MURRIETA, JAMES GIANULIAS, DAVID GIANULIAS, MAFFEI and DOES 1 through 30, Inclusive)

37. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the above paragraphs as though fully set forth herein.

38. Beginning on or about November 18, 2005, Plaintiff furnished and delivered to Defendants at their special insistence and request, certain labor and materials, *to wit*, installation of drywall work at the Work of Improvement, and, specifically, at the Murrieta 453/Village Walk Project; the agreed price and reasonable value of said labor and materials performed to date was and is the sum of $2,845,492.00, plus approved extras; and, there is now due and owing to Plaintiff, for or on account thereof, the sum of $1,661,723.13, in lawful money of the United States.

39. Plaintiff is informed and believes, and thereupon alleges, that Plaintiff's Scope of Work is necessary and required for the convenient use and occupation of the whole of the land defined above as the Work of Improvement.

40. Plaintiff is informed and believes, and thereupon alleges, that Defendants G COMPANIES, MURRIETA, JAMES GIANULIAS, DAVID GIANULIAS, MAFFEI and DOES 1 through 30, Inclusive, have received full value and consideration for the labor, services and materials Plaintiff provided to and on behalf of Defendants G COMPANIES, MURRIETA, JAMES GIANULIAS, DAVID GIANULIAS, MAFFEI and DOES 1 through 30, Inclusive, used and consumed in Plaintiff's performance and its work, and now enjoy the benefits and value of said labor, services and materials so furnished and used, *to wit*, drywall work at the Work of Improvement.

41. On or about January 15, 2008, Plaintiff duly filed and recorded, as Instrument No. 2008-0022501, in the Office of the County Recorder of the County of Riverside, State of California, the same being the county in which the Work of Improvement is located, a Mechanic's Lien duly verified by its own oath containing a statement of demand in the sum of $1,661,723.13, the names of the owners of the Subject Work of Improvement, together with a general statement of the kind of labor and

materials furnished by Plaintiff, the name of the person by whom Plaintiff was employed and to who and for whom Plaintiff furnished said labor and materials, and a description of the property sought to be charged for said lien sufficient for identification, which said Mechanic's Lien was filed for record. A true and correct copy of the Mechanic's Lien is attached hereto as Exhibit "B," and incorporated herein by this reference, as though fully set forth at length.

42. Ninety (90) days have not elapsed or expired since the filing of the Mechanic's Lien.

43. Plaintiff is informed and believes, and thereupon alleges, that prior to the filing of Plaintiff's Mechanic's Lien, a Notice of Completion of the Work of Improvement has not been filed nor recorded in the Office of the County Recorder of the County of Riverside.

44. Plaintiff has paid a necessary charge and expense for recording said Mechanic's' Lien in the sum of $12.00 which has not been repaid to Plaintiff.

45. Plaintiff is informed and believes, and thereupon alleges, that all of the Defendants set forth above have or claim to have some right, title or interest in the Work of Improvement, the exact nature of which are unknown to Plaintiff at this time but which claims are subject and subordinate to the claim of lien of Plaintiff herein.

SIXTH CAUSE OF ACTION

(For Enforcement of Bonded Stop Notice Against Defendant BANK OF THE WEST)

46. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the above paragraphs as though fully set forth herein.

47. Plaintiff is informed and believes, and thereupon alleges, that Defendant BANK OF THE WEST was the construction lender on the Work of Improvement and, on or about February 7, 2008, was holding or controlling funds from which to pay costs due or to become due to Defendant G COMPANIES on the Work of Improvement in a sum unknown to Plaintiff but known to Defendants.

48. On or about February 7, 2008, the amount of $1,661,723.13 remained owing and unpaid to Plaintiff for the supervision, labor, materials, services, tools and equipment, or a combination thereof Plaintiff provided at the Subject Work of Improvement and, on that date Plaintiff served on Defendant BANK OF THE WEST a stop notice verified by Plaintiff and accompanied the stop notice with a bond with good and sufficient sureties conforming to the requirements of *Civil Code* § 3083. A copy of the stop notice is attached as Exhibit "C" and is incorporated herein by reference. Plaintiff expended additional sums as premiums on the bond, in an amount according to proof.

