

07-1656-CD  
Richard Gulish vs Sunrise Homes

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

RICHARD SCOTT GULISH and  
GARY L. CRAGO,

Plaintiffs

vs.

SUNRISE HOMES,

Defendant

)  
)  
) No. 07-1656-CD  
)  
) Type of Case: Civil Action  
)  
) Type of Pleading: Notice of Appeal  
) from Magisterial District Judge  
) Judgment  
)  
) File on Behalf of: Defendant  
)  
) Counsel of Record for this Party:  
) Scott C. Etter, Esquire  
) I.D. No.: PA72789  
) Brian K. Marshall, Esquire  
) I.D. No.: PA87331  
) MILLER, KISTLER, CAMPBELL,  
) MILLER, WILLIAMS & BENSON, INC.  
) 720 S. Atherton Street  
) State College, PA 16801  
) 814-234-1500

**FILED** *Atty Marshall*  
*11/10/07* *pd. 85.00*  
OCT 11 2007

William A. Shaw  
Prothonotary/Clerk of Courts

1 CC to Piffs

*Atty Marshall*  
*MST Hawkins*

## COMMONWEALTH OF PENNSYLVANIA

## COURT OF COMMON PLEAS

Judicial District, County Of Clearfield

## NOTICE OF APPEAL

FROM

## MAGISTERIAL DISTRICT JUDGE JUDGMENT

COMMON PLEAS No. 07-1656-CD

## NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the Magisterial District Judge on the date and in the case referenced below.

NAME OF APPELLANT Sunrise Homes		MAG. DIST. NO. 46-3-04	NAME OF MDJ James L. Hawkins	
ADDRESS OF APPELLANT 2790 West College Avenue,		CITY State College	STATE PA	ZIP CODE 16801
DATE OF JUDGMENT 10/2/07	IN THE CASE OF (Plaintiff) Richard Scott Gulish & Gary L. Crago v. Sunrise Homes (Defendant)			
DOCKET No.		SIGNATURE OF APPELLANT OR ATTORNEY OR AGENT		
<p>This block will be signed ONLY when this notation is required under Pa. R.C.P.D.J. No. 1008B.</p> <p>This Notice of Appeal, when received by the Magisterial District Judge, will operate as a SUPERSEDEAS to the judgment for possession in this case.</p> <p>_____ Signature of Prothonotary or Deputy</p>		<p>If appellant was Claimant (see Pa. R.C.P.D.J. No. 1001(6) in action before a Magisterial District Judge, A COMPLAINT MUST BE FILED within twenty (20) days after filing the NOTICE of APPEAL.</p>		

## PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

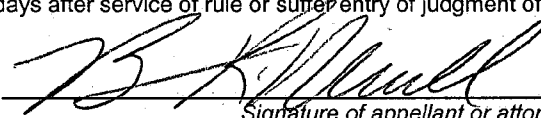
(This section of form to be used ONLY when appellant was DEFENDANT (see Pa.R.C.P.D.J. No. 1001(7) in action before Magisterial District Judge. IF NOT USED, detach from copy of notice of appeal to be served upon appellee.

PRAECIPE: To Prothonotary

Enter rule upon Richard Scott Gulish and Gary L. Crago appellee(s), to file a complaint in this appeal

Name of appellee(s)

(Common Pleas No. 07-1656-CD) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

  
Signature of appellant or attorney or agent

RULE: To Richard Scott Gulish &amp; Gary L. Crago, appellee(s)

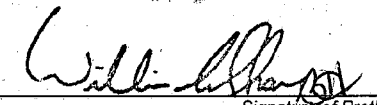
Name of appellee(s)

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS MAY BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of the mailing.

Date: Oct. 11, 2007

  
Signature of Prothonotary or Deputy

YOU MUST INCLUDE A COPY OF THE NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH THIS NOTICE OF APPEAL.

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.: **46-3-04**  
MDJ Name: Hon. **JAMES L. HAWKINS**  
Address: **251 SPRING ST  
PO BOX 362  
HOUTZDALE, PA**  
Telephone: **(814) 378-7160** **16651-0362**

**ATTORNEY DEF PRIVATE :**

**BRIAN K. MARSHALL  
720 S ATHERTON ST  
STATE COLLEGE, PA 16801**

**NOTICE OF JUDGMENT/TRANSCRIPT  
CIVIL CASE**

PLAINTIFF: NAME and ADDRESS  
**RICHARD SCOTT GULISH & GARY L. CRAGO  
940 SUE ST.  
HOUTZDALE, PA 16651**

VS.  
DEFENDANT: NAME and ADDRESS  
**SUNRISE HOMES  
2790 WEST COLLEGE AVE.  
STATE COLLEGE, PA 16801**

Docket No.: **CV-0000107-07**  
Date Filed: **8/17/07**



**THIS IS TO NOTIFY YOU THAT:**

Judgment: **FOR PLAINTIFF** (Date of Judgment) **10/02/07**

☒ Judgment was entered for: (Name) **RICHARD SCOTT GULISH, & GARY**

☒ Judgment was entered against: (Name) **SUNRISE HOMES**  
in the amount of \$ **6,473.93**

☐ Defendants are jointly and severally liable.

☐ Damages will be assessed on Date & Time \_\_\_\_\_

☐ This case dismissed without prejudice.

☐ Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127  
\$ \_\_\_\_\_

☐ Portion of Judgment for physical damages arising out of  
residential lease \$ \_\_\_\_\_

Amount of Judgment	\$ <b>6,346.43</b>
Judgment Costs	\$ <b>127.50</b>
Interest on Judgment	\$ <b>.00</b>
Attorney Fees	\$ <b>.00</b>
<b>Total</b>	<b>\$ 6,473.93</b>
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
<b>Certified Judgment Total</b>	<b>\$ _____</b>

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

EXCEPT AS OTHERWISE PROVIDED IN THE RULES OF CIVIL PROCEDURE FOR MAGISTERIAL DISTRICT JUDGES, IF THE JUDGMENT HOLDER ELECTS TO ENTER THE JUDGMENT IN THE COURT OF COMMON PLEAS, ALL FURTHER PROCESS MUST COME FROM THE COURT OF COMMON PLEAS AND NO FURTHER PROCESS MAY BE ISSUED BY THE MAGISTERIAL DISTRICT JUDGE.

UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE MAGISTERIAL DISTRICT JUDGE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES, OR OTHERWISE COMPLIES WITH THE JUDGMENT.

**10-2-07** Date *James L. Hawkins*, Magisterial District Judge

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

\_\_\_\_\_, Date \_\_\_\_\_, Magisterial District Judge

My commission expires first Monday of January, **2012**

SEAL

AOPC 315-07

**DATE PRINTED: 10/02/07 11:22:00 AM**

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.: **46-3-04**  
MDJ Name: Hon. **JAMES L. HAWKINS**  
Address: **251 SPRING ST  
PO BOX 362  
HOUTZDALE, PA**  
Telephone: **(814) 378-7160 16651-0362**

**JAMES L. HAWKINS  
251 SPRING ST  
PO BOX 362  
HOUTZDALE, PA 16651-0362**

**NOTICE OF JUDGMENT/TRANSCRIPT  
CIVIL CASE**

PLAINTIFF: NAME and ADDRESS  
**RICHARD SCOTT GULISH & GARY L. CRAGO  
940 SUE ST.  
HOUTZDALE, PA 16651**

VS.  
DEFENDANT: NAME and ADDRESS  
**SUNRISE HOMES  
2790 WEST COLLEGE AVE.  
STATE COLLEGE, PA 16801**

Docket No.: **CV-0000107-07**  
Date Filed: **8/17/07**



**THIS IS TO NOTIFY YOU THAT:**

Judgment: **FOR PLAINTIFF** (Date of Judgment) **10/02/07**

☒ Judgment was entered for: (Name) **RICHARD SCOTT GULISH, & GARY**

☒ Judgment was entered against: (Name) **SUNRISE HOMES**  
in the amount of \$ **6,473.93**

☐ Defendants are jointly and severally liable.

☐ Damages will be assessed on Date & Time \_\_\_\_\_

☐ This case dismissed without prejudice.

☐ Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127  
\$ \_\_\_\_\_

☐ Portion of Judgment for physical damages arising out of  
residential lease \$ \_\_\_\_\_

Amount of Judgment	\$ <b>6,346.43</b>
Judgment Costs	\$ <b>127.50</b>
Interest on Judgment	\$ <b>.00</b>
Attorney Fees	\$ <b>.00</b>
<b>Total</b>	\$ <b>6,473.93</b>
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
<b>Certified Judgment Total</b>	\$ _____

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

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UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE MAGISTERIAL DISTRICT JUDGE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES, OR OTHERWISE COMPLIES WITH THE JUDGMENT.

**FILED**  
OCT 15 2007

William A. Shaw  
Prothonotary/Clerk of Courts

10-2-07 Date James L. Hawkins, Magisterial District Judge

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

10-12-07 Date James L. Hawkins, Magisterial District Judge

My commission expires first Monday of January, **2012**

SEAL

**CIVIL COMPLAINT**

Mag. Dist. No.: **46-3-04**  
MDJ Name: Hon. **JAMES L. HAWKINS**  
Address: **251 SPRING ST**  
**PO BOX 362**  
**HOUTZDALE, PA 16651-0362**  
Telephone: **(814) 378-7160**

PLAINTIFF: NAME and ADDRESS  
[ **RICHARD SCOTT GULISH & GARY L. CRAGO** ]  
**D. B. A.**  
**GULISH & CRAGO LANDSCAPING L.L.C.**  
**940 SUE ST**  
**L HOUTZDALE, PA 16651** ]  
**VS.**  
DEFENDANT: NAME and ADDRESS  
[ **BARRY BEGUMIAN** ]  
**SUNRISE HOMES** ✓  
**2790 WEST COLLEGE AVE.**  
**L STATE COLLEGE, PA 16801** ]

	AMOUNT	DATE PAID
FILING COSTS	\$ <u>127.50</u>	<u>8/17/07</u>
POSTAGE	\$ _____	<u>/ /</u>
SERVICE COSTS	\$ _____	<u>/ /</u>
CONSTABLE ED.	\$ _____	<u>/ /</u>
 TOTAL	\$ _____	<u>/ /</u>

Docket No.: **CV 107-07**  
Date Filed: **8-17-07**



Pa.R.C.P.D.J. No. 206 sets forth those costs recoverable by the prevailing party.

TO THE DEFENDANT: The above named plaintiff(s) asks judgment against you for \$ 6346.43 together with costs upon the following claim (Civil fines must include citation of the statute or ordinance violated):

**WE ARE SUEING BECAUSE OF NONPAYMENT OF SERVICES.**  
**FOR MISC. LANDSCAPE INSTALLATIONS & MAINTANENCE.**  
**THE FOLLOWING IS A LIST OF INVOICE #S.**

**200 356**  
**333 331**  
**328**

I, **RICHARD SCOTT GULISH**, verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of Section 4904 of the Crimes Code (18 PA. C.S. § 4904) related to unsworn falsification to authorities.

  
(Signature of Plaintiff or Authorized Agent)

Plaintiff's Attorney: **GIRARD KASUBICK** Address: **611 BRISBEN ST**  
Telephone: **814-378-7840** **HOUTZDALE, PA 16651**

IF YOU INTEND TO ENTER A DEFENSE TO THIS COMPLAINT, YOU SHOULD NOTIFY THIS OFFICE IMMEDIATELY AT THE ABOVE TELEPHONE NUMBER. YOU MUST APPEAR AT THE HEARING AND PRESENT YOUR DEFENSE. UNLESS YOU DO, JUDGMENT MAY BE ENTERED AGAINST YOU BY DEFAULT.

If you have a claim against the plaintiff which is within magisterial district judge jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office at least five days before the date set for the hearing.

**If you are disabled and require a reasonable accommodation to gain access to the Magisterial District Court and its services, please contact the Magisterial District Court at the above address or telephone number. We are unable to provide transportation.**

# CIVIL/LANDLORD TENANT WORKSHEET



Case Name: <b>RICHARD SCOTT GULISH, &amp; GARY VS BARRY BEGOUMIAN</b>	Docket No.: <b>CV-0000107-07</b>
---	----------------------------------

Hearing Date: 10/02/07 Hearing Time: 9:30 A

Cross Complaint Filed (Date): \_\_\_\_\_ Cross Complaint Amount: \$ \_\_\_\_\_

☒ Defendant intends to defend (Date): 8/29/07 ☐ Stayed on (Date): \_\_\_\_\_

☒ Plaintiff so notified (Date): 8/29/07 ☐ Stayed until further notice.

☒ Hearing was held on (Date): 10-2-07 Defendant appeared at hearing:

☒ Defendant did not appear. His Atty. Did! ☐ Not represented.

☐ Plaintiff did not appear. ☐ Represented by: \_\_\_\_\_

Residential Lease ? ☐ Y ☐ N

## DISPOSITION

☒ Judgment for plaintiff: R.S.G. + Gulish & Crago Land. LLC  
(Name)

☐ Judgment for defendant: \_\_\_\_\_  
(Name)

Judgment entered on (Date): 10-2-07 Notice of judgment given on (Date): Please mail

The amount of rent per month as established by the Magisterial District Judge, is \$ \_\_\_\_\_

The total amount of the Security Deposit is \$ \_\_\_\_\_

	Total Amount Established by MDJ Less	Security Deposit Applied =	Adjudicated Amount
Rent in Arrears	\$ _____	-\$ _____	= \$ _____
Physical Damages Leasehold Property	\$ _____	-\$ _____	= \$ _____
Damages/Unjust Detention	\$ _____	-\$ _____	= \$ _____
	Less Amt. Due Defendant from Cross Complaint - \$ _____		
<input type="checkbox"/> Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127	Interest (if provided by lease) \$ _____		
<input type="checkbox"/> Defendants are jointly and severally liable.	Amount of Judgment \$ <u>6,346.43</u>		
<input type="checkbox"/> Possession granted.	Judgment Costs <u>→</u> \$ <u>127.50</u>		
<input type="checkbox"/> Possession not granted.	Attorney Fees \$ _____		
<input type="checkbox"/> Grant Possession if money Judgment is not Satisfied by time of eviction.	Total Judgment \$ <u>6473.93</u>		

☐ Order for Possession Requested

☐ Order for Possession Issued

☐ Order for Possession Reissued

☐ Appeal Filed

☐ Supersedeas Attached

☐ Supersedeas Terminated

☐ Dismissed without prejudice (Date): \_\_\_\_\_

☐ Transferred to (Date): \_\_\_\_\_

☐ Settled (Date): \_\_\_\_\_

☐ Damages will be assessed on (Date): \_\_\_\_\_ (Time): \_\_\_\_\_

☐ Levy is stayed for \_\_\_\_\_ days, or

☐ Objection to Levy has been filed and a hearing will be held on (Date): \_\_\_\_\_ (Time): \_\_\_\_\_

☐ Objection to levy denied; sale to be rescheduled

☐ Judgment and cost satisfied (Date): \_\_\_\_\_  
(By whom notified): \_\_\_\_\_

☐ Continued to (Date): \_\_\_\_\_ (Time): \_\_\_\_\_

At the request of:

☐ Plaintiff

☐ Defendant

☐ Withdrawn (Date): \_\_\_\_\_

☐ Notice of continuance given on (Date): \_\_\_\_\_

☐ generally stayed.

**FINAL DISPOSITION MADE BY:**  
James S. Harkens  
 (Magisterial District Judge)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL DIVISION

RICHARD SCOTT GULISH	:	No.: 2007-1656-CD
AND GARY L. CRAGO,	:	Type of Case: Civil
T/D/B/A/ GULISH AND CRAGO	:	Type of Pleading:
LANDSCAPE SERVICES, L.L.C.,	:	Complaint
Plaintiffs	:	Filed on behalf of:
vs.	:	Plaintiffs
	:	Counsel of Record for
SUNRISE HOMES, INC.	:	This Party:
Defendant	:	Girard Kasubick, Esq.
	:	Supreme Court No. 30109
	:	LEHMAN & KASUBICK
	:	611 Brisbin Street
	:	Houtzdale, PA 16651
	:	(814) 378-7840

**FILED** <sup>cc</sup>  
01/23/2007 *Atty Kasubick*  
NOV 26 2007 *(GK)*

William A. Shaw  
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL DIVISION

RICHARD SCOTT GULISH	:	
AND GARY L. CRAGO	:	No.: 2007-1656-CD
T/D/B/A GULISH AND CRAGO	:	
SERVICES, L.L.C.,	:	
Plaintiffs	:	
vs.	:	
	:	
SUNRISE HOMES, INC.,	:	
Defendant	:	

**NOTICE**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE.  
IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE

SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH  
INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE  
MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES  
THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A  
REDUCED FEE OR NO FEE.

Court Administrator's Office  
Clearfield County Court House  
Clearfield, PA 16830  
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL DIVISION

RICHARD SCOTT GULISH	:	
AND GARY L. CRAGO	:	No.: 2007-1656-CD
T/D/B/A GULISH AND CRAGO	:	
SERVICES, L.L.C.,	:	
Plaintiffs	:	
vs.	:	
	:	
SUNRISE HOMES, INC.,	:	
Defendant	:	

**COMPLAINT**

AND NOW COMES the Plaintiffs, Richard Scott Gulish and Gary L. Crago t/d/b/a Gulish and Crago Landscape Services, L.L.C. by and through their attorney, Girard Kasubick, Esq., and files the following Complaint.

1. The Plaintiffs are Richard Scott Gulish and Gary L. Crago who are the owners of the business Gulish and Crago Landscape Services, L.L.C. a Limited Liability Company formed under the laws of the Commonwealth of Pennsylvania with its principal place of business at 940 Sue Street, Houtzdale, PA 16651.

2. The Defendant is Sunrise Homes, Inc. a corporation formed under the laws of the Commonwealth of Pennsylvania with its principal place of business at 2790 West College Avenue, Suite 900, State College, PA 16801.

3. The Defendant has its own offices in State College, Pennsylvania and is involved in the development of real properties in that area for construction and sale of family homes.

