

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

In re:	:	Chapter 11
	:	
Building Materials Holdings	:	Case No. 09-12074 (KJC)
Corporation, <i>et al.</i> ,	:	Jointly Administered
	:	
Debtors.	:	Objection Deadline: September 11, 2009 at 4:00 p.m.
	:	Hearing Date: September 18, 2009 at 1:00 p.m.

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

Greystone Homes, Inc. (“Greystone”) hereby moves (the “Motion”) this Court for an order granting relief from the automatic bankruptcy stay so that it may proceed *only* against the available insurance assets of debtor H.N.R. Framing Systems, Inc. (“HNR”) pursuant to 11 U.S.C. § 362. In support of this Motion, Greystone relies upon the Declaration of Rick Carey (“Carey Decl.”) and states as follows:

BACKGROUND

1. On or about June 16, 2009, HNR filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Carey Decl., ¶ 2.
2. Greystone is a creditor of HNR and, therefore, qualifies as a party in interest in this case. Carey Decl., ¶ 3.
3. On or about November 13, 2007, Dandan Pan and various homeowners (collectively, the “Homeowners”) commenced litigation against Greystone relating to a certain housing development located in Carlsbad, California (the “Project”), and 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 as Exhibit “A” to Carey Decl. Greystone moved to compel arbitration, which the Homeowners did not oppose, and the matter is known as Case No. 37-2007-00081892 in the San Diego County Superior Court (the “Litigation”). Carey Decl., ¶ 4.

4. On or about October 15, 2008, Greystone filed a Cross-Complaint for indemnity, comparative equitable indemnity, contribution, declaratory relief, express contractual indemnity, breach of contract and negligence (the “Cross-Complaint”) against HNR, among others, based upon the alleged construction defects caused by HNR during HNR’s performance of work and/or services and/or providing of materials which were incorporated into the development, construction and/or sale of the Project. A true and correct copy of the Cross-Complaint is attached as Exhibit “B” to Carey Decl. Carey Decl., ¶ 5.

5. No trial date has been set in the Litigation. Based on the information produced in discovery in the Litigation, it appears that approximately one third of the Homeowners’ claims implicate HNR. Carey Decl., ¶ 6.

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

7. Greystone states, on information and belief, that HNR is insured under one or more general liability and excess liability insurance policies and that Greystone’s claims can or have been tendered under those liability insurance policies. Carey Decl., ¶ 8.

8. Greystone states, on information and belief, that on or about February 10, 1998, HNR and Greystone executed a Subcontractor Agreement whereby HNR agreed to provide materials and labor at the Project. A true and correct copy of the subcontract is attached as Exhibit “C” to Carey Decl. This subcontract was later amended 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

\$1,000,000.00. Carey Decl., ¶ 9.

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

10. Greystone states, on information and belief, 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. Carey Decl., ¶ 11.

11. Greystone states, on information and belief, 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. Carey Decl., ¶ 12.

12. Greystone states, on information and belief, that its instant pending lawsuit against HNR will be defended at no expense to HNR. Carey Decl., ¶ 13.

13. If Movant Greystone is not permitted to pursue its interests in the insurance policies, then Greystone will suffer irreparable injury, loss and damage. Carey Decl., ¶ 14.

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

RELIEF REQUESTED

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

16. Greystone 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.

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

BASIS FOR RELIEF REQUESTED

18. The purpose of the automatic stay is "to prevent certain creditors from gaining a preference for their claims against the debtor; to forestall the depletion of the debtor's assets due to legal costs in defending proceedings against it; and, in general, to avoid interference with the orderly liquidation or rehabilitation of the debtor." *St. Croix Condominium Owners v. St. Croix Hotel*, 682 F.2d 446, 448 (3d Cir. 1982). However, the automatic stay is not meant to be absolute, and in appropriate instances relief may be granted. *Wedgewood Inv. Fund, Ltd. v. Wedgewood Realty Group, Ltd. (In re Wedgewood)*, 878 F.2d 693, 697 (3d Cir. 1989).

19. Section 362(d)(1) of the Bankruptcy Code provides that "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay – (1) for cause, including the lack of adequate protection of an interest in property of such party in interest...." "Cause [, as defined in Section 362(d)(1),] is a flexible concept and courts often conduct a fact intensive, case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the [automatic] stay." *In re The SCO GROUP, INC.*, 395 B.R. 852, 856 (Bankr. D. Del. 2007) (internal citations omitted). This Court utilizes the following "three-prong balancing test to determine whether to grant relief from the stay: (1) whether any great prejudice to either the bankrupt estate or the debtor will result from continuation of the civil suit; (2) whether the hardship to the non-bankrupt party by maintenance of the stay considerably outweighs the hardship to the debtor; and (3) the

probability of the creditor prevailing on the merits.” *Id.* at 857; *Izzarelli v. Rexene (In re Rexene Prods. Co.)*, 141 B.R. 574, 576 (Bankr. D. Del. 1992). In particular, this Court confirmed that the legislative intent of Section 362(d)(1) was to emphasize the “importance of allowing a case to continue in the original tribunal so long as there is no prejudice to the estate.” *Id.*

20. Here, application of the Court’s balancing test favors granting Greystone relief from the automatic stay for three reasons. First, there will be no great prejudice to HNR or HNR’s bankrupt estate because Greystone agrees not to proceed against either HNR or its estate in excess of HNR’s insurance coverage. In addition, to the extent that HNR’s insurance coverage does not satisfy such liability of HNR, if any, Greystone agrees to waive its right to satisfaction of its claim and participation in any distribution of assets of HNR’s estate. Second, Greystone will suffer considerable hardship if the stay is not lifted because it will not be able to continue prosecution of its Cross-Complaint and will be left to defend itself without the benefit of its additional insured status under HNR’s insurance policies. Third, the likelihood of Greystone prevailing on the merits is extremely high because HNR’s obligations to defend, indemnify and name Greystone as an additional insured were agreed to and formalized by written contract, to which HNR has never objected. Therefore, relief from the automatic stay should be granted.

WHEREFORE, Greystone respectfully requests:

1. That the automatic stay imposed pursuant to 11 U.S.C. § 362 be modified forthwith to permit Greystone to proceed with prosecution of its Cross-Complaint against HNR and others;
2. That Greystone be allowed to assert its claims against the liability insurance policies of HNR;
3. That in the event Greystone obtains a judgment against HNR or otherwise resolves the Litigation, Greystone may receive HNR’s insurance policy proceeds without any

further approval by this Court; and

4. For such other and further relief as the Court may deem proper, just and equitable.

Dated: August 19, 2009
Wilmington, Delaware

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**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 RICK CAREY IN SUPPORT OF GREYSTONE HOMES, INC.'S
MOTION FOR RELIEF FROM STAY**

I, Rick Carey, declare:

1. I am an employee of Greystone Homes, Inc. ("Greystone"). The facts set forth herein are of my own personal knowledge and if sworn I could and would testify competently thereto.
 2. On or about June 16, 2009, H.N.R. Framing Systems, Inc. ("HNR") filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, Delaware Bankruptcy Court Case No. 09-12081 (which has since been consolidated into Case No. 09-12074).
 3. Greystone is a creditor of HNR and, therefore, qualifies as a party in interest in this case.
 4. On or about November 13, 2007, Dandan Pan and various homeowners (collectively, the "Homeowners") commenced litigation against Greystone relating to a certain housing development located in Carlsbad, California (the "Project"), and 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." Greystone moved to compel arbitration, which the Homeowners
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8. Greystone believes that HNR is insured under one or more general liability and excess liability insurance policies and that Greystone's claims can or have been tendered under those liability insurance policies.

9. I am informed and believe that on or about February 10, 1998, HNR and Greystone executed a Subcontractor Agreement whereby HNR agreed to provide materials and labor at the Project. A true and correct copy of the subcontract is attached hereto as Exhibit "C." This subcontract was later amended 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 \$1,000,000.00.

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11. Greystone 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. Greystone 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. Greystone believes that its instant pending lawsuit against HNR will be defended at no expense to HNR.

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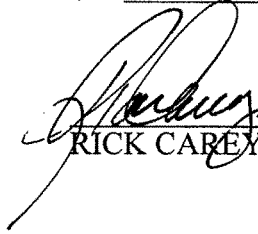
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I declare under penalty of perjury under the laws of the United States of America under the laws of the State of California that the foregoing is true and correct.

Executed this 3 day of AUGUST, 2009, at San Diego, California.



RICK CAREY

4811-5012-3524.1

Exhibit A

1 Luke P. Ryan, Esq., SBN 167634
2 Megan M. Chodzko, Esq., SBN 227898
3 SHINNICK & RYAN LLP
4 1810 State Street
5 San Diego, CA 92101
6 Tel: (619) 239-5900
7 Fax: (619) 239-1833

8 Attorneys for Plaintiffs

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN DIEGO

11 DANDAN PAN, an individual, and as an
12 INDIVIDUAL HOMEOWNER CLASS
13 REPRESENTATIVE, and all others similarly
14 situated,

15 Plaintiffs,

16 vs.

17 GREYSTONE HOMES, INC., A Delaware
18 Corporation and DOES 1-500, inclusive,

19 Defendants.

Case No.:

[CONSTRUCTION DEFECT]
[CLASS ACTION]

CLASS ACTION COMPLAINT
FOR DAMAGES ON STRICT LIABILITY;
BREACH OF EXPRESS WARRANTIES;
BREACH OF IMPLIED WARRANTIES OF
MERCHANTABILITY; BREACH OF
IMPLIED WARRANTIES OF FITNESS;
NEGLIGENCE.

20 PLAINTIFFS for causes of action against DEFENDANTS, and each of them, demand a jury
21 trial for each cause of action and alleges as follows:

22
23 **PRELIMINARY ALLEGATIONS**

24 1. DANDAN PAN, an individual, and as an INDIVIDUAL HOMEOWNER CLASS
25 REPRESENTATIVE, and all others similarly situated, (Herein after PLAINTIFFS) are all
26 individuals residing within the City of Carlsbad, County of San Diego, State of California and own
27 real property within the housing development known as COBBLESTONE SEA VILLAGE
28 (hereinafter referred to as the "SUBJECT PROJECT").

1 2. For convenience, the real property of the PLAINTIFFS is legally described as
2 including, but not limited to all lots in MarBrisa, of Map No. 13428 and 13429, Tract No. 84-82 A in
3 the city of Carlsbad, County of San Diego, State of California.

4 3. PLAINTIFFS bring this action as a class action for prospective class certification, as
5 REPRESENTATIVES of all individuals who own one or more properties at "SUBJECT
6 PROPERTY."

7 a. PLAINTIFFS are informed and believe and based thereon alleges that the class,
8 consisting of the owners of approximately 211 properties, estimated to comprise over 422 total family
9 members is so numerous that joinder of all homeowners individually would be impractical and
10 burdensome.

11 b. PLAINTIFFS are informed and believe and based thereon allege that this action
12 involves questions of law and fact common to the entire class in that the land and improvements of all
13 members of the class have suffered injuries due to original construction defects.

14 c. PLAINTIFFS are informed and believe and based thereon allege that the claims
15 of PLAINTIFFS are typical of the class of homeowner members generally, and the defenses of the
16 defendants are also believed to be typical of one another.

17 d. PLAINTIFFS are informed and believe and based thereon allege that
18 PLAINTIFFS can fairly and adequately protect the interests of all members of the class.

19 e. PLAINTIFFS are informed and believe and based thereon allege that questions
20 of law and fact common to the properties of the class predominate over questions affecting the
21 properties of the individual class members, and that the interests of justice and efficiency will be best
22 served by bringing this action as a class action with regard to the aforementioned interests.

23 4. **NUMEROSITY FACTORS:** There are believed to be at least 211 different properties,
24 with an average density of 2 persons per home, or a total of 422 **PLAINTIFFS**.

25 5. **COMMONALITY FACTORS:** All of the DEFENDANTS are the same for each of
26 the actions. All of the products are the same: to wit: mass produced single family dwellings in the
27 Subject Property, all built by the same developer. There is a common theory of defects from mass
28 production: Water intrusion producing property damage, mold growth and subsequent deterioration of

1 building materials, water intrusion at stucco, windows and roofs, stucco deficiencies and other similar
2 defects.

3 6. **TYPICALITY:** PLAINTIFFS are informed and believe and based thereon allege that
4 the claims of PLAINTIFFS are typical of the class of homeowner members generally, and the
5 anticipated affirmative defenses of the defendants are also believed to be typical of one another. The
6 original design, materials, and/or workmanship is typical in that the homes have defects in the stucco,
7 plumbing, roofing, foundations, concrete, stucco, windows, stucco, gutter systems, pavement,
8 flatwork, the structures as well as the problems and conditions discussed under commonality factors.

9 7. The resulting damages are typical in that the homes have had water damage inside
10 from, including but not limited to, cracked stucco, leaking roofs, condensate lines, leaking windows,
11 pipes and shower assemblies.

12 8. The causes are typical in that water damage was caused by failure to build stucco
13 systems, roofs, windows, condensate lines and pipes in conformity with building codes and industry
14 standards.

15 9. The designs and methods of repair are typical in that water damage caused by faulty
16 stucco systems, roofs, windows, stucco systems, and drainage pipes can be repaired by properly
17 repairing the buildings, roofs, stucco systems, windows and cracked and leaking drainage pipes.

18 10. The damages for costs of repair are typical in that each home will require repairs to its
19 buildings, stucco systems, roofs, windows and plumbing pipes and replacement of cracked and leaking
20 drainage pipes and condensate lines, and many other similar repairs.

21 11. The PLAINTIFFS selected as class REPRESENTATIVES **have conditions and**
22 **damages typical of the problems experienced by the 422 homeowners** who are likely to become
23 members of this class. For this reason, PLAINTIFFS are informed and believe and based thereon
24 allege that PLAINTIFFS can fairly and adequately protect the interests of all members of the class. A
25 class action will help to speed the resolution of these cases, expedite discovery, streamline the
26 litigation, and help all of the PLAINTIFFS, all of the DEFENDANTS and the Court because of the
27 common issues that will affect all of the PLAINTIFFS and DEFENDANTS that will have to be
28 litigated over and over again if a series of individual cases are brought. None of the PLAINTIFFS

1 have previously pursued suit individually, so all of the cases can be handled expeditiously at one time,
2 without any individual's trial date being delayed, and without a later motion for consolidation of
3 approximately 211 separate lawsuits for approximately 211 different PLAINTIFF families.

4 12. **COMMON QUESTIONS OF LAW AND FACT:** The DEFENDANTS are likely to
5 allege the **same** or similar **affirmative defenses** in all of these cases, such as a failure to state a cause
6 of action; the statute of limitations, responsibility of third parties such as sub-contractors (whose
7 identities are not yet known to PLAINTIFFS and thus are designated as part of DOES 1 - 500).
8 PLAINTIFFS believe that common questions of fact affect the individual class members, since the
9 failure to construct homes in the tract will **affect the prices of all homes in the tract, and**
10 **surrounding areas** causing the same or similar damages to all homeowners. The homes appear to
11 have all been completed during substantially the same time frame. The PLAINTIFFS have **common**
12 **damages** as well; **water damage** from cracked stucco; leaking pipes; leaking roofs, stucco and
13 windows; and slab cracks. The **testimony** to be presented by the estimated more than 422
14 PLAINTIFFS **will be the same or similar**. The testimony from the anticipated DEFENDANTS and
15 CROSS-DEFENDANTS (after the developer cross-complains against various subcontractors) will be
16 the same. If over 422 different PLAINTIFFS need to try their cases individually, each trial is likely to
17 last a month, so that thousands of court days would be necessary, based on information and belief.
18 However, if the action is presented as a Class Action, it is anticipated this matter can be completed in
19 under 60 court days for trial. In addition, if each of the 422 or more PLAINTIFFS are subjected to a
20 deposition, as a witness to damages for their neighbors, in addition to their own case, there is a
21 potential for several hundred depositions, which would be burdensome and oppressive. **A class action**
22 **would help with discovery greatly. The DEFENDANTS would also benefit** since then only one
23 deposition (although it might last a few days) would be taken of each DEFENDANT, rather than one
24 deposition for each of cases. Interrogatories and Production of Documents will be streamlined and
25 less expensive. As a result, the interests of justice and efficiency will be best served by bringing this
26 action as a class action with regard to the aforementioned interests. Each of these cases shares
27 common questions which are significantly related to one another.

1 13. PLAINTIFFS are individuals who are or may hereinafter become owners of the
2 residential property and dwellings which are the subject of this lawsuit. Said PLAINTIFFS' interests
3 and rights in said residential dwellings have been or may hereinafter become affected by the damage
4 to the property which is the subject of this lawsuit. Said PLAINTIFFS have been named to preserve
5 their right to recovery as such future owner and other related parties may be entitled by virtue of the
6 facts contained herein. PLAINTIFFS will amend this Complaint to allege the true names and
7 capacities when ascertained or upon proof at time of trial.

8 14. PLAINTIFFS are informed and believe and based thereon allege that at all times herein
9 relevant DOES 1 through 500 were Developer Defendants.

10 15. PLAINTIFFS are informed and believe and based thereon allege that at all times herein
11 relevant DEFENDANTS DOES 1 through 500 were business entities, municipalities, individuals, or
12 otherwise involved in the sale, distribution, construction, development, purchase, or promotion of
13 homes purchased by PLAINTIFFS herein, or were involved with those entities, municipalities,
14 individuals, or otherwise involved in the sale, distribution, construction, development, purchase, or
15 promotion of homes purchased by PLAINTIFFS, herein as a partner, joint venturer, co-developer,
16 employee, employer, contractor, sub-contractor, promoter, loaning institution, inspector, guarantor,
17 solicitor, retailer, distributor, marketer, agent, principal, materialmen, architects and/or engineers, or
18 other persons, entities or professionals who participated in the process of design, engineering, and/or
19 construction of the subject structures on the subject property, and who performed works of labor,
20 supplied materials, equipment and/or services necessary for the building and construction, including
21 supervision of construction of the subject buildings with the knowledge that the buildings would be
22 sold to and used by members of the public, including PLAINTIFFS herein, or in some other legal
23 manner responsible for the actions of the other DEFENDANTS herein.

