subcontractor shall adhere to tolerances in framing +/- 1/4" in areas that constitute critical dimensions. The Project Superintendent shall determine areas of concern where more strict tolerances shall be applied. All walls must be plumb and true, all floors must be level.
- 20.47 Framing shall be squared, aligned and plumb with no wedges, shims or makeshifts.


Subcontractor's Initials

- 20.48 All curb-mounted walls (with the exception of garage walls) will be furred out as necessary to meet existing width of curb.
- 20.49 Install z-bar backing or other flashing where required for siding to maintain schedule. All exterior trim shall be properly installed and flashed with 80# min. paper or mo/stop to assure a proper water tight installation.
- 20.50 Subcontractor agrees to fabricate and install exterior decorative trim, including shutters, as required, on all elevations.
- 20.51 Provide and install roof crickets.
- 20.52 Sheathing shall be secured at right angles to the floor and/or roof joints. Sheathing shall meet flush at all butt joints. Nail borders at 6" o/c maximum unless otherwise noted or required by public authority.
- 20.53 All shear paneling to be done in accordance with plans and nailed according to shear wall schedule. Includes transfer blocks and teco clips. Particular attention will be taken with regards to shear panels and special shear nailing for and backing for special drywall nailing. In the case where shear panel(s) is(are) indicated in only one side of a window and/or door, the other side of the window and/or door shall either be sheathed or furred to match the side with the shear panel.
- 20.54 All floor joist, ceiling joist and roof rafters subject to deflection shall be set with crown up and shall not be spliced between bearings, and blocked, screwed and glued.
- 20.55 Subcontractor shall to install continuous 3/4" plywood decking catwalk in attic from the attic access to the heating unit(s). Said catwalk and decking should be not less than 3'-0" wide and flooring in front of heating unit(s) shall extend the length of the working space of the unit(s) at a width of not less than 3'-0" wide.
- 20.56 Interior and exterior angles shall be properly framed and backed out to receive interior and exterior finish work.
- 20.57 Subcontractor shall provide solid backing at high wall and ceiling areas for upper and island upper cabinets. Subcontractor shall provide solid backing for stair handrails.
- 20.58 Subcontractor agrees to knock out all braces, prepare all door and window openings and to cut all bottom plates in a timely manner as to accommodate other trades as required.
- 20.59 Balloon frame walls as per plans.
- 20.60 Supply pick-up labor to check all framing work and replace all crooked, twisted, or bowed studs, etc., as needed.
- 20.61 No work will be considered final until accepted by all pertinent governing agencies and by Contractor.
- 20.62 Install double wall shear panel after plumbing and electrical inspections where required.
- 20.63 Frame around heating ducts in garage after ducts are installed.
- 20.64 Re-nail floors after final inspection by City, as needed, to stop squeaks. (Screws to be used if needed). *Note:* While not a part of this contract, Subcontractor may choose to screw plywood floors instead of nailing them so as to minimize future service calls.
- 20.65 All requirements for Title 24 (pertaining to framing) shall be included. Particular attention will be given to exterior walls:
a) Studs must be flush with the edge of plates.
b) Plates must be tightly caulked to concrete with resilient non-hardening caulking.
c) All intersections of exterior walls must be a tight fit.
- 20.66 Authorized extra work must be billed within thirty (30) days of completion of said work. Failure to comply will result in non-payment of extra work.
- 20.67 No waxed, oiled, or greased nails will be permitted. All nailing shall comply with City specifications. All exterior trim, fascia, etc., shall be fastened with galvanized nails.
- 20.68 Subcontractor to supply ridge cap, hip and material for roofing subcontractor.
- 20.69 Subcontractor shall assume full responsibility for any lumber installed to assure full compliance with City, County and Contractor's requirements. Subcontractor shall provide all labor and equipment to remove and replace lumber unacceptable after installation. Subcontractor shall make all corrections at no cost to Contractor.
- 20.70 Subcontractor shall hold prices for labor through completion of this job and as per Exhibit "B"
- 20.71 Roof systems as per plans.

- 20.72 Prior to Subcontractor receiving the framing inspection draw, Subcontractor shall provide Contractor with a set of redlined plans indicating all changes that have been made, if any, noted and Initialed.
- 20.73 Pick-up to be done as each house is completed.
- 20.74 Wherever a balcony, patio deck, walkway, deck terrace, etc. is constructed, such surface must always be constructed in such a manner as to have positive drainage of no less than 1/4" per foot, irrespective of whether such slope is specified in the construction documents. In the event that such plans or other documents do not show drainage, it is imperative that Subcontractor call such omission to the Contractor's attention, but in any event, Subcontractor shall be obligated under this contract to provide the proper slope unless relieved of said obligation, in writing, by Contractor.
- 20.75 All windows in kitchens and baths that have a tile stool shall be set on a 1" X 1" filler.
- 20.76 Add backing on all four sides for all H.V.A.C. registers and return air grills.
- 20.77 Provide headers at all optional openings.
- 20.78 Construct stairs as per plans.
21. **SPECIFIC CONDITIONS**
- 21.1 Floor systems to be TJI systems.
- 21.2 Interior non-bearing studs will be installed @ 24" o/c.
- 21.3 Drywall clips will be used at corners and at ceilings in lieu of wood backing.
- 21.4 All decorative 1/2 round trim at exterior is included.
- 21.5 All materials and labor to construct Sales Office as per plans and specifications prepared by Austin Johnson are included at no cost to Contractor.

22. **CONTRACT PRICE:**

22.1 Prices are as follows:

<u>PLAN</u>	<u>LABOR</u>	<u>LUMBER</u>	<u>TJI's & TRUSSES</u>	<u>PLAN TOTALS</u>
1A	\$ 10,349.00	\$ 9,480.00	\$ 5,778.00	\$ 25,607.00
1B	\$ 10,199.00	\$ 9,041.00	\$ 5,962.00	\$ 25,199.00
1C	\$ 10,159.00	\$ 9,591.00	\$ 5,934.00	\$ 25,683.00
2A	\$ 10,412.00	\$ 8,361.00	\$ 4,691.00	\$ 23,465.00
2B	\$ 10,419.00	\$ 8,471.00	\$ 4,741.00	\$ 23,631.00
2C	\$ 9,958.00	\$ 8,295.00	\$ 4,709.00	\$ 22,962.00
3A	\$ 11,068.00	\$ 9,214.00	\$ 5,404.00	\$ 25,685.00
3B	\$ 10,783.00	\$ 9,379.00	\$ 5,433.00	\$ 25,595.00
3C	\$ 11,076.00	\$ 9,930.00	\$ 5,502.00	\$ 26,507.00

