

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

GULISH AND CRAGO LANDSCAPE
SERVICES, LLC,

Plaintiff

vs.

SUNRISE HOMES,

Defendant

)
)
) No. 08-736-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

APR 23 2008

William A. Shaw
Prothonotary/Clerk of Courts

Atty pd. 395.00

2cc Atty Marshall

1cc Piff

1cc M.J. Hawkins

COMMONWEALTH OF PENNSYLVANIA

COURT OF COMMON PLEAS

Judicial District, County Of Clearfield

46th

NOTICE OF APPEAL

FROM

MAGISTERIAL DISTRICT JUDGE JUDGMENT

COMMON PLEAS No. 08-736-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 4/14/08	IN THE CASE OF (Plaintiff) Gulish & Crago Landscape, LLC vs Sunrise Homes (Defendant)			
DOCKET No. CV-00000-26-08	SIGNATURE OF APPELLANT OR ATTORNEY OR AGENT			
This block will be signed ONLY when this notation is required under Pa. R.C.P.D.J. No. 1008B. This Notice of Appeal, when received by the Magisterial District Judge, will operate as a SUPERSEDEAS to the judgment for possession in this case.		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.		
_____ Signature of Prothonotary or Deputy				

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 Gulish & Crago Landscape, LLC appellee(s), to file a complaint in this appeal

Name of appellee(s)

(Common Pleas No. 08-736-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 Gulish & Crago Landscape, LLC, 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: April 23, 2008


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 APR 15 2008
COUNTY OF: **CLEARFIELD**

**NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE**

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**

PLAINTIFF: **GULISH & CRAGO LANDSCAPE LLC**
**940 SUE ST
HOUTZDALE, PA 16651**

VS.
DEFENDANT: **SUNRISE HOMES**
**2790 W. COLLEGE AVE
STATE COLLEGE, PA 16801**

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

Docket No.: **CV-0000026-08**
Date Filed: **2/28/08**



THIS IS TO NOTIFY YOU THAT:

Judgment: **DEFAULT JUDGMENT PLTF** (Date of Judgment) **4/14/08**

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

☒ Judgment was entered against: (Name) **SUNRISE HOMES**
in the amount of \$ **8,099.01**

☐ 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	\$ 7,969.01
Judgment Costs	\$ 130.00
Interest on Judgment	\$.00
Attorney Fees	\$.00
Total	\$ 8,099.01
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
Certified Judgment Total	\$ _____

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.

4-14-08 Date *[Signature]*, 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: 4/14/08 2:08:00 PM

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

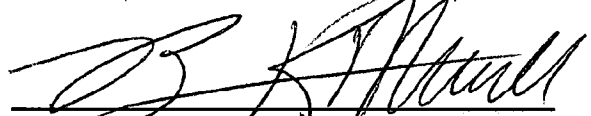
GULISH AND CRAGO LANDSCAPE)	
SERVICES, LLC,)	
)	Plaintiff
)	No.
vs.)	
)	
SUNRISE HOMES,)	
)	Defendant

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 Notice of
Appeal from Magisterial District Judge Judgment was served this 21 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

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

**NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE**

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**

PLAINTIFF: NAME and ADDRESS
GULISH & CRAGO LANDSCAPE LLC
940 SUE ST
HOUTZDALE, PA 16651

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

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

Docket No.: **CV-0000026-08**
Date Filed: **2/28/08**



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FILED
m12:44/08
APR 30 2008

William A. Shaw
Prothonotary/Clerk of Courts

4-14-08 Date *[Signature]*, Magisterial District Judge

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.
4/15/08 Date *[Signature]*, Magisterial District Judge

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

SEAL

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: **GULISH & CRAGO LANDSCAPE LLC**
NAME and ADDRESS
940 SUE ST
HOUTZDALE, PA 16651

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

Docket No.: **CV-0000026-08**
Date Filed: **2/28/08**



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☐ Damages will be assessed on Date & Time _____

☐ This case dismissed without prejudice.

