Exhibit F
I, David W. Mitchell, declare as follows:

1. I am an Attorney at the law firm of Hoge, Fenton, Jones & Appel, Inc., in San Jose, California. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.
2. I served, together with Michael McSweeney, Esq. of the firm, as co-counsel for CILKER APARTMENTS, LLC (hereinafter "Cilker") with respect to Madera Framing, Inc. v. Western National Construction, et. al., Santa Clara County Superior Court Case No. CV010004 (hereinafter "MFI v. WNC").

3. This MFI v. WNC action involved Madera Framing, Inc.'s (hereinafter "MFI") claims against Defendant WESTERN NATIONAL CONSTRUCTION (hereinafter "WNC") for contractual payment for work it alleged that it performed at the One Pearl Place apartments (hereinafter the Subject Property") under theories of Breach of Written Contract, Foreclosure on Mechanic's Lien, Common Counts Against License Bond and Statutory Penalties. Cilker was named in the original complaint solely because it was the owner of the Subject Property and a required party under the cause of action for foreclosure of its Mechanics Lien. MFI v. WNC, did not involve or relate to any claims or defenses based upon construction deficiencies. In fact, no construction defect claims were alleged in MFI v. WNC.

4. After MFI filed and served its Complaint against WNC and Cilker, Mr. McSweeney provided counsel for MFI a copy of a lien release bond that had been provided by WNC and obtained the release of the MFI Mechanic's Lien against the Subject Property and shortly thereafter the dismissal of Cilker from MFI v. WNC.

5. Following Cilker's dismissal, I was thereafter informed that a settlement had been reached in the MFI v. WNC action following mediation. Cilker was not involved in, or have notice of, the mediation. Neither I, Mr. McSweeney, nor any other representative of Cilker was present at the mediation of the MFI v. WNC action. Neither I, Mr. McSweeney nor any other personal representative on behalf of Cilker were contacted during the mediation of the MFI v. WNC action.

6. Following the settlement reached between MFI and WNC, I was provided with a draft of a proposed Mutual Release and Settlement Agreement (hereinafter "Agreement") with respect to that matter. I reviewed the Agreement on behalf of Cilker and can authenticate the document. Attached hereto as Exhibit "1" is a true and correct copy of the Agreement.
Following my review of this document, I communicated with Mr. Michael Taurek, counsel for WNC, regarding my thoughts about the document and indicated to him that any and all future disputes that Cilker may have against WNC would need to be expressly excluded from and not covered by the releases in the Agreement.

7. At the time of the preparation of the Agreement by WNC and MFI, Cilker was in the process of closing permanent financing on the Subject Property. To facilitate that closing, the MFI v. WNC action needed to be resolved quickly. As a result, Cilker fronted the money for the settlement between WNC and MFI, with the determination of who – WNC or Cilker – would ultimately bear the cost reserved for later resolution between the two of them.

8. Cilker did not receive any monetary or other consideration with respect to its payment, and inclusion in the Agreement. Cilker received nothing in return for its advancing of the payment to MFI.

9. As it concerns the Agreement, it was never Cilker's intention to release any claims relating to construction deficiencies against WNC, MFI or any other entity. Cilker's intention was to retain, in full, any and all such claims.

10. This intention is set forth in Paragraph 3 of the Agreement, which specifically excludes from the release all claims relating to (1) third party claims for personal injuries, (2) claims for construction deficiencies and/or claims for resulting property damage occurring at the Subject Property, or for (3) claims arising out of conditions that were unknown to Cilker and WNC at the time the Agreement was executed.

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

Executed April 19, 2016, at San Jose, California.

[Signature]

David W. Mitchell, Esq.
MUTUAL RELEASE AND SETTLEMENT AGREEMENT

THIS MUTUAL RELEASE AND SETTLEMENT AGREEMENT ("Agreement") is entered into by and among, on the one hand, Madera Construction, Inc., a California corporation ("Madera Construction") and Madera Framing, Inc., a California corporation ("Madera Framing"), collectively referred to herein as "Madera," and on the other hand, Western National Construction, a California corporation ("WNC"), Insurance Company of the West, an entity authorized to transact business as a surety in California ("ICOW"), Western Surety Corporation, an entity authorized to transact business as a surety in California ("Western Surety"), and Cilker Apartments, LLC, a California limited liability corporation ("Cilker") (all of the parties set forth above are sometimes hereinafter collectively referred to as the "Settling Parties"), based upon the following understandings:

A. Madera, as a subcontractor, supplied and furnished certain labor, equipment, materials, and services to, and performed certain rough framing and carpentry work for WNC, as general contractor, pursuant to a written subcontract between Madera and WNC for the performance of the work of improvement known as the One Pearl Place, located at 5210 Terner Way, San Jose, California (hereinafter referred to as the "Project"). Specifically, Madera subcontracted with WNC to perform rough framing and carpentry re-work and/or work arising from and necessitated by the alleged abandonment of the Project by WNC's previous framing subcontractor, Multi-Building Structures, Inc. ICOW issued a mechanics' lien release bond on behalf of Cilker and City National Bank ("City National"), the owners of the Project. Western Surety issued WNC's contractor's license bond.

B. During the course of the Project, Madera recorded a mechanics' lien against the Project with the Santa Clara County Clerk-Recorder as document number 17459021 in the amount of $286,675.00 for outstanding sums claimed due and owing to Madera upon the Project.

C. Disputes arose between the parties arising out of Madera's work on the Project, including but not limited to, Madera's claims for extra work and related costs and subcontract balance and WNC's claims that Madera performed Project work in an untimely, deficient and defective manner. With respect to those disputes, Madera filed a complaint against WNC, Cilker, City National, and Western Surety on December 1, 2003, Case No. CV010004 in Santa Clara County Superior Court, which alleged causes of action for Breach of Contract, To Foreclose on Mechanics' Lien, on Common Counts, for Statutory Penalties, and on Contractor's License Bond. Madera filed a first amended complaint on January 14, 2004 which substituted ICOW for the Project owners, and which amended the cause of action to foreclose on mechanics' lien to an action to foreclose on mechanics' lien release bond. On or about February 24, 2004 WNC, Western and ICOW filed answers asserting general denials, affirmative defenses and offsets to Madera's first amended complaint. The first amended complaint and all responsive pleadings, including all answers and cross-complaints, shall be referred to herein as the "Action."
D. All of the Settling Parties to this Agreement deny any liability in connection with the various claims alleged in the Action and wish to reach full and final settlement of the respective disputes between them and to avoid further litigation.

In consideration of the mutual covenants set forth below, the Settling Parties agree and stipulate as follows:

1. In consideration for all Settling Parties' signatures on this Agreement and the dismissal of the entire Action with prejudice, Cilker has agreed to pay to Madera the sum of Two Hundred and Fifteen Thousand Dollars and No Cents ($215,000.00) as follows:

   (a) Cilker, through its counsel, David W. Mitchell at Hoge, Fenton, Jones & Appel, Inc., shall deliver a check, payable to the trust account of Murphy Austin Adams Schoenfeld LLP, Madera's counsel, in the sum of Two Hundred and Fifteen Thousand Dollars and No Cents ($215,000.00) within five (5) business days after receipt by counsel for WNC, Michael T. Taurek of Green & Hall, and counsel for Cilker of an executed copy of this Agreement by Madera (the "settlement check"). The settlement check shall be deposited into the trust account of Murphy Austin Adams Schoenfeld LLP, but said funds shall be held in trust and not distributed to Madera until Madera delivers to counsel for Cilker and WNC the documents described below in paragraph 1(b). Upon delivery of said documents described below in paragraph 1(b) to counsel for Cilker and counsel for WNC, Madera's counsel shall remit to Madera the sums from the settlement check held in its trust account.

   (b) Within three (3) business days after receipt of the settlement check and a fully executed Agreement, counsel for Madera shall deliver to counsel for Cilker a fully executed and notarized release of Madera's mechanic's lien, recorded with the Santa Clara County Clerk-Recorder as the document number 17459021 in the amount of $286,675.00, in a form suitable for recording, and counsel for Madera shall also deliver to counsel for WNC (i) a Request for Dismissal, with prejudice, of the Action; and (ii) a conditional waiver and release upon final payment, using the form published as Civil Code Section 3262(d)(3), with the phrase "zero" typed in the lower blank on the form as to reserved/unresolved claims. Counsel for Cilker and counsel for WNC agree to hold in trust and not negotiate, record or file the lien releases or Request for Dismissal until counsel for Madera provides written confirmation via facsimile (to counsel for Cilker and counsel for WNC) that the settlement check has posted to the trust account of Murphy Austin Adams Schoenfeld LLP.

   (c) Upon receipt of written confirmation via facsimile that the settlement check has posted to the trust account of Murphy Austin Adams Schoenfeld...
LLP, counsel for Cilker may record the lien release and counsel for WNC may file the Request for Dismissal, with prejudice, of the entire Action. WNC, ICOW, Cilker, City National, and/or Western Surety shall also sign the Request for Dismissal with prejudice if necessary to dismiss the Action in its entirety with prejudice.

(d) Within three (3) business days after the settlement check has posted to the trust account of Murphy Austin Adams Schoenfeld LLP, Madera shall also provide counsel for WNC an unconditional waiver and release upon final payment, using the form published as Civil Code section 3262(d)(4), with the phrase “zero” typed in the lower blank on the form as to reserved/unresolved claims and extra work.

2. The Settling Parties on behalf of themselves, their heirs, executors, administrators and assigns, hereby release and forever discharge each other, and their respective predecessors, heirs, executors, partnerships, administrators, successors and assigns, and each of their respective past, present and future employees, attorneys, insurers, sureties, agents, representatives, partners, officers, directors and stockholders, from any and all claims, demands, arbitrations, actions, or causes of action, that arise out of or relate to the claims alleged in the Action, or which could have been alleged in the Action, whether known or unknown, and agree that no further litigation will occur with respect to these disputes except as may be provided in paragraph 3 herein. Also, this release does not apply to any claims Cilker and WNC have against each other regarding which party is ultimately responsible for this settlement payment.

3. Notwithstanding the mutual release set forth above, the Settling Parties agree to expressly except from this Agreement, and shall continue to retain any and all claims, rights and defenses concerning, responsibility for future claims by third parties for personal injury, construction defects and/or resultant property damage occurring at the Project or arising out of the work related to the Project, but only to the extent such claims arise out of conditions that were unknown to WNC or Cilker and not apparent by reasonable inspection as of the date this Agreement became fully executed. Each of the settling parties represent that they are currently unaware of any such claim(s) or contention(s).

4. The releases described above are full and final releases applying to all losses, except as stated in paragraphs 2 and 3 above, including but not limited to damages, costs, expenses, and attorneys’ fees, incurred by said parties, arising out of or in any way connected with the above-described matters. It is the intention of the releasing parties, in executing this Agreement, that the same shall be effective as a bar to each and every claim, demand, and cause of action, by said parties based upon the above-described matters, except as provided in paragraphs 2 and 3 above, and said Settling Parties knowingly, voluntarily, and expressly waive any and all rights and benefits otherwise conferred by the provisions of section 1542 of the California Civil Code which states at follows:
A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which, if known by him, must have materially affected his settlement with the debtor.

The Parties to this Agreement expressly consent that, notwithstanding section 1542 of the California Civil Code, this Agreement shall be given full and final effect according to each and all of its express terms and conditions, including those related to unknown and unsuspected claims, demands, and causes of action, except as provided in paragraphs 2 and 3 above. The Settling Parties acknowledge and agree that this waiver is an essential and material term of this Agreement and, without such waiver, this Agreement would not have been entered into.

5. The Parties to this Agreement have been advised or have had the opportunity to be advised by their legal counsel with respect to the terms of this Agreement and understand and acknowledge the significance and consequences of its. The signer of this Agreement hereby represents and covenants that he or she is authorized to execute this agreement on behalf of the party for which he or she is signing.