4. The Plaintiffs operate a landscaping business wherein they landscape yards and plant trees, shrubs, flowers, grass, and develop commercial and residential sites by landscaping.

5. In or about late 2004, Plaintiffs and Defendant first entered into contracts for Plaintiffs to do some landscaping work on sites being developed by Defendant.

6. By Master Subcontractor Agreement dated May 2, 2005, Plaintiffs and Defendant entered into a written contract for Plaintiffs to do work on sites being developed by Defendant, a copy of which is attached hereto and marked Exhibit "A".

7. Since May 2, 2005 Plaintiffs have done dozens of landscaping jobs for Defendant and some followed the terms of the May 2, 2005 Master Subcontractor Agreement and others did not follow the procedure established in that Agreement.

8. In or about October 2006, Defendant requested that Plaintiffs place some indoor plants at the

Defendant's offices at 2790 West College Avenue, State College, Pennsylvania 16801.

9. The Plaintiffs did install the indoor plants at Defendant's office in or about October 2006 and Plaintiffs issued invoice No. 200 to Defendant for payment, a copy of which is attached hereto and marked Exhibit "B" in the amount of \$445.20.

10. Defendant has not paid Invoice No. 200 in the amount of \$445.20.

11. In or about May 2007, Defendant requested that Plaintiffs do landscaping work on a lot site in the Timberton Development of Defendant and do landscaping work in the sign area at the entrance of the Timberton Development of Defendant.

12. The Plaintiffs did the landscaping work on the lot site and sign area of the Timberton Development and issued Invoice Nos. 328 and 333 to Defendant for payment, a copy of which are attached hereto and marked Exhibits "C" and "D" in the amount of \$156.25 and \$1,050.00.

13. The Defendant has not paid Invoice Nos. 328 and 333 in the amount of \$156.25 and \$1,050.00.

14. In or about May and June 2007, Defendant requested that the Plaintiffs do landscaping work at Lot

29 in the Springfield Commons Development of Defendant with extra work requested at this site.

15. The Plaintiffs did the landscaping work at Lot 29 in the Springfield Commons Development and issued Invoice Nos. 331 and 356 to Defendant for payment, a copy of which are attached hereto and marked Exhibits "E" and "F", in the amounts of \$4,510.39 and \$184.59.

16. The Defendant has not paid Invoice Nos. 331 and 356 in the amounts of \$4,510.39 and \$184.59.

17. The Defendant did not follow the procedure outlined in the Master Subcontractor Agreement, attached hereto and marked Exhibit "A" for the work performed by the Plaintiffs noted in this Complaint.

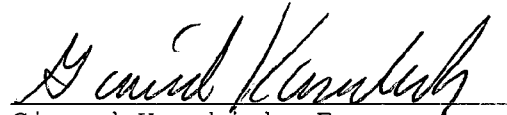
18. The Plaintiffs aver that they are due a total amount of \$6,346.43 from the Defendant being the total of the amounts set forth in Paragraphs 10, 13, and 16 in this Complaint.

19. The Plaintiffs further aver that it is due court costs including Magisterial Judge costs of \$127.50 and interest on the amount claimed.

WHEREFORE, Plaintiffs request Your Honorable Court to enter judgment in the amount of Six Thousand Three Hundred Forty-six and 43/100 (\$6,346.43) Dollars, plus court costs

and interest in favor of Plaintiffs and against the Defendant.

RESPECTFULLY SUBMITTED:

  
Girard Kasubick, Esq.,  
Attorney for Plaintiffs

**VERIFICATION**

I, the undersigned, verify that the statements made in the foregoing Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.

  
Richard Scott Gulish

**SUNRISE HOMES, INC.**  
**MASTER SUBCONTRACTOR AGREEMENT**

THIS AGREEMENT, made this 2<sup>nd</sup> day of May 2005, by and between,

**Sunrise Homes, Inc.**  
2790 West College Avenue, Suite 900  
State College, PA 16801  
Phone 814-231-8500  
Fax 814-238-0093  
(the "Contractor")

AND

**Gulish & Crago Landscape Services**  
940 Sue Street  
Houtzdale, PA 16651  
Phone: 814-577-0951  
(the "Subcontractor")

For the consideration as hereinafter provided, and intending to be legally bound hereby, the Subcontractor and Contractor agree as follows:

General Scope of Agreement: **This is a Master Subcontract.** The terms of this Master Subcontract will apply to any and all work performed by Subcontractor for Contractor after the above date for any work and/or projects that are not under a separate Subcontract agreement with Contractor which may have been executed before January 1, 2002.

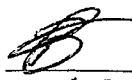

This Master Subcontract contemplates that Contractor will engage Subcontractor to perform work from time to time on one or more projects. As the Subcontractor is engaged for each new project, a "Work Order" will be issued to the Subcontractor describing the scope of work to be performed as well as the terms of payment for that particular project. Each Work Order shall constitute an Amendment to this Master Subcontract, subject to all the terms and conditions of this Master Subcontract, which will be incorporated by reference into the Work Order as if set forth at length therein. A form Work Order is attached hereto as "Exhibit A". Additional terms and conditions that will apply to that project may also be included in the Work Order, and additional documents comprising binding contract documents for the project may be referenced in the Work Order. This Master Subcontract, the Work Order issued for any particular project, all other contract documents referenced in the Work Order, and any change orders issued on a particular project, shall be referred to hereafter as the "Subcontract Documents."

Section 1. Subcontractor Representations. The Subcontractor hereby covenants and agrees to provide all material, supplies, tools, equipment, labor, supervision, services and other items required by the Subcontract Documents, or reasonably inferable from the Subcontract Documents, for each project, to complete all work in strict compliance with the Subcontract Documents.

Section 2. Duration of Work. The Subcontractor agrees to begin work immediately upon receipt of a Work Order issued by Contractor and to timely complete the scope of work included in the Subcontract Documents for each project. Time is of the essence for each project. The scope of work shall be substantially completed no later than the date set forth in the Work Order, subject to any adjustments approved by Contractor. Should Subcontractor fail to substantially complete its work by the date set forth in a Work Order, the Contractor may withhold \$100 per day from the Subcontractor as liquidated damages, or may seek the actual damages incurred due to the delayed completion.

Section 3. Progress and Final Payments. Payments to Subcontractor shall be made in accordance with the terms of payment found in each individual Work Order. Said progress payments shall be paid upon applications for payments and/or invoices submitted by the Subcontractor and approved by the Contractor for completed work such that applications/invoices received by Contractor by the 30<sup>th</sup> of the month will be paid on the Friday after the 10<sup>th</sup> of the following month. The Contractor may withhold payment on any items and/or sections of the scope of work not completed to applicable

EXHIBIT "A"  
Page 1 of 7

CONTRACTOR:   
SUBCONTRACTOR:  D3



industry standards or to Contractor's reasonable satisfaction and/or for failure to maintain scheduled progress, except if such failure is the result of any factor beyond Subcontractor's control. All work deemed defective or substandard shall be corrected prior to payment.

Final payment, constituting the entire unpaid balance of the sum under each Work Order, shall be made by the Contractor when the Subcontractor has fully performed the scope of work in accordance with the requirements of the applicable Subcontract Documents. Before issuance of the final payment, the Subcontractor, if requested by the Contractor, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's performance of any Work Order have been satisfied.

**The making of final payment shall not constitute a waiver of any claims by Contractor.**

**Acceptance of final payment by Subcontractor shall constitute a full and final waiver and release of all claims, counterclaims, demands, mechanic's lien claims and surety bond claims arising from, or relating in any way to, the subject project for which final payment was made, including but not limited to any alleged claims for change orders, extra-contractual work, delay and/or inefficiency damages. Without effecting the waiver and release of the preceding sentence, Contractor expressly reserves the right to require that Subcontractor execute a waiver and release of claims in a form acceptable to Contractor at the time of final payment.**

Section 4. Subcontractor Agreements. The Contractor may require the Subcontractor to enter into agreements with sub-subcontractors to perform portions of the scope of work under any Work Order. In such case the Subcontractor and the sub-subcontractor shall assume all obligations and responsibilities toward each other which the Contractor and Subcontractor assume toward each other and shall have the benefit of all rights, remedies and redress which are provided by virtue of the provisions of the Subcontract Documents for that particular project.

Section 5. Contractor Services. The Contractor shall cooperate with the Subcontractor in scheduling and performing the scope of work of each Work Order to avoid conflicts or interference in the Subcontractor's work. As soon as practicable after execution of each Work Order, the Contractor shall provide the Subcontractor with copies of the Contractor's construction schedule, together with any additional scheduling details that will enable the Subcontractor to plan and perform the scope of work properly. The Subcontractor shall be promptly notified of any subsequent changes in the construction schedules and additional scheduling details in accordance with Section regarding "Change Orders" in this Master Subcontract.

Section 6. Subcontractor Storage of Materials. The Contractor shall provide suitable areas for storage of Subcontractor materials and equipment used during the scope of work of each Work Order. At all times, the Subcontractor shall bear the responsibility of the materials and equipment stored at the project sites. Subcontractor shall remove the material and equipment immediately after the completion of the scope of work.

Section 7. Communications with Subcontractor. The Contractor shall give instructions and orders only to persons designated as authorized representatives of the Subcontractor.

Section 8. Contractor Notice of Hazardous Substances. If hazardous substances of a type of which an employer is required by law to notify its employees are being used on any site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall notify the Subcontractor's employees of the use of such substance

before exposure to the substance in sufficient detail and time to permit the Subcontractor's compliance with such laws.

Section 9. Defects in Work. Subcontractor warrants that all work performed under any Work Order will be free from defects and that all work will conform with the requirements of the Subcontract Documents for that project. Any work not conforming to said requirements or any substitutions not properly approved and authorized by the Contractor shall be considered defective. Any work found defective within one (1) year of project completion shall be promptly corrected by the Subcontractor upon receipt of written or verbal notice by Contractor or Homeowner. Should Subcontractor fail to promptly correct any defects after notice and Contractor corrects the defects by another means, Subcontractor shall be liable for all costs incurred in correcting the defects, including all attorney's fees and costs incurred in serving the notice of defects or any subsequent legal action. This obligation shall survive termination of any Work Order and the Master Subcontract.

Section 10. Subcontractor Warranty. Subcontractor warrants that all materials and equipment furnished pursuant to the Subcontract Documents for any project will be of good quality and new unless otherwise permitted under the Subcontract Documents. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the manufacturer of any materials or equipment supplied to a project.

Section 11. Waiver of Rights to File Mechanic's Liens. The Subcontractor agrees that neither the Subcontractor nor any sub-subcontractor nor any person furnishing labor, materials or services to the Subcontractor for the performance of the scope of work for any project, shall file a lien or claim commonly known as a mechanic's lien or material men's lien claim, against the land or improvements constituting the project. This provision constitutes an express waiver of the right to file such liens on behalf of the Subcontractor and each and every of its sub-subcontractors, material men and laborers for each project.

Section 12. Termination by Contractor. The Contractor may terminate any Work Order, or this Master Subcontract as a whole, for any reason and without cause. In the event the Subcontractor fails or neglects to carry out the scope of work for a project in accordance with the Subcontract Documents for that project, or otherwise fails to perform in accordance with this Master Subcontract, except when such failure is caused by delays due to weather breakdowns, strikes, accidents, acts of God or intentional delays caused by Contractor, the Contractor shall provide written notice to Subcontractor of such failure or neglect and shall request the Subcontractor to promptly commence work or correct the default. If Subcontractor fails to commence work within three working days of receipt of notice from Contractor, the Contractor may, without prejudice to any other remedy available to it under this Master Subcontract, terminate the particular Work Order, or this Master Subcontract as a whole, and Contractor may finish the scope of work remaining under any Work Orders by whatever method the Contractor deems expedient. Any unpaid balance under a Work Order may be used by Contractor toward the expense of finishing the Subcontractor's work under that Work Order; however, if such expense exceeds the unpaid balance, the Subcontractor shall pay the difference to the Contractor. If Subcontractor is terminated for cause as described in this paragraph, it shall be liable to Contractor for all attorney's fees and costs incurred by Contractor in serving the notice of termination and in any subsequent legal action.

Section 13. Termination by Subcontractor. If Contractor fails to pay any amount validly due under a Work Order in accordance with the payment schedule in that Work Order, and such nonpayment continues for a period of 90 days, Subcontractor shall have the right to terminate that particular Work Order. In the event of termination of a Work Order by Subcontractor for nonpayment, if such nonpayment is not caused by the fault of Subcontractor or other persons performing the scope of work on its behalf under that particular Work Order, the Subcontractor shall be entitled to recover from the

Contractor payments for work actually completed, but in no instance shall be entitled to consequential, incidental, indirect, or special damages, including but not limited to loss of use costs, revenues, profits or savings, even if Contractor knew or should have known of the possibility of such damages.

Section 14. Subcontractor Execution of Work.

a) The Subcontractor shall cooperate with the Contractor in scheduling and performing the scope of work under each Work Order to avoid conflict, delay or interference with the work of the Contractor or other subcontractors.

b) The Subcontractor shall keep each project and surrounding areas free from accumulation of waste materials or rubbish caused during the performance of Subcontractor's scope of work. The Subcontractor shall keep the road to each project clean and free of mud at all times during the execution of the scope of work for each project, provided, however, the Subcontractor shall not be held responsible for unclean conditions caused by the Contractor or other subcontractors.

c) If Subcontractor's performance under any Work Order causes the Contractor to bear any additional cost or expense as a result of Subcontractor's inability to keep the surrounding area in the condition specified in the previous paragraph, all such costs and expenses shall be deducted from the unpaid balance owed to Subcontractor under that particular Work Order.

d) The Subcontractor shall employ competent workers and have a competent foreman or other authorized person, approved by the Contractor, on each project site during all working hours. Working hours shall be those as set by the Contractor and the Subcontractor shall adjust its working hours accordingly. There shall be no drinking or drug use by Subcontractor or any employees, agents or other persons for which the Subcontractor is directly or indirectly responsible at any project at any time. Failure to comply with this provision shall result in automatic termination of this Master Subcontract in accordance with the Termination provision of this Master Subcontract.

e) The Subcontractor shall be responsible to Contractor for the acts and omissions of the Subcontractor's employees, sub-subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with or employment by the Subcontractor. Without limiting the foregoing, the Subcontractor shall promptly remedy damage and loss to property at the project site caused in whole or in part by the Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable. The foregoing obligations of the Subcontractor are in addition to the Subcontractor's obligations set forth elsewhere in the Subcontract Documents.

f) The Subcontractor shall furnish all material, submit shop drawings and samples as required, and perform all work necessary to complete the scope of work for each project to the full satisfaction of Contractor. All work performed by Subcontractor shall be performed in an expeditious, workmanlike manner in accordance with applicable industry standards and in compliance with all government regulations and governing codes including but not limited to OSHA Safety Regulations.

g) If Subcontractor, its sub-subcontractors or anyone directly or indirectly employed by them, is using a hazardous substance on any project of a type which an employer is required by law to notify its employees is being used on the site, the Subcontractor, its sub-subcontractors or anyone directly or indirectly employed by them shall, prior to harmful exposure of any of the employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employees on the site. In the event that the Subcontractor fails to comply fully with the foregoing, Subcontractor agrees to indemnify and hold harmless the Contractor in accordance with Section 15, below.

h) The Subcontractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of any work.

i) Subcontractor shall attend any conferences required by Contractor to discuss the progress and status of work on any project.

Section 15. Indemnification. To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Contractor and agents and employees of Contractor from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the scope of work on any project by the Subcontractor, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property including loss of use therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by the Contractor. In the case of any claims, suits, demands, damages or losses brought by one directly or indirectly employed by Subcontractor, including but not limited to statutory employees, the indemnification obligations of this paragraph shall not be limited in any way by the immunity from liability or suit granted by applicable workmen's compensation laws, or by any limitation on the amount or type of damages, compensation, or benefits payable under any applicable workmen's compensation laws, disability benefits laws, or other employee benefits laws.

Section 16. Insurance. Certificates of insurance are to be provided to Contractor for approval prior to start of work and/or first progress payment for the project. Insurance shall be purchased and maintained without interruption from the date of commencement of work by the Subcontractor until the date of final payment. Any information concerning reduction of coverage or cancellation shall be furnished by the Subcontractor to the Contractor with reasonable promptness. The following coverages and limits of liability shall be maintained by the Subcontractor:

TYPE	AMOUNT
General Liability	no less than \$500,000.00
Worker's Compensation – Employers Liability	no less than \$500,000.00

The Contractor and Subcontractor waive all rights against (1) each other and any of their other subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect and the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Contractor and Subcontractor, as appropriate, shall require separate contractors and subcontractors, if any, and sub-subcontractors, agents and employees of any of them, by appropriate agreement, written where legally required for validity, to provide similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

A loss of insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their sub-subcontractors in similar manner.

Section 17. Changes in Work. The Subcontractor may be ordered in writing by the Contractor to make changes in the scope of work for each project within the general scope of the Subcontract Documents ("change orders"). Such change orders may consist of additions, deletions or other revisions

to the Subcontract Documents, the subcontract sum for the particular project, the time of completion or the Subcontractor's schedule of values. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform work which would be inconsistent with a change order. The Subcontractor, prior to the commencement of any change order, shall submit to the Contractor within 3 days of receiving a change order written copies of any claims for adjustment to the contract sum or time of completion plus any claims for additional costs or damages for delays or other expenses caused by the change order.

No extra work or changes under the Subcontract Documents for any project will be recognized or reimbursed unless agreed to in writing by the Contractor before the work is performed. The Subcontractor shall notify the Contractor of any work over and above the scope of work that is required to be performed because of unforeseen problems arising from the Subcontract Documents or a change order.

Section 18. Arbitration. Any claim or dispute between Contractor and Subcontractor arising under the Subcontract Documents for any project shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, whose decision and award shall be final and binding. Notice of the demand for arbitration shall be filed in writing with the other party and the American Arbitration Association within twenty (20) days of the date the dispute arose.