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4-14-08 Date *[Signature]*, Magisterial District Judge

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.
4/25/08 Date *[Signature]*, Magisterial District Judge

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

SEAL

AOPC 315-07

DATE PRINTED: **4/14/08 2:08:00 PM**

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

GULISH AND CRAGO LANDSCAPE
SERVICES, L.L.C.

Plaintiff

vs.

SUNRISE HOMES, INC.,

Defendant

: No.: 2008-736-CD
: Type of Case: Civil
: Type of Pleading:
: Complaint
: Filed on behalf of:
: Plaintiff
: 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

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MAY 27 2008

2cc
Atty Kasubick

William A. Shaw
Prothonotary/Clerk of Courts

GW

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

GULISH AND CRAGO LANDSCAPE	:	
SERVICES, L.L.C.	:	No.: 2008-736-CD
Plaintiff	:	
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 Plaintiff. 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

GULISH AND CRAGO LANDSCAPE :
SERVICES, L.L.C. : No.: 2008-736-CD
Plaintiff :
vs. :
SUNRISE HOMES, INC., :
Defendant :

COMPLAINT

AND NOW COMES the Plaintiff, Gulish and Crago Landscape Services, L.L.C. by and through their attorney, Girard Kasubick, Esq., and files the following Complaint.

1. The Plaintiff is 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 Plaintiff operates 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, Plaintiff and Defendant first entered into contracts for Plaintiff to do some landscaping work on sites being developed by Defendant in Centre County.

6. By Master Subcontractor Agreement dated May 2, 2005, Plaintiff and Defendant entered into a written contract for Plaintiff 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, Plaintiff has 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 August 2006, Defendant from its offices in Centre County telephoned the Plaintiff at its offices in Clearfield County and requested that Plaintiff do some extra work and install additional plants at a site in Defendant's Coble Creek II development.

9. The Plaintiff did install the extra plants at Defendant's Coble Creek II development in or about August 2006 and Plaintiff issued invoice No. 158 to Defendant for payment, a copy of which is attached hereto and marked Exhibit "B" in the amount of \$120.00.

10. Defendant has not paid Invoice No. 158 in the amount of \$120.00.

11. In or about October 2006, Defendant from its offices in Centre County telephoned the Plaintiff at its offices in Clearfield County and requested that Plaintiff plant yews and do mulching around an electric box at a site at Defendant's Coble Creek II development.

12. The Plaintiff did plant the yews and completed the mulching around the electrical box at Defendant's Coble Creek II development and issued Invoice No. 199 to Defendant for payment, a copy of which are attached hereto and marked Exhibits "C" in the amount of \$343.05.

13. The Defendant has not paid Invoice No. 199 in the amount of \$343.05.

14. In or about June 2006, Defendant from its offices in Centre County telephoned the Plaintiff at its offices in Clearfield County and requested that the Plaintiff do extra work and plant various plants between

buildings and around the electrical box at Defendant's Coble Creek II development.

15. The Plaintiff did the extra work and planted various plants between buildings and around the electrical box at Defendant's Coble Creek II development and issued Invoice No. 105 to Defendant for payment, a copy of which are attached hereto and marked Exhibits "D" in the amount of \$407.70.

16. The Defendant has not paid Invoice No. 105 in the amount of \$407.70.

17. In or about June 2006, Defendant from its offices in Centre County telephoned the Plaintiff at its offices in Clearfield County and requested that the Plaintiff do extra work and plant various plants at the entrance at Defendant's Coble Creek II development.

18. The Plaintiff did the extra work and planted various plants at the entrance at Defendant's Coble Creek II development and issued Invoice No. 104 to Defendant for payment, a copy of which are attached hereto and marked Exhibits "E" in the amount of \$583.39.

19. The Defendant has not paid Invoice No. 104 in the amount of \$583.39.

20. In or about October 2006, Defendant from its offices in Centre County telephoned the Plaintiff at its offices in Clearfield County and requested a change from grass planting to river stone being placed along several buildings at Defendant's Coble Creek II development.

21. The Plaintiff did complete the change from grass along the buildings to placing river stone along the buildings as requested at Defendant's Coble Creek II development and issued Invoice No. 201 to Defendant for payment, a copy of which are attached hereto and marked Exhibits "F" in the amount of \$2,093.10.

