

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

IN RE:)	
)	Chapter 11
BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i>,¹)	Case No. 09-12074 (KJC)
)	
Debtors.)	Jointly Administered
)	
)	Objection Deadline: September 30, 2009 at 4:00 p.m. (ET)
)	Hearing Date: October 7, 2009 at 11:00 a.m. (ET)

**DEBTORS' MOTION FOR COMFORT ORDER AUTHORIZING
THE DEBTORS TO ENTER INTO CONSTRUCTION CONTRACTS
WITH WESTERN NATIONAL CONTRACTORS**

Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***"), submit this Motion (the "***Motion***"), pursuant to sections 363(c) and 363(b) of title 11 of the United States Code (the "***Bankruptcy Code***") for entry of an order substantially in the form annexed hereto as ***Exhibit A*** authorizing the Debtors to enter into construction agreements in substantially the same form as the Standard Subcontract Agreement (as defined herein) with Western National Contractors and to use purchase orders in substantially in the same form as the Standard Purchase Order (as defined herein). In support thereof, the Debtors respectfully represent:

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. sections 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. section 157(b). Venue is proper pursuant to 28 U.S.C. sections 1408 and 1409.

BACKGROUND

2. On June 16, 2009 (the "*Petition Date*"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "*Chapter 11 Cases*"). The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases. On June 26, 2009, the Office of the United States Trustee appointed the official committee of unsecured creditors.

3. The Debtors are one of the largest providers of residential building products and construction services in the United States. The Debtors distribute building materials, manufacture building components (e.g., millwork, floor and roof trusses, and wall panels), and provide construction services to professional builders and contractors through a network of 31 distribution facilities, 43 manufacturing facilities, and five regional construction services facilities.

4. The Debtors operate under two brand names: BMC West® and SelectBuild®.

- ***BMC West.*** Under the BMC West brand, the Debtors market and sell building products, manufacture building components, and provide construction services to professional builders and contractors. Products include structural lumber and building materials purchased from manufacturers, as well as manufactured building components such as millwork, trusses, and wall panels. Construction services include installation of various building products and framing. The Debtors currently offer these products and services in major metropolitan markets in Texas, Washington,

Colorado, Idaho, Utah, Montana, North Carolina, California, and Oregon.

- **SelectBuild.** Under the SelectBuild brand, the Debtors offer integrated construction services to production homebuilders, as well as commercial and multi-family builders. Services include wood framing, concrete services, managing labor and construction schedules, and sourcing materials. The Debtors currently offer these services in major metropolitan markets in California, Arizona, Nevada and Illinois.

5. On the Petition Date, the Debtors filed their proposed chapter 11 plan (the "**Plan**") and accompanying disclosure statement (the "**Disclosure Statement**"). The Debtors filed amended versions of the Plan and Disclosure Statement on July 27, 2009. To implement this restructuring, the Debtors have obtained \$80 million in debtor-in-possession financing, which the Court approved on a final basis on July 1, 2009.

**THE STANDARD SUBCONTRACT AGREEMENT
AND THE STANDARD PURCHASE ORDER**

6. The Debtors and Western National Contractors ("**Western National**") desire to enter into construction agreements in substantially the same form as Western National's Standard Subcontract Agreement, as amended by an Addendum to Contract (the "**Standard Subcontract Agreement**") whereby the Debtors will provide construction services to development projects for which Western National is the general contractor. A copy of the Standard Subcontract Agreement with the relevant Addendum to Contract is attached hereto as **Exhibit B**. In connection therewith, the Debtors desire to provide materials to Western National pursuant to Western National's Standard Purchase Order Agreement (the "**Standard Purchase Order**"). A copy of the Standard Purchase Order is attached hereto as **Exhibit C**.

7. Under the Standard Subcontract Agreement, the Debtors, as subcontractors, "agree[]" to furnish all labor, material, supplies, equipment, services, machinery, hoisting equipment, tools and other facilities of every kind and description required for the

prompt and efficient execution of the work described herein in connection with the construction of" the relevant project. The Debtors' work will include, but is not limited to, rough carpentry work. The Standard Subcontract Agreement also explicitly states that a material change in the Debtors' management or an assignment of the contract without prior consent are events that will permit Western National to terminate the contract. It is the express understanding of the Debtors and Western National that the Debtors' pending bankruptcy cases will not inhibit Western National's ability to immediately terminate any subcontract agreements that are executed hereafter and to conclude the underlying projects with another subcontractor upon the Debtors' default; provided, however, that such termination shall not give rise to a claim for breach of contract against the Debtors or a defense to payment of amounts owed for work previously performed by the Debtors. It is also contemplated that pursuant to the Standard Purchase Order, the Debtors will provide raw materials such as lumber and trusses that are required to complete any executed contracts.

8. In consideration for their complete performance under the subcontract agreement currently being considered, the Debtors would receive \$1,247,882 for their services and \$1,830,873 for materials. The Debtors wish to enter into other additional construction agreements with Western National similar to the Standard Subcontract Agreement whereby the Debtors will provide construction services to development projects.

BASIS FOR RELIEF REQUESTED

I. The Debtors' Entry Into Contracts Similar to the Standard Subcontract Agreement Should Be Approved Pursuant to Section 363(c) of the Bankruptcy Code

9. Even though the Debtors agreed to seek authority from this Court to enter into construction agreements in substantially the same form as the Standard Subcontract

Agreement, Court approval of the Debtors' entry into these contracts is not necessary by virtue of section 363(c) of the Bankruptcy Code. Pursuant to section 363(c), "the trustee may enter into transactions . . . in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing." *See also In re James A. Phillips*, 29 B.R. 391, 395 n.2 (S.D.N.Y. 1983) ("Insofar as transactions are actually in the ordinary course, they are authorized automatically by § 363(c)(1) and § 1107(a), and do not require Bankruptcy Court approval.").

10. The Third Circuit has adopted a "two-step inquiry for determining whether a transaction is in 'the ordinary course of business': a 'horizontal dimension' test and a 'vertical dimension' test." *In re Roth American, Inc.*, 975 F.2d 949, 952 (3d Cir. 1992); *see also In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 797 (Bankr. D. Del. 2007); *Vision Metals, Inc. v. SMS DEMAG, Inc. (In re Vision Metals, Inc.)*, 325 B.R. 138, 143 (Bankr. D. Del. 2005). "The inquiry deemed horizontal is whether, from an industry-wide perspective, the transaction is of the sort commonly undertaken by companies in that industry." *Roth American*, 975 F.2d at 953. "The inquiry deemed vertical (more appropriately characterized as the creditor's expectation test) analyzes the transactions from the vantage point of a hypothetical creditor and [the inquiry is] whether the transaction subjects a creditor to economic risk of a nature different from those he accepted when he decided to extend credit." *Id.* (internal citations and quotations omitted) (brackets in original).

11. "[I]f the Court determines that a transaction is in the ordinary course of a debtor's business, the Court will not entertain an objection to the transaction, provided that the conduct involves a business judgment made in good faith upon a reasonable basis and within the scope of authority under the Bankruptcy Code. . . . Put another way, the Court will not disturb a

transaction within the ordinary course of business if 'the trustee can articulate reasons for his conduct (as distinct from a decision made arbitrarily or capriciously).'" *In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 797 (Bankr. D. Del. 2007) (quoting *In re Curlew Valley Assocs.*, 14 B.R. 506, 513 (Bankr. D. Utah 1981)) (internal citations omitted).

12. Entering into construction agreements in substantially the same form as the Standard Subcontract Agreement is within the scope of the Debtors' ordinary course of business. From a "horizontal dimension" perspective, it cannot be questioned that entering into contracts such as the Standard Subcontract Agreement is within the ordinary course of business of companies that provide construction services. Similarly, from a "vertical dimension" perspective, entry into the Standard Subcontract Agreement is well within the ordinary course of the Debtors' business. As described above, one of the Debtors' core businesses is providing integrated construction services to homebuilders, including commercial and multi-family builders in California. The Standard Subcontract Agreement contemplates the provision of integrated construction services, as it requires the Debtors to "furnish and provide all labor, material and equipment necessary to complete installation of the rough carpentry work" on the project." *See* Standard Subcontract Agreement at 9. Furthermore, the Standard Subcontract Agreement itself evidences that it is within the Debtors' ordinary course of business by noting that the Debtors have successfully provided similar services to Western National in the past.

13. In light of the foregoing, the Debtors respectfully submit that entry into contracts in substantially the same form as the Standard Subcontract Agreement is within the Debtors' ordinary course of business and should be approved pursuant to section 363(c) of the Bankruptcy Code.

II. Alternatively, the Debtors' Entry Into Contracts Similar to the Standard Subcontract Agreement Should Be Approved Pursuant to Section 363(b) of the Bankruptcy Code

14. If the Court finds that the Debtors' entry into contracts in substantially the same form as the Standard Subcontract Agreement is not within their ordinary course of business, then the Debtors respectfully request that their entry into such contracts be approved pursuant to section 363(b) of the Bankruptcy Code.

15. Section 363(b)(1) of the Bankruptcy Code permits a debtor-in-possession to use property of the estate "other than in the ordinary course of business" after notice and a hearing. 11 U.S.C. § 363(b)(1). Uses of estate property outside the ordinary course of business may be authorized if the debtor demonstrates a "sound business purpose." *See In re Lionel Corp.*, 722 F. 2d 1063, 1071 (2d Cir. 1983) ("The rule we adopt requires that a judge determining a 363(b) application expressly find from the evidence presented before him...a good business reason to grant such an application."); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) ("In determining whether to authorize the use, sale or lease of property of the estate under [section 363(b)], courts require the debtor to show that a sound business purpose justifies such actions.").

16. Once the debtor articulates a business justification for a particular form of relief, courts review the debtor's request under the "business judgment rule." *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (noting that under normal circumstances, courts defer to a trustee's judgment concerning use of property under Bankruptcy Code section 363(b) when there is a legitimate business justification). The business judgment rule "is a presumption that in making a business decision the directors of a corporation acted on an

informed basis, in good faith and in the honest belief that the action was in the best interests of the company." *Official Comm. of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); see also *In re Helm*, 335 B.R. 528, 539 (Bankr. S.D.N.Y. 2006) ("The business judgment rule requires the Court to determine whether a reasonable business person would make a similar decision under similar circumstances.") (quoting *In re Vencor, Inc.*, Case No. 99-3199, 2003 WL 21026737 at *3 (Bankr. D. Del. Apr. 30, 2003)).

17. The Debtors' entry into construction contracts like the Standard Subcontract Agreement is a sound exercise of their business judgment. Upon completion of their obligations under the contract being contemplated, for instance, the Debtors would receive \$3,078,755, a substantial sum for a building materials and construction services company in a struggling housing market. Furthermore, the Debtors have a prior-existing relationship with the contractor, Western National. If the Debtors are able to continue this relationship and enter into other similar contracts with Western National they will be able to generate additional revenue for the benefit of their estates. For these reasons, the Debtors believe that entry into contracts in substantially the same form as the Standard Subcontract Agreement is in their best interests as a means to continue successful business operations and to increase revenue.

18. In light of the foregoing, the Debtors respectfully submit that entry into contracts in substantially the same form as the Standard Subcontract Agreement is an appropriate exercise of the Debtors' business judgment; is necessary and in the best interest of the Debtors, their creditors, and their estates; and should be approved pursuant to sections 363(c) and 363(b) of the Bankruptcy Code.

NOTICE

19. No trustee or examiner has been appointed in these Chapter 11 Cases. The Debtors have provided notice of filing of the Motion to: (a) the Office of the United States Trustee; (b) counsel to Wells Fargo Bank, as agent under the Debtors' Prepetition Credit Agreement and DIP Facility (as defined in the Plan); (c) counsel to the Creditors' Committee; (d) counsel to Western National; and (e) any persons who have filed a request for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. Due to the nature of the relief requested the Debtors respectfully submit that no further notice of this Motion is required.

NO PRIOR REQUEST

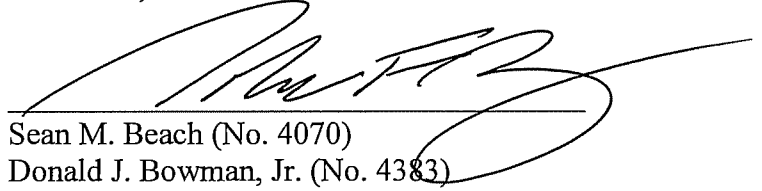
20. No prior request for the relief sought in this Motion has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: Wilmington, Delaware
September 18, 2009

YOUNG CONAWAY STARGATT &
TAYLOR, LLP



Sean M. Beach (No. 4070)
Donald J. Bowman, Jr. (No. 4383)
Robert F. Poppiti, Jr. (No. 5052)
The Brandywine Building
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Wilmington, DE 19801
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---- and ----

GIBSON, DUNN & CRUTCHER LLP
Michael A. Rosenthal (admitted *pro hac vice*)
Matthew K. Kelsey (admitted *pro hac vice*)
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Telephone: 214.698.3100
Facsimile: 214.571.2900

ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

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

In re:

)
) **Chapter 11**
)

**BUILDING MATERIALS HOLDING
CORPORATION, *et al.*,¹**

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

Debtors.

) **Jointly Administered**
)

) **Objection Deadline: September 30, 2009 at 4:00 p.m. (ET)**
) **Hearing Date: October 7, 2009 at 11:00 a.m. (ET)**
)

NOTICE OF MOTION

TO: (A) The Office of the United States Trustee for the District of Delaware; (B) Counsel to Wells Fargo Bank, as Agent Under the Prepetition Credit Facility and the DIP Facility (as Defined in the Plan); (C) Counsel to the Official Committee of Unsecured Creditors; (D) All Parties That Have Requested Notice Pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure; and (E) Counsel to Western National Contractors.

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the "Debtors") have filed the attached **Debtors' Motion for Comfort Order Authorizing the Debtors to Enter Into Construction Contracts With Western National Contractors** (the "Motion").

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed on or before **September 30, 2009 at 4:00 p.m. (ET)** (the "Objection Deadline") with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

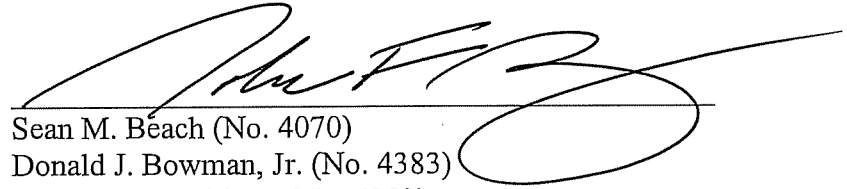
PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON OCTOBER 7, 2009 AT 11:00 A.M. (ET) BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

PLEASE TAKE FURTHER NOTICE that if you fail to respond in accordance with this notice, the Court may grant the relief requested in the Motion without further notice or hearing.

Dated: Wilmington, Delaware
September 18, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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----and----

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Telephone: (214) 698-3100
Facsimile: (214) 571-2900

ATTORNEYS FOR THE DEBTORS
AND DEBTORS-IN-POSSESSION

EXHIBIT A

Proposed Order

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

IN RE:)	
)	Chapter 11
BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i>,¹)	Case No. 09-12074 (KJC)
)	
Debtors.)	Jointly Administered
)	
)	Ref. Docket No. _____
)	

**ORDER PURSUANT TO SECTION 363(c) OF THE BANKRUPTCY CODE
AUTHORIZING THE DEBTORS TO ENTER INTO CONSTRUCTION CONTRACTS
WITH WESTERN NATIONAL CONTRACTORS**

Upon consideration of the motion (the "***Motion***") of Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***") for entry of an order authorizing the Debtors to enter into construction agreements in substantially the same form as the Standard Subcontract Agreement² that was attached as ***Exhibit B*** to the Motion and to use the Standard Purchase Order that was attached to the Motion as ***Exhibit C*** for orders of materials, all as set forth in the Motion; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. sections 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and notice of

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before the Court (the "*Hearing*"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion is granted as set forth below.
2. Pursuant to section 363(c) of title 11 of the United States Code (the "*Bankruptcy Code*"), the Debtors are authorized to enter into construction agreements in substantially the same form as the Standard Subcontract Agreement and to utilize the Standard Purchase Order for orders of materials.
3. Nothing in the Motion or this Order shall be deemed or otherwise construed as the Debtors' assumption of any executory contract, unexpired lease or other agreement pursuant to section 365 of the Bankruptcy Code.
4. The Debtors are authorized to take any action necessary to effectuate the terms of this Order without further order of the Court.
5. The Court shall retain jurisdiction over any and all matters arising from or related to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware
October ____, 2009

Kevin J. Carey
Chief United States Bankruptcy Judge

EXHIBIT B

Standard Subcontract Agreement

WESTERN NATIONAL CONTRACTORS
STANDARD SUBCONTRACT AGREEMENT BY AND BETWEEN

Subcontractor: 191745
C CONSTRUCTION, INC.
dba SELECTBUILD
RANCHO CUCAMONGA, CA
91730

Telephone: 909-944-4899

Fax: 909-944-7952

Job Number: 07-728
Project Name/No: HC TERRA VISTA IV
Project Address: 11660 CHURCH STREET
R. CUCAMONGA, CA 91730

Contract No: 077280610002

THIS AGREEMENT, made this date: 9/1/2009 by and between C CONSTRUCTION, INC. hereinafter called the Subcontractor and WESTERN NATIONAL CONTRACTORS, hereinafter called the Contractor.

WITNESSETH:

That the Subcontractor and the Contractor for the considerations hereinafter named agreed as follows:

- A. The Subcontractor agrees to furnish all labor, material, supplies, equipment, services, machinery, hoisting equipment, tools and other facilities of every kind and description required for the prompt and efficient execution of the work described herein in connection with the construction of the above named project for the benefit of:

LGC HOMECOMING@TERRA VISTA, LLC

hereinafter called Owner, and shall be in accordance with the Contract Documents consisting of the Drawings and Specifications, General Conditions and any Special Conditions prepared by:

ARCHITECTS ORANGE

hereinafter called the Architect, and the General Terms hereof, all of which shall hereby become a part of this Agreement and all of which the Subcontractor certifies he has read and knows the contents thereof. When any provision of this Subcontract Agreement is at variance with the Contract Documents, this agreement shall govern.

- B. The Subcontractor's work shall include, but not necessarily be limited to all ROUGH CARPENTRY work in accordance with the following exhibits:

EXHIBIT "A" The Statement of Work
EXHIBIT "B" The Insurance Information
EXHIBIT "C" Billing Instructions
EXHIBIT "D" The OSHA Addendum
EXHIBIT "E" The Hazardous Materials Disclosure Statement
EXHIBIT "F" Special Conditions for Site Improvement Contracts
EXHIBIT "G" Payment Schedule
all attached hereto and made a part of this Subcontractor's Agreement

Total Subcontract Amount: \$1,247,882.00

- C. In consideration of the faithful performance by the Subcontractor of all the terms, conditions and requirements of this Subcontract, the Contractor agrees to pay to the Subcontractor the Sum of:

one million two hundred forty-seven thousand eight hundred eighty-two and xx / 100 (US Dollars)

in current funds subject to additions and deductions for charges as may be agreed upon, from funds received from the Owner. All payments shall be in accordance with the subject to the General Terms incorporated herein.

SUBCONTRACTOR:
C CONSTRUCTION, INC.