SEVENTH CAUSE OF ACTION

(For Conversion Against Defendants G COMPANIES, JAMES GIANULIAS, DAVID GIANULIAS, MAFFEI and DOES 1 through 30, Inclusive)

49. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the above paragraphs as though fully set forth herein.

50. Plaintiff has a right to possession of a portion of the construction funds in the amount of $1,661,723.13 for the services, labor, supervision, equipment, permits, licenses, insurance, transportation, supplies, and materials furnished and performed by Plaintiff to Defendants pursuant to the terms of the Subcontract, and which Defendants agreed to pay.

51. Defendants, and each of them, interfered with Plaintiff's right to possession of this property by failing to pay to Plaintiff the amount of $1,661,723.13 owed pursuant to the terms of the Subcontract.

52. Defendants' interference of Plaintiff's right to possession of this property was knowing and/or intentional which caused Plaintiff harm in that Plaintiff is yet to be paid fully for the services, labor, supervision, equipment, permits, licenses, insurance, transportation, supplies, and materials furnished and performed by Plaintiff at the Work of Improvement.

53. The taking and conversion of the construction funds by Defendants was done willfully and maliciously, with a reckless disregard for the rights and interests of Plaintiff. After demand was made upon Defendants for payments of the amounts outstanding from the construction funds, Defendants willfully and maliciously refused to remit payment to Plaintiff. For such willful and malicious acts on the part of Defendants, and each of them, Plaintiff seeks exemplary damages in addition to its actual damages, to conform to proof at trial.

54. In addition, for the foregoing reasons, a constructive trust should be imposed upon the property Defendants wrongfully hold, including the diverted, misappropriated and converted construction funds in the amount of $1,661,723.13, plus interest at the legal rate of ten percent (10%) in favor of Plaintiff.

EIGHTH CAUSE OF ACTION

(For Misappropriation of Construction Funds Against Defendants G COMPANIES, JAMES GIANULIAS, DAVID GIANULIAS, MAFFEI and DOES 1 through 30, Inclusive)

55. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the above paragraphs as though fully set forth herein.

56. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and each of them, obtained a loan for the purpose of funding the construction of the Subject Work of Improvement. Plaintiff entered into the Subject Subcontract to provide services, labor, supervision, equipment, permits, licenses, insurance, transportation, supplies, and materials at the Subject Work of Improvement in reliance upon and in exchange for payment of its costs as agreed in the Subject Subcontract. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff was to be paid out of the construction loan obtained by Defendants, and each of them.

57. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and each of them, used the construction funds for purposes other than payment of the outstanding amount owed to Plaintiff for the services, labor, supervision,

equipment, permits, licenses, insurance, transportation, supplies, and materials Plaintiff provided at the Work of Improvement. Due to this misappropriation of construction funds, Plaintiff sustained damages in the amount of $1,661,723.13, for labor and materials provided by Plaintiff at Defendants' special insistence and request, and for which it has not been paid.

PRAYER

WHEREFORE, Plaintiff prays for judgment against all Defendants, and each of them, as follows:

ON THE FIRST CAUSE OF ACTION

(For Damages for Breach of Contract Against Defendants G COMPANIES, JAMES GIANULIAS, DAVID GIANULIAS, MAFFEI and DOES 1 through 30, Inclusive)

(1) For compensatory damages in a principal amount of $1,661,723.13, plus interest thereupon at the legal rate, according to proof;

ON THE SECOND CAUSE OF ACTION

(For Quantum Merit Against Defendants G COMPANIES, MURRIETA, JAMES GIANULIAS, DAVID GIANULIAS, MAFFEI and DOES 1 through 30, Inclusive)

(2) For compensatory damages in a principal amount of $1,661,723.13, plus interest thereupon at the legal rate, according to proof;

ON THE THIRD CAUSE OF ACTION

(For Account Stated Against Defendants G COMPANIES, JAMES GIANULIAS, DAVID GIANULIAS, MAFFEI and DOES 1 through 30, Inclusive)