24 16. PLAINTIFFS are informed and believe, and thereon allege that, at all times herein
25 mentioned:

26 a. DEFENDANT, GREYSTONE HOMES, INC., A Delaware Corporation, is doing
27 business in California in accordance with the laws of the State of California, and has conducted
28

1 business within the County of San Diego, State of California, including but not limited to
2 development, construction, improvement, conversion and/or sale of the SUBJECT PROPERTY.

3 17. DEFENDANTS DOES 1 through 500, inclusive, whether individual, corporate, an
4 association or otherwise, are fictitious names of DEFENDANTS whose true names and capacities are,
5 at this time, unknown to PLAINTIFFS. PLAINTIFFS are informed and believe and based thereon
6 allege that at all times herein mentioned all of the DEFENDANTS sued herein as DOES 1 through
7 500, inclusive, were and/or are developers, owners, general contractors, subcontractors, builders,
8 architects, engineers or otherwise, and acted for themselves or as the agent, servant, and employee of
9 their co-defendants, and in doing the things hereafter mentioned were acting in the scope of their
10 authority as such agents, servants and employees, and with the permission and consent of their co-
11 defendants; and that each of said fictitiously named DEFENDANTS, whether acting for themselves or
12 as agents, corporations, associations, business entities or otherwise, are in some way liable or
13 responsible to PLAINTIFFS on the facts hereinafter alleged, and proximately caused injuries and
14 damages as hereinafter alleged. At such time as DEFENDANTS' true names become known to
15 PLAINTIFFS, PLAINTIFFS will ask leave of this Court to amend this complaint to insert said true
16 names and capacities.

17 18. PLAINTIFFS are informed and believe and based thereon allege that at all times
18 material herein, DEFENDANTS, including DOES 1 through 500 inclusive, and each of them, were
19 either individuals, sole proprietorships, corporations, partnerships, business entities and/or
20 organizations who conducted business in the County of San Diego and/or participated in the
21 development, construction and/or sale of the real property and construction as set forth in more
22 particular detail hereinafter. DEFENDANTS had and have an alter ego relationship such that
23 inequitable results will follow if the separateness is respected and the DEFENDANTS have a unity of
24 interest in the liability and damages alleged herein.

25 19. PLAINTIFFS will notify all prospective class members of the pendency of this action
26 as soon as practical.

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1 **FIRST CAUSE OF ACTION**

2 **(Strict Liability Against Defendants and DOES 1-100 only)**

3 20. PLAINTIFFS reallege and incorporate by reference paragraphs 1 through 19 as though
4 fully set forth again herein.

5 21. PLAINTIFFS are informed and believe and thereupon allege that DEFENDANTS
6 DOES 1 through 100, and each of them, as mass producers, mass developers, mass constructors of
7 homes and sellers and/or owners commenced to develop the Subject Property by causing the
8 construction of the subject residential lots and structures, which structures were intended to be used as
9 residential dwellings; that at all times herein mentioned, said DEFENDANTS, and each of them, acted
10 as developers of the Subject Property for the purposes set forth herein.

11 22. PLAINTIFFS are informed and believe and based thereon allege that DEFENDANT
12 DOES 1 through 100, and each of them, as mass developers, sellers, and/or mass builders of the
13 subject structures, knew that the subject structures would be sold to and be used by members of the
14 general public for the purpose of residential units, and said DEFENDANTS knew or reasonably
15 should have known that the persons who would purchase said units would do so without inspection for
16 the defects set forth herein.

17 23. DEFENDANTS, and each of them, at all times herein mentioned, were and are
18 merchants with respect to the subject homes as said DEFENDANTS, and each of them, impliedly
19 warranted that the real property, and structures thereon, including but not limited to, drainage systems,
20 concrete slabs, soils, stucco, roofs, floors, walls, ceilings, patios, doors, windows, sliding glass doors,
21 decks, shear walls, concrete flatwork, sheet metal, insulation, electrical systems, heating, ventilation
22 and air conditioning systems, pavement system, plumbing and plumbing fixtures, and irrigation
23 systems were of merchantable quality and were erected in a reasonably workmanlike manner.

24 24. DEFENDANT DOES 1 through 100, and each of them, as developers, mass-
25 developers, mass-constructors and mass-producers of the SUBJECT PROPERTY are strictly liable
26 and responsible to PLAINTIFFS for all damages suffered as a result of the above-described
27 deficiencies.

28 ///

1 25. Within three years past, PLAINTIFFS have discovered that the project has and is
2 experiencing defective conditions and that the Subject Property and structures located thereon, in
3 particular, the concrete slabs, stucco, water intrusion membranes, roofs, floors, walls, ceilings, doors,
4 windows, sliding glass doors, decks, shear walls, concrete flatwork, sheet metal, insulation, electrical
5 systems, heating, ventilation and air conditioning systems, pavement system, plumbing and plumbing
6 fixtures, irrigation systems, and structural systems, were and are not of merchantable quality, nor were
7 they designed, erected, constructed or installed in a workmanlike manner but instead, are defective
8 and, as now known, the subject structures demonstrate improper, non-existent, and/or inadequately
9 designed and/or constructed, concrete slabs, stucco, water intrusion membranes, roofs, floors, walls,
10 ceilings, doors and windows, sliding glass doors, shear walls, concrete flatwork, sheet metal,
11 insulation, electrical systems, heating, ventilation and air conditioning systems, pavement system,
12 plumbing and plumbing fixtures, irrigation systems, and structural systems, so the subject structures as
13 constructed are defective and improper and have resulted in damaged and defective structures and
14 defective real property. These defective components have damaged other systems or other
15 components in the homes, property, and subject project. PLAINTIFFS are informed and believe that
16 various types of resulting property damage have manifested from the aforementioned defects and
17 deficiencies in various places of the project at various times from the completion of construction to the
18 present. PLAINTIFFS are informed and believe and thereupon allege that the structures may be
19 additionally defective in ways and to extent not precisely known, but which will be inserted herein by
20 way of amendment or will be established at the time of trial, according to proof. These defects were
21 neither known nor apparent by reasonable inspection by PLAINTIFFS at the time Defendant sold the
22 SUBJECT PROPERTY to PLAINTIFFS.

23 26. PLAINTIFFS are informed and believe and thereon allege that DEFENDANT DOES 1
24 through 100, and each of them, knew or had reason to know that PLAINTIFFS would rely on their
25 skill, judgment, and expertise in selecting, investigating, surveying, evaluating, testing, compacting,
26 grading, and preparing the site of the residential property, and in designing, engineering, inspecting,
27 manufacturing, and constructing the residential property, to be reasonably fit for its intended purpose
28 and be free of defects.

1 27. Within three years past, PLAINTIFFS became aware of facts which thereafter upon
2 investigation, resulted in PLAINTIFFS being informed that portions of the residential property
3 buildings, including, but not limited to the roofs, windows, sliding glass doors, heating, ventilation and
4 air conditioning, plumbing, concrete flatwork, irrigation systems, stucco, and garages had been
5 inadequately repaired, renovated and/or restored so that the above-described defective conditions
6 existed and do now exist and the subject building and property are defective, not of merchantable
7 quality and not fit for the purpose of permitting persons to reside therein in a proper manner or
8 fashion.

9 28. PLAINTIFFS are informed and believe and thereon allege that DEFENDANTS, and
10 each of them, had substantial and continuing involvement with the project, including the following:

11 a. Substantial reconstruction, rehabilitation, improvement and construction at the
12 project, including, but not limited to, repairs to plumbing, HVAC, stucco, garages, and roofing
13 systems.

14 b. On numerous occasions DEFENDANTS represented to PLAINTIFFS that,
15 plumbing fixtures, HVAC, garages, paving, stucco and roofing systems, foundations, including other
16 problems, were not inadequate and that repairs had been successfully performed thereby inducing
17 reasonable reliance thereupon by PLAINTIFFS that conditions were not in need of repairs, thereby
18 tolling applicable statute of limitations. DEFENDANTS are estopped from asserting any potentially
19 applicable statutes of limitations.

20 29. PLAINTIFFS are informed and believe and based thereon allege that the above-
21 referenced structures may be additionally defective in ways and to the extent not now precisely
22 known, but which will be inserted herein by way of amendment at the time of trial according to proof.

23 30. Because these are single family homes, PLAINTIFFS have no need to employ
24 California Civil Code §1375 et seq. to notify DEFENDANTS of the defective condition of the subject
25 properties before filing suit. DEFENDANTS have failed to acknowledge responsibility for all of the
26 same or otherwise have failed to make the appropriate restoration and/or repair to the structures at
27 DEFENDANTS' cost and expenses. PLAINTIFFS have provided adequate notices of various
28 breaches alleged herein.

1 31. PLAINTIFFS are informed and believe and based thereon allege that the items
2 generally referred to and particularly described herein are "latent deficiencies" within the meaning of
3 California Code of Civil Procedure §337.15 in that the above-described defects arose out of, were
4 attributable to and are directly and proximately caused by the above-described latent deficiencies in
5 the design, specifications, planning, supervision, observation of construction, construction,
6 development and/or improvement of the subject premises and subject structures, and that prior to the
7 time when it was discovered by PLAINTIFFS as set forth herein, could not have been discovered by
8 the exercise of reasonable diligence. PLAINTIFFS, at all times herein mentioned, relied on the skill
9 of Defendant DOES 1 through 100, and each of them, in producing homes that are reasonably fit for
10 their intended purpose.

11 32. PLAINTIFFS are still not fully aware of all of the causes, the full extent and possible
12 legal significance of the results or causes of the property conditions herein above-described due to the
13 loss being continual and latent in nature. PLAINTIFFS are lay individuals who have required expert
14 consultations to assist in review of property conditions. PLAINTIFFS are still not informed of any
15 causes or entire results of the full extent of these latent deficiencies, nor are PLAINTIFFS fully
16 informed of the potential causes or amount of the resultant damage due to the loss being continual and
17 latent in nature.

18 33. PLAINTIFFS are informed and believe and thereon allege that DEFENDANTS, and
19 each of them, did inspect and market said individual residential units with full knowledge of the causes
20 and effects of defects in their construction of the subject property, the deficiencies in design,
21 installation and supervision thereof and, in willful and reckless disregard of the defective conditions,
22 causes and results. In particular, PLAINTIFFS are informed and believe and thereon allege that
23 Defendants, and each of them, in their inspection, design, installation and supervision of said homes,
24 engaged in a calculated course of conduct to reduce their costs of development by the use of
25 substandard, deficient and inadequate design, construction techniques and materials.

26 34. PLAINTIFFS are informed and believe and thereon allege DEFENDANTS, and each
27 of them, ignored curing the causes of the defects and pursued a course of construction so as to increase
28

1 their profit from the project at the expense of the ultimate purchaser in that said defects became latent
2 defects, not apparent from casual inspection, but would only become apparent as time passed.

3 35. PLAINTIFFS are informed and believe and based thereon allege that any and all repair
4 attempts by DEFENDANTS, and each of them, failed to adequately correct said property damages and
5 deficiencies thereby resulting in further property damages.

6 36. PLAINTIFFS are informed and believe and thereupon allege that instead of causing the
7 necessary and required reconstruction of subject property, DEFENDANTS have caused cosmetic,
8 temporary or ineffective repairs to be made to various portions of subject property for the purpose of
9 leading PLAINTIFFS to believe that Defendants were resolving and correcting all deficiencies. By
10 virtue of such conduct, DEFENDANTS are estopped to assert that the PLAINTIFFS have not
11 commenced this action in a timely fashion and is further estopped to assert that the PLAINTIFFS may
12 not seek the damages herein sought.

13 37. PLAINTIFFS are informed and believe and thereupon allege that the above-described
14 defects arose out of, were attributable to, and are directly and proximately caused by the above-
15 described deficiency in the design, specification, planning, supervision, observation of construction,
16 construction, development and/or improvement and any repairs of the Subject Property, and that prior
17 to the time when it was discovered by PLAINTIFFS as set forth herein, could not have been
18 discovered by the exercise of reasonable diligence.

19 38. PLAINTIFFS are informed and believe and thereon allege that there is a meritorious
20 factual basis for each cause of action herein alleged, based upon PLAINTIFFS' review, consultation,
21 and inspections by and with consultants prior to the filing and service of the original complaint.

22 39. PLAINTIFFS are informed and believe and based thereon allege that DEFENDANTS,
23 and each of them, including DOES, ignored the defects in their construction, and pursued a course of
24 construction aimed at increasing their profit from the project at the expense of the ultimate purchaser,
25 who purchased homes containing latent defects, not apparent from casual inspection, but which only
26 became apparent with the passage of time. Due to DEFENDANTS' inspections through contractors,
27 architects, and engineers, DEFENDANTS knew or should have known of the poor, substandard, and
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1 defective conditions of the structures and their components prior to and during the construction and/or
2 marketing of said residential properties.

3 40. PLAINTIFFS are informed and believe and thereupon allege that as a direct and
4 proximate result of the defects set forth herein, PLAINTIFFS have suffered damages in an amount
5 precisely unknown, but believed to be within the jurisdiction of this Court in that it has been and will
6 hereafter be required to perform works of repair, restoration, and construction to portions of the
7 structures to prevent further damages and to restore the structures to their proper condition.
8 PLAINTIFFS will establish the precise amount of such damages at trial, according to proof, for the
9 following damages:

10 a. For correction of problems, specifically expert investigation, redesign and
11 reconstruction of the problem areas generally referred to and particularly described herein, but not
12 limited thereto, PLAINTIFFS have suffered and/or will suffer damages in an amount the full nature
13 and extent of which shall be ascertained according to proof at trial.

14 b. For damages which are the legal/proximate consequence of the problems set
15 forth herein, PLAINTIFFS have suffered or will suffer damages to real property and structures
16 thereon, and other property in an amount in excess of the jurisdictional minimum, the full nature and
17 extent of which damages shall be ascertained according to proof at trial.

18 c. For damages which are the legal/proximate consequence of the problems,
19 including but not limited to those specified herein, to all common areas and enclosures, PLAINTIFFS
20 have suffered and/or will suffer damages the full nature and extent of which shall be ascertained
21 according to proof at trial.

22 d. For diminution in value to buildings in general (in areas not to be
23 reconstructed), as the result of accelerated aging, which is the legal/proximate result of the problems,
24 including but not limited to those specified herein. PLAINTIFFS have suffered and/or will suffer
25 damages in an amount the full nature and extent of which shall be ascertained according to proof at
26 trial.

27 e. For relocation costs and related costs when permanent repairs are effectuated,
28 which shall be ascertained according to proof at trial.

1 f. In addition, for certain temporary emergency repairs and expert investigation,
2 which were completed at PLAINTIFFS' expense, the full nature and extent of which will be
3 ascertained according to proof at trial.

4 g. For lost mortgage payments, insurance payments, taxes, utility payments, and
5 other related expenses due to un-inhabitable residences, which are the legal/proximate consequence of
6 the problems including, but not limited to, those specified herein. PLAINTIFFS have suffered and/or
7 will suffer damage the full nature and extent of which shall be ascertained according to proof at trial.

8 h. For lost or diminished rental income which is the legal/proximate consequence
9 of the problems, conditions and damages including but not limited to those specified herein,
10 PLAINTIFFS have suffered and/or will suffer damages the full nature and extent of which shall be
11 ascertained according to proof at trial.

12 41. PLAINTIFFS are informed and believe and thereupon allege that as a further direct and
13 proximate result of the defective conditions of the subject structure and subject premises, the following
14 damages have been incurred and suffered:

15 a. PLAINTIFFS' interest in the subject structures and premises and the values
16 thereof have been significantly reduced and diminished. Said construction defects have greatly
17 reduced the monetary value and/or marketability of said property and/or depreciated said property
18 and/or rendering said structures and/or said property to be unfit for the purposes for which said
19 property has traditionally and historically been used.

20 b. PLAINTIFFS have lost use and enjoyment of the subject structures and
21 premises.

22 42. All of the above-described damages have occurred, but the amount thereof is presently
23 unknown, and when the precise amount is known, it will be established by way of amendment to these
24 pleadings or according to proof at the time of trial.

25 WHEREFORE, PLAINTIFFS pray judgment against Defendants, and each of them, as
26 hereinafter appears.

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SECOND CAUSE OF ACTION

**(Breach of Express Warranty Against
DEFENDANTS and DOES 1-100 only)**

43. PLAINTIFFS reallege and incorporate by reference paragraphs 1 through 42 as though fully set forth again herein.

44. PLAINTIFFS are informed and believe and based thereon allege that DEFENDANTS, and each of them, including DOES 1-100, expressly warranted through sales brochures for the subject premises, related advertising circulars and materials; and through the contracts of sale and related sales warranty information regarding the subject premises, that the subject project was designed and constructed in a commercially reasonable and habitable manner when DEFENDANTS, and each of them, offered units of the project for sale to the general public for use as residences.

45. PLAINTIFFS relied on DEFENDANTS', and each of their express representations that these were residential dwellings not previously marketed for sale to the general public, and thus of merchantable quality suitable for their intended purpose, without major, significant defective causes, effects or conditions, unremedied or unrepaired by DEFENDANTS, and each of them.

46. PLAINTIFFS have reasonably notified DEFENDANTS of the breach of the express warranties.

47. As a direct and proximate result of the breach of the express warranties by DEFENDANTS, and each of them, as hereinabove alleged, PLAINTIFFS suffered resulting and/or physical damage to components, other components and other systems in the homes, property, and subject project stemming from the failure of the concrete slabs, stucco, water protection membranes, roofs, floors, walls, ceilings, doors and windows, sliding glass doors, shear walls, concrete flatwork, sheet metal, insulation, electrical systems, heating, ventilation and air conditioning systems, pavement system, plumbing and plumbing fixtures, irrigation systems, and structural systems, as herein set forth.