By _____

Title _____

Date _____

Contractor License No. _____

CONTRACTOR:
WESTERN NATIONAL CONTRACTORS

By _____

Title _____

Date _____

Contractor License No. 840973

8 Executive Circle
Irvine, Ca 92614
(949) 862-6200 (Phone)
(949) 862-6252 (Fax)

<u>Internal Approval</u>	Admin: Date:	PM: Date:	D.O.C. Date:	Rec'd By Acct: Date:	
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GENERAL TERMS

IT IS MUTUALLY AGREED between the parties as follows:

1. **DOCUMENTS.** The "Contract Documents" are listed in Exhibit "A", and describe the work to be performed by the Subcontractor under this Agreement (the "Work"). Subcontractor acknowledges that it has examined and studied the Contract Documents and fully understands the character of the Work to be performed by it under the Contract Documents.
2. **SUBCONTRACTOR'S INVESTIGATION.** The Subcontractor acknowledges that it has made an independent investigation of the Job Site, and of all conditions, which might affect the progress of the Work, and has satisfied itself as to these conditions. The Contract Price as set forth in Exhibit "G" ("Payment Schedule") includes payment for all Work, which may be performed by the Subcontractor and anticipates all such conditions. Any information which may have been furnished to Subcontractor by Contractor about job conditions is for the convenience of Subcontractor only, and Contractor does not warrant that the conditions are as so indicated. Subcontractor agrees to perform in good and workmanlike manner, and to furnish all labor, materials (all materials shall be new unless otherwise specified by Contractor) supplies, equipment, and other facilities required for execution of the Work. Subcontractor shall be obligated to perform the Work in strict compliance with the Contract Documents and all applicable laws, ordinances, regulations and requirements.
3. **COMMENCEMENT.** Unless otherwise specified in Exhibit "A", Contractor shall give Subcontractor three (3) days advance notice of the date upon which the Subcontractor is to commence the performance of the Work.
4. **CONTRACT PRICE.** For the strict performance (and not merely substantial performance) by Subcontractor of all of its obligations under the Contract Documents, Contractor shall pay to Subcontractor the "Contract Price" set forth in Exhibit "G" attached hereto. The Contract Price is intended to include all costs and all increases in costs, foreseen or unforeseen, including, without limitation, taxes, labor, material, and transportation costs, all of which are to be borne solely by the Subcontractor. All loss or damage arising from any Work performed under this Subcontract through unforeseen or unusual obstructions, difficulties or delays which may be encountered in the prosecution of same, or through the action of the elements, shall be borne by Subcontractor.
5. **PAYMENTS TO SUBCONTRACTOR.** So long as Subcontractor is not in default under this Subcontract, payments will be made for Work completed as set forth below.

- (a) Contractor agrees to make progress payments to the Subcontractor for Work completed, based upon the applicable pro rata portion of the Contract Price, less applicable retention (as set forth in the Exhibit "A" and Exhibit "G" attached hereto), which payments shall be made in accordance with the Payment Processing Procedure set forth in the Exhibit "A" and Exhibit "G". Final payment shall be made at such time as is specified in Exhibit "A" and Exhibit "G", or, if no such time is specified, thirty-five (35) days after recordation of notice of completion on the Project, so long as all grounds for withholding payments, enumerated under subparagraph (c) below, have been satisfied, and satisfactory proof that all claims, including taxes, growing out of the Work (and any liens related thereto) have been released. As used herein, the term Project includes the total construction of the apartment site, of which the Work performed under this Subcontract is a part.
- (b) The Subcontractor shall prepare and present to the Contractor, for its approval, an invoice in a form and in detail acceptable to Contractor, showing the amount due. Each such invoice shall be in conformance with the requirements set forth in Exhibit "G" attached hereto, and shall contain the following: (i) a statement of the current Contract Price including approved Change Orders; (ii) the percentage of completion of the Work; (iii) the applicable retention; and (iv) the net amount due for the current period.

Contractor is not required to make any payment to Subcontractor unless Subcontractor shall previously have provided: (i) the Certificate(s) of Insurance and Insurance Endorsement(s) required under this Subcontract; (ii) releases for the previous payment, executed by all persons who may have mechanic's lien, stop notice or labor and material bond rights against the project and arising out of Work performed or materials supplied under this Subcontract; (iii) upon Contractor's request, evidence reasonably satisfactory to Contractor of payment (as applicable) to all labor unions and union trust funds; (iv) applicable city or other governmental authority business license numbers; and, (v) Subcontractor's employer tax identification numbers.

- (c) The Contractor may withhold progress payments, in whole or in part, in order to protect the Contractor from loss because of: (i) defective work not remedied, missing materials not furnished, clean-up not performed; (ii) claims filed or reasonable evidence indicating probable filing of claims, including claims covered by Subcontractor's insurance until such claims are accepted by carrier; (iii) failure of the Subcontractor to make payments properly to his subcontractors and/or suppliers or for labor, materials or equipment, transportation or shipping costs, taxes, fees, payments to labor unions and union trust funds or other claims growing out of the Work; (iv) reasonable doubt that the Work can be completed for the unpaid balance of the Contract Price; (v) damage to another subcontractor, or to Contractor; (vi) reasonable indication that the Work will not be completed on schedule; (vii) unsatisfactory prosecution of the Work by the Subcontractor; (viii) failure to deliver written guarantees or warranties; (ix) failure to obtain the approvals required by any authority having jurisdiction; or, (x) punch-list or pick-up work not performed. When the above grounds are removed by Subcontractor, payments shall be made for the amounts withheld because of them. Contractor may require that Subcontractor furnish releases in a form satisfactory to Contractor for all claims made under (c)(ii) and (c)(iii), together with supporting invoices, receipts or other records or substantiate the amounts owing or paid as Contractor may require.
 - (d) If construction loan funds are deposited in a joint control account, Subcontractor agrees to accept payments from such account and any order given by Contractor to Subcontractor thereon shall be deemed payment on part of the Contractor and a release of Contractor in the amount of such order.
 - (e) Any payments made hereunder or advances made by Contractor prior to full completion and final acceptance of the Work shall not be construed as evidence of acceptance of any of the Work. Contractor shall have the right to make payments to Subcontractor hereunder, or under any material purchase order issued by Contractor to Subcontractor or relating to the Work, by checks payable jointly to Subcontractor and his subcontractors, suppliers, laborers, or any of them.
 - (f) Any and all funds payable to the Subcontractor hereunder shall constitute trust funds in the hands of the Subcontractor, to be applied to the payment of claims of his subcontractors, laborers and materialmen arising out of the Work, and to the payment of other costs, fees, expenses, premiums and taxes related to the Work, before application to any other purpose. SUBCONTRACTOR AGREES TO FURNISH TO CONTRACTOR, AND CONTRACTOR MAY REFUSE PAYMENT TO SUBCONTRACTOR UNLESS AND UNTIL SUBCONTRACTOR FURNISHES TO CONTRACTOR, RELEASES OF CLAIMS OF LABORS, MATERIALMEN AND SUBCONTRACTORS PERFORMING WORK OR FURNISHES MATERIAL UNDER THIS SUBCONTRACT, ALL IN A FORM SATISFACTORY TO CONTRACTOR, AND IT IS AGREED THAT NO PAYMENT HEREUNDER SHALL BE MADE, EXCEPT AT CONTRACTOR'S OPTION, UNLESS AND UNTIL SUCH RELEASES ARE FURNISHED.
6. **LIST OF SUPPLIERS.** Subcontractor shall within ten (10) days of execution of this Subcontract provide to Contractor a list of names and addresses of all suppliers who will supply Subcontractor in connection with the Work. Subcontractor shall have no right to change the suppliers or use additional suppliers without first obtaining written permission of Contractor.
 7. **ADDITIONS, CHANGES AND MODIFICATIONS TO SUBCONTRACT.** The terms and conditions of this Subcontract are not subject to additions, modification or change, unless such addition, modification or change is made in writing by a duly authorized representative of Contractor ("Change Order"). Any additions, change or modification made by any other person or persons shall not be binding upon Contractor.
 8. **ADHERENCE TO PLANS AND SPECIFICATIONS.** The Subcontractor shall adhere strictly to the plans and specifications and the other Contract Documents unless a Change Order is made. In such case, the terms of said Change Order shall be agreed upon in writing by the Contractor and Subcontractor before commencement of said revised Work. Additional Work or deviation from the plans and specifications performed without a Change Order will not be subject to reimbursement. Disputed Work indicated or necessary to complete the Project shall be promptly performed as ordered by the Contractor and the proper cost or credit breakdowns therefore shall be submitted immediately thereafter by Subcontractor to the Contractor for consideration. Should the plans vary from the specifications, the specifications shall govern. Should there be any discrepancy between the plans, the specifications, the model homes, or any of them, and any governmental laws or regulations, then those which are more stringent shall govern. Contractor does not assume any responsibility for failure of the plans or specifications to meet with governmental laws or regulations. If any of the

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Contract Documents provide for a method of work contrary to any such laws and regulations, Subcontractor shall be required to notify Contractor, in writing, prior to the installation of the Work.

9. **EXTRAS.** Contractor may at any time during the progress of the Project, order in writing changes, additions or modifications to the plans and specifications in accordance with Section 7 hereof and the same shall not void this Subcontract. Unless otherwise requested by Contractor in writing, Subcontractor shall submit in writing to Contractor a cost or credit proposal for such revised Work at least seven (7) days prior to commencement of such revised Work. Subcontractor will support all claims for extras with a detailed breakdown showing differences in quality, and value of labor and material involved. Subcontractor shall be deemed to have waived any claim for additional payment for extra Work to the extent Subcontractor fails to submit its proposal revised Work in the prescribed time. The Construction Sequence or Order of Work (as defined herein) and any progress schedule established by Contractor will remain fixed, unless expressly otherwise directed by Contractor. If the time is extended, all added costs for same must be included in the original claim for the changes, otherwise such added costs will not be subject to reimbursement.

Should the Contractor elect to have any extra Work performed on a time and material basis in lieu of unit prices or for a negotiated lump sum, and so notifies the Subcontractor in writing, the Subcontractor will perform the Work at his actual net cost plus overhead and profit, with or without a maximum guarantee total cost, at the Contractor's option. The Subcontractor's markup for overhead and profit will not exceed ten percent (10%) (including field supervision, tools and equipment) unless agreed to by the Contractor in advance of the commencement of such work. Unit prices include all costs plus overhead and profit of the Subcontractor.

10. **START AND FINISH OF THE WORK.**

- (a) On or before three (3) days before Subcontractor will be required to commence the Work, Contractor will deliver to Subcontractor a general "Construction Sequence" or "Order of Work". The Subcontractor agrees to undertake and complete the Work in accordance with the Construction Sequence or Order of Work established by the Contractor. The Construction Sequence or Order of Work shall be subject to change by the Contractor as deemed necessary or convenient to the overall progress of the Project. Contractor may, from time to time, establish specific requirements or schedules for the pace and rate of performance of the Work of Subcontractor under this Subcontract, including, without limitation, benchmark dates or intermediate completion dates for various portions of the Work, final completion dates for the Work, specific numbers of units to be completed within a given time period, and numbers of qualified workers necessary, as determined by Contractor, to maintain the pace or rate of work established by Contractor. Subcontractor acknowledges its understanding that Contractor, in entering into this Subcontract, is relying on Subcontractor's ability to perform the Work at the pace or rate as may be established by Contractor from time to time. Subcontractor agrees that it will keep itself continually informed of the progress of the job and will, upon its own initiative, confer with the Contractor so as to plan his Work in coordinated sequence with the work of the Contractor and of others and so as to be able to expeditiously perform its Work at the time most beneficial to the entire project; however, Subcontractor shall not proceed with any phase of its Work ahead of the time designated by the Contractor unless authorized by Contractor. SHOULD CONTRACTOR'S WORK SCHEDULE BE CHANGED, SUBCONTRACTOR WILL PROCEED IN STRICT ACCORDANCE WITH CONTRACTOR'S DIRECTION. Contractor shall have the right to decide the time or order in which the various portions of the Work shall be installed or the priority of the work of other trade contractors, and, in general, all matters respecting the timely and orderly conduct of the work of trade contractors on the Job Site. If the project is divided into parts, Subcontractor will perform several or all parts simultaneously, if required by Contractor.

It is specifically understood that Subcontractor herein agrees and hereby guarantees to complete its phase of operation at a production rate specified in EXHIBIT "A", being prepared to do whatever is necessary including overtime in order to complete said Work on schedule. Subcontractor further agrees to maintain its production rate during the entire tenure of time Subcontractor is working on the jobsite.

The production rate specified in EXHIBIT "A" shall be increased or decreased at the discretion of the Contractor's Project Superintendent.

Subcontractor further agrees and understands that the production schedule established by the Contractor is based on six (6) days a week, Monday through Saturday.

- (b) If the Contractor is not in default in any of the provisions herein, and in order to expedite the final completion of the Project or general or special work thereon the Contractor directs Subcontractor to work overtime, it is agreed that Subcontractor shall work overtime, and it is understood that Contractor is to pay only the actual extra cost over the rate for regular time of overtime. Time slips covering overtime must be checked and approved daily by the Contractor's authorized agent. No overhead or profit is to be charged by the Subcontractor for overtime.
- (c) If the Subcontractor is behind in the Work, fails or refuses to supply sufficient workers, or to deliver materials or equipment on schedule, and delays progress of the Work; or if the different parts thereof are not commenced, performed, finished and delivered at the time established by Contractor, Contractor shall have the right to direct the Subcontractor, within twenty-four (24) hours after notice from Contractor, to furnish additional labor and expedite deliveries of material and equipment at Subcontractor's cost and expense. If such additional labor is not available, the Contractor has the right to require Subcontractor at Subcontractor's cost, to work overtime or additional shifts (and/or weekend and holidays) to such an extent as will be sufficient to speed up and complete the Work on schedule. Should the work schedule be changed, Subcontractor will proceed in strict accordance with Contractor's directions.
- (d) Without in any way limiting or waiving Contractor's rights and remedies pursuant to this Subcontract, if at any time during the progress of the Work, Contractor, Contractor's designated representative or Contractor's architect/engineer determines that Subcontractor is leaving excessive amounts of punch-list or pick-up work, Contractor may direct Subcontractor to cease work on any or all portions of the Project and to immediately perform all necessary punch-list or pick-up work related to Subcontractor's Work under the Subcontract.
11. **INSPECTIONS AND APPROVALS.** The Work shall be subject to inspection and approval by the Contractor, Contractor's designated representative, Contractor's architect/engineer and governmental authorities. Subcontractor shall be required to furnish, for the approval of the Contractor, Contractor's architect/engineer and governmental authorities such samples, shop drawings and patterns, as may be required for the Work, and all Work shall be in accordance therewith. Contractor shall be afforded access to Subcontractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement, and Subcontractor shall preserve such records for a period of three (3) years, or for such longer period as may be required by law, after the final payment to Subcontractor.
12. **LINES, GRADES AND MEASUREMENTS.** Subcontractor assumes full responsibility for the accuracy of all lines, levels and measurements and their relation to bench marks, property lines, reference lines and the work of the Contractor or other trade contractors. In all cases where dimensions are governed by conditions already established, the responsibility for correct knowledge of the conditions shall rest entirely on Subcontractor. No variation from specified lines or grades or dimensions shall be made except on written authority from Contractor. All work shall be made to conform to actual, final conditions as they develop in the course of construction.
13. **RELATED WORK.** By commencing Work, Subcontractor acknowledges that all related, adjacent or dependent work, services, utilities or materials are acceptable to him and waives any and all claims for damage or extras with respect to defects or failure thereof.
14. **INTERRUPTION OF WORK.** If, as a result of fire, earthquake, acts of God, war, strikes, picketing, boycott, lockouts, or other causes or conditions beyond the control of Contractor, or if Contractor shall consider it inadvisable to proceed with the Work, then Subcontractor shall, upon receipt of notice from Contractor, immediately discontinue any further Work until such time as Contractor may deem it advisable to resume the Work. Subcontractor will resume the Work within twenty-four (24) hours after receiving notice from Contractor to do so, and Subcontractor shall not be entitled to any damages or compensation on account of cessation of Work as a result of any of the causes mentioned above.
15. **CORRECTIONS OF DEFECTS IN MATERIAL OR WORK.** All defects in materials used or Work performed as designated by Contractor, Contractor's designated representatives, Contractor's architect/engineer or governmental authorities, upon inspection and brought to the attention of Subcontractor shall be corrected by Subcontractor to the satisfaction of Contractor, and Contractor's architect/engineer and governmental authorities, at Subcontractor's cost. Subcontractor shall commence such corrective work within twenty-four (24) hours after notice to Subcontractor, and shall diligently and expeditiously pursue such corrective work to completion. Should any dispute arise as to the quality of Subcontractor's workmanship or the quality of materials furnished, the reasonable decision of Contractor, Contractor's designated representative or Contractor's architect/engineer, shall be binding.
16. **DAMAGE TO WORK.** Should Subcontractor damage the work or installations of Contractor or any other trade contractor, Subcontractor shall promptly pay to Contractor or such trade contractor, as the case may be, all costs incurred in repairing the damage. Subcontractor shall take all action necessary to insure that his suppliers do not damage curbs and sidewalks.

17. **GUARANTEE.** The Subcontractor guarantees all materials and workmanship and agrees to replace at his sole cost and expense and to the satisfaction of the Contractor and Contractor's architect/engineer, any materials adjudged defective or improperly installed, and guarantees the Contractor against liability, losses or damage to any or all parts of the Work arising from said installation during a period of one (1) year from the date of occupancy of the last building. If, however, the period of guarantee is stipulated in excess of one (1) year by the Contract Documents, Subcontractor shall be bound as specified. All guarantees, including equipment warranties, will inure to the benefit of the Contractor and any successor in interest to Contractor. During the warranty period, a period of twenty-four (24) hours after notification by Contractor will be allowed for response and corrective action. After the twenty-four (24) hour period, the problem may be corrected by Contractor and the Subcontractor will be back-charged for time and materials plus fifteen percent (15%) overhead. Emergencies will be corrected by Subcontractor immediately. Subcontractor agrees that upon notification of defects from Contractor, Subcontractor shall proceed within twenty-four (24) hours with due diligence, at its own expense, to replace any defective material or perform any labor necessary to correct any defect in the Work. Should Subcontractor demonstrate poor warranty service prior to the payment of retentions Contractor may hold money from Subcontractor's retention to insure performance during warranty period. Nothing contained herein shall be deemed to limited Subcontractor's liability or responsibility for latent defects or structural defects, or to limit any statutory or implied warranties, or any other rights or remedies of Contractor.