23. **ALTERNATE PRICE:**

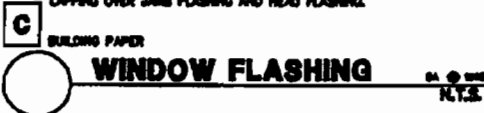
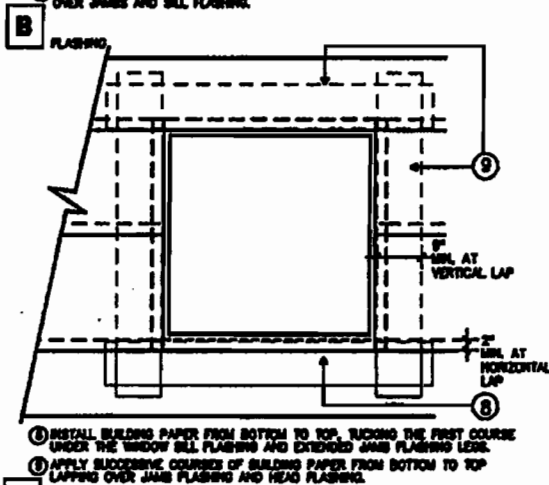
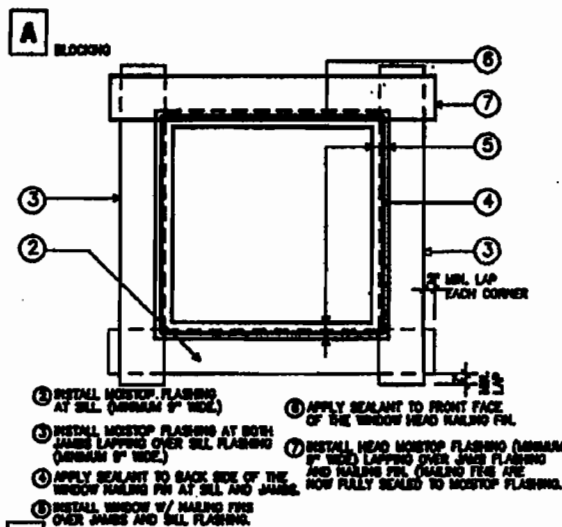
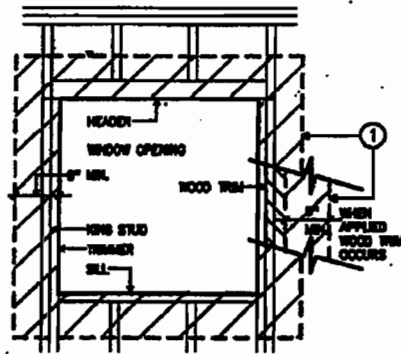
23.1 To provide and install exterior shutters per current plans and specifications:

23.2 Alternate pricing as follows:

<u>PLAN</u>	<u>TOTAL</u>	<u>PLAN</u>	<u>TOTAL</u>
1A	\$ 280.00	3A	\$ 280.00
1B	\$ 420.00	3B	\$ 280.00
1C	\$ 280.00	3C	\$ N/A
2A	\$ 280.00		
2B	\$ 280.00		
2C	\$ N/A		

23.3 Labor prices are locked for the duration of job.

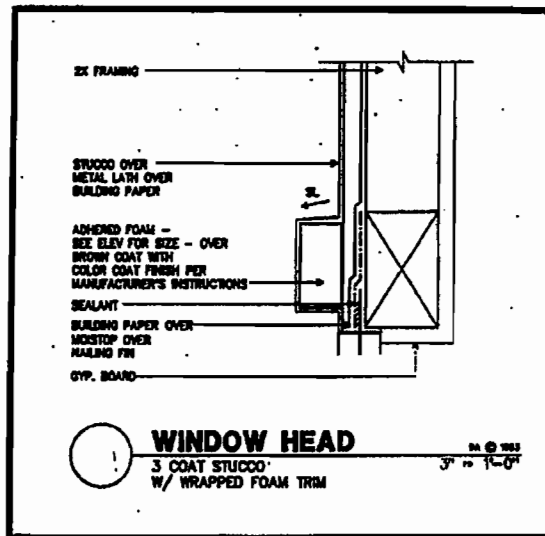

Contractor's Initials



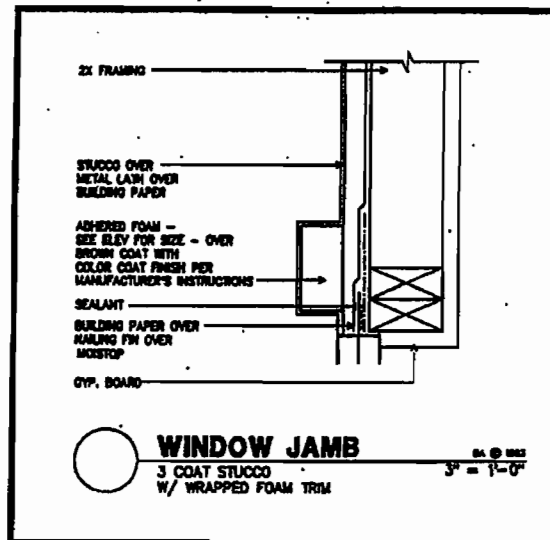
EXAMPLE 2

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 Contractor's Initials

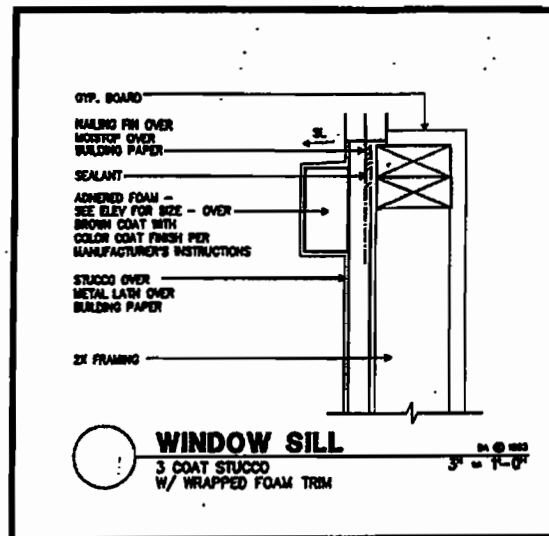


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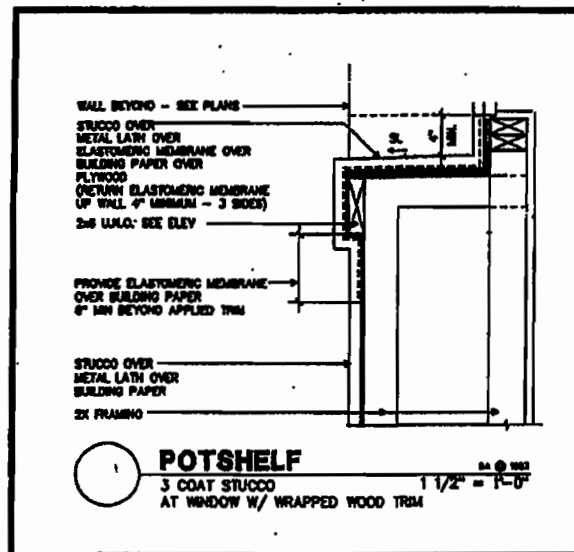


EXAMPLE 5

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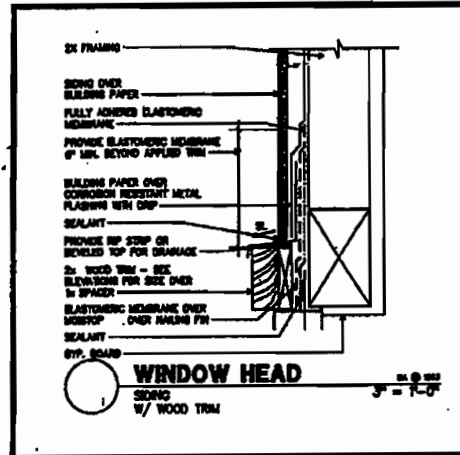