48. PLAINTIFFS are informed and believe and thereupon allege that as a direct and proximate result of the defects set forth herein, PLAINTIFFS have suffered damages in an amount precisely unknown, but believed to be within the jurisdiction of this Court in that they have been and

1 will hereafter be required to perform works of repair, restoration, and construction to portions of the
2 structures to prevent further damage and to restore the structures to their proper condition.

3 49. PLAINTIFFS are informed and believe and thereupon allege that as a further direct and
4 proximate result of the defective conditions of the subject structures and subject premises,
5 PLAINTIFFS have suffered damages as alleged in Paragraphs 40-42.

6 WHEREFORE, PLAINTIFFS pray judgment against DEFENDANTS, and each of them, as
7 hereinafter appears.

8 **THIRD CAUSE OF ACTION**
9 **(Breach Of Implied Warranties Of**
10 **Merchantability Against All Defendants, but as to Original Homeowners Only)**

11 50. PLAINTIFFS reallege and incorporate by reference Paragraphs 1 through 49 as though
12 fully set forth again herein.

13 51. Commencing on a date unknown to PLAINTIFFS, DEFENDANTS, including DOES
14 1-500, and each of them, participated in the manner set forth herein as to each, in the development
15 and/or construction of the residential property.

16 52. DEFENDANTS, including DOES 1-500, and each of them, at all times herein
17 mentioned were and are merchants and/or manufacturers with respect to the residential property, and
18 DEFENDANTS, including DOES 1-500, and each of them, impliedly warranted that the residential
19 property was designed and constructed in a commercially reasonable, habitable and workmanlike
20 manner and were of merchantable quality when DEFENDANTS, and each of them, offered units of
21 the project for sale to the general public and to the PLAINTIFFS herein for use as residences.

22 53. PLAINTIFFS are informed and believe and thereon allege that this implied warranty
23 was made to PLAINTIFFS by DEFENDANTS, including DOES 1-500, and each of them, through
24 the promotional brochures and sales presentations wherein DEFENDANTS emphasized the amenities,
25 quality construction and sound location of the residential property through all related advertising
26 circulars and materials and through the contracts of sale and related sales warranty information
27 regarding the subject premises when DEFENDANTS, including DOES 1-500, and each of them
28 offered units of the project for sale to the general public for use as residences. Said implied warranties

1 include, among other things:

- 2 a. That the soils were properly compacted to prevent uplifting and cracking of
- 3 foundations;
- 4 b. That the stucco was properly applied to prevent cracking and water intrusion;
- 5 c. That the concrete slabs were properly constructed to prevent cracking and water
- 6 intrusion;
- 7 d. That the roofs were properly designed and installed to prevent leakage and/or
- 8 failure;
- 9 e. That the drainage systems were adequately designed and installed to prevent
- 10 water ponding and leakage into units;
- 11 f. That the plumbing and plumbing fixtures were properly designed and installed
- 12 to avoid leaks and pipe breaks;
- 13 g. That the ventilation systems were properly designed and installed to enable
- 14 proper operation;
- 15 h. That the structural systems were designed to support the buildings and
- 16 improvements;
- 17 i. That the mechanical systems were designed to allow proper operations;
- 18 j. That the property was constructed in a reasonably workmanlike manner;
- 19 k. That the property complied with all applicable laws, ordinances, and building
- 20 codes.

21 54. PLAINTIFFS relied on DEFENDANTS', and each of their, implied representations
22 that the residential property was constructed in a commercially reasonable manner and suited for its
23 intended purposes and use.

24 55. PLAINTIFFS have become aware of facts that the residential property is not of
25 merchantable quality, but is in fact defective, and thereupon allege that as a direct and proximate result
26 of the defects set forth herein, PLAINTIFFS have suffered damages in an amount precisely unknown,
27 but believed to be within the jurisdiction of this Court in that they have been and will hereafter be
28 required to perform works of repair, restoration, and construction to portions of the structure to

1 prevent further damage and to restore the structure to its proper condition. PLAINTIFFS will establish
2 the precise amount of such damages at trial, according to proof, for damages alleged in Paragraphs 39-
3 42 above.

4 56. PLAINTIFFS have become aware of facts which resulted in PLAINTIFFS being
5 informed that portions of the residential property were inadequately constructed, manufactured,
6 developed, designed, supervised, or otherwise improved so that the above-described defective
7 conditions existed then and do now exist and the residential property is defective and not of
8 merchantable quality.

9 57. The residential property may be additionally defective in ways and to extent not
10 precisely know, but which will be established at the time of trial, according to proof.

11 58. PLAINTIFFS have timely notified DEFENDANTS, including DOES 1-500, and each
12 of them, that the residential property or portions thereof is not of merchantable quality and from time
13 to time gave further notice of the particulars of such defective conditions. Notwithstanding said
14 notices, DEFENDANTS, including DOES, and each of them, have declined and failed to acknowledge
15 responsibility for the same or otherwise cause the appropriate restoration and/or repairs to be made to
16 the residential property at their expense or to otherwise contribute to the costs of the same.

17 59. PLAINTIFFS are informed and believe and based thereon allege that the above-
18 described defects arose out of, or were attributable to and are directly and proximately caused by, the
19 above-described latent deficiency in the design, specifications, planning, supervision, observation of
20 construction, selection of building materials, insulation, construction, development, and/or
21 improvement of the residential property, and that prior to the time when it was discovered by
22 PLAINTIFFS as set forth herein, the deficient conditions could not have been discovered by the
23 exercise of reasonable diligence.

24 60. As a direct and proximate result of the defects set forth herein and the breach of the
25 aforesaid implied warranty by DEFENDANTS, including DOES 1-500, and each of them,
26 PLAINTIFFS have suffered damages in an amount as alleged in Paragraphs 40-42.

27 WHEREFORE, PLAINTIFFS pray judgment against DEFENDANTS, and each of them, as
28 hereinafter appears.

1 **FOURTH CAUSE OF ACTION**

2 **(Breach of Implied Warranty of Fitness against All Defendants, but as to**
3 **Original Homeowners Only)**

4 61. PLAINTIFFS reallege and incorporate by reference Paragraphs 1 through 60, as though
5 fully set forth again herein.

6 62. PLAINTIFFS are informed and believe and based thereon allege that DEFENDANT
7 DOES 1-500, and each of them, knew or had reason to know that the residential property and its
8 construction elements would be used as residential dwelling units, and further knew or had reason to
9 know that:

- 10 a. That the drainage systems should be used to carry away surface and subsurface water;
11 b. That the soils should be properly compacted and of such mixture as to prevent slippage
12 and movement of the soil under the residences;
13 c. That weather and water exposed surfaces and systems should be used to provide a
14 weather and water tight barrier for the living units;
15 d. The soils should serve as the basis for all footings, foundation slabs, foundation
16 systems, and structures;
17 e. Other construction components including stucco, interior floors, should be used to
18 provide proper, secured, habitable residences;
19 f. The plumbing and sewage systems should provide for a carefree delivery of water and
20 sewage services free from leaks, backups, odors, clogs, excessive noise, and breaks;
21 g. The electrical systems should provide for the carefree delivery of a steady supply of
22 electricity free from interruptions and surges. All electrical fixtures should be properly secured
23 and installed;
24 h. The structural and framing systems and components should provide a proper basis for
25 the integrity and fire worthiness of the subject building to avoid damage to structural systems,
26 fixtures, and personal property.

27 63. DEFENDANT DOES 1-500, and each of them, further knew that the purchasers and
28 lessees of said units would enjoy water-tight, stable, usable, secure, and otherwise habitable units.

64. DEFENDANT DOES 1-500, and each of them, knew or had reason to know that the purchasers would rely upon the skill and judgment and expertise of the DEFENDANTS in the design, construction, development, manufacture, and sale of said properties in providing components and property fit for its intended purposes as described above.

65. DEFENDANTS DOES 1-500, and each of them, impliedly warranted that the aforementioned components as designed, manufactured, and installed at the residential property would be fit for the purposes as alleged above.

66. The residences were not fit for said purposes but, in fact, failed as alleged herein above.

67. As a direct and proximate result of the defects set forth herein and the breach of the aforesaid implied warranty by DEFENDANT DOES 1-500, and each of them, PLAINTIFFS have suffered damages in an amount as alleged in Paragraphs 40-42.

WHEREFORE, PLAINTIFFS pray judgment against DEFENDANTS, and each of them, as hereinafter appears.

FIFTH CAUSE OF ACTION

(Negligence-Real Property Against All Defendants)

68. PLAINTIFFS reallege and incorporate by reference Paragraphs 1 through 67, as though fully set forth again herein.

69. PLAINTIFFS are informed and believe and thereupon allege that DEFENDANTS, and each of them, were and are builders, contractors, general contractors, subcontractors, suppliers, materialmen, architects and/or engineers, or other persons, entities or professionals who participated in the process of design, engineering, and/or construction of subject structures on the residential property, and who performed works of labor, supplied materials, equipment and/or services necessary for the building and construction, including supervision of construction of the Subject Property with the knowledge that the units would be sold to and used by members of the public, including PLAINTIFFS herein. In so doing, said DEFENDANTS, and each of them, in the capacity as builder, contractor, subcontractor, supplier, materialman, architect, engineer, seller and/or general contractor or otherwise, caused the subject premises and subject structures to be designed, engineered and/or constructed through their own works of labor, their supplying of materials, equipment and services, and through

1 causing other contractors and subcontractors, including other DEFENDANTS, and each of them, to
2 perform works of labor, to supply materials, equipment and services in order to properly complete the
3 subject property and subject structures so that it could be sold to and used by members of the public.

4 70. PLAINTIFFS are informed and believe and thereupon allege the DEFENDANTS, and
5 each of them, whether builder, contractor, subcontractor, supplier, materialman, architect, engineer or
6 otherwise, negligently, carelessly, tortuously, and wrongfully failed to use reasonable care in the
7 analysis and preparation of the structures and improvements; in the design, manufacture, construction,
8 installation, and surface drainage systems, stucco, concrete slabs, roofs, and roof, drainage systems,
9 floors, walls, ceilings, patios, doors and windows, sliding glass doors, decks, shear walls, concrete
10 flatwork, sheet metal, insulation, electrical systems, heating, ventilation and air conditioning systems,
11 pavement system, plumbing and plumbing fixtures, irrigation systems, acoustics, structural systems
12 and building structures.

13 71. PLAINTIFFS are informed and believe and thereupon allege the DEFENDANTS, and
14 each of them, named herein, whether builder, contractor, subcontractor, supplier, materialman,
15 architect, engineer or otherwise, performed work, labor and/or services upon the subject premises and
16 subject structure, and each knew or should have known that if the subject structure and subject
17 premises were not properly or adequately designed, engineered, supervised and/or constructed, that the
18 owners and users would be substantially damaged thereby, and that the subject structures would be
19 defective and not of merchantable quality. Likewise, said DEFENDANTS, and each of them, knew or
20 reasonably should have known that if the real property and structures and improvements thereon
21 including, but not limited to, the stucco, foundations, concrete slabs, roofs, and roof, drainage systems,
22 floors, walls, ceilings, patios, doors and windows, sliding glass doors, decks, shear walls, concrete
23 flatwork, sheet metal, insulation, electrical systems, heating, ventilation and air conditioning systems,
24 pavement system, plumbing and plumbing fixtures, irrigation systems, and structural systems were not
25 adequately designed, engineered, constructed or installed, that the owners and users would be substantially
26 damaged thereby and the subject structures would be defective and not of merchantable quality.

27 72. The DEFENDANTS, and each of them, named herein were under a duty to exercise
28 ordinary care as builder, contractor, subcontractor, supplier, materialman, architect, engineer or

1 otherwise to avoid reasonably foreseeable injury to users and purchasers of the subject premises and
2 subject structures, and knew or should have foreseen with reasonable certainty that purchasers and/or
3 users would suffer the monetary damages set forth herein if said DEFENDANTS, and each of them,
4 failed to perform their duty to cause the subject premises and subject structures to be designed,
5 engineered and completed in a proper and workmanlike manner and fashion.

6 73. In performing the works of a builder and/or contractor, subcontractor, supplier,
7 materialman, architect, engineer or otherwise, said DEFENDANTS, and each of them, failed and
8 neglected to perform the work, labor and services properly or adequately in that each said
9 DEFENDANT so negligently, carelessly and in an unworkmanlike manner performed the aforesaid
10 work, labor and/or services such that the subject premises and subject structures as described herein
11 were designed, engineered and/or constructed improperly, negligently, carelessly and/or in an
12 unworkmanlike manner. Further, that sellers knew or should have known that the premises were
13 constructed in an unworkmanlike manner.

14 74. As a direct and proximate result of the foregoing negligence, carelessness and
15 unworkmanlike conduct, actions and/or omissions by said DEFENDANTS, and each of them,
16 PLAINTIFFS have suffered damages in an amount presently unknown, but believed to be within this
17 court's jurisdiction, in order to correct the defective conditions of the subject premises and subject
18 structures and to restore them to their proper condition; PLAINTIFFS are presently unaware of the
19 precise amount of damages, but will establish the same at trial according to proof.

20 75. PLAINTIFFS are informed and believe and thereupon allege that as a direct and
21 proximate result of the defects set forth herein, PLAINTIFFS have suffered damages in an amount as
22 alleged in Paragraphs 40-42.

23 **NEGLIGENCE PER SE:**

24 76. PLAINTIFFS are informed and believe, and based on that information and belief allege
25 that the DEFENDANTS, and each of them, **were under a duty imposed by statute and each of said**
26 **DEFENDANTS** violated one or more **of these statutes** in the design or construction of the residential
27 properties at the SUBJECT PROPERTY **including but not limited to:**

28 (a) **Uniform Building Code Section 1907 which prohibits window leaks;**

1 (b) Uniform Building Code Section 3201 which prohibits loose roof tiles and
2 roof leaks; and

3 (c) Uniform Building Code Section 203 which prohibits unsafe conditions such
4 as mold.

5 77. PLAINTIFFS are further informed and believe, and based on that information and
6 belief allege that said Building Code regulations and ordinances, including but not limited to the
7 Uniform Building Code, are mandated by various governmental and quasi-governmental entities
8 having jurisdiction over the construction of residential housing in the County of San Diego, State of
9 California, for the purpose of ensuring that residential housing, including that located at the SUBJECT
10 PROPERTY, is constructed in a watertight, stable, secure, sanitary, useful and otherwise habitable
11 manner.

12 78. As a result of the violation of one or more building code regulations or ordinances by
13 the DEFENDANTS, and each of them, as alleged herein above, the PLAINTIFFS have sustained and
14 will sustain damages as alleged in the Causes of Action herein stated.

15 79. As a direct and proximate result of the violation of the building codes by
16 DEFENDANTS, and each of them, as herein above alleged, PLAINTIFFS suffered damages
17 stemming from the failure of the concrete slabs, stucco, roofs, drainage systems, floors, walls, ceilings,
18 patios, doors and windows, sliding glass doors, decks, shear walls, concrete flatwork, sheet metal,
19 insulation, electrical systems, heating, ventilation and air conditioning systems, pavement system,
20 plumbing and plumbing fixtures, irrigation systems, and structural systems as herein set forth.

21 80. PLAINTIFFS are informed and believe and thereupon allege that as a direct and
22 proximate result of the defects set forth herein, PLAINTIFFS have suffered damages as alleged in
23 Paragraphs 40-42.

24 WHEREFORE, PLAINTIFFS pray judgment against DEFENDANTS, and each of them, as
25 hereinafter appears.

- 26 1. For damages according to proof thereof;
27 2. For attorney's fees and costs of suit herein;
28 3. For interest thereon at the maximum legal rate;

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4. For prejudgment interest on all sums awarded at the maximum legal rate;
5. For such other and further relief as the court may deem just and proper.

Dated: 11-2-07

Respectfully submitted,

SHINNICK & RYAN LLP

By: Megan M. Chodzko
Luke P. Ryan, Esq.
Megan M. Chodzko
Attorney for Plaintiffs

Exhibit B

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GREYSTONE HOMES, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL DIVISION**

DANDAN PAN, an individual, and as an
INDIVIDUAL HOMEOWNER CLASS
REPRESENTATIVE, and all others similarly
situated,

Plaintiffs,

v.

GREYSTONE HOMES, INC., a Delaware
corporation, and DOES 1-500, inclusive,

Defendants.

GREYSTONE HOMES, INC., a Delaware
Corporation,

Cross-Complainant,

v.

CANAC KITCHEN US LIMITED, a
corporation, T-FOUR TILE, a corporation,
CALIFORNIA TILE COMPANY, a
corporation, MERLE WILLIAMS & SONS
CORP., a corporation, REGAL CULTURED
MARBLE, INC., a corporation, WESTREND
ELECTRIC, INC., a corporation, GOLDEN
STATE FENCE CO., a corporation,
SURECRAFT SUPPLY, INC., a corporation,
TAYLOR TRIM & SUPPLY, INC., a
corporation, HNR FRAMING SYSTEMS,
INC., a corporation, WESTERN OVERHEAD
DOORS, a corporation, ESCONDIDO

CASE NO. 37-2007-00081892-CU-CD-CTL

Assigned for all purposes to:
Hon. Luis R. Vargas, Dept. 63

**CROSS-COMPLAINT OF GREYSTONE
HOMES, INC. FOR:**

- 1. INDEMNITY;**
- 2. COMPARATIVE EQUITABLE
INDEMNITY;**
- 3. CONTRIBUTION;**
- 4. DECLARATORY RELIEF;**
- 5. EXPRESS CONTRACTUAL
INDEMNITY;**
- 6. BREACH OF CONTRACT; and**
- 7. NEGLIGENCE.**

Date Action Filed: November 16, 2007
Trial Date: Not set

OVERHEAD DOOR CO., a corporation,
CELTIC FINE GRADERS, a corporation,
DOOSE LANDSCAPE, INC., a corporation,
RCR PLUMBING, INC., a corporation,
CHARMAC, INC., dba CHAPARRAL
PRODUCTS, a corporation, PACIFIC COAST
ROOFING CORP., a corporation, MAYER
ROOFING INC., a corporation, PACIFIC
SHEET METAL INC., a corporation,
QUALITY PLASTERING COMPANY, a
corporation, ATI WINDOWS, a corporation,
SAN DIEGO MIRROR & TRIM, a corporation,
SUN PLUMBING CO., INC., a corporations,
PSG CORROSION ENGINEERING, INC., a
corporation, MAGNESITE SPECIALTIES,
INC., a corporation, MACORD
CONSTRUCTION, a corporation, PREMIER
PAINT, a corporation, and ROES 1-100,
inclusive,

Cross-Defendants.