22. The Defendant has not paid Invoice No. 201 in the amount of \$2,093.10.

23. In or about November 2006, Defendant from its offices in Centre County telephoned the Plaintiff at its offices in Clearfield County and requested extra planting at the end of a building at Defendant's Wiltree Town Homes development.

24. The Plaintiff did complete the extra planting at the end of a building as requested at Defendant's Wiltree Town Homes development and issued Invoice No. 232 to Defendant for payment, a copy of which are attached hereto and marked Exhibits "G" in the amount of \$1,041.73.

25. The Defendant has not paid Invoice No. 232 in the amount of \$1,041.73.

26. In or about May 2007, Defendant from its offices in Centre County telephoned the Plaintiff at its offices in Clearfield County and requested lawn installation and planting of yews along several driveways at Defendant's Wiltree Town Homes development.

27. The Plaintiff did complete the lawn installation and planting of yews along several driveways as requested at Defendant's Wiltree Town Homes development and issued Invoice No. 339 to Defendant for payment, a copy of which are attached hereto and marked Exhibits "H" in the amount of \$3,380.10.

28. The Defendant has not paid Invoice No. 339 in the amount of \$3,380.10.

29. 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 Plaintiff under all invoices noted in this Complaint.

30. The Defendant made telephone calls to the Plaintiff for the Plaintiff to perform the work set forth

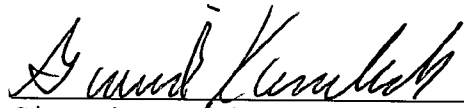
in this Complaint and no work orders, change orders or any documents were issued for the work performed under all the invoices noted in this Complaint.

31. The Plaintiff avers that they are due a total amount of \$7,969.07 from the Defendant being the total of the amounts set forth in Paragraphs 10, 13, 16, 19, 22, 25 and 28 in this Complaint.

32. The Plaintiff further avers that it is due court costs including Magisterial Judge costs of \$130.00 and interest on the amount claimed.

WHEREFORE, Plaintiffs request Your Honorable Court to enter judgment in the amount of Seven Thousand Nine Hundred Sixty-nine and 07/100 (\$7,969.07) Dollars, plus court costs, attorney fees and interest in favor of Plaintiff and against the Defendant.

RESPECTFULLY SUBMITTED:



Girard Kasubick, Esq.,
Attorney for Plaintiff

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 2nd 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 30th of the month will be paid on the Friday after the 10th 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 & CHAGO 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: 158
Date: 8/18/2006
Terms: Net 30
Due Date: 9/17/2006

Bill To:

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

Ship To:

Ship Date 8/18/2006 Ship Via Tracking No FOB

Code	Description	Qty/Hours	Rate	Tax %	Amount
	EXTRA WORK @ CCIF- INSTALL 3 DRIVEWAY PLANTINGS	3.00	\$40.00	0.00%	\$120.00

Subtotal	\$120.00
Tax	\$0.00
Shipping	\$0.00
Total	\$120.00
Deposit	\$0.00
Balance Due	<u>\$120.00</u>



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: 199
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 Ship Via Tracking No FOB
10/16/2006

Code	Description	Qty/Hours	Rate	Tax %	Amount
	ELECTRIC BOX PLANTING - 5 DENSE YEW	5.00	\$36.00	6.00%	\$180.00
	1.5 YARDS MULCH	1.50	\$25.00	6.00%	\$37.50
	LABOR TO INSTALL	2.50	\$45.00	0.00%	\$112.50

Subtotal	\$330.00
Tax	\$13.05
Shipping	\$0.00
Total	\$343.05
Deposit	\$0.00
Balance Due	\$343.05



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

814-577-0951
FAX 814-378-7722
CELL 814-571-9545
SCOTTG@PENNSWOODS.NET

Invoice

Invoice No: 105
Date: 6/16/2006
Terms: Net 30
Due Date: 7/16/2006

Bill To:

SUNRISE HOMES
STATE COLLEGE, PA 16801

Ship To:

COBBLE CREEK II (EXTRA WORK)

Ship Date 6/3/2006 Ship Via Tracking No FOB

Code	Description	Qty/Hours	Rate	Tax %	Amount
	ELECTRIC BOX PLANTING BETWEEN BLDG. 15 & 16- LABOR	2.50	\$45.00	0.00%	\$112.50
	6 BAYBERRY	6.00	\$29.00	6.00%	\$174.00
	1 YARD MULCH	1.00	\$25.00	6.00%	\$25.00
	2 DRIVEWAY PLANTINGS	1.00	\$45.00	0.00%	\$45.00
	2 BLUE STAR JUNIPERS	2.00	\$11.95	6.00%	\$23.90
	6 GERANIUMS	6.00	\$2.19	6.00%	\$13.14

Subtotal	\$393.54
Tax	\$14.16
Shipping	\$0.00
Total	\$407.70
Deposit	\$0.00
Balance Due	\$407.70



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

814-577-0951
FAX 814-378-7722
CELL 814-571-9545
SCOTTG@PENNSWOODS.NET

Invoice

Invoice No: 104
Date: 6/16/2006
Terms: Net 30
Due Date: 7/16/2006

Bill To:

SUNRISE HOMES
STATE COLLEGE, PA 16801

Ship To:

COBBLE CREEK II (EXTRA WORK)

Ship Date Ship Via Tracking No FOB
6/3/2006

Code	Description	Qty/Hours	Rate	Tax %	Amount
	ENTRANCE PLANTING- LABOR TO INSTALL	6.00	\$45.00	0.00%	\$270.00
	12 DAYLILY	12.00	\$8.00	6.00%	\$96.00
	7 COTONEASTER	7.00	\$7.95	6.00%	\$55.65
	5 RUSSIAN SAGE	5.00	\$8.00	6.00%	\$40.00
	1 DIABLO NINEBARK	1.00	\$29.00	6.00%	\$29.00
	3 YARDS MULCH	3.00	\$25.00	6.00%	\$75.00

Subtotal	\$565.65
Tax	\$17.74
Shipping	\$0.00
Total	\$583.39
Deposit	\$0.00
Balance Due	<u>\$583.39</u>



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: 201
Date: 10/16/2006
Terms: Net 30
Due Date: 11/15/2006

Bill To:

SUNRISE HOMES
2790 W. COLLEGE AVE.
STATE COLLEGE, PA 16801
(COBBLE CREEK II CHANGE RIVER STONE)

Ship To:

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

Code	Description	Qty/Hours	Rate	Tax %	Amount
	7 TON RIVER STONE	7.00	\$42.00	6.00%	\$294.00
	1080 SQ. FT. GEO FABRIC	1080.00	\$0.20	6.00%	\$216.00
	LABOR TO CHANGE AND ADD EXTRA STONE	34.50	\$45.00	0.00%	\$1,552.50

Subtotal	\$2,062.50
Tax	\$30.60
Shipping	\$0.00
Total	\$2,093.10
Deposit	\$0.00
Balance Due	<u>\$2,093.10</u>



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: 232
Date: 11/30/2006
Terms: Net 30
Due Date: 12/30/2006

Bill To:

SUNRISE HOMES
2790 W. COLLEGE AVE.
STATE COLLEGE, PA 16801
(WILTREE TOWNHOMES)

Ship To:

Ship Date 11/30/2006 Ship Via Tracking No. FOB

Code	Description	Qty/Hours	Rate	Tax %	Amount
	EXTRA LANDSCAPE PLANTING @ END OF BLDG. # 2 (NOT ON PLAN)	1.00	\$1,041.73	0.00%	\$1,041.73

Subtotal	\$1,041.73
Tax	\$0.00
Shipping	\$0.00
Total	\$1,041.73
Deposit	\$0.00
Balance Due	<u>\$1,041.73</u>



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: 339
Date: 6/1/2007
Terms: Net 30
Due Date: 7/1/2007

Bill To:

SUNRISE HOMES
2790 W. COLLEGE AVE.
STATE COLLEGE, PA 16801
WILTREE LAWN & PLANTS- BLDG. #2

Ship To:

Ship Date: 6/1/2007 Ship Via: <shipvia> Tracking No: <tracking number> FOB: <shipping_fob>

Code	Description	Qty/Hours	Rate	Tax %	Amount
	LAWN INSTALLATION 7714 SQ. FT.	7714.00	\$0.15	0.00%	\$1,157.10
	INSTALL DENSE YEWS @ DRIVEWAYS	36.00	\$61.75	0.00%	\$2,223.00

Subtotal	\$3,380.10
Tax	\$0.00
Shipping	\$0.00
Total	\$3,380.10
Deposit	\$0.00
Balance Due	<u>\$3,380.10</u>

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

GULISH AND CRAGO LANDSCAPE
SERVICES, L.L.C.
Plaintiff

vs.

SUNRISE HOMES, INC.,
Defendant

: No.: 2008-736-CD
: Type of Case: Civil
: Type of Pleading:
: Proof of Service
: Filed on behalf of:
: Plaintiff
: 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

019:0430
MAY 30 2008

William A. Shaw
Prothonotary/Clerk of Courts

icc
Atty Kasubick

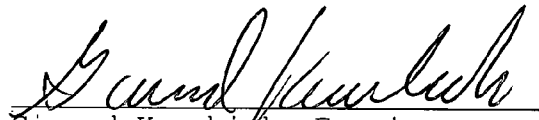
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL DIVISION

GULISH AND CRAGO LANDSCAPE :
SERVICES, L.L.C. : No.: 2008-736-CD
Plaintiff :
vs. :
SUNRISE HOMES, INC., :
Defendant :

PROOF OF SERVICE

I hereby certify that I, Girard Kasubick, Esq.,
served a copy of the Complaint on the Defendant by regular
United States mail, postage pre-paid, mailed on May 28,
2008 upon the attorney for the Defendant 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 16801-4669


Girard Kasubick, Esquire,
Attorney for Plaintiff

UB

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

GULISH AND CRAGO LANDSCAPE
SERVICES, LLC,

Plaintiff

vs.

SUNRISE HOMES,

)
)
) No. 2008-736-CD
)
) Type of Case: Civil Action
)
) Type of Pleading: Preliminary
) Objections
)
)
) 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 DEC 08 2008
m 11:45 am
s
DEC 08 2008
2cc Attys:
Etter & Marshall
(GK)

William A. Shaw
Prothonotary/Clerk of Courts

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

GULISH AND CRAGO LANDSCAPE)	
SERVICES, LLC,)	
)	No. 2008-736-CD
Plaintiffs)	
)	
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 Gulish and Crago Landscape Services, LLC, Plaintiffs, of which the following is a statement in support thereof:

1. On or about May 27, 2008, Plaintiff filed a Complaint in the Court of Common Pleas of Clearfield County, Pennsylvania demanding payment for services allegedly rendered by Plaintiff to Defendant Sunrise Homes, Inc.

2. Preliminary Objections may be filed for, *inter alia*, an agreement for alternative dispute resolution. Pa. R.C.P. 1028(a)(6).

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 arbitration requirements to which they agreed as set forth in the Master Subcontract.

5. Subcontract Documents, and more specifically, Purchase Orders, for certain work on the Cobble Creek Manor II and Wiltree Town Homes projects of Defendant, which were issued by Defendant to Plaintiff, in conformity with the Master Subcontract Agreement, are attached hereto as Exhibits "A1" and "A2."

6. In its Complaint, Plaintiff alleges that it did additional work for Defendant, which work is not within the scope of the Subcontract Documents/Purchase Orders attached as Exhibits "A1" and "A2."

7. Changes to the scope of work set forth in the Subcontract Documents is governed by Section 17 of the Master Subcontract.