(3) For compensatory damages in a principal amount of $1,661,723.13, plus interest thereupon at the legal rate, according to proof;

ON THE FOURTH CAUSE OF ACTION

(For Open Book Account Against Defendants G COMPANIES, JAMES GIANULIAS, DAVID GIANULIAS, MAFFEI and DOES 1 through 30, Inclusive)

(4) For compensatory damages in a principal amount of $1,661,723.13, plus interest thereupon at the legal rate, according to proof;

(5) For attorneys' fees and costs pursuant to *California Civil Code* Section 1717.5;

ON THE FIFTH CAUSE OF ACTION

(For Foreclosure of Mechanic's Lien Against Defendants G COMPANIES, MURRIETA, JAMES GIANULIAS, DAVID GIANULIAS, MAFFIE and DOES 1 through 30, Inclusive)

(6) For compensatory damages in a principal amount of $1,661,723.13;

(7) For accrued interest thereupon at a rate of eighteen percent (18%), or the maximum available at law, per annum from on or about November 18, 2005;

(8) For accrued interest thereupon at the rate of two percent (2%) per month, from on or about November 18, 2005, pursuant to *Cal. Civ. Code* Section 3260 and/or *Cal. Bus. and Prof. Code* Section 7108.5;

(9) That said amounts (as stated in Paragraphs 6 and 7 above) be adjudged to be a lien on the Work of Improvement and on all of the real property referenced in this Complaint, and that said real property be adjudged and decreed to be sold by the Sheriff of the County of Riverside, State of California, according to the law and practice of this Court, and that the proceeds of said sale be applied to satisfy the costs of sale and the costs of these proceedings and Plaintiff's claim as aforesaid;

(10) That the interest, estate or claim of all of the Defendants, and each of them, in, to or upon the Subject Work of Improvement and all of the real property referenced in this Complaint, and every part thereof, be adjudged and decreed to be subsequent and subject to Plaintiff's lien as aforesaid; and the equity of redemption of each and every said Defendant in or to said real property be forever barred and foreclosed;

(11) That Plaintiff or any party to this action may become a purchaser at such sale; and that Plaintiff be granted such other, further or general relief as may be met and proper and according to equity; and

(12) That if the proceeds of said sale be insufficient to satisfy the aforesaid sums due Plaintiff, that Plaintiff have judgment and execution against the Defendants, and each

of them, for any deficiency that may arise after the application of said proceeds;

ON THE SIXTH CAUSE OF ACTION

(For Enforcement of Bonded Stop Notice Against Defendant BANK OF THE WEST)

(13) For compensatory damages in a principal amount of $1,661,723.13, plus interest thereupon at the legal rate, according to proof;

(14) That it be ordered that the stop notice claim of Plaintiff in the amount of $1,661,723.13, including the premium on the stop notice bond, together with costs incurred by Plaintiff in bringing this action, be decreed to be an equitable garnishment and lien on the funds that Defendant BANK OF THE WEST had in its possession at the time of service of the stop notice alleged in this complaint, and that a constructive trust be imposed on such funds for the benefit of Plaintiff, and that Plaintiff have judgment against this Defendant for the amount so adjudged. If it is determined that this Defendant improperly disbursed any part of such funds, and that there now are inadequate funds because of such disbursement to satisfy the claim of Plaintiff in full, that Plaintiff have a personal judgment against Defendant for the amount improperly disbursed.

(15) For reasonable attorneys' fees and costs, together with the costs of suit herein incurred;

ON THE SEVENTH CAUSE OF ACTION

(For Conversion Against Defendants G COMPANIES, JAMES GIANULIAS, DAVID GIANULIAS, MAFFEI and DOES 1 through 30, Inclusive)

(16) For compensatory damages in a principal amount of $1,661,723.13, plus interest thereupon at the legal rate, according to proof;

(17) Exemplary damages for the willful and malicious acts of Defendants, plus interest thereupon at the legal rate, according to proof;

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ON THE EIGHTH CAUSE OF ACTION

(For Misappropriation of Construction Funds Against Defendants G COMPANIES, JAMES GIANULIAS, DAVID GIANULIAS, MAFFEI and DOES 1 through 30, Inclusive)

(18) For compensatory damages in a principal amount of $1,661,723.13, plus interest thereupon at the legal rate, according to proof;

(19) Exemplary damages for the willful and malicious acts of Defendants, plus interest thereupon at the legal rate, according to proof;

ON ALL CAUSES OF ACTION

(20) For damages in an amount to be proven at trial;

(21) For costs of suit herein incurred; and

(22) For any such other and further relief as this Court deems just and proper.