Cross-complainant Greystone Homes, Inc. ("Greystone"), alleges as follows:

GENERAL ALLEGATIONS

1. Greystone is informed and believes, and on that basis alleges, that at all times mentioned herein Plaintiff Dandan Pan and the other homeowners he represents, including those specifically mentioned in Plaintiff's Arbitration Claim that was filed and served on August 8, 2008, namely, Don and Brenda Bomar, Glen and Christine Butler, Chris and Shannon Gill, Tuzo Jerger, Elliot and Marla Lander, Richard and Kay Odgers, L. John and Lynda Puhek, Paul and Karen Rutledge, and Robert and Kathleen Seeman (collectively "Plaintiffs"), are individuals residing in San Diego County, California.

2. Greystone is informed and believes, and on that basis alleges, that at all times mentioned herein, cross-defendants Canac Kitchens US Limited; T-Four Tile; California Tile Company; Merle Williams & Sons Corp.; Regal Cultured Marble, Inc.; Westrend Electric,

1 Inc.; Golden State Fence Co.; Surecraft Supply, Inc.; Taylor Trim & Supply, Inc.; HNR Framing
2 Systems, Inc.; Western Overhead Doors; Escondido Overhead Door Co.; Celtic Fine Graders;
3 Doose Landscape, Inc.; RCR Plumbing, Inc.; Companies; Charmac, Inc., dba Chaparral Products;
4 Pacific Coast Roofing Corp.; Mayer Roofing, Inc.; Pacific Sheet Metal, Inc.; Quality Plastering
5 Company; ATI Windows; San Diego Mirror & Trim; Sun Plumbing Co., Inc.; PSG Corrosion
6 Engineering, Inc.; Magnesite Specialties, Inc.; Macord Construction; and Premier Paint were and
7 are corporations doing business in San Diego County, California.

8
9 3. The true names and capacities of cross-defendants sued herein as Roes 1
10 through 100, inclusive, whether individual, corporate, associate or otherwise, are unknown to
11 Greystone at this time, which therefore sues these cross-defendants by such fictitious names.
12 Greystone will ask leave of court to amend this cross-complaint to show their true names and
13 capacities when the same have been ascertained. Each of such cross-defendants Roes 1 through
14 100, inclusive, participated in and is in some way liable to cross-complainant for the wrongful acts
15 hereinafter alleged.

16
17 4. Greystone is informed and believes, and based thereon alleges, that at all
18 times mentioned herein the specifically named cross-defendants and Roes 1 through 100, inclusive
19 (collectively "Cross-Defendants"), and each of them, were the agents, joint venturers, partners,
20 servants and/or employees of each of the other Cross-Defendants and were acting within the scope
21 of their authority as such agents, joint venturers, partners, servants and employees, with the
22 permission and consent of Cross-Defendants, and each of them.

23
24 **FIRST CAUSE OF ACTION**

25 (FOR INDEMNITY)

26
27 5. Greystone hereby realleges the allegations contained in Paragraphs 1
28 through 4, inclusive, and incorporates them by reference as though fully set forth herein.

6. On or about November 16, 2007, Plaintiffs instituted the principal action against Greystone. Plaintiffs' Complaint ("Complaint") alleges, among other things, in its first through fifth causes of action, that Greystone constructed Plaintiffs' residences in a defective manner and that the project "has and is experiencing defective conditions and that the Subject Property and structures located thereon, in particular, the concrete slabs, stucco, water intrusion membranes, roofs, floors, walls, ceilings, doors, windows, sliding glass doors, decks, shear walls, concrete flatwork, sheet metal, insulation, electrical systems, heating ventilation and air conditioning systems, pavement system, plumbing and plumbing fixtures, irrigation systems, and structural systems, were and are not of merchantable quality, nor were they designed, erected, constructed or installed in a workmanlike manner but instead, are defective and, as now known, the subject structures demonstrate improper, non-existent, and/or inadequately designed and/or constructed, concrete slabs, stucco, water intrusion membranes, roofs, floors, walls, ceilings, doors and windows, sliding glass doors, shear walls, concrete flatwork, sheet metal, insulation, electrical systems, heating ventilation and air conditioning systems, pavement system, plumbing and plumbing fixtures, irrigation systems, and structural systems, so the subject structures as constructed are defective and improper and have resulted in damaged and defective structures and defective real property. These defective components have damaged other systems or other components in the homes, property, and subject project." (Complaint, ¶ 25). Plaintiffs also allege that Greystone "impliedly warranted that the real property, and structures thereon," including but not limited to the alleged defects mentioned above, "were of merchantable quality and were erected in a reasonably workmanlike manner." (Complaint, ¶ 23).

7. Greystone denies all of the material allegations made by Plaintiffs and Greystone further denies that it is in any way responsible for Plaintiffs' alleged damages.

8. If Greystone is in any way found liable to Plaintiffs in the principal action, including without limitation the first through fifth causes of action of the Complaint, or any subsequently filed complaint by Plaintiffs and/or additionally named plaintiffs, then such liability

1 will be based upon the negligent and/or wrongful conduct of Cross-Defendants, and each of them,
2 and upon negligence and/or conduct which is constructive or imputed to Greystone by law.

3
4 9. Greystone is informed and believes, and on that basis alleges, that Cross-
5 Defendants performed work and/or services and/or provided materials which were incorporated
6 into the development, construction and/or sale of the subject properties and structures thereon,
7 which said work, services or materials have caused the damages, if any, alleged in the Complaint
8 or any subsequent complaint.

9
10 10. Therefore, should Greystone be held liable to Plaintiffs herein, such liability
11 will be based upon the active and primary negligence on the part of Cross-Defendants, and each of
12 them, and Greystone's only liability will be passive and secondary in nature; therefore, Greystone
13 is entitled to full indemnification from Cross-Defendants, and each of them, for any and all
14 amounts that Greystone may be required to pay by way of judgment or award in the principal
15 action.

16
17 11. In defending the aforesaid action brought by Plaintiffs, Greystone has been
18 and will be compelled to pay certain amounts by way of defense, including costs of court,
19 attorneys' fees, investigation and discovery expenses, all of which, in equity and in good
20 conscience, should be borne by Cross-Defendants, and each of them.

21
22 **SECOND CAUSE OF ACTION**

23 (FOR COMPARATIVE EQUITABLE INDEMNITY)

24
25 12. Greystone hereby realleges the allegations contained in Paragraphs 1
26 through 11, inclusive, and incorporates them by reference as though fully set forth herein.

13. Therefore, should Greystone be held liable to Plaintiffs herein, or any subsequently added plaintiffs, in equity and good conscience, Cross-Defendants, and each of them, will be liable and bound to indemnify Greystone in an amount proportionate to the amount of fault attributable to Cross-Defendants, and each of them.

THIRD CAUSE OF ACTION

(FOR CONTRIBUTION)

14. Greystone hereby realleges the allegations contained in Paragraphs 1 through 13, inclusive, and incorporates them by reference as though fully set forth herein.

15. Therefore, should Greystone pay any monies by way of settlement, repairs, investigation judgment or other actions in response to Plaintiffs' claims, in equity and good conscience, Cross-Defendants, and each of them, will be liable and bound to contribute to Greystone an amount proportionate to the amount of fault attributable to Cross-Defendants, and each of them. Furthermore, should Greystone be held liable to Plaintiffs herein, or any subsequently added plaintiffs, Cross-Defendants, and each of them, will be liable and bound to Plaintiffs, or any subsequently added plaintiffs, in an amount proportionate to the amount of fault attributable to Cross-Defendants, and each of them.

FOURTH CAUSE OF ACTION

(FOR DECLARATORY RELIEF)

16. Greystone hereby realleges the allegations contained in Paragraphs 1 through 15, inclusive, and incorporates them by reference as though fully set forth herein.

17. An actual controversy exists between Greystone and Cross-Defendants, and each of them, in that Greystone contends that Cross-Defendants, and each of them, are obligated to

1 indemnify and defend Greystone. Greystone alleges that Cross-Defendants, and each of them,
2 make contentions to the contrary.

3
4 18. Greystone requests a judicial declaration that Cross-Defendants, and each of
5 them, were the legal cause of any injuries and damages sustained by Plaintiffs, and that Cross-
6 Defendants should defend Greystone and additionally indemnify Greystone, either completely or
7 partially, for any sums of money which may be recovered against Greystone by Plaintiffs.

8
9 **FIFTH CAUSE OF ACTION**

10 (FOR EXPRESS CONTRACTUAL INDEMNITY)

11
12 19. Greystone hereby realleges the allegations contained in Paragraphs 1
13 through 18, inclusive, and incorporates them by reference as though fully set forth herein.

14
15 20. Cross-Defendants entered into various subcontract agreements (the
16 "Subcontracts") with Greystone, whereby Cross-Defendants agreed to perform work and/or
17 services and/or provide materials on behalf of Greystone, which were incorporated into the
18 development, construction and/or sale of the subject properties and structures thereon. The
19 Subcontracts each state, in pertinent part, among other things:

20
21 "Subcontractor agrees to furnish all labor, materials, equipment, supplies,
22 supervision and all other things necessary to efficiently perform and timely
23 complete in strict accordance with the Plans and Specifications...

24
25 [¶] Subcontractor agrees to procure and maintain at its own expense and with
26 companies satisfactory to Contractor [Greystone]...insurance coverage for all of its
27 operations...[and] Subcontractor's insurance shall name Contractor...as an
28 additional insured[.]

1 [¶] In the event Contractor shall have a claim made against if for, or become
2 involved in litigation or arbitration because of claims for personal injuries, death,
3 property damage...or any other type of claims, damages, injury or loss arising out
4 of or related to the activities of or the work performed...by Subcontractor, its
5 agents, employees, servants or subcontractors, it is the express intent of the parties
6 to this Agreement that Subcontractor shall indemnify, defend and hold Contractor
7 harmless against any and all such claims, damages, injury, loss, liability and
8 expense, including but not limited to, attorneys' fees, and expert and consultants'
9 fees incurred as a result thereof."

10
11 21. By service of this Cross-Complaint and/or separate demand, Greystone, has
12 and is demanding that Cross-Defendants and each of them defend and indemnify Greystone in this
13 action. Greystone is informed and believes, and on that basis alleges, that Cross-Defendants, and
14 each of them, have failed and refuse to defend and indemnify Greystone in this action.

15
16 22. All of the conditions and obligations to be performed by Greystone, under
17 the Subcontracts have been performed. If Greystone, has failed to perform any condition,
18 covenant or promise, the failure is discharged and excused by Cross-Defendants' failure to meet
19 conditions precedent and necessary for Greystone's performance.

20
21 23. Greystone has incurred, and continues to incur, necessary and reasonable
22 attorneys' fees and other legal costs in defending against Plaintiffs' action. Greystone is informed
23 and believes that Cross-Defendants have failed to provide Greystone with a defense and indemnity
24 to the claims brought by the Plaintiffs. By the terms of the Subcontracts, Greystone is entitled to
25 recover such fees and costs from Cross-Defendants. Greystone does not know the full amount
26 thereof at this time and will amend this cross-complaint to state such amount when the same
27 becomes known to them.

24. By reason of the foregoing, Greystone is further entitled to be indemnified by Cross-Defendants to the extent that Greystone may hereinafter be held liable to Plaintiffs, or any other party in this action, and to the extent that Greystone may incur attorneys' fees and/or other legal costs in defending this action.

SIXTH CAUSE OF ACTION
(FOR BREACH OF CONTRACT)

25. Greystone hereby realleges the allegations contained in Paragraphs 1 through 24, inclusive, and incorporates them by reference as though fully set forth herein.

26. All of the conditions and obligations to be performed by Greystone under the Subcontracts have been performed. If Greystone has failed to perform any condition, covenant or promise, the failure is discharged and excused by Cross-Defendants' failure to meet conditions precedent and necessary for Greystone's performance.

27. Greystone is informed and believes that Cross-Defendants, and each of them, breached the Subcontracts by, among other things, failing to obtain adequate insurance and/or make Greystone an additional named insured under the applicable policies of insurance. Greystone is informed and believes that had Cross-Defendants obtained the required insurance, such insurance would provide Greystone with a full and complete defense in this action and full indemnity against the Plaintiffs' claims in this action.

28. As a direct result of these breaches of the Subcontracts, Greystone was compelled to incur attorneys' fees, investigation costs and other costs and expenses associated with the defense of this action.

1 29. As a direct and proximate result of the breaches of the Subcontracts by
2 Cross-Defendants, Greystone has been damaged in a total amount not yet ascertained but in an
3 amount within the jurisdiction of this Court. Greystone will amend this Cross-complaint, if and
4 when necessary, to allege the nature and amounts of such damages with greater particularity when
5 the same has been more fully ascertained.

6
7 **SEVENTH CAUSE OF ACTION**

8 (FOR NEGLIGENCE)

9
10 30. Greystone hereby realleges the allegations contained in Paragraphs 1
11 through 24, inclusive, and incorporates them by reference as though fully set forth herein.

12
13 31. Throughout the performance of the Subcontracts and/or in connection with
14 any other work, labor or materials provided to the project, Cross-Defendants, and each of them,
15 had full access to the subject properties and owed Greystone a duty of reasonable care in the
16 supply and installation of materials, rendering of services and construction of the subject
17 properties.

18
19 32. If Greystone is in any way found liable in the principal action, then Cross-
20 Defendants, and each of them, breached their duty of care owed to Greystone and as a direct and
21 proximate result of Cross-Defendants' breaches of their duty of care, Greystone will have been
22 damaged in a total amount not yet ascertained but within the jurisdiction of this Court. Greystone
23 will amend this Cross-Complaint, if and when necessary, to allege the nature and amounts of such
24 damages with greater particularity when the same has been more fully ascertained.

25
26 ///

27
28 ///

PRAYER

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

1. For a judgment of indemnity whereby Cross-Defendants, and each of them, are required to indemnify and pay to Greystone the total amount of any judgment rendered in the principal action against Greystone, including Plaintiffs' attorneys' fees, expenses and costs of suit, together with Greystone's attorneys' fees, expenses and costs of suit incurred in defending against Plaintiffs' complaint;

2. For a judgment of indemnity whereby Cross-Defendants, and each of them, are required to indemnify and pay to Greystone all sums proportionate to the fault attributable to Cross-Defendants, and each of them, up to the full judgment rendered against Greystone in favor of Plaintiffs, and/or any subsequently added plaintiffs, including Plaintiffs' attorneys' fees, expenses and costs of suit, together with Greystone's attorneys' fees, expenses and costs of suit incurred in defending against Plaintiffs' complaint;

3. For contribution to Greystone either completely or partially by Cross-Defendants, for any sums of money which Greystone may incur in responding to the Plaintiffs claims and/or which may be recovered against Greystone by Plaintiffs, and that any judgment in favor of Plaintiffs, and/or any subsequently added plaintiffs, in the principal action include judgment against Cross-Defendants, and each of them, for their pro-rata share of fault;

4. For a judicial determination that Cross-Defendants were the legal cause of any injuries and damages sustained by Plaintiffs, and/or any subsequently added plaintiffs, in the principal action, and that Cross-Defendants indemnify Greystone, either completely or partially, for any sums of money which may be recovered against Greystone;

5. For a judgment totally indemnifying Greystone from any judgment rendered in favor of any party herein against Greystone, together with an award of Greystone's attorneys' fees, investigation fees and other litigation expenses;

6. For general and special damages according to proof;

7. For any and all attorneys' fees, experts' fees, costs and discovery expenses heretofore incurred and hereafter to be incurred by Greystone in its defense of this action, according to proof; and

8. For such other and further relief as the Court deems proper.

DATED: October 15, 2008

PAYNE & FEARS LLP

By:



THOMAS L. VINCENT
MARK E. EARNEST

Attorneys for Defendant and Cross-Complainant
GREYSTONE HOMES, INC.

4817-7886-7459

Exhibit C



GREYSTONE HOMES, INC.

SUBCONTRACT AGREEMENT

CONTRACTOR'S STATE LICENSE 632643 A, B

Posted
2/1/97

DIVISION OFFICE: Coastal Valley
CONTRACT NUMBER: 611207-OS C/O: 000

THIS SUBCONTRACT AGREEMENT ("Contract"), is made and entered into at Corona, CA this 30TH day of OCTOBER, 1997, by and between Greystone Homes, Inc., whose address is 495 E. Rincon, Suite 115, Corona, CA 91719 (herein called "Contractor") and HNR FRAMING SYSTEMS INC., a Corporation, whose address is 12345 CROSTHWAITE CIRCLE, POWAY, CA 92064, telephone number (619) 486-2471 (herein called "Subcontractor").

WHEREAS, Contractor has or is about to commence the construction of TRACT# T.84-32A located at CARLSBAD, CA, and known as COBBLESTONE-MARBRISA, (herein called "Project"), pursuant to plans and specifications prepared by William Hezmalhalch Architecture dated 9/8/97, herein collectively called "Plans and Specifications" which plans and specifications are incorporated herein by this reference.