8. In Section 17, beginning on page 5 of 7, of the Master Subcontract, which is attached in full to Plaintiff's Complaint as Exhibit "A," it is provided under a heading entitled "Change in Work" that:

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.**

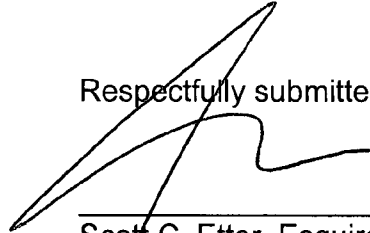
No extra work or changes under the Subcontract documents for any project will be recognized or reimbursed unless agreed to **in writing** by the Contractor **before the work is performed**. The Subcontractor shall notify the Contractor of any work over and above the scope of work that is required to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

(Emphasis added)

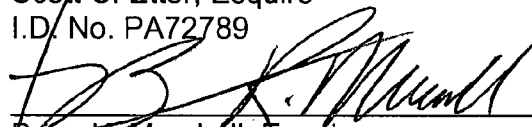
9. Given the forgoing, the Plaintiff has failed to submit this dispute, which arises under the Subcontract Documents, to arbitration, as required by the Master Subcontract.

WHEREFORE, Defendant Sunrise Homes, Inc. respectfully requests these Preliminary Objections be sustained, and the Complaint be dismissed with prejudice due to Plaintiff's failure to comply with Sections 17 and 18 of the Master Subcontract document, as set forth heretofore.

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:

12/5/08

Counsel for Defendant

EXHIBIT A1

Sunrise Homes, Inc.
2790 W College Ave, Suite 900
State College, PA 16801
(814) 231-8500

JOB SITE:
Cobble Creek Manor II
3222 Shellers Bend
State College, PA 16801

SUBCONTRACTOR:
Gulish & Crago Landscape Serv.
940 Sue Street
Houtzdale, PA 16651

WORK NEEDED:
Landscaping

Revised

Date of W.O.:
Job Number:

Wed May. 04, 2005
CC2-MG

Work Start Date:
Scheduled Completion Date:
Contract Amount:

Tue May. 03, 2005
MMM. DD, YYYY
\$157,812.00

ATTN: SCOTT.

CONTRACT AMOUNT BASED ON:

Buffer Yard Plantings - Buffer One	\$19,987
Buffer Yard Plantings - Street Trees	\$16,891
Entrance Plantings A	\$3,361 ✓
Entrance Plantings B	\$2,998
Manor House Plantings	\$58,012 ✓
Clubhouse Landscaping	\$13,797
Clubhouse Hardscape	\$34,785 ✓
Misc. Lawn	\$15,444
Misc. Retaining Wall	\$3,410 ✓
Less Credit for Lily of Valley/ Use Mixed Perennial	\$(3,230) ✓
→ Pond, Waterfall and Stream w/ Bridge to be replaced with Free Standing Fountain	\$(7,643) ✓

SUB-TOTAL: \$157,812

Bid documents included in the work Order:

- Landscape Drawings Sheets 1 through 10 dated November 8, 2004 furnished by PennTerra Engineering.
- Landscape Specifications dated November 6, 2004 furnished by PennTerra Engineering.
- Bid Quantities total of 3 pages including estimate from putting greens.

Contractor reserves the right to delete, modify and or change the specifications and the final contract cost will be adjusted

CONTINUED ON NEXT PAGE

<i>Inw. 6-24-05</i>	<i>\$14462.83</i>	<i>Inw. \$26975.98</i>
<i>Inw. 9-7-05</i>	<i>\$21973</i>	<i>Inw. 67 \$1449</i>
<i>* Revised Pricing</i>	<i>\$9497.50</i>	<i>4-12-06</i>
<i>Inw. 9-26-05</i>	<i>\$8217.53</i>	
<i>Inw. 10-8-05</i>	<i>\$13178.65</i>	
<i>Inw. 11-5-05</i>		

accordingly.