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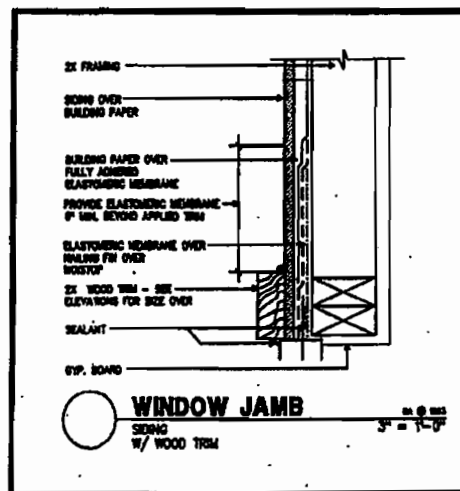


EXAMPLE 7.

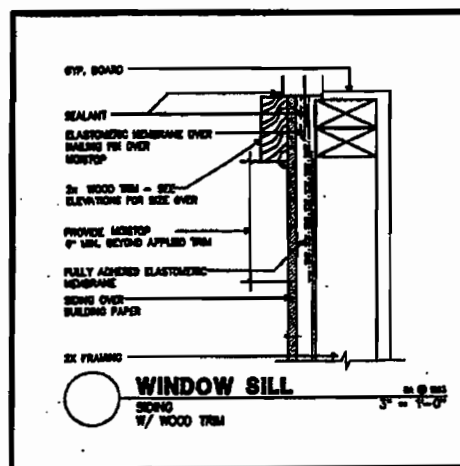
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EXAMPLE 8



EXAMPLE 9



EXAMPLE 10

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EXHIBIT "B" TO SUBCONTRACT AGREEMENT
PAYMENT EXHIBIT
BRIDGEPORT

Contract #722-0010
Cost Code: A-0701

This Exhibit "B" is attached to and made a part of that Subcontract No. 722-0010 for FRAMING between K. Hovnanian Companies of California, Inc. and HNR FRAMING SYSTEMS Tract No: PRD96-7949.

So long as Subcontractor is not in default under this Subcontract, payments will be made for Work completed at the time and in the amounts set forth below. Contractor agrees to pay Subcontractor a monthly progress payment in an amount equal to ninety percent (90%) of all labor and materials which have been properly placed in position and accepted by Contractor and Owner, subject to the schedule as shown on Exhibit B payment schedule. Subcontractor shall submit progress payment requests to Contractor for Work completed.

- (a) As a condition precedent to receiving payment for Work that has been completed, Subcontractor shall prepare and present to Contractor, for its approval, each of the following:
1. An invoice for work completed with a copy of Exhibit "B" schedule of this form attached and marked to show all payment items completed in the current billing period. Consecutively number, sign and date each invoice.
 2. Complete and attach the appropriate releases, in the form of schedule (1) of this subcontract, to comply with Civil Code 3262 (d) (1) executed by all persons who may have mechanic lien, stop notice or labor and material bond rights against the property and arising out of work performed or materials supplied under this subcontract.
 3. All work, including contract work, change orders or customer service extras, must be billed within 30 days of the completed work.
 4. All billings for extras and/or optional work shall be attached with a copy of the Change Order and/or Purchase Order for the respective extra work and submitted to the Owner for processing with all other attachments as noted herein. No extra and/or option billing will be processed without proper back-up. Extras must be billed separately from contract billings.
 5. Backcharges for work damaged by other trades will not be accepted unless they have been verified by the Project Superintendent within three (3) days of the occurrence.
 6. Contractor is not required to make any payments to Subcontractor unless Subcontractor shall previously have provided: (i) the Certificates of Insurance required by Paragraph 12 of this Subcontract; and (ii) evidence of payment (as applicable) to all labor unions and union trust funds.
- (b) All invoices not billed in accordance with this agreement shall be returned unpaid with an explanation to the Subcontractor. Contractor may withhold progress payments, in whole or in part in order to protect Contractor and/or Owner from loss because of:
1. defective work not remedied, missing materials not furnished, clean-up not performed;
 2. claims filed or reasonable evidence indicating probable filing of claims, including claims not covered by insurance until such claims are accepted by carrier;
 3. failure of Subcontractor to make payments properly to its subcontractors or for labor, materials, or equipment, transportation or shipping costs, taxes, fees, payments to labor unions and union trust funds or other claims arising out of the Work;
 4. reasonable doubt that the Work can be completed for the unpaid balance of the Subcontract Price;
 5. damage to another subcontractor, or to Contractor or Owner;
 6. reasonable indication that the Work will not be completed on schedule;
 7. unsatisfactory prosecution of the Work by Subcontractor;
 8. failure to deliver written guarantees or warranties; or
 9. failure to obtain the approvals required by any authority having jurisdiction.

When the above grounds are removed by Subcontractor, payments will be made for the amounts withheld because of them. Contractor may require that Subcontractor furnish releases in a form satisfactory to Contractor for all claims made under (b) 2 and (b) 3, above, together with supporting invoices, receipts or other records to substantiate the amounts owing as paid as Contractor may require.

- (c) Any and all funds payable to Subcontractor hereunder are hereby declared to constitute trust funds in the hands of Subcontractor, to be applied first to the payments of claims of its subcontractors, architects, engineers, surveyors, laborers and materialmen arising out of the described Work, to claims for utilities furnished and taxes imposed, and to the payment premiums on surety bonds and other bonds filed and premiums on Insurance accruing during the construction of the described Work, before application to any other purpose.
- (d) Any payment made hereunder or advances made by Contractor prior to full completion and final acceptance of the Work shall not be construed as evidence or acceptance of any of Subcontractor's Work by Contractor or Owner. If construction loan funds are deposited in a joint control account, Subcontractor agrees to accept payments from such account and any order given by Contractor to Subcontractor thereon shall be deemed payment on part of Contractor and a release of Contractor in the amount of any such order. Contractor shall have the right to make payments to Subcontractor thereunder by checks payable jointly to Subcontractor and its suppliers, vendors or any of them.
- (e) Final payment and amounts retained by Contractor shall not be released to Subcontractor until both (i) the expiration of thirty-five (35) days after the ~~notice of completion has been recorded on the property~~, and (ii) Owner has approved and accepted subcontractors work under this contract.

completion of our work

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Contractor Initials
Exhibit Master Exhibit B .doc

HNR FRAMING SYSTEMS INC. Contact: ROGE KERICK C-010-1 CHANGES PER
 12345 CROSTWATE CIRCLE Phone #: (619) 486-2471 A1722005 BRIDGEPORT PER CONBT 15
 POWAY, CA 92064 Vendor#: 6645 701 A0701 FRAMING