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. **PERFORMANCE OF THE WORK:** Subcontractor agrees to furnish all labor, materials, equipment, supplies, supervision and all other things necessary to efficiently perform and timely complete in strict accordance with the Plans and Specifications, in accordance with the HIGHEST TRADE PRACTICES and in a manner satisfactory to the Contractor, that portion of the Project referred to as:

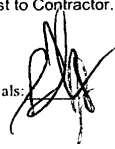
COBBLESTONE-MARBRISA / MODELS - FRAMING LABOR (4095) / LUMBER (4100) / TRUSSES (4105)


(herein called the "Work"). Subcontractor, by acceptance of this Contract, shall guarantee the availability of all materials, labor and equipment necessary to complete the Work according to the established construction schedule of Contractor. Subcontractor will pay promptly all fees, taxes, union welfare and benefit payments, deposits, charges, damages and penalties that may be assessed against Contractor on account of Subcontractor's performance hereunder, and Subcontractor acknowledges that all such taxes and payments have been included in the Contract Price. All possible contingencies to perform a complete job have been anticipated and included in the Contract Bid.

1.1 **INSPECTION.** Subcontractor acknowledges inspection of the site for the Work and has thoroughly examined the Plans and Specifications with the understanding that the provisions relating to the Work may be set forth throughout different parts of the Plans and Specifications; it being the prime purpose of this Contract to provide for the entire performance and completion of this Subcontractor's particular portion of the Project. Subcontractor shall be solely responsible for verifying with Contractor's representative that it possesses the most current set of Plans and Specifications prepared and approved for construction by Contractor. If Subcontractor, during the performance of the Work, finds discrepancies between the Plans, physical conditions, errors and omissions in the plans or in the layout as given and/or Specifications, it shall be Subcontractor's responsibility to immediately notify Contractor in writing. Any work performed after such discovery, until authorized to proceed, shall be done at Subcontractor's risk, until a satisfactory remedy is directed by the Contractor. Prior to ordering any materials or performing any work, Subcontractor shall verify all measurements or conditions at the Project, and shall be responsible for the correctness of same. No extra charge or compensation shall be allowed on account of differences between actual dimensions or conditions, and the measurements and conditions which may be found as indicated in the Plans and Specifications. The soils and geology reports available to each bidder were prepared by Contractor's consultants and made only for the purpose of study and design, Contractor assumes no responsibility whatsoever in respect to the sufficiency or accuracy of the reports, investigations or of the borings which have been made, and there is no warranty or guarantee, either express or implied, that the conditions indicated by the reports, investigations, or borings are representative of those existing throughout the Project, that unanticipated developments may not occur, or that materials other than, or in proportions different from those indicated, may not occur. Subcontractor agrees to undertake the Work subject to all site conditions as they now exist or may arise.

1.2 **PROGRESS.** Subcontractor agrees to (i) keep itself thoroughly informed as to the progress of the Project, (ii) begin the Work upon request of Contractor, (iii) diligently pursue the Work to completion as rapidly as the conditions of the Project will permit, (iv) efficiently coordinate its Work with that of Contractor and all other subcontractors so as not to interfere with, disrupt or delay any work to be performed by any of said persons and, in any event, so as not to interfere with, disrupt or delay the progress required to conform to the Project completion date designated by Contractor. Contractor may, but shall not be obligated to, furnish Subcontractor with a progress schedule for all or any portion of the Work which, if furnished, may be amended from time to time by Contractor and shall be considered a part of this Contract. As to that portion of the Work covered thereby, such schedule shall control over any other provision of this Contract regarding time for performance. Time for performance, whether established by progress schedule or any other provision hereof, shall be of the essence and Subcontractor shall be liable to Contractor for any and all damages, including, but not limited to, consequential damages caused by delays of Subcontractor. If, however, the Project is destroyed by fire or other catastrophe, Subcontractor will be paid for work performed and incorporated into the Project prior to the catastrophe, and both parties shall thereafter be relieved from any further obligation hereunder. Subcontractor shall confine all operations at the site to areas permitted by law, ordinance, permits and Contract Documents, and shall not unreasonably encumber the site with materials or equipment.

1.3 **SPECIFICATIONS.** In addition to the Plans and Specifications, Subcontractor shall adhere to any and all manufacturer's specifications for installation of materials. If there is any conflict between Contractor's Specifications and the manufacturer's specifications, it is the responsibility of Subcontractor to bring the discrepancy to Contractor's attention in writing. Subcontractor's further work done without first resolving such conflict shall be at its own risk. Attached hereto as Exhibit "B" (intentionally not in alphabetical order) is Contractor's Scope of Work, which is hereby incorporated by this reference, and Subcontractor shall adhere to the terms and specifications thereof in performing the Work. Any deviation from either the manufacturer's specifications or Contractor's Scope of Work will result in Subcontractor removing and replacing all materials to the manufacturer's specifications and Contractor's Scope of Work at no cost to Contractor.

Subcontractor's Initials: 

Contractor's Initials: 

rev'd: 12/29/97

GHI06976

1.4 **WORK OF OTHERS.** Subcontractor shall protect the work of all subcontractors and Contractor during the course of its work and shall be fully responsible for the protection of all existing structures, curbs, landscaping and adjacent property. Subcontractor and its employees shall cooperate with all trades. Subcontractor shall be responsible for inspecting any work of any other subcontractor or consultant that may affect its own Work and shall report, in writing, to Contractor any defects in such work or any other discrepancies or problems which could adversely affect Subcontractor's work within twenty-four (24) hours after discovering the defect, discrepancy or problem, or after it should have been noticeable, whichever occurs earlier. Subcontractor shall stop all of its work until the defect, discrepancy or problem has been resolved. If the proper performance of any part of the Work depends upon the performance by Contractor or any other subcontractor whose work precedes in time the Work of Subcontractor, Subcontractor agrees that commencing performance of such part of the Work shall be deemed to be an admission that the work which precedes such part of the Work has been done in a proper manner, and Subcontractor accepts such work as correct and fit to be accommodated into its own. No such acceptance shall be implied if the defect does not occur or its not noticeable until after Subcontractor has completed its own work. If Subcontractor installs any work over improper workmanship previously installed by other trades, Subcontractor will absorb all repair costs necessary to repair any prior work deemed inferior by Contractor. Subcontractor shall be responsible for any damage that may be sustained by the Contractor or others for incorrect location of the work or portions thereof.

1.5 **PHASING.** The parties hereto acknowledge that the Work covered by this Contract is intended to be performed in more than one phase. If, in order to avoid possible escalation in the cost of materials provided by the Subcontractor as part of the work covered by this Contract, Subcontractor elects to purchase such materials in advance of any particular phase of the project commenced by Contractor, then Subcontractor acknowledges that it is purchasing such materials at its own risk and that Contractor shall not pay nor be liable for the cost of such materials purchased by the Subcontractor unless and until such applicable phase of the work in which such materials are to be incorporated commences and such materials are either incorporated into such work of improvement. Subcontractor further agrees that in the event subsequent subcontracts are to be entered into between the parties for subsequent phases of construction on the Project, the prices quoted by Subcontractor for labor and materials on this phase of the Project shall be the same for the subsequent phases until thirty (30) days following written notice of an increase in labor or material prices. In the event subsequent phases of the Project are contracted without thirty (30) days' prior written notice from Subcontractor of price increase, Subcontractor agrees the subsequent subcontract shall be at the prices prevailing between Contractor and Subcontractor at the time of the bid.

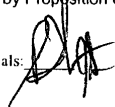
2. **LABOR AND SUPERVISION:** Subcontractor shall at all times keep on the construction site and throughout the performance of this Contract, competent supervision together with all necessary assistants and employees. Subcontractor's Superintendent shall have full authority to act for Subcontractor in matters pertaining to this Contract and the performance of the Work hereunder. The Subcontractor's Superintendent shall remain in attendance at the site and shall be present at all times when work of any kind is being performed including work done during overtime. Subcontractor's Superintendent shall be satisfactory to Contractor, and shall not be changed except with the consent of Contractor, unless the Superintendent proves to be unsatisfactory to Subcontractor and ceases to be in its employ. Superintendent shall represent the Subcontractor, and all communications given to the Superintendent shall be as binding as if given to Subcontractor. Subcontractor shall at all times enforce strict discipline and good order among its employees and shall not employ any unfit person or anyone not skilled in the task assigned to that employee. Subcontractor shall remove from the jobsite and replace any employee, including Subcontractor's Jobsite Superintendent, upon request of Contractor. Subcontractor shall provide an English-speaking Superintendent on the Project at all times.

3. **LEGAL COMPLIANCE:** Subcontractor warrants and represents it is familiar with all applicable laws, ordinances, codes, rules, standards and regulations and that it, its employees, and all others acting under its direction or control, shall at all times comply with and abide by all local, state and federal statutes, ordinances, rules and regulations, and any amendments thereto, as well as those of any other public body having authority concerning the Work, including but not limited to, the building codes of the governmental entity having jurisdiction over the Project, the Occupational Safety and Health Act of 1970, the Immigration Reform and Control Act of 1986 (the "Immigration Act"), all applicable equal employment opportunity laws and requirements promulgated by any governmental authority, including, without limitation, the requirements of the Civil Rights Act of 1964, 42 United States Code, Section 1983, Executive Orders 11246, 11375 and 11478, the California Fair Employment Practices Act, the California Plan, The Age Discrimination in Employment Act, the Americans with Disabilities Act, the Safe Drinking Water & Toxic Enforcement Act of 1986 ("Proposition 65"), whether or not Subcontractor itself is independently subject to the provisions thereof, the Storm Water Pollution Control Guidelines for the State of California, and any other applicable statute or ordinances. Subcontractor shall exercise full responsibility for compliance with all applicable laws by Subcontractor, its agents, employees, suppliers and subcontractors with respect to its portion of the Work on this Project. Subcontractor, on its behalf and on behalf of its employees and agents, shall receive and respond to, defend and be responsible for any citation, order, claim, charge, criminal or civil actions, arising by failure of Subcontractor or its agents, employees, suppliers and subcontractors to so comply, regardless of whether such non-compliance results from active or passive acts or omissions or whether such non-compliance is the sole or a contributory cause of any of those matters against which Subcontractor is obligated hereunder to indemnify and hold Contractor harmless.


3.1 **IMMIGRATION.** Subcontractor specifically warrants and agrees it does not and shall not knowingly hire or continue to employ aliens not authorized to work in the United States, it has and shall continue to verify the employment documentation specified in the Immigration Act, and it has and shall properly complete and retain the Immigration and Naturalization Service's Form I-9 for all its employees covered by the Immigration Act.

3.2 **PATENT AND COPYRIGHTS.** Subcontractor shall assume all liability and responsibility for all royalties, licenses, patent fees, and any other charges made in connection with the use of patented processes upon the work or in connection therewith.

3.3 **ENVIRONMENTAL.** Subcontractor shall, prior to commencing the Work, identify to Contractor in writing all hazardous or toxic substances to be used in performing the Work or to be brought onto the Project by Subcontractor, and shall provide Material Safety Data Sheets ("MSDS") to Contractor for those substances. Failure to supply such documentation to Contractor shall result in a hold on all payments under this Contract until such documentation is supplied. All work, labor, services or materials necessary to comply with this Section will be furnished by Subcontractor as part of this Contract without any additional compensation. Subcontractor shall immediately identify to Contractor in writing all hazardous or toxic substances discovered during the performance of the Work omitted from any previous notification(s) and promptly provide the MSDS on those substances to Contractor. Subcontractor shall immediately notify Contractor if Subcontractor, or any of Subcontractor's partners, employees, agents, subcontractors, customers, invitees or suppliers, brings a chemical which has been listed on the Governor's list pursuant to Proposition 65 onto the Project (a "listed chemical") and shall, in addition, provide Contractor with copies of all warning labels on products Subcontractor or said persons are using. Subcontractor may be released from its obligation thereunder to post the exposure warning signs required by Proposition 65, and only that obligation, with the express written permission of Contractor.

Subcontractor's Initials: 

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Contractor's Initials: 

3.3.1 Subcontractor shall immediately notify Contractor of any spill, release or discharge of any listed chemical caused by or brought to the attention of Subcontractor or any of Subcontractor's partners, employees, agents, subcontractors, customers, invitees or suppliers, whether such spill, relapse or discharge is the result of an intentional act, negligence, accident or misfortune. As to any spill, release or discharge of a listed chemical which is caused by Subcontractor or any of Subcontractor's partners, employees, agents, subcontractors, customers, invitees or suppliers, whether caused intentionally, negligently or accidentally, Subcontractor shall immediately take all reasonable and necessary actions to prevent the further spread of any spill, release or discharge of a listed chemical which is brought to the attention of Subcontractor. Subcontractor shall take immediate action to clean up said spill, release or discharge in full compliance with all applicable laws and regulations and any directions from Contractor, at Subcontractor's expense.

3.3.2 Neither Subcontractor nor any of Subcontractor's partners, employees, agents, subcontractors, customers, invitees or suppliers shall clean any tools, equipment, vehicles, materials or other items in such a manner as to cause a violation of Proposition 65. All residue and waste materials resulting from any such cleaning action shall be collected and gathered by Subcontractor and removed from the Project and disposed of in accordance with all applicable laws and regulations.

3.4 **SAFETY**. Subcontractor shall have a written Illness and Injury Prevention Plan conforming to the requirements of SB 198, and shall have trained each of its employees regarding that plan and the codes of safe practices applicable to their jobs. Subcontractor acknowledges its failure to adhere to Contractor's safety policies and job rules after written notice may result in Subcontractor's removal from the jobsite, and termination of this Contract.

4. **JOB RULES**: Subcontractor hereby acknowledges it has read, understands and will comply with Contractor's Code of Safe Practices and has been informed of and will comply with Contractor's policies concerning safety, reasonable restrictions on use and access to the construction site by unauthorized personnel and the rules and policies concerning Contractor's prohibition of solicitation or distribution on the Project, which are as follows:

4.1 Contractor has posted "No Trespassing" signs in conspicuous and appropriate places through the construction site. The structures being built are located on private property. Because Contractor may be held accountable for any injuries to persons or property occurring on the jobsite, access to the construction project by unauthorized persons, i.e., members of the general public or off-duty employees or family members of Subcontractor's employees, is strictly prohibited. Subcontractor acknowledges the posting of Contractor's "no trespass", "no solicitation" and "no distribution" signs, and acknowledges that the construction is occurring on private property under exclusive control and care of Contractor. Moreover, Subcontractor agrees to abide by these reasonable rules and procedures notwithstanding any contractual language to the contrary contained in agreements between Subcontractor and any labor organization. Subcontractors who may be working on the project have no authority, contractual or otherwise, to permit access to the construction site to any unauthorized persons, including solicitors, sales persons, off-duty employees, or officials of any labor organization. In the event unauthorized persons do enter the construction site in contravention of this statement of policies and procedures, Contractor shall regard such entry as an unlawful trespass.

4.2 Hard-hats are required for all employees of Subcontractor having an exposure to overhead or flying objects hazards.

4.3 No alcoholic beverages or illegal drugs are allowed on job site at any time. Anyone found drinking or otherwise under the influence of a controlled substance shall be removed from the job site at once. Continued abuse of this requirement by Subcontractor or its employees shall be considered grounds for termination of the Contract.

4.4 No animals shall be allowed on the job site. Subcontractor is asked to inform employees of this rule before work commences so as to eliminate any hardship on pets in the event they must be removed from the job site.

4.5 All traffic laws, ordinances, rules and regulations shall be observed by subcontractors and their employees on the job site, and within the Project. The speed limit within the Project is 5 MPH. Subcontractor and its employees shall not speed or otherwise operate their automobiles in a dangerous or offensive manner within the Project.

4.6 Subcontractor agrees there shall be no parking of construction vehicles on finished lots, finished driveways, or in garages.

5. **EQUIPMENT**: Should Subcontractor or its employees use Contractor's or any other subcontractor's equipment, scaffolding or other facilities, it is understood and agreed such use shall be at Subcontractor's sole risk, and by the use thereof, Subcontractor hereby waives all claims and liability against Contractor, assumes the full risk of the operation thereof, and assumes full responsibility for any and all loss, cost, expense, damage, or injury, including reasonable attorneys' fees, arising therefrom. Security may, at Contractor's discretion, be utilized at various times during the course of construction. This, however, will not constitute acceptance of or responsibility for the security and safekeeping of Subcontractor's equipment or materials by Contractor.

6. **CLEAN UP**: Subcontractor agrees to clean up and remove all its debris, rubbish, hazardous or toxic discharges and surplus materials as the Work progresses and to keep its own work protected from damages by the elements and from damage likely to be occasioned in the performance of the Work and to protect all other parts of the Project from damage likely to be caused by Subcontractor's Work. Should any such damage occur, Subcontractor agrees to immediately repair the same. Any default of Subcontractor in any such cleaning or protection from damage, may be remedied by Contractor, and the cost thereof deducted (at a rate of \$50.00 per hour for Contractor's labor) from the Contract Price

7. **INSURANCE**: Subcontractor agrees to procure and maintain at its own expense and with companies satisfactory to Contractor and having a current A. M. Best's rating of not less than "A VII", insurance coverage for all of its operations as follows:

7.1. **Workers' Compensation Insurance**: Coverage A in amounts as required by law; Employer's Liability of \$1,000,000, and such coverage shall contain a waiver of subrogation by the insurance carrier with respect to Contractor evidenced by a separate endorsement in favor of Contractor;

7.2. **General Liability Insurance**: Provided through a Comprehensive or Commercial General Liability policy (occurrence form only; **not claims made or "modified occurrence" form**) providing insurance for bodily injury and property damage covering premises and operations; products and completed operations; contractual liability specifically covering the indemnity in Article Eleven, broad form property damage including completed operations, severability of interest and cross liability clauses; independent professionals; owners/contractors protective; explosion, collapse and underground

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hazards ("X", "C", & "U") if underground work is being performed by Subcontractor; and personal and advertising liability; with limits of at least \$1,000,000 per occurrence/\$2,000,000 aggregate or such higher amount as designated by Contractor at time of executing this Contract. In the event the Work consists of grading, earth movement, ~~grading~~ *grading*, roofing, sewer or storm drain construction, plumbing, or fire sprinkler installation, such limits of liability shall be at least \$5,000,000 per occurrence/\$5,000,000 aggregate. Subcontractor's insurance shall be primary and any other insurance maintained by Contractor shall be excess only and non-contributing with Subcontractor's insurance. Subcontractor's insurance shall name Contractor, its officers, employees, agents, partners and joint venturers as additional insureds, which coverage shall be evidenced by a separate Additional Insured endorsement in a form acceptable to Contractor; and

7.3. Automobile Liability Insurance: Providing coverage for bodily injury and property damage, for owned, hired and non-owned automobiles of at least \$1,000,000 combined single limit.