IMPORTANT: Our Work Order Number must appear on all invoices. The Work Start Date and Scheduled Completion Date specified above are forecasted dates and are subject to change. Please notify us immediately if you are unable to start the work by the Work Start Date. Our Site Manager/Foreman will contact you to confirm the actual start date and expected completion date. In witness hereof, the Builder and the Subcontractor agree to the above terms.

by:

Sham P. Kelly
AUTHORIZED REPRESENTATIVE/BUILDER

EXHIBIT A2

Sunrise Homes, Inc.
2790 West College Ave.
State College, PA 16801

814-231-8500

Fax: 814-238-0093

Gulish & Crago
940 Sue Street
Houtzdale, PA 16651

814-577-0951

Fax: 814-378-7722

Purchase Order

PO #: 1550

PO Release Date: 8/4/2006

Current Date: 8/4/2006

L&I: Landscaping

Wiltree - L&I
Wiltree Court
State College PA 16801

Plan: Wiltree Townhomes Land & Infrastructure

Elevation: NA Handling: N/A

As per quote #79 on 7/19/06

Terms: Net 15

Tax Rate: 6.0000%

Trade Discount: 0.000%

Payment Discount: 0.000%

Superintendent will contact you with the Delivery/Installation Date

Description	Product No	Location - Where Used	Code	Tax	Quantity	U/M	Cost	Extension
Wiltree Addit. Planting one end of each building	Quote	NONE	0180	N	7292.1100	EA	1.000	7292.1100
Wiltree Bldg 1 Landscaping	Quote	NONE	0180	N	4149.0500	EA	1.000	4149.0500
Wiltree Bldg 2 Landscaping	Quote	NONE	0180	N	3190.0300	EA	1.000	3190.0300
Wiltree Bldg 3 Landscaping	Quote	NONE	0180	N	12972.2900	EA	1.000	12972.2900
Wiltree Bldg 4 Landscaping	Quote	NONE	0180	N	3624.2200	EA	1.000	3624.2200
Wiltree Bldg 5 Landscaping	Quote	NONE	0180	N	13750.5500	EA	1.000	13750.5500
Wiltree Bldg 6 Landscaping & buffer at back	Quote	NONE	0180	N	8683.4400	EA	1.000	8683.4400
Wiltree Bldg 7 Landscaping	Quote	NONE	0180	N	8327.6100	EA	1.000	8327.6100
Wiltree Front Patios (Each)	Quote	NONE	0180	N	17164.0500	EA	1.000	17164.0500
Wiltree Lawn Seeding Areas	Quote	NONE	0180	N	11010.7600	EA	1.000	11010.7600
Wiltree North Buffer Planting	Quote	NONE	0180	N	18656.6500	EA	1.000	18656.6500
Wiltree Rear Patios (Each)	Quote	NONE	0180	N	55669.5600	EA	1.000	55669.5600
Wiltree Steps @ rear patio	Quote	NONE	0180	N	16150.1700	EA	1.000	16150.1700
Wiltree Wall at Window Well	Quote	NONE	0180	N	13035.6000	EA	1.000	13035.6000
Wiltree Whitehall Road Buffer and Entrance	Quote	NONE	0180	N	10748.9600	EA	1.000	10748.9600

Job PO Note:

<u>Sub Total</u>	<u>Discount</u>	<u>Sales Tax</u>	<u>Total</u>
\$204,425.05	\$0.00	\$0.00	\$204,425.05

Payment is authorized for the face value of this Purchase Order only. If the value of this Purchase Order does not match your expected payment then you MUST contact our office for a corrected or additional Purchase Order.

All material deliveries must be field verified and a shipping ticket left with the Superintendent.

Contractor Invoice No:

Signature

Date

Inv. 179 9-27-06
Inv. 206 10-24-06
Inv. 221 11-16-06
Inv. 249 12-28-06

\$10770.60
\$10349.01
\$26440.02
\$2692.87

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

GULISH AND CRAGO LANDSCAPE
SERVICES, L.L.C.,

Plaintiffs

vs.

SUNRISE HOMES, INC.,

Defendant

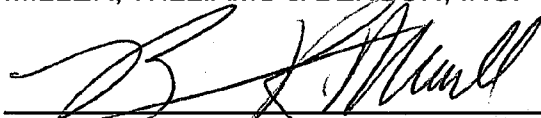
)
)
) No. 2008-736-CD
)
)
)
)
)

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 Preliminary
Objections was served this 5th day of December, 2008 by
mailing same first class United States mail, postage prepaid, addressed to:

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

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



Brian K. Marshall, Esquire

1A

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

GULISH AND CRAGO LANDSCAPE
SERVICES, LLC,

)
)
) Plaintiffs

) No. 08-736-CD
)
)

vs.