Section 19. Assignment. This Master Subcontract, and each Work Order issued hereunder, shall not be assigned by the Subcontractor without prior written consent from the Contractor. Subcontractor may not further subcontract portions of the Scope of Work without written notification to the Contractor.

Section 20. Contractor Approvals. Each Work Order issued under this Master Subcontract is specifically conditioned upon the ability of Contractor to secure all necessary government permits and unappealable and unappealed approvals, without pursuing appeal or contesting an appeal or appeal by others, to construct the particular project. Each Work Order is further conditioned upon the Contractor obtaining all the necessary financing for construction and improvements of the particular project. Upon failure of either of the foregoing and upon written notice by Contractor to Subcontractor, a Work Order shall be terminated and become null and void, and both parties shall be relieved of all obligations and liabilities hereunder.

Section 21. Miscellaneous Provisions.

21.1 Entire Agreement. This Master Subcontract represents the entire agreement and understanding of the parties with respect to its subject matter, with the exception of any Work Orders issued hereunder, and supersedes any and all previous agreements of whatever nature between the parties with respect to the same subject matter except as described elsewhere herein. This Master Subcontract and each Work Order issued hereunder may not be altered or amended except by written agreement signed by both parties.

21.2 Governing Law. This Master Subcontract and each Work Order issued hereunder has been made in the Commonwealth of Pennsylvania, and the interpretation, validity, performance and effect of said documents shall be determined in accordance with the laws of the Commonwealth of Pennsylvania.

21.3 Time of Essence. Time is of the essence of this Master Subcontract and each Work Order issued hereunder. No extension of time will be valid without the written consent of the Contractor.

21.4 Compliance. The Subcontractor shall comply with federal, state, and local tax laws, social security acts, unemployment compensation acts, workers' compensation acts, to the extent applicable, in the performance of the scope of work for any project.

21.5 Headings. The headings of the paragraphs in this Master Subcontract are for convenience only; they form no part of this Master Subcontract and shall not affect its interpretation. All schedules, exhibits or attachments referred to herein shall be incorporated in and constitute a part of this Master Subcontract.

21.6 Binding Agreement. This Master Subcontract shall inure to the benefit of the Contractor's and Subcontractor's successors, executors, administrators and assigns.

21.7 Subcontractor Review of Site. By executing each Work Order, Subcontractor is representing that Subcontractor has visited the project site, examined the project site carefully, become familiar with the local conditions under which the work is to be performed, examined the Subcontract Documents carefully, and has determined that the work can be performed by the Subcontractor for the Work Order sum and within the time allotted for completion. In addition, the Subcontractor represents that it has verified to its satisfaction the nature and quantity of the work involved and is familiar with all conditions which may be encountered. The Subcontractor hereby agrees to perform the work, without increase in the Work Order sum, irrespective of the conditions encountered by the Subcontractor at the project site.

21.8 Severability. If any part of any provision of this Master Subcontract or any Work Order issued hereunder is invalid or unenforceable under applicable law, the provision shall be ineffective only to the extent of such invalidity or unenforceability without in any way affecting the remaining provisions of this Master Subcontract and/or a Work Order.

21.9 Counterparts. This Master Subcontract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

21.10 Non-Exclusivity of Agreement. This Master Subcontract shall not constitute nor be construed as an agreement for Contractor to use Subcontractor exclusively on all projects. In addition, this Master Subcontract shall not constitute nor be construed as an agreement that Contractor will purchase the complete output of all labor, materials and equipment produced or provided by Subcontractor.

This document has important legal consequences; consultation with an attorney is encouraged before signing this document.

IN WITNESS WHEREOF, the Contractor and the Subcontractor hereto agree to the full performance of all the covenants, terms and conditions set forth in this Master Subcontract.

SUBCONTRACTOR

GULISH & CRAGO LANDSCAPE LLC

By:

Signature: [Signature]

Printed: SCOTT GULISH

Title: OWNER

CONTRACTOR

Sunrise Homes, Inc.

By:

Signature: [Signature]

Printed: Barry Begoumian

Title: President



GULISH & CRAGO LANDSCAPE L.L.C.  
940 SUE ST.  
HOUTZDALE, PA 16651

814-577-0951  
FAX 814-378-7722  
CELL 814-571-9545  
EXTREMETREES@VERIZON.NET

# Invoice

Invoice No: 200  
Date: 10/16/2006  
Terms: Net 30  
Due Date: 11/15/2006

Bill To:

SUNRISE HOMES  
2790 W. COLLEGE AVE.  
STATE COLLEGE, PA 16801

Ship To:

Ship Date: 10/16/2006      Ship Via: <shipvia>      Tracking No.: <tracking number>      FOB: <shipping\_fob>

Code	Description	Qty/Hours	Rate	Tax %	Amount
	MISC. OFFICE PLANTS	1.00	\$420.00	6.00%	\$420.00

Subtotal	\$420.00
Tax	\$25.20
Shipping	\$0.00
Total	\$445.20
Deposit	\$0.00
Balance Due	\$445.20



GULISH & CRAGO LANDSCAPE L.L.C.

940 SUE ST.  
HOUTZDALE, PA 16651

814-577-0951  
FAX 814-378-7722  
CELL 814-571-9545  
EXTREMETREES@VERIZON.NET

# Invoice

Invoice No: 328  
Date: 5/11/2007  
Terms: Net 30  
Due Date: 6/10/2007

Bill To:

SUNRISE HOMES  
2790 W. COLLEGE AVE.  
STATE COLLEGE, PA 16801  
TIMBERTON SIGN @ ENTRANCE

Ship To:

Ship Date 5/11/2007 Ship Via <shipvia> Tracking No <tracking number> FOB <shipping\_fob>

Code	Description	Qty/Hours	Rate	Tax %	Amount
	2.5 CUBIC YARDS MULCH	2.50	\$25.00	6.00%	\$62.50
	LABOR TO INSTALL 2 MAN HOURS	2.00	\$45.00	0.00%	\$90.00

Subtotal	\$152.50
Tax	\$3.75
Shipping	\$0.00
Total	\$156.25
Deposit	\$0.00
Balance Due	\$156.25





GULISH & CRAGO LANDSCAPE L.L.C.

940 SUE ST.

HOUTZDALE, PA 16651

814-577-0951

FAX 814-378-7722

CELL 814-571-9545

EXTREMETREES@VERIZON.NET

# Invoice

Invoice No: 333  
Date: 5/18/2007  
Terms: Net 30  
Due Date: 6/17/2007

Bill To:

Ship To:

SUNRISE HOMES  
2790 W. COLLEGE AVE.  
STATE COLLEGE, PA 16801  
( MODEL HOME @ TIMBERTON )

Ship Date: 5/18/2007      Ship Via: <shipvia>      Tracking No: <tracking number>      FOB: <shipping\_fob>

Code	Description	Qty/Hours	Rate	Tax %	Amount
	15 YARDS MULCH	15.00	\$25.00	6.00%	\$375.00
	LABOR RE-EDGE BEDS , PRUNE, INSTALL MULCH	14.50	\$45.00	0.00%	\$652.50

Subtotal	\$1,027.50
Tax	\$22.50
Shipping	\$0.00
Total	\$1,050.00
Deposit	\$0.00
Balance Due	\$1,050.00



GULISH & CRAGO LANDSCAPE L.L.C.

940 SUE ST.  
HOUTZDALE, PA 16651

814-577-0951  
FAX 814-378-7722  
CELL 814-571-9545  
EXTREMETREES@VERIZON.NET

# Invoice

Invoice No: 331  
Date: 5/18/2007  
Terms: Net 30  
Due Date: 6/17/2007

Bill To:

SUNRISE HOMES  
2790 W. COLLEGE AVE.  
STATE COLLEGE, PA 16801  
( SPRINGFIELD COMMONS LOT # 29 )

Ship To:

P.O.# 4992

Ship Date 5/18/2007      Ship Via <shipvia>      Tracking No <tracking number>      FOB <shipping\_fob>

Code	Description	Qty/Hours	Rate	Tax %	Amount
	MATERIAL TO INSTALL LOT # 29	1.00	\$2,231.50	6.00%	\$2,231.50
	LABOR TO INSTALL	39.00	\$55.00	0.00%	\$2,145.00

Subtotal	\$4,376.50
Tax	\$133.89
Shipping	\$0.00
Total	\$4,510.39
Deposit	\$0.00
Balance Due	\$4,510.39



GULISH & CRAGO LANDSCAPE L.L.C.  
940 SUE ST.  
HOUTZDALE, PA 16651

814-577-0951  
FAX 814-378-7722  
CELL 814-571-9545  
EXTREMETREES@VERIZON.NET

# Invoice

Invoice No: 356  
Date: 6/26/2007  
Terms: Net 30  
Due Date: 7/26/2007

Bill To:

SUNRISE HOMES  
2790 W. COLLEGE AVE.  
STATE COLLEGE, PA 16801  
SPRINGFIELD # 29 EXTRA WORK

Ship To:

Ship Date: 6/26/2007      Ship Via: <shipvia>      Tracking No: <tracking number>      FOB: <shipping\_fob>

Code	Description	Qty/Hours	Rate	Tax %	Amount
	3 RED TWIG DOGWOOD AT UTILITY BOX ( EXTRA WORK )	3.00	\$38.50	6.00%	\$115.50
	1/4 YARD MULCH	0.25	\$27.00	6.00%	\$6.75
	LABOR TO INSTALL	1.00	\$55.00	0.00%	\$55.00

Subtotal	\$177.25
Tax	\$7.34
Shipping	\$0.00
Total	\$184.59
Deposit	\$0.00
Balance Due	\$184.59

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION

RICHARD SCOTT GULISH	:	No.: 2007-1656-CD
AND GARY L. CRAGO,	:	Type of Case: Civil
T/D/B/A/ GULISH AND CRAGO	:	Type of Pleading:
LANDSCAPE SERVICES, L.L.C.,	:	Certificate of Service
Plaintiffs	:	Filed on behalf of:
vs.	:	Plaintiffs
	:	Counsel of Record for
SUNRISE HOMES, INC.	:	This Party:
Defendant	:	Girard Kasubick, Esq.
	:	Supreme Court No. 30109
	:	LEHMAN & KASUBICK
	:	611 Brisbin Street
	:	Houtzdale, PA 16651
	:	(814) 378-7840

FILED<sup>icc</sup>

011:0761  
NOV 29 2007

*Ang Kasubick*

*(LM)*

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

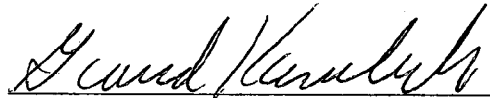
CIVIL DIVISION

RICHARD SCOTT GULISH	:	
AND GARY L. CRAGO	:	No.: 2007-1656-CD
T/D/B/A GULISH AND CRAGO	:	
SERVICES, L.L.C.,	:	
Plaintiffs	:	
vs.	:	
	:	
SUNRISE HOMES, INC.,	:	
Defendant	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I, Girard Kasubick, Esq., served a certified copy of the Complaint and Certificate of Service as required under Pa.R.C.P.M.D.J. No. 1005D. by regular United States mail, postage pre-paid, mailed on November 27, 2007 upon the attorneys for the Defendant, at the following address:

Brian K. Marshall, Esq.  
Scott C. Etter, Esq.  
MILLER, KISTLER, CAMPBELL, MILLER,  
WILLIAMS & BENSON, INC.  
720 South Atherton Street  
State College, PA 16801-4669



Girard Kasubick, Esquire,  
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

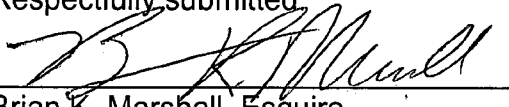
RICHARD SCOTT GULISH and	)	
GARY L. CRAGO, t/d/b/a	)	
GULISH AND CRAGO LANDSCAPE	)	
SERVICES, LLC,	)	
	)	No. 07-1656-CD
Plaintiffs	)	
	)	
vs.	)	
	)	
SUNRISE HOMES, INC.,	)	
	)	
Defendant	)	

PRAECIPE

TO THE PROTHONOTARY:

Pursuant to Clearfield County Local Rule of Civil Procedure 211, please have the Court Administrator schedule an argument on Defendant's Preliminary Objections to Plaintiff's Complaint in the above captioned matter.

Respectfully submitted:


  
Brian K. Marshall, Esquire  
I.D. No. PA87331

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
720 S. Atherton Street  
State College, PA 16801  
814-234-1500

Date:

12/17/07

Counsel for Defendant

**FILED** <sup>icc</sup>  
m19:3284 Atty Marshall  
DEC 17 2007  
  
William A. Shaw  
Prothonotary/Clerk of Courts

RICHARD SCOTT GULISH and  
GARY L. CRAGO, t/d/b/a  
GULISH AND CRAGO LANDSCAPE  
SERVICES, L.L.C.,

Plaintiffs

vs.

SUNRISE HOMES, INC.,  
Defendant

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

No. 2007-1656 - C.D.

**PRELIMINARY OBJECTIONS**

Filed on behalf of: Defendant,  
Sunrise Homes, Inc.

**COUNSEL OF RECORD FOR PARTY:**

Brian K. Marshall, Esquire

I.D. #87331

Scott C. Etter, Esquire

I.D. #72789

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
720 South Atherton Street, Suite 201  
State College, PA 16801  
(814) 234-1500 TEL  
(814) 234-1549 FAX

**FILED**

DEC 17 2007

William A. Shaw  
Prothonotary/Clerk of Courts

1cc  
Att'y Marshall  
GK

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

RICHARD SCOTT GULISH and	)	
GARY L. CRAGO, t/d/b/a	)	
GULISH AND CRAGO LANDSCAPE	)	
SERVICES, LLC,	)	
	)	Plaintiffs
	)	No. 07-1656-CD
vs.	)	
	)	
SUNRISE HOMES, INC.,	)	
	)	Defendant

**PRELIMINARY OBJECTIONS**

NOW COMES the Defendant, Sunrise Homes, Inc., by and thorough its counsel, Scott C. Etter, Esquire, Brian K. Marshall, Esquire, and Miller, Kistler, Campbell, Miller, Williams & Benson, Inc., and pursuant to Pa. R.C.P. 1028 interposes Preliminary Objections to the Complaint filed by Richard Scott Gulish and Gary L. Crago, t/d/b/a Gulish and Crago Landscape Services, LLC, Plaintiffs, of which the following is a statement in support thereof:

1. On or about November 26, 2007, Plaintiffs filed a Complaint in the Court of Common Pleas of Clearfield County, Pennsylvania demanding payment for services allegedly rendered by Plaintiffs to Defendant Sunrise Homes, Inc.
2. Preliminary Objections may be filed for, *inter alia*, improper venue, legal insufficiency of a pleading (demurrer), or an agreement for alternative dispute resolution. Pa. R.C.P. 1028(a)(1),(3),(6).



**A. Agreement for Alternative Dispute Resolution**

3. In section 18 on page 6 of 7 on the Master Subcontract, which is attached in full to Plaintiffs' Complaint as Exhibit "A," provides under a heading entitled "Arbitration," that:

"Any claim or dispute between Contractor and Subcontractor arising under the Subcontract Documents for any project shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, whose decision and award shall be final and binding. Notice of the demand for arbitration shall be filed in writing with the other party and the American Arbitration Association within twenty (20) days of the date the dispute arose."

4. Plaintiffs have not complied with the requirements to which they agreed as set forth in the Master Subcontract.

**B. Improper Venue**

5. In the alternative, if it is determined that the arbitration provision is unenforceable, Pennsylvania Rule of Civil Procedure 1028(a)(1) provides that Preliminary Objections may be premised upon improper venue.

6. Pennsylvania Rule of Civil Procedure 2179(a) provides that an action against a corporation may be brought in and only in (1) the county where its registered office or principal place of business is located; (2) a county where it regularly conducts business; (3) the county where the cause of action arose; (4) a county where a transaction or occurrence took place out of which the cause of action arose; or (5) a county where the property or a part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.

7. Plaintiffs' Complaint contains no averments which place venue in Clearfield County in accordance with any of the categories described in Pa. R.C.P. 2179(a).

8. To the contrary, Plaintiffs complaint alleges that Sunrise Homes, Inc. has its office and conducts business in State College, Centre County, Pennsylvania and that the work allegedly performed was completed in the State College, Centre County, Pennsylvania area.

9. In addition, as set forth in Exhibit 1 which is attached hereto and made a part hereof, the registered office of Sunrise Homes, Inc. is in Centre County.

**C. Legal Insufficiency of a Pleading (Demurrer)**

10. Also in the alternative, in their Complaint, Plaintiffs allege that they performed various work for Sunrise Homes, Inc, that they billed Sunrise Homes, Inc. for the same, and that the bills remain unpaid.

11. Plaintiffs have not sufficiently set forth the theory under which they seek to recover (i.e., negligence, breach of contract, etc.).

12. Without a more specific statement as to Plaintiffs' legal theory, Defendant is unable to appropriately determine the legal theories of Plaintiffs, and thereafter defend itself.

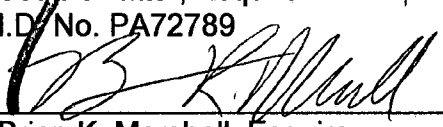
WHEREFORE, Defendant, Sunrise Homes, Inc., respectfully requests that these Preliminary Objections be sustained, and that the Complaint be dismissed with prejudice.