Seq#	Lot Plan	Qty Item	UPON COMPLETION	REVENUE	\$ Amount
001	1 1	BR 02	Check Off	546.00	600.00
			Items Requested		
			In This Billing-->		
002	2 2	A 04	Check Off	264.00	264.00
			Items Requested		
			In This Billing-->		
003	3 3	BR 08	Check Off	486.00	486.00
			Items Requested		
			In This Billing-->		
004	4 1	CR 03	Check Off	607.00	607.00
			Items Requested		
			In This Billing-->		
005	5 1	AR 01	Check Off	350.00	350.00
			Items Requested		
			In This Billing-->		
006	6 3	AR 07	Check Off	229.00	229.00
			Items Requested		
			In This Billing-->		
007	7 2	C 06	Check Off	678.00	678.00
			Items Requested		
			In This Billing-->		
008	8 1	BR 02	Check Off	600.00	600.00
			Items Requested		
			In This Billing-->		
009	9 2	A 04	Check Off	264.00	264.00
			Items Requested		
			In This Billing-->		
010	10 3	C 09	Check Off	577.00	577.00
			Items Requested		
			In This Billing-->		
011	11 2	B 05	Check Off	468.00	468.00
			Items Requested		
			In This Billing-->		
012	12 3	AR 07	Check Off	229.00	229.00
			Items Requested		
			In This Billing-->		
013	13 3	C 09	Check Off	577.00	577.00
			Items Requested		
			In This Billing-->		
014	14 3	BR 08	Check Off	486.00	486.00
			Items Requested		
			In This Billing-->		

10/2

Subcontractors Initials
 Contractors Initials

 HNR FRAMING SYSTEMS INC. 92064 15
 12345 CROSTWALTE CIRCLE
 FOMAY, CA
 Vendor #: 6645
 Phone #: (419) 486-2471
 Contact: ROGER KERRICK
 C-010-1
 A1722005
 BRIDGEPORT PHI COMET
 A0701 FRAMING

Seq#	Lot	Plan	Qty	Item	\$ Amount
015	15	2	8	05	468.00
FIELD CHANGES					
In This Billing-->					
Contract Totals					6,083.30

Pay No:
 Percent:
 Description:
 UPON COMPLETION RETURN

Subcontractors Initials
 Contractors Initials

HNR FRAMING SYSTEMS INC.
 12345 CROSTHWAITE CIRCLE
 POWAY, CA 92064

Contact: ROGB KERRICK
 Phone #: (619) 486-2471
 Vendor#: 6645

C-010-1
 A1722005
 701

CHANGES PH1
 BRIDGEPORT PH1 COMST
 A0701 FRAMING

15

GENERAL TERMS:

THIS EXHIBIT "B" IS ATTACHED TO AND MADE A PART OF THAT
 SUBCONTRACT NUMBER STATED ABOVE.

SUB-CONTRACTOR AGREES TO BILL APPROVED EXTRAS AT $\$12.00$ /HR.
 FOR LABORER'S AND $\$25.00$ /HR FOR JOURNEMEN. EXCEPT FOR
 CONSTRUCTION CLEANUP TRADES.

PLEASE ATTACH A COPY OF THIS PAGE TO ALL CONTRACT BILLINGS.
 PROGRESS BILLING NO. _____ TOTAL CURRENT BILLING _____

NOTE: PAYMENT INVOICES MUST BE SENT TO THE COMMUNITY BUILDER
 OFFICE FOR PAYMENT:
 SUBMIT TO:
 BRIDGEPORT BUILDER OFFICE
 9805 W. CANYON TERRACE
 SAN DIEGO, CA. 92123

PAYMENT SCHEDULE:

PAYMENT FOR INVOICES RECEIVED BY THE CONTRACTOR BY THE 10TH
 OF EACH MONTH WILL BE MAILED TO THE SUBCONTRACTOR BY THE 5TH
 OF THE FOLLOWING MONTH. PAYMENT FOR INVOICES RECEIVED BY THE
 CONTRACTOR BY THE 25TH OF EACH MONTH WILL BE MAILED TO THE
 SUBCONTRACTOR BY THE 20TH THE FOLLOWING MONTH. INVOICES WILL
 NOT BE CONSIDERED TO BE SUBMITTED TIMELY IF THEY ARE
 INCOMPLETE OR DO NOT INCLUDE ALL CORRECT REQUIRED RELEASES.

NOTE: FINAL INVOICES MUST BE SUBMITTED NO LATER THAN
 6 MONTHS FROM COMPLETION OF WORK OR THE INVOICES WILL BE
 NULL & VOID AND NO FURTHER MONIES WILL BE OWED TO
 SUBCONTRACTOR.

AT CONTRACTOR'S SOLE OPTION, THIS CONTRACT CAN BE EXTENDED
 TO INCLUDE ADDITIONAL MONIES IN SUBSEQUENT PHASE(S). THE "PER
 PLAN" COST OF SAID ADDITIONAL MONIES SHALL BE AT EXACTLY THE
 SAME COSTS STATED HEREIN, PROVIDED HOWEVER, THAT SAID
 SUBSEQUENT PHASE(S) IS (ARE) CONTRACTED PRIOR TO DEC.31,1998

Subcontractors Initials  Contractors Initials _____

K. HOVUNTA AIDOPORT 722
Payment Terms & Invoice
For 5/04/98

Page 1 FO974H
00000000
Run 9.55.52 05/04/98

HR FRAMING SYSTEMS INC.
13345 CROSTWALTE CIRCLE
POMAY, CA 92064
Contact: 8-0010 FRAME LUMBER
Phone #: (619) 486-2471 A:722001 BRIDGEPORT MOUEL COMST 3
Vendor#: 6645 701 A0701 FRAMING

Pay No: 1
Percent: 50.00 % 50.00 %
Description: 1ST FLOOR LAYOUT 2ND FLOOR WALLS

Seq#	Lot Plan	Elv Item			\$ Amount
001	70 1	C 01	Check Off	4,795.50	4,795.50
Items Requested					
In This Billing-->					
002	71 2	BR 02	Check Off	4,235.50	4,235.50
Items Requested					
In This Billing-->					
003	72 3	C 03	Check Off	4,965.00	4,965.00
Items Requested					
In This Billing-->					
FRAME LUMBER					
Contract Totals					13,996.00
Contract Totals					27,992.00

Subcontractors Initials

Contractors Initials

CONSTRUCTIVE CONTRACT
 EXHIBIT "B"
 PAYMENT TERMS DETAIL

Contract: 8-0010 FRAME LINGER
 Phone #: (619) 486-2471 BRIDGEPORT MODEL CORP 3
 Vendor: 6645 702 A0701 FRANKS

GENERAL TERMS:

THIS EXHIBIT "B" IS ATTACHED TO AND MADE A PART OF THAT
 SUBCONTRACT NUMBER STATED ABOVE.

SUB-CONTRACTOR AGREES TO BILL APPROVED EXTRAS AT 30% PER
 FOR LABORER'S AND 60% PER FOR JOURNEMEN, EXCEPT FOR
 CONSTRUCTION CLEANUP FRAMES.