6. This Agreement is binding upon all of the Settling Parties, as well as their past and present subsidiaries, parents, divisions, affiliates, partners, successors, assigns, officers, directors, agents, servants, employees, attorneys, representatives, and beneficiaries.

7. Each of the undersigned warrants that he or she is of legal age, legally competent to execute this Agreement, and has authority of the party for whom the undersigned is executing this Agreement.

8. Each party to this Agreement is to bear its own costs and attorneys' fees.

9. This Agreement contains the entire agreement between the Parties hereto. The terms of this Agreement are contractual in nature and not a mere recital. This Agreement is executed without reliance upon any representation by any person concerning the nature or extent of damages or legal liability therefor, and the signer of this Agreement has carefully read and understood the contents of this Agreement and signs the same as his or her own free act.

10. Should any dispute arise hereunder, this Agreement shall be governed by and interpreted pursuant to California law.

11. If any provision of this Agreement is held to be invalid or unenforceable, all of the remaining provisions shall nevertheless continue in full force and effect.

12. This Agreement may be executed in one or more counter parts and, when said counter parts are taken together, shall constitute one original Agreement.
13. Each Party hereto has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party.

14. All Parties hereto agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of the Agreement. Time is of the essence in this Agreement, and all transactions contemplated hereby.

DATED: July 7, 2004

MADERA CONSTRUCTION, INC., a California corporation

BY

Its Secretary

DATED: July 7, 2004

MADERA FRAMING, INC., a California corporation

BY

Its U. P.

[SIGNATURES MAY BE IN COUNTERPART. SIGNATURES CONTINUED ON NEXT PAGE.]
DATED: July 7, 2004

WESTERN NATIONAL CONSTRUCTION
a California corporation

BY

Its Chief Financial Officer

DATED: July __, 2004

CILKER APARTMENTS, LLC,
a California limited liability corporation

BY

Its

DATED: July __, 2004

INSURANCE COMPANY OF THE WEST,
a California surety

BY

Its

DATED: July __, 2004

WESTERN NATIONAL SURETY,
a California surety

BY

Its

[SIGNATURES MAY BE IN COUNTERPART.]
DATED: July __, 2004

WESTERN NATIONAL CORPORATION,
a California corporation

BY ____________________________________

Its. __________________________________

DATED: July __, 2004

CILKER APARTMENTS, LLC,
a California limited liability corporation

BY ________________________________

Its. ________________________________

DATED: July __, 2004

INSURANCE COMPANY OF THE WEST,
a California surety

BY __________________________________

Its. __________________________________

DATED: July __, 2004

WESTERN SURETY CORPORATION,
a California surety

BY __________________________________

Its. __________________________________

[SIGNATURES MAY BE IN COUNTERPART.]
DATED: July 7, 2004

WESTERN NATIONAL CONSTRUCTION
a California corporation

BY
Its Chief Financial Officer

DATED: July ____, 2004

CILKER APARTMENTS, LLC,
a California limited liability corporation

BY
Its

DATED: July 12th, 2004

INSURANCE COMPANY OF THE WEST,
a California surety

BY
Its Surety Current Representative

DATED: July ____, 2004

WESTERN NATIONAL SURETY,
a California surety

BY
Its

[SIGNATURES MAY BE IN COUNTERPART.]
DATED: July __, 2004

WESTERN NATIONAL CORPORATION,
a California corporation

BY

DATED: July __, 2004

CILKER APARTMENTS, LLC,
a California limited liability corporation

BY

designation

DATED: July __, 2004

INSURANCE COMPANY OF THE WEST,
a California corporation

BY

DATED: July __, 2004

WESTERN SURETY COMPANY,
a California surety incorrectly named as WESTERN SURETY CORPORATION

BY

SIGNATURES MAY BE IN COUNTERPART.
Exhibit G
I, Michael McSweeney declare as follows:

1. I am General Counsel of the law firm of Hoge, Fenton, Jones & Appel, Inc., in San Jose, California. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.
2. I served, together with David W. Mitchell, Esq., as counsel for CILKER APARTMENTS, LLC (hereinafter "Cilker") with respect to Madera Framing, Inc. v. Western National Construction, et. al., Santa Clara County Superior Court Case No. CV010004 (hereinafter "MFI v. WNC").

3. This MFI v. WNC action involved Madera Framing, Inc.'s (hereinafter "MFI") claims against Defendant WESTERN NATIONAL CONSTRUCTION (hereinafter "WNC") for contractual payment for work it alleged that it performed at the One Pearl Place apartments (hereinafter the Subject Property") under theories of Breach of Written Contract, Foreclosure on Mechanic's Lien, Common Counts Against License Bond and Statutory Penalties. Cilker was named solely because it was the owner of the Subject Property and a required party under the cause of action for foreclosure of its Mechanics Lien. MFI v. WNC, did not involve or relate to any claims or defenses based upon construction deficiencies. In fact, no construction defect claims were alleged in MFI v. WNC.

4. Pursuant to Cilker's contract with WNC, I tendered the MFI v. WNC action on behalf of Cilker to WNC (through its counsel, Mr. Robert L. Green, Esq. at Green and Hall). WNC accepted this tender, and also posted a Mechanics Lien Release Bond, which removed MFI's Mechanics Lien from the Subject Property.

5. In addition, on December 22, 2003 I wrote to MFI's counsel, Mr. D. Michael Schoenfeld, Esq., and requested that Cilker be dismissed from the action as a lien release bond, a copy of which was included with the letter, had been obtained by WNC. Attached hereto as Exhibit "1" is a true and correct copy of this correspondence. Following this request, MFI dismissed Cilker from the MFI v. WNC action. This dismissal was accomplished by MFI filing a First Amended Complaint, which removed Cilker as a named defendant in the MFI v. WNC action dropped the cause of action seeking to foreclose on the lien, added the bond surety as a new party defendant and a cause of action on the bond.

///

DECLARATION OF MICHAEL MCSWEENY IN SUPPORT OF PLAINTIFF CILKER APARTMENTS, LLC'S OPPOSITION TO DEFENDANT MADERA FRAMING, INC.'S MOTION FOR SUMMARY JUDGMENT
Following the dismissal of Cilker, I received notice that the remaining parties in the *MFI v. WNC* action had mediated their dispute and reached a monetary settlement. Cilker was not a party to the lawsuit at the time of the mediation, and was not involved in the mediation in any way. Neither I, Mr. Mitchell, nor any personal representative on behalf of Cilker was present at the mediation of the *MFI v. WNC* action. Moreover, neither I, Mr. Mitchell nor any personal representative on behalf of Cilker were contacted during the mediation of the *MFI v. WNC* action.

Thereafter, I reviewed the *MFI v. WNC* Settlement Agreement and Release (hereinafter "Agreement") prepared by others. Not being a party to the action at the time of the settlement Plaintiff’s inclusion in the Settlement and Release Agreement was solely due to Plaintiff’s agreement to advance funds on WNC’s behalf with the resolution of who—WNC or Plaintiff—would ultimately be responsible for such cost to be determined between the two of them at a later date.

Construction deficiencies claims were never part of the *MFI v. WNC* action. It was never Cilker’s intention that by advancing funds on WNC’s behalf that it would release claims relating in any way to construction deficiencies.

Cilker never released any claims for construction deficiencies at the Subject Property in the Agreement, whether past, present or future. In fact, it was Cilker’s intention not to release any such claims for construction deficiencies, property damage, or any claims arising out of conditions unknown to Cilker, as reflected in Paragraph 3 of the Agreement.

Paragraph 3 specifically and expressly excluded from the release all claims relating to (1) third party claims for personal injuries, (2) claims for construction deficiencies and/or claims for resulting property damage occurring at the Subject Property, or for (3) claims arising out of conditions that were unknown to Cilker and WNC at the time the Agreement was executed.

Because Cilker was not part of the settlement between WNC and MFI, Cilker did not receive any consideration whatsoever as part of the settlement between WNC and MFI or for its execution of the Agreement.
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed April 19, 2016, at Loomis, California.

Michael McSweeney, Esq.
Exhibit 1
December 22, 2003

D. Michael Schoenfeld  
Murphy Austin Adams Schoenfeld LLP  
1000 G. Street, Third Floor  
P.O. Box 1319 (95812-1319)  
Sacramento, CA  95814

Re: Madera Framing, Inc. v Western National Construction, et. al.  
Santa Clara Superior Court, Action No. CV 010004  
Our File No.: 64482

Dear Mr. Schoenfeld:

This firm represents Cilker Apartments, LLC, named by you in the above referred litigation. Please be so kind as to address further communications regarding this matter to the undersigned.

I am enclosing a copy of a lien release bond obtained by the general contractor, Western National Construction, pursuant its contract with my client and Civil Code, Section 3143. I anticipate you will hear of this directly from Western National Construction’s counsel, as well.

In light of this bond, and the provisions of the code under which it was obtained (which expressly provide that such releases the property “from any action brought to foreclose such lien”), I request that you promptly provide me with a dismissal of the lawsuit as against my client and the lender (City National Bank).

I look forward to receiving the dismissal requested. Should you wish to discuss, please give me a call.
Very truly yours,
HOGEO, FENTON, JONES & APPEL, INC.

Michael D. McSweeney
Bond to Release Mechanics Lien
L.C.W. GROUP
[ ] INSURANCE COMPANY OF THE WEST
[ ] EXPLORER INSURANCE COMPANY
[ ] INDEPENDENCE CASUALTY AND SURETY COMPANY

11455 El Camino Real, San Diego, CA 92130-2045
P.O. Box 85563, San Diego, CA 92186-5563 (619) 350-2400 - FAX (619) 350-2707

BOND TO RELEASE MECHANIC'S LIEN
UNDER Section 3143, Civil Code of the State of California

BOND NO. 2123968
PREMIUM: $7,700.00

KNOW ALL MEN BY THESE PRESENTS:

That we, Western National Construction, as Principal, and Insurance Company of the West, a California corporation, duly qualified to transact business in the State of California, as Surety, are held and firmly bound unto Madera Framing, Inc., as Obligee, in the sum of Four Hundred Thirty Thousand Twelve and 50/100 DOLLARS ($430,012.50), lawful money of the United States of America, for which payment well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:
WHEREAS, Madera Framing, Inc. is the Claimant under that certain mechanic’s lien in the amount of $286,675.00 recorded as Instrument No. 17459021 on 11/05/03, Series N/A Book N/A, Official Records of Santa Clara County, California, covering the following described property: Cilker Apartments LLC, One Pearl Place, 5210 Territor Way, San Jose, CA (Pearl Ave. and Chynoweth)

AND WHEREAS, the Principal disputes the correctness or validity of such claim of lien and desires to free all the above described real property from the effect of such claim of lien pursuant to the provisions of Section 3143, Civil Code of the State of California.

NOW, THEREFORE, if the above Principal shall pay any sum which the claimant may recover on the claim together with his costs of suit in the action to enforce such claim of lien, if he recovers therein, then this obligation shall be void; otherwise to remain in full force and effect.

SIGNED, SEALED and DATED this 19th day of November, 2003.

Insurance Company of the West

By: Daniel Huckabay
Attorney-In-Fact

Western National Construction

By: [Signature]
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Orange
On 11/19/08 before me, Arturo Ayala, Notary Public
personally appeared Daniel Huckabay

[Signature]

WITNESS my hand and official seal.