7.4. Certificates and Endorsements: The limits of coverage required in this Article may be provided by any combination of primary and excess policies. Certificates of Insurance evidencing such coverage shall be delivered to Contractor prior to the commencement of any work. Such certificates of insurance shall state "All Operations" of Contractor or Subcontractor performed on behalf of Contractor shall be covered by such insurance. Subcontractor's insurer shall provide at least thirty (30) days' prior written notice of cancellation or material change in coverage to Contractor. The wording "Endeavor" and ... "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" must be deleted from the certificate. If your carrier or broker will not remove such language from the certificate, a separate endorsement requiring 30-day notice of cancellation will be required. Nothing in this Article shall reduce Subcontractor's obligations as set forth in Article Thirteen herein. Subcontractor's current workers compensation experience modification rating is *N/A*.

8. WARRANTY: Neither the final payment nor any provision in the Contract documents shall relieve Subcontractor of responsibility for faulty materials or workmanship. In addition to the specific guarantees required by the Specifications for the Work, Subcontractor guarantees all the work to be performed and all the materials to be furnished under this Contract against patent defects in material or workmanship for a period of one (1) year from the close of escrow on such property resulting from failure in material or workmanship which may occur during said one year period at its own expense and without cost to Contractor. A 7-day-a-week and 24 hour on-call emergency service must be provided by roofing, plumbing, electrical and HVAC subcontractors. Such 24 hour number is *N/A*. In the event of an emergency, Subcontractor agrees to respond and repair or replace any work or materials within 24 hours of receiving notice.

8.1 APPOINTMENTS. Subcontractor shall be required to give the homeowner notification that the homeowner's warranty service call will be within a four hour period in either the morning or the afternoon. Should Subcontractor agree to make warranty repairs to a specific home, and fail to keep its appointment with the homeowner, without giving at least 24 hours' notice of cancellation to the homeowner, or does not keep such appointment within the set four (4) hour period, Subcontractor acknowledges that its actions will cause damage to the reputation of Contractor, and may damage the relationship of Contractor with its homeowners. Such damages would be extremely difficult and impractical to precisely compute. The parties therefore agree that as liquidated damages, and not as a penalty, Subcontractor will pay Contractor the sum of \$250.00 for every appointment it misses or is over four (4) hours late in keeping for warranty service calls. Subcontractor further agrees that the amount of such liquidated damages may be backcharged against any then open contract between Contractor and Subcontractor.

8.2 FAILURE TO PERFORM WARRANTY SERVICE. In the event Subcontractor fails to repair or replace any work or materials after receiving reasonable notice of Contractor's request to repair or replace the same, Contractor may, at its sole option and discretion, elect to repair or replace such work or materials, and hold Subcontractor liable for such repair or replacement (including any administrative costs incurred by Contractor), and may backcharge or withhold the cost of such repair or replacement from any account then payable by Contractor to Subcontractor. Nothing in the foregoing provision shall, in any manner, diminish or defeat any legal right Contractor may have to proceed against Subcontractor, including, but not limited to the right to recover for latent defects.

9. CHANGES TO THE CONTRACT: Contractor shall have the right at any time, by a written change notice signed by Contractor, to make changes in any one or more of the following parts of this Contract: (a) the Plans and Specifications; (b) the time for performance of all or any portion of the Work. If any such change notice causes an increase or decrease in the cost of or the time required for the performance of any part of the Work, equitable adjustment will be made in the Contract Price or the time for performance or both, and any modification to the Contract shall be in writing and signed by the parties hereto. Any claim by Subcontractor for adjustment under this paragraph must be submitted to Contractor in writing within ten (10) days from the date of receipt by Subcontractor of notification of change. Nothing contained herein shall excuse Subcontractor from proceeding with the Work as changed even though a mutually agreed price or time for performance change has not been reached. No extra allowances will be made to cover any costs in excess of the Contract Price unless initiated by Contractor's Superintendent using the "Extra and Back-Charge Request Form". This form will describe the "Extra" being requested and will be signed by the Project Superintendent and the Manager of Construction or Vice President of Operations. Upon delivery of "Extra", Subcontractor will receive the signed copy of the Request. The Purchasing Manager or Site Development Manager will initiate payment, provided the request was not part of the Contract, by issuing a Purchase Order or Change Order. If Subcontractor is receiving a Back-Charge, it will be initiated by Contractor's Superintendent using the "Extra and Back-Charge Request Form". This Back-Charge will indicate the work completed along with any backup documentation which may apply. All extra work will require submittal of daily "extra work order" time cards to be stamped by Contractor's Superintendent on a daily basis, submitted at the time of invoice, and be separate from Contract Work; referencing Purchase Order and/or Change Order. Any deviation by Subcontractor of above procedure may result in delay or forfeiture of payment. Contractor may at any time, in its sole discretion, change the number of any particular elevation without incurring additional costs for said changes, save and except the actual cost of the elevation.

10. PAYMENT: Contractor agrees to pay Subcontractor for the full and faithful performance of the Work the sum of **ONE HUNDRED FIFTY EIGHT THOUSAND ONE HUNDRED FORTY FIVE DOLLARS AND NO CENTS (\$158,145.00)** based on the schedule set forth in Exhibit "A" (the "Detail Payment Schedule") attached hereto and incorporated herein by this reference. The plan elevation base pricing is as follows:

Plan/EI	Option	Cost Code	Description	Type	UOM	Amount
001A		4095	Labor	L		\$9,147.00
001A		4100	Material	L		\$8,014.00
001A		4105	Trusses	L		\$4,086.00

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Contractor's Initials *[Signature]*

001B		4095	Labor	L		\$9,345.00
001B		4100	Material	L		\$8,033.00
001B		4105	Trusses	L		\$4,086.00
001C		4095	Labor	L		\$9,109.00
001C		4100	Material	L		\$8,105.00
001C		4105	Trusses	L		\$4,086.00
002A		4095	Labor	L		\$11,435.00
002A		4100	Material	L		\$9,624.00
002A		4105	Trusses	L		\$5,724.00
002B		4095	Labor	L		\$11,642.00
002B		4100	Material	L		\$9,714.00
002B		4105	Trusses	L		\$5,608.00
002C		4095	Labor	L		\$11,459.00
002C		4100	Material	L		\$9,623.00
002C		4105	Trusses	L		\$5,769.00
003A		4095	Labor	L		\$11,062.00
003A		4100	Material	L		\$9,448.00
003A		4105	Trusses	L		\$6,099.00
003B		4095	Labor	L		\$10,944.00
003B		4100	Material	L		\$9,433.00
003B		4105	Trusses	L		\$6,270.00
003C		4095	Labor	L		\$11,201.00
003C		4100	Material	L		\$9,589.00
003C		4105	Trusses	L		\$6,314.00
004A		4095	Labor	L		\$10,854.00
004A		4100	Material	L		\$8,622.00
004A		4105	Trusses	L		\$4,595.00
004B		4095	Labor	L		\$11,021.00
004B		4100	Material	L		\$8,811.00
004B		4105	Trusses	L		\$4,595.00
004C		4095	Labor	L		\$10,748.00
004C		4100	Material	L		\$8,569.00
004C		4105	Trusses	L		\$4,756.00
005A		4095	Labor	L		\$10,451.00
005A		4100	Material	L		\$7,646.00
005A		4105	Trusses	L		\$5,508.00
005B		4095	Labor	L		\$10,386.00
005B		4100	Material	L		\$7,535.00
005B		4105	Trusses	L		\$5,508.00
005C		4095	Labor	L		\$10,406.00
005C		4100	Material	L		\$7,658.00
005C		4105	Trusses	L		\$5,603.00
006A		4095	Labor	L		\$11,290.00
006A		4100	Material	L		\$10,737.00
006A		4105	Trusses	L		\$5,245.00
006B		4095	Labor	L		\$11,150.00
006B		4100	Material	L		\$10,689.00
006B		4105	Trusses	L		\$5,245.00
006C		4095	Labor	L		\$11,503.00
006C		4100	Material	L		\$10,818.00
006C		4105	Trusses	L		\$5,309.00
007A		4095	Labor	L		\$12,516.00
007A		4100	Material	L		\$10,470.00
007A		4105	Trusses	L		\$6,076.00
007B		4095	Labor	L		\$12,464.00
007B		4100	Material	L		\$10,452.00
007B		4105	Trusses	L		\$6,202.00
007C		4095	Labor	L		\$12,360.00
007C		4100	Material	L		\$10,411.00
007C		4105	Trusses	L		\$6,284.00

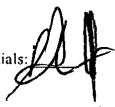
Contractor will make payments to Subcontractor in accordance with the following procedure:

10.1 Subcontractor shall present Contractor with a complete billing package comprised of: (a) an original invoice tied to the sequence sheet and matching Exhibit "A"; (b) a copy of Exhibit "A" highlighted to indicate the items to be included in the billing; (c) lien releases from Subcontractor on appropriate Contractor's forms; and (d) lien releases from Subcontractor's suppliers on appropriate Contractor's forms, in each case, for all work performed during the previous thirty (30) days. Billing for change orders will require the same billing package plus an Extra and Back-Charge form executed by Contractor's Superintendent.


10.2 Contractor will pay thirty (30) days from receipt of Subcontractor's correctly submitted billing package.

10.3 Contractor shall retain 5 percent of the total Contract Price pursuant to Exhibit "A".

10.4 If applicable, the retained percentage shall be paid within thirty-five (35) days after completion and acceptance of the Work by Contractor, the City or County having jurisdiction over the Work, the Federal Housing Administration or Veterans Administration, if applicable, and other inspectors having the duty and obligation to inspect the construction of the Project and Subcontractor's full and faithful performance of all other provisions of this Contract, including, but not limited to, Articles Six and Eight.

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10.5 Invoiced payments will be made only if Subcontractor's progress and workmanship are acceptable to Contractor, which acceptance shall not be unreasonably withheld, and Subcontractor, before receiving any payment, shall furnish Contractor releases stating all labor, materials and other items used by Subcontractor in the performance of the Work have been paid in full or will be paid in full upon receipt of the payment then being requested. If requested to do so by Contractor, Subcontractor shall execute any other documentation reasonably necessary to ensure the lien-free status of the property with respect to the performance of the Work.

10.6 The parties hereto agree that all funds paid Subcontractor shall first be used by Subcontractor to discharge obligations incurred by Subcontractor in performance of the Work and the funds shall not be used for any other purpose. The obligations referred to herein shall be those which, if not satisfied, would or could eventually be an obligation of Contractor or which would or could result in subjecting the Project to a mechanic's lien or other encumbrance on the real property upon which the Project is being constructed.

10.7 If at any time during the progress of the Work there should be evidence of any lien, stop notice or claim for material or equipment furnished or work performed pursuant hereto for which Contractor or its property may become liable, Contractor shall have the right to retain money due Subcontractor hereunder or under any other contract with Subcontractor; an amount sufficient to make Contractor whole against any such lien or claim.

10.8 Any authorized extra labor shall be paid at the rate of \$ ~~30.00~~ ^{45.00 per hour} per hour. All billing requests for extras will be paid only if the complete billing packages are submitted within sixty (60) days after the completion of the extra work for which payment is being requested. All other requests for payment pursuant to this Contract will be paid only if the complete billing package for such work is submitted within one hundred and eighty (180) days after the completion of the work for which payment is being requested. **Payment requests not complying with the invoice submission periods set forth above will not be paid.**

11. **ASSIGNMENT OF THE CONTRACT BY SUBCONTRACTOR:** Subcontractor shall not assign this Contract or any part thereof, or assign any monies due or to become due hereunder without first obtaining the prior written consent of Contractor.

12. **SUBCONTRACTOR'S FAILURE TO PERFORM:** In addition to Contractor's other remedies set forth elsewhere in this Contract for Subcontractor's failure to perform its obligations under this Contract, upon the occurrence of any one or more of the following events and the continuation thereof for a period of twenty-four (24) hours following written notice thereof by Contractor to Subcontractor:

12.1.1 Subcontractor fails to complete the whole or any portion of the Work in a timely manner, or in the opinion of Contractor, Subcontractor is not making sufficient progress with the Work, either due to lack of material, personnel or otherwise;

12.1.2 Subcontractor or any subcontractor or supplier of Subcontractor become delinquent in contributions or payments required to be made to any Welfare, Pension, Vacation, Apprenticeship or other employee benefit program or Trust;

12.1.3 Contractor or any other subcontractor shall be unable to proceed with the Project because of any action by one or more employees of Subcontractor or any subcontractor or by any person or labor organization purporting or attempting to represent any employee of Subcontractor or any subcontractor, or the presence of Subcontractor or its subcontractors on the Project causes any labor relations problems, including but not limited to picketing, strikes, slowdowns or interference with the operations of Contractor;

12.1.4 Subcontractor fails to remedy any defect of material or workmanship furnished by it when and as required by Contractor;

12.1.5 Subcontractor is unable to pay debts as they mature or makes any assignment for the benefit of creditors or in the event any petition is filed by or against Subcontractor under the Bankruptcy Act;

12.1.6 Subcontractor fails to comply with Contractor's Codes of Safe Practices or Job Rules;

12.1.7 Subcontractor substitutes materials without Contractor's written consent;

12.1.8 Subcontractor assigns its obligations, or any part thereof, to another subcontractor or supplier without Contractor's prior written consent; or

12.1.9 Subcontractor violates any other provision of this Contract;

Contractor may, without further notice to Subcontractor, terminate this Contract in whole or in part and, either through its own employees or through any subcontractor of its choice, complete the portion of the Work terminated or remedy such defect of material or workmanship and upon such termination Subcontractor shall be liable to Contractor for any and all loss, damage or expense, directly or indirectly suffered by Contractor from such failure by Subcontractor, including, but not limited to, any liquidated damages imposed upon the Contractor and reasonable attorneys' fees incurred or paid by Contractor. The costs incurred by Contractor as a result of the above actions may be deducted from this Contract, or any other contract then extant with Subcontractor. Should the amount or balance due on this Contract be insufficient, Contractor may collect the deficiency by legal process. In the event Contractor must use its own labor to complete all or any portion of the Work of this Contract, including but not limited to warranty service work, Contractor's labor shall be charged at the rate of fifty (\$50) dollars per hour. If Contractor, through its own employees or through any such subcontractor of its choice, completes the Work pursuant to the provisions of this paragraph, it may use or permit any such subcontractor to use all material and equipment of Subcontractor on the site on the date of giving such notice.

12.2 In the event of Subcontractor's failure to make satisfactory progress with the Work, Contractor may also, without terminating the Contract, furnish or cause to be furnished the necessary materials or employ or cause to be employed the necessary workmen to remedy the situation at the expense of Subcontractor and all material and equipment of Subcontractor on the site, may at the option of Contractor, be used by Contractor or its additional subcontractors. The costs incurred by Contractor as a result of the above actions shall be charged against Subcontractor and Contractor may deduct same from this Contract, or any other contract then extant with Subcontractor. Should the amount or balance due on this Contract be insufficient, Contractor may collect the deficiency by legal process.

12.3 Contractor may also, upon the happening of any of the events listed in paragraphs 12.1.1-12.1.9 above, without terminating the Contract, remove Subcontractor from the Project until such time as Subcontractor remedies such deficiency. In

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the event Subcontractor's employees are removed for failure to comply with the noted deficiency, Subcontractor acknowledges Contractor will suffer damages from the delay in the construction schedule. Such damages would be extremely difficult and impractical to precisely compute. The parties therefore agree that, as liquidated damages, and not as a penalty, Subcontractor will pay Contractor the sum of \$1,000.00 per day for each day Subcontractor is absent from the jobsite by reason of being removed, and such sum may be backcharged against any contract then open between the parties.

13. INDEMNITY: In the event Contractor shall have a claim made against it for, or become involved in litigation or arbitration because of claims for personal injuries, death, property damage, liens, stop notices or charges of any kind against the site of the Project, Subcontractor's failure to fulfill its obligations under the Contract; claims under workers compensation acts or any other employee benefit acts with respect to Subcontractor's employees; violation of any federal state or local law, regulation or code; infringements of patents, or violations of patent rights; or any other type of claims, damages, injury or loss arising out of or related to the activities of or the work performed (including any addenda to this Contract, "extras" or written or verbal change orders to this Contract) by Subcontractor, its agents, employees, servants or subcontractors, it is the express intent of the parties to this Agreement that Subcontractor shall indemnify, defend and hold Contractor harmless against any and all such claims, damages, injury, loss, liability and expense, including but not limited to, attorneys' fees, and expert and consultants' fees incurred as a result thereof. The obligations imposed upon Subcontractor by this provision are binding, valid and enforceable even if it is claimed or established that Contractor was actively or passively negligent, strictly liable in tort or otherwise responsible for any such claims, damages, injury, loss, liability or expense with one exception: Subcontractor shall not be obligated to defend, indemnify or hold Contractor harmless under the terms of this provision for claims, damages, injury, loss, liability or expense caused by the sole negligence or willful misconduct of Contractor. Payment to Subcontractor by Contractor shall not be a condition precedent to enforcing Contractor's rights to indemnification. The indemnity set forth in this section shall survive the expiration or termination of this Contract until such time as action against Contractor on account of any matter covered by this indemnity is barred by the applicable statute of limitations.