PLEASE ATTACH A COPY OF THIS PAGE TO ALL CONTRACT BILLINGS.
 PROGRESS BILLING NO. TOTAL CURRENT BILLING

NOTE: PAYMENT INVOICES MUST BE SENT TO THE COMMUNITY BUILDER
 OFFICE FOR PAYMENT:
 BRIDGEPORT BUILDER OFFICE
 9608 W. CANTON TERRACE
 SAN DIEGO, CA. 92123

PAYMENT SCHEDULE:

PAYMENT FOR INVOICES RECEIVED BY THE CONTRACTOR BY THE 10TH
 OF EACH MONTH WILL BE MAILED TO THE SUBCONTRACTOR BY THE 15TH
 OF THE FOLLOWING MONTH. PAYMENT FOR INVOICES RECEIVED BY THE
 CONTRACTOR BY THE 25TH OF EACH MONTH WILL BE MAILED TO THE
 SUBCONTRACTOR BY THE 30TH OF THE FOLLOWING MONTH. INVOICES WILL
 NOT BE CONSIDERED TO BE SUBMITTED TIMELY IF THEY ARE
 INCOMPLETE OR DO NOT INCLUDE ALL CORRECT REQUIRED RELEASES.

NOTE: FINAL INVOICES MUST BE SUBMITTED NO LATER THAN
 6 MONTHS FROM COMPLETION OF WORK OR THE INVOICES WILL BE
 NULL & VOID AND NO FURTHER MONIES WILL BE OWED TO
 SUBCONTRACTOR.

AT CONTRACTOR'S SOLE OPTION, THIS CONTRACT CAN BE EXTENDED
 TO INCLUDE ADDITIONAL HOMES IN SUBSEQUENT PHASE(S). THE "PER
 PLAN" COST OF SAID ADDITIONAL HOMES SHALL BE AT EXACTLY THE
 SAME COSTS STATED HEREIN, PROVIDED HOWEVER, THAT SAID
 SUBSEQUENT PHASE(S) IS (ARE) CONTRACTED PRIOR TO DEC 31, 1998

Subcontractor Initials Contractors Initials

[Handwritten Signature] *[Handwritten Signature]*

HR FRAMING SYSTEMS INC.
 13345 CROSTWALTE CIRCLE
 FOWAY, CA 92064
 Contact: S-0010A FRAMING LABOR
 Phone #: (619) 486-2472 BRIDGEPORT MODEL CONST 3
 Vendor#: 6645 701 A0701 FRAMING

Seq#	Lot	Plan	Item	1	2	3	4	5	\$ Amount
001	70	1	C 01	30.00	20.00	20.00	20.00	10.00	10.159.00
Description:				1ST FLOOR WALLS	FLOOR CEILING	STACKE ROOF	ROOF SHEATHED	RETROFIT	
Pay No:				30.00	20.00	20.00	20.00	10.00	
Percent:				100%	100%	100%	100%	100%	
Seq# Lot Plan Item				001	70	1	C 01	30.00	10.159.00
Check Off				3,887.70	2,883.80	2,883.80	2,883.80	1,441.90	
Items Requested				3,887.70	2,883.80	2,883.80	2,883.80	1,441.90	
FRAME LABOR				3,887.70	2,883.80	2,883.80	2,883.80	1,441.90	
001 71 2 BR 02				3,887.70	2,883.80	2,883.80	2,883.80	1,441.90	
Check Off				3,887.70	2,883.80	2,883.80	2,883.80	1,441.90	
Items Requested				3,887.70	2,883.80	2,883.80	2,883.80	1,441.90	
FRAME LABOR				3,887.70	2,883.80	2,883.80	2,883.80	1,441.90	
003 72 3 C 03				3,887.70	2,883.80	2,883.80	2,883.80	1,441.90	
Check Off				3,887.70	2,883.80	2,883.80	2,883.80	1,441.90	
Items Requested				3,887.70	2,883.80	2,883.80	2,883.80	1,441.90	
FRAME LABOR				3,887.70	2,883.80	2,883.80	2,883.80	1,441.90	
Contract Totals				9,495.80	6,336.80	6,336.80	6,336.80	3,265.40	31,654.00

8/7/98

Contractors Initials RP

CONSTRUCTION CONTRACT
 EXHIBIT 'B'
 PAYMENT TERMS DETAIL

HR FRAMING SYSTEMS INC.
 12345 CROSTHWAITE CIRCLE
 POWAY, CA 92064

Contact:
 Phone #: (619) 486-2471
 Vendor #: 6645

8-0010A FRAMING LABOR
 A1722801 BRIDGEPORT MODEL CONST
 701 A0701 FRAMING

GENERAL TERMS:

THIS EXHIBIT 'B' IS ATTACHED TO AND MADE A PART OF THAT
 SUBCONTRACT NUMBER STATED ABOVE.

SUB-CONTRACTOR AGREES TO BILL APPROVED EXTRAS AT \$4.00/HR.
 FOR LABORER'S AND \$4.00/HR FOR JOURNEMEN. EXCEPT FOR
 CONSTRUCTION CLEANUP TRADES.

30⁵ 2/1

40⁵ 2/1

PLEASE ATTACH A COPY OF THIS PAGE TO ALL CONTRACT BILLINGS.
 PROGRESS BILLING NO. TOTAL CURRENT BILLING

NOTE: PAYMENT INVOICES MUST BE SENT TO THE COMMUNITY BUILDER
 OFFICE FOR PAYMENT:
 BRIDGEPORT BUILDER OFFICE
 9605 W. CANTON TERRACE
 SAN DIEGO, CA. 92133

PAYMENT SCHEDULE:

PAYMENT FOR INVOICES RECEIVED BY THE CONTRACTOR BY THE 10TH
 OF EACH MONTH WILL BE MAILED TO THE SUBCONTRACTOR BY THE 5TH
 OF THE FOLLOWING MONTH. PAYMENT FOR INVOICES RECEIVED BY THE
 CONTRACTOR BY THE 25TH OF EACH MONTH WILL BE MAILED TO THE
 SUBCONTRACTOR BY THE 20TH THE FOLLOWING MONTH. INVOICES WILL
 NOT BE CONSIDERED TO BE SUBMITTED TIMELY IF THEY ARE
 INCOMPLETE OR DO NOT INCLUDE ALL CORRECT REQUIRED RELEASES.

NOTE: FINAL INVOICES MUST BE SUBMITTED NO LATER THAN
 6 MONTHS FROM COMPLETION OF WORK OR THE INVOICES WILL BE
 WELL A VOID AND NO FURTHER MONIES WILL BE OWED TO
 SUBCONTRACTOR.