18. **TERMINATION OF AGREEMENT**

- (a) Upon written notification from Contractor that Subcontractor's performance under this Subcontract is unsatisfactory, or upon notification that Subcontractor has failed to comply fully with the terms of this Subcontract, or that Subcontractor's Work needs correction or has been damaged, Subcontractor shall promptly take all actions necessary to fully comply with the terms of the Contract Documents and the requirements of Contractor. Should Subcontractor fail to begin to take such corrective actions within twenty-four (24) hours after such notification, or to the extent such corrective actions are not completed within the time period specified by Contractor, Contractor may terminate this Subcontract. In the event of such termination, Subcontractor hereby authorizes Contractor to perform and complete the Work in connection herewith. Contractor may (a) eject Subcontractor, (b) take possession of all of Subcontractor's materials, tools and equipment on the Job Site, and (c) secure materials and employ workers necessary to complete the Work at Subcontractor's expense. Subcontractor shall not be entitled to receive any further payment until completion of the entire Project and then only after the direct and indirect costs incurred by Contractor to complete Subcontractor's Work have been determined. The direct and indirect costs shall apply against the Contract Price, and, if in excess of the balance due Subcontractor, the amount of the excess shall be a debt immediately due and owing from Subcontractor to Contractor. If the balance of the Contract Price shall exceed direct and indirect cost, such excess shall be paid to Subcontractor within thirty-five (35) days after completion of the entire Project.
- (b) Contractor reserves the right to terminate this Subcontract in the event that the Project or a material portion thereof is destroyed by fire or other catastrophe. In the event of such termination, Subcontractor shall be entitled only to payment in the lesser amount of either, (a) actual and reasonable labor and materials costs for Work actually completed per the payment schedule costs for field supervision, overhead and profit, or (b) a pro-rata portion of the Contract Price which reflects the portion of Work actually completed in proportion to the Contract Price. There shall be deducted from such sums as provided in this Section the amount of any payments made to Subcontractor prior to the date of termination of this Subcontract. Subcontractor shall not be entitled to any claim against Contractor for any additional compensation or damages in the event of such termination.

This Subcontract may at Contractor's election become null and void and of no effect in the event financing for the Project is or becomes unavailable, or if for any reason beyond its control, Contractor shall be unable to undertake the Project or any portion thereof.

- (c) Subcontractor and Contractor acknowledge and agree that Contractor's continued confidence in the ability of a Subcontractor to properly and expeditiously perform its work is a substantial and material concern to Contractor. Consequently, in the event Contractor and Subcontractor enter into or have entered into any other agreements, and Subcontractor defaults under this Subcontract or any other agreements, Contractor may, at Contractor's election, treat a default under this Subcontract as a default under any other agreement, and Contractor may, at its election treat a default under any other agreement as a default under this Subcontract.
- (d) If at any time during the performance by Subcontractor of its duties and obligations under this Subcontract Contractor becomes dissatisfied with the progress of performance of Subcontractor, regardless of whether the causes for Contractor's dissatisfaction would otherwise constitute a default by the Subcontractor under this Subcontract, Contractor may, at its election, declare remaining contracts for the Project null and void, or, if this Subcontract relates to a multi-phase project, Contractor may elect to reduce the scope of the Work to be performed by Subcontractor hereunder to the phase then in progress, in which event the provisions of this Subcontract relating to subsequent phases shall become null and void, and Contractor's sole obligation to Subcontractor shall be for payment to Subcontractor of the amounts which would be paid to Subcontractor in the event of a termination of this Subcontract as a result of destruction, as described in Section 18(b) above.
- (e) Contractor shall have the right, at any time, acting in its sole discretion, with or without cause, to terminate Subcontractor's rights under this Subcontract by giving to Subcontractor written notice of termination. A termination effected under this Section shall take effect at the time specified in such notice, and Contractor's sole obligation to Subcontractor shall be for payment to Subcontractor of the amounts which would be paid to Subcontractor in the event of the termination of this Subcontract as a result of destruction as described in Section 18(b) above.
19. **REMOVAL OF WORK CONDEMNED.** The Subcontractor shall, within twenty-four (24) hours after receipt of written notice from the Contractor remove from the Job Site any materials or portions of the Work condemned by the Contractor or any applicable governmental authority, as unsound or improper, or which fail to conform to the Contract Documents, and shall make good all work in other trades damaged by such removal. In the event that all or any portion of the Work so condemned shall be of such a nature, that in the judgment of the Contractor it will not be expedient to order the same replaced or corrected, the Contractor may at his option, and in addition to any other remedies available to Contractor deduct from the payments due or to become due to the Subcontractor an amount equal to the difference between the fair and reasonable value of the Work so condemned and its value had the Work been executed in conformity with the Contract Documents.
20. **DEFENSE OF PATENTS.** The Subcontractor shall defend all suits or claims for infringement of any patent rights that may be brought against Owner, Contractor or Contractor's architect/engineer arising out of the Work, and shall indemnify and hold Owner, Contractor and Contractor's architect/engineer harmless from loss on account thereof, except that the Subcontractor shall not be responsible for such loss when a particular process or product of a particular manufacturer or manufacturers is specified by Owner, Contractor or Contractor's architect/engineer and Subcontractor is unaware of any infringement.
21. **CUTTING, FITTING AND PATCHING, WORK OF OTHERS.** The Subcontractor shall do all cutting, fitting and patching of his Work that may be required to make its several parts come together properly, and to fit it to receive or be received by the work of other trade contractors, shown upon or reasonably implied by the Contract Documents. Subcontractor agrees to protect the work of others from damage as a result of his operations. Should Subcontractor cause damage to any separate trade contractor on the Project, the Subcontractor shall, upon notice, compensate such trade contractor to the extent of any such damage.
22. **CLAIMS FOR DELAY OR DAMAGE.** Subcontractor expressly waives any and all rights to make claims or to be entitled to receive any compensation or damages for failure of Contractor or other trade contractors to have related portions of the Project completed in time for the Work of Contractor to proceed. Should the Subcontractor default in the proper performance of his Work including, without limitation, performance of punch-list or pick-up work, thereby causing delay to the Project, Subcontractor shall be liable for any and all loss and damages to Contractor, including, without limitation, liquidated damages, increased financing and construction costs, lost rent opportunities and lost revenues sustained by the Contractor or Owner. The Subcontractor shall be liable under this Section even though such default is caused by strikes, lockouts, acts of God, or other reasons beyond the control of Subcontractor, unless the Subcontractor gives written notice of the delay to Contractor within four (4) days following the start of the alleged occurrence. Contractor shall not be liable to Subcontractor for loss or damages resulting from the aforementioned causes, or for Contractor's delay, or for modification or extension of the Construction Sequence or Order of Work of modification of the pace of work, or modification or extension of any progress schedule established by Contractor, or for losses or damages resulting from Change Orders, or for delays caused by other trade contractors.
23. **INSURANCE** Subcontractor shall comply with the insurance requirements set forth on Exhibit "B" attached hereto. PRIOR TO COMMENCING THE WORK, SUBCONTRACTOR SHALL DELIVER TO CONTRACTOR THE ENDORSEMENTS AND CERTIFICATES OF INSURANCE AS EVIDENCE OF COMPLIANCE WITH THE REQUIREMENTS OF EXHIBIT B. In the event Subcontractor fails to secure or maintain any policy of insurance required hereby, Contractor may, at its sole discretion, terminate Subcontractor or, in the alternative, secure such policy of insurance in the name of and for the account of Subcontractor and, in such event, Subcontractor shall reimburse Contractor upon demand for the cost thereof. Subcontractor's satisfaction of its obligations to maintain insurance as specified herein shall not be construed to be a limitation of liability on the part of Subcontractor, nor relieve Subcontractor of any liability or responsibility under this contract or as a matter of law.

24. INDEMNIFICATION BY SUBCONTRACTOR

- (a) The insurance maintained by Subcontractor in accordance with Section 23 shall insure the performance of Subcontractor's indemnification obligations as set forth herein. All work (whether performed by Subcontractor or its Sub-subcontractors) covered by or related to the Subcontract documents done at the job site, or in preparing, storing, or delivering materials, tools, equipment or any other type of personal property, or in providing services for the Project, or any or all of them, to or for the Project, shall be at the sole risk of Subcontractor. In addition to and without limiting Subcontractor's indemnification obligations pursuant to any other Section of this Subcontract, Subcontractor shall, to the fullest extent permitted by law with respect to all such Work that is covered by or incidental to the Contract or Subcontract documents, defend all claims through legal counsel reasonably acceptable to Contractor and the additional insured specified in Exhibit B and indemnify and hold harmless Contractor, Western National Contractors, Lewis Operating Corp., LGC Homecoming at Terra Vista, LLC and all of their respective divisions, subsidiaries, members, partners and affiliated companies and all of their respective employees, officers, directors, shareholders, agents and representatives, and all of their respective successors and assigns (collectively, the "Indemnitees") from and against any losses, liabilities, damages, injuries, claims, expenses (including actual attorneys' fees) and costs (collectively, "Claims") whether incurred by or made against any Indemnitees, arising from or related to (i) performance of any or all work that is covered by or incidental to the Subcontract documents, including without limitation, (A) any defect in construction, grading work or other work performed by or on behalf of Subcontractor, its Sub-subcontractors or any of its or their respective employees, officers, agents, suppliers, representatives, permittees or invitees or any other person or entity claiming under or through Subcontractor or any Sub-subcontractor (collectively, "Subcontractor's Representatives"), (B) any defect, error or omission in any of the Contract or Subcontract documents or other reports, studies, maps, plans, drawings, opinions, surveys, specifications or designs (collectively, "Plans & Reports") completed by or at the request of Subcontractor or any of Subcontractor's Representatives and utilized in the Work and any defect, error or omission in any Plans and Reports prepared by any other person or entity which Subcontractor failed to discover or report to Contractor as a result of Subcontractor's negligence or breach of its obligations hereunder, (C) any death or bodily injury to persons or injury or damage to property involving Subcontractor or any of Subcontractor's Representatives on the Project site or relating to the Project, and (D) any use or misuse by Subcontractor or any of Subcontractor's Representatives of the Project site, the improvements thereon or any part thereof, (ii) any negligent act or failure to act or any act which constitutes willful misconduct by Subcontractor or any of Subcontractor's Representatives, (iii) any violation or alleged violation by Subcontractor or any of Subcontractor's Representatives of any law now or hereinafter enacted, or (iv) the breach by Subcontractor of any of its obligations under the Contract or Subcontract Documents.

It is the intention of the parties that Subcontractor is providing a "Type I" indemnity under California law and that a finding of negligence on the part of Subcontractor is not necessary to trigger Subcontractor's defense and indemnity obligations hereunder; provided, however, (1) Subcontractor shall not be obligated to indemnify any Indemnitees for any Claim found by a court of competent jurisdiction to have been caused by the sole negligence or willful misconduct of such Indemnitees, and (2) with regard to claims that are subject to AB 758 (California Civil Code section 2782 (c) and (d)), Subcontractor shall defend and indemnify Contractor to the fullest extent allowable by law. This shall not affect any obligation of Contractor pursuant to paragraph 23 (Insurance) nor shall it affect any obligation owed to Contractor by Subcontractor's insurance carriers pursuant to Contractor's status as an additional insured. Payment of any Claim by the applicable Indemnitees shall not be a condition precedent under this Indemnity.

Subcontractor's obligation to defend a Claim brought or threatened against Contractor and/or the Indemnitees is contingent only upon the tender to Subcontractor of written notice of such Claim. Upon receipt of such written notice, Subcontractor shall immediately and fully (i) defend the Indemnitees against such Claim, through counsel chosen by the Indemnitees, at Subcontractor's own cost, expense, and risk; (ii) pay and satisfy any judgment or decree that may be rendered against any Indemnitees arising out of such Claim; and/or (iii) timely pay all legal expense incurred by the Indemnitees in connection with the Claim or in enforcing the defense and indemnity obligations set forth in this Section as such legal expenses are incurred. No obligation of Subcontractor to Contractor shall be lessened, reduced, delayed, or affected by the existence of other potential or actual indemnitors or insurers, or by Subcontractor's rights against any third party to contribution, subrogation, or pro-ratio; provided that for claims which are subject to AB 758 (California Civil Code section 2782 (c) and (d)), the rights and obligations of Subcontractor and the Indemnitees hereunder shall be no greater than that allowed by controlling law.

- (b) In any and all claims against the Indemnitees by any employee of Subcontractor, any Sub-subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Section 24 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor or any Sub-subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. Said indemnity is intended to apply during the period of the Subcontract or, if later, during Subcontractor's performance, and shall survive the expiration or termination of the Subcontract until such later time as (i) action on account of any matter covered by such indemnity is barred by any applicable statute of limitations, or (ii) such date as any Claim or action for which indemnification may be claimed is fully and finally resolved and, if applicable, any compromise thereof or judgment or award thereon is paid in full by Subcontractor and Contractor or the applicable Indemnitees are reimbursed by Subcontractor for any amounts paid in compromise thereof or upon a judgment or award thereon and in defense of such action or Claim, including actual attorneys' fees, or (iii) upon the first sale of a condominium unit in the Project to a third party (the Project having been converted to condominiums), irrespective of the identity of the then owner of the Project.
- (c) Subcontractor, as a material part of the consideration of this Contract, waives on its behalf, except to the extent occasioned solely by the willful or negligent acts of Contractor, its agents or employees, all claims and demands against Contractor and the Indemnitees for all loss, damage, injury, sickness or death of any person, and all other claims of any kind or character to any person or property directly or indirectly arising out of or resulting from Sub-contractor's presence at the site or performance of this Contract or the commencement, prosecution and completion of the Work.
25. **INDEPENDENT CONTRACTOR RELATIONSHIP.** The relationship of Subcontractor to Contractor shall be that of an independent contractor. Subcontractor shall provide a qualified superintendent or foreman to act as the representative of Subcontractor on the Job Site, who is authorized to receive orders, to make decisions regarding the Work, and be responsible for the total scope of Work included in this Subcontract. Such superintendent or foreman shall at all times be satisfactory to Contractor and shall not be changed without the consent of Contractor. If such superintendent or foreman is unsatisfactory to Contractor, Subcontractor shall promptly replace him.
26. **CLEAN UP.** At all times during the course of construction, Subcontractor shall perform its Work so as to maintain the Job Site in a clean, safe and orderly condition. Subcontractor shall perform any and all clean up duties as may be specified in the attached "Exhibit A". If Subcontractor fails to perform a clean up function within twenty-four (24) hours after notification from Contractor to do so, Contractor may proceed with such clean up, and the cost thereof shall be charged to Subcontractor and deducted from monies due under this Subcontract.
27. **USE OF CONTRACTOR'S EQUIPMENT.** The use of any of Contractor's equipment by Subcontractor, given, loaned or rented to Subcontractor by Contractor, shall be upon the understanding that Subcontractor uses the equipment, at its own risk and takes the same "as is", and Subcontractor assumes all responsibility for and agrees to hold Contractor harmless from any claims or damages whatsoever resulting from the use thereof, whether such damage results to Subcontractor or his own employees or properties or to other persons or the employees or property of other persons. Nothing herein contained shall be deemed to permit any such use by Subcontractor without the prior written consent of Contractor.
28. **PERMITS AND LAWS.** Subcontractor shall promptly obtain, at its expense, and before commencing the Work, all permits and licenses required for the Work or as specified in the Exhibit 'A' attached hereto, and Subcontractor shall exhibit each such permit or license to Contractor upon Contractor's request.
29. **ASSIGNMENT.**
- (a) Subcontractor shall neither assign nor subcontract the whole or any portion of this Subcontract or the payments hereunder without first obtaining permission in writing from Contractor, and then only subject to, and upon the same terms and conditions of, the provisions of this Subcontract. Any such subcontract shall contain all of the provisions of this Subcontract and shall require the subcontractor thereunder to be directly liable to Contractor in all respects as herein required of Subcontractor. No assignment shall relieve Subcontractor from his duties, obligations and liabilities hereunder, unless specifically relieved in writing by Contractor. Any permission granted by Contractor shall not be deemed permission to any subsequent assignment. Any assignment by Subcontractor made without the consent of Contractor as herein provided shall be null and void and

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shall, at the option of Contractor, be grounds for termination of this Subcontract, and Contractor shall have the right to elect to proceed pursuant to Section 18 hereof.

- (b) This subcontract may be assigned to the owner if the owner terminates the Prime Contract Agreement between the Owner and General Contractor. If work in connection with this subcontract has been suspended for more than 30 days after termination of the Prime Contract Agreement and the Owner accepts the assignment of this subcontract; the contract price may be adjusted for increases in direct costs as a result of the suspension. The Owner may assign the subcontract to another entity and the owner shall be automatically released from all liability and all costs incurred under the subcontract based on events occurring after assignment to another entity.

30. **LIENS.** Subcontractor shall pay when due all claims for labor or material incurred by Subcontractor in the performance of this Subcontract. If any liens, attachments, or suits affecting title to real property are recorded and/or filed against the Project, the Property or any portion thereof in connection with claims for labor or material incurred by Subcontractor in the performance of this Subcontract, Subcontractor shall within ten (10) days after written demand by Contractor, cause the effect of such lien, attachment or suit to be removed from the project, the Property or any portion thereof, and Subcontractor shall indemnify, defend and hold Owner, Contractor and the Property harmless from and against any and all liability and claims made in connection therewith, including, without limitation, any costs and expenses for attorneys' fees, bond premiums and all incidental and consequential damages resulting therefrom. In the event Subcontractor shall fail to promptly cause the effect of any such lien, attachment or suit to be so removed, Contractor is hereby authorized to use whatever means it may deem best to cause the lien, attachment or suit, together with its effect upon the title, to be removed, discharged, satisfied, compromised or dismissed, and the cost thereof, including attorneys' fees incurred by Owner and Contractor, shall become immediately due from Subcontractor to Owner and Contractor. Subcontractor may contest any such lien, attachment or suit, provided he shall cause the effect thereof to be removed from the Project, the Property or any part thereof.

Should Subcontractor fail to make any payments required under this Section, Owner or Contractor may make such payments on behalf of Subcontractor, and Subcontractor shall, on demand reimburse Contractor for the amount actually paid, but Owner or Contractor shall not be entitled to collect any greater amount from Subcontractor than the amount actually paid under this Section.