ARTURO AYALA
COMM. #1336239
NOTARY PUBLIC- CALIFORNIA
ORANGE COUNTY
MY COMPL. EXP. DEC. 23, 2005

[Signature of Notary]

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL
☐ CORPORATE OFFICER

☐ PARTNER(S)
☐ LIMITED
☐ GENERAL

☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER:

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

Release of Lien Bond
TITLE OR TYPE OF DOCUMENT

One
NUMBER OF PAGES

11/19/08
DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE
ICW GROUP
Power of Attorney
The Explorer Insurance Company of the West
Insurance Company of the West
Independence Casualty and Surety Company

KNOW ALL MEN BY THESE PRESENTS: That Insurance Company of the West, a Corporation duly organized under the laws of the State of California, The Explorer Insurance Company, a Corporation duly organized under the laws of the State of Arizona, and Independence Casualty and Surety Company, a Corporation duly organized under the laws of the State of Texas, (collectively referred to as the "Companies"), do hereby appoint

RALPH EDM. JR., DANIEL HUCAKAY, ARTURO AYALA, PATRICIA KNAPP

their true and lawful Attorney(s)-in-Fact with authority to date, execute, sign, seal, and deliver on behalf of the Companies, fidelity and surety bonds, undertakings, and other similar contracts of suretyship, and any related documents.

IN WITNESS WHEREOF, the Companies have caused these presents to be executed by its duly authorized officers this 16th day of January, 2001.

[Seal]

John H. Craig, Assistant Secretary
State of California
County of San Diego } ss.

John L. Husman, Executive Vice President

On January 16, 2001, before me, Norma Porter, Notary Public, personally appeared John L. Husman and John H. Craig, personally known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument, the same was executed in the presence of the person(s) executing the instrument, the notary upon belief of which the present notary, executed the instrument.

Witness my hand and official seal.

Norma Porter, Notary Public

RESOLUTIONS

This Power of Attorney is granted and is signed, sealed and witnessed with facsimile signatures and sealed under authority of the following resolutions adopted by the respective Boards of Directors of each of the Companies:

"RESOLVED: That the President, an Executive or Senior Vice President of the Company, together with the Secretary or any Assistant Secretary, or the Board of Directors of the Company, as the case may be, shall be authorized to execute Powers of Attorney empowering the person(s) named as Attorney(s)-in-Fact to date, execute, sign, seal, and deliver on behalf of the Company, fidelity and surety bonds, undertakings, and other similar contracts of suretyship, and any related documents.

RESOLVED FURTHER: That the signatures of the officers making the appointment, and the signature of any officer certifying the validity and correct status of the appointment, may be facsimile representations of the signatures and the signature seal of any notary, and the seal of the Company, may be facsimile representations of the signatures and seals, and such facsimile representations shall have the same force and effect as if manually affixed. The facsimile representations referred to herein may be affixed by stamping, printing, typing, or photostating."

CERTIFICATE

I, the undersigned, Assistant Secretary of Insurance Company of the West, The Explorer Insurance Company, and Independence Casualty and Surety Company, do hereby certify that the foregoing Power of Attorney is in full force and effect, and has not been revoked, and that the above resolutions were duly adopted by the respective Boards of Directors of the Companies, and are now in full force.

IN WITNESS WHEREOF, I have not my hand this 19th day of November, 2003.

John H. Craig, Assistant Secretary

To verify the authenticity of this Power of Attorney you may call 1-800-877-1111 and ask for the Surety Division. Please refer to the Power of Attorney Number, the above named individual(s) and details of the bond to which the power is attached. For information or filing claims, please contact Surety Claims, ICW Group, 11455 El Camino Real, San Diego, CA 92130-3245 or call (800) 877-3469.
ICW GROUP
INSURANCE COMPANY OF THE WEST
THE EXPLORER INSURANCE COMPANY
INDEPENDENCE CASUALTY AND SURETY COMPANY
11455 El Camino Real
San Diego, Ca 92130-2045

BOND # 212 39 68

TERRORISM COVERAGE DISCLOSURE

The Terrorism Risk Insurance Act of 2002 (the “Act”) establishes a program under which the Federal Government will share in the payment of covered losses caused by certain acts of international terrorism. We are providing you with this notice to inform you of the key features of the Act, and to let you know what effect, if any, the Act will have on the premium.

Under the Act, insurers are required to provide coverage for certain losses caused by international acts of terrorism as defined in the Act. The Act further provides that the Federal Government will pay a share of such losses. Specifically, the Federal Government will pay 90% of the amount of covered losses caused by certain acts of terrorism that is in excess of the statutorily established deductible for that year. The Act also caps the amount of terrorism-related losses for which the Federal Government or an insurer can be responsible at $100,000,000,000.00, provided that the insurer has met its deductible.

Please note that passage of the Act does not result in any change in coverage under the attached policy or bond (or the policy or bond being quoted). Please also note that no separate additional premium charge has been made for the terrorism coverage required by the Act. The premium charge that is allocable to such coverage is inseparable from and imbedded in the overall premium.
I, Jon B. Zimmerman, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a shareholder of Robinson & Wood, Inc., attorneys of record for Plaintiff CILKER APARTMENTS, LLC (hereinafter "Plaintiff"). I have personal knowledge of the facts set forth herein, except as to those
stated on information and belief and, as to those, I am informed and believe them to be true. If
called as a witness, I could and would competently testify to the matters stated herein.

2. On October 26, 2015 and October 27, 2015, I attended the deposition of Mr. Jerry
Merry, the designated Person Most Knowledgeable on behalf of MADERA CONSTRUCTION
(hereinafter "MC") and MADERA FRAMING (hereinafter "MFI"). Attached hereto as Exhibit
"1" are true and correct copies of pages 111, 112, 410, 411, and 416, to Mr. Merry's deposition
transcript.

3. Attached hereto as Exhibit "2" is a true and correct copy of Exhibit 339 to the
deposition of Mr. Merry. This document is the Subcontract Agreement entered into between
Madera Construction and Western National Construction, executed by Madera Construction on
August 26, 2002. This document was authenticated by Mr. Merry during his deposition at pages
111, line 3 to page 112, line 12. As well, this document was produced to document depository by
Western National Construction on March 30, 2015 and is bates stamped WNC080345-WNC080.

4. Attached hereto as Exhibit "3" is a true and correct copy of Exhibit 378 to the
deposition of Mr. Merry. This document is a copy of a correspondence from J. Scott Alexander,
dated June 24, 2004. This document was produced by MFI to the document depository on
September 3, 2015, and is bates stamped MFI01385 to MFI01387.

5. On March 15, 2016, my associate, Mr. Gregory Cohen, attended the deposition of
Mr. J. Scott Alexander, former counsel for MFI with respect to the prior litigation. Attached
hereto as Exhibit "4" is a true and correct copy of page 37 to Mr. Alexander's deposition
transcript.

6. Attached hereto as Exhibit "5" is a true and correct copy of Exhibit 803 to Mr.
Alexander's deposition. These documents are e-mails between Michael Taurek and V. Blair
Shahbazian. The documents contained in Exhibit 803 to Mr. Alexander's deposition were also
produced by MFI to the document depository on September 3, 2015, and they are bates stamped
MFI02217 through MFI 022222.

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DECLARATION OF JON B. ZIMMERMAN IN SUPPORT OF PLAINTIFF CILLKER APARTMENT, LLC'S
OPPOSITION TO MADERA FRAMING, INC.'S MOTION FOR SUMMARY JUDGMENT
7. On July 16, 2015, I attended the deposition of Mr. Randall Avery, the designated Person Most Knowledgeable on behalf of WESTERN NATIONAL CONSTRUCTION. Attached hereto as Exhibit "6" is a true and correct copy of page 140 to Mr. Avery's deposition transcript.

8. March 15, 2016, my associate, Mr. Gregory Cohen, attended the deposition of Mr. V. Blair Shahbazian, former counsel for MFI with respect to the prior litigation. Attached hereto as Exhibit "7" are true and correct copies of pages 45 and 46 to Mr. Shahbazian's deposition transcript.

9. MFI produced documents with respect to this matter on March 17, 2015, July 6, 2015 and September 3, 2015. I have reviewed the documents produced by MFI and I did not locate any document that is a written guarantee of MFI's work with respect to the Subject Property. Attached hereto as Exhibit "8" are true and correct copies of MFI's Notices of Production of Documents with respect to this matter.

10. The claims contained in Plaintiff's Complaint for Damages, and subsequent amended versions, are based on claims of both construction and design deficiencies.

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

Executed April 22, 2016, at San Jose, California.

[Signature]

Jon B. Zimmerman
Exhibit 1
BY MR. ERLINGER:

Q. Prior to taking that lunch break, we were taking a look at a document that I had placed before you. It is a multi-page document entitled Western National Construction Standard Subcontract Agreement.

The first page of that document has a Bates of WNC 080345.

Is there anything about this document that makes you think that it isn't a copy of the Western National Construction subcontract agreement entered into by Madera Construction to perform its work at One Pearl?

A. No.

Q. The bottom of pages 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, the page marked as Exhibit D, page 18 and page 19, do you recognize the initials of Carl Rounds?

A. Yes, I do.

Q. You've seen the way Mr. Rounds signs his initials many times before. That's how you recognize it today; correct?

A. Yes.

Q. And do you recognize Mr. Rounds' signature at the bottom of page 19, the last page of the document?

A. Yes.
Q. And that's at the bottom above the word -- under "Madera Construction" and above the words "Carl Rounds, President"?

A. Yes.

Q. And this agreement appears to have been entered into by August 6, 2002. That's the date on the left-hand side under his signature; correct?

A. Yes.

MR. ERLINGER: I'm going to mark the document that you're looking at as Exhibit 339.

(Exhibit No. 339 marked for Identification.)

BY MR. ERLINGER:

Q. And I'll ask you to keep that document in front of you. I would like to ask you some questions about it.

As a custom and practice in the 2000 to 2002 time frame at Madera Construction in your role as field superintendent, did you receive personally copies of subcontract agreements where Madera Construction was performing work for a general contractor on a site?

A. No.

Q. Were you aware as a field superintendent in that time frame of the various scopes of work that Madera Construction was agreeing to perform at the
A. I don't remember.

Q. When you went to the mediation at their office, did you have to look up the address or did you know where it was?

A. I had to look it up.

Q. Continuing on paragraph 13 of Exhibit 373, it states there: "To facilitate the completion of the project and/or remaining subcontract work and obligations, Plaintiff Madera Framing in or about August 2003 agreed to perform and actually commenced performance of all remaining subcontract work and obligations arising out of the subcontract as amended per the account of Madera Construction."

Do you see that?

A. Yes.

Q. Is that a true and accurate statement to the best of your knowledge?

MR. MOORE: Calls for a legal conclusion. Vague and ambiguous. Overbroad.

BY MR. ZIMMERMAN:

Q. Or is it false?

A. True.

Q. It then sets forth: "Thereafter all efforts to complete the subcontract work and/or obligations, including the furnishing of all labor and services and
the provision of all materials and equipment were undertaken solely by Madera Framing."

Do you see that?

A. Yes.

Q. Is that an accurate statement?

A. Yes.

Q. And that comports with your testimony earlier that Madera Construction did not complete its obligations under the contract; isn't that correct, sir?


MR. MOORE: Join.

BY MR. ZIMMERMAN:

Q. Correct, sir?

A. Yes.

(Exhibit No. 374 marked for Identification.)

BY MR. ZIMMERMAN:

Q. Exhibit 374 is the answer of Western National to the Madera complaint.

Do you see that, sir?

A. Yes.

Q. Take a look at the caption on the left part of this document. Do you see Cilker Apartments, LLC listed on that caption?
Do you see that, sir?

A. Yes.

Q. Did you understand that there was no issue as between Madera Framing and Western National as to that issue?

MR. BAZZANO: Objection. Vague and ambiguous.

MR. MOORE: Assumes facts. Vague and ambiguous.

MR. ZIMMERMAN: You can answer the question, sir.

MR. BAZZANO: Can you read the question back, please.