Respectfully submitted:



---

Scott C. Etter, Esquire  
I.D. No. PA72789



---

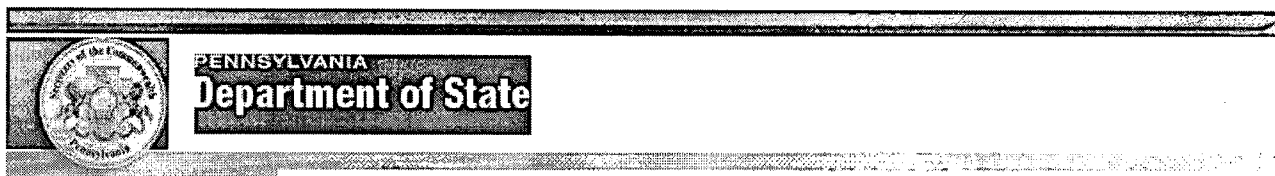
Brian K. Marshall, Esquire  
I.D. No. PA87331

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
720 S. Atherton Street  
State College, PA 16801  
814-234-1500

Date: 12/14/07

Counsel for Defendant

# **EXHIBIT 1**



## Corporations

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Search Type: **Starting With**

Search Date: **11/1/2007**

Search Criteria: **Sunrise Homes**

Search Time: **15:14**

Click on the Business Entity Name or Entity Number to view more information.

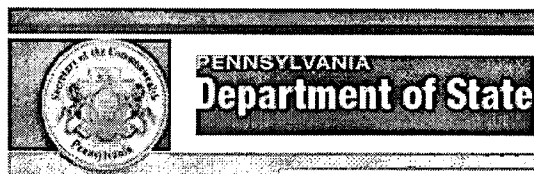
Business Entity Name	Entity Number	Type	Status	Entity Creation Date
SUNRISE HOME SERVICES	2883622	Fictitious Names	Active	6/21/1999
SUNRISE HOMES	2489385	Fictitious Names	Active	4/16/1976
SUNRISE HOMES	2094453	Fictitious Names	Active	6/12/1992
SUNRISE HOMES	2073240	Fictitious Names	Active	1/22/1992
SUNRISE HOMES, INC.	2611279	Business Corporation	Active	12/9/1994
SUNRISE HOMES, INC.	620270	Business Corporation	Withdrawn	9/3/1975

Records Returned 1 to 6

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## Corporations

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Orders  
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Search for Images

### Business Entity Filing

#### History

Date: 11/1/2007

(Select the link above to view the  
Business Entity's Filing History)

#### Business Name History

Name	Name Type
SUNRISE HOMES, INC.	Current Name

#### Business Corporation - Domestic - Information

Entity Number:	2611279
Status:	Active
Entity Creation Date:	12/9/1994
State of Business.:	PA
Principal Office Address:	2790 W College Ave Ste 900 State College PA 16801
Mailing Address:	No Address

#### Officers

Name:	BAHRAM B BEGOUNIAN
Title:	President
Address:	467 E BEAVER AVE STATE COLLEGE PA 16801-0

Name:	ARA KERVANDJIAN
Title:	Secretary
Address:	467 E BEAVER AVE STATE COLLEGE PA 16801-0

Name:	ARA KERVANDJIAN
Title:	Treasurer
Address:	467 E BEAVER AVE STATE COLLEGE PA 16801-0

Name:	LARA C SAHAKIAN
Title:	Vice President
Address:	467 E BEAVER AVE STATE COLLEGE PA 16801-0

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

RICHARD SCOTT GULISH and  
GARY L. CRAGO, t/d/b/a  
GULISH AND CRAGO LANDSCAPE  
SERVICES, L.L.C.,

Plaintiffs

vs.

SUNRISE HOMES, INC.,

Defendant

No. 2007-1656 - C.D.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Preliminary Objections was served by  
depositing the same within the custody of the United States Postal Service, First Class,  
postage prepaid, addressed as follows:

Girard Kasubick, Esquire  
Lehman & Kasubick  
611 Brisbin Street  
Houtzdale, PA 16651-1208



Brian K. Marshall, Esquire  
I.D. #87331

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
720 South Atherton Street, Suite 201  
State College, PA 16801  
(814) 234-1500 TEL  
(814) 234-1549 FAX

Counsel for Defendant

Date: December 14, 2007



**FILED**

**DEC 17 2007**

**William A. Shaw  
Prothonotary/Clerk of Courts**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

RICHARD SCOTT GULISH and  
GARY L. CRAGO, t/d/b/a  
GULISH AND CRAGO LANDSCAPE  
SERVICES, LLC,

Plaintiffs

vs.

SUNRISE HOMES, INC.,

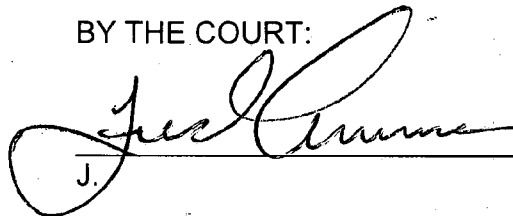
Defendant

No. 07-1656-CD

ORDER

NOW THIS 19<sup>th</sup> day of December, 2007, upon  
consideration of the Praecept for Argument on Defendant's Preliminary Objections, it is  
hereby the Order of this Court that argument shall be held on the 24<sup>th</sup> day of  
January, 2008, at 2:30 o'clock p.m. in Courtroom No. 1 of  
the Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
J. Marshall

**FILED**

DEC 19 2007

William A. Shaw  
Prothonotary/Clerk of Courts

3cc Atty  
Marshall

(CK)

FILED

DEC 19 2007

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 12/19/07

☒ You are responsible for serving all appropriate parties.

\_\_\_\_\_ The Prothonotary's office has provided service to the following parties:

\_\_\_\_\_ Plaintiff(s) \_\_\_\_\_ Plaintiff(s) Attorney \_\_\_\_\_ Other

\_\_\_\_\_ Defendant(s) \_\_\_\_\_ Defendant(s) Attorney

\_\_\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

RICHARD SCOTT GULISH and  
GARY L. CRAGO, t/d/b/a  
GULISH AND CRAGO LANDSCAPE  
SERVICES, LLC,

Plaintiffs

vs.

SUNRISE HOMES, INC.,  
Defendant

)  
)  
)  
)  
) No. 07-1656-CD  
)  
) Type of Case: Civil Action  
)  
) Type of Pleading: Affidavit of Service  
)  
)  
) File on Behalf of: Defendant  
)  
) Counsel of Record for this Party:  
) Scott C. Etter, Esquire  
) I.D. No.: PA72789  
) Brian K. Marshall, Esquire  
) I.D. No.: PA87331  
) MILLER, KISTLER, CAMPBELL,  
) MILLER, WILLIAMS & BENSON, INC.  
) 720 S. Atherton Street  
) State College, PA 16801  
) 814-234-1500

FILED<sup>no</sup>  
m1104561  
DEC 28 2007  
William A. Shaw  
Prothonotary/Clerk of Courts

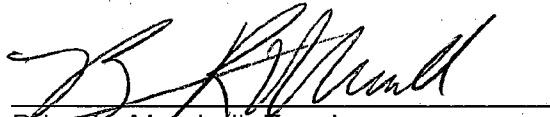
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

RICHARD SCOTT GULISH and )  
GARY L. CRAGO, t/d/b/a )  
GULISH AND CRAGO LANDSCAPE )  
SERVICES, LLC, )  
Plaintiffs ) No. 07-1656-CD  
vs. )  
SUNRISE HOMES, INC., )  
Defendant )

**AFFIDAVIT OF SERVICE**

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF CENTRE ) SS:

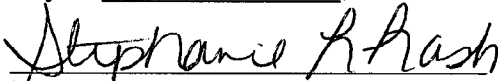
Brian K. Marshall, Esquire, attorney for Defendant in the above-captioned matter, being duly sworn according to law, deposes and says that he served the Order dated December 19, 2007 scheduling argument on Defendant's Preliminary Objections for January 24, 2008 on Plaintiff's Counsel by regular U.S. mail on December 26, 2007.

  
Brian K. Marshall, Esquire  
I.D. No.: PA87331

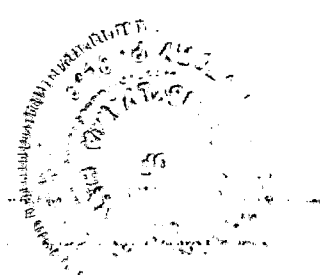
MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
720 S. Atherton Street  
State College, PA 16801  
814-234-1500

Attorney for Plaintiff

Sworn to and subscribed  
before me this 27<sup>th</sup>  
day of December, 2007.

  
Notary Public

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Stephanie L. Lash, Notary Public  
State College Boro, Centre County  
My Commission Expires Mar. 28, 2009  
Member, Pennsylvania Association of Notaries



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

RICHARD SCOTT GULISH and  
GARY L. CRAGO, t/d/b/a  
GULISH AND CRAGO LANDSCAPE  
SERVICES, LLC,

Plaintiffs

vs.

SUNRISE HOMES, INC.,

Defendant

No. 07-1656-CD

**CERTIFICATE OF SERVICE**

I, Brian K. Marshall, Esquire, of the law firm of MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC., hereby certify that the foregoing Affidavit of  
Service was served this 26 day of December, 2007 by  
mailing same first class United States mail, postage prepaid, addressed to:

Girard Kasubick, Esquire  
611 Brisbin Street  
Houtzdale, PA 16651

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.

  
\_\_\_\_\_  
Brian K. Marshall, Esquire

FILED

DEC 28 2007

**William A. Shaw**  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL DIVISION

RICHARD SCOTT GULISH  
and GARY L. CRAGO,  
t/d/b/a GULISH AND CRAGO  
LANDSCAPE SERVICES, LLC,  
Plaintiffs

vs.

SUNRISE HOMES, INC.  
Defendant

: No.: 2007-1656-CD  
: Type of Case: Civil  
: Type of Pleading:  
: Affidavit on Preliminary  
: Objections  
: Filed on behalf of:  
: Plaintiffs  
: Counsel of Record for  
: This Party:  
: Girard Kasubick, Esq.  
: Supreme Court No. 30109  
: LEHMAN & KASUBICK  
: 611 Brisbin Street  
: Houtzdale, PA 16651  
: (814) 378-7840

**FILED** No. CC  
0/3:4267  
JAN 24 2008 (GK)

William A. Shaw  
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL DIVISION

RICHARD SCOTT GULISH :  
and GARY L. CRAGO : No.: 2007-1656-CD  
t/d/b/a GULISH AND CRAGO :  
LANDSCAPE SERVICES, LLC, :  
Plaintiffs :  
vs. :  
SUNRISE HOMES, INC., :  
Defendant :

AFFIDAVIT ON PRELIMINARY OBJECTIONS

I, Richard Scott Gulish, Plaintiff in the above-captioned matter, being duly sworn according to law, hereby depose and say that:

1. For all the work performed under the five (5) invoices Nos. 200, 328, 333, 331, and 356 set forth in the Complaint, Defendant from its offices in State College, Centre County, Pennsylvania contacted Plaintiff's Office by telephone located in Houtzdale, Clearfield County, Pennsylvania to perform the work requested under said invoices.

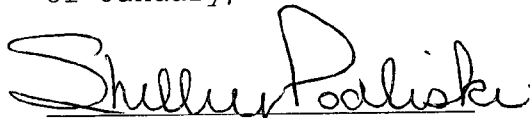
2. Invoice No. 200 had nothing to do with Plaintiff being a subcontractor, but was for work performed at Defendant's Offices and not under any subcontract.

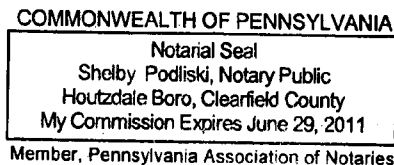
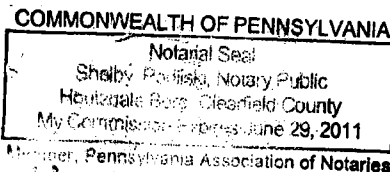
3. For the work performed under Invoices Nos. 328, 333, 331, and 356, the Defendant never issued any work orders, but made telephone calls on all Invoices and issued a purchase order on Invoice No. 331 only when dealing with Plaintiff in Houtzdale, Clearfield County, Pennsylvania to perform the work completed by Plaintiff under said Invoices.

4. The Defendant was inconsistent and did issue work orders on some occasions and did not issue work orders on some occasions pursuant to the Master Subcontractor Agreement when Plaintiff performed work for Defendant. No work orders were issued for any invoices issued under the Complaint in this matter.

  
Richard Scott Gulish

Sworn to and subscribed  
before me this 15<sup>th</sup> day  
of January, 2008.

  
N. P.



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

RICHARD SCOTT GULISH and  
GARY L. CRAGO, t/d/b/a  
GULISH and CRAGO LANDSCAPE  
SERVICES, LLC

VS.

SUNRISE HOMES, INC.

:  
:  
:  
:  
:  
:  
:  
:

NO. 07-1657-CD

FILED 2CC Atty's:  
Kasubick  
0/11:55am B. Marshall  
JAN 28 2008 (60)

William A. Shaw  
Prothonotary/Clerk of Courts

O R D E R

AND NOW, this 24th day of January, 2008, following argument on the Defendant's Preliminary Objections, it is the ORDER of this Court that Preliminary Objections 1 and 3 are hereby dismissed.

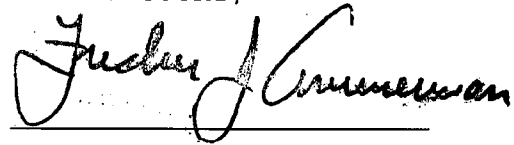
Preliminary Objection 1 is dismissed as the section of the contract calling for arbitration specifically requires that the dispute be based upon "subcontract documents" which the Court finds do not exist in this case.

Preliminary Objection 3 is dismissed as the Court interprets the complaint as being for breach of contract only.

Preliminary Objection 2 is hereby granted to the extent that the Plaintiff shall have no more than twenty (20) days from this date in which to file an Amended Complaint

setting forth additional factual averments as to why venue is appropriate in Clearfield County and not Centre County.

BY THE COURT,

A handwritten signature in cursive script, appearing to read "Judge J. Crumman", written over a horizontal line.

President Judge

DATE: 1-28-08

☐ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

**FILED**

**JAN 28 2008**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL DIVISION

RICHARD SCOTT GULISH	:	No.: 2007-1656-CD
AND GARY L. CRAGO,	:	Type of Case: Civil
T/D/B/A/ GULISH AND CRAGO	:	Type of Pleading:
LANDSCAPE SERVICES, L.L.C.,	:	Amended Complaint
Plaintiffs	:	Filed on behalf of:
vs.	:	Plaintiffs
	:	Counsel of Record for
SUNRISE HOMES, INC.	:	This Party:
Defendant	:	Girard Kasubick, Esq.
	:	Supreme Court No. 30109
	:	LEHMAN & KASUBICK
	:	611 Brisbin Street
	:	Houtzdale, PA 16651
	:	(814) 378-7840

**FILED** 2cc  
01943/64  
FEB 07 2008  
Amy Kasubick

William A. Shaw  
Prothonotary/Clerk of Courts

(GK)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL DIVISION

RICHARD SCOTT GULISH	:	
AND GARY L. CRAGO	:	No.: 2007-1656-CD
T/D/B/A GULISH AND CRAGO	:	
SERVICES, L.L.C.,	:	
Plaintiffs	:	
vs.	:	
	:	
SUNRISE HOMES, INC.,	:	
Defendant	:	

**NOTICE**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE.  
IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE

SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH  
INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE  
MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES  
THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A  
REDUCED FEE OR NO FEE.

Court Administrator's Office  
Clearfield County Court House  
Clearfield, PA 16830  
(814) 765-2641



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL DIVISION

RICHARD SCOTT GULISH	:	
AND GARY L. CRAGO	:	No.: 2007-1656-CD
T/D/B/A GULISH AND CRAGO	:	
SERVICES, L.L.C.,	:	
Plaintiffs	:	
vs.	:	
	:	
SUNRISE HOMES, INC.,	:	
Defendant	:	

**AMENDED COMPLAINT**

AND NOW COMES the Plaintiffs, Richard Scott Gulish and Gary L. Crago t/d/b/a Gulish and Crago Landscape Services, L.L.C. by and through their attorney, Girard Kasubick, Esq., and files the following Amended Complaint.

1. The Plaintiffs are Richard Scott Gulish and Gary L. Crago who are the owners of the business Gulish and Crago Landscape Services, L.L.C. a Limited Liability Company formed under the laws of the Commonwealth of Pennsylvania with its principal place of business at 940 Sue Street, Houtzdale, PA 16651.

2. The Defendant is Sunrise Homes, Inc. a corporation formed under the laws of the Commonwealth of Pennsylvania with its principal place of business at 2790 West College Avenue, Suite 900, State College, PA 16801.

3. The Defendant has its offices in State College, Centre County, Pennsylvania and is involved in the development of real properties in that area for construction and sale of family homes.

4. The Plaintiffs operate a landscaping business based in Clearfield County, wherein they landscape yards and plant trees, shrubs, flowers, grass, and develop commercial and residential sites by landscaping.

5. In or about late 2004, Plaintiffs and Defendant first entered into contracts for Plaintiffs to do some landscaping work on sites being developed by Defendant in Centre County.

6. By Master Subcontractor Agreement dated May 2, 2005, Plaintiffs and Defendant entered into a written contract for Plaintiffs to do work on sites being developed by Defendant, a copy of which is attached hereto and marked Exhibit "A".

7. Since May 2, 2005, Plaintiffs have done dozens of landscaping jobs for Defendant and some followed the terms of the May 2, 2005 Master Subcontractor Agreement and others did not follow the procedure established in that Agreement.

8. In or about October 2006, Defendant from its offices in Centre County telephoned the Plaintiffs at its offices in Clearfield County and requested that Plaintiffs place some indoor plants at the Defendant's offices at 2790 West College Avenue, State College, Pennsylvania 16801. This was not a subcontract agreement but a direct contract with Defendant.

9. The Plaintiffs did install the indoor plants at Defendant's office in or about October 2006 and Plaintiffs issued invoice No. 200 to Defendant for payment, a copy of which is attached hereto and marked Exhibit "B" in the amount of \$445.20.

10. Defendant has not paid Invoice No. 200 in the amount of \$445.20.

11. In or about May 2007, Defendant from its offices in Centre County telephoned the Plaintiffs at its offices in Clearfield County and requested that Plaintiffs do landscaping work on a lot site in the Timberton Development of Defendant and do landscaping work in the sign area at the entrance of the Timberton Development of Defendant.