13.1 Subcontractor's duty to defend Contractor is entirely separate from, independent and free-standing of Subcontractor's duty to indemnify Contractor, and includes, without limitation, defense of Contractor against claims for which Contractor may be strictly liable, and applies whether the issue of Subcontractor's negligence, breach of contract or other fault or obligation has been determined and whether Contractor has paid any sums, or incurred any detriment, arising out of or resulting directly or indirectly from Subcontractor's performance of the Work. It is the parties' intent that Contractor shall be entitled to summary adjudication of Subcontractor's duty to defend Contractor during any stage of any claim or suit within the scope of this Section. Contractor shall be entitled to recover from Subcontractor the attorneys' fees and costs incurred in enforcing the indemnity provisions herein.

14. CONSTRUCTION LOANS: This Contract may be subject to, and when subject to, shall be contingent upon Contractor obtaining a construction loan for the Project satisfactory to Contractor. If such construction loan is not, for any reason, obtained and recorded for this Project from time to time as required, Contractor may terminate this Contract, and, at Contractor's option, may designate which portions of the Work covered by this Contract shall be performed by Subcontractor.

15. NOTICES: Any notice given under this Contract shall be given in writing and delivered either personally to the Superintendent at the Project for service on Contractor or to the representative of Subcontractor in charge of the work at the Project for service on the Subcontractor, or sent by United States mail or Federal Express or comparable overnight delivery service, postage prepaid, addressed to the party to be charged at the address as the same appears herein or at such other address as either party may give by written notice to the other. Notices shall be deemed received when delivered personally or twenty-four (24) hours following deposit in the United States mail or delivery to such overnight service as aforesaid. As used herein, the term "days" shall mean and refer to consecutive calendar days.

16. ENTIRE AGREEMENT: This Contract, together with any related documents expressly referred to herein, constitutes the entire agreement and understanding between the parties, and supersedes any and all other prior agreements or understandings, whether written or oral, regarding the Work or the Project.

17. VENUE AND CHOICE OF LAWS: Any action brought to interpret or enforce the terms of this Contract shall be brought in the state court of the judicial district in which the Division Office of Contractor listed above is located. This Contract shall be governed by the Laws of the State of California.

18. SUBCONTRACTOR LICENSING: SUBCONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A SUBCONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, 9835 GOETHE ROAD, SACRAMENTO, CA 95827. MAILING ADDRESS: P.O. BOX 2600, SACRAMENTO, CA 95826.

If the foregoing is acceptable to you, please so indicate by signing and returning the original of this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year first above written.

GREYSTONE HOMES, INC.
"Contractor"

By: 

Title: Vice President of Operations

HNR FRAMING SYSTEMS INC.
"Subcontractor"


By: 

Title: President

Fed I.D. No. 330464329
License No. 617393

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EXHIBIT "B"

SCOPE OF WORK

JOB PREPARATION

1. Prior to starting any work under this Contract, Subcontractor shall meet with Contractor's Project Superintendent, concrete, HVAC, plumbing, window and stair subcontractor, and any other subtrades necessary to coordinate all of the details of the work, including review of the plans and specifications, dimensions, schedules, models and prior production units if they exist. Subcontractor agrees that it has inspected and accepts all existing conditions and is aware of all the details for which it is responsible.
2. Prior to plating, Subcontractor shall inspect and accept, or reject, the concrete slab for square, layout and level, and confirm that all hardware, plumbing and electrical stubs are within wall spaces as required, and all structural elements to be embedded in slab have been correctly installed.

DETAILED DESCRIPTION OF THE WORK

A) MATERIAL MANAGEMENT


1. No lumber shall be delivered to the jobsite without consent of Contractor's Vice President of Operations and direction of Contractor's Project Superintendent.
2. Subcontractor shall be fully responsible for the handling and distribution of all lumber and trusses on the job site, including the unloading of all lumber trucks. This shall also include the coordination and scheduling of shipments with the lumber company and verification of deliveries made based on the approved lumber list and orders placed.
3. Subcontractor shall store materials only at locations approved by Contractor's Project Superintendent, and shall move any lumber and trusses as required by Contractor. All tools of the trade shall be removed from the job site and all Subcontractor's scaffolding materials shall be neatly stacked out of the way of subsequent subtrades at the completion of framing work at each house.

B) LUMBER

1. Subcontractor guarantees that lumber supplies will be sufficient in all categories to complete the rough framing operation. Any shortages or overages shall be the responsibility of Subcontractor.
2. Subcontractor is responsible for full replacement of any and all material on site after delivery until said materials are installed.
3. All exposed fascia, siding, and structural members shall be of the same dimensions. Varying sizes of the same materials will not be accepted.
4. Lumber delivered shall be fresh stock only.

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5. Loads shall be banded securely to prevent warping and for ease of handling.
6. All materials shall be as specified on architectural and structural plans.

C) LAYOUT AND BACKING

1. Subcontractor shall carefully note all backing requirements for windows, stair system, vents, arches, shutters, sheetmetal, wardrobe bumper jambs, ceiling tracks, tub and shower enclosures, plumbing, water heater earthquake straps, cabinets, counter tops, handrails, deadbolts, towel bars, paper holders, drywall, stucco, masonry, exterior trim, fences and all other backing and furring required by all subsequent trades.
2. Subcontractor shall sweep the foundation free of all sawdust and debris prior to installation of soleplate.
3. Subcontractor agrees to layout from the same starting point in each unit as determined by Contractor's Project Superintendent.
4. Subcontractor will not bend any copper or cut any pipe.

D) ROUGH HARDWARE

1. Subcontractor shall furnish and install all rough hardware shown on the plans, required by code, and as necessary for a complete framing job, including braces, joist hangers, truss clips, tecos, plate straps, post anchors, saddles, beam hangers, bolts, nuts, washers, hold downs including all missing nuts for foundation bolts, and washers for such bolts, screws, nails, shots, plates and pins, but excluding any items imbedded in concrete which shall be furnished and installed by others.
2. All hardware shall be ICBO approved and accepted by all governing agencies.

E) CAULKING

1. Furnish and install "rope" caulking under the soleplate of all exterior walls prior to standing the walls.
2. Caulk all wood-to-wood joints and all penetrations at the exterior building shell to provide for a completely weatherproofed building. Caulk all joints at exterior wood trim and detailing, and all cracks and voids in exposed exterior wood finishes as directed by Contractor's Project Superintendent. Subcontractor shall be responsible to furnish and install Top Rainbuster No. 900 caulking for this purpose. *(or 25 year caulking)*
3. Subcontractor shall follow all caulking details as shown on the plans. *RL*

F) SHEAR PANELS

1. Use of pneumatic air tools will be permitted however, overdriven nails shall be removed and replaced. Nail heads shall not break the shear panel surface.
2. Shear panels shall not be held back from any door or window opening.

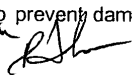
G) GENERAL FRAMING REQUIREMENTS

1. All framing shall be constructed with all joints plumb and true, tight, and nailed or bolted as required. All horizontal members subject to bending shall be set with crown up and shall not be spliced between bearings. All members shall have solid bearing without being shimmed. Interior and exterior angles shall be properly framed to receive interior and exterior finishes. Joints of all paneling, siding and sheathing shall occur at studs or shall be solidly back-blocked.

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2. No lubricated nails shall be permitted.
3. In the event temporary power is unavailable at the jobsite, Contractor is responsible to provide generators.
4. Subcontractor shall not notch or cut any structural members, including but not limited to engineered floor joists, floor trusses, glu-lams or roof trusses, without written approval from Contractor, Engineer of Record, and Structural Engineer.
5. All false beams shall have chamfered, mitered edges with drip cuts.
6. Furnish and install plywood or OSB sheathing at ledges and pot shelves.
7. Bathtubs and shower pans, once installed, are to be covered at all times to prevent damage with plywood supplied and cut to fit by Subcontractor *AT A cost of 35⁰⁰ each*  with plywood supplied and cut to fit by Subcontractor.
8. Furnish and install all fire stops per code including, but not limited to, frame chases, popouts and fireplace framing.
9. Subcontractor **shall** furnish and install headers for all optional openings as indicated on plans.
10. All ceiling lines shall be straight and within 1/4" level in 8' throughout.
11. All walls shall be straight, square, and within 1/4" plumb in 8' throughout.
12. All windows and doors shall be within 1/8" plumb and level.
13. All window and door reveals to be equal.
14. Earth to wood contacts and/or wood debris will not be allowed within the building envelope.

H) STAIRS


1. Furnish and install temporary stairs and hand rails to comply with OSHA and applicable state and local requirements. Rails shall be installed in such a way that drywall will be installed without the removal of the rail.
2. Subcontractor shall ensure that the rise and run of each stair meet governing authorities requirements and all building codes. Coordinate all backing and dimensions with Stair Subcontractor. Special care shall be taken to ensure that walls receiving wall cap and railings are constructed straight and square to the satisfaction of Contractor.
3. Subcontractor shall construct stair treads with a minimum of 3/4" plywood sheathing, glued and screwed with 1 3/4" screws or **hand nailed. pneumatic gun nails will not be used.**

I) FLOOR SYSTEM

1. Subcontractor shall coordinate with Contractor's Project Superintendent to allow room for supply and return air ductwork between joists at designated locations.
2. Subcontractor shall straight edge all floor joists prior to sheathing floors.
3. Floor depressions, humps and areas out of level more than one-quarter of an inch (1/4") in eight feet (8') shall be planed and filled as needed.
4. Screw all second floor interior plates with 2 1/2" #6 drywall screws every other stud bay.
5. Floor sheathing shall be glued and screwed with 1 3/4" screws, screw nails to be six (6") inches O.C. at supported edges and **ten (10") inches** O.C. in the field. Glue shall be applied amply enough to be visibly oozing, and shall not be allowed to skim over or dry prior to application and screwing. Floors shall be screwed within one hour of glue application.

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6. Floor squeaks are unacceptable. Subcontractor shall install floor sheathing in such a manner as to eliminate floor squeaks that result from an improperly assembled floor system.
7. Subcontractor shall routinely check floors. Subcontractor's foreman shall walk unit prior to installation of finish flooring with Project Superintendent to ensure that the subfloor is free of defects and noises. Any floor squeaks detected after finish flooring are the full responsibility of Subcontractor.

J) ROOF TRUSSES

TRUSS CALCS PROVIDED BY HANSON TRUSS COMPANY.
SUBCONTRACTOR ASSUMES FULL RESPONSIBILITY IN THE EVENT THAT ANOTHER MANUFACTURER IS USED. SUBCONTRACTOR SHALL PROCESS NEW CALCULATIONS THROUGH THE CITY OF CARLSBAD, AND SHALL GUARANTEE TO CONTRACTOR THAT THIS SHALL CAUSE NO SCHEDULING OR INSPECTION DELAYS ON THIS PROJECT. SUBCONTRACTOR SHALL DELIVER TO CONTRACTOR'S PROJECT MANAGER THREE (3) STAMPED, SIGNED AND APPROVED SETS OF CALCULATIONS FOR CONTRACTOR'S RECORDS.


1. Furnish and install all trusses and auxiliary structures necessary to construct a complete roof in accordance with the plans including, but not limited to, the following items:
 - A. Main span flat and scissors trusses.
 - B. Main span special trusses with soffited ceilings.
 - C. Gable end trusses with stud backing at 16" on center.
 - D. Drywall backing trusses at volume ceilings.
 - E. Firewall fill trusses.
 - F. Girder trusses.
 - G. Complete hip end sets.
 - H. Complete Dutch hip sets.
 - I. Roof Dormers.
 - J. Precut California fills.
 - K. Truss tails at overhangs.
 - L. All required blocking (frieze blocking and ridge blocking).
 - M. Precut vent blocking and ladder blocks.
 - N. Extra trusses at special point loads.
 - O. Installation and support hardware.

K) ROOFING AND FASCIA

1. Exterior trim and fascia material shall be selected to minimize exposed knots and defects. Material with large, loose or missing knots shall not be installed.
2. Fascia boards shall be furnished and installed in the longest available lengths to avoid multiple splices in long eave runs. Splices in visually sensitive areas, such as across the front of the garage or other entryways, shall be offset to the side of the house rather than near the center of the house.
3. All fascia shall be mitered at all splices and at all outside corners.
4. Furnish and Install all roof sheathing, ridge, hip and eave boards as required for tile roofing in accordance with the roofing manufacturer's specifications and details.
5. Furnish and install all crickets as shown, or where needed, if not shown on plans.
6. Furnish ladders for roof sheathing and other high out-of-sight inspections.
7. Clip and countersink any and all sheathing nails exposed at roof overhang, where battens are present.

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L) FLASHING & WATERPROOFING

1. Furnish and install "Moistop" flashing as manufactured by Fortifiber Corporation in Portland, Oregon, around all trim and pop-outs per plan. This shall be installed to provide a minimum 6" lap.
2. Furnish and install all waterproofing details behind framing per plans.
3. All exterior pot shelves, ledges and fireplace shoulders shall be coated with bituthane, which shall be **other trades** responsibility.

M) PREPARATION FOR SUBSEQUENT TRADES

1. Cut openings for HVAC subcontractor and install backing required for all subsequent trades.
2. Provide solid backing 6" above and below all dead bolt areas between jamb and rough opening.
3. Build platforms and install walkways for forced air units.
4. Provide soffited ceilings and 2" x 6" walls as shown on plans.
5. Build all chases for electrical, plumbing, dryer vents, FAU flue, chimney flue, freon lines and any other item that would require concealment both in the living areas and the garage areas.
6. Fur all ceiling and/or roof areas to accommodate all insulation as designated, including a deeper attic crawl hole access frame to accommodate the thickness of the attic insulation. Install baffles at eave vents so that air flow is not restricted by insulation.
7. Furnish and install garage platforms with 2 layers of 3/4" plywood. Platforms shall be level and not sloped with garage floors.

N) SIDING AND TRIM

1. Furnish and install all siding, trim, corner trim, plant-ons, false louvers and pot shelves at exterior elevations in accordance with plan details. All nails and bolts for exterior use shall be hot dipped galvanized.
2. Furnish and install 60 minute rated, grade D building paper under all siding. Paper must be lapped to next stud bay at all corners.
3. Hammer marks on the exterior trim and siding is unacceptable. All damaged trim shall be replaced. The use of corrugated faced hammers shall not be permitted in the nailing of any exposed wood.
4. Any tear or perforation in building paper shall be sealed.
5. All siding shall be caulked in accordance with manufacturer's recommendations.
6. Subcontractor shall furnish and install red clay vent pipes as shown on plans.
7. Install all framing related sheet metal and louvers, which are to be furnished by others, and which must be installed as an integral part of this Work, including but not limited to foundation vents, gable vents and eave vents.

O) SHEETMETAL

1. Vents shall be back blocked on all four sides and flashed with Moistop.

P) EXTERIOR OPENINGS

1. This contract **excludes** the installation of exterior wood door frames.
2. This contract **excludes** the installation of exterior window frames and patio doors.

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Q) SITE & MATERIAL CLEAN UP

1. Subcontract shall clean up all houses under construction on a daily basis. All debris is to be placed in one orderly pile in front of each house. Any re-useable material must be stacked in a separate pile and clearly designated as useable material to avoid removal by the Clean Up Subcontractor.
2. Subcontractor shall dispose of all food and paper trash in trash cans provided by Contractor.
3. Subcontractor agrees that after drywall texture there shall be no eating, drinking or smoking inside the units throughout the completion of the units.
4. Subcontractor agrees that no person is allowed to use bathrooms inside any unit under any condition during or after construction
5. No equipment maintenance shall be performed within one half mile of any residence.

R) PICK UP

1. After lathing and siding, and prior to drywall operations, Subcontractor shall correct any and all crooked, twisted, bowed and split lumber including studs, joists, beams, rafters or other unsuitable framing members. Contractor has the right to reject any material deemed unsatisfactory. Subcontractor shall not install any lumber which is twisted, warped, cracked, rotting or otherwise unacceptable, including beams with heart center, or pitch pockets in exposed lumber. Subcontractor shall assume full responsibility for any material installed, and Subcontractor shall provide all labor, materials and equipment to remove and replace any unacceptable materials at no cost to Contractor.
2. Bowed studs shall be replaced by straight studs. Notching of studs to straighten is not acceptable.
3. Subcontractor is required to be present for all framing inspections, by governing agencies or third party, and shall be prepared to make on-the-spot corrections, as needed.
4. Subcontractor shall re-tighten hold downs and anchoring devices prior to final framing inspection.
5. Upon completion of final pick up Subcontractor shall shim all exterior door and window openings, between trimmers and headers.

S) MODEL FIELD CHANGES

1. At the models, where field changes are frequently required, Subcontractor shall have Contractor initial Subcontractor's plans as well as the Superintendent's "as-builts" or take the risk of not receiving payment for unauthorized or unacceptable work. Subcontractor shall provide one (1) set of redlined plans to Contractor's Project Superintendent within ten (10) days of completion of model framing inspection.

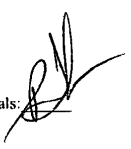
T) SCHEDULES

1. Subcontractor is aware that the model complex will receive contract and schedule priority and that there may be no continuity of work between the model homes and the first production units. Subcontractor agrees that the production rates for the models shall be increased to complete the models at the fastest possible rate, and has included the cost of all overtime necessary to complete the models in accordance with Contractor's requirements. Subcontractor shall man the models with the most qualified and experienced tradesmen available.