DATED: February 19, 2008

HINES SMITH CARDER

By: _____
Marc S. Hines, Esq.
Michelle A. Chiongson, Esq.
Attorneys for Plaintiff
CAPITAL DRYWALL, LP

Exhibit "A"

G COMPANIES CONSTRUCTION, INC.
1105 Quail Street
Newport Beach, CA 92660

411474

TO: CAPITAL DRYWALL
ATTENTION: FRANK SCARDINO
ADDRESS: 1341 WEST ARROW HIGHWAY
SAN DIMAS CA 91773
PHONE: 909-599-6729
FAX: 909-599-5052

DATE: January 27, 2006
PROJECT: MURRIETA 453/VILLAGE WALK
TRANSMITTAL NO.: 071

SUBJECT: **EXECUTED CONTRACT**

SENT VIA: [x] U.S. MAIL [ ] OVERNIGHT [ ] MESSENGER
[ ] CERTIFIED MAIL [ ] HAND DELIVER [ ] OTHER: _____

COMMENTS: Enclosed, please find your executed contract for Murrieta 453/Village Walk

FOR YOUR: [X] REVIEW [ ] SIGNATURE [ ] COMMENT
[ ] APPROVAL [ ] FILE [ ] OTHER: _____

FROM: Jennifer Grooms
G Companies Construction, Inc.
1105 Quail Street
Newport Beach, CA 92660
PHONE: (949) 955-3832
FAX: (949) 752-7108

G COMPANIES CONSTRUCTION, INC.
SUBCONTRACT AGREEMENT

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THIS SUBCONTRACT, entered into this 18th day of November, 2005, by and between G Companies Construction, Inc., 1105 Quail Street, Newport Beach, CA 92660, (949) 955-3238 Phone, (949) 752-7108 Fax, herein called the "Contractor" and Capital Drywall Inc., 1341 West Arrow Highway, San Dimas, CA 91773 (909) 599-6729 Phone, (909) 599-5052 Fax, herein called the "Subcontractor".

RECITAL

Contractor proposes to construct, develop and/or subdivide a tract of land (the "Project") commonly known as Village Walk/Murrieta 453, County of Riverside, State of California (the "Property"). The construction of the Project is to be in strict accordance with the provisions and requirements set forth in the plans, specifications, and any other document listed in Schedule B attached hereto; all of these documents are on file and available during business hours for inspection and review at Contractor's principal office. Such documents are herein designated as the "Contract Documents" and are incorporated herein by this reference. These Contract Documents are intended to complement and supplement each other, and work described in one document but not in another shall nonetheless be executed as if such were described in all documents. Inasmuch as various Contract Documents have been approved and comply with County, City and financial institution requirements, it is essential that Subcontractor proceed and perform his work in exact conformity with the applicable portions of the Contract Documents.

NOW THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. **FINANCING CONDITION/TERMINATION FOR CONVENIENCE:** This Subcontract is subject to and contingent upon the Project's Owner(s) obtaining sufficient construction loans from time to time for the Project. Contractor may at any time, and for any reason, including the Project's Owner(s) inability to obtain sufficient construction loans for the Project, terminate the work and services of Subcontractor under this Subcontract for Contractor's convenience upon three (3) days written notice. Upon receipt of such notice, Subcontractor shall, unless otherwise directed, immediately discontinue the work and the placing of orders for materials in connection with the performance of this Subcontract, and shall thereafter do only such work as may be necessary to preserve and protect the work in progress. Upon such termination, Subcontractor shall be entitled to compensation and payment (a) for the percentage of the work completed in conformity with the Subcontract multiplied by the Contract Price, and (b) other costs actually incurred by Subcontractor for the performance of termination-related tasks as may be directed and approved by Contractor. There shall be deducted from such compensation the amount of any payments made to Subcontractor prior to the termination and any amounts chargeable to Subcontractor pursuant to any provision of the Subcontract. In the event of such termination and payment, Subcontractor shall not be entitled to any claim or claim of lien against Contractor or the Property for any additional compensation or damages.