12. The Plaintiffs did the landscaping work on the lot site and sign area of the Timberton Development and

issued Invoice Nos. 328 and 333 to Defendant for payment, a copy of which are attached hereto and marked Exhibits "C" and "D" in the amount of \$156.25 and \$1,050.00.

13. The Defendant has not paid Invoice Nos. 328 and 333 in the amount of \$156.25 and \$1,050.00.

14. In or about May and June 2007, Defendant from its offices in Centre County telephoned the Plaintiffs at its offices in Clearfield County and requested that the Plaintiffs do landscaping work at Lot 29 in the Springfield Commons Development of Defendant. Afterwards Defendant wanted extra work done at this site.

15. The Plaintiffs did the landscaping work at Lot 29 in the Springfield Commons Development and issued Invoice Nos. 331 and 356 to Defendant for payment, a copy of which are attached hereto and marked Exhibits "E" and "F", in the amounts of \$4,510.39 and \$184.59.

16. The Defendant has not paid Invoice Nos. 331 and 356 in the amounts of \$4,510.39 and \$184.59.

17. The Defendant did not follow the procedure outlined in the Master Subcontractor Agreement and did not issue any work orders as required on page 1 and Section 2 of the Master Subcontractor Agreement, attached hereto and marked Exhibit "A" for the work performed by the

Plaintiffs under all invoices noted in this Amended Complaint.

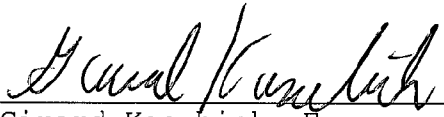
18. The Defendant only made phone calls for the Plaintiffs to perform the work set forth in this Amended Complaint and did issue one purchase order on Invoice No. 331 but never made any work order requests.

19. The Plaintiffs aver that they are due a total amount of \$6,346.43 from the Defendant being the total of the amounts set forth in Paragraphs 10, 13, and 16 in this Amended Complaint.

20. The Plaintiffs further aver that it is due court costs including Magisterial Judge costs of \$127.50 and interest on the amount claimed.

WHEREFORE, Plaintiffs request Your Honorable Court to enter judgment in the amount of Six Thousand Three Hundred Forty-six and 43/100 (\$6,346.43) Dollars, plus court costs, attorney fees and interest in favor of Plaintiffs and against the Defendant.

RESPECTFULLY SUBMITTED:

  
Girard Kasubick, Esq.,  
Attorney for Plaintiffs

**VERIFICATION**

I, the undersigned, verify that the statements made in the foregoing Amended Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.

  
Richard Scott Gulish

**SUNRISE HOMES, INC.**  
**MASTER SUBCONTRACTOR AGREEMENT**

THIS AGREEMENT, made this 2<sup>nd</sup> day of May 2005, by and between,

**Sunrise Homes, Inc.**  
2790 West College Avenue, Suite 900  
State College, PA 16801  
Phone 814-231-8500  
Fax 814-238-0093  
(the "Contractor")

AND

**Gulish & Crago Landscape Services**  
940 Sue Street  
Houtzdale, PA 16651  
Phone: 814-577-0951  
(the "Subcontractor")

For the consideration as hereinafter provided, and intending to be legally bound hereby, the Subcontractor and Contractor agree as follows:

General Scope of Agreement: **This is a Master Subcontract.** The terms of this Master Subcontract will apply to any and all work performed by Subcontractor for Contractor after the above date for any work and/or projects that are not under a separate Subcontract agreement with Contractor which may have been executed before January 1, 2002.



This Master Subcontract contemplates that Contractor will engage Subcontractor to perform work from time to time on one or more projects. As the Subcontractor is engaged for each new project, a "Work Order" will be issued to the Subcontractor describing the scope of work to be performed as well as the terms of payment for that particular project. Each Work Order shall constitute an Amendment to this Master Subcontract, subject to all the terms and conditions of this Master Subcontract, which will be incorporated by reference into the Work Order as if set forth at length therein. A form Work Order is attached hereto as "Exhibit A". Additional terms and conditions that will apply to that project may also be included in the Work Order, and additional documents comprising binding contract documents for the project may be referenced in the Work Order. This Master Subcontract, the Work Order issued for any particular project, all other contract documents referenced in the Work Order, and any change orders issued on a particular project, shall be referred to hereafter as the "Subcontract Documents."

Section 1. Subcontractor Representations. The Subcontractor hereby covenants and agrees to provide all material, supplies, tools, equipment, labor, supervision, services and other items required by the Subcontract Documents, or reasonably inferable from the Subcontract Documents, for each project, to complete all work in strict compliance with the Subcontract Documents.

Section 2. Duration of Work. The Subcontractor agrees to begin work immediately upon receipt of a Work Order issued by Contractor and to timely complete the scope of work included in the Subcontract Documents for each project. Time is of the essence for each project. The scope of work shall be substantially completed no later than the date set forth in the Work Order, subject to any adjustments approved by Contractor. Should Subcontractor fail to substantially complete its work by the date set forth in a Work Order, the Contractor may withhold \$100 per day from the Subcontractor as liquidated damages, or may seek the actual damages incurred due to the delayed completion.

Section 3. Progress and Final Payments. Payments to Subcontractor shall be made in accordance with the terms of payment found in each individual Work Order. Said progress payments shall be paid upon applications for payments and/or invoices submitted by the Subcontractor and approved by the Contractor for completed work such that applications/invoices received by Contractor by the 30<sup>th</sup> of the month will be paid on the Friday after the 10<sup>th</sup> of the following month. The Contractor may withhold payment on any items and/or sections of the scope of work not completed to applicable

EXHIBIT "A"  
Page 1 of 7

CONTRACTOR:   
SUBCONTRACTOR:  13

industry standards or to Contractor's reasonable satisfaction and/or for failure to maintain scheduled progress, except if such failure is the result of any factor beyond Subcontractor's control. All work deemed defective or substandard shall be corrected prior to payment.

Final payment, constituting the entire unpaid balance of the sum under each Work Order, shall be made by the Contractor when the Subcontractor has fully performed the scope of work in accordance with the requirements of the applicable Subcontract Documents. Before issuance of the final payment, the Subcontractor, if requested by the Contractor, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's performance of any Work Order have been satisfied.

**The making of final payment shall not constitute a waiver of any claims by Contractor.**

**Acceptance of final payment by Subcontractor shall constitute a full and final waiver and release of all claims, counterclaims, demands, mechanic's lien claims and surety bond claims arising from, or relating in any way to, the subject project for which final payment was made, including but not limited to any alleged claims for change orders, extra-contractual work, delay and/or inefficiency damages. Without effecting the waiver and release of the preceding sentence, Contractor expressly reserves the right to require that Subcontractor execute a waiver and release of claims in a form acceptable to Contractor at the time of final payment.**

Section 4. Subcontractor Agreements. The Contractor may require the Subcontractor to enter into agreements with sub-subcontractors to perform portions of the scope of work under any Work Order. In such case the Subcontractor and the sub-subcontractor shall assume all obligations and responsibilities toward each other which the Contractor and Subcontractor assume toward each other and shall have the benefit of all rights, remedies and redress which are provided by virtue of the provisions of the Subcontract Documents for that particular project.

Section 5. Contractor Services. The Contractor shall cooperate with the Subcontractor in scheduling and performing the scope of work of each Work Order to avoid conflicts or interference in the Subcontractor's work. As soon as practicable after execution of each Work Order, the Contractor shall provide the Subcontractor with copies of the Contractor's construction schedule, together with any additional scheduling details that will enable the Subcontractor to plan and perform the scope of work properly. The Subcontractor shall be promptly notified of any subsequent changes in the construction schedules and additional scheduling details in accordance with Section regarding "Change Orders" in this Master Subcontract.

Section 6. Subcontractor Storage of Materials. The Contractor shall provide suitable areas for storage of Subcontractor materials and equipment used during the scope of work of each Work Order. At all times, the Subcontractor shall bear the responsibility of the materials and equipment stored at the project sites. Subcontractor shall remove the material and equipment immediately after the completion of the scope of work.

Section 7 Communications with Subcontractor. The Contractor shall give instructions and orders only to persons designated as authorized representatives of the Subcontractor.

Section 8. Contractor Notice of Hazardous Substances. If hazardous substances of a type of which an employer is required by law to notify its employees are being used on any site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall notify the Subcontractor's employees of the use of such substance



before exposure to the substance in sufficient detail and time to permit the Subcontractor's compliance with such laws.

Section 9. Defects in Work. Subcontractor warrants that all work performed under any Work Order will be free from defects and that all work will conform with the requirements of the Subcontract Documents for that project. Any work not conforming to said requirements or any substitutions not properly approved and authorized by the Contractor shall be considered defective. Any work found defective within one (1) year of project completion shall be promptly corrected by the Subcontractor upon receipt of written or verbal notice by Contractor or Homeowner. Should Subcontractor fail to promptly correct any defects after notice and Contractor corrects the defects by another means, Subcontractor shall be liable for all costs incurred in correcting the defects, including all attorney's fees and costs incurred in serving the notice of defects or any subsequent legal action. This obligation shall survive termination of any Work Order and the Master Subcontract.

Section 10. Subcontractor Warranty. Subcontractor warrants that all materials and equipment furnished pursuant to the Subcontract Documents for any project will be of good quality and new unless otherwise permitted under the Subcontract Documents. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the manufacturer of any materials or equipment supplied to a project.

Section 11. Waiver of Rights to File Mechanic's Liens. The Subcontractor agrees that neither the Subcontractor nor any sub-subcontractor nor any person furnishing labor, materials or services to the Subcontractor for the performance of the scope of work for any project, shall file a lien or claim commonly known as a mechanic's lien or material men's lien claim, against the land or improvements constituting the project. This provision constitutes an express waiver of the right to file such liens on behalf of the Subcontractor and each and every of its sub-subcontractors, material men and laborers for each project.

Section 12. Termination by Contractor. The Contractor may terminate any Work Order, or this Master Subcontract as a whole, for any reason and without cause. In the event the Subcontractor fails or neglects to carry out the scope of work for a project in accordance with the Subcontract Documents for that project, or otherwise fails to perform in accordance with this Master Subcontract, except when such failure is caused by delays due to weather breakdowns, strikes, accidents, acts of God or intentional delays caused by Contractor, the Contractor shall provide written notice to Subcontractor of such failure or neglect and shall request the Subcontractor to promptly commence work or correct the default. If Subcontractor fails to commence work within three working days of receipt of notice from Contractor, the Contractor may, without prejudice to any other remedy available to it under this Master Subcontract, terminate the particular Work Order, or this Master Subcontract as a whole, and Contractor may finish the scope of work remaining under any Work Orders by whatever method the Contractor deems expedient. Any unpaid balance under a Work Order may be used by Contractor toward the expense of finishing the Subcontractor's work under that Work Order; however, if such expense exceeds the unpaid balance, the Subcontractor shall pay the difference to the Contractor. If Subcontractor is terminated for cause as described in this paragraph, it shall be liable to Contractor for all attorney's fees and costs incurred by Contractor in serving the notice of termination and in any subsequent legal action.

Section 13. Termination by Subcontractor. If Contractor fails to pay any amount validly due under a Work Order in accordance with the payment schedule in that Work Order, and such nonpayment continues for a period of 90 days, Subcontractor shall have the right to terminate that particular Work Order. In the event of termination of a Work Order by Subcontractor for nonpayment, if such nonpayment is not caused by the fault of Subcontractor or other persons performing the scope of work on its behalf under that particular Work Order, the Subcontractor shall be entitled to recover from the

Contractor payments for work actually completed, but in no instance shall be entitled to consequential, incidental, indirect, or special damages, including but not limited to loss of use costs, revenues, profits or savings, even if Contractor knew or should have known of the possibility of such damages.

Section 14. Subcontractor Execution of Work.

a) The Subcontractor shall cooperate with the Contractor in scheduling and performing the scope of work under each Work Order to avoid conflict, delay or interference with the work of the Contractor or other subcontractors.

b) The Subcontractor shall keep each project and surrounding areas free from accumulation of waste materials or rubbish caused during the performance of Subcontractor's scope of work. The Subcontractor shall keep the road to each project clean and free of mud at all times during the execution of the scope of work for each project, provided, however, the Subcontractor shall not be held responsible for unclean conditions caused by the Contractor or other subcontractors.

c) If Subcontractor's performance under any Work Order causes the Contractor to bear any additional cost or expense as a result of Subcontractor's inability to keep the surrounding area in the condition specified in the previous paragraph, all such costs and expenses shall be deducted from the unpaid balance owed to Subcontractor under that particular Work Order.

d) The Subcontractor shall employ competent workers and have a competent foreman or other authorized person, approved by the Contractor, on each project site during all working hours. Working hours shall be those as set by the Contractor and the Subcontractor shall adjust its working hours accordingly. There shall be no drinking or drug use by Subcontractor or any employees, agents or other persons for which the Subcontractor is directly or indirectly responsible at any project at any time. Failure to comply with this provision shall result in automatic termination of this Master Subcontract in accordance with the Termination provision of this Master Subcontract.

e) The Subcontractor shall be responsible to Contractor for the acts and omissions of the Subcontractor's employees, sub-subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with or employment by the Subcontractor. Without limiting the foregoing, the Subcontractor shall promptly remedy damage and loss to property at the project site caused in whole or in part by the Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable. The foregoing obligations of the Subcontractor are in addition to the Subcontractor's obligations set forth elsewhere in the Subcontract Documents.

f) The Subcontractor shall furnish all material, submit shop drawings and samples as required, and perform all work necessary to complete the scope of work for each project to the full satisfaction of Contractor. All work performed by Subcontractor shall be performed in an expeditious, workmanlike manner in accordance with applicable industry standards and in compliance with all government regulations and governing codes including but not limited to OSHA Safety Regulations.

g) If Subcontractor, its sub-subcontractors or anyone directly or indirectly employed by them, is using a hazardous substance on any project of a type which an employer is required by law to notify its employees is being used on the site, the Subcontractor, its sub-subcontractors or anyone directly or indirectly employed by them shall, prior to harmful exposure of any of the employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employees on the site. In the event that the Subcontractor fails to comply fully with the foregoing, Subcontractor agrees to indemnify and hold harmless the Contractor in accordance with Section 15, below.

h) The Subcontractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of any work.

i) Subcontractor shall attend any conferences required by Contractor to discuss the progress and status of work on any project.

Section 15. Indemnification. To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Contractor and agents and employees of Contractor from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the scope of work on any project by the Subcontractor, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property including loss of use therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by the Contractor. In the case of any claims, suits, demands, damages or losses brought by one directly or indirectly employed by Subcontractor, including but not limited to statutory employees, the indemnification obligations of this paragraph shall not be limited in any way by the immunity from liability or suit granted by applicable workmen's compensation laws, or by any limitation on the amount or type of damages, compensation, or benefits payable under any applicable workmen's compensation laws, disability benefits laws, or other employee benefits laws.

Section 16. Insurance. Certificates of insurance are to be provided to Contractor for approval prior to start of work and/or first progress payment for the project. Insurance shall be purchased and maintained without interruption from the date of commencement of work by the Subcontractor until the date of final payment. Any information concerning reduction of coverage or cancellation shall be furnished by the Subcontractor to the Contractor with reasonable promptness. The following coverages and limits of liability shall be maintained by the Subcontractor:

TYPE	AMOUNT
General Liability	no less than \$500,000.00
Worker's Compensation – Employers Liability	no less than \$500,000.00

The Contractor and Subcontractor waive all rights against (1) each other and any of their other subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect and the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Contractor and Subcontractor, as appropriate, shall require separate contractors and subcontractors, if any, and sub-subcontractors, agents and employees of any of them, by appropriate agreement, written where legally required for validity, to provide similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

A loss of insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their sub-subcontractors in similar manner.

Section 17. Changes in Work. The Subcontractor may be ordered in writing by the Contractor to make changes in the scope of work for each project within the general scope of the Subcontract Documents ("change orders"). Such change orders may consist of additions, deletions or other revisions

to the Subcontract Documents, the subcontract sum for the particular project, the time of completion or the Subcontractor's schedule of values. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform work which would be inconsistent with a change order. The Subcontractor, prior to the commencement of any change order, shall submit to the Contractor within 3 days of receiving a change order written copies of any claims for adjustment to the contract sum or time of completion plus any claims for additional costs or damages for delays or other expenses caused by the change order.

No extra work or changes under the Subcontract Documents for any project will be recognized or reimbursed unless agreed to in writing by the Contractor before the work is performed. The Subcontractor shall notify the Contractor of any work over and above the scope of work that is required to be performed because of unforeseen problems arising from the Subcontract Documents or a change order.

Section 18. Arbitration. Any claim or dispute between Contractor and Subcontractor arising under the Subcontract Documents for any project shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, whose decision and award shall be final and binding. Notice of the demand for arbitration shall be filed in writing with the other party and the American Arbitration Association within twenty (20) days of the date the dispute arose.

Section 19. Assignment. This Master Subcontract, and each Work Order issued hereunder, shall not be assigned by the Subcontractor without prior written consent from the Contractor. Subcontractor may not further subcontract portions of the Scope of Work without written notification to the Contractor.

Section 20. Contractor Approvals. Each Work Order issued under this Master Subcontract is specifically conditioned upon the ability of Contractor to secure all necessary government permits and unappealable and unappealed approvals, without pursuing appeal or contesting an appeal or appeal by others, to construct the particular project. Each Work Order is further conditioned upon the Contractor obtaining all the necessary financing for construction and improvements of the particular project. Upon failure of either of the foregoing and upon written notice by Contractor to Subcontractor, a Work Order shall be terminated and become null and void, and both parties shall be relieved of all obligations and liabilities hereunder.

Section 21. Miscellaneous Provisions.

21.1 Entire Agreement. This Master Subcontract represents the entire agreement and understanding of the parties with respect to its subject matter, with the exception of any Work Orders issued hereunder, and supersedes any and all previous agreements of whatever nature between the parties with respect to the same subject matter except as described elsewhere herein. This Master Subcontract and each Work Order issued hereunder may not be altered or amended except by written agreement signed by both parties.