MODELS

Day

1. Trench footings & plumbing trenches, set forms (pre sat. prior)
2. Set ground plumbing, electrical sleeves, P.M. Inspections
3. Rough grade, copper, fine grade, sand visqueen, set cables
4. Slab inspection, pour slabs & garages
5. Strip forms, rough grade, drop lumber, layout, plate, detail, frame 1st floor
6. Drop trusses, plumb & line, set beams, joist, plumbing top out sheet & nail floor

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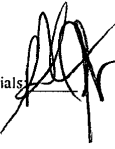
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7. Layout, plate, frame, plumb & line & beams, load trusses
8. Roll trusses, fascia, sheet & nail roof & shear panel, set tubs
9. Copper, HVAC, fireplaces, windows, jambs
10. Felt & load roofs, rough electric, exterior trim, backing
11. Sheet metal A.M., Framing pickup, screed. lath 6', set staging
12. Top-out lath, complete framing, pickup framing, inspections, paint fascia
13. Insulation, dry in roof, inspection P.M., insulation
14. Hang drywall, lids & walls
15. Metal, scrape, inspection
16. Tape & detail, nail spotter, scratch coat plaster
17. First coat walls, high man crew
18. Second coat everything, brown coat plaster
19. Sand & third coat, clean out sides (maybe foam elevation)
20. Final sand & hot mud, texture, clean, paint eaves
21. Sand & edge walls, seal kitchen & baths, start handrail
22. Set finish carpentry, cabinets, finish handrail, fireplace faces
23. Kitchen tile, drywall prepaints, base, measure tops & shower doors
24. Paint sweep, stain & lacquer handrail, color coat, paint prep
25. Undercoat, flat wall, grade & form flatwork, garage doors, roof fill-ins
26. Enamel, pour flatwork, seal wall, paper walls
27. Set interior hardware & lockup, "set tops", electrical, HVAC, trim
28. Set plumbing, trim, set mirrors
29. Finish grade & cert., box out
30. Set fencing, sand floors, start landscape/hardscape
31. Wallpaper, landscaping/hardscaping
32. Final pick-up day, complete wallpaper, complete landscaping
33. Final clean
34. Final inspection

PRODUCTION

Subcontractor shall provide sufficient labor, equipment and materials to complete the following work tasks at the noted buildings per day production rate. The work tasks are to be performed continuously without delay between tasks, providing that other trade's work requiring installation prior to the start of Subcontractor's next sequential work task has been completed and approved.

DESCRIPTION	HOUSES PER DAY
a) Layout and plate	2
b) Raise first floor walls	2
c) Plumb and line first floor	2
d) Set first floor beams	2
e) Bolt hold downs first floor	2
f) Load and install floor system	2
g) Shear and nail first floor	2
h) Cut stairs	2
i) Lay and screw second floor sheathing	2
j) Layout and plate second floor	2
k) Raise second floor walls	2
l) First floor pick-up, drops, platforms and cuts	2
m) Plumb and line second floor	2
n) Set second floor beams	2
o) Shear and nail second floor	2
p) Load and roll roof trusses	2
q) Conventional roof framing	2
r) Fascia complete	2
s) Starter board at barges and overhangs	2
t) Lay and nail roof sheathing	2
u) Exterior trim and siding	2
v) Second floor pick-up and HVAC catwalks	2
w) Final pick-up and stud straightening	2

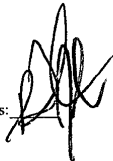
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V) PLANS/REPORTS

1. All work shall be in accordance with the bid plans by William Hezmalhach Architects Inc., titled "Cobblestone" Single Family Homes, date stamped 9-8-97.
2. All work shall be in accordance with the plans by ESI/FME, date stamped 9-22-97, Delta #5.

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PRICE AND PAYMENT SCHEDULE


I. PRICE SCHEDULE

A) MODELS/PRODUCTION HOUSES

PLAN	LABOR CODE 4095	LUMBER CODE 4100	TRUSSES & FLOOR JOISTS CODE 4105	TOTAL PRICE
1A	9147	8014	4086	\$21247
1B	9345	8033	4086	\$21464
1C	9109	8105	4086	\$21300
2A	11435	9624	5724	\$26783
2B	11642	9714	5608	\$26964
2C	11459	9623	5769	\$26851
3A	11062	9448	6099	\$26608
3B	10944	9433	6270	\$26647
3C	11201	9589	6314	\$27104
4A	10854	8622	4595	\$24071
4B	11021	8811	4595	\$24427
4C	10748	8569	4756	\$24073
5A	10451	7646	5508	\$23605
5B	10386	7535	5508	\$23429
5C	10406	7658	5603	\$23667
6A	11290	10737	5245	\$27272
6B	11150	10689	5245	\$27084
6C	11503	10818	5309	\$27630
7A	12516	10470	6076	\$29062
7B	12464	10452	6202	\$29118
7C	12360	10411	6284	\$29055

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B) OPTIONAL ITEMS

When authorized in writing by Contractor, Subcontractor shall construct the option noted below for the prices shown.

The CUTOFF point for the above referenced options shall be: Contractor to notify Subcontractor prior to completion of layout to receive this option.

Prices below are for labor and lumber.

OPTION NO.	PLAN	DESCRIPTION	PRICES BEFORE/AFTER CUTOFF	
			BEFORE LAYOUT	AFTER FRAMING
	1	Bedroom #4 to Loft	<\$31>	\$375
	1	Deck #1	\$2580	\$2580
	1	Deck #2	\$344	\$344
	2	Bedroom #5 to Tandem Garage	<\$48>	\$405
	2	Bedroom #2 to Super Family Room	<\$60>	\$405
	2	Bedroom #2 to Den/Office	<\$24>	\$375
	2	Bedroom #4 to Retreat/Nursery	\$160	\$375
	2	Deck #1	\$2640	\$2640
	2	Deck #2	\$344	\$344
	3	Bedroom #2 to Loft	<\$60>	\$355
	3	Deck #1	\$2160	\$2160
	3	Deck #2	\$344	\$344
	3	Bedroom #2 to Loft - French Door	\$-0-	\$355
	4	Bedroom #4 to Loft	<\$56>	\$405
	4	Deck #1	\$2480	\$2480
	4	Deck #2	\$344	\$344
	5	Bedroom #4 to Loft	<\$42>	\$405
	5	Deck #1	\$2480	\$2480
	5	Deck #2	\$344	\$344
	6	Bedroom #5 to Den	\$-0-	\$355
	6	Deck #1	\$2380	\$2380
	6	Deck #2	\$344	\$344
	6	Garage to Garden Room/Studio	\$1010	\$1010
	7	Bedroom #5 to Loft	<\$36>	\$405
	7	Bedroom #2 to Retreat	\$25	\$405
	7	Deck #1	\$2960	\$2960
	7	Deck #2	\$344	\$344

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C) OPTIONAL ITEMS

PAYMENT SCHEDULE

When authorized in writing by Contractor, Subcontractor shall construct the option noted below for the prices shown.

The CUTOFF point for the above referenced options shall be: Contractor to notify Subcontractor prior to completion of ~~work~~ to receive this option.

SLABS BEING POURED

Prices below are for labor and lumber.

OPTION NO.	PLAN	DESCRIPTION	PRICES BEFORE/AFTER CUTOFF	
			BEFORE LAYOUT SLAB	AFTER FRAMING
1	1	Bedroom #4 to Loft	\$ 280	375
1	1	Deck #1	\$ 2580	2735
1	1	Deck #2 (French doors)	\$ 344	344
2	2	Bedroom #5 to Tandem Garage	\$ 265	405
2	2	Bedroom #2 to Super Family Room	\$ 210	485
2	2	Bedroom #2 to Den/Office	\$ 197	392
2	2	Bedroom #4 to Retreat/Nursery	\$ 265	465
2	2	Deck #1	\$ 2640	2880
2	2	Deck #2	\$ 344	344
3	3	Bedroom #2 to Loft	\$ 196	355
3	3	Deck #1	\$ 2160	2430
3	3	Deck #2	\$ 344	344
4	4	Bedroom #4 to Loft	\$ 215	405
4	4	Deck #1	\$ 2480	2630
4	4	Deck #2	\$ 344	344
5	5	Bedroom #4 to Loft	\$ 183	405
5	5	Deck #1	\$ 2480	2633
5	5	Deck #2	\$ 344	344
6	6	Bedroom #5 to Den	\$ 125	355
6	6	Deck #1	\$ 2580	2540
6	6	Deck #2	\$ 344	344
6	6	Garage to Garden Room/Studio	\$ 1010	1010
7	7	Bedroom #5 to Loft	\$ 177	405
7	7	Bedroom #2 to Retreat	\$ 135	405
7	7	Deck #1	\$ 2960	3115
7	7	Deck #2	\$ 344	344

APPROVED BY
PETER BERRY

12/11/98

[Signature]

Subcontractor: HNR FRAMING Name/Title: DAN REED PROJECT MANAGER
Address: 12345 CROSTHWAITER CIR. POWAY CA 92064
Phone: 486-2471 Fax: (619) 486-7351
Authorized Signature: *[Signature]* 1-8-97

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II. PAYMENT SCHEDULE

A) LABOR & LUMBER

1. Lumber invoices shall only be paid in accordance with this payment schedule for material which is installed.

DRAW #1: 35%

SINGLE STORY: Walls completed, standing and aligned and ready for roof beams and roof trusses.

TWO STORY: First floor walls completed and aligned. Second floor joists and/or trusses completed and second floor, floor decking completely installed and stairs completed to the second floor.

DRAW #2: 30%

SINGLE STORY: Roof trusses and roof framing complete, fascia, barge and starter board complete.

TWO STORY: Second story walls standing and aligned and roof trusses, fascia, barge and starter board installed and complete.

DRAW #3: 15%

SINGLE STORY AND TWO STORY: Roof sheathing complete, window frames set and building completely ready for exterior finishes.

DRAW #4: 15%

SINGLE STORY AND TWO STORY: All exterior siding and trim complete, all pick-up work complete, framing inspection approved and final framing accepted by Contractor.

DRAW #5: 5%

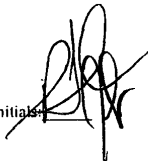
RETENTION: 35 days after framing inspection.

B) ROOF TRUSSES

DRAW #1: 100%

Upon installation and inspection of trusses.

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GREYSTONE HOMES, INC.

EXHIBIT "A"

DETAIL PAYMENT SCHEDULE

Vendor: 131668 HNR FRAMING SYSTEMS INC.
Contract: 611207-OS
Rel. Cost Center: 22231 Cobblestone Models

PT 1	WALLS COMPLETED, STANDING AND ALIGNED AND READY FOR ROOF BEAMS AND ROOF TRUSSES	35%
PT 2	ROOF TRUSSES AND ROOF FRAMING COMPLETE, FASCIA, BARGES AND STARTER BOARD COMPLETE	30%
PT 3	ROOF SHEATHING COMPLETE, WINDOW FRAMES SET AND BUILDING COMPLETELY READY FOR EXTERIOR FINISHES	15%
PT 4	ALL EXTERIOR SIDING AND TRIM COMPLETE, ALL PICK-UP WORK COMPLETE, FRAMING INSPECTION APPROVED AND FINAL FRAMING ACCEPTED BY CONTRACTOR	15%
PT 5	RETENTION 35 DAYS AFTER FRAMING INSPECTION	5%

4095 Labor

P/E	Option	Lot	Balance \$ Point One	Balance \$ Point Two	Balance \$ Point Three	Balance \$ Point Four	Balance \$ Point Five	Balance \$ Point Six	Balance \$ Point Seven	Balance \$ Point Eight	Balance \$ Point Nine	Total \$
004B		0096	\$3,857.35	\$3,306.30	\$1,653.15	\$1,653.15	\$551.05					\$11,021.00
007A		0097	\$4,380.60	\$3,754.80	\$1,877.40	\$1,877.40	\$625.80					\$12,516.00
002C		0098	\$4,010.65	\$3,437.70	\$1,718.85	\$1,718.85	\$572.95					\$11,459.00
006A		0099	\$3,951.50	\$3,387.00	\$1,693.50	\$1,693.50	\$564.50					\$11,290.00
005B		0100	\$3,635.10	\$3,115.80	\$1,557.90	\$1,557.90	\$519.30					\$10,386.00
003C		0101	\$3,920.35	\$3,360.30	\$1,680.15	\$1,680.15	\$560.05					\$11,201.00
			\$23,755.55	\$20,361.90	\$10,180.95	\$10,180.95	\$3,393.65					\$67,873.00

PT 1	WALLS COMPLETED, STANDING AND ALIGNED AND READY FOR ROOF BEAMS AND ROOF TRUSSES	35%
PT 2	ROOF TRUSSES AND ROOF FRAMING COMPLETE, FASCIA, BARGES AND STARTER BOARD COMPLETE	30%
PT 3	ROOF SHEATHING COMPLETE, WINDOW FRAMES SET AND BUILDING COMPLETELY READY FOR EXTERIOR FINISHES	15%
PT 4	ALL EXTERIOR SIDING AND TRIM COMPLETE, ALL PICK UP WORK COMPLETE, FRAMING INSPECTION APPROVED AND FINAL FRAMING ACCEPTED BY CONTRACTOR	15%
PT 5	RETENTION 35 DAYS AFTER FRAMING INSPECTION	5%

4100 Material

P/E	Option	Lot	Balance \$ Point One	Balance \$ Point Two	Balance \$ Point Three	Balance \$ Point Four	Balance \$ Point Five	Balance \$ Point Six	Balance \$ Point Seven	Balance \$ Point Eight	Balance \$ Point Nine	Total \$
004B		0096	\$3,083.85	\$2,643.30	\$1,321.65	\$1,321.65	\$440.55					\$8,811.00
007A		0097	\$3,664.50	\$3,141.00	\$1,570.50	\$1,570.50	\$523.50					\$10,470.00
002C		0098	\$3,368.05	\$2,886.90	\$1,443.45	\$1,443.45	\$481.15					\$9,623.00
006A		0099	\$3,757.95	\$3,221.10	\$1,610.55	\$1,610.55	\$536.85					\$10,737.00
005B		0100	\$2,637.25	\$2,260.50	\$1,130.25	\$1,130.25	\$376.75					\$7,535.00
003C		0101	\$3,356.15	\$2,876.70	\$1,438.35	\$1,438.35	\$479.45					\$9,589.00
			\$19,867.75	\$17,029.50	\$8,514.75	\$8,514.75	\$2,838.25					\$56,765.00

PT 1	TRUSSES DELIVERED	100%
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4105 Trusses

P/E	Option	Lot	Balance \$ Point One	Balance \$ Point Two	Balance \$ Point Three	Balance \$ Point Four	Balance \$ Point Five	Balance \$ Point Six	Balance \$ Point Seven	Balance \$ Point Eight	Balance \$ Point Nine	Total \$
004B		0096	\$4,595.00									\$4,595.00
007A		0097	\$6,076.00									\$6,076.00
002C		0098	\$5,769.00									\$5,769.00
006A		0099	\$5,245.00									\$5,245.00
005B		0100	\$5,508.00									\$5,508.00
003C		0101	\$6,314.00									\$6,314.00
			\$33,507.00									\$33,507.00

Subcontractor's Initials: 

19

Contractor's Initials: 

rev'd: 12/29/97

GHI06995

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

In re:	:	Chapter 11
	:	
Building Materials Holdings	:	Case No. 09-12074 (KJC)
Corporation, <i>et al.</i> ,	:	Jointly Administered
	:	
Debtors.	:	
	:	

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

Upon consideration of the Motion of Greystone Homes, Inc. (“Greystone”) for Relief from the Automatic Stay (the “Motion”); and it appearing that due and adequate notice was provided under the circumstances; and after due consideration of the Motion and any responses thereto;

IT IS HEREBY ORDERED, that

1. The Motion is GRANTED.
2. The automatic stay imposed pursuant to 11 U.S.C. § 362 is hereby modified and lifted to permit Greystone to proceed with prosecution of its Cross-Complaint against H.N.R. Framing Systems, Inc. (“HNR”) pursuant to 11 U.S.C. § 362 and others;
3. Greystone is hereby allowed to assert its claims against the liability insurance policies of HNR;
4. In the event Greystone obtains a judgment against HNR or otherwise resolves the Litigation, Greystone may receive HNR’s insurance policy proceeds without any further approval by this Court; and
5. This Order shall be effective immediately.

The Honorable Kevin J. Carey
Chief, United States Bankruptcy Court Judge

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

In re:	:	Chapter 11
	:	
Building Materials Holdings	:	Case No. 09-12074 (KJC)
Corporation, <i>et al.</i> ,	:	Jointly Administered
	:	
Debtors.	:	Objection Deadline: September 11, 2009 at 4:00 p.m.
	:	Hearing Date: September 18, 2009 at 1:00 p.m.

NOTICE OF HEARING

PLEASE TAKE NOTICE that on August 13, 2009, Greystone Homes, Inc. (“Greystone”) filed the Motion of Greystone Homes, Inc. for Relief from the Automatic Stay (the “Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, Delaware 19801 (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that any objections to the Applications must be made in writing, filed with the Bankruptcy Court, and served upon, so as to actually be received by the undersigned, on or before **September 11, 2009 (Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that if an objection is filed, a hearing on the Motion may be held before the Honorable Kevin J. Carey in the Bankruptcy Court, 824 Market Street, 5th Floor, Courtroom #5, Wilmington, Delaware 19801, on **September 18, 2009 at 1:00 p.m. (Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that if no objection to the Motion is timely filed in accordance with the above procedures, the Bankruptcy Court may enter an Order granting the relief sought in the Motion without further notice or hearing.

Dated: August 19, 2009
Wilmington, Delaware

CIARDI CIARDI & ASTIN

/s/ Mary E. Augustine
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