AT CONTRACTOR'S SOLE OPTION, THIS CONTRACT CAN BE EXTENDED
 TO INCLUDE ADDITIONAL WORK IN SUBSEQUENT PHASE(S). THE "PER
 PLAN" COST OF SAID ADDITIONAL WORKS SHALL BE AT EXACTLY THE
 SAME COSTS STATED HEREIN, PROVIDED HOWEVER, THAT SAID
 SUBSEQUENT PHASE(S) IS (ARE) CONTRACTED PRIOR TO DEC 31, 1998

 Contractors Initials PD

NR FRAMING SYSTEMS INC.
 12345 CROSTHWAITE CIRCLE
 FOWAY, CA 92064
 Contact: S-00108 FRAMING TRUSSES
 Phone #: (619) 486-2471 A1723001 BRIDGEPORT MOORE CORST 3
 Vendor#: 6645 701 A0701 FRAMING

Pay No: 1
 Percent: 100.00 %
 Description: AT DELIVERY

Seq#	Lot	Plan	Rev	Item	\$ Amount
001	70	1	C	01	5,934.00
Check Off					
Items Requested					
In This Billing-->					
71	2	BR	02		4,741.00
Check Off					
Items Requested					
In This Billing-->					
003	72	3	C	03	5,502.00
Check Off					
Items Requested					
In This Billing-->					
Contract Totals					16,177.00

Contractors Initials *[Signature]*
 Contractors Initials *[Signature]*

CONSTRUCTION CONTRACT
 EXHIBIT "B"
 PAYMENT TERMS DETAIL

OUR FRAMING SYSTEMS INC.
 12345 CROSTWAINTE CIRCLE
 POMAY, CA 92064

Contact:
 Phone 8: (619) 466-2471
 Vendor: 6645

8-00109 FRAMING TERMS
 A-722001 BRIDGEPORT MODEL CONST 3
 701 A0761 FRAMING

GENERAL TERMS:

THIS EXHIBIT "B" IS ATTACHED TO AND MADE A PART OF THAT
 SUBCONTRACT NUMBER STATED ABOVE.

SUB-CONTRACTOR AGREES TO BILL APPROVED EXTRAS AT \$40.00/HR.
 FOR LABORER'S AND \$40.00/HR FOR JOURNEMEN. EXCEPT FOR
 CONSTRUCTION CLEANUP PHASE.

PLEASE ATTACH A COPY OF THIS PAGE TO ALL CONTRACT BILLINGS.
 PROGRESS BILLING NO. TOTAL CURRENT BILLING

NOTE: PAYMENT INVOICES MUST BE SENT TO THE COMMUNITY BUILDER
 OFFICE FOR PAYMENT:
 SUBMIT TO: BRIDGEPORT BUILDER OFFICE
 9605 W. CANTON TERRACE
 SAN DIEGO, CA. 92123

PAYMENT SCHEDULE:
 PAYMENT FOR INVOICES RECEIVED BY THE CONTRACTOR BY THE 10TH
 OF EACH MONTH WILL BE MAILED TO THE SUBCONTRACTOR BY THE 5TH
 OF THE FOLLOWING MONTH. PAYMENT FOR INVOICES RECEIVED BY THE
 CONTRACTOR BY THE 25TH OF EACH MONTH WILL BE MAILED TO THE
 SUBCONTRACTOR BY THE 20TH THE FOLLOWING MONTH. INVOICES WILL
 NOT BE CONSIDERED TO BE SUBMITTED TIMELY IF THEY ARE
 INCOMPLETE OR DO NOT INCLUDE ALL CORRECT REQUIRED RELEASES.

NOTE: FINAL INVOICES MUST BE SUBMITTED NO LATER THAN
 6 MONTHS FROM COMPLETION OF WORK OR THE INVOICES WILL BE
 NULL & VOID AND NO FURTHER MONIES WILL BE OWED TO
 SUBCONTRACTOR.

AT CONTRACTOR'S SOLE OPTION, THIS CONTRACT CAN BE EXTENDED
 TO INCLUDE ADDITIONAL PHASES IN SUBSEQUENT PHASE(S). THE "PER
 PLAN" COST OF SAID ADDITIONAL PHASES SHALL BE AT EXACTLY THE
 SAME COSTS STATED HEREIN, PROVIDED HOWEVER, THAT SAID
 SUBSEQUENT PHASE(S) IS (ARE) CONTRACTED PRIOR TO DEC 31, 1998

Contractors Initials

Contractors Initials

HNR FRAMING SYSTEMS INC. 92064 S-0018C FRAMING LUMBER
 12345 CROSTWATTS CIRCLE Phone #: (619) 486-2471 A172005 BRIDGEPORT FRI COMST 15
 POMAY, CA Vendor#: 6645 701 A0701 FRAMING

Pay No: 1
 Percent: 50.00 % 50.00 %
 Description: 1ST FLOOR LAYOUT 2ND FLOOR WALLS

Seq#	Lot	Plan	Qty	Item	Check Off	Items Requested	\$ Amount
001	1	1	NR	02	Check Off	4,528.50	4,528.50
LUMBER							
002	2	2	A	04	Check Off	4,180.50	4,180.50
LUMBER							
003	3	3	BR	08	Check Off	4,689.50	4,689.50
LUMBER							
004	4	1	CR	03	Check Off	4,795.50	4,795.50
LUMBER							
005	5	1	AR	01	Check Off	4,740.00	4,740.00
LUMBER							
006	6	3	AR	07	Check Off	4,607.00	4,607.00
LUMBER							
007	7	2	C	06	Check Off	4,167.50	4,167.50
LUMBER							
008	8	1	NR	02	Check Off	4,528.50	4,528.50
LUMBER							
009	9	2	A	04	Check Off	4,180.50	4,180.50
LUMBER							
010	10	3	C	09	Check Off	4,365.00	4,365.00
LUMBER							
011	11	2	B	05	Check Off	4,235.50	4,235.50
LUMBER							
012	12	3	AR	07	Check Off	4,607.00	4,607.00
LUMBER							
013	13	3	C	09	Check Off	4,365.00	4,365.00
LUMBER							
014	14	3	BR	08	Check Off	4,689.50	4,689.50
LUMBER							

3/11
 3/11
 Contractors Initials *pd*

 HBR FRAMING SYSTEMS INC.
 13145 CROSTHWAITE CIRCLE
 POWAY, CA 92064
 Contact: S-8018C FRAMING LUMBER
 Phone #: (619) 486-2471 A1722905 BRIDGEPORT FRI CONST 15
 Vendor #: 6645 701 A0761 FRAMING

Pay No: 1 2
 Percent: 50.00 % 50.00 %
 Description: 1ST FLOOR LAYOUT 2ND FLOOR WALLS

Seq#	Lot Plan	Item	\$ Amount
015	15 2	B 05	8,471.00
LUMBER			
Check Off			4,235.50
Items Requested			4,235.50
In This Billing-->			

Contract Totals 68,079.00 68,079.00 136,158.00

9/4 9/4

Contractors Initials

HER FRAMING SYSTEMS INC.
 13145 CHOSTENWATE CIRCLE
 POWAY, CA 92064

Contact:
 Phone #: (619) 486-3471
 Vendor#: 6645

S-0810C
 A1723805
 701

FRAMING LUMBER
 BRIDGEPORT FILL CORST
 A0701 FRAMING

15

CONSTRUCTIC CONTRACT
 EXHIBIT "B"
 PAYMENT TERMS DETAIL

GENERAL TERMS:

THIS EXHIBIT "B" IS ATTACHED TO AND MADE A PART OF THAT
 SUBCONTRACT NUMBER STATED ABOVE.

SUB-CONTRACTOR AGREES TO BILL APPROVED EXTRAS AT \$1.00/HR.
 FOR LABORER'S AND \$1.00/HR FOR JOURNEMEN. EXCEPT FOR
 CONSTRUCTION CLEANUP TRADES.