21.2 Governing Law. This Master Subcontract and each Work Order issued hereunder has been made in the Commonwealth of Pennsylvania, and the interpretation, validity, performance and effect of said documents shall be determined in accordance with the laws of the Commonwealth of Pennsylvania.

21.3 Time of Essence. Time is of the essence of this Master Subcontract and each Work Order issued hereunder. No extension of time will be valid without the written consent of the Contractor.

21.4 Compliance. The Subcontractor shall comply with federal, state, and local tax laws, social security acts, unemployment compensation acts, workers' compensation acts, to the extent applicable, in the performance of the scope of work for any project.

21.5 Headings. The headings of the paragraphs in this Master Subcontract are for convenience only; they form no part of this Master Subcontract and shall not affect its interpretation. All schedules, exhibits or attachments referred to herein shall be incorporated in and constitute a part of this Master Subcontract.

21.6 Binding Agreement. This Master Subcontract shall inure to the benefit of the Contractor's and Subcontractor's successors, executors, administrators and assigns.

21.7 Subcontractor Review of Site. By executing each Work Order, Subcontractor is representing that Subcontractor has visited the project site, examined the project site carefully, become familiar with the local conditions under which the work is to be performed, examined the Subcontract Documents carefully, and has determined that the work can be performed by the Subcontractor for the Work Order sum and within the time allotted for completion. In addition, the Subcontractor represents that it has verified to its satisfaction the nature and quantity of the work involved and is familiar with all conditions which may be encountered. The Subcontractor hereby agrees to perform the work, without increase in the Work Order sum, irrespective of the conditions encountered by the Subcontractor at the project site.

21.8 Severability. If any part of any provision of this Master Subcontract or any Work Order issued hereunder is invalid or unenforceable under applicable law, the provision shall be ineffective only to the extent of such invalidity or unenforceability without in any way affecting the remaining provisions of this Master Subcontract and/or a Work Order.

21.9 Counterparts. This Master Subcontract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

21.10 Non-Exclusivity of Agreement. This Master Subcontract shall not constitute nor be construed as an agreement for Contractor to use Subcontractor exclusively on all projects. In addition, this Master Subcontract shall not constitute nor be construed as an agreement that Contractor will purchase the complete output of all labor, materials and equipment produced or provided by Subcontractor.

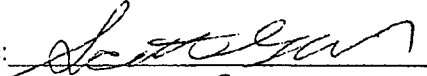
This document has important legal consequences; consultation with an attorney is encouraged before signing this document.

IN WITNESS WHEREOF, the Contractor and the Subcontractor hereto agree to the full performance of all the covenants, terms and conditions set forth in this Master Subcontract.

SUBCONTRACTOR

GULISH & CHAGO LANDSCAPE LLC

By:

Signature: 

Printed: SCOTT GULISH

Title: OWNER

CONTRACTOR

Sunrise Homes, Inc.

By:

Signature: 

Printed: Barry Begoumian

Title: President



GULISH & CRAGO LANDSCAPE L.L.C.

940 SUE ST.

HOUTZDALE, PA 16651

814-577-0951

FAX 814-378-7722

CELL 814-571-9545

EXTREMETREES@VERIZON.NET

# Invoice

Invoice No: 200  
Date: 10/16/2006  
Terms: Net 30  
Due Date: 11/15/2006

Bill To:

Ship To:

SUNRISE HOMES  
2790 W. COLLEGE AVE.  
STATE COLLEGE, PA 16801

Ship Date: 10/16/2006  
Ship Via: <shipvia>  
Tracking No: <tracking number>  
FOB: <shipping\_fob>

Code	Description	Qty/Hours	Rate	Tax %	Amount
	MISC. OFFICE PLANTS	1.00	\$420.00	6.00%	\$420.00

Subtotal	\$420.00
Tax	\$25.20
Shipping	\$0.00
Total	\$445.20
Deposit	\$0.00
Balance Due	\$445.20



GULISH & CRAGO LANDSCAPE L.L.C.

940 SUE ST.  
HOUTZDALE, PA 16651

814-577-0951  
FAX 814-378-7722  
CELL 814-571-9545  
EXTREMETREES@VERIZON.NET

# Invoice

Invoice No: 328  
Date: 5/11/2007  
Terms: Net 30  
Due Date: 6/10/2007

Ship To:

Ship To:

SUNRISE HOMES  
2790 W. COLLEGE AVE.  
STATE COLLEGE, PA 16801  
TIMBERTON SIGN @ ENTRANCE

Ship Date: 5/11/2007  
Ship Via: <shipvia>  
Tracking No: <tracking number>  
FOB: <shipping\_fob>

Code	Description	Qty/Hours	Rate	Tax %	Amount
	2.5 CUBIC YARDS MULCH	2.50	\$25.00	6.00%	\$62.50
	LABOR TO INSTALL 2 MAN HOURS	2.00	\$45.00	0.00%	\$90.00

Subtotal	\$152.50
Tax	\$3.75
Shipping	\$0.00
Total	\$156.25
Deposit	\$0.00
Balance Due	\$156.25



GULISH & CRAGO LANDSCAPE L.L.C.

940 SUE ST.  
HOUTZDALE, PA 16651

814-577-0951  
FAX 814-378-7722  
CELL 814-571-9545  
EXTREMETREES@VERIZON.NET

# Invoice

Invoice No: 333  
Date: 5/18/2007  
Terms: Net 30  
Due Date: 6/17/2007

Bill To:

Ship To:

SUNRISE HOMES  
2790 W. COLLEGE AVE.  
STATE COLLEGE, PA 16801  
(MODEL HOME @ TIMBERTON)

Ship Date

Ship Via

Tracking No

FOB

5/18/2007

<shipvia>

<tracking number>

<shipping\_fob>

Code	Description	Qty/Hours	Rate	Tax %	Amount
	15 YARDS MULCH	15.00	\$25.00	6.00%	\$375.00
	LABOR RE-EDGE BEDS , PRUNE, INSTALL MULCH	14.50	\$45.00	0.00%	\$652.50

Subtotal	\$1,027.50
Tax	\$22.50
Shipping	\$0.00
Total	\$1,050.00
Deposit	\$0.00
Balance Due	\$1,050.00





GULISH & CRAGO LANDSCAPE L.L.C.  
940 SUE ST.  
HOUTZDALE, PA 16651

814-577-0951  
FAX 814-378-7722  
CELL 814-571-9545  
EXTREMETREES@VERIZON.NET

# Invoice

Invoice No: 331  
Date: 5/18/2007  
Terms: Net 30  
Due Date: 6/17/2007

Bill To:

SUNRISE HOMES  
2790 W. COLLEGE AVE.  
STATE COLLEGE, PA 16801  
(SPRINGFIELD COMMONS LOT # 29)

Ship To:

P.O.# 4992

Ship Date: 5/18/2007      Ship Via: <shipvia>      Tracking No: <tracking number>      FOB: <shipping\_fob>

Code	Description	Qty/Hours	Rate	Tax %	Amount
	MATERIAL TO INSTALL LOT # 29	1.00	\$2,231.50	6.00%	\$2,231.50
	LABOR TO INSTALL	39.00	\$55.00	0.00%	\$2,145.00

Subtotal	\$4,376.50
Tax	\$133.89
Shipping	\$0.00
Total	\$4,510.39
Deposit	\$0.00
Balance Due	\$4,510.39



GULISH & CRAGO LANDSCAPE L.L.C.

940 SUE ST.  
HOUTZDALE, PA 16651

814-577-0951  
FAX 814-378-7722  
CELL 814-571-9545  
EXTREMETREES@VERIZON.NET

# Invoice

Invoice No: 356  
Date: 6/26/2007  
Terms: Net 30  
Due Date: 7/26/2007

Bill To:

SUNRISE HOMES  
2790 W. COLLEGE AVE.  
STATE COLLEGE, PA 16801  
SPRINGFIELD # 29 EXTRA WORK

Ship To:

Ship Date: 6/26/2007      Ship Via: <shipvia>      Tracking No: <tracking number>      FOB: <shipping\_fob>

Code	Description	Qty/Hours	Rate	Tax %	Amount
	3 RED TWIG DOGWOOD AT UTILITY BOX ( EXTRA WORK )	3.00	\$38.50	6.00%	\$115.50
	1/4 YARD MULCH	0.25	\$27.00	6.00%	\$6.75
	LABOR TO INSTALL	1.00	\$55.00	0.00%	\$55.00

Subtotal	\$177.25
Tax	\$7.34
Shipping	\$0.00
Total	\$184.59
Deposit	\$0.00
Balance Due	\$184.59

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL DIVISION

RICHARD SCOTT GULISH	:	No.: 2007-1656-CD
AND GARY L. CRAGO,	:	Type of Case: Civil
T/D/B/A/ GULISH AND CRAGO	:	Type of Pleading:
LANDSCAPE SERVICES, L.L.C.,	:	Certificate of Service
Plaintiffs	:	Filed on behalf of:
vs.	:	Plaintiffs
	:	Counsel of Record for
SUNRISE HOMES, INC.	:	This Party:
Defendant	:	Girard Kasubick, Esq.
	:	Supreme Court No. 30109
	:	LEHMAN & KASUBICK
	:	611 Brisbin Street
	:	Houtzdale, PA 16651
	:	(814) 378-7840

**FILED** <sup>1cc</sup>  
019:46/BAK  
FEB 13 2008  
Any Kasubick  
William A. Shaw  
Prothonotary/Clerk of Courts

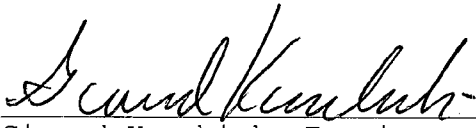
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL DIVISION

RICHARD SCOTT GULISH :  
AND GARY L. CRAGO : No.: 2007-1656-CD  
T/D/B/A GULISH AND CRAGO :  
SERVICES, L.L.C., :  
Plaintiffs :  
vs. :  
SUNRISE HOMES, INC., :  
Defendant :

**CERTIFICATE OF SERVICE**

I hereby certify that I, Girard Kasubick, Esq.,  
served a copy of the Amended Complaint by regular United  
States mail, postage pre-paid, mailed on February 7, 2008  
upon the attorney for the Defendant, Sunrise Homes, Inc.,  
at the following address:

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
Brian K. Marshall, Esq.  
Scott C. Etter, Esq.  
720 South Atherton Street, Suite 201  
State College, PA 16801

  
Girard Kasubick, Esquire,  
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

RICHARD SCOTT GULISH and  
GARY L. CRAGO, t/d/b/a  
GULISH AND CRAGO LANDSCAPE  
SERVICES, LLC,

Plaintiffs

vs.

SUNRISE HOMES, INC.,  
Defendant

)  
)  
)  
)  
) No. 07-1656-CD  
)  
) Type of Case: Civil Action  
)  
) Type of Pleading: Answer and New  
) Matter to Amended Complaint and  
) Counterclaim  
)  
)  
) File on Behalf of: Defendant  
)  
) Counsel of Record for this Party:  
) Scott C. Etter, Esquire  
) I.D. No.: PA72789  
) Brian K. Marshall, Esquire  
) I.D. No.: PA87331  
) MILLER, KISTLER, CAMPBELL,  
) MILLER, WILLIAMS & BENSON, INC.  
) 720 S. Atherton Street  
) State College, PA 16801  
) 814-234-1500

FILED <sup>no</sup>cc  
m/11/23/08  
APR 03 2008

William A. Shaw  
Prothonotary/Clerk of Courts

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Defendant

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) No. 07-1656-CD  
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**NOTICE TO PLEAD**

TO THE WITHIN NAMED PLAINTIFFS:

You are hereby notified to plead to the enclosed New Matter within twenty (20)  
days from service hereof or a default judgment may be entered against you.



Brian K. Marshall, Esquire  
I.D. No. PA87331

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
720 S. Atherton Street  
State College, PA 16801  
814-234-1500

Counsel for Defendant

Date: 4/21/08

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

RICHARD SCOTT GULISH and	)	
GARY L. CRAGO, t/d/b/a	)	
GULISH AND CRAGO LANDSCAPE	)	
SERVICES, LLC,	)	
	)	
Plaintiffs	)	No. 07-1656-CD
	)	
vs.	)	
	)	
SUNRISE HOMES, INC.,	)	
	)	
Defendant	)	

**ANSWER AND NEW MATTER TO AMENDED COMPLAINT AND COUNTERCLAIM**

NOW COMES the Defendant, Sunrise Homes, Inc., by and through its attorneys, Scott C. Etter, Esquire, Brian K. Marshall, Esquire and Miller, Kistler, Campbell, Miller, Williams & Benson, Inc., and files the following Answer and New Matter to the Amended Complaint filed by Plaintiffs on or about February 7, 2008, and a Counterclaim, of which the following is a statement:

**ANSWER**

1. Admitted upon information and belief.
2. Admitted.
3. Admitted.
4. Admitted upon information and belief.
5. Admitted.
6. Admitted.
7. Admitted in part and denied in part. It is admitted that since May 2, 2005, Plaintiffs have done many landscaping jobs for Defendant. The remaining averments of

paragraph 7 of Plaintiffs' Amended Complaint are denied as conclusions of law. Strict proof demanded at trial.

8. Admitted in part and denied in part. It is admitted that in or about October 2006, Defendant, from its offices in Centre County, telephoned Plaintiffs at their offices in Clearfield County and requested that Plaintiffs place some indoor plants at Defendant's offices at 2790 W. College Avenue, State College, Centre County, Pennsylvania. The remaining averments of paragraph 8 are denied as conclusions of law. Strict proof demanded at trial.

9. Admitted.

10. Admitted. By way of further answer, Defendant claims an offset against the amount Plaintiffs allege to be due and owing as set forth in Defendant's counterclaim.

11. Admitted.

12. Admitted. By way of further answer, the work performed by Plaintiffs on the entranceway was deficient, as set forth more fully in Defendant's counterclaim.

13. Admitted. By way of further answer, Defendant claims an offset against the amount Plaintiffs allege to be due and owing as set forth in Defendant's counterclaim.

14. Admitted in part and denied in part. It is admitted that in or about May and/or June 2007, Defendant, from its offices in Centre County, telephoned the Plaintiffs at their offices in Clearfield County, and requested that the Plaintiffs do landscape work at lot no. 29 in the Springfield Commons Development. The remaining averments of paragraph 14 are insufficiently specific for Defendant to form a belief as to the truth or



falsity of those averments, and as such, the same are denied. Strict proof demanded at trial.

15. Admitted. By way of further answer, the work performed on lot no. 29 in the Springfield Commons Development was deficient as set forth in Defendant's counterclaim.

16. Admitted. By way of further answer, the work performed on lot no. 29 in the Springfield Commons Development was deficient as set forth in Defendant's counterclaim. As such, Defendant requests an offset of any amounts due and owing Plaintiffs as set forth in Defendant's counterclaim.

17. Denied. Defendant, at all times material hereto, sufficiently followed the requirements of the Master Subcontractor Agreement. To any extent that the formalities of the Master Subcontractor Agreement were not followed, Plaintiffs waived their right to demand compliance with the Master Subcontractor Agreement by performing work outside of the Master Subcontractor Agreement. Strict proof demanded at trial.

18. Denied. The averments of paragraph 18 are denied. Defendant incorporates its answer to paragraph 17 herein as though set forth in full. Strict proof demanded at trial.

19. Denied as a conclusion of law. By way of further answer, Defendant incorporates herein its answers to paragraphs 1 through 18 of Plaintiffs' Amended Complaint, and restates its claims that any amounts due and owing Plaintiffs are offset against amounts Plaintiffs owe Defendant pursuant to Defendant's counterclaim as set forth hereinafter. Strict proof demanded at trial.

20. Denied as a conclusion of law. By way of further answer, Defendant incorporates herein its answers to paragraphs 1 through 19 of Plaintiffs' Amended Complaint. Strict proof demanded at trial.

### **NEW MATTER**

21. Plaintiffs' claims in this forum are barred by Section 18 of the Master Subcontractor Agreement which is attached to Plaintiffs' Complaint as Exhibit A. Specifically, Plaintiffs agreed to alternative dispute resolution in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and failed to timely pursue their remedy pursuant to Section 18 of the Master Subcontractor Agreement.

22. Plaintiffs claim an offset against any amounts owed to them by amounts that they owe to Defendant, as set forth in Defendant's counterclaim hereinafter. Defendant hereby incorporates its counterclaim herein as though set forth in full.

23. Plaintiffs claims are barred by the statute of limitations.

### **COUNTERCLAIM**

NOW COMES Defendant/Counterclaim Plaintiff, Sunrise Homes, Inc., by and through its attorneys, Scott C. Etter, Esquire, Brian K. Marshall, Esquire and Miller, Kistler, Campbell, Miller, Williams & Benson, Inc., who files the following Counterclaim, of which the following is a statement:

1. Counterclaim Plaintiff, Sunrise Homes, Inc., is a corporation formed under the laws of the Commonwealth of Pennsylvania, with its principal place of business at 2790 W. College Avenue, Suite 900, State College, PA 16801.

2. Counterclaim Defendants are Richard Scott Gulish and Gary L. Crago, individuals and citizens of the Commonwealth of Pennsylvania and the sole members of Gulish and Crago Landscape Services, LLC, a limited liability company formed under the laws of the Commonwealth of Pennsylvania, with its principal place of business at 940 Sue Street, Houtzdale, PA 16651.

3. Counterclaim Plaintiff has offices in State College, Centre County, Pennsylvania, and is involved in the development of real estate in Centre County, Pennsylvania.

4. Counterclaim Defendants are a landscaping business based in Houtzdale, Clearfield County, Pennsylvania, and the owners thereof, who are residents of Clearfield County, Pennsylvania.