31. **TAXES.** The contract price stated herein includes the payment by Subcontractor of any taxes under California Sales or Use Tax Law, or any amendments thereto, or any law now existing, or which may thereafter be adopted by Federal, State, Local or other governmental authority, taxing the materials, services required, or labor furnished, or any other tax levied by reason of the work performed or to be performed hereunder.
32. **INSOLVENCY, DEATH OR BANKRUPTCY.** In the event Subcontractor becomes insolvent, is unable to pay its obligations as they become due, or files a petition in bankruptcy, this Subcontract may be terminated at the option of Contractor. Subcontractor hereby authorizes all financial institutions, materialmen and individuals to disclose to Contractor Subcontractor's financial status, credit and manner of meeting obligations. If Subcontractor is a sole proprietor, his death shall automatically terminate this Subcontract.
33. **TITLE.** The title to all Work completed and in the course of construction and all materials on the Job Site shall, as between Subcontractor and Contractor, be in Contractor.
34. **RIGHT TO DEMAND BOND.** The Contractor has the right, at its expense and at any time, to require the Subcontractor to furnish the Contractor with a Performance bond and/or a Labor and Material Bond required by a surety company satisfactory to Contractor, and which guarantees performance of this Subcontract by the Subcontractor and payment of all mechanics' lien claims which may arise out of such performance. Contractor will pay the premium of any such bond, and if the Subcontractor is unable to deliver the bond within ten (10) days after notice to do so from Contractor has the right to terminate this Subcontract, pay the Subcontractor the reasonable value of Work then accomplished on the Job Site by Subcontractor, (not to exceed a pro-rata share of the Contract Price based upon the percentage of completion of Subcontractor's Work) and at Contractor's option, to have the Project finished by others.
35. **NO DELAY.** Notwithstanding the fact that a dispute, controversy or question shall have arisen in the interpretation of any provision of the Contract Documents, the performance of any Work, the delivery of any material, the payment of any monies to Subcontractor, or otherwise, the Subcontractor agrees that it will not directly or indirectly stop or delay any Work or part of Work on Subcontractor's part required to be performed, or stop or delay the delivery of any materials on its part required to be furnished hereunder, pending the determination of such dispute or controversy, regardless of whether such controversy, dispute or question is subject to arbitration, litigation or judicial reference proceeding.
36. **DISPUTE RESOLUTION.** At the sole election of Contractor, any claim, dispute or controversy arising out of this Subcontract, whether relating to breach or interpretation of this Subcontract, may be heard and determined by a judicial reference pursuant to the provisions of Section 638 of the California Code of Civil Procedure or by arbitration pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations.
37. **LABOR RELATIONS.** Subcontractor agrees that at all times during the performance of the Work under this Subcontract, Subcontractor shall maintain labor relations policies satisfactory to Contractor in Contractor's sole discretion. Subcontractor agrees that if the status of Subcontractor's labor relations changes from the manner in which they existed as of the date of this Subcontract, Subcontractor shall immediately notify Contractor. Contractor may terminate this Subcontract immediately upon any change in the labor relations policies maintained by Subcontractor, and in the event of such termination, Contractor's sole obligation to Subcontractor shall be for payment to Subcontractor of the amounts which would be paid to Subcontractor in the event of a termination of this Subcontract as a result of destruction, as described in Section 18(b) above. Subcontractor recognizes that in the performance of the Work, it will be required to work side by side with other trade contractors on the Job Site, who may or may not be signatory to collective bargaining agreements with labor organizations. Contractor reserves the right to establish a "two gate" system (union trades and non-union trades) at any time during the course of work on the Project. Subcontractor shall not be relieved of its obligations to supply sufficient, properly skilled workers to perform the Work without delay or interruption as a result of any labor dispute or grievance between Subcontractor and its employees. Subcontractor represents and warrants that it is not delinquent in making payments or reports to any union fringe benefit trust fund and that it does not appear on any delinquency list published by any union fringe benefit trust fund. In the event Subcontractor becomes delinquent in such payment, or appears on any such delinquent list, such event shall be deemed to be a material default under this Subcontract, thereby entitling Contractor to exercise any rights and remedies available to it under the Subcontract. Subcontractor agrees to indemnify, defend and hold the Contractor harmless from claims, demands and liability for union fringe benefit trust fund obligations arising out of Subcontractor's Work on the Project.
38. **SAFETY LAWS, HAZARD COMMUNICATION STANDARDS, PROPOSITION 65 AND SAFE PRACTICES COMPLIANCE.** Subcontractor and its subcontractors and suppliers shall, at their own cost and expense, protect their employees, employees of Contractor and/or Owner and all other persons from risk of death, injury, or bodily harm arising out of or in any way connected with the work to be performed hereunder, and Subcontractor and/or its subcontractors/suppliers shall strictly comply with all safety orders, rules, regulations or requirements of all federal, state and local governmental agencies exercising safety jurisdiction over said work, including, but not limited to, the federal and state OSHA Regulations, and shall comply with all of Contractor's safety requirements, policies and rules.
- (a) Subcontractor acknowledges that Subcontractor, and not Contractor, is the "Controlling Employer" and therefore has the authority and responsibility for the safety of its employees, sub-subcontractors and materialmen, as well as the safety of other subcontractors and trades in relation to Subcontractor's work or trade while on the job site. In furtherance thereof, Subcontractor shall provide safe and sufficient facilities at all times. Subcontractor shall take all safety measures related to its work or trade as required by Contractor and all applicable laws, ordinances, rules, regulations and orders of any public authority including, without limitation, the California Occupational Safety and Health Act of 1973 and all rules and regulations promulgated by the California Department of Industrial Relations pursuant to said act. In addition thereto, if Contractor deems it necessary, additional security precautions such as fences, watchmen, etc. may be required and Subcontractor shall pay his proportionate share based on the subcontract price ratio to the total construction cost.
- (b) Subcontractor shall be responsible to Contractor for the reimbursement of any damages suffered by Contractor as a result of failure to comply with the terms of this Article, including any fines or penalties and damages due to claims against Contractor for injury to persons or property.
- (c) Subcontractor, by execution hereof, verifies that all personnel assigned to perform work under this Subcontract have completed safety training specifically required by state/federal OSHA and will be qualified by training and/or experience to complete the assigned work. All necessary personal protective equipment deemed appropriate for the work assignment will be provided to all personnel who will be instructed in the property selection, care and use of such safety devices and safe guards. Material Safety Data Sheets (MSDS) related to products which may be used on this project will be provided to contractor and any personnel who may be required or permitted to use such products will have been made aware of

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- the risks associated with such materials and the safety precautions necessary to protect people, property and the environment. As the "controlling employer" with regard to safety of its own employees, Subcontractor shall have a designated "Responsible Authorized Person for Safety" on the job site at all times that Subcontractor's personnel are working on the Project. Subcontractor will identify and arrange for additional safety training as the need arises, will perform continuous hazard recognition for unsafe work practices and/or unsafe work conditions and will abate same, and will eliminate all unacceptable risks howsoever created. It is a condition of this contract the Subcontractor have an effective safety and health program that meets or exceeds OSHA requirements. It is Subcontractor's responsibility to report any safety or health hazards or potential hazards before commencing any activity which poses any hazard to any person, property, or the environment.
- (d) Subcontractor acknowledges that it and its subcontractors/suppliers will be subject to the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) and regulation enacted pursuant thereto to provide clear and reasonable warnings to their employees and others of potential exposure to a chemical known to the State of California to cause cancer or reproductive toxicity, notwithstanding any provision exempting Subcontractor or its subcontractors/suppliers on the basis that they have less than ten (10) employees. Subcontractor and its subcontractors/suppliers are required to acquire and review copies of Proposition 65 and the regulations and requirements enacted pursuant thereto.
 - (e) Subcontractor acknowledges that it and its subcontractors/suppliers will be subject to Labor Code Section 6401.7 and regulations enacted in furtherance thereof, including, but not limited to, Sections 1509, 1510 and 3203 of Title 8 of the California code of Regulations and all successor statutes and regulations. In particular, Subcontractor and its subcontractors/suppliers will, at their sole expense, establish, implement, and maintain a written Injury and Illness Prevention Program and Code of Safe Practices. In particular, Subcontractor and its subcontractors/suppliers will: (1) conduct periodic meetings of supervisory employees to discuss safety problems and accidents that have occurred and (2) require their supervisory employees to conduct "tailgate" or "toolbox" safety meetings, or equivalent, with their crews at least every ten (10) working days to emphasize safety and safe working practices.
 - (f) Subcontractor and each of its subcontractors/suppliers shall maintain a "Log of Occupational Injuries and Illnesses" for their respective employees.
 - (g) If Subcontractor and its subcontractors/suppliers do not comply with all safety requirements to the Project, Contractor may, but shall not be obligated to, give written notice of violation to the Subcontractor. Subcontractor shall cause its performance to come into compliance with such safety requirements within twenty-four (24) hours after such written notice has been presented to Subcontractor (or, in the event compliance cannot be completed within twenty-four (24) hours, Subcontractor shall immediately commence and continue such effort as may be necessary to obtain a reasonable time from commencement). If Subcontractor does not take such steps to come into compliance, then such failure shall be deemed a material default.

39. ENVIRONMENTAL COMPLIANCE

- (a) Subcontractor and its subcontractors/suppliers shall use, handle, transport and dispose of all Hazardous Materials in compliance with all present and future federal, state and local environmental, health or safety law, including, but not limited to, all statutes, regulations, ordinances, codes, and rules of common law. Subcontractor further agrees that Subcontractor and Subcontractor's subcontractors/suppliers shall not cause the discharge, release or disposal of any Hazardous Materials on the jobsite. In addition to the obligations set forth herein, Subcontractor and its subcontractors/suppliers shall, upon completion of performance of all duties under this Subcontract, remove all materials, supplies and waste containing any Hazardous Material from the jobsite. Subcontractor shall bear full financial responsibility, as between the parties to this Subcontract, for the compliance of the Subcontractor and its subcontractors/suppliers with the provisions of this Section. Subcontractor agrees to indemnify, defend (pursuant to the terms of the Subcontract), protect and hold Contractor and Owner harmless from and against any liabilities, costs, claims, damages, fines, penalties or expenses, including actual attorney's fees and costs of investigation, soils testing, governmental approvals, remediation and clean-up arising out of or in any way connected with the failure of the Subcontractor or its subcontractors/suppliers, their agents, employees, officers, or representatives, to comply with this Section. Should Subcontractor or its subcontractors/suppliers discharge, release or dispose of any Hazardous Material on the site in violation of this section, Subcontractor shall immediately inform Contractor in writing. In the event Subcontractor or its subcontractors/suppliers encounter on the site any pipeline, underground storage tank or other container, of any kind, that may contain a Hazardous Material, or encounter material reasonably believed to be a Hazardous Material, Subcontractor shall immediately stop work in the area affected and report the condition to the Contractor in writing. If Subcontractor or its subcontractors/suppliers do not comply with the requirements of this section, Contractor may, but is not obligated to, give written notice of violation to Subcontractor. Should Subcontractor or his subcontractors/suppliers fail to comply with the requirements of this section within twenty-four (24) hours from the time Contractor issues such written notice of noncompliance or within the time of an abatement period specified by any governmental agency, whichever period is shorter, Subcontractor shall be in material default of the Subcontract.
- (b) Definition of Hazardous Material. "Hazardous Material" means any substance: (1) the presence of which requires investigation or remediation under any present or future federal, state, or local statute, regulation, ordinance, rule, code, order, action, policy or common law, or (2) which is or becomes defined as a "hazardous waste", "hazardous substance", pollutant or contaminant under any present or future federal, state, or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response and Liability Act (42 U.S.C. Sections 9601 *et seq.*) and/or the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901 *et seq.*); or (3) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of California or any political subdivision thereof; or (4) the presence of which on the property causes or threatens to cause a nuisance upon the Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Property; or (5) which contains gasoline, diesel fuel or other petroleum hydrocarbons; or (6) which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation.

40. EQUAL OPPORTUNITY - During the performance of this Subcontract, the Subcontractor agrees as follows:

- (a) The Subcontractor will not discriminate against any employee or applicant for employment because of race, creed or national origin. The Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to their race, creed, color, or national origin. Such affirmative action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selections for training, including apprenticeship. The Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth this nondiscrimination clause.
- (b) The Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin.
- (c) The Subcontractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided advising the labor union or worker's representative of the Subcontractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) The Subcontractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and the rules, regulations, and relevant orders of the Secretary of Labor.
- (e) The Subcontractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (f) In the event of the Subcontractor's noncompliance with the nondiscrimination clauses of this Subcontract or with any such rules, regulations, orders, this Subcontract may be cancelled, terminated or suspended in whole or in part and Subcontractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (g) The Subcontractor will include the provisions of paragraph (a) through (g) in every sub-subcontract or purchase order unless exempted by rules, regulations, or orders of the secretary of Labor issued pursuant to Section 204 of executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each sub-subcontractor or vendor. The Subcontractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Subcontractor becomes involved in, or is threatened with, litigation with any other sub-subcontractor or vendor as a result of such direction by the agency, the Subcontractor may request the United States to enter into such litigation to protect the interests of the United States.

- 41. NOTICES.** All notices or other communications required or permitted hereunder shall be in writing, and shall be delivered or sent, as the case may be by any of the following methods: (i) personal delivery; (ii) regular mail; (iii) overnight commercial carrier or delivery service; (iv) registered or certified mail (with postage prepaid and return receipt requested); (v) telecopy/fax, or (vi) electronic mail (e-mail). Any such notice or other communication shall be

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deemed received and effective upon the earlier of (i) if personally delivered, the date of delivery directly to the party or to the address of the party to receive such notice; (ii) if delivered by overnight commercial carrier or delivery service, one day following the receipt of such communication by such carrier or service from the sender, as shown on the sender's delivery invoice from such carrier or service, as the case may be; (iii) if mailed with postage prepaid, seventy-two (72) hours after delivery to the U.S. Post Office, or when actually received if sooner; or (iv) if given by telecopy/fax, when sent to the correct telecopy/fax number of the party to receive such notice. Any notice or other communication sent by telecopy/fax and/or e-mail must be confirmed within forty-eight (48) hours by letter mailed or delivered in accordance with the foregoing. Any reference herein to the date of receipt, delivery, or giving, as the case may be, of any notice or other communication shall refer to the date such communication becomes effective under the terms of this Section. The addresses for purposes of the giving of notices hereunder are set forth on the first page of this Subcontract for the Contractor and the Subcontractor. Notice of change of address shall be given by written notice in the manner detailed in this Section.

42. **LICENSE.** Subcontractor warrants that he is, and shall herein, licensed by the State in which work under this Subcontract is to be performed, under the terms of this Subcontract.

43. **MISCELLANEOUS.**

- (a) All rights, options and remedies of Contractor contained in this Subcontract shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Contractor shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided at law or in equity, whether or not stated in this Subcontract.
- (b) No waiver by Contractor of a breach of any of the terms, covenants or conditions of this Subcontract by Subcontractor shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. No waiver of any default of Subcontractor hereunder shall be implied from any omission by Contractor to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect default other than as specified in said waiver. The consent or approval by Contractor to or of any act by Subcontractor requiring Contractor's consent or approval shall not be deemed to waive or render unnecessary Contractor's consent or approval to or of any subsequent similar act by Subcontractor.
- (c) Time is of the essence in this Subcontract.
- (d) In the event of any dispute regarding the interpretation or enforcement of any of the terms and provisions of this Subcontract, the prevailing party shall be entitled to actual attorneys' fees, expenses and costs incurred.
- (e) Each and all of the covenants and conditions of this Subcontract shall inure to the benefit and shall be binding upon the successors and interest of Contractor and subject to the restrictions upon assignment herein, the successors and assigns of Subcontractor.
- (f) Subcontractor represents and warrants that the person or persons executing this Subcontract on behalf of Subcontractor has or have full authority to enter into this Subcontract and to bind Subcontractor hereto.
- (g) All covenants, indemnities, representations and warranties made by Subcontractor pursuant to this Subcontract shall survive the termination of this Subcontract and Contractor's final payment to Subcontractor.
- (h) This Subcontract constitutes the entire agreement between the parties and no statements or representations, verbal or in writing, other than herein set forth shall be a part hereof.

44. **PRIME CONTRACTOR; SUBCONTRACTOR CLAIMS**

Contractor has made a contract for construction with the Owner, which provides for the furnishing of labor, materials, equipment and services in connection with development of the Job Site (the "Prime Contract"). Subcontractor shall be bound to Contractor to the same extent that Contractor is bound to Owner by all terms and provisions of the Prime Contract and by all decisions, rulings and interpretations of Owner or its authorized representative. Where a provision of the Prime Contract is inconsistent with a provision of this Subcontract, this Prime Contract shall govern.

In the event Subcontractor claims that it is entitled to damages or to additional compensation, or in the event that Subcontractor disputes any determination made by Owner or Owner's representative, Subcontractor shall, within the time allowed by the Prime Contract, prepare its claims or contentions in writing, as required by the Owner. Subcontractor shall be bound by Owner's ruling or decision on all such matters to the same extent that Contractor is bound. Subcontractor shall have no right to receive payment from Contractor on any claim or contention in any sum greater than that allowed and paid to Contractor by Owner. Subcontractor acknowledges and agrees that payment by Owner to Contractor is an express condition precedent to Contractor's obligation to pay Subcontractor. Contractor shall have no obligation to pay Subcontractor unless and until Contractor has, in fact, received payment from Owner on account of the Work performed by Subcontractor.

45. **EXHIBITS.** The following EXHIBITS are attached and shall be incorporated into this Subcontract and made a part hereof.

<u>X</u>	EXHIBIT 'A'	-	Statement of Work
<u>X</u>	EXHIBIT 'B'	-	Insurance Information
<u>X</u>	EXHIBIT 'C'	-	Billing Instructions
<u>X</u>	EXHIBIT 'D'	-	OSHA Addendum
<u>X</u>	EXHIBIT 'E'	-	"Hazardous Materials Disclosure Statement"
<u>X</u>	EXHIBIT 'F'	-	Special Conditions for Site Improvement Contracts
<u>X</u>	EXHIBIT 'G'	-	Payment Schedule

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT IS FILED WITHIN THREE YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA, 95826

My signature below acknowledges that I have read and understand the above requirements of all pages.

SUBCONTRACTOR:

C CONSTRUCTION, INC. DBA SELECTBUILD

- Contractor License No. 863761

By: _____

By: _____

Date: _____

CONTRACTOR:

WESTERN NATIONAL CONTRACTORS

- Contractor License No. 840973

By: _____

By: _____

Date: _____

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EXHIBIT A
STATEMENT OF WORK

A. GENERAL TERMS AND CONDITIONS -

Subcontractor shall furnish and provide all labor, material and equipment necessary to complete installation of the ROUGH CARPENTRY work on this Project, said work including, but not limited to, provisions of the subject specifications as complemented and/or altered by the subject drawings. The following is designed to indicate in a general way the scope of work and is subject to qualifications and additions set out elsewhere in this Subcontract. All work shall be in accordance with building codes, all applicable governing bodies, rules and regulations, and to the complete satisfaction of Contractor.

Subcontractor shall call in all his inspections and obtain approval of same. Subcontractor shall unconditionally guarantee all its work for one year from date of occupancy. This guarantee shall include all materials and labor. In the event Contractor is unable to proceed with Project, it is agreed that Contractor can cancel this Subcontract without recourse by Subcontractor.

In the event that Subcontractor is requested to perform services or furnish material over and above his subcontract provisions, and expects to be reimbursed for same, he must first obtain written approval from Contractor for this Project. Written approval shall be in the form of a WESTERN NATIONAL CONTRACTORS "Change Order" document. This requirement shall be in addition to any and all other instructions, verbal or written, that Subcontractor may receive from Contractor's field representatives, or any other source.

All additional work performed or material supplied prior to or without the written approval of the Contractor shall be considered done at no charge to Contractor.

Subcontractor shall be responsible for providing a safe work place and for compliance with standards and regulations of the Federal Occupational Safety and Health Act (OSHA), California Division of Industrial Safety (CDIS). Subcontractor is to take special note of the OSHA requirement under code 1592(a) which states: SIGNALMAN MUST BE USED TO DIRECT BACKING OPERATION WHERE THE HIGH AMBIENT NOISE OBSCURES A TRUCK'S BACKUP ALARM.

Subcontractor shall be responsible for erosion protection of his work during construction.

All cut and fill slopes within the development shall be protected. The Subcontractor shall pay for any damage to these slopes, banks, or swales. Subcontractor, its employees, representatives, agents, and sub-subcontractors shall not drive over, walk over, scar, deface or cause damage to said slopes, banks, or swales in any manner whatsoever. If damage should occur it will be the responsibility of the Subcontractor or his agent to repair damaged land and shall be held fully responsible for all costs incurred.

Subcontractor acknowledges that Contractor is relying on the special expertise, skill and knowledge of Subcontractor in the performance of their work herein specified. In addition, such reliance by contractor extends without limitation to Subcontractor's evaluation and performance of contractual responsibilities, as per the scope of work included herein, and the following:

- a. The Contract Documents;
- b. The job site, including without limitation the soil and underground conditions and all other conditions, which might affect the progress of the work contracted for under the Subcontract or described in the Contract Documents;
- c. The plans and specifications;
- d. Statutes, ordinances and governmental rules, regulations and other requirements applicable to the work contracted for under this subcontract.
- e. Rules, regulations, plans, specifications and other requirements of entities whose regulations or specifications are adopted or used by Contractor.