PLEASE ATTACH A COPY OF THIS PAGE TO ALL CONTRACT BILLINGS.
 PROGRESS BILLING NO. _____ TOTAL CURRENT BILLING _____

NOTE: PAYMENT INVOICES MUST BE SENT TO THE COMMUNITY BUILDER
 OFFICE FOR PAYMENT:

BRIDGEPORT BUILDER OFFICE
 9605 W. CANTON TERRACE
 SAN DIEGO, CA. 92123

PAYMENT SCHEDULE:

PAYMENT FOR INVOICES RECEIVED BY THE CONTRACTOR BY THE 10TH
 OF EACH MONTH WILL BE MAILED TO THE SUBCONTRACTOR BY THE 5TH
 OF THE FOLLOWING MONTH. PAYMENT FOR INVOICES RECEIVED BY THE
 CONTRACTOR BY THE 25TH OF EACH MONTH WILL BE MAILED TO THE
 SUBCONTRACTOR BY THE 20TH THE FOLLOWING MONTH. INVOICES WILL
 NOT BE CONSIDERED TO BE SUBMITTED TIMELY IF THEY ARE
 INCOMPLETE OR DO NOT INCLUDE ALL CORRECT REQUIRED RELEASES.

NOTE: FINAL INVOICES MUST BE SUBMITTED NO LATER THAN
 6 MONTHS FROM COMPLETION OF WORK OR THE INVOICES WILL BE
 NULL & VOID AND NO FURTHER MONIES WILL BE OWED TO
 SUBCONTRACTOR.

AT CONTRACTOR'S SOLE OPTION, THIS CONTRACT CAN BE EXTENDED
 TO INCLUDE ADDITIONAL HOMES IN SUBSEQUENT PHASE(S). THE "PER
 PLAN" COST OF SAID ADDITIONAL HOMES SHALL BE AT EXACTLY THE
 SAME COSTS STATED HEREIN, PROVIDED HOWEVER, THAT SAID
 SUBSEQUENT PHASE(S) IS (ARE) CONTRACTED PRIOR TO DEC 31, 1998

Contractors Initials

[Handwritten Signature]

CONSTRUCTION CONTRACT
EXHIBIT "B"
PAYMENT TERMS DETAIL

K. ROYMAN
Payable To: & Invoice
For 5/04/98

FOR FRAMING SYSTEMS INC.
12345 CHRISTIANITE CIRCLE
POMAY, CA 92064
Contract: 8-00100 FRAMING LABOR
Phone #: (619) 486-2471 BRIDGEPORT MEL CORST 15
Vendor#: 6645 701 A0701 FRAMING

Seq#	Lot	Plan	Item	1	2	3	4	5	\$ Amount
001	1	1	BR 02	Check Off	3,056.80	2,829.20	2,829.20	1,521.60	10,196.00
FRAME-LABOR									
002	2	2	A 04	Check Off	3,223.60	2,829.40	2,829.40	1,521.20	10,412.00
FRAME-LABOR									
003	3	3	BR 08	Check Off	3,234.90	2,829.60	2,829.60	1,521.30	10,783.00
FRAME-LABOR									
004	4	4	CR 03	Check Off	3,047.70	2,829.80	2,829.80	1,521.90	10,159.00
FRAME-LABOR									
005	5	5	AR 01	Check Off	3,184.70	2,829.80	2,829.80	1,521.90	10,349.00
FRAME-LABOR									
006	6	6	AR 07	Check Off	3,319.80	2,829.20	2,829.20	1,520.60	11,066.00
FRAME-LABOR									
007	7	7	C 06	Check Off	3,987.40	2,829.60	2,829.60	1,521.80	9,958.00
FRAME-LABOR									
008	8	8	BR 02	Check Off	3,058.80	2,829.20	2,829.20	1,521.60	10,196.00
FRAME-LABOR									
009	9	9	A 04	Check Off	3,123.60	2,829.40	2,829.40	1,521.20	10,412.00
FRAME-LABOR									
010	10	10	C 10	Check Off	3,222.80	2,829.20	2,829.20	1,521.60	11,066.00
FRAME-LABOR									
011	11	11	B 05	Check Off	3,123.70	2,829.80	2,829.80	1,521.90	10,419.00
FRAME-LABOR									
012	12	12	AR 07	Check Off	3,319.80	2,829.20	2,829.20	1,520.60	11,066.00
FRAME-LABOR									
013	13	13	C 10	Check Off	3,222.80	2,829.20	2,829.20	1,521.60	11,076.00
FRAME-LABOR									
014	14	14	BR 08	Check Off	3,234.90	2,829.60	2,829.60	1,521.30	10,783.00
FRAME-LABOR									

9/11 10/2 10/2
Contractors Initials *[Signature]*

CONSTRUCTIVE
 EXHIBIT
 PAYMENT TERMS DETAIL

Contract: S-00100 FRAMING LABOR
 Phone #: (619) 486-2471 BRIDGEPORT FHL CONST 15
 Vendor #: 6645 701 A0781 FRAMING
 92064

Pay No: 1
 Percent: 30.00 %
 Description: 1ST FLOOR WALLS

Seq# Lot Plan Bly Item 2
 015 15 2 B 05 Check Off 20.00 %
 Items Requested 2.000.80
 In This Billing--> 2.000.80

Contract Totals 47,511.00 31,698.00 31,698.00 31,698.00 158,320.00
 9 10/2 10/2 11/6

Subcontractors Initials Contractors Initials

[Handwritten Signature]

GENERAL TIPS:

THIS EXHIBIT "B" IS ATTACHED TO AND MADE A PART OF THAT SUBCONTRACT NUMBER STATED ABOVE.

SUB-CONTRACTOR AGREES TO BILL APPROVED EXTRAS AT \$5.00/HR FOR LABORER'S AND \$25.00/HR FOR JOURNEMEN. EXCEPT FOR CONSTRUCTION CLEANUP TRADES.

PLEASE ATTACH A COPY OF THIS PAGE TO ALL CONTRACT BILLINGS.
PROGRESS BILLING NO. _____ TOTAL CURRENT BILLING _____

NOTE: PAYMENT INVOICES MUST BE SENT TO THE COMMUNITY BUILDER
OFFICE FOR PAYMENT;
SUBMIT TO:
BRIDGEPORT BUILDER OFFICE
9605 N. CANTON TERRACE
SAN DIEGO, CA. 92123

PAYMENT SCHEDULE:

PAID FOR INVOICES RECEIVED BY THE CONTRACTOR BY THE 5TH OF EACH MONTH. PAYMENT FOR INVOICES RECEIVED BY THE CONTRACTOR BY THE 15TH OF EACH MONTH WILL BE MAILED TO THE SUBCONTRACTOR BY THE 20TH THE FOLLOWING MONTH. INVOICES WILL NOT BE CONSIDERED TO BE SUBMITTED TIMELY IF THEY ARE INCOMPLETE OR DO NOT INCLUDE ALL CORRECT REQUIRED RELEASES.

NOTE: FINAL INVOICES MUST BE SUBMITTED NO LATER THAN 6 MONTHS FROM COMPLETION OF WORK OR THE INVOICES WILL BE WELL & VOID AND NO FURTHER MONIES WILL BE OWED TO SUBCONTRACTOR.