5. By Master Subcontractor Agreement dated May 2, 2005, Counterclaim Plaintiff and Counterclaim Defendants entered into a written contract for Counterclaim Defendants to do landscape work on various parcels of real estate being developed by Counterclaim Plaintiff. A copy of the Master Subcontractor Agreement is attached to Counterclaim Defendants Complaint in this matter and marked Exhibit A.

6. During the term of the said contract, Counterclaim Plaintiff contracted with Counterclaim Defendants, pursuant to the Master Subcontractor Agreement, for the performance of various landscaping and lawn installation services.

7. On or about August 20, 2007, Counterclaim Plaintiff sent to Counterclaim Defendants a Notice of Non-Performance and Notice of Intent to Cancel Contract. A true and correct copy of the said Notice is attached hereto, incorporated herein by reference and marked Exhibit "B."

8. The said Notice advised Counterclaim Defendants of various deficiencies in their work, to include deficiencies in the lawns and plant installation on lot nos. 5, 13, 18, 19 and 20 in Timberton Estates, which is located in Patton Township, Centre County, Pennsylvania; notice that two trees at the entrance to Timberton Estates were dead; notice that pavers installed on the outdoor patio of lot no. 20 at Timberton Estates were not installed correctly; notice that lawn installation at building nos. 1 and 2 of the Wiltree Condominium development were deficient; notice that the lawn installation on lot nos. 20 and 29 in the Springfield Commons development was deficient; and notice that the lawn on lot no. 30 in the Springfield Commons development had not been installed.

9. Counterclaim Plaintiff incurred the following expenses to remedy the deficiencies alleged hereinabove:

(a)	Lot 20 Timberton Estates	\$ 1,000.00
(b)	Lot 19 Timberton Estates	\$ 1,000.00
(c)	Lot 18 Timberton Estates	\$ 1,000.00
(d)	Lot 13 Timberton Estates	\$ 1,000.00
(e)	Lot 5 Timberton Estates	\$ 1,000.00
(f)	Timberton Estate – 2 trees at entrance	\$ 300.00
(g)	Lot 20 Timberton Estate – pavers	\$ 500.00
(h)	Wiltree Building 1 – lawn	\$ 1,500.00
(i)	Wiltree Building 2 – lawn	\$ 1,500.00
(j)	Lot 29 Springfield Commons	\$ 1,000.00
(k)	Lot 30 Springfield Commons	\$ 1,000.00
(l)	Lot 20 Springfield Commons	\$ 500.00
	TOTAL	\$11,300.00

10. In Section 9 of the Master Subcontractor Agreement, Counterclaim Defendants warranted that all work performed will be free from defects.

11. Section 9 further provides that any work found defective within one year of project completion shall be promptly corrected by Counterclaim Defendants upon receipt of written or verbal notice by Counterclaim Plaintiff.

12. Section 9 further provides that should Counterclaim Defendants fail to promptly correct any defects after notice, and Counterclaim Plaintiff corrects the defects by another means, Counterclaim Defendants shall be liable for all costs incurred in correcting the defects, including all attorney's fees and costs incurred in serving the notice of defects and any subsequent legal action.

13. The costs incurred by contractor to repair the defects alleged herein above total \$11,300.00, exclusive of attorney's fees and costs.

14. Counterclaim Plaintiff has engaged counsel at the reasonable and customary rate of \$150.00 per hour for prosecution of this matter, and as of the date of filing, a total amount of legal fees incurred has not been determined and is not determinable until the end of the litigation.

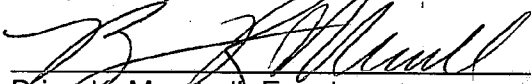
15. The Master Subcontractor Agreement which is attached to Counterclaim Defendants' Complaint as Exhibit A is a valid and binding contract upon Counterclaim Plaintiffs and Counterclaim Defendants.

16. Counterclaim Defendants' action in failing to remedy the deficiencies stated hereinabove after due and proper written notice constitute a breach of the contract.

17. As a result of the Counterclaim Defendants' breach of the valid and binding contract, Counterclaim Plaintiff has incurred compensable damages in the amount of \$11,300.00, plus attorney's fees in the amount of \$150.00 per hour.

WHEREFORE, Counterclaim Plaintiff, Sunrise Homes, Inc., respectfully requests the Honorable Court enter judgment in its favor and against Defendant for \$11,300.00, plus attorney's fees for all time incurred in prosecuting this matter at the reasonable and customary rate of \$150.00 per hour, plus interest, costs of suit, and any other relief that the Court would deem to be appropriate and just.

Respectfully submitted:



Brian K. Marshall, Esquire  
I.D. No. PA87331

Scott C. Etter, Esquire  
I.D. No. PA72789

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.  
720 S. Atherton Street  
State College, PA 16801  
814-234-1500

Date: 4/21/08

Counsel for Defendant

# **EXHIBIT A**

**SUNRISE HOMES, INC.**  
**MASTER SUBCONTRACTOR AGREEMENT**

THIS AGREEMENT, made this 2<sup>nd</sup> day of May 2005, by and between,

**Sunrise Homes, Inc.**  
2790 West College Avenue, Suite 900  
State College, PA 16801  
Phone 814-231-8500  
Fax 814-238-0093  
(the "Contractor")

AND

**Gulish & Crago Landscape Services**  
940 Sue Street  
Houtzdale, PA 16651  
Phone: 814-577-0951  
(the "Subcontractor")

For the consideration as hereinafter provided, and intending to be legally bound hereby, the Subcontractor and Contractor agree as follows:

General Scope of Agreement: **This is a Master Subcontract.** The terms of this Master Subcontract will apply to any and all work performed by Subcontractor for Contractor after the above date for any work and/or projects that are not under a separate Subcontract agreement with Contractor which may have been executed before January 1, 2002.

This Master Subcontract contemplates that Contractor will engage Subcontractor to perform work from time to time on one or more projects. As the Subcontractor is engaged for each new project, a "Work Order" will be issued to the Subcontractor describing the scope of work to be performed as well as the terms of payment for that particular project. Each Work Order shall constitute an Amendment to this Master Subcontract, subject to all the terms and conditions of this Master Subcontract, which will be incorporated by reference into the Work Order as if set forth at length therein. A form Work Order is attached hereto as "Exhibit A". Additional terms and conditions that will apply to that project may also be included in the Work Order, and additional documents comprising binding contract documents for the project may be referenced in the Work Order. This Master Subcontract, the Work Order issued for any particular project, all other contract documents referenced in the Work Order, and any change orders issued on a particular project, shall be referred to hereafter as the "Subcontract Documents."


Section 1. Subcontractor Representations. The Subcontractor hereby covenants and agrees to provide all material, supplies, tools, equipment, labor, supervision, services and other items required by the Subcontract Documents, or reasonably inferable from the Subcontract Documents, for each project, to complete all work in strict compliance with the Subcontract Documents.

Section 2. Duration of Work. The Subcontractor agrees to begin work immediately upon receipt of a Work Order issued by Contractor and to timely complete the scope of work included in the Subcontract Documents for each project. Time is of the essence for each project. The scope of work shall be substantially completed no later than the date set forth in the Work Order, subject to any adjustments approved by Contractor. Should Subcontractor fail to substantially complete its work by the date set forth in a Work Order, the Contractor may withhold \$100 per day from the Subcontractor as liquidated damages, or may seek the actual damages incurred due to the delayed completion.

Section 3. Progress and Final Payments. Payments to Subcontractor shall be made in accordance with the terms of payment found in each individual Work Order. Said progress payments shall be paid upon applications for payments and/or invoices submitted by the Subcontractor and approved by the Contractor for completed work such that applications/invoices received by Contractor by the 30<sup>th</sup> of the month will be paid on the Friday after the 10<sup>th</sup> of the following month. The Contractor may withhold payment on any items and/or sections of the scope of work not completed to applicable

EXHIBIT "A"  
Page 1 of 7

CONTRACTOR: 

SUBCONTRACTOR: 



industry standards or to Contractor's reasonable satisfaction and/or for failure to maintain scheduled progress, except if such failure is the result of any factor beyond Subcontractor's control. All work deemed defective or substandard shall be corrected prior to payment.

Final payment, constituting the entire unpaid balance of the sum under each Work Order, shall be made by the Contractor when the Subcontractor has fully performed the scope of work in accordance with the requirements of the applicable Subcontract Documents. Before issuance of the final payment, the Subcontractor, if requested by the Contractor, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's performance of any Work Order have been satisfied.

**The making of final payment shall not constitute a waiver of any claims by Contractor.**

**Acceptance of final payment by Subcontractor shall constitute a full and final waiver and release of all claims, counterclaims, demands, mechanic's lien claims and surety bond claims arising from, or relating in any way to, the subject project for which final payment was made, including but not limited to any alleged claims for change orders, extra-contractual work, delay and/or inefficiency damages. Without effecting the waiver and release of the preceding sentence, Contractor expressly reserves the right to require that Subcontractor execute a waiver and release of claims in a form acceptable to Contractor at the time of final payment.**

Section 4. Subcontractor Agreements. The Contractor may require the Subcontractor to enter into agreements with sub-subcontractors to perform portions of the scope of work under any Work Order. In such case the Subcontractor and the sub-subcontractor shall assume all obligations and responsibilities toward each other which the Contractor and Subcontractor assume toward each other and shall have the benefit of all rights, remedies and redress which are provided by virtue of the provisions of the Subcontract Documents for that particular project.

Section 5. Contractor Services. The Contractor shall cooperate with the Subcontractor in scheduling and performing the scope of work of each Work Order to avoid conflicts or interference in the Subcontractor's work. As soon as practicable after execution of each Work Order, the Contractor shall provide the Subcontractor with copies of the Contractor's construction schedule, together with any additional scheduling details that will enable the Subcontractor to plan and perform the scope of work properly. The Subcontractor shall be promptly notified of any subsequent changes in the construction schedules and additional scheduling details in accordance with Section regarding "Change Orders" in this Master Subcontract.

Section 6. Subcontractor Storage of Materials. The Contractor shall provide suitable areas for storage of Subcontractor materials and equipment used during the scope of work of each Work Order. At all times, the Subcontractor shall bear the responsibility of the materials and equipment stored at the project sites. Subcontractor shall remove the material and equipment immediately after the completion of the scope of work.

Section 7 Communications with Subcontractor. The Contractor shall give instructions and orders only to persons designated as authorized representatives of the Subcontractor.

Section 8. Contractor Notice of Hazardous Substances. If hazardous substances of a type of which an employer is required by law to notify its employees are being used on any site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall notify the Subcontractor's employees of the use of such substance

before exposure to the substance in sufficient detail and time to permit the Subcontractor's compliance with such laws.

Section 9. Defects in Work. Subcontractor warrants that all work performed under any Work Order will be free from defects and that all work will conform with the requirements of the Subcontract Documents for that project. Any work not conforming to said requirements or any substitutions not properly approved and authorized by the Contractor shall be considered defective. Any work found defective within one (1) year of project completion shall be promptly corrected by the Subcontractor upon receipt of written or verbal notice by Contractor or Homeowner. Should Subcontractor fail to promptly correct any defects after notice and Contractor corrects the defects by another means, Subcontractor shall be liable for all costs incurred in correcting the defects, including all attorney's fees and costs incurred in serving the notice of defects or any subsequent legal action. This obligation shall survive termination of any Work Order and the Master Subcontract.

Section 10. Subcontractor Warranty. Subcontractor warrants that all materials and equipment furnished pursuant to the Subcontract Documents for any project will be of good quality and new unless otherwise permitted under the Subcontract Documents. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the manufacturer of any materials or equipment supplied to a project.

Section 11. Waiver of Rights to File Mechanic's Liens. The Subcontractor agrees that neither the Subcontractor nor any sub-subcontractor nor any person furnishing labor, materials or services to the Subcontractor for the performance of the scope of work for any project, shall file a lien or claim commonly known as a mechanic's lien or material men's lien claim, against the land or improvements constituting the project. This provision constitutes an express waiver of the right to file such liens on behalf of the Subcontractor and each and every of its sub-subcontractors, material men and laborers for each project.

Section 12. Termination by Contractor. The Contractor may terminate any Work Order, or this Master Subcontract as a whole, for any reason and without cause. In the event the Subcontractor fails or neglects to carry out the scope of work for a project in accordance with the Subcontract Documents for that project, or otherwise fails to perform in accordance with this Master Subcontract, except when such failure is caused by delays due to weather breakdowns, strikes, accidents, acts of God or intentional delays caused by Contractor, the Contractor shall provide written notice to Subcontractor of such failure or neglect and shall request the Subcontractor to promptly commence work or correct the default. If Subcontractor fails to commence work within three working days of receipt of notice from Contractor, the Contractor may, without prejudice to any other remedy available to it under this Master Subcontract, terminate the particular Work Order, or this Master Subcontract as a whole, and Contractor may finish the scope of work remaining under any Work Orders by whatever method the Contractor deems expedient. Any unpaid balance under a Work Order may be used by Contractor toward the expense of finishing the Subcontractor's work under that Work Order; however, if such expense exceeds the unpaid balance, the Subcontractor shall pay the difference to the Contractor. If Subcontractor is terminated for cause as described in this paragraph, it shall be liable to Contractor for all attorney's fees and costs incurred by Contractor in serving the notice of termination and in any subsequent legal action.

Section 13. Termination by Subcontractor. If Contractor fails to pay any amount validly due under a Work Order in accordance with the payment schedule in that Work Order, and such nonpayment continues for a period of 90 days, Subcontractor shall have the right to terminate that particular Work Order. In the event of termination of a Work Order by Subcontractor for nonpayment, if such nonpayment is not caused by the fault of Subcontractor or other persons performing the scope of work on its behalf under that particular Work Order, the Subcontractor shall be entitled to recover from the

Contractor payments for work actually completed, but in no instance shall be entitled to consequential, incidental, indirect, or special damages, including but not limited to loss of use costs, revenues, profits or savings, even if Contractor knew or should have known of the possibility of such damages.

Section 14. Subcontractor Execution of Work.

- a) The Subcontractor shall cooperate with the Contractor in scheduling and performing the scope of work under each Work Order to avoid conflict, delay or interference with the work of the Contractor or other subcontractors.
- b) The Subcontractor shall keep each project and surrounding areas free from accumulation of waste materials or rubbish caused during the performance of Subcontractor's scope of work. The Subcontractor shall keep the road to each project clean and free of mud at all times during the execution of the scope of work for each project, provided, however, the Subcontractor shall not be held responsible for unclean conditions caused by the Contractor or other subcontractors.
- c) If Subcontractor's performance under any Work Order causes the Contractor to bear any additional cost or expense as a result of Subcontractor's inability to keep the surrounding area in the condition specified in the previous paragraph, all such costs and expenses shall be deducted from the unpaid balance owed to Subcontractor under that particular Work Order.
- d) The Subcontractor shall employ competent workers and have a competent foreman or other authorized person, approved by the Contractor, on each project site during all working hours. Working hours shall be those as set by the Contractor and the Subcontractor shall adjust its working hours accordingly. There shall be no drinking or drug use by Subcontractor or any employees, agents or other persons for which the Subcontractor is directly or indirectly responsible at any project at any time. Failure to comply with this provision shall result in automatic termination of this Master Subcontract in accordance with the Termination provision of this Master Subcontract.
- e) The Subcontractor shall be responsible to Contractor for the acts and omissions of the Subcontractor's employees, sub-subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with or employment by the Subcontractor. Without limiting the foregoing, the Subcontractor shall promptly remedy damage and loss to property at the project site caused in whole or in part by the Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable. The foregoing obligations of the Subcontractor are in addition to the Subcontractor's obligations set forth elsewhere in the Subcontract Documents.
- f) The Subcontractor shall furnish all material, submit shop drawings and samples as required, and perform all work necessary to complete the scope of work for each project to the full satisfaction of Contractor. All work performed by Subcontractor shall be performed in an expeditious, workmanlike manner in accordance with applicable industry standards and in compliance with all government regulations and governing codes including but not limited to OSHA Safety Regulations.
- g) If Subcontractor, its sub-subcontractors or anyone directly or indirectly employed by them, is using a hazardous substance on any project of a type which an employer is required by law to notify its employees is being used on the site, the Subcontractor, its sub-subcontractors or anyone directly or indirectly employed by them shall, prior to harmful exposure of any of the employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employees on the site. In the event that the Subcontractor fails to comply fully with the foregoing, Subcontractor agrees to indemnify and hold harmless the Contractor in accordance with Section 15, below.
- h) The Subcontractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of any work.
- i) Subcontractor shall attend any conferences required by Contractor to discuss the progress and status of work on any project.

Section 15. Indemnification. To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Contractor and agents and employees of Contractor from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the scope of work on any project by the Subcontractor, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property including loss of use therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by the Contractor. In the case of any claims, suits, demands, damages or losses brought by one directly or indirectly employed by Subcontractor, including but not limited to statutory employees, the indemnification obligations of this paragraph shall not be limited in any way by the immunity from liability or suit granted by applicable workmen's compensation laws, or by any limitation on the amount or type of damages, compensation, or benefits payable under any applicable workmen's compensation laws, disability benefits laws, or other employee benefits laws.

Section 16. Insurance. Certificates of insurance are to be provided to Contractor for approval prior to start of work and/or first progress payment for the project. Insurance shall be purchased and maintained without interruption from the date of commencement of work by the Subcontractor until the date of final payment. Any information concerning reduction of coverage or cancellation shall be furnished by the Subcontractor to the Contractor with reasonable promptness. The following coverages and limits of liability shall be maintained by the Subcontractor:

TYPE	AMOUNT
General Liability	no less than \$500,000.00
Worker's Compensation – Employers Liability	no less than \$500,000.00

The Contractor and Subcontractor waive all rights against (1) each other and any of their other subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect and the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Contractor and Subcontractor, as appropriate, shall require separate contractors and subcontractors, if any, and sub-subcontractors, agents and employees of any of them, by appropriate agreement, written where legally required for validity, to provide similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

A loss of insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their sub-subcontractors in similar manner.