It is hereby acknowledged and agreed that the amount paid to Subcontractor by Contractor under this Subcontract is partially in return for Subcontractor's evaluation of the above items. Subcontractor has notified Contractor in writing of the manner, if any, in which the Contract Documents and the plans and specifications provided by Contractor are not sufficient to permit the work contracted for or to be accomplished in an efficient and workmanlike manner in full compliance with governmental agencies having jurisdiction thereof. In the event that such documents, plans and specifications are deficient in any manner other than as so communicated to Contractor, any work required to correct such deficiency shall be performed by Subcontractor at its sole cost and expense according to the terms of this Subcontract, without limitation thereof.

Without limiting the generality of the foregoing, in the event that work performed by Subcontractor is preliminarily or conditionally accepted and such work is subsequently found to be deficient by any governmental agency having jurisdiction thereof, and corrective action is necessary; Subcontractor shall perform corrective measures at his sole cost and expense.

No alcoholic beverages or drugs of any kind are to be consumed by Subcontractor's employees before, during or after working hours while on the jobsite; no pets or animals of any kind are allowed on the jobsite; no children, family members or any other unauthorized persons are allowed on the jobsite. Subcontractor agrees to impose and strictly enforce a regulation to this effect and to inform its employees that such regulation will be strictly enforced. Any employee found to have violated said regulation is to be immediately replaced upon Contractor's or Owner's request. Any breach of this provision will be grounds for immediate termination of this Subcontract Agreement by Contractor.

Owner's Architect is Architects Orange, hereafter called "Architect".

Owner's Civil Engineer is Madole & Associates, hereafter called "Civil Engineer".

Owner's Structural Engineer is ESI/FME, hereafter called "Structural Engineer".

Owner's Soils Engineer is RMA Group, Inc., hereafter called "Soils Engineer".

Owner's Landscape Architect is Sitescapes, hereafter called "Landscape Architect".

The subcontractor will also comply with the latest requirements of local, City, County, State, Federal and all other agencies having jurisdiction over the work performed at the project specified in this Subcontract

PLAN LIST:

Architectural Plans by Architects Orange dated 3/30/2009: CS, A0.1, A1.1, A2.1A, A2.1B, A2.1C, A3.1, A3.2, A3.3, A3.4, A3.5, A4.0, A4.1, A4.2, A4.3, A4.4, A5.0, A5.1, A5.2, A5.3, A5.4, A5.5, AP3.1, AP3.2, AP4.1, AP4.2, AP4.3, AP5.1, AP5.2, APSC, T.1, PW.1, PW.3, D.1, D.2, D.3, D.4, D.5, D.6, PR-1, PR-2, PR-3, PR-D1.

Structural Plans by ESI/FME dated 3/17/2009: SGN, S4-1, S4-2, S4-3, S5-1, S5-2, S5-3, SP4-1, SP4-2, SP5-1, SPR-1, ST-1, SD1, SD2, SD3, HFX-1, HFX-2

Mechanical Plans by Tryco Consulting Inc. dated 3/18/2009: M0.1, M0.2, M1.1, M1.2, M2.1, M2.2, M3.1, M4.1

Plumbing Plans by Tryco Consulting Inc. dated 3/18/2009: P0.1, P1.1, P1.1A, P1.2, P2.1, P2.1A, P2.2, P3.1, P4.2, P5.1, P6.1

Electrical Plans by LEA Linwood Engineering Associates, P.C. dated 3/18/2009: E100, E101, E102, E103, E104, E200, E201, E202, E203, E204, E205, E300, E301, E302, E400, E501, SE1.0, SE2.0, SE2.1, SE2.2, SE3.0, SE3.1

Title 24 Calculations by Tryco Consulting, Inc. dated 3/18/2009: EC1.1, EC1.2, T24 (for Building 2), T24 (for Building 28), T24 (for Building 27), T24 (for Building 5), T24-1 (for Pool Building), T24-2 (for Pool Building).

Private Sewer by Madole & Associates dated 5/4/2009: Sheets 1, 2, 3

Rough Grading Plans by Madole & Associates dated 7/8/2009: Sheets 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

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Precise Grading Plans by Madole & Associates dated 6/1/2009: Sheets 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 31, 32

Private Storm Drain by Madole & Associates dated 6/1/2009: Sheets 21, 22, 23

Water Quality BMP by Madole & Associates dated 6/1/2009: Sheets 24, 25, 26, 27, 28, 29, 30

Water Plans by Madole & Associates dated 5/4/2009: Sheets 1, 1, 2, 3, 4, 5

Soils Report and Visqueen Letter by RMA and Associates dated 2/17/2009, 6/9/2009: Pages 1-41, 1

Landscape Demo Plans by Sitescapes dated 8/7/2009: Sheets A1, L1, L2, L3, L4, L5, L6, L7

Edison Preliminary Plans by Morrow Management dated 8/6/2009: Sheets 1 of 1

Gas Preliminary Plans by Morrow Management dated 8/5/2009: Sheets 1 of 1

Communication System Plans by Morrow Management dated 8/10/2009: Sheets 1 of 1

Acoustical Report by LSA and Associates dated 3/22/2005 pages 1-17

Verdura Wall Plan by Soils Retention dated 7/28/2009 sheets 1, 2, 3, 4, 5

SCOPE OF WORK

SECTION 1: GENERAL

1. Subcontractor agrees to provide all necessary labor, materials, equipment, tools, supplies, and miscellaneous incidentals as required for the prompt and efficient execution of the work described herein, in accordance with the project drawings, owner specifications, and details for this project with all subsequent revisions through the date of this contract.
2. It is the intent of Contractor that this Subcontractor provides all work required for a complete turnkey job. This Agreement is lump sum per plans, specifications and on-site inspection. Only work resulting from plan changes will be considered as an extra and must be confirmed with an executed Contractor's Change Order before commencement of work. The Project Manager must approve all Change Orders. Contractor's employee signature on daily work tickets is an acknowledgment of work performed or material used and does not constitute approval of extra work or material. No extra work shall be performed before a Change Order for the work is issued. All work shall be performed under the direction of Contractor's Project Superintendent.
3. Subcontractor agrees to that the amount of this contract represents a 100% complete job and includes completion of all pick-up items within two (2) days of notification
4. Subcontractor acknowledges that it has personally inspected the site and is fully aware of all conditions as they relate to this project and its work.
5. Subcontractor is to coordinate all efforts with the Project Superintendent and all related trades, a schedule will be provided by the project superintendent and updated as required.
6. Subcontractor shall work on an accelerated schedule at recreation, lease and model buildings at no additional charge.
7. Resident Relations: Subcontractor's employees will conduct themselves in a manner that reflects optimum business courtesy and consideration. Formal communication relative to the Contract is to be handled by the Project Manager, as are resident complaints concerning work performed herein. Subcontractor's employees will at all times adhere to proper moral, ethical and legal code of conduct.
8. When performing warranty work Subcontractor will:
 - (a) Provide 24-hour emergency service phone number. Emergency service shall be made available to residents on weekends and holidays.
 - (b) Check in with the project leasing office before starting repair or service work for special instructions, priorities and to obtain keys.
 - (c) Park in designated visitor spaces only.
9. Pricing is good through the completion of the project.
10. Subcontractor is to have an operable fire extinguisher on the project.
11. Subcontractor has the responsibility of notifying the Project Superintendent of any manpower problems on a weekly basis.
12. The contractor shall have a qualified English speaking foreman on site at all times.
13. The contractor shall prepare, maintain and enforce their own written in-house safety program, hold in-house safety meetings and provide Owner with a copy of both their written safety program and copies of meeting minutes from their weekly safety meetings. The contractor will establish and present a Site Orientation and Emergency Evacuation Procedure for its employees to follow in the event of an emergency or disaster that would necessitate evacuation of the site. Submittal of Contractor's written safety program shall precede execution of the Contract Agreement. Copies of Contractor's safety meeting minutes, Site Orientation and Emergency Evacuation Procedure with a list of attendees, must be faxed to the Project Manager a maximum of one (1) week following each meeting for the duration of the job. A twenty-four hour emergency telephone number for a representative of the Contractor shall precede execution of the Contract Agreement.
14. Working hours will be posted in the Site Construction Office. The contractor will not perform work or schedule deliveries at any time other than the posted hours or at times prohibited by City Ordinances. If the contractor elects to work at times other than the posted hours the Contractor will contact Western National Contractors Project Superintendent for permission. A representative of Western National Contractors shall be on site at any time a Contractor performs work on the site.
15. Contractor to clean up his work area, storage and lay-down areas on a daily basis with all trash removed to Owner provided bins or as directed by the project superintendent.

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16. A mandatory Production/Safety meeting will be conducted as scheduled by the superintendent. You must have a foreman or representative attend this meeting. The foreman or representative must authorize to commit your firm to accepting/discussing scheduled and other pertinent management responsibilities. (Failure to attend this meeting will result in a \$100.00 fine charged to your contract account.) Note: on the second meeting day of each month the Project Manager will also be expected to attend the regular scheduled Contractor's meeting.

SECTION 2: SCOPE SPECIFIC:

- A. Subcontractor will furnish all necessary materials including but not limited to:
- Lumber (New of sufficient quality)
 - Siding
 - Nails
 - Hardware, HDs (hold-downs)
 - Embedded hardware (Installed by Others)
 - Roof trusses
 - Floor joist
 - Roof sheathing
 - Shear panels
 - Caulking / Adhesives per owner approval and manufacturers recommendations. (Sub floor glue, window caulk & siding caulk etc.)
- B. Any deviations or changes from the plans and specifications will require a written approval (with the proper submittals) by the Architect and/or Structural Engineer.
- C. This Scope of Work includes, but is not limited to, exterior elevations as indicated on the plans and specifications, and installation of window frames with or without glazing.
- D. Subcontractor will furnish and install all catalog rough hardware, including all embedded hardware with relation to rough framing. Embedded hardware is laid out and provided by Subcontractor and will be installed by others.
- E. Subcontractor will provide to the contractor a minimum of six (6) submittal package for each submittal item. Subcontractor will take full responsibility for all trusses not approved by Structural Engineer. All submittal packages will be delivered to the contractor within seven (7) working days after execution of the Contract Agreement.
- F. All framing will be done to industry standards. Subcontractor will correct any frames that are not true, straight and plumb without any additional cost to the Contractor. Subcontractor will provide labor, equipment and/or replacement if needed to straighten or plane any bowed studs or framing members to include Glu-Lams, beams, post and headers etc.
- G. Skilled tradesmen will do all cutting for framing structural and non-structural members, for rough plumbing, electrical, HVAC and other through wall apparatus. Any cutting of structural members will require approval, in writing by the Structural Engineer, prior to cutting or drilling of member.
- H. Subcontractor will provide the cutouts, notching, furring, openings, etc. as required by all other trades. Such work shall include cutting and notching for ducts, air conditioning lines and air registers. Any structural member whose strength is impaired by improper cutting, drilling or excessive defects shall be replaced or repaired by Subcontractor.
- I. All interior stairs to be per plans and details.
- J. Work covered herein shall also include the responsibility of protecting materials prior to installation from damage by other trades, such as window fascia, plant-on materials, etc. Garage areas may be used for this purpose. Subcontractor's scaffolding materials shall be neatly stacked as directed.
- K. Subcontractor's equipment and material stored on-site will be the sole responsibility of Subcontractor.
- L. OSHA-approved scaffolding materials will be furnished and erected by Subcontractor for his portion of work only. Fall protection plan in place prior to start of framing.
- M. Subcontractor will furnish all equipment, hoisting, deliveries and off loading and loading truss systems to the site as required to complete its portion of work.
- N. Subcontractor will install and maintain temporary stairs and railings as required by OSHA and shall furnish and maintain any scaffolding required for rough carpentry work.
- O. Subcontractor will furnish all labor and materials necessary to glue down all sub-flooring and nail same with approved type ring shank nails or screws. Type of glue to be approved by Contractor, Owner and glue shall only be applied in accordance with manufacturer's recommendations. This applies to all plywood decking/decking. Caulking to be submitted and approved by owner.
- P. Furnish and install caulking under all perimeter sill plates and party walls, including any caulking required at exterior frames and corners per Title 24 requirements. Subcontractor is responsible for all caulking on siding, blocking, eaves, fascia, trim, etc. This caulk is to be specified by Owner, Elastomeric/any brand.
- Q. Subcontractor will provide labor, material and equipment to install any and all necessary blocking, backing, edge backing, stair supports, bath accessories, medicine cabinets and blocking at eaves etc.
- R. It is the responsibility of Subcontractor to notify Contractor of slab deficiencies, as required. Any deficiencies not reported and in which extra cost is accrued will be at the expense of Subcontractor. Concrete slab repairs, sacking and dry pack will be done by others.
- S. Fill and sand all holes that exceed the industry standards of embedment in framing members. (Plywood roof sheathing and shear panel). The head of the nail will not penetrate below the surface of the sheathing and it must be flush with the surface. If gun nails are deeper than this, they will fracture the structural integrity of the roof and shear panel sheathing. Subcontractor shall supply a responsible person to walk all inspections with general contractor and governing agency.
- T. Any framing corrections imposed by the city, county and other governing agencies will be corrected, repaired, replaced, re-nailed etc. by the following inspection day. Subcontractor will complete all pick-up work and repairs required for (or by) jurisdictional agencies.
- U. The following items shall be included in this Scope of Work:
- Pool Cabana and (75) Apartment buildings.
 - Any interior dropped soffits and utilities chases that are wood are included in this Contract. All metal stud drops to be by others.
 - All exterior rough framing trim includes pool cabana, and apartments.

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MATERIALS:

- A. Options: Plywood, CDX vs.: OSB Lumber
- B. Plywood – "American Plywood Association"
- C. Millwork – "Woodwork Institute of California"
- D. Sills (on concrete) – Pressure treated, DF; caulk all perimeter mudsills and all party walls.
- E. Horizontal framing – #2DF. Set all horizontal members with crown side up.
- F. Vertical framing – Stud grade DF or standard and better (Refer to structural design calculations.)
- G. Plywood diaphragms – "Standard" plywood. Solid block edge blocking or T and G as per as noted.
- H. Nailing – Common or box nails to be per plans and specifications. All plywood diaphragms shall have cemented coated spiral shank ply nails. Provide double top plate with minimum 48" lap.
- I. Fascia, wood trim and barge boards – DF #2X and better re-sawed as detailed. Nailed with hot dipped galvanized. To use full lengths to eliminate joints/splices where possible.
- J. Building paper – Per plans and specifications. Vertically lap at all corners minimum one stud space.
- K. Stud walls to have full bearing on plate.
- L. Blocking and bridging.
- M. Stud walls – Per plans and specifications. Note walls with continuous studs from bottom to top plate.
- N. Joists and rafters – Per plans and specifications.
- O. Headers shall be set with crown side up.
- P. Fire stopping/draft stops – Per plans and specifications.

NOTE: The above lumber grades are a minimum standard. Refer to structural engineering requirements in structural plans. The highest grade or quality will prevail. Moisture content of lumber to be at a percentage set by owner and Contractor.

- Q. Shear walls – To be installed precisely per plans and code. O.S.B. may be utilized if approved by governing agencies. Must meet A.P.A. equivalent and have structural engineering approval.
- R. All interior stair treads to be per plans and details.
- S. Install 1 x 4 S4S under sliding door threshold prior to frame installation on 2nd floors. Attach to 2 x 4 imbedded in slab at this location.
- T. Subcontractor will be responsible for selecting only usable and acceptable lumber. All unusable and undesirable materials shall be omitted from the framing.
- U. Graded lumber for each application shall be the correct size, species and grade indicated on plans and/or in UBC. Structural members with more than 20% wane are not acceptable and shall not be utilized. Any and all non-conforming lumber shall be removed and replaced at Subcontractor's expense.
- V. Subcontractor will furnish all "Made in America (U.S.A.)" rough hardware including nails, staples, shots, hangers, straps, bolts, washers, nuts, clips, truss clips, etc. as applicable.
- W. Subcontractor will use only American-made bolts. Subcontractor will drill holes one-sixteenth (1/16) inch larger in diameter than the bolts. Subcontractor will use washers under heads that bear on wood and under all nuts. Subcontractor will re-tighten all bolts prior to covering. Subcontractor will supply all washers for anchor bolts thicker than one-eighth (1/8) inch.
- X. All exterior hangers, framing anchors and strap connectors shall be galvanized or treated with rust-inhibiting paint.
- Y. At radius and round windows, Subcontractor will supply "Arch-Rite" or equal radius material approved by Contractor.
- Z. Crickets, forced air unit (FAU) and water heater platforms, electrical and mechanical chases and stripping and furring shall be included.
- AA. Subcontractor shall provide shims for appropriate deck sloping.

PART 1 - MATERIALS TO BE SUPPLIED BY OTHERS:

- A. Blocking to be provided for others at frame hinge and latch locations, just as if this contract included installation of frames.
- B. Subcontractor will install window frames (supplied by others with glass already installed) true and plumb. Subcontractor will not bend nails over.
- C. Subcontractor will install wood vents, simulated wood louvers, etc. (supplied by others) if applicable.
- D. Subcontractor will install all sheet metal flashing, vents, etc. (supplied by others) at siding areas during framing if applicable.
- E. Interior metal drop soffits.

PART 2 - EXECUTION:

- A. No waxed, oiled or greased nails shall be permitted. All nailing shall be to specifications of local governing bodies.
- B. Subcontractor will set all horizontal or sloped members with crown up.
- C. Subcontractor will be responsible for removing all debris and framing members from under floor areas prior to sub-floor. All debris to be piled six feet (6') from building.

INITIALS: Contractor _____ Subcontractor _____

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- D. Subcontractor will move all useable framing materials and supplies forward or off-site in an orderly and timely manner, especially if said materials pose a safety hazard at job site.
- E. Contractor may reject lumber whether or not it has been installed because of improper cutting or fitting, excessive warp, twist, bow, crook, mildew, fungus or mold. Subcontractor will replace, at no additional cost to Contractor, any installed lumber that Contractor rejects.
- F. Only long boards relatively free of splits and knots are to be used for fascia, with no joints at front door area. Fascia and trim shall be installed with tight fit mitered corners. All fascia and trim material improperly selected or applied shall be corrected to the satisfaction of the Project Superintendent.
- G. Joints to be nailed & strapped to avoid openings.
- H. The number, size and type of nails or other fasteners used to connect wood members shall not be less than indicated on the plans. In instances where the prescribed nailing cannot be accomplished, or when careless workmanship caused nailing to be ineffective, Subcontractor will provide and install, at his own expense, suitable framing anchors, ties, bolts or other fasteners required. All such fasteners shall be installed per manufacturer's instructions. Whenever careless workmanship cannot be corrected to the satisfaction of all jurisdictional agencies and Contractor, Subcontractor will remove and satisfactorily replace the items involved at no additional cost to Contractor.
- I. Subcontractor will verify with Contractor the location of all items such as plaster grounds, cabinet backings, mounted television, utility cabinets and backing for bath accessories, etc. before installing them.
- J. Subcontractor will use galvanized nails or galvanized screws at siding, fascia, trim and any other exterior wood.
- K. Subcontractor will set all nails in siding flush with the siding surface and shall avoid hammer marks at all trim or siding. Any exposed siding, trim or fascia finishes that are split or damaged shall be repaired or replaced to Contractor's satisfaction at Subcontractor's expense. All nails shall be galvanized. Any siding with nails recessed too deeply shall be replaced at Subcontractor's expense. Staples shall not be utilized to connect, attach, fasten or secure any exposed siding, trim or fascia finishes.
- L. Subcontractor will furnish and install nine (9") inch wide Moistop flashing around all door and window openings. Subcontractor will be responsible for Moistop through lathing installation.
- M. Subcontractor will furnish and install building paper or felt under siding, trim, wood frame receiving brick veneer, posts or columns to be veneered, etc. Subcontractor will lap joints six (6") inches minimum to prevent penetration of water into stud spaces and shall securely fasten joints in accordance with manufacturer's recommendations. Pressure treated posts where exposed to weather.
- N. When applicable, Subcontractor will install all backing required for hip and ridge trim on concrete tile roofs.
- O. If an "engineered" or similar floor system is specified, Subcontractor will include solid rim joists or solid rim blocking at perimeter locations.
- P. Subcontractor will install Moistop, per manufacturer's specifications, with a minimum width of nine (9") inches behind all exterior trim and all wood to wood, all applications between wood and all 2 x 6 or smaller trim or plant-on, etc. to the satisfaction of all jurisdictional authorities and Contractor.
- Q. All roof, floor and sheer panel areas shall be gapped one-eighth (1/8") inch all around.
- R. Framers shall have sufficient time for pickup before and after inspections.