AT CONTRACTOR'S SOLE OPTION, THIS CONTRACT CAN BE EXTENDED TO INCLUDE ADDITIONAL HOMES IN SUBSEQUENT PHASE(S). THE *PER PLAN* COST OF SAID ADDITIONAL HOMES SHALL BE AT EXACTLY THE SAME COSTS STATED HEREIN, PROVIDED HOWEVER, THAT SAID SUBSEQUENT PHASE(S) IS (ARE) CONTRACTED PRIOR TO DEC 31, 1998.

Contractors Initials

Initials

RMR FRAMING SYSTEMS INC. S-00108 FRAMING TRUSSES
 12345 CROSTWALTE CIRCLE A-722005 BRIDGEPORT PHL CONST 15
 PUNAY, CA 92064 701 A0701 FRAMING

Pay No: 1
 Percent: 100.00 %
 Description: AT DELIVERY

Seq#	Lot	Plan	Elv	Item	\$ Amount
001	1	1	BR	02 Check Off	5,962.00
				Items Requested	
				In This Billing-->	
	2	2	A	04 Check Off	4,691.00
				Items Requested	
				In This Billing-->	
003	3	3	BR	08 Check Off	5,433.00
				Items Requested	
				In This Billing-->	
004	4	1	CR	03 Check Off	5,984.00
				Items Requested	
				In This Billing-->	
005	5	1	AR	01 Check Off	5,778.00
				Items Requested	
				In This Billing-->	
006	6	3	AR	07 Check Off	5,404.00
				Items Requested	
				In This Billing-->	
007	7	2	C	06 Check Off	4,709.00
				Items Requested	
				In This Billing-->	
008	8	1	BR	02 Check Off	5,962.00
				Items Requested	
				In This Billing-->	
009	9	2	A	04 Check Off	4,691.00
				Items Requested	
				In This Billing-->	
010	10	3	C	09 Check Off	5,433.00
				Items Requested	
				In This Billing-->	
011	11	2	B	05 Check Off	4,741.00
				Items Requested	
				In This Billing-->	
012	12	3	AR	07 Check Off	5,404.00
				Items Requested	
				In This Billing-->	
013	13	3	C	09 Check Off	5,502.00
				Items Requested	
				In This Billing-->	
014	14	3	BR	08 Check Off	5,433.00
				Items Requested	
				In This Billing-->	
				FRAME TRUSSES	

Contractors Initials  Contractors Initials 

K. NOVARI RIDGEPORT 723 CONTRACT 2 PO974H
 Payment To. Invoice EXHIB. 00000000
 For 5/04/98 PAYMENT TERMS DETAIL Run 10.02.13 05/04/98

HIR FRAMING SYSTEMS INC. 8-0010H FRAMING TRUSSES
 12345 CROSTWALTE CIRCLE A:723005 BRIDGEPORT PER CUNT 15
 POWAY, CA 92064 701 A0701 FRAMING

Pay No: 1
 Percent: 100.00 %
 Description: AT DELIVERY

Seq#	Lot	Plan	Slv	Item	\$ Amount
015	15	2	B	05	4,741.00
Check Off					
Items Requested					
In This Billing-->					
FRAME TRUSSES					
Contract Totals					79,887.00

(79,887.00

Contractors Initials *[Signature]* Contractors Initials *[Signature]*

12345 CROSTHWAITE CIRCLE 92064
 POMA, CA

FRAMING TRUSSES
 BRIDGEPORT FRI CONST
 15

8-00108
 A1722005
 701

Contact: ...
 Phone: (619) 486-2471
 Vendor: 6645

GENERAL TERMS:

THIS EXHIBIT "B" IS ATTACHED TO AND MADE A PART OF THAT
 SUBCONTRACT NUMBER STATED ABOVE.

SUB-CONTRACTOR AGREES TO BILL APPROVED EXTRAS AT \$8.00/HR.
 FOR LABORER'S AND \$12.00/HR FOR JOINTMENTER. EXCEPT FOR
 CONSTRUCTION CLEANUP TRADES.

PLEASE ATTACH A COPY OF THIS PAGE TO ALL CONTRACT BILLINGS.
 PROGRESS BILLING NO. TOTAL CURRENT BILLING

PAYMENT SCHEDULE:

PAYMENT FOR INVOICES RECEIVED BY THE CONTRACTOR BY THE 10TH
 OF EACH MONTH WILL BE MAILED TO THE SUBCONTRACTOR BY THE 5TH
 OF THE FOLLOWING MONTH. PAYMENT FOR INVOICES RECEIVED BY THE
 CONTRACTOR BY THE 25TH OF EACH MONTH WILL BE MAILED TO THE
 SUBCONTRACTOR BY THE 20TH THE FOLLOWING MONTH. INVOICES WILL
 NOT BE CONSIDERED TO BE SUBMITTED TIMELY IF THEY ARE
 INCOMPLETE OR DO NOT INCLUDE ALL CORRECT REQUIRED RELEASES.

NOTE: FINAL INVOICES MUST BE SUBMITTED NO LATER THAN
 6 MONTHS FROM COMPLETION OF WORK OR THE INVOICES WILL BE
 NULL & VOID AND NO FURTHER MONIES WILL BE OWED TO
 SUBCONTRACTOR.

NOTE: PAYMENT INVOICES MUST BE SENT TO THE COMMUNITY BUILDER
 OFFICE FOR PAYMENT.
 BRIDGEPORT BUILDER OFFICE
 9605 W. CANTON TERRACE
 SAN DIEGO, CA. 92123

AT CONTRACTOR'S SOLE OPTION, THIS CONTRACT CAN BE EXTENDED
 TO INCLUDE ADDITIONAL HOMES IN SUBSEQUENT PHASE(S). THE "PER
 PLAN" COST OF SAID ADDITIONAL HOMES SHALL BE AT EXACTLY THE
 SAME COSTS STATED HEREIN, PROVIDED HOWEVER, THAT SAID
 SUBSEQUENT PHASE(S) IS (ARE) CONTRACTED PRIOR TO DEC 31, 1998

Contractors Initials

Initials

CERTIFICATE OF SERVICE

I, William A. Hazeltine, do hereby certify I am not less than 18 years of age and that on this 8th day of April 2010, I caused a copy of the within *Declaration of Yvette M. Dumas in Support of K. Hovnanian at Bridgeport, Inc 's Motion for Relief from Automatic Stay* to be served upon the parties listed below via U.S. Mail, First Class, postage pre-paid

Christopher J. Giaimo, Jr., Esq.
Katie A. Lane, Esq.
Arent Fox LLP
1050 Connecticut Avenue, NW
Washington, DC 20036-5339

Bradford J. Sandler, Esq.
Jennifer R. Hoover, Esq.
Jennifer E. Smith, Esq.
Benesch, Friedlander, Coplan & Aronoff LLP
222 Delaware Avenue, Suite 801
Wilmington, DE 19801

Under penalty of perjury, I declare the foregoing to be true and correct.

April 8, 2010
Date

/s/ William A. Hazeltine
William A. Hazeltine