THE WITNESS: Yes, please.

(Record read.)

MR. BAZZANO: Vague as to time.

THE WITNESS: That all remaining obligations had been taken care of?

MR. ZIMMERMAN: Yes. That the obligations of Madera Construction were being assumed by Madera Framing, Inc.

THE WITNESS: Yes.

MR. MOORE: Same objections.

THE WITNESS: No issues.

BY MR. ZIMMERMAN:

Q. Turn to request number 17 on page 6. Western
Exhibit 2
A. Western National Construction ("Contractor") has contracted with Olker Apartments LLC, ("Owner") to develop an apartment project (the "Project") upon real property of Owner (the "Property") described as:

ONE PEARL PLACE
5210 TERNER WAY
SAN JOSE, CA

This development and subdivision is to be in strict accordance with plans, specifications, lists of materials, sections, details, profiles, grading plans, deed restrictions, utility layouts and various other provisions set forth in various interrelated documents; all these documents are on file and available during business hours for inspection and reference at Contractor's principal office. Such documents are herein designated as "Contract Documents" and are incorporated herein by this reference. These Contract Documents are intended to supplement each other, and work described in one document but not in another shall nonetheless be executed as if such were contained in all documents. It is essential that the Subcontractor proceed in exact conformity with the applicable portions of the Contract Documents.

The Subcontractor has made an Independent investigation on the job site, the soil conditions affecting the job site, and all other conditions which might affect the progress of the work, and has satisfied itself as to these conditions. The contract price includes payment of all work which may be done by the Subcontractor in order to overcome unidentified underground conditions. Any information which may have been furnished by the Subcontractor to Contractor is for the Subcontractor's use only, and Contractor does not warrant that the conditions are as such indicated. The Subcontractor has satisfied itself as to all job conditions, including underground conditions, and has not relied on information supplied by the Contractor.

B. Contractor desires to engage Subcontractor to perform certain work in connection with the Project.

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 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 "B" 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 Subcontractor's use 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 the Exhibit "B" 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 Agreement through unforeseen or 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 Agreement, 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 retainage (as set forth in the Exhibits "A" and "B" attached hereto), which payments shall be made in accordance with the Payment Procedure set forth in the Exhibits "A" and "B." Final payment shall be made at such time as is specified in the Exhibits "A" and "B," 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 Agreement 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 the Exhibit "B" 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 retainage; 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 of Insurance required under this Agreement; (ii) releases for the previous payment, executed by all persons who may have mechanic's lien, sub-notice or labor and material bond rights against the project and arising out of Work performed or materials supplied under this Agreement; (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, damages claims or evidence indicating probable future claims, including claims covered by Subcontractor's insurance until such claims are accepted by carrier; (ii) failure of the Subcontractor to make payments property to its 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.
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Contractor may require that Subcontractor furnish releases in a form satisfactory to Contractor for all claims made under (a)(6) and (c)(8), together with supporting invoices, receipt or other records or substantiate the amounts owing or paid as Contractor may require.

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.

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 check payable jointly to Subcontractor and his subcontractors, suppliers, laborers, or any of them.

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 LABOR, MATERIALS, AND SUBCONTRACTORS PERFORMING WORK OR FURNISHING MATERIAL UNDER THE 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 Agreement 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 AGREEMENT. The terms and conditions of this Agreement 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, changes 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 of the other Contract Documents, and, where applicable, to the model homes, 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. Discrepancies noted or necessary to complete the project shall be promptly performed as ordered by the Contractor and the proper cost or credit breakdowns therefor shall be submitted immediately thereafter by Subcontractor to the Contractor for consideration. Should the plans vary from the specifications, then 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 Contract Documents provide for a method of work contrary to any such laws and regulations, Subcontractor in writing, prior to the installation of the Work shall be required to notify the Contractor of the same. Failure to notify the Contractor of the same shall in no way relieve the Subcontractor of the obligation to meet governmental laws and regulations.

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 Paragraph 7 hereof and shall not void this Agreement. Unless otherwise requested by Contractor in writing, Subcontractor, prior to commencement of revised Work, shall submit within seven (7) days to the Contractor written copies of Subcontractor's cost or credit proposal for such revised Work. Subcontractor will support all claims for extras with a detailed breakdown showing differences in quality, and value of labor and material involved. The Construction Sequence or Order of Work (as defined herein) and any progress schedule established by Subcontractor 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 change, 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 notify the Subcontractor in writing, the Subcontractor will perform the Work at its 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 Agreement, including work dates 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 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 co-ordinated sequence with the work of the Contractor and of others and so as to be able to expediently 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 the 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.

(b) It is specifically understood that Subcontractor herein agrees and hereby guarantees to complete his phase of operation at a production rate specified in EXHIBIT "A", being prepared to do what ever is necessary including overtime in order to complete said Work on schedule. Subcontractor further agrees to maintain their production rate during the entire tenure of time Subcontractor is working on the job site.

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.

INTIALS: Contractor

Subcontractor

Cost Code: 05-573-3610A

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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 the Contractor, Contractor shall have the right to direct the Subcontractor, within twenty-four (24) hours after notice from the Contractor, to furnish additional labor 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 any way limiting or waiving Contractor's rights and remedies pursuant to this Agreement, if at any time during the progress of the Work, Subcontractor, 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 Agreement.

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, all 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 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 existed, adjacent or dependent work, services, utilities or materials are acceptable to hire 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, acte 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 shall 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 by the Contractor 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, as the case may be, all costs incurred in repairing the damage. Subcontractor shall take all action necessary to assure 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 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 each building or unit constructed hereunder. However, the period of guarantee is limited to one (1) year by the Contract Documents, Subcontractor shall be bound as specified. All guarantees, including equipment warranties, will lapse 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, the Subcontractor shall be required to perform and complete the Work in and in connection herewith. Contractor may (a) energize Subcontractor, (b) take possession of all of Subcontractor's materials, tools and equipment on the Job Site, and (c) assure 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 such debt and Subcontractor within thirty-five (35) days after Notice of Subcontractor's default, shall fail to correct any defective material or perform any labor necessary to correct any defect in the Work. Nothing contained herein shall be deemed to limit 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 notification from Contractor by telegram or by written notice that Subcontractor's performance under this Agreement is unsatisfactory, or upon notification that Subcontractor has failed to comply fully with the terms of this Agreement, 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 do so within twenty-four (24) hours after such notification Contractor may terminate this Agreement. In the event of such termination, Subcontractor hereby authorizes Contractor to perform and complete the Work in and in connection herewith. Contractor may (a) energize Subcontractor, (b) take possession of all of Subcontractor's materials, tools and equipment on the Job Site, and (c) assure 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 such debt and Subcontractor within thirty-five (35) days after Notice of Subcontractor's default, shall fail to correct any defective material or perform any labor necessary to correct any defect in the Work. Nothing contained herein shall be deemed to limit 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.

(b) Subcontractor reserves the right to terminate this Agreement 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 reasurable labor and materials costs for Work actually completed plus ten percent (10%) of such 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 such sums as provided in this Paragraph the amount of any payments made to Subcontractor prior to the date of termination of this Agreement. Subcontractor shall not be entitled to any claim against Contractor for any additional compensation or damages in the event of such termination.

This Agreement 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.

INITIALS: Contractor [Signature] Subcontractor [Signature]

Cost Code: 05-570-3010A

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WNC 080347
(d) 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 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 Agreement or any other agreements, or at Contractor's election, Director may, at Contractor's election, treat a default under this Agreement 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 Agreement as described in Paragraph 18(b) above.

(e) Contractor shall have the right, at any time, acting in its sole discretion, and without cause, to terminate Subcontractor's rights under this Agreement by giving to Subcontractor written notice of termination. A termination effective under this paragraph 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 Agreement as a result of destruction, as described in Paragraph 18(b) above.

16. REMOVAL OF WORK CONDEMNED. The Subcontractor shall, within twenty-four (24) hours after receipt of written notice from the Subcontractor remove from the Job Site any materials or portions of the Work condemned by the Contractor or any applicable governmental authority, unless sound 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 said 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 its option, and in addition to any other remedies available to Contractor, deduct from the payments due to or 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 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 manufacturer 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 the Contractor to proceed. Should the Subcontractor default in the performance of his Work Undoubtedly, 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 losses and damages to Contractor, including, without limitation, liquidated damages, increased financing and construction costs, lost sales opportunities and lost revenues sustained by the Contractor. The Subcontractor shall be liable under this Paragraph even though such default is caused by strikes, lockouts, acts of God, or other reasons beyond the control of the contractor, and Subcontractor shall pay to the 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, for delays caused by other trade contractors.

23. INSURANCE. Subcontractor shall purchase and maintain with an insurer or insurers acceptable to Contractor, policies of insurance which will protect Subcontractor, Owner, Contractor and 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 Agreement, whether such be by Subcontractor, by any employee, agents, subcontractors 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. The aforementioned insurance shall include coverage for:

(a) statutory worker's compensation and employer's liability with limits of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit bodily injury and liability per occurrence, including an endorsement evidencing a "Waiver of Subrogation";

(b) commercial general and auto liability insurance with limits of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit bodily injury and property damage liability per occurrence, including: (i) any autos or all owned, scheduled, non-owned and hired vehicles, (ii) blanket contractual, (iii) broad form property damage, including completed operations, severability of interest and cross liability clauses, (iv) products/completed operations (maintained for the (10) years after Contractor's acceptence of the work), (v) personal & advertising injury, (vi) owner's & contractor's protective, (vii) premises/operations, (viii) occurrence basis, (ix) underground explosion, (x) fire damage, (xi) medical, (xii) collapse and underground hazards (x, o, a, s). The commercial general liability policy shall contain an endorsement naming Contractor and the parties specified in Section L.3 of Exhibit C as additional insureds.

(c) aircraft liability insurance, if the work involves aircraft, with limits exceeding acceptable to Contractor, including owned and non-owned aircraft. Waiver of subrogation is required on hull coverage;

(d) professional errors and omissions liability insurance, if applicable, with limits and a deductible provision which are acceptable to Contractor. Such insurance shall be maintained during the term of this Agreement and renewed for a period of at least five (5) years thereafter.

The policy of insurance required in (b) above, shall also contain an endorsement that as respects the work and/or performance of Subcontractor, such policy or policies are primary and any Insurance carried by the additional insureds is excess and non-contributing with such primary insurance; shall state that not less than thirty (30) days written notice shall be given to Contractor prior to cancellation or reduction in coverage or amount, and shall waive all rights of subrogation against the additional insureds. Prior to commencement of Work, Subcontractor shall deliver to Contractor the endorsements and certificates of insurance as evidence of compliance with the requirements of this Paragraph A.2.b. In the event Subcontractor fails to secure or maintain any policy of insurance required hereunder, Contractor may, at its sole discretion, 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 shall 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. All insurance carriers issuing any insurance required hereby shall be as specified in EXHIBIT C, "Insurance Requirements and Billing Instructions."

24. INDEMNIFICATION BY SUBCONTRACTOR

[INITIALS: Contractor Subcontractor]

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WNC 080348
(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 the Subcontract documents done at the Job Site, or in preparing, storing, delivering materials, tools, equipment or any other type of personal property, or in providing services for the Project, shall be at the sole risk of Subcontractor. In addition to and without limiting Subcontractor's indemnification obligations pursuant to Sections 17, 20 and 30, Subcontractor shall indemnify and hold the Owner, Architect, Contractor, Subcontractor and all of their respective divisions, subsidiaries, members, partners and affiliated companies and their respective employees, officers, directors, shareholders, agents and representatives, as well as their respective successors and assigns (collectively, the "Indemnitees") from and against any and all losses, liabilities, damages, Injuries, claims, expenses (including actual attorneys' fees) and costs (collectively, "Claims") whether incurred by or made against any Indemnitee, arising from or related to (i) the performance of any or all work which 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 or Sub-subcontractor's representatives, (B) any negligence or willful misconduct by Subcontractor or any of Subcontractor's Representatives, (C) any violation or alleged violation by Subcontractor or any of Subcontractor's Representatives of any law now or hereinafter enacted, or (D) the breach by Subcontractor of any of its obligations under the Contract Documents. It is the intention of the parties that Subcontractor is providing a "Type B" indemnity under California law; provided, however, 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 Indemnitee. Payment of any Claim by the applicable Indemnitee shall not be a condition precedent under this indemnity.