END OF SECTION

WESTERN NATIONAL CONTRACTORS
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EXHIBIT B
INSURANCE INFORMATION

Prior to commencing its work, Subcontractor shall fully comply with the terms of this Exhibit "B" and deliver to Contractor the Insurance Endorsements and Certificates of Insurance as required herein.

Subcontractor shall purchase and maintain policies of insurance which will protect Subcontractor, Owner, Contractor and any applicable lender or any other party having an interest in the Work, the Project and/or Property, from claims which arise out of or result from Subcontractor's actions or inactions relating to this Subcontract, whether such be by Subcontractor, by any employees, agents, subcontractors, sub-subcontractors or assignees of Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

All insurance described within this Exhibit "B" shall be maintained by Contractor at its sole expense with insurance carriers licensed and approved to do business in California, having a general policyholders rating of not less than an "A" and financial rating of not less than "VIII" in the most current Best's Key Rating Guide. In no event will such insurance be terminated or otherwise allowed to lapse prior to termination of the Contract or such longer period as may be specified herein.

1. **Evidence of Insurance.** As evidence of specified insurance coverage, Subcontractor shall deliver Certificates of Insurance issued by Subcontractor's insurance carrier showing each of the below coverages in force for the specified period, but Contractor has the right to require Subcontractor to submit for Contractor's review certified policies. Such evidence shall be delivered to Contractor promptly upon execution of this Contract or prior to commencement of Work, whichever earliest occurs. Subcontractor shall also allow Contractor to inspect such evidence of insurance Subcontractor obtains from its subcontractors. Certificates of Insurance shall be issued to the following Certificate Holder:

WESTERN NATIONAL CONTRACTORS
LEWIS OPERATING CORP
LGC HOMECOMING AT TERRA VISTA, LLC
8 Executive Circle
Irvine, CA 92614

Each policy and certificate shall be subject to reasonable approval by Contractor and shall provide that such policy shall not be subject to material alteration or cancellation without thirty (30) days notice in writing to be delivered by registered mail to Contractor.

In the cancellation section of the Certificate of Insurance the Contractor shall delete the words "endeavor to" and "the failure to mail such notice shall impose no obligation or liability of any kind upon Company."

2. **Types of Insurance.** Subcontractor shall purchase and maintain the following types of coverage:

(a) **Workers' Compensation.** Subcontractor shall maintain Workers' Compensation Insurance, including Employer's Liability with minimum limits of:

\$1,000,000 per Accident
\$1,000,000 Disease, Policy Limit
\$1,000,000 Disease, Each Employee

Such insurance will contain a WAIVER OF SUBROGATION by the insurance carrier with respect to Contractor. Such insurance shall be in strict accordance with the requirements of the most current and applicable Workers' Compensation Insurance Laws.

(b) **General Liability Insurance.** Subcontractor shall maintain Comprehensive or Commercial General Liability Insurance on an "occurrence" basis with a combined single limit for bodily injury and property damage of \$1,000,000 Each Occurrence with coverage for Products and Completed Operations (maintained for ten (10) years after Contractor's acceptance of the Work); Contractual Liability specifically covering the indemnification contained in Paragraph 24 of the Contract; Broad Form Property Damage including completed operations, Severability of Interest and Cross Liability Clauses, Explosion, Collapse and Underground Hazards (X, C, U); Owner's Contractors Protective Liability; Personal & Advertising Injury; Premises & Operations Coverage; Fire Damage; and Medical. Subcontractor shall maintain such coverage with minimum limits of:

\$1,000,000 Per Occurrence
\$2,000,000 General Aggregate
\$1,000,000 Products & Completed Operations
\$50,000 Fire Damage
\$5,000 Medical Exp. on any one person

(c) **Automobile Liability Insurance.** Subcontractor shall maintain Any Auto or Owned, Hired and Non-Owned automobile liability insurance covering all automobiles, trucks and other motor vehicles utilized by Subcontractor in connection with this Contract. Subcontractor shall maintain such coverage with minimum limits of \$1,000,000 Combined Single Limit.

(d) **Aircraft Liability Insurance.** If the Work involves aircraft, Subcontractor shall maintain Aircraft Liability coverage with limits and coverage acceptable to Contractor, but not less than \$10,000,000 per occurrence, covering owned and non-owned aircraft. A Waiver of Subrogation is required on hull coverage.

(e) **Professional Errors & Omissions Liability.** Professional Errors & Omissions Liability. If the Work involves architectural, design, or engineering services, Subcontractor shall maintain Professional Errors & Omissions coverage with limits acceptable to Contractor, but not less than \$2,000,000. The Deductible or Self-Insured Retention (SIR) under such policy shall not exceed \$25,000. Such insurance shall include contractual liability, coverage for prior acts and shall be maintained during the term of this Subcontract and renewed for a period of at least five (5) years thereafter.

(f) **Excess/ Umbrella Liability Insurance.** Subcontractor shall maintain excess/umbrella coverage over all primary policies with minimum limits as required by Contractor.

3. **Additional Insured.** Contractor shall be included as an additional insured under each coverage specified in Paragraph 2, above. An additional insured endorsement, ISO Form CG 2010 11/85 (or substantially similar and acceptable endorsement), shall be issued with the following provision:

It is understood and agreed that coverage afforded by this policy shall also apply to WESTERN NATIONAL CONTRACTORS, LEWIS OPERATING CORP, LGC HOMECOMING AT TERRA VISTA, LLC and their respective officers, directors, agents, servants, employees, divisions, subsidiaries, partners, shareholders, and affiliated companies and all other parties listed as Indemnitees under the Contract, all as additional insureds, but only with respect to legal liability or claims caused by, arising out of or resulting from the acts or omissions of the named insured or of others performed on behalf of the named insured and the acts or omissions of the additional insured(s) in connection with any general supervision by the additional insured(s) of the Subcontractors work.

This insurance is primary and any other insurance or self-insurance maintained by the additional insureds is excess and non-contributing with this insurance as respects claims or liability arising out of or resulting from the acts or omissions of the named insured, or of others performed on behalf of the named insured.

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4. **Deductibles and Self-Insured Retentions.** Any Deductible and/or Self-Insured Retention (SIR) contained in any policy identified in Paragraph 2 and pursuant to which Contractor and the above-referenced entities are named as an additional insured, must be reasonably acceptable to Contractor. All SIRs in Subcontractor's policies may be satisfied directly by Contractor and/or any additionally insured party to trigger said insurance regardless of the approval or participation of Subcontractor. Such policies may not require that the SIR only be satisfied by the Subcontractor and/or "Named Insured" to the exclusion of the Contractor and other additional insureds.

5. **Waiver of Subrogation.** Subcontractor hereby waives all rights against Contractor for damages caused by fire and other perils and risks to the extent covered by Subcontractor's required policies of insurance. All policies of insurance required herein shall contain a provision under which the insurance carrier waives its right of subrogation with respect to Contractor and such other parties identified as additional insureds in Paragraph 3, above.

6. **Consultant and Subcontractor Insurance.** Subcontractor shall not allow any consultant or subcontractor to perform any portion of the Work until Subcontractor obtains from such consultant or subcontractor the exact insurance required to be carried by Subcontractor under this Exhibit "B" including, but not limited to, (a) obtaining all types and amounts of insurance identified in Paragraph 2, above, (b) providing evidence of such insurance to Contractor pursuant to Paragraph 1, above, (c) an additional insured endorsement as required in Paragraph 3, above, and (d) a waiver of subrogation in favor of Contractor and the other designated parties in accordance with Paragraph 5, above.

NOTE: Contractor may terminate or withhold payment to Subcontractor for noncompliance with insurance requirements or expiration/cancellation of insurance.

WESTERN NATIONAL CONTRACTORS
HOMECOMING AT TERRA VISTA IV /

EXHIBIT C
BILLING INSTRUCTIONS

1. LOWER-TIERED SUBCONTRACTORS AND MATERIAL SUPPLIERS

Prior to the commencement of any work, Subcontractor shall submit a list of all lower tiered subcontractors and suppliers along with their designated performance times.

2. CALIFORNIA PRELIMINARY NOTICE INFORMATION

The Subcontractor shall be required to provide this information to each lower tiered subcontractor, material supplier, etc, . . . with whom he enters a contract on the Project.

PROJECT NAME & LOCATION:	LGC HOMECOMING AT TERRA VISTA, LLC. 11660 CHURCH STREET RANCHO CUCAMONGA, CA 91730
GENERAL CONTRACTOR:	WESTERN NATIONAL CONTRACTORS 8 EXECUTIVE CIRCLE IRVINE, CA 92614
OWNER/DEVELOPER:	LEWIS OPRATING CORP LGC HOMECOMING AT TERRA VISTA, LLC. LIMITED LIABILITY COMPANY 1156 NORTH MOUNTAIN AVENUE UPLAND, CA 91786
CONSTRUCTION LENDER:	N/A

3. BILLING INSTRUCTIONS

- Upon execution of this contract Western National Contractors will mail and or e-mail a PDF file containing the "Subcontractor Application for Payment" billing form that is required for invoicing. This form will be provided to you prior to each billing cycle. Instructions on how to complete the Application will be provided.
- Billing can be processed ONLY if your subcontract or change orders are fully executed. Subcontracts must be signed by both your company and WNC in order to be considered for payment. If you do not have a fully executed commitment by the invoice due date, you will not be able to bill against that commitment.
- Subcontractor must use the Lien Releases supplied by Contractor as part of this subcontract.
- Before submitting payment requests to this office, you must check with Contractors Field superintendent as to the number of buildings or dwelling units accomplished up to the date of your payment request. The quantities that you should request must tally with the quantities logged in the field.
- RETENTION: 10% retention payable thirty-five (35) days after recordation of Notice of Completion on the Project.
- Payment requests should have attached to it a labor and material lien release on Western National Contractors forms. THE DATE OF THESE RELEASES MUST HAVE THE SAME DATE AS THE SUBCONTRACT APPLICATION FOR PAYMENT.
- Invoices must be submitted to contractor no later than the 1st of the month to be paid by the 1st of the following month. Paid, as defined herein, means deposited in the U.S. Mail.
- INVOICES NOT PROPERLY SUBMITTED BY THE DATES INDICATED SHALL BE DEEMED AS LATE AND CARRIED OVER TO THE FOLLOWING MONTH.
- Contractor may at his discretion make any payment due Subcontractor by check payable jointly to subcontractor and to any materialmen, subcontractor, laborers or suppliers concerned in said work.

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EXHIBIT D
OSHA ADDENDUM

To WESTERN NATIONAL CONTRACTORS

This Addendum to Contract No. 077280610002 confirm that C CONSTRUCTION, INC. DBA SELECTBUILD is fully cognizant of CAL/OSHA's SB 198 Injury and Illness Prevention Program requirements, California Division of Industrial Orders (CDIS), and the Standards and Regulations of California Occupational Safety and Health Act (Title 8, Industrial Relations) and hereby agrees that Subcontractor will comply with the same at all times during the performance of the Work under this Subcontract. Particular reference shall be made to the trades dealing with "Excavation, Trenches and Earthwork" - Article 6 of the CAL/OSHA Construction Safety Orders and Sections 1539, 1540, 1541, 1542, 1546 and 1547 thereof.

Subcontractor agrees to abide by all OSHA safety requirements, including but not limited to, OSHA fall protection standards. We agree to abide by the above named rules and will take all steps to insure that all employees on the jobsite covered by Contract No. 077280610002 will be fully knowledgeable of the rules as well. To this end, a copy of said rules will be kept on the jobsite.
Acknowledgement:

Subcontractor's Name _____

Trade _____

WESTERN NATIONAL CONTRACTORS
HOMECOMING AT TERRA VISTA IV /

EXHIBIT E
"HAZARDOUS MATERIAL DISCLOSURE STATEMENT"

In accordance with "Proposition 65", the OSHA Hazard Communications Standards, and other laws, ordinances and regulations, Subcontractor shall disclose to the Contractor any hazardous materials being used or stored by Subcontractor on the Project, along with all applicable "Material Safety Data Sheets".

Subcontractor shall keep such hazardous materials information on file in the Project construction site office for review by Contractor. Subcontractor shall keep its records of hazardous materials on this Project separate from records on other projects on which Subcontractor may be working.

If Subcontractor is not using or storing any hazardous materials on this Project, Subcontractor should sign below and check the "Not Applicable" line and return to Contractor prior to commencement of work on the Project.

If Subcontractor is using or storing any hazardous materials on this project, Subcontractor must sign below, check the "Applicable" line and return this form, along with all necessary information on such materials to Contractor prior to commencement of Work on the Project.

Compliance with this procedure will be monitored in similar fashion as Subcontractor Insurance Requirements. Any failure to comply will result in delays or withholding of invoices and payments under this Subcontract.

Acknowledgement:

Subcontractor's Name _____

Trade _____

Applicable _____

Not Applicable _____

WESTERN NATIONAL CONTRACTORS
HOMECOMING AT TERRA VISTA IV /

EXHIBIT F
SPECIAL CONDITIONS FOR SITE IMPROVEMENT CONTRACTS

1. **WORK IS COMPREHENSIVE.** Work includes all effort necessary for completion. Work such as boring, casing, dewatering, rock and other bedding, removals and patching restorations are included in the contract price. Excess dirt will be placed and leveled as directed by the Contractor.
2. **TESTING.** The cost of initial testing shall be paid for by Contractor and the cost of retesting, as a result of failures, shall be paid for by Subcontractor.
3. **EQUIPMENT RATES FOR CERTAIN PURPOSES.** Subcontractor shall attach hereto a schedule of Subcontractor's standard rates for equipment. Contractor specifically reserves the right to approve the rental rates submitted by the Subcontractor.
4. **USE OF COMPLETED PORTIONS.** Contractor shall have the right, upon written notice to the Subcontractor and his Surety, if any, to take possession of and use any completed or partially completed portions of the work, notwithstanding that the time for completing the entire work or such portions may not have expired, but such taking possession and use shall not be deemed an acceptance of any work.
5. **REMOVING OBSTRUCTIONS.** When the proper completion of the work requires their temporary or permanent removal, the Subcontractor shall at its own expense remove and without unreasonable delay, temporarily or permanently replace or relocate in a workmanlike manner and to the satisfaction of the Contractor, all water pipe or appurtenances thereto, pipe lines, retaining walls, curbs, gutters, cement walks, and all other improvements of whatever character. Such improvements temporarily removed shall be maintained until permanently replaced, all at the Subcontractor's expense.
6. **PUBLIC UTILITIES.** In case it should be necessary to move property owned by a public utility, franchise or easement holder, the cost of which, because of the terms of any franchise or for any other reason, must be borne by the owner thereof, such owner will, upon proper application by the Subcontractor, be notified by the Contractor to move such property within a specified reasonable time, and the Subcontractor shall not interfere with said property until after the expiration of the time specified. If the cost is not borne by the owner of the public utility, franchise or easement, the Subcontractor shall perform the work, unless otherwise specified within the Plans, Specifications, or elsewhere in the contract.
The right is reserved to governmental entities and to any and all persons and owners of public utilities, franchises and easements to enter at any time upon any street, alley, right-of-way or easement for the purpose of making changes in their property made necessary by the work under this Contract and for the purpose of maintaining and making repairs to their property, and for any purpose of any work which they are otherwise privileged or entitled to undertake or do.
7. **MAINTENANCE OF EXISTING IMPROVEMENTS.** Unless otherwise indicated on the Plans or in the Specifications, or otherwise called for by the owner thereof, all water, gas or irrigation lines, lighting, power or telephone conduits or wires, or sewer lines, structures or house water, gas or irrigation lines, lighting, power or telephone conduits or wires, or sewer lines, structures or house connections in place, and other surface or subsurface structures or lines whether or not known to Subcontractor at the time of the execution of the Contract, shall be maintained by the Subcontractor and shall not be disturbed, disconnected or damaged by him during progress of the work. The location of existing underground facilities, whether shown on the Plans or not, shall be the responsibility of the Subcontractor. Should the Subcontractor in the performance of the work disturb, disconnect or damage any of the above, all expenses of whatever nature arising from such disturbance, disconnection or damage shall be borne by the Subcontractor.
8. **PRESERVATION OF MONUMENTS.** The Subcontractor shall not disturb any monuments or stakes found on the site of the work without written permission from the Contractor, and he shall bear the expense of properly resetting any monuments or stakes, which he may disturb.
9. **TEMPORARY WORK.** The Subcontractor shall perform all work of a temporary nature for the completion of the Contract. The cost of such work is included in the Contract price. Such work includes but is not limited to:
WATER, LIGHT and POWER—The Subcontractor shall provide all temporary water, light and power necessary for the performance of the work under this Contract and shall pay for all such charges until the work is accepted by the Contractor.
PUBLIC SAFETY—The Subcontractor shall conform in all respects to the requirements of all Federal, State, and local laws, rules and regulations governing public safety, including barricades, lights and fences.
PUBLIC CONVENIENCE and ACCESS—The Subcontractor shall conduct its operations so as to cause the minimum obstruction and inconvenience to traffic and to facilities adjacent to the work. Temporary access roads required to maintain traffic flow or access shall be installed and maintained by the Subcontractor, along with employment of traffic control personnel. During all phases of the work, the Subcontractor shall take precautions to abate dust and noise nuisances by means satisfactory to the Contractor, its Engineer, and local governmental agencies.
10. **SUBSURFACE AND LATENT CONDITIONS.** Variations in subsurface and/or latent conditions not materially differing from those shown or indicated in the Plans and Specifications, or not differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Plans and Specifications, shall not give rise to additional payments to Subcontractor. However, should the Subcontractor encounter or discover during the progress of the work subsurface and/or latent conditions, at the Site, materially differing from those shown on the Plans or indicated in the Specifications or unknown conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for the Plans and Specifications, the attention of the Contractor shall be immediately called to such conditions, in writing, before they are disturbed. The Contractor shall thereupon investigate the conditions, and if they do so materially differ, the additional work shall, with the written approval of the Contractor, be qualified as "extra work" and shall be resolved in accordance with the General Terms and Conditions of this Contract.

Rock excavation not apparent from the surface, or reflected in the Plans or Specifications or not specifically included contract documents and the Subcontractor's bid shall be considered as extra work. Rock excavation shall consist of furnishing all necessary equipment, material, and labor to remove all geological formations that require use of special equipment or blasting, to the line and grade as shown on the Plans or as directed by the Engineer. These geological formations are defined as those having a seismic velocity in excess of 6500 feet per second and that require removal by special equipment and/or blasting. Determination of seismic velocities will be accomplished by the Geologist or his qualified representative.

During the grading operation, the judgment of the Engineer or Geologist shall determine what constitutes rock excavation. In the event of a conflict of judgment between the Subcontractor and Engineer or Geologist, the Subcontractor may order a seismic test. Seismic tests which are ordered by the Subcontractor and fail to show velocities in excess of 6500 feet per second, shall be paid for by the Subcontractor. The Subcontractor shall also pay for the costs of delays.

The Subcontractor shall be responsible for obtaining necessary permits for blasting, and shall be responsible for the safety of all persons and properties during any blasting operation and, shall have in force acceptable liability insurance. All operations shall be conducted in strict accordance with State, Federal and WNC safety rules and regulations.

Excessive blasting will not be permitted. Any material outside of the authorized area, which may be shattered or loosened because of blasting, shall be removed and, when necessary, replaced at the Subcontractor's expense.

Blasted material shall be placed in any embankment area in accordance with Section 19, Standard Specifications (January, 1975), of the State of California Business and Transportation Agency, Department of Transportation. Where the Engineer requires rock excavation below the finished surface, the area will be filled to finish grade.

Upon the encountering of rock coming within the provisions of these paragraphs, a payment schedule will be negotiated in accordance with Contract provisions. There shall be taken into consideration in connection therewith any quantity of earth that the Subcontractor was required to remove because of required rock excavation. The quantity of the rock excavation shall be measured and certified in the field by the Engineer.

ATTACHED SCHEDULES: The following schedules are attached to this Subcontract:

- | | | |
|-----|------------|------------------------------|
| [] | Schedule A | Construction Schedule |
| [] | Schedule B | Modifications to Subcontract |

Exhibit G:

Commitment#: 077280610002

PAYMENT SCHEDULE

<u>Item #</u>	<u>Description</u>	<u>Bldg #</u>	<u>Location</u>	<u>Owner Cost Code</u>	<u>Internal Cost Code</u>	<u>Contract Amount</u>
1	BLDG-169-TYPE-27-LABOR		03	331640	06.100	11,089.00
2	BLDG-170-TYPE-27-LABOR		03	331640	06.100	11,089.00
3	BLDG-171-TYPE-28-LABOR		03	331640	06.100	4,380.00
4	BLDG-178-TYPE-27-LABOR		03	331640	06.100	11,089.00
5	BLDG-179-TYPE-27-LABOR		03	331640	06.100	11,089.00
6	BLDG-180-TYPE-28-LABOR		03	331640	06.100	4,380.00
7	BLDG-181-TYPE-27-LABOR		03	331640	06.100	11,089.00
8	BLDG-182-TYPE-27-LABOR		03	331640	06.100	11,089.00
9	BLDG-183-TYPE-28-LABOR		03	331640	06.100	4,380.00
10	BLDG-190-TYPE-27-LABOR		03	331640	06.100	11,089.00
11	BLDG-191-TYPE-27-LABOR		03	331640	06.100	11,089.00
12	BLDG-192-TYPE-28-LABOR		03	331640	06.100	4,380.00
13	BLDG-193-TYPE-27-LABOR		03	331640	06.100	11,089.00
14	BLDG-194-TYPE-27-LABOR		03	331640	06.100	11,089.00
15	BLDG-195-TYPE-27-LABOR		03	331640	06.100	11,089.00
16	BLDG-196-TYPE-27-LABOR		03	331640	06.100	11,089.00
17	BLDG-197-TYPE-28-LABOR		03	331640	06.100	4,380.00
18	BLDG-187-TYPE-28-LABOR		03	331640	06.100	4,380.00
19	BLDG-188-TYPE-27-LABOR		03	331640	06.100	11,089.00
20	BLDG-189-TYPE-27-LABOR		03	331640	06.100	11,089.00
21	BLDG-184-TYPE-28-LABOR		03	331640	06.100	4,380.00
22	BLDG-185-TYPE-27-LABOR		03	331640	06.100	11,089.00
23	BLDG-186-TYPE-27-LABOR		03	331640	06.100	11,089.00
24	BLDG-175-TYPE-27-LABOR		03	331640	06.100	11,089.00
25	BLDG-176-TYPE-27-LABOR		03	331640	06.100	11,089.00
26	BLDG-177-TYPE-28-LABOR		03	331640	06.100	4,380.00
27	BLDG-172-TYPE-27-LABOR		03	331640	06.100	11,089.00
28	BLDG-173-TYPE-27-LABOR		03	331640	06.100	11,089.00
29	BLDG-174-TYPE-28-LABOR		03	331640	06.100	4,380.00
30	BLDG-163-TYPE-28-LABOR		03	331640	06.100	4,380.00
31	BLDG-164-TYPE-27-LABOR		03	331640	06.100	11,089.00
32	BLDG-165-TYPE-27-LABOR		03	331640	06.100	11,089.00
33	BLDG-160-TYPE-28-LABOR		03	331640	06.100	4,380.00
34	BLDG-161-TYPE-27-LABOR		03	331640	06.100	11,089.00
35	BLDG-162-TYPE-27-LABOR		03	331640	06.100	11,089.00
36	BLDG-153-TYPE-27-LABOR		03	331640	06.100	11,089.00
37	BLDG-154-TYPE-27-LABOR		03	331640	06.100	11,089.00
38	BLDG-155-TYPE-28-LABOR		03	331640	06.100	4,380.00
39	BLDG-159-TYPE-27-LABOR		03	331640	06.100	11,089.00
40	BLDG-158-TYPE-27-LABOR		03	331640	06.100	11,089.00
41	BLDG-157-TYPE-27-LABOR		03	331640	06.100	11,089.00
42	BLDG-156-TYPE-27-LABOR		03	331640	06.100	11,089.00
43	BLDG-150-TYPE-27-LABOR		03	331640	06.100	11,089.00
44	BLDG-149-TYPE-27-LABOR		03	331640	06.100	11,089.00
45	BLDG-148-TYPE-28-LABOR		03	331640	06.100	4,380.00
46	BLDG-147-TYPE-28-LABOR		03	331640	06.100	4,380.00
47	BLDG-146-TYPE-27-LABOR		03	331640	06.100	11,089.00
48	BLDG-145-TYPE-27-LABOR		03	331640	06.100	11,089.00
49	BLDG-151-TYPE-28-LABOR		03	331640	06.100	4,380.00
50	BLDG-152-TYPE-27-LABOR		03	331640	06.100	11,089.00
51	BLDG-140-TYPE-5-6-LABOR		03	331640	06.100	41,089.00
52	BLDG-141-TYPE-2-3-LABOR		03	331640	06.100	38,610.00
53	BLDG-144-TYPE-27-LABOR		03	331640	06.100	11,089.00
54	BLDG-143-TYPE-27-LABOR		03	331640	06.100	11,089.00
55	BLDG-142-TYPE-28-LABOR		03	331640	06.100	4,380.00
56	BLDG-123-TYPE-2-3-LABOR		03	331640	06.100	38,610.00
57	BLDG-125-TYPE-5-6-LABOR		03	331640	06.100	41,089.00
58	BLDG-124-TYPE-5-6-LABOR		03	331640	06.100	41,089.00
59	BLDG-CABANA-LABOR	17		322220	13.164	1,692.00
60	BLDG-126-TYPE-5-6-LABOR		03	331640	06.100	41,089.00
61	BLDG-127-TYPE-5-6-LABOR		03	331640	06.100	41,089.00
62	BLDG-128-TYPE-5-6-LABOR		03	331640	06.100	41,089.00
63	BLDG-130-TYPE-5-6-LABOR		03	331640	06.100	41,089.00
64	BLDG-131-TYPE-2-3-LABOR		03	331640	06.100	38,610.00
65	BLDG-129-TYPE-2-3-LABOR		03	331640	06.100	38,610.00
66	BLDG-132-TYPE-5-6-LABOR		03	331640	06.100	41,089.00
67	BLDG-137-TYPE-2-3-LABOR		03	331640	06.100	38,610.00
68	BLDG-138-TYPE-2-3-LABOR		03	331640	06.100	38,610.00
69	BLDG-139-TYPE-5-6-LABOR		03	331640	06.100	41,089.00
70	BLDG-136-TYPE-5-6-LABOR		03	331640	06.100	41,089.00
71	BLDG-135-TYPE-5-6-LABOR		03	331640	06.100	41,089.00

Initials

PAYMENT SCHEDULE

<u>Item #</u>	<u>Description</u>	<u>Bldg #</u>	<u>Location</u>	<u>Owner Cost Code</u>	<u>Internal Cost Code</u>	<u>Contract Amount</u>	
72	BLDG-134-TYPE-5-G-LABOR			03	331640	06,100	41,089.00
73	BLDG-133-TYPE-5-G-LABOR			03	331640	06,100	41,089.00
							\$1,247,882.00

Initials

ADDENDUM TO CONTRACT
HOMECOMING AT TERRA VISTA IV

This Addendum to the Contract between Western National Contractors and Selectbuild--Framing amends that contract dated September __, 2009 only as specifically described herein:

Paragraph 18(c) is replaced in its entirety by the following:

(c) Subcontractor and Contractor acknowledge and agree that the primary reason for Contractor's decision to enter into this Subcontract is due to past experience with Subcontractor and the high quality and cost-effectiveness of the services previously provided by Subcontractor to Contractor. The continued confidence in the ability of Subcontractor to properly and expeditiously perform its work is a substantial and material concern to Contractor. Consequently, immediately upon a material change in Subcontractor's management; the assignment of this contract in a manner contrary to that permitted in paragraph 29(a) of this Subcontract ; or the default by Subcontractor of any other agreement with Contractor, Contractor may, at its election, terminate this Subcontract or any other agreement with Subcontractor; provided, however, that such termination shall not give rise to a claim for breach of contract against Subcontractor or a defense to payment of amounts owed for work previously performed by Subcontractor.

Paragraph 45 shall be amended to list this Addendum as Exhibit 'H.'

All lumber required to be purchased pursuant to the Subcontract shall be purchased via a purchase order in the form substantially similar to that attached to this Addendum as Exhibit 1.

ADD SIGNATURE LINES HERE

EXHIBIT C

Standard Purchase Order

WESTERN NATIONAL CONTRACTORS

STANDARD PURCHASE ORDER AGREEMENT BY AND BETWEEN

Subcontractor: 191745
C CONSTRUCTION, INC.
dba SELECTBUILD
RANCHO CUCAMONGA, CA
91730

Tel: 909-944-4899
Fax: 909-944-7952

Contractor: WESTERN NATIONAL CONTRACTORS
8 EXECUTIVE CIRCLE
IRVINE, CA 92614

Tel: (949) 862-6200
Fax: (949) 862-6252

Ship To Address: 11660 CHURCH STREET

RANCHO CUCAMONG, CA 91730

Project : 07-728
HC TERRA VISTA IV
11660 CHURCH STREET
R. CUCAMONGA, CA 91730

Date: 8/31/2009
Contract No.: 077280610004

SHIP, SUBJECT TO CONDITIONS ON LAST PAGE , THE ITEMS LISTED BELOW

All work completed shall be in accordance with the referenced plans and specifications, as well as all governmental agencies having jurisdiction.

Item #	Description	Owner	Internal	Units	Unit Desc	Unit Cost	Amount
		Cost Code	Cost Code				
1	BLDG-169-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
2	BLDG-170-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
3	BLDG-171-TYPE-28-LUMBER	331640	06.100	N/A			5,278.00
4	BLDG-178-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
5	BLDG-179-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
6	BLDG-180-TYPE-28-LUMBER	331640	06.100	N/A			5,278.00
7	BLDG-181-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
8	BLDG-182-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
9	BLDG-183-TYPE-28-LUMBER	331640	06.100	N/A			5,278.00
10	BLDG-190-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
11	BLDG-191-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
12	BLDG-192-TYPE-28-LUMBER	331640	06.100	N/A			5,278.00
13	BLDG-193-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
14	BLDG-194-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
15	BLDG-195-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
16	BLDG-196-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
17	BLDG-197-TYPE-28-LUMBER	331640	06.100	N/A			5,278.00
18	BLDG-187-TYPE-28-LUMBER	331640	06.100	N/A			5,278.00
19	BLDG-188-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
20	BLDG-189-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
21	BLDG-184-TYPE-28-LUMBER	331640	06.100	N/A			5,278.00
22	BLDG-185-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
23	BLDG-186-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
24	BLDG-175-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
25	BLDG-176-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
26	BLDG-177-TYPE-28-LUMBER	331640	06.100	N/A			5,278.00
27	BLDG-172-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
28	BLDG-173-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
29	BLDG-174-TYPE-28-LUMBER	331640	06.100	N/A			5,278.00
30	BLDG-163-TYPE-28-LUMBER	331640	06.100	N/A			5,278.00
31	BLDG-164-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
32	BLDG-165-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
33	BLDG-160-TYPE-28-LUMBER	331640	06.100	N/A			5,278.00

PLEASE REFERENCE THIS PURCHASE ORDER ON ALL CORRESPONDING INVOICES

Seller shall advise within five (5) days if he does not agree to all the terms of this purchase order, otherwise, this order is to be understood as accepted in all its terms.

My signature below acknowledges that I have read and understand the details of the specifications as set forth.

SUBCONTRACTOR:
C CONSTRUCTION, INC.

CONTRACTOR
WESTERN NATIONAL CONTRACTORS

By _____

By _____

Title _____

Title _____

Date _____

Date _____

<u>Internal Approval</u>	Admin:	PM:	D.O.C.	Rec'd By Acct:
	Date:	Date:	Date:	Date:

WESTERN NATIONAL CONTRACTORS

STANDARD PURCHASE ORDER AGREEMENT BY AND BETWEEN

Subcontractor: 191745
C CONSTRUCTION, INC.
dba SELECTBUILD
RANCHO CUCAMONGA, CA
91730

Tel: 909-944-4899
Fax: 909-944-7952

Contractor: WESTERN NATIONAL CONTRACTORS
8 EXECUTIVE CIRCLE
IRVINE, CA 92614

Tel: (949) 862-6200
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Ship To Address: 11660 CHURCH STREET

RANCHO CUCAMONG, CA 91730

Project : 07-728
HC TERRA VISTA IV
11660 CHURCH STREET
R. CUCAMONGA, CA 91730

Date: 8/31/2009
Contract No.: 077280610004

SHIP, SUBJECT TO CONDITIONS ON LAST PAGE , THE ITEMS LISTED BELOW

All work completed shall be in accordance with the referenced plans and specifications, as well as all governmental agencies having jurisdiction.

Item #	Description	Owner Cost Code	Internal Cost Code	Units	Unit Desc	Unit Cost	Amount
34	BLDG-161-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
35	BLDG-162-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
36	BLDG-153-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
37	BLDG-154-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
38	BLDG-155-TYPE-28-LUMBER	331640	06.100	N/A			5,278.00
39	BLDG-159-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
40	BLDG-158-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
41	BLDG-157-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
42	BLDG-156-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
43	BLDG-150-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
44	BLDG-149-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
45	BLDG-148-TYPE-28-LUMBER	331640	06.100	N/A			5,278.00
46	BLDG-147-TYPE-28-LUMBER	331640	06.100	N/A			5,278.00
47	BLDG-146-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
48	BLDG-145-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
49	BLDG-151-TYPE-28-LUMBER	331640	06.100	N/A			5,278.00
50	BLDG-152-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
51	BLDG-140-TYPE-5-6-LUMBER	331640	06.100	N/A			47,775.00
52	BLDG-141-TYPE-2-3-LUMBER	331640	06.100	N/A			44,893.00
53	BLDG-144-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
54	BLDG-143-TYPE-27-LUMBER	331640	06.100	N/A			12,893.00
55	BLDG-142-TYPE-28-LUMBER	331640	06.100	N/A			5,278.00
56	BLDG-123-TYPE-2-3-LUMBER	331640	06.100	N/A			44,893.00
57	BLDG-125-TYPE-5-6-LUMBER	331640	06.100	N/A			47,775.00
58	BLDG-124-TYPE-5-6-LUMBER	331640	06.100	N/A			47,775.00
59	BLDG-CABANA-LUMBER	322220	13.164	N/A			1,250.00
60	BLDG-126-TYPE-5-6-LUMBER	331640	06.100	N/A			47,775.00
61	BLDG-127-TYPE-5-6-LUMBER	331640	06.100	N/A			47,775.00
62	BLDG-128-TYPE-5-6-LUMBER	331640	06.100	N/A			47,775.00
63	BLDG-130-TYPE-5-6-LUMBER	331640	06.100	N/A			47,775.00
64	BLDG-131-TYPE-2-3-LUMBER	331640	06.100	N/A			44,893.00
65	BLDG-129-TYPE-2-3-LUMBER	331640	06.100	N/A			44,893.00
66	BLDG-132-TYPE-5-6-LUMBER	331640	06.100	N/A			47,775.00

PLEASE REFERENCE THIS PURCHASE ORDER ON ALL CORRESPONDING INVOICES

Seller shall advise within five (5) days if he does not agree to all the terms of this purchase order, otherwise, this order is to be understood as accepted in all its terms.

My signature below acknowledges that I have read and understand the details of the specifications as set forth.

SUBCONTRACTOR:
C CONSTRUCTION, INC.

CONTRACTOR
WESTERN NATIONAL CONTRACTORS

By _____

By _____

Title _____

Title _____

Date _____

Date _____

<u>Internal Approval</u>	Admin:	PM:	D.O.C.	Rec'd By Acct:
	Date:	Date:	Date:	Date:

WESTERN NATIONAL CONTRACTORS

STANDARD PURCHASE ORDER AGREEMENT BY AND BETWEEN

Subcontractor: 191745
C CONSTRUCTION, INC.
dba SELECTBUILD
RANCHO CUCAMONGA, CA
91730

Tel: 909-944-4899
Fax: 909-944-7952

Contractor: WESTERN NATIONAL CONTRACTORS
8 EXECUTIVE CIRCLE
IRVINE, CA 92614

Tel: (949) 862-6200
Fax: (949) 862-6252

Ship To Address: 11660 CHURCH STREET

RANCHO CUCAMONG, CA 91730

Project : 07-728
HC TERRA VISTA IV
11660 CHURCH STREET
R. CUCAMONGA, CA 91730

Date: 8/31/2009
Contract No.: 077280610004

SHIP, SUBJECT TO CONDITIONS ON LAST PAGE , THE ITEMS LISTED BELOW

All work completed shall be in accordance with the referenced plans and specifications, as well as all governmental agencies having jurisdiction.

Item #	Description	Owner Cost Code	Internal Cost Code	Units	Unit Desc	Unit Cost	Amount
67	BLDG-137-TYPE-2-3-LUMBER	331640	06.100	N/A			44,893.00
68	BLDG-138-TYPE-2-3-LUMBER	331640	06.100	N/A			44,893.00
69	BLDG-139-TYPE-5-6-LUMBER	331640	06.100	N/A			47,775.00
70	BLDG-136-TYPE-5-6-LUMBER	331640	06.100	N/A			47,775.00
71	BLDG-135-TYPE-5-6-LUMBER	331640	06.100	N/A			47,775.00
72	BLDG-134-TYPE-5-6-LUMBER	331640	06.100	N/A			47,775.00
73	BLDG-133-TYPE-5-6-LUMBER	331640	06.100	N/A			47,775.00
74	BLDG-169-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
75	BLDG-170-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
76	BLDG-171-TYPE-28-TRUSSES	331640	06.100	N/A			2,073.00
77	BLDG-178-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
78	BLDG-179-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
79	BLDG-180-TYPE-28-TRUSSES	331640	06.100	N/A			2,073.00
80	BLDG-181-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
81	BLDG-182-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
82	BLDG-183-TYPE-28-TRUSSES	331640	06.100	N/A			2,073.00
83	BLDG-190-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
84	BLDG-191-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
85	BLDG-192-TYPE-28-TRUSSES	331640	06.100	N/A			2,073.00
86	BLDG-193-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
87	BLDG-194-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
88	BLDG-195-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
89	BLDG-196-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
90	BLDG-197-TYPE-28-TRUSSES	331640	06.100	N/A			2,073.00
91	BLDG-187-TYPE-28-TRUSSES	331640	06.100	N/A			2,073.00
92	BLDG-188-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
93	BLDG-189-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
94	BLDG-184-TYPE-28-TRUSSES	331640	06.100	N/A			2,073.00
95	BLDG-185-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
96	BLDG-186-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
97	BLDG-175-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
98	BLDG-176-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
99	BLDG-177-TYPE-28-TRUSSES	331640	06.100	N/A			2,073.00

PLEASE REFERENCE THIS PURCHASE ORDER ON ALL CORRESPONDING INVOICES

Seller shall advise within five (5) days if he does not agree to all the terms of this purchase order, otherwise, this order is to be understood as accepted in all its terms.

My signature below acknowledges that I have read and understand the details of the specifications as set forth.

SUBCONTRACTOR:
C CONSTRUCTION, INC.

CONTRACTOR
WESTERN NATIONAL CONTRACTORS

By _____

By _____

Title _____

Title _____

Date _____

Date _____

<u>Internal Approval</u>	Admin:	PM:	D.O.C.	Rec'd By Acct:
	Date:	Date:	Date:	Date:

WESTERN NATIONAL CONTRACTORS

STANDARD PURCHASE ORDER AGREEMENT BY AND BETWEEN

Subcontractor: 191745
C CONSTRUCTION, INC.
dba SELECTBUILD
RANCHO CUCAMONGA, CA
91730

Tel: 909-944-4899
Fax: 909-944-7952

Contractor: WESTERN NATIONAL CONTRACTORS
8 EXECUTIVE CIRCLE
IRVINE, CA 92614

Tel: (949) 862-6200
Fax: (949) 862-6252

Ship To Address: 11660 CHURCH STREET

RANCHO CUCAMONG, CA 91730

Project : 07-728
HC TERRA VISTA IV
11660 CHURCH STREET
R. CUCAMONGA, CA 91730

Date: 8/31/2009
Contract No.: 077280610004

SHIP, SUBJECT TO CONDITIONS ON LAST PAGE , THE ITEMS LISTED BELOW

All work completed shall be in accordance with the referenced plans and specifications, as well as all governmental agencies having jurisdiction.

Item #	Description	Owner	Internal	Units	Unit Desc	Unit Cost	Amount
		Cost Code	Cost Code				
100	BLDG-172-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
101	BLDG-173-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
102	BLDG-174-TYPE-28-TRUSSES	331640	06.100	N/A			2,073.00
103	BLDG-163-TYPE-28-TRUSSES	331640	06.100	N/A			2,073.00
104	BLDG-164-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
105	BLDG-165-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
106	BLDG-160-TYPE-28-TRUSSES	331640	06.100	N/A			2,073.00
107	BLDG-161-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
108	BLDG-162-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
109	BLDG-153-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
110	BLDG-154-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
111	BLDG-155-TYPE-28-TRUSSES	331640	06.100	N/A			2,073.00
112	BLDG-159-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
113	BLDG-158-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
114	BLDG-157-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
115	BLDG-156-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
116	BLDG-150-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
117	BLDG-149-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
118	BLDG-148-TYPE-28-TRUSSES	331640	06.100	N/A			2,073.00
119	BLDG-147-TYPE-28-TRUSSES	331640	06.100	N/A			2,073.00
120	BLDG-146-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
121	BLDG-145-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
122	BLDG-151-TYPE-28-TRUSSES	331640	06.100	N/A			2,073.00
123	BLDG-152-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
124	BLDG-140-TYPE-5-6-TRUSSES	331640	06.100	N/A			9,981.00
125	BLDG-141-TYPE-2-3-TRUSSES	331640	06.100	N/A			8,967.00
126	BLDG-144-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
127	BLDG-143-TYPE-27-TRUSSES	331640	06.100	N/A			4,333.00
128	BLDG-142-TYPE-28-TRUSSES	331640	06.100	N/A			2,073.00
129	BLDG-123-TYPE-2-3-TRUSSES	331640	06.100	N/A			8,967.00
130	BLDG-125-TYPE-5-6-TRUSSES	331640	06.100	N/A			9,981.00
131	BLDG-124-TYPE-5-6-TRUSSES	331640	06.100	N/A			9,981.00
132	BLDG-CABANA-TRUSSES	322220	13.164	N/A			657.00

PLEASE REFERENCE THIS PURCHASE ORDER ON ALL CORRESPONDING INVOICES

Seller shall advise within five (5) days if he does not agree to all the terms of this purchase order, otherwise, this order is to be understood as accepted in all its terms.

My signature below acknowledges that I have read and understand the details of the specifications as set forth.

SUBCONTRACTOR:
C CONSTRUCTION, INC.

CONTRACTOR
WESTERN NATIONAL CONTRACTORS

By _____

By _____

Title _____

Title _____

Date _____

Date _____

<u>Internal Approval</u>	Admin:	PM:	D.O.C.	Rec'd By Acct:
	Date:	Date:	Date:	Date:

WESTERN NATIONAL CONTRACTORS
STANDARD PURCHASE ORDER AGREEMENT BY AND BETWEEN

Subcontractor: 191745
C CONSTRUCTION, INC.
dba SELECTBUILD
RANCHO CUCAMONGA, CA
91730
Tel: 909-944-4899
Fax: 909-944-7952

Contractor: WESTERN NATIONAL CONTRACTORS
8 EXECUTIVE CIRCLE
IRVINE, CA 92614
Tel: (949) 862-6200
Fax: (949) 862-6252

Ship To Address: 11660 CHURCH STREET

RANCHO CUCAMONG, CA 91730

Project : 07-728
HC TERRA VISTA IV
11660 CHURCH STREET
R. CUCAMONGA, CA 91730

Date: 8/31/2009
Contract No.: 077280610004

SHIP, SUBJECT TO CONDITIONS ON LAST PAGE , THE ITEMS LISTED BELOW

All work completed shall be in accordance with the referenced plans and specifications, as well as all governmental agencies having jurisdiction.

Item #	Description	Owner	Internal	Units	Unit Desc	Unit Cost	Amount
		Cost Code	Cost Code				
133	BLDG-126-TYPE-5-6-TRUSSES	331640	06.100	N/A			9,981.00
134	BLDG-127-TYPE-5-6-TRUSSES	331640	06.100	N/A			9,981.00
135	BLDG-128-TYPE-5-6-TRUSSES	331640	06.100	N/A			9,981.00
136	BLDG-130-TYPE-5-6-TRUSSES	331640	06.100	N/A			9,981.00
137	BLDG-131-TYPE-2-3-TRUSSES	331640	06.100	N/A			8,967.00
138	BLDG-129-TYPE-2-3-TRUSSES	331640	06.100	N/A			8,967.00
139	BLDG-132-TYPE-5-6-TRUSSES	331640	06.100	N/A			9,981.00
140	BLDG-137-TYPE-2-3-TRUSSES	331640	06.100	N/A			8,967.00
141	BLDG-138-TYPE-2-3-TRUSSES	331640	06.100	N/A			8,967.00
142	BLDG-139-TYPE-5-6-TRUSSES	331640	06.100	N/A			9,981.00
143	BLDG-136-TYPE-5-6-TRUSSES	331640	06.100	N/A			9,981.00
144	BLDG-135-TYPE-5-6-TRUSSES	331640	06.100	N/A			9,981.00
145	BLDG-134-TYPE-5-6-TRUSSES	331640	06.100	N/A			9,981.00
146	BLDG-133-TYPE-5-6-TRUSSES	331640	06.100	N/A			9,981.00

Total Amount Of This Purchase Order:

1,830,873.00

Less Deposit Required At: 0 % Check Req. Num.: Date: 8/31/2009 0.00

Conditions:

SUBCONTRACTOR TO SUPPLY AND DELIVER ALL LUMBER, TRUSSES, HARDWARE, AND NECESSARY MATERIALS FOR FRAMING ON THE ABOVE LISTED BUILDINGS.

PLEASE REFERENCE THIS PURCHASE ORDER ON ALL CORRESPONDING INVOICES

Seller shall advise within five (5) days if he does not agree to all the terms of this purchase order, otherwise, this order is to be understood as accepted in all its terms.

My signature below acknowledges that I have read and understand the details of the specifications as set forth.

SUBCONTRACTOR:
C CONSTRUCTION, INC.

CONTRACTOR
WESTERN NATIONAL CONTRACTORS

By _____

By _____

Title _____

Title _____

Date _____

Date _____

<u>Internal Approval</u>	Admin:	PM:	D.O.C.	Rec'd By Acct:
	Date:	Date:	Date:	Date:

WESTERN NATIONAL CONTRACTORS

STANDARD PURCHASE ORDER AGREEMENT BY AND BETWEEN

Subcontractor: C Construction, Inc. DBA SelectBuild
8780 Prestige Court
Rancho Cucamonga, CA 91730

Tel: (909) 944-4899
Fax: (909) 944-7952

Ship to Address: 11660 Church Street
Rancho Cucamonga, CA 91730

Contractor: Western National Contractors
8 Executive Circle
Irvine, CA 92614

Tel: (949) 862-6200
Fax: (949) 862-6360

Project: HC Terra Vista IV
11660 Church Street
Rancho Cucamonga, CA 91730

Date: 8/31/2009
Contract #: 077280610004

SHIP, SUBJECT TO CONDITIONS LISTED BELOW

- a) Purchase Order Number must appear on all invoices, packages, packing slips, and bills of lading.
- b) The original Bill of Lading or shipping receipt must be attached to all invoices.
- c) All materials shipped must be tagged or marked with Purchase Order number.
- d) Itemized packing list showing P.O. must be enclosed with each shipment.
- e) Any correspondence relating to this order must refer to Purchase Order number.
- f) Separate invoices in triplicate must be furnished for each Purchase Order.
- g) Seller's invoice must be accompanied by the signed receiving ticket. (Refer to item 13)

1. The term "Purchaser" as hereinafter used means the person, firm or corporation from whom the merchandise is used herein is understood to include all necessary work in connection therewith performed by the Seller under the terms of this order and after delivery to the custody of the Purchaser.

2. This form, when properly signed and bearing an order number is the only form which will be recognized by Purchaser as authority for charging merchandise to its account.

3. All merchandise described herein must be delivered within the time specified on the face of this order, if delivery is not made within such time, the Purchaser shall have the right to cancel this order. The Purchaser may, at its option, accept delayed deliveries from Seller without thereby waiving its right to demand strict compliance with the delivery schedule set for on the face hereof with respect to all other deliveries.

4. Seller warrants that said merchandise will correspond with the description of the same on the reverse side of this order and shall be of good merchantable quality.

5. Seller shall save harmless and indemnify Purchaser from and against any damages with Purchaser may sustain by reason of claims for infringement of patents arising out of the execution of this order on the part of the Seller (whether in performing or furnishing anything herein specifically required or not) and from and against the expense of defending any suits brought against Purchaser founded upon the claim of such infringement.

6. Seller shall save harmless and indemnify Purchaser from and against all claims, suits (including counsel fees and other expenses of suits, whether groundless or not), judgments and awards on account of any damage to property or injury, including death, to persons (including any damage or injury to the property or person on any employee of Seller or of Purchaser) which may be caused or be alleged to have been caused in whole or in part by or which may occur or be alleged to have occurred in connection with the execution of this order on the part of Seller.

Seller assumes all risk of damage or injury to its own property or person, from whatsoever cause.

7. Seller shall comply with all laws and orders and regulations of public authorities relative to rates of wages, hours of labor and other similar or dissimilar matters which may be binding upon Purchaser in connection with any work or contract for or in connection with which the work, labor materials, supplies, tools, equipment or other things to be performed or furnished by Seller under this order are or are intended to be used.

8. Seller shall not assign this order, nor any moneys due or to become due hereunder without prior written consent of Purchaser, and any attempted assignment without consent of Purchaser shall be void. No drafts for Purchases will be allowed.

9. Purchaser will pay no charges for packing, loading or draying unless set forth on reverse side of this purchase order. Seller agrees that taxes and all other costs are included in the agreed dollar amount.

10. Discount period on this purchase order will be computed from the date of receipt of materials or correct invoice, whichever date is later.

11. Seller must not substitute or back order, but must notify Purchaser immediately and await Purchaser's written instructions to substitute, back order or cancel.

12. All materials shall be provided in accordance with building codes, all applicable governing bodies, rules and regulations, and to the complete satisfaction of the Purchaser. Supplier will comply with the latest requirements of local, City, State, Federal and all other agencies having jurisdiction over the materials provided for the project specified in this Purchase Order.

13. Seller is required to have all materials inspected, accepted, and signed for at the time of delivery by a Western National Contractors employee.

My signature below acknowledges that I have read and understand the details of the specifications as set forth.

SUBCONTRACTOR:
C CONSTRUCTION, INC. DBA SELECTBUILD

By _____

Title _____

Date _____

CONTRACTOR:
WESTERN NATIONAL CONTRACTORS

By _____

Title _____

Date _____

Internal Approval	Admin:	PM:	D.O.C.	Rec'd By Acct:
	Date:	Date:	Date:	Date:

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

In re:

BUILDING MATERIALS HOLDING
CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 09-12074 (KJC)

Jointly Administered

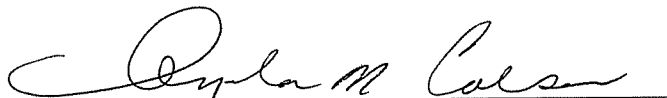
AFFIDAVIT OF SERVICE

STATE OF DELAWARE)
) SS
NEW CASTLE COUNTY)

Casey S. Cathcart, an employee of the law firm of Young Conaway Stargatt & Taylor, LLP, co-counsel to the above-captioned debtors, being duly sworn according to law, deposes and says that on September 18, 2009, she caused a copy of the **Debtors' Motion for Comfort Order Authorizing the Debtors to Enter Into Construction Contracts With Western National Contractors** to be served as indicated upon the parties identified on the attached service lists.


Casey S. Cathcart

SWORN TO AND SUBSCRIBED before me this 18th day of September, 2009.


Notary Public
My Commission Expires:

ANGELA M. COLSON
NOTARY PUBLIC
STATE OF DELAWARE
My commission expires Aug. 31, 2011

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

**BUILDING MATERIALS HOLDING CORPORATION
SPECIAL SERVICE LIST RE: MOTION FOR COMFORT ORDER
W/R/T WESTERN NATIONAL CONTRACTORS
9/18/2009**

Bernard D. Bollinger, Jr., Esq.
Buchalter Nemer
1000 Wilshire Blvd., Suite 1500
Los Angeles, CA 90017-2457
(Counsel to Western National Contractors)
First Class Mail

2002 SERVICE LIST
BUILDING MATERIALS HOLDING CORPORATION
9/18/2009

David G. Aelvoet, Esq.
Linebarger Goggan Blair & Sampson LLP
Travis Building, 711 Navarro, Suite 300
San Antonio, TX 78205
(Counsel to Bexar County)
First Class Mail

Christopher M. Alston, Esq.
Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101
(Counsel to JELD-WEN, inc.)
First Class Mail

Brian W. Bisignani, Esq.
Post & Schell, P.C.
17 North 2nd Street, 12th Floor
Harrisburg, PA 17101-1601
(Counsel to Aon Consulting)
First Class Mail

Robert McL. Boote, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
(Counsel to Westchester Fire Insurance
Company and ACE USA)
First Class Mail

David Boyle
Airgas, Inc.
259 Radnor-Chester Road, Suite 100
P.O. Box 6675
Radnor, PA 19087-8675
First Class Mail

Celeste H. Campbell
KPMG LLP
303 Peachtree Street NE, Suite 2000
Atlanta, GA 30308
(Auditors and Tax Advisor to the Debtors)
First Class Mail

Andrew Cardonick, Esq.
Greenberg Traurig, LLP
77 West Wacker Drive, Suite 3100
Chicago, IL 60601
(Counsel to Grace Bay Holdings, II, LLC)
First Class Mail

Scott T. Citek, Esq.
Lamm & Smith, P.C.
3730 Kirby Drive, Suite 650
Houston, TX 77098
(Counsel to Bay Oil Company)
First Class Mail

Scott D. Cousins, Esq.
Dennis A. Melero, Esq.
Greenberg Traurig, LLP
1007 North Orange Street, Suite 1200
Wilmington, DE 19801
(Counsel to Grace Bay Holdings, II, LLC)
Hand Delivery

Raniero D. D'Aversa, Jr., Esq.
Laura D. Metzger, Esq.
Weston T. Eguchi, Esq.
Orrick, Herrington & Sutcliffe LLP
666 Fifth Avenue
New York, NY 10103-0001
(Counsel to Rabobank International)
First Class Mail

2002 SERVICE LIST
BUILDING MATERIALS HOLDING CORPORATION
9/18/2009

Tobey M. Daluz, Esq.
Joshua E. Zugeran, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
919 North Market Street, 12th Floor
Wilmington, DE 19801
(Counsel to Westchester Fire Insurance
Company and ACE USA)
Hand Delivery

Robert J. Dehney, Esq.
Erin R. Fay, Esq.
Morris Nichols Arsht & Tunnell LLP
1201 North Market Street, 18th Floor
P.O. Box 1347
Wilmington, DE 19899-1347
(Counsel to D.R. Horton, Inc.)
Hand Delivery

John P. Dillman, Esq.
Linebarger Goggan Blair & Sampson LLP
P.O. Box 3064
Houston, TX 77253-3064
(Counsel to Cypress-Fairbanks ISD, Fort
Bend County, and Harris County)
First Class Mail

Mark W. Eckard, Esq.
Reed Smith LLP
1201 North Market Street, Suite 1500
Wilmington, DE 19801
(Counsel to CIT Technology Financing Services,
Inc.)
Hand Delivery

Kevin B. Fisher, Esq.
Seth Mennillo, Esq.
Paul, Hastings, Janofsky & Walker LLP
55 Second Street, 24th Floor
San Francisco, CA 94105
(Counsel to Wells Fargo Bank, N.A.)
First Class Mail

John M. Flynn, Esq.
Carruthers & Roth, P.A.
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