Section 17. Changes in Work. The Subcontractor may be ordered in writing by the Contractor to make changes in the scope of work for each project within the general scope of the Subcontract Documents ("change orders"). Such change orders may consist of additions, deletions or other revisions

to the Subcontract Documents, the subcontract sum for the particular project, the time of completion or the Subcontractor's schedule of values. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform work which would be inconsistent with a change order. The Subcontractor, prior to the commencement of any change order, shall submit to the Contractor within 3 days of receiving a change order written copies of any claims for adjustment to the contract sum or time of completion plus any claims for additional costs or damages for delays or other expenses caused by the change order.

No extra work or changes under the Subcontract Documents for any project will be recognized or reimbursed unless agreed to in writing by the Contractor before the work is performed. The Subcontractor shall notify the Contractor of any work over and above the scope of work that is required to be performed because of unforeseen problems arising from the Subcontract Documents or a change order.

Section 18. Arbitration. Any claim or dispute between Contractor and Subcontractor arising under the Subcontract Documents for any project shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, whose decision and award shall be final and binding. Notice of the demand for arbitration shall be filed in writing with the other party and the American Arbitration Association within twenty (20) days of the date the dispute arose.

Section 19. Assignment. This Master Subcontract, and each Work Order issued hereunder, shall not be assigned by the Subcontractor without prior written consent from the Contractor. Subcontractor may not further subcontract portions of the Scope of Work without written notification to the Contractor.

Section 20. Contractor Approvals. Each Work Order issued under this Master Subcontract is specifically conditioned upon the ability of Contractor to secure all necessary government permits and unappealable and unappealed approvals, without pursuing appeal or contesting an appeal or appeal by others, to construct the particular project. Each Work Order is further conditioned upon the Contractor obtaining all the necessary financing for construction and improvements of the particular project. Upon failure of either of the foregoing and upon written notice by Contractor to Subcontractor, a Work Order shall be terminated and become null and void, and both parties shall be relieved of all obligations and liabilities hereunder.

Section 21. Miscellaneous Provisions.

21.1 Entire Agreement. This Master Subcontract represents the entire agreement and understanding of the parties with respect to its subject matter, with the exception of any Work Orders issued hereunder, and supersedes any and all previous agreements of whatever nature between the parties with respect to the same subject matter except as described elsewhere herein. This Master Subcontract and each Work Order issued hereunder may not be altered or amended except by written agreement signed by both parties.

21.2 Governing Law. This Master Subcontract and each Work Order issued hereunder has been made in the Commonwealth of Pennsylvania, and the interpretation, validity, performance and effect of said documents shall be determined in accordance with the laws of the Commonwealth of Pennsylvania.

21.3 Time of Essence. Time is of the essence of this Master Subcontract and each Work Order issued hereunder. No extension of time will be valid without the written consent of the Contractor.

21.4 Compliance. The Subcontractor shall comply with federal, state, and local tax laws, social security acts, unemployment compensation acts, workers' compensation acts, to the extent applicable, in the performance of the scope of work for any project.

21.5 Headings. The headings of the paragraphs in this Master Subcontract are for convenience only; they form no part of this Master Subcontract and shall not affect its interpretation. All schedules, exhibits or attachments referred to herein shall be incorporated in and constitute a part of this Master Subcontract.

21.6 Binding Agreement. This Master Subcontract shall inure to the benefit of the Contractor's and Subcontractor's successors, executors, administrators and assigns.

21.7 Subcontractor Review of Site. By executing each Work Order, Subcontractor is representing that Subcontractor has visited the project site, examined the project site carefully, become familiar with the local conditions under which the work is to be performed, examined the Subcontract Documents carefully, and has determined that the work can be performed by the Subcontractor for the Work Order sum and within the time allotted for completion. In addition, the Subcontractor represents that it has verified to its satisfaction the nature and quantity of the work involved and is familiar with all conditions which may be encountered. The Subcontractor hereby agrees to perform the work, without increase in the Work Order sum, irrespective of the conditions encountered by the Subcontractor at the project site.

21.8 Severability. If any part of any provision of this Master Subcontract or any Work Order issued hereunder is invalid or unenforceable under applicable law, the provision shall be ineffective only to the extent of such invalidity or unenforceability without in any way affecting the remaining provisions of this Master Subcontract and/or a Work Order.

21.9 Counterparts. This Master Subcontract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

21.10 Non-Exclusivity of Agreement. This Master Subcontract shall not constitute nor be construed as an agreement for Contractor to use Subcontractor exclusively on all projects. In addition, this Master Subcontract shall not constitute nor be construed as an agreement that Contractor will purchase the complete output of all labor, materials and equipment produced or provided by Subcontractor.

This document has important legal consequences; consultation with an attorney is encouraged before signing this document.

IN WITNESS WHEREOF, the Contractor and the Subcontractor hereto agree to the full performance of all the covenants, terms and conditions set forth in this Master Subcontract.

SUBCONTRACTOR

GULISH & CIRAGO LANDSCAPE LLC

By:

Signature: [Signature]

Printed: SCOTT GULISH

Title: OWNER

CONTRACTOR

Sunrise Homes, Inc.

By:

Signature: [Signature]

Printed: Barry Begoumian

Title: President

# **EXHIBIT B**

August 20, 2007

Scott Gulish  
Gulish & Crago Landscaping Service  
940 Sue Street  
Houtzdale, PA 16651

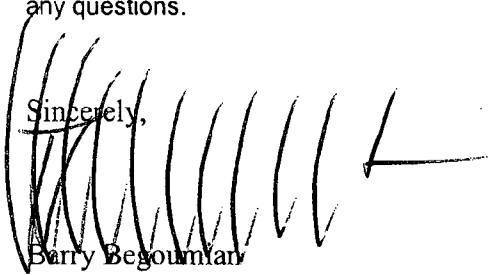
**Ref: NOTICE OF NON-PERFORMANCE - NOTICE OF INTENT TO CANCEL CONTRACT**

Pursuant to Section 12 of the contract, Sunrise can terminate any work order or the contract as a whole, if you fail to carry out the work in conformance with the requirements of the contract, and such failures continue after notice is given to you. Please be advised that we have provided such notice from time to time, and in certain instances, as long ago as two years. Those specific areas of concern are as follows:

Lot 20 Timberton -Lawn installation  
Lot 19 Timberton -Lawn installation  
Lot 18 Timberton -Lawn installation  
Lot 13 Timberton Lawn and plant installation  
Lot 5 Timberton Lawn installation  
Timberton -Tress at the entrance -2 tress are dead  
Pavers at the Patio of lot 20 Timberton are not installed correctly  
Wiltree Building 1- Lawn installation  
Wiltree Building 2- Lawn installation  
Lot 29 Springfield - Lawn installation  
Lot 30 Springfield - Lawn installation  
Lots 20 units A/B Springfield - Lawn installation

Please be advised, in addition, that you have three (3) working days from receipt of this notice to remedy the entire and total afore described deficiencies. To the extent that you do not, then Sunrise will pursue all contractual remedies available to it. Please contact me if you have any questions.

Sincerely,

  
Barry Begoumian  
President & CEO

Cc- Sub-contract file  
Neil Taurig



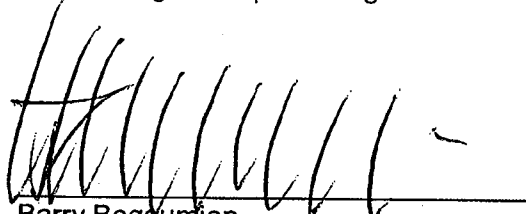
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

RICHARD SCOTT GULISH and	)	
GARY L. CRAGO, t/d/b/a	)	
GULISH AND CRAGO LANDSCAPE	)	
SERVICES, LLC,	)	
	)	No. 07-1656-CD
Plaintiffs	)	
	)	
vs.	)	
	)	
SUNRISE HOMES, INC.,	)	
	)	
Defendant	)	

**VERIFICATION**

I, Barry Begoumian, am President of SUNRISE HOMES, INC., a corporation, and as such President, being authorized to do so, state that the facts contained in the foregoing Answer and New Matter to Amended Complaint and Counterclaim are true and correct to the best of my knowledge, information, and belief.

I make this Verification pursuant to 18 Pa.C.S.A. § 4904 pertaining to unsworn falsification to authorities.

  
Barry Begoumian

Dated: 4/1/08

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

RICHARD SCOTT GULISH and  
GARY L. CRAGO, t/d/b/a  
GULISH AND CRAGO LANDSCAPE  
SERVICES, LLC,

Plaintiffs

vs.

SUNRISE HOMES, INC.,

Defendant

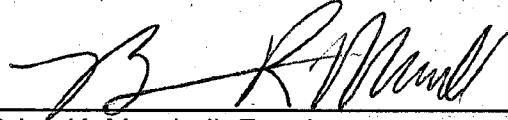
No. 07-1656-CD

**CERTIFICATE OF SERVICE**

I, Brian K. Marshall, Esquire, of the law firm of MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC., hereby certify that the foregoing Answer and  
New Matter to Amended Complaint and Counterclaim was served this 2nd  
day of April, 2008 by mailing same first class United States mail,  
postage prepaid, addressed to:

Girard Kasubick, Esquire  
611 Brisbin Street  
Houtzdale, PA 16651

MILLER, KISTLER, CAMPBELL,  
MILLER, WILLIAMS & BENSON, INC.

  
Brian K. Marshall, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL DIVISION

RICHARD SCOTT GULISH	:	No.: 2007-1656-CD
AND GARY L. CRAGO,	:	Type of Case: Civil
T/D/B/A/ GULISH AND CRAGO	:	Type of Pleading:
LANDSCAPE SERVICES, L.L.C.,	:	Reply to New Matter and
Plaintiffs	:	Counterclaim
	:	Filed on behalf of:
vs.	:	Plaintiffs
	:	Counsel of Record for
SUNRISE HOMES, INC.	:	This Party:
Defendant	:	Girard Kasubick, Esq.
	:	Supreme Court No. 30109
	:	LEHMAN & KASUBICK
	:	611 Brisbin Street
	:	Houtzdale, PA 16651
	:	(814) 378-7840

FILED

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APR 24 2008

sec  
Att. Kasubick

GP

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL DIVISION

RICHARD SCOTT GULISH :  
AND GARY L. CRAGO : No.: 2007-1656-CD  
T/D/B/A GULISH AND CRAGO :  
SERVICES, L.L.C., :  
Plaintiffs :  
vs. :  
SUNRISE HOMES, INC., :  
Defendant :

**REPLY TO NEW MATTER AND COUNTERCLAIM**

AND NOW COMES the Plaintiffs, Richard Scott Gulish and Gary L. Crago t/d/b/a Gulish and Crago Landscape Services, L.L.C. by and through their attorney, Girard Kasubick, Esq., and files the following Reply to New Matter and Counterclaim.

**REPLY TO NEW MATTER**

21. Denied. Defendant did not issue work orders, change orders, or subcontract documents for the work done by Plaintiffs and did not follow the requirements of the Agreement attached as Exhibit "A" to Plaintiffs Complaint as set forth in paragraphs 8 through 18 of Plaintiffs Complaint which is incorporated herein by reference thereto. The Plaintiffs work was done for Defendant under

oral contracts. This paragraph is further denied as a conclusion of law or fact.

22. Denied. This is a conclusion of law or fact for which no responsive pleading is required.

23. Denied. This is a conclusion of law or fact for which no responsive pleading is required.

**REPLY TO COUNTERCLAIM**

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted in part and Denied in part. It is admitted that Counterclaim Plaintiff followed some procedures under the Master Subcontractor Agreement for some work done and completed by Counterclaim Defendants. It is denied that all contracts followed the procedure under the Master Subcontractor Agreement and the ones for which Counterclaim Defendants make claim for in their Complaint were oral contracts entered into by telephone calls between the parties with no work orders, change orders or subcontract documents issued or other procedures followed under the Master Subcontractor Agreement.

7. Admitted. This was sent to Counterclaim Defendants the same day service was made on Counterclaim Plaintiff of Counterclaim Defendants Magisterial Judge Complaint.

8. Admitted in part and Denied in part. It is admitted the Notice contains the said list of deficiencies. It is denied that Counterclaim Defendants caused or is responsible for any deficiencies or that any of their work was deficient. This is further denied as a conclusion of law or fact for which no responsive pleading is required.

9. Denied. Counterclaim Defendants after reasonable investigation is without knowledge or information sufficient to form a belief as to this averment and proof thereof is demanded.

10. Admitted in part and Denied in part. It is admitted that Section 9 of the Master Subcontractor Agreement states this. It is denied that any defects occurred as this is a conclusion of law or fact for which no responsive pleading is required. It is further denied the Agreement is binding and that any obligations of the party are under oral contract.

11. Admitted in part and Denied in part. It is admitted that Section 9 of the Master Subcontractor Agreement states this. It is denied that any defects occurred as this is a conclusion of law or fact for which no responsive pleading is required. It is further denied the Agreement is binding and that any obligations of the party are under oral contract.

12. Admitted in part and Denied in part. It is admitted that Section 9 of the Master Subcontractor Agreement states this. It is denied that any defects occurred as this is a conclusion of law or fact for which no responsive pleading is required. It is further denied the Agreement is binding and that any obligations of the party are under oral contract.

13. Denied. Counterclaim Defendants after reasonable investigation is without knowledge or information sufficient to form a belief as to this averment and proof thereof is demanded.

14. Denied. This is a conclusion of law or fact for which no responsive pleading is required.

15. Denied. Counterclaim Defendants did not follow the procedures for issuance of work orders, change orders and subcontract documents under the Master Subcontractor

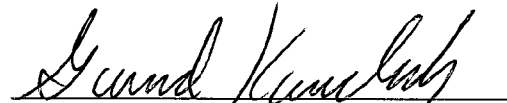
Agreement and any contracts between Counterclaim Plaintiff and Counterclaim Defendants were oral contracts.

16. Denied. The Notice providing three (3) days to correct any deficiencies is not provided for in the Master Subcontractor Agreement and it is averred that "promptly" under the Agreement is a reasonable time and not three (3) days. This averment is further denied for the reasons set forth in paragraph 15 of this Reply to Counterclaim which is incorporated herein by reference thereto.

17. Denied. This is a conclusion of law or fact for which no responsive pleading is required.

WHEREFORE, Counterclaim Defendants, requests Your Honorable Court to dismiss Counterclaim Plaintiff's Counterclaim and enter judgment in favor of Counterclaim Defendants.

RESPECTFULLY SUBMITTED:

A handwritten signature in cursive script, appearing to read "Girard Kasubick", is written over a horizontal line.

Girard Kasubick, Esq.,  
Attorney for Plaintiffs  
and Counterclaim Defendants



**VERIFICATION**

I, the undersigned, verify that the statements made in the foregoing Reply to New Matter and Counterclaim is true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.

  
Richard Scott Gulish

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

RICHARD SCOTT GULISH and  
GARY L. CRAGO, t/d/b/a  
GULISH AND CRAGO LANDSCAPE  
SERVICES, L.L.C.,

Plaintiffs

vs.

SUNRISE HOMES, INC.,  
Defendant

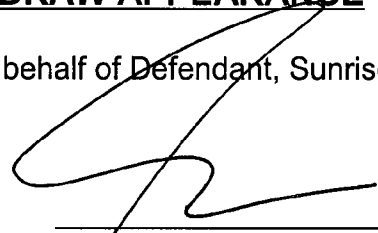
No. 2007-1656 - C.D.

<sup>5</sup> **FILED** NO  
m/12:36/ST CC  
JUN 10 2009 Copy  
to  
William A. Shaw  
Prothonotary/Clerk of Courts  
CIA  
(610)

**PRAECIPE TO WITHDRAW APPEARANCE**

Please withdraw our appearance on behalf of Defendant, Sunrise Homes, Inc., in the above captioned matter.

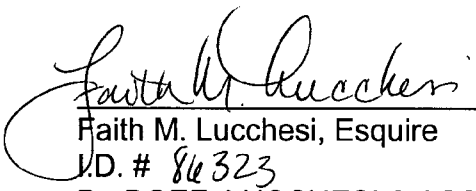
Date: June 8, 2009.

  
\_\_\_\_\_  
Brian K. Marshall, Esquire I.D. #87331  
Scott C. Etter, Esquire I.D. #72789  
CAMPBELL, MILLER, WILLIAMS,  
BENSON, ETTER & CONSIGLIO, INC.  
720 South Atherton Street  
State College, PA 16801-4628  
(814) 234-1500

**PRAECIPE TO ENTER APPEARANCE**

Please enter our appearance on behalf of Defendant, Sunrise Homes, Inc., in the above captioned matter. A single copy of all papers may be served on the undersigned for purposes of this action.

Date: June 8, 2009

  
\_\_\_\_\_  
Faith M. Lucchesi, Esquire  
I.D. # 86323  
De BOEF, LUCCHESI & ASSOCIATES, PC  
1368 South Atherton Street  
State College, PA 16801  
(814) 234-4050

Attorneys for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

RICHARD SCOTT GULISH and  
GARY L. CRAGO, t/d/b/a  
GULISH AND CRAGO LANDSCAPE  
SERVICES, L.L.C.,

Plaintiffs

vs.

SUNRISE HOMES, INC.,  
Defendant


No. 2007-1656 - C.D.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Praecipe to Withdraw Appearance and  
Praecipe to Enter Appearance was served by depositing the same within the custody of  
the United States Postal Service, First Class, postage prepaid, addressed as follows:

Girard Kasubick, Esquire  
Lehman & Kasubick  
611 Brisbin Street  
Houtzdale, PA 16651-1208

Faith M. Lucchesi, Esquire  
De Boef, Lucchesi & Associates, PC  
1368 South Atherton Street  
State College, PA 16801



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Brian K. Marshall, Esquire  
I.D. #87331  
Scott C. Etter, Esquire  
I.D. #72789

CAMPBELL, MILLER, WILLIAMS,  
BENSON, ETTER & CONSIGLIO, INC.  
720 South Atherton Street, Suite 201  
State College, PA 16801  
(814) 234-1500 TEL  
(814) 234-1549 FAX

Date: June 9, 2009