(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. Sole Indemnity is intended to apply during the period of the Contract or, if later, during Subcontractor's performance, and shall survive the expiration or termination of the Contract on account of any matter covered by it, (a) Indemnity is barred until such later time as (i) a Claim is filed, (ii) a notice is given, (iii) a suit is commenced, (iv) any applicable statute of limitations, or (v) any such Claim is barred. In such event, Subcontractor shall be liable for all costs of settlement or defense of the Indemnitees or their predecessors in interest even if such 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 indemnificants is reimbursed by Subcontractor for any amounts paid in compromise thereof or upon a judgment or award thereon, in defense of such action or Claim, including actual attorneys' fees, or (i) upon the final sale of a condominium unit in the Project to the 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 neglect of Subcontractor, its agents or employees, for loss, damage, 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 Subcontractor's performance 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 proper scope of the Work, including the quality and workmanship of the Work. 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 all clean up duties as may be specified in the attached Exhibit A. If Subcontractor fails to perform within twenty-four (24) hours after notice 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 Agreement.

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 his 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. Subcontractor shall not assign nor subconstract the whole or any portion of this Agreement 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 Agreement. Any assignment granted by Subcontractor shall not be deemed permission to any subseuent assignement. Any assignment by Subcontractor made without the consent of Contractor as herein provided shall be null and void and shall, at the option of Contractor, be grounds for termination of the Agreement. Contractor shall enforce the right to rescind to proceed pursuant to Paragraph 18 hereof. Any such subcontract shall contain all of the provisions of this Agreement 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.

30. LIENS. Subcontractor shall pay when due all claims for labor or material incurred by him in the performance of this Agreement. If any lien, attachment, or suit affecting title to real property are 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 Agreement, 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 liabilities and claims made in connection therewith, including, without limitation, any costs and expenses for attorney's fees, bond premiums and all consequential and incidental damages resulting therefrom. Any Subcontractor shall fail to promptly act to so remove said lien, attachment or suit, 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 property, to be removed.

INITIALS: Subcontractor

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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 Paragraph, 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 Paragraph.

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 Federals, 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 Agreement may be terminated at the option of Contractor. Subcontractor hereby authorizes all financial institutions, materialmen, contractors and others to deduct from Subcontractor's financial status, credit and manner of mailing obligations. If Subcontractor is a sole proprietor, his death shall automatically terminate this Agreement.

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 Agreement by the Subcontractor and payment of all mechanical lien claims which shall be incurred. Subcontractor shall 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, without terminating this Agreement, to pay the Subcontractor the reasonable value of Work then accomplished on the Job Site by Subcontractor, so as 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 portion 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. All the sole election of Contractor, any claim, dispute or controversy arising out of this Agreement, whether relating to breach or interpolation of this Agreement, 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 time 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 Agreement, 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 change from the manner in which it existed as of the date of this Agreement, Subcontractor shall immediately notify Contractor. Contractor may terminate this Agreement 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 Agreement as a result of destruction, as described in Paragraph 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 union organizations. Contractor reserves the right to establish a "two gate" system (union and non-union trades) at any time during the course of work on this 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 grievances between Subcontractor and its employees. Subcontractor represents and warrants that it is not discharging 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 Agreement, thereby entitled Contractor to exercise any rights and remedies available to it under the Agreement. Subcontractor agrees to indemnify, defend and hold the Contractor harmless from claims, demands and liability for any 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 it 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 its subcontractors/suppliers shall strictly comply with all safety codes, 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 it and its subcontractors/suppliers will be subject to the California Hazardous Substances Information and Trading Act (Labor Code Sections 6360-6369.7, and regulations enacted pursuant thereto, and Section 15285.59 of Title 25 of the California Code of Regulations, collectively, the “Hazardous Communications Standards”). In particular, Subcontractor and its subcontractors/suppliers shall develop and implement, at their sole expense, the written hazard communication program required hereunder. In circumstances where work of the Subcontractor or its subcontractors/suppliers may result in personal employees being exposed to hazardous chemicals associated with that work (as defined in the Hazard Communication Standards), Subcontractor shall notify Contractor concerning these chemicals, and specifically shall supply Contractor with each Material Safety Data Sheet (MSDS) on all hazardous materials the Subcontractor of its subcontractors/suppliers may introduce to the job site on a form acceptable to Contractor. Subcontractor and its subcontractors/suppliers are required to acquire and review copies of the Hazard Communication Standards and the regulations and requirements enacted pursuant thereto.

(b) 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. In the event Subcontractor or 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.

(c) All Subcontractor foremen are required to make daily safety inspections to determine unsafe practices, unsafe equipment and any violations of safety laws, regulations, safety orders, rules or requirements.

INITIALS: Contractor [Signature] Subcontractor [Signature]

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WNC 080350
(d) All Subcontractor supervisory personnel (superintendents, foremen, etc.) shall be responsible for preparing written reports on any accident occurring to an employee of the Subcontractor or of its subcontractors/suppliers. A copy of this accident report shall be transmitted to the Subcontractor’s Project Superintendent in charge of the project. Each accident report shall be on a form provided by, or acceptable to, the Contractor.

(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 1532 of Title 8 of the California code of Regulations and all subsequent amendments and regulations. In particular, it will at its sole expense, establish, implement, and maintain a written injury and illness prevention program and Code of Safe Practices. In particular, Subcontractor and each of its subcontractors/suppliers shall conduct periodic meetings of supervisory employees, including superintendents, and of each of its subcontractors/suppliers and 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 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 job site. In addition to the obligations set forth herein, Subcontractor and its subcontractors/suppliers shall, upon completion of this Agreement, remove all materials, supplies and waste containing any Hazardous Material from the job site. Subcontractor shall bear full financial responsibility, as between the parties to this Agreement, for the compliance of the Subcontractor and its subcontractors/suppliers with the provisions of this paragraph 39. Subcontractor agrees to indemnify, defend (pursuant to the terms of the Agreement), 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, suits testing, governmental approvals, remediation and clean-up arising out of the failure of the Subcontractor or its subcontractors/suppliers, their agents, employees, officers, or representatives, to comply with this paragraph 39. 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 any on the site any pipelines, 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. 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 its 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 Agreement.

(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 persons or to 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 contract, 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 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 employment 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 forthwith for 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 noncompliance 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 his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Subcontractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, orders, this contract 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

INITIALS: Contractor ____________________ Subcontractor ____________________
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); or (v) telecopy/telex. Any such notice or other communication shall be deemed received and effective upon the earlier of: (I) if personally delivered, the date of delivery to the addressee 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; or (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/telex, when sent to the correct telecopy number of the party to receive such notice.

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

Miscellaneous.

(a) All rights, options and remedies of Contractor contained in this Agreement 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 remedies provided at law or in equity, whether or not stated in this Agreement.

(b) No waiver by Contractor of a breach of any of the terms, covenants or conditions of this Agreement 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 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 or of any act by Subcontractor requiring Contractor's consent or approval shall not be deemed to waive or renders unnecessary Contractor's consent or approval of or of any subsequent similar act by Subcontractor.

(c) Time is of the essence in this Agreement.

(d) In the event of any dispute regarding the interpretation or enforcement of any of the terms and provisions of this Agreement, 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 Agreement shall inure to the benefit and shall be binding upon the successors and assigns 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 Agreement on behalf of Subcontractor has or have full authority to enter into this Agreement and to bind Subcontractor hereunder.

(g) All covenants, indemnities, representations and warranties made by Subcontractor pursuant to this Agreement shall survive the termination of this Agreement 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.

Prime Contractor / Subcontractor Claims

Contractor has made a contract for construction with Clear Apartments ("Owner") which provides for the furnishing of labor, materials, equipment and services in connection with the development of the Job Site ("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 of the terms and conditions of the Prime Contract and by all decisions, rulings and interpretations of Owner or its authorized representatives. Where a provision of the Prime Contract is inconsistent with a provision of this Agreement, this Agreement 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 Agreement and made a part hereof.

- EXHIBIT A: Statement of Work
- EXHIBIT B: Payment Schedule
- EXHIBIT C: Insurance Information & Billing Instructions
- EXHIBIT D: OSHA Addendum
- EXHIBIT E: "Hazardous Materials Disclosure Statement"
- EXHIBIT F: Special Conditions for Site Improvement Contracts
- EXHIBIT G:

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 28900, SACRAMENTO, CALIFORNIA, 95836

A. GENERAL TERMS AND CONDITIONS

Subcontractor shall furnish and provide all labor, material, and equipment necessary to complete installation of the ROUGH FRAMING 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 as 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 his 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 work, it is agreed that this contract can be canceled by Contractor 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's Purchasing Department for this project. Written approval shall be in the form of an WESTERN NATIONAL CONSTRUCTION Authorization for Extra Work or "Addendum to Subcontract Agreement" 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 Purchasing Department 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 (CDI). Subcontractor is to take special note of the OSHA requirement under code 1926.450 which states: SIGNALMAN MUST BE USED TO DIRECT BACKING OPERATION WHERE THE HIGH AMBIENT NOISE OBSOLES 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. Any damage to these slopes, banks, or swales shall be paid for by the Subcontractor. Subcontractor or his agent shall not drive over, walk on, 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.

It is understood and agreed 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 specifications for the work contracted for under the Agreement 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 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 its 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 job site; no pets or animals of any kind are allowed on the job site; no children, family members or any other unauthorized persons are allowed on the job site. 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 request. Any breach of this provision will be grounds for immediate termination of this Subcontract Agreement by WESTERN NATIONAL CONSTRUCTION.

INITIALS: Contractor: Subcontractor: [Signature]

Cost Code: 65-570-301A - 9 -

WNC 080353
WESTERN NATIONAL CONSTRUCTION
EXHIBIT A
STATEMENT OF WORK

Contractor's Architect is McLaren, Vasquez & Partners, hereafter called "Architect".
Contractor's Civil Engineer is Sandra Humber Jones, hereafter called "Civil Engineer".
Contractor's Structural Engineer is Group M Engineers, hereafter called "Structural Engineer".
Contractor's Site Engineer is Terratech, Inc., hereafter called "Site Engineer".
Contractor's Landscape Architect is Cottone & Taniuchi, hereafter called "Landscape Architect".

Per Grading Plans prepared by Sandra Humber Jones, sheets G1-G6 of d, dated September 1, 1999.
Per Architectural Plans prepared by McLaren, Vasquez & Partners, Inc., pages: GEN-1.0 thru Gen-2.0, SP-1 thru SP-3, AA1-1.1 thru AA4-3.2, AB1-1.0 thru AB1-7.3, AB2-1.1 thru AB2-2.5, AB3-1.1 thru AB3-1.4, AB4-1.1 thru AB4-4.4, AS-2.1, AB-1.1 thru AS-4.4, AF-1.1 thru AF-7.3 thru Data 4 dated 5/24/90.
Per Structural Plans prepared by Group M Engineers pages: SD-1.1 thru SD-2.5, SA-1 thru SA-4, SB-1 thru SB-24, SF-1 thru SF-3, SR-1 thru SR-2, dated 5/19/93.
Per Mechanical Plans prepared by LDI Mechanical, Inc. pages: M-1 thru M-7, EN-1 thru EN-2, MR-1 thru MR-2, ENR-1 dated 6/7/90.
Per Electrical Plans prepared by Amedict, Inc. pages: E1.0 thru E2.0, EA3.1 thru EA4.2, EB3.0 thru EB4.3 (not dated).
Per Plumbing Plans prepared by Parks Mechanical Construction Corp. pages: P0.1 thru P7.6, P7.0-A, P7.1 thru P9.2 dated 6/7/90.
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 contract.

SCOPE OF WORK

SPECIFIC CONDITIONS

A. GENERAL: The Subcontractor agrees to furnish all materials, labor, tools, equipment, transportation and services required to complete all ROUGH FRAMING work as stated above.

1. Subcontractor acknowledges that he has personally inspected the site and is fully aware of all conditions as they related to this project and his work.

2. Subcontractor agrees to provide transportation and off loading of all rough carpentry materials.

3. Subcontractor shall furnish and provide all labor and equipment (including scaffolding, etc.), materials tools, supplies, and miscellaneous incidental as required for the prompt and efficient execution to complete rough carpentry work. Work includes but is not limited to, siding, furring, and other miscellaneous trim, and in general, to do all carpentry work up to the framing stage.

4. Include all blocking, backing, taping, cutting and head-outs required for other trades and at all future handicap accessible units. Provide fire blocking and diaphragm blocking as required. Provide rumble and CCTV plywood backerboard in electrical rooms. Backing per Walls and ceiling, and including, but not limited to: electrical panels, entry door bumsers, bath accessories, sheetrock, tubs, handrails, railings, fire stops, cabinets, wardrobe doors, grab bars, stucco lath, raised stucco weep scree, RC-1 channels, recessed opening in exterior, party or bearing walls, wall hung lavatories, steel I-beam for sheetrock attachment at 1-1/2 construction, etc. Provide backing attachment with A35 clips where shown.

5. Receive and install windows, sliding glass doors and skylights. Caulk at bottom track and side jamps of sliding glass doors. Adjust all windows. Screens installed by others. Provide and install bitumen at all windows and doors per plans. Masonry is not responsible for any materials they did not supply.

6. Windows must be installed level, plumb, and with equal margins. Windows shall be caulked heavily at nailing flanges on all sides upon installation. The joint where the horizontal and vertical nailing flange come together shall be sealed with caulking. All bitumen, or other brand, flashing at windows, exterior doors, etc. is furnished and installed by this Subcontractor per plan.

7. Storage of lumber will be on site where space is available, per superintendent's direction.

8. Subcontractor is to include in their work straightening of studs that may bow, warp, or twist after framing operation up to 30 days after framing inspection.

9. Subcontractor is to work with plumbing, electrical, fire sprinkler and mechanical subcontractors on placing of their materials in wall and ceiling spaces.

10. This Subcontractor to cut roof penetrations including those for cased (O'Hagin) tile vents, by other trades with layout provided by other trades located prior to roof sheathing.

11. Wood sleepers for wardrobe door track, unit front entry, patio doors, and carpet/vinyl transition strips, etc. is included and shall be installed prior to gypsum.

12. Where sheetrock must be continuous at 2 hr. wall conditions, studs of intersecting walls shall be held back to accommodate this condition.

13. Furn downs are nested by others.

INITIALS: Contractor, Subcontractor

Cost Code: 05-570-3010A

- 10 -

WNC 080354
14. Full-time onsite supervision shall be supplied by the Subcontractor.

15. Safety handrails and barricades will be the integral part of framing. These are to be installed in such a way as to allow other contractors to work and not be unduly impacted. Stairways are to be installed in place until permanent stairways are installed. All scaffolding and temporary work platforms are to be installed with all required safety fences and railings. One time. Not responsible for other trades removing.

16. The Contractor will provide temporary power poles.

17. No dimensional adjustments shall be made that affects the kitchens, baths, entries, or stairways without the approval of WNC's Superintendent.

18. Subcontractor shall provide a qualified foreman on the job at all times.

19. Subcontractor shall furnish and install all rough hardware, wood-to-wood fastening devices that relate to rails, which attach to any and all steel or iron posts and beams. Includes nails, sheathing, straps, hangers, saddle, and other items. Fasteners shall be installed according to the manufacturer's instructions.

20. All framing shall be constructed with all studs, headers, and joists as required. All horizontal members subject to bending shall be set with crown up and shall not be spaced between bearings. Wherever feasible, all members shall have solid bearing without being shimmmed. Interior and exterior angles shall be properly framed to receive interior and exterior finish work. All fascias shall be mitered at the joints and nailed securely.

21. Any work damaged by other trades will be replaced at the expense of the trade. Joints of all paneling, siding, sheathing, etc., shall occur at studs or shall be safely back-blocked. Subcontractor shall also cut all other blocking and furnish and install trusses where specified.

22. Subcontractor acknowledges that fireplace stacks shall be plum and straight and agrees to verify dimensions with fireplace supplier.

23. Subcontractor shall keep ground clear and free from debris throughout construction. Cleanup of all wood waste materials to be placed in debris boxes provided by Owner. Units shall be broom cleaned at completion of framing operation by Subcontractor's labor.

24. Work covered herein shall also include the responsibility of protecting materials prior to installation, from damage by other trades, such as windows, fascia, plant-on materials, and other like items. Garbage areas may be used for this purpose. Subcontractor's scaffolding materials shall be neatly stacked as directed. Madera is not responsible for protection of windows from other trades.

25. OSHA approved wood scaffolding materials will be furnished and erected by Subcontractor for his own use.

26. All materials supplied by this Subcontractor shall be brought to the area of installation from storage areas by this Subcontractor.

27. Before fabrication, the Project Superintendent shall be contacted by Subcontractor as to production and scheduling.

28. Stair tread angle clips, concrete treads risers, and intermediate landings to be installed by Subcontractor, delivered by others at all wood stringer stairs.

29. Subcontractor to install and maintain temporary stairs and railings per OSHA requirements and in a safe manner. No site-built ladders or other equipment not in compliance will be allowed.

30. Subcontractor shall furnish all labor and materials necessary to glue down all sub flooring and decking and nail same with approved type ring shank nails. Type of glue to be approved by Architect and glue shall only be applied in accordance with manufacturer's recommendations.

31. Place and nail all roof sheathing. Subcontractor to achieve inspection and approval thereof.

32. Care shall be taken to clip and countersink any and all roof sheathing nails exposed at roof overhangs.

33. Contract price includes mailbox structures and trash endosseum framing. Mailboxes to be supplied by others.

34. All lumber, plywood and framing materials shall comply with standards as set forth in the architectural and structural plans.

35. Stud walls to have full bearing of framing.

36. Firestopping per plans as it relates to framing and rough carpentry.

NOTE Refer to structural engineering requirements in structural plans. The highest grade or quality will prevail.

37. SUBFLOORS - 5/8 STANDARD SHEATHING with exterior glue, nailed and glued. Underlayment grade if exterior exposed. An A.P.A. equivalent O.S.B. may be used if approved by code and structural engineer. 1-1/8", or double layers of plywood may be required at rolled assemblies.

38. 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.

39. Subcontractor agrees to use only 1-1/8' plywood at all stair treads provided by others.

40. Subcontractor will be held responsible for any damage to existing landscaping due to its operation.

41. Install 3x3 return stucco ground under aluminum siding door threshold after frame is installed. Attach to 2x4 imbedded in stucco at this location.

42. "Cathedral and decoting plywood 5/8", 1/4" or 1-1/8" per plans with exterior glue, plugged and tough sanded, allow to drain. O.S.B. is not an acceptable exterior decoting substrate.

C. SCHEDULE:

PRODUCTION: $399,909.00
Production includes completion of all framing at breezeways through roof sheathing. All framing, sheathing, sheathing, fascia, holdowns, and sheath panel to be in accordance with the plans. It does not include removing any shear or hold downs improperly installed. A forklift with operator will be provided and all associated expenses for Madera's use only.

CLEAN UP: $165,000.00

INITIALS: Contractor  

WNC 080355
Quality control or clean up includes typical cosmetic issues encountered when a job has been framed properly the first time. These items include stud straightening, furring or planning of window openings that were framed properly but need minor adjustments, any blocking or backing damaged or removed by other trades. It does not include blocking or backing not installed at time of joisting or framing.

LAYOUT ERRORS: $118,300.00
This was accomplished by establishing an average repair cost per unit. This average is approximately $950.00. Total for layout errors was determined by multiplying the number of units by the average repair cost per unit.

ALLOWANCE FOR LUMBER AND MATERIALS: $187,700.00
Additional lumber and material allowances that are provided for either damaged material or material not on site.
A.

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TOTAL CONTRACT AMOUNT $850,000.00**

**$850,000.00 is the estimated cost to complete this project. The final cost upon completion may be more or less and the contract price will be adjusted at that time.
### EXHIBIT B
#### PAYMENT SCHEDULE

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#### DRAW SCHEDULE PER BUILDING:

**DRAW**

1 100% Upon completion and acceptance by Contractor.

Draws are to be submitted bi-weekly, every other Friday with payment due within two weeks after the draws are submitted. Updates of work completed shall be submitted alternating Fridays. NO RETENTION SHALL BE WITHHELD.
I. EVIDENCE OF INSURANCE

Prior to the commencement of any contract work, Subcontractor shall provide Contractor with certificates of insurance evidencing the following insurance coverages, as well as endorsements (a) evidencing the waiver of subrogation with respect to the additional insureds specified in Section 3 below, (b) naming the parties specified in Section 3 below as additional insureds, and (c) providing that any insurance or self-insurance maintained by the additional insureds specified in Section 3 below is excess and non-contributing. The required coverages are:

1. CERTIFICATE HOLDER: WESTERN NATIONAL CONSTRUCTION, CILKER ORCHARDS AND CILKER APARTMENTS LLC
   P.O. Box 19928
   Irvine, CA 92623-1928

2. COVERAGE:

   A. GENERAL LIABILITY
      $1,000,000 Per Occurrence CSL
      (limit of S.I.R. or GL deductible specified on Certificate)
      - Commercial General Liability
      - Bodily Injury & Property Damage on Occurrence Basis - NOT
      "Claims Made"
      - Owner's Contractors Protective Liability
      - Contractual Liability
      - Broad Form Property Damage
      - Products Completed Operations
      - Personal & Advertising Injury Liability
      - Premises & Operations Coverage
      - Underground, Explosion & Collapse Hazard
      - No General Liability deductible permitted
      - Additional Insured And Primary Wording Endorsements

   B. AUTOMOBILE LIABILITY
      $1,000,000 Limit
      - All Owned Autos or
      - Scheduled Autos and
      - Hired Autos and
      - Non-owned Auto
      - Additional Insured

   C. WORKERS COMPENSATION
      $1,000,000 Limit
      - Workers Compensation - Statutory Coverage
      - Employer's Liability - $1,000,000 Minimum
      - ENDORSEMENT EVIDENCING WAIVER OF SUBROGATION

3. ADDITIONAL INSURED/PRIMARY COVERAGE:

   - "It is understood and agreed that coverage afforded by this policy shall also apply to Cilker Orchards, Cilker Apartments LLC and their respective owners, directors, agents, servants, employees, divisions, subsidiaries, partners, shareholders and affiliated companies and Western National Construction 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."

4. PROFESSIONAL ERRORS & OMISSIONS LIABILITY:
   Only required for the Subcontractor providing architectural, design or engineering services.
   $1,000,000 Limit
   Deductible and/or SIR Not To Exceed $25,000

5. CANCELLATION:

   A. 30 DAYS CATEGORICALLY
      - If using the ACCORD form, X-out words "ENDEAVOR TO" and the words "BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION..."*

6. DESCRIPTION OF OPERATIONS: "All Operations"

7. CITIURE:

   All insurance carriers issuing any insurance required hereby shall have the most recent Best's key rating of A with a size rating of _10 or better.

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

   INITIALS: Contractor ___________ Subcontractor ___________

Cost Code: 05-570-3010A

WNC 080359
II. 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.

III. 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:
PARCEL 2
SAN JOSE, CA

GENERAL CONTRACTOR: WESTERN NATIONAL CONSTRUCTION
8 EXECUTIVE CIRCLE
IRVINE, CA 92614

OWNER/DEVELOPER: CILKER APARTMENTS LLC
1631 WILLOW STREET, SUITE 225
SAN JOSE, CA 95123

CONSTRUCTION LENDER: NA

IV. BILLING INSTRUCTIONS

- Subcontractor must use the Lien Release Package supplied by WESTERN NATIONAL CONSTRUCTION as a part of this Subcontract Agreement.
- Before submitting payment requests to this office, you must check with our 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.
- Each payment request should be in strict conformance with the above and should show the number of buildings or dwelling units, the particular activity for which you are billing, the unit price as agreed, and the retention as established herein.
- RETENTION: 10% Retention will be withheld.
- Payment requests should have attached to it a labor and material lien release on Western National Construction forms. The date of these releases must, of course, have the same date as the Payment Request Form.
- Invoices submitted to Western National Construction on a schedule which will be paid on the 10th of the following month.
- INVOICES MUST BE 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 materialman, subcontractor, laborers or suppliers concerned in said work.

INITIALS: Contractor ___ Subcontractor ___
TO: WESTERN NATIONAL CONSTRUCTION

DATE: AUGUST 9, 2002

SUBJECT: “HAZARDOUS MATERIALS DISCLOSURE STATEMENT”

Please be informed that you are obligated by “Proposition 65”, the OSHA Hazard Communications Standards, and all other local governing agencies to disclose to the General Contractor any hazardous materials being used or stored on any of our projects along with all applicable “Material Safety Data Sheets”.

To comply with the “Hazardous Materials Compliance Program” being implemented by WESTERN NATIONAL CONSTRUCTION, hazardous materials information will be on file in each construction site office for your employees review.

If you are working on more than one project, each project shall be disclosed separately.

If you have no hazardous materials involved in your trade, please sign the acknowledgement below and indicate “not applicable” and return to WESTERN NATIONAL CONSTRUCTION office at your earliest convenience.

If you will be disclosing information, please sign the acknowledgement below and return along with the necessary forms as soon as possible.

Compliance with this procedure will be monitored by the same way we monitor insurance compliance, therefore, failure to comply can hold up your invoices and payments.

If you have questions, please contact our office.

Acknowledgement:

Subcontractor’s Name Madera Construction

Trade Rough Framing

Applicable

Not Applicable

WNC 083361
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 foreman, 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 his 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 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 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 water, gas or irrigation lines, lighting, power or telephone conduits or wires or sewer lines, structures or house water, gas or irrigation lines.

   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 staves found on the site of the work without written permission from the Contractor, and he shall bear the expenses of properly resetting any monuments or staves 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 his 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, his Engineer, and local governmental agencies.

10. SUBSURFACE AND LATENT CONDITIONS

Variations in subsurface 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 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 in 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 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 in 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 8500 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, is 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 8500 feet per second, shall be paid for by the Subcontractor. The costs of delays shall also be paid for by the Subcontractor.

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 WDH 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 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 which the Subcontractor was relieved of removing by reason of required rock excavation. The quantity of the rock excavation shall be measured and certified in the field by the Engineer.

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

SUBCONTRACTOR:

MADERA CONSTRUCTION

By: [Signature]

By: Carl Round, President

Date: August 26, 2002

CONTRACTOR:

WESTERN NATIONAL CONSTRUCTION

By: [Signature]

By: Jim Enzer, Director of Construction

Date: 7-23-02

INITIALS: Contractor [Signature] Subcontractor [Signature]
Exhibit 3
MURPHY AUSTIN ADAMS SCHOENFELD LLP
1000 G Street, 3rd Floor
P.O. Box 1319
Sacramento, California 95812-1319
(916) 446-2300

FACSIMILE
(916) 503-4000

FACSIMILE TRANSMITTAL COVER SHEET

DATE: June 29, 2004

OUR FILE NO.: 761.002

RE: Madera Framing, Inc. v. WNC, et al.

Please deliver the following page(s) immediately to:

<table>
<thead>
<tr>
<th>Name/Company</th>
<th>Fax No.</th>
<th>Phone No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stephen P. Gorman, Esq.</td>
<td>408-297-2295</td>
<td>408-297-2000</td>
</tr>
</tbody>
</table>

From: J. Scott Alexander

Number of pages, including this page: 3

Note:

☒ Claim of Privilege

**WARNING TO RECIPIENT**

If the box above is checked, the information contained in this facsimile message is confidential information and is attorney/client privileged. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service.

[If you do not receive all pages or have any problems with receiving, please call Susan Hamilton at (916) 446-2300, extension 433]
June 29, 2004

Via Facsimile and U.S. Mail

Stephen P. Gorman, Esq.
1 Almaden Blvd., # 204
San Jose, California 95113

Re: Madera Framing v. Western National Construction, et al.
    Our File No: 761.002

Dear Mr. Gorman:

Per our telephone conversation yesterday afternoon, we request that you attend the ADR Status Conference on behalf of our firm and client, Madera Framing, Inc., which is scheduled for the 10:30 a.m. calendar in Department 16 on Thursday, July 1, 2004 in the Santa Clara County Superior Court. A copy of the notice is enclosed.

Please advise the Court that all parties mediated before Mr. Robert O’Connor of McDonough, Holland & Allen on Monday, June 28, 2004. A tentative resolution was reached, but the parties have not yet reduced the settlement agreement to writing pending clarification of certain issues pertaining to the scope of the release provisions. We request that the Court place the matter over for a further Status Conference in 60 to 90 days, by which time we will have either concluded the settlement agreement and dismissed the litigation or will be continuing with discovery.

Please call me to confirm your receipt of this correspondence, as well as to confirm that you will be making this appearance on behalf of our firm and client. We appreciate your prompt attention to this matter.

Very truly yours,

J. Scott Alexander

JSA:di

MURPHY AUSTIN
ADAMS SCHONFELD LLP

J. SCOTT ALEXANDER
DIRECT (916) 503-4000 Fax 207
salexander@murphyaustin.com

MFI 001386
TO: D. Michael Schoenfeld
Murphy Austin Adams Schoenfeld
Post Office Box 1319
Sacramento, CA 95812-1319

RE: MADERA FRAMING INC vs WESTERN NATIONAL CONSTRUCTION, et al
Case Nbr: 1-03-CV-010004

NOTICE OF MEDIATION STATUS CONFERENCE

The above entitled case has been referred to mediation per the parties' stipulation.

Within 20 days of the stipulation to mediation, the parties shall agree on a mediator and a mediation date. Within the same 20-day period, plaintiff's counsel shall complete and submit to the ADR Administrator, Elizabeth Strickland the enclosed ADR Stipulation and Order form, (Local Civil Rule 2(b)(2)).

The parties may use the court referral service by contacting Ms. Strickland at (408) 882-2156 or may make their own arrangements for a mediator, but must submit the ADR Stipulation and Order form in any event.

The Mediation Status Conference for the above entitled case is:
ON: 07/01/04 AT: 1030AM IN: Superior Dept 16
Superior Court, 191 N. 1st Street, San Jose, CA 95113

COPIES TO:

CC: Robert L. Green, Green & Hall
600 South Main Street, 12th Floor, Orange, CA 92868-4643

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's Office at (408) 882-2700, or use the Court's TDD line, (408) 862-2690 or the Voice/TDD California Relay Service, (800) 735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown above, and by depositing the envelope with postage fully prepaid, in the United States mail at San Jose, CA on 04/06/04. KIRI TORRE, Chief Executive Officer/Clerk by Jennifer Shanelec, Deputy

MFI 001387
Exhibit 4
IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

---oOo---

CILKER APARTMENTS, LLC,

Plaintiff,

vs. No. 113CV258281

WESTERN NATIONAL CONSTRUCTION,

et al.,

Defendants.

_______________________________/

AND ALL RELATED CROSS-ACTIONS.

_______________________________/

DEPOSITION OF J. SCOTT ALEXANDER

Taken before LETICIA A. RALLS, RPR

CSR No. 10070

March 15, 2016

Aiken Welch Court Reporters
One Kaiser Plaza, Suite 250
Oakland, California 94612
(510) 451-1580 (877) 451-1580
Fax: (510) 451-3797
www.aikenwelch.com
been a mediation as we are sitting here discussing this, but I don't have a specific recollection. I'm sure if I was, you'll show me something.

Q. I'll get there.

I'll show you what was marked as Exhibit 378 to Mr. Merry's deposition. And this is a three-page document. First appears to be a fax dated June 29th, 2004, from J. Scott Alexander to Stephen Gorman. If you can take a moment to look at the correspondence on the second page of this document?

MR. CASTRO: Sorry, Counsel. Is there a Bates number on that?

MR. COHEN: Sure. It's MFI 001385 through 1387.

MR. CASTRO: Thank you.

MR. COHEN: You're welcome.

THE WITNESS: Okay. I have looked at this document.

BY MR. COHEN:

Q. Okay. Do you have any recollection of having sent this document?

A. I do not. No, I do not.

Q. And that's your signature on the bottom of the page, correct?

A. Yeah, it appears to be.

Q. Do you know who Mr. Gorman is?
Exhibit 5
I am not in favor of the inclusion of the language "and not apparent by reasonable inspection as of the date this Agreement became fully executed." Nevertheless, it is ultimately the client's call on whether that is a deal breaker. Please forward a clean copy of the agreement via e-mail with the proposed change, and I will forward it on to my client for consideration.

Given the holiday weekend, it is very likely that we will be unable to get an answer back until Tuesday, July 6, at the earliest.

-----Original Message-----
From: V. Blair Shahbazian [mailto:BShahbazian@murphyaustin.com]
Sent: Thursday, July 01, 2004 8:42 AM
To: Michael Taurek
Cc: J. Scott Alexander
Subject: RE: Madera/Western

Using your paragraph, here is what we can agree to:

Notwithstanding the mutual release set forth above, the Settling Parties agree to expressly except from this Agreement, and shall continue to retain any and all claims, rights and defenses concerning, responsibility for future claims by third parties for personal injury, construction defects, and/or resultant property damage occurring at the Project or arising out of the work related to the Project, but only to the extent such claims arise out of conditions that were unknown to WNC and not apparent by reasonable inspection as of the date this Agreement became fully executed. Each of the Settling Parties represent that they are currently unaware of any such claim(s) or of any contention(s) by any third party.

-----Original Message-----
From: Michael Taurek [mailto:mtaurek@greenhall.com]
Sent: Wednesday, June 30, 2004 5:12 PM
To: V. Blair Shahbazian
Cc: J. Scott Alexander
Subject: RE: Madera/Western

While I have not talked to my client about it, how about if we include some additional language as follows:

Notwithstanding the mutual release set forth above, the settling parties agree to expressly except from this Agreement, and shall continue to retain any and all claims, rights and defenses concerning responsibility for future claims by third parties for personal injury, substandard workmanship, and/or resulting property damage occurring at the Project or arising out of the work related to the Project, but only to the extent such claims arise out of alleged conditions that were unknown to WNC at the time of entering into this Agreement. Each of the settling parties represent that they are currently unaware of any such claim(s) or of any contention(s) by any third party.

-----Original Message-----
From: V. Blair Shahbazian [mailto:BShahbazian@murphyaustin.com]
Sent: Wednesday, June 30, 2004 4:27 PM
To: Michael Taurek
Cc: J. Scott Alexander
Subject: RE: Madera/Western
The changes you suggest are not acceptable. Any defects of which your client knows or could know by reasonable investigation are being settled and must be released. That is why our client is agreeing to accept less than what it would otherwise be entitled to recover. Only those unknown claims or those claims not discoverable by reasonable investigation, or claims by third parties for personal injury or property damage are excepted. This is standard language in construction settlement agreements where there are claims of defects or substandard work and must be included in the settlement agreement here.

-----Original Message-----
From: Michael Taurek [mailto:mtaurek@greenhall.com]
Sent: Wednesday, June 30, 2004 4:01 PM
To: V. Blair Shambazian
Cc: J. Scott Alexander
Subject: RE: Madera/Western

I think all of the changes which you have made will be acceptable to WNC et al., with the exception of the strike out of defects in paragraph 5 on page 2. In reviewing the agreement, it seems to me that the release exception at paragraph 4 should be removed in its entirety. WNC has no intention of suing your client absent some claim by a third party. Paragraph 5 should remain, therefore, but it needs to include situations for substandard workmanship which do not result in text book "resultant non-economic" damage. A provision to the contrary would prevent WNC from filing an indemnity or contribution claim against your client in the event it was later discovered that WNC was being sued by a third party for improper nailing of shear walls. That would make no sense in my opinion. As alternatives, I propose that paragraph 5 reads as follows:

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> -----Original Message-----
> From: V. Blair Shambazian [mailto:BShambazian@murphyaustin.com]
> Sent: Wednesday, June 30, 2004 3:02 PM
> To: mtaurek@greenhall.com
> Cc: J. Scott Alexander
> Subject: Maders/Western
> > << Message: Untitled Attachment >> << File: 159447.wpd >> << File: 159448.wpd >>
> ___
> [This E-mail scanned for viruses by Declude Virus]
> ___
> [This E-mail scanned for viruses by Declude Virus]
V. Blair Shahbazian

From: Michael Taurek [mtaurek@greenhall.com]
Sent: Wednesday, June 30, 2004 5:12 PM
To: V. Blair Shahbazian
Cc: J. Scott Alexander
Subject: RE: Madera/Western

While I have not talked to my client about it, how about if we include some additional language as follows:

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To: Michael Taurek
Cc: J. Scott Alexander
Subject: RE: Madera/Western

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> To: mtaurek@greenhall.com
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> > << Message: Untitled Attachment >> << File: 159447.wpd >> << File: 159448.wpd >>
> --
> [This E-mail scanned for viruses by Declude Virus]
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> Sent: Wednesday, June 30, 2004 3:02 PM
> To: mtaurek@greenhall.com
> Cc: J. Scott Alexander
> Subject: Madera/Western
> > << Message: Untitled Attachment >> << File: 159447.wpd >> << File: 159448.wpd >>

[This E-mail scanned for viruses by Declude Virus]
Exhibit 6
refers to the interior work was provided the fax date

says January 27, 2004, which would mean that scope of

work was complete by -- presumably complete by that
time.

BY MR. ZIMMERMAN:

Q. Right. But my question is is that as you
tested earlier, the contract completion of

requirements pursuant to the subcontract is not complete

until the guarantee form is completed and returned to

Western; correct?

A. Correct.

Q. That did not happen in Cell-Crete's situation

based upon the documents until January of 2004; correct?

A. Correct.

Q. From what you've been shown, it has not

occurred as it relates to the hardrock. They never

provided that guarantee; is that correct?

MR. RYAN: Object. Calls for speculation.

MR. ZIMMERMAN: You can answer.

THE WITNESS: Nothing was presented to me that

showed the warranty letter, the guarantee letter. I
don't know whether they provided it or not.

MR. ZIMMERMAN: Okay. Let's have this marked.

(Exhibit No. 48 marked for

Identification.)
Exhibit 7
DEPOSITION OF V. BLAIR SHAHBAZIAN

Taken before LETICIA A. RALLS, RPR

CSR No. 10070

March 15, 2016

Aiken Welch Court Reporters
One Kaiser Plaza, Suite 250
Oakland, California 94612
(510) 451-1580  (877) 451-1580
Fax: (510) 451-3797
www.aikenwelch.com
when you're done please? Thank you.

(Witness reviews document.)

THE WITNESS: Okay.

BY MR. COHEN:

Q. Do you have any recollection with respect to the negotiation of that particular provision?

A. I have no recollection.

Q. Do you have an understanding as to what that provision intent was?

MR. BAZZANO: Objection. Calls for speculation.

MR. FISCHER: Join.

MR. CASTRO: Join.

THE WITNESS: I have no recollection of being part of this provision.

BY MR. COHEN:

Q. Okay.

A. Negotiating it.

Q. Let me show you what we marked as Exhibit 803 to Mr. Alexander's deposition this morning?

A. Okay.

Q. And this is an e-mail -- a collection of e-mails printed out, it says "V. Blair Shahbazian" on top. Do you see that?

A. I do.

Q. It's e-mails between yourself and Michael
Taurek. Do you know the name Michael Taurek?

A. I don't recall.

Q. Okay. If you could take a look for me? I'm going to the last page of the document, please -- or the exhibit, please?

A. M-hm.

Q. Sorry. Second to the last page; I apologize. And then at the bottom of the page, you see where it says "From," two-thirds of the way down, "V. Blair Shahbazian." Do you see that?

A. Yes.

Q. And it lists out your e-mail?

A. Yeah.

Q. That's your correct e-mail?

A. It is.

Q. Do you have any recollection of having sent that particular e-mail to Mr. Taurek?

MR. BAZZANO: Which e-mail are you referring to?

MR. COHEN: The June 30th, 2004, at 4:27 p.m.

MR. BAZZANO: Thank you.

THE WITNESS: I don't recollect this at all.

BY MR. COHEN:

Q. If you can take a look at the bottom where it says from Michael Taurek to yourself, June 30th, 2004, then going on to the next page, you see the body of the
ROBERT B. LUECK, ESQ. (83673)  
ALEXANDER R. MOORE, ESQ. (195509)  
JOHN A. CASTRO, ESQ. (273698)  
BOORNZIAN, JENSEN & GARTHE  
A Professional Corporation  
555 12th Street, Suite 1800  
Oakland, CA  94607  
Facsimile: (510) 839-1897  
Telephone: (510) 834-4350  

Attorneys for Defendant  
Madera Framing, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

CILKER APARTMENTS, LLC,  
Plaintiff,  
vs.  
WESTERN NATIONAL CONSTRUCTION,  
et al.,  
Defendants.  

Case No.: 113CV258281

NOTICE OF DEPOSIT OF DOCUMENTS BY MADERA FRAMING, INC.

Complaint Filed: March 20, 2014

Pursuant to Case Management Order No. 1, defendant MADERA FRAMING, INC. hereby deposits the following documents, Bates-stamped MFI00001 – MFI001372. The documents are herewith submitted to the document depository, located at Aiken & Welch, 111 N. Market Street, Suite 300, San Jose, California 95113, (877) 451-1580 as follows:

<table>
<thead>
<tr>
<th>DESCRIPTION OF DOCUMENTS</th>
<th>BATES RANGE</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>FROM</td>
</tr>
<tr>
<td>Madera Framing, Inc. Job File</td>
<td>MFI00001</td>
</tr>
</tbody>
</table>

Additionally, attached hereto as Exhibit A is MADERA FRAMING, INC.’s Privilege Log concerning documents withheld from production, pursuant to Case Management Order No. 1.

Please be further advised that MADERA FRAMING, INC. reserves the right to amend its Notice of Deposit during the course of litigation and to rely on and introduce any and all relevant
information to this action at the time of trial.

DATED: March 17, 2015

BOORNAZIAN, JENSEN & GARTH
A Professional Corporation

By:

ALEXANDER R. MOORE, ESQ.
JOHN A. CASTRO, ESQ.
Attorneys for Defendant Madera Framing, Inc.
EXHIBIT A
Privilege Log – Madera Framing, Inc.

<table>
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<tr>
<th>Bates</th>
<th>Description</th>
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<tbody>
<tr>
<td>MFI38-44</td>
<td>2/26/06 correspondence between Madera Framing, Inc. principal and defense counsel for same in unrelated personal injury matter; Attorney-client privilege.</td>
</tr>
<tr>
<td>MFI127-129</td>
<td>4/11/05 correspondence to defense counsel of Madera Framing, Inc. in unrelated personal injury matter; Attorney-client privilege; Work product.</td>
</tr>
<tr>
<td>MFI262-265</td>
<td>4/3/03 correspondence containing personal/identity information of Madera Framing, Inc. employees, and submitted to U.S. Department of Justice Immigration and Naturalization Service; Private information.</td>
</tr>
</tbody>
</table>
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

CILKER APARTMENTS, LLC, Case No.: 113CV258281
Plaintiff,

vs. NOTICE OF DEPOSIT #2 OF DOCUMENTS BY MADERA FRAMING, INC.

WESTERN NATIONAL CONSTRUCTION, et al.,
Defendants.

Complaint Filed: March 20, 2014

AND RELATED CROSS-ACTIONS.

Pursuant to Case Management Order No. 1, defendant MADERA FRAMING, INC. hereby deposits the following documents, Bates-stamped MFI001373 – MFI001380. The documents are herewith submitted to the document depository, located at Aiken & Welch, 111 N. Market Street, Suite 300, San Jose, California 95113, (877) 451-1580 as follows:

<table>
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<tr>
<th>DESCRIPTION OF DOCUMENTS</th>
<th>BATES RANGE</th>
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<tr>
<td>Madera Framing, Inc. Payroll Records</td>
<td>MFI001373</td>
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<td>MFI001380</td>
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Please be further advised that MADERA FRAMING, INC. reserves the right to amend its Notice of Deposit during the course of litigation and to rely on and introduce any and all relevant information to this action at the time of trial.
DATED: July 6, 2015

BOORNAZIAN, JENSEN & GARTHE
A Professional Corporation

By:
ALEXANDER R. MOORE, ESQ.
JOHN A. CASTRO, ESQ.
Attorneys for Defendant Madera Framing, Inc.
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

CILKER APARTMENTS, LLC, Case No.: 113CV258281

Plaintiff,

vs.

WESTERN NATIONAL CONSTRUCTION,

et al.

Defendants.

AND RELATED CROSS-ACTIONS.

Pursuant to Case Management Order No. 1, defendant MADERA FRAMING, INC. hereby deposits the following documents, Bates-stamped MFI001381 – MFI002328. The documents are herewith submitted to the document depository, located at Aiken & Welch, 111 N. Market Street, Suite 300, San Jose, California 95113, (877) 451-1580 as follows:

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<tr>
<td>From</td>
<td>To</td>
</tr>
<tr>
<td>Prior counsel’s case file re Madera Framing, Inc. v. Western National Construction, Santa Clara County Superior Court Case No. 1-03-CV-010004</td>
<td>MFI001381</td>
</tr>
</tbody>
</table>

A privilege log for the above-referenced document production is attached hereto as Exhibit A. Please be further advised that MADERA FRAMING, INC. reserves the right to amend its
Notice of Deposit during the course of litigation and to rely on and introduce any and all relevant information to this action at the time of trial.

DATED: September 3, 2015

BOORNAZIAN, JENSEN & GARTHE
A Professional Corporation

By:

ALEXANDER R. MOORE, ESQ.
JOHN A. CASTRO, ESQ.
Attorneys for Defendant/Cross-
Defendant Madera Framing, Inc.
# EXHIBIT A

## PRIVILEGE LOG

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<td>MFI1572-1625</td>
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<td>MFI2129-76</td>
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<tr>
<td>MFI2255-2328</td>
<td>Settlement and mediation</td>
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