2. **DOCUMENTS:** The Contract Documents describe the work to be performed by Subcontractor under this Subcontract, and Subcontractor shall be bound to Contractor in the same manner and to the same extent as Contractor is bound to the Owner under the Contract Documents. Subcontractor acknowledges that he has carefully examined and studied the Contract Documents in their entirety. Subcontractor further acknowledges that the work of the various subcontractors for the Project is interrelated, and Subcontractor fully understands the character of the work to be performed by him under the Contract Documents. Subcontractor has investigated the site and is satisfied as to the conditions to be encountered during his operations. Subcontractor shall not in any respect rely upon any representations to him by any person on behalf of the Contractor, but shall rely solely upon his own investigations. Commencing work shall indicate acceptance of conditions and surfaces underlying or adjacent to work of this Agreement.

3. **WORK COVERED:** Subcontractor agrees to perform in good and workmanlike manner, and to furnish to the Project all labor, materials (all materials shall be new unless otherwise specified by Contractor), supplies, equipment, services, machinery, tools and other facilities of every description required for the prompt and efficient execution of the work (the "Job") as outlined in Schedule A attached hereto. Subcontractor shall be obligated to perform the Job in strict compliance with the Contract Documents and the provisions of this Subcontract. It is agreed that all labor, materials and equipment furnished by Subcontractor that are properly and necessarily required to perform and provide a complete Job shall be deemed to be included within the Contract Price, even though all items of labor, materials and equipment may not specifically be mentioned in this Subcontract or the Contract Documents.

4. **CONTRACT PRICE:** For the strict (not substantial) performance by Subcontractor of all of its obligations hereunder, Contractor shall pay to Subcontractor the sum of TWO MILLION EIGHT HUNDRED FORTY-FIVE THOUSAND FOUR HUNDRED NINETY-TWO AND 00/100 Dollars ($2,845,492.00) attached hereto, subject to additions and deductions as provided in this Subcontract.

5. **PAYMENT SCHEDULE:** So long as Subcontractor is not in default under any of the provisions of this Subcontract, periodic payments will be made for the work as it progresses in an amount equal to ninety percent (90%) of the value of the work and materials incorporated in the construction as estimated by the Contractor. The amount estimated will be determined by using unit price or prices specified in Schedule D attached hereto and shall be in accordance with the payment schedule set forth therein. With respect to the work covered by any request for a progress payment, Contractor shall not be obligated to make the progress payments to Subcontractor until Contractor has received:

(a) Inspections and approvals of Subcontractor's work hereunder, if required and available, from City, County and other public agencies;

(b) Waiver and lien releases, in a form satisfactory to Contractor, from Subcontractor, all sub-subcontractors, laborers, materialmen, trust funds, and other persons and entities who may be potential lien claimants against the Property, evidencing that all labor, materials, equipment, union benefits, payroll taxes and other similar items furnished in connection with the performance of the work under this Subcontract have been paid.

Contractor may deduct from any amounts due or to become due to Subcontractor any sum or sums owning by Subcontractor to Contractor under this Agreement on account of any other obligation, liability or contract unrelated to this Agreement, and in the event of any breach by Subcontractor of any provision or obligation of this Agreement, or in the event of the assertion by other parties of any claim or lien against Contractor or the construction site arising out of Subcontractor's performance of this Agreement, Contractor shall have the right, but is not required, to retain out of any payments due or to become due to Subcontractor an amount sufficient to completely protect Contractor from any and all loss, damage, or expense therefrom until the situation has been remedied or adjusted by Subcontractor to the satisfaction of Contractor. If Contractor exercises this right in good faith, Subcontractor shall not be entitled to any interest whatsoever on the money so retained regardless of the outcome of any subsequent claim resolution or litigation.

Initial