SUNRISE HOMES, INC.,

)
)
) Defendant)

ORDER

NOW THIS 9th day of DECEMBER, 2008, upon
consideration of Defendant's Preliminary Objections, it is hereby the Order of this Court
that argument shall be held on the 16th day of January, 2009,
at 3:00 o'clock a.m. in Courtroom No. 1 of the Clearfield County
Courthouse, Clearfield, PA.

BY THE COURT:

Frederick J. Zimmerman

J.

FILED

DEC 10 2008

William A. Shaw
Prothonotary/Clerk of Courts

610

Marshall

FILED

DEC 10 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 12/10/08

☒ 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:

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

GULISH and CRAGO
LANDSCAPE SERVICES, LLC,
Plaintiffs

vs.

SUNRISE HOMES, INC.
Defendant

: No.: 2008-736-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 ^{ICC}
01/31/09
JAN 16 2009
Any Kasubick

William A. Shaw
Prothonotary/Clerk of Courts

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

GULISH AND CRAGO	:	
LANDSCAPE SERVICES, LLC	:	No.: 2008-736-CD
Plaintiffs	:	
	:	
vs.	:	
	:	
	:	
SUNRISE HOMES, INC.,	:	
Defendant	:	

AFFIDAVIT ON PRELIMINARY OBJECTIONS

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

1. The Plaintiff did receive the work order
number 004746 on Cobble Creek Manor II attached as Exhibit
"A1" to the Preliminary Objections of the Defendant.

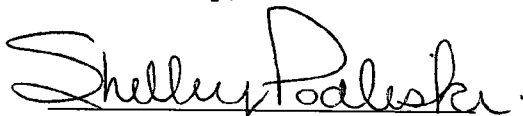
2. The invoice numbers 158, 199, 105, 104 and
201 set forth in the Complaint were additional work on the
Cobble Creek Manor II job site and no change orders were
issued under Section 17. of the Master Subcontractor
Agreement for the work done on those invoices. The
Exhibit "A1" attached to the Preliminary Objections of the
Defendant does not list work performed under any of the
above noted Cobble Creek Manor II invoices.

3. The Plaintiff did not receive the purchase order number 1550 on Wiltree attached as Exhibit "A2" to the Preliminary Objections of the Defendant. The Plaintiff has never seen or received this document prior to it being attached to the Defendant's Preliminary Objections.

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


Richard Scott Gulish

Sworn to and subscribed
before me this 15th day
of January, 2009.


N.P.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Shelby Podlaski, Notary Public
Houtzdale Boro, Clearfield County
My Commission Expires June 29, 2011
Member, Pennsylvania Association of Notaries

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

GULISH AND CRAGO LANDSCAPE
SERVICES, LLC

-VS-

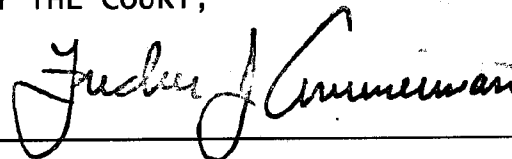
SUNRISE HOMES, INC.

No. 08-736-CD

O R D E R

AND NOW, this 16th day of January, 2009, following argument on the Defendant's Preliminary Objections, with the Court finding that the arbitration provisions of the agreement are not applicable due to the failure of the contractor to issue the work orders under the contract, it is the ORDER of this Court that the Preliminary Objections be and are hereby dismissed.

BY THE COURT,



President Judge

FILED
10/9/31/09
JAN 20 2009
2CCAtty's
Kasubick
Marshall/Ester
William A. Shaw
Prothonotary/Clerk of Courts

FILED

JAN 20 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/20/09

___ You are responsible for serving all appropriate parties.

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

___ Plaintiff(s) X Plaintiff(s) Attorney ___ Other

___ Defendant(s) X Defendant(s) Attorney

___ Special Instructions: