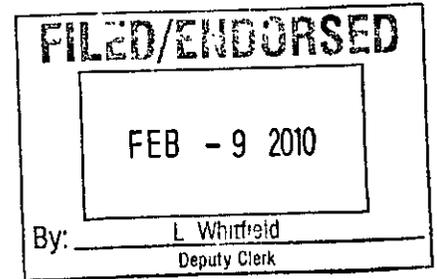


1 STANLEY R. PARRISH
2 State Bar No. 137624
3 P.O. Box 302
4 Fair Oaks, CA 95628
5 (916) 536-0330
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7 Attorneys for Defendants/Cross-
8 Complainants ROY RUTHERFORD, TANGIE
9 RUTHERFORD



10 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

11 MJB/BIXBY CONSTRUCTION, INC.,

CASE NO. 34-2009-00066239

12 Plaintiff,

**CROSS-COMPLAINT FOR BREACH
OF CONTRACT, NEGLIGENCE, AND
FRAUD**

13 vs.

14 ROY RUTHERFORD and TANGIE
15 RUTHERFORD AND DOES 1-100,
16 INCLUSIVE,

DEMAND FOR JURY TRIAL

17 Defendants.

18 ROY RUTHERFORD and TANGIE
19 RUTHERFORD,

20 Cross-Complainants,

21 vs.

22 MJB/BIXBY CONSTRUCTION, INC.,
23 AND DOES 1-25, INCLUSIVE,

24 Cross-Defendants.

25 COME NOW cross-complainants, ROY RUTHERFORD and TANGIE
26 RUTHERFORD, who allege as follows:
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2 **THE ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

3 1. Cross-complainants, ROY and TANGIE RUTHERFORD, are
4 competent adults at all times herein, have been and are residents
5 of the subject property, 8600 Gunner Way, Fair Oaks, CA 95628.

6 2. Cross-defendant, MJB/BIXBY CONSTRUCTION, INC., is
7 believed to be a legal entity incorporated under the laws of the
8 State of California with its principal place of business located
9 in Sacramento, California. Cross-complainants are informed that
10 MJB/BIXBY CONSTRUCTION, INC. (hereinafter "BIXBY") is licensed by
11 the State of California to operate as a building contractor.

12 3. Cross-complainants are informed and believe and thereon
13 allege that at all times herein mentioned each of the cross-
14 defendants was the agent and/or employee of each of the remaining
15 defendants and doing the things herein alleged was acting within
16 the course and scope of such agency and employment.

17 4. Cross-complainants are informed and believe and thereon
18 allege that each of the said doe defendants are, and at all times
19 herein, were the agent, servant, master or principal of each and
20 every other doe defendant named herein and are liable to cross-
21 complainants for the damages sustained by cross-complainants
22 either directly or indirectly, vicariously or otherwise.

23 **FIRST CAUSE OF ACTION**

24 **Breach of Insurance**

25 5. Cross-complainants incorporate by reference Paragraphs
26 1-4 above as though fully set forth herein.

27 6. On or about February 19, 2009, the parties entered into
28

1 a written Agreement for the construction of a 1258 square foot
2 addition to the house in which cross-complainants lived. The
3 addition was to be lived in by Roy Rutherford's elderly mother.
4 Said contract also included other miscellaneous work to be
5 performed aside from the addition. BIXBY agreed to complete the
6 addition and other included work within 150 working days in
7 exchange for the agreed price, \$235,904.28. This price covered
8 all soft costs, site development and the construction. A complete
9 copy of the written Agreement is attached hereto as Exhibit "1".
10 Attached as Exhibit "A" to the Contract was the Plan Sheet Index,
11 and attached as Exhibit "B" was a schedule of all values which
12 broke out the estimated cost of each of the additions and/or
13 renovations which came to the total cost of \$235,904.28.

14 7. BIXBY started the project within ten days as required
15 by the Contract. During the first month of the Contract work
16 progressed, and payments were made without incident. However,
17 starting on or about March 16, 2009, BIXBY began generating
18 Change Orders. Between March 16 and May 12, 2009, he drafted a
19 total of twenty-three Change Orders, of which only two or three
20 were actually requested by RUTHERFORDS. In each and every case,
21 the Change Order was drafted, the work was initiated, and often
22 completed, before BIXBY ever showed the change order to
23 Rutherfords or sought signatures on the Change Orders. Of the
24 twenty-three Change Orders, only nine were actually signed by
25 RUTHERFORDS, and then only after RUTHERFORDS were threatened with
26 liens and/or work stoppage unless they agreed to sign.

27 8. By July 16, 2009, RUTHERFORDS were concerned with the
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1 amount of costs being incurred and the quality of the work being
2 performed. This concern was related to BIXBY both orally and in
3 writing, but attempts to meet with BIXBY and/or his agents fell
4 on deaf ears. RUTHERFORDS expressed concern as to the cost of
5 repairs, improper installation of the roof, excessive grading,
6 not pulling proper permits and overcharging on the cabinets.

7 9. BIXBY's response to RUTHERFORD's request to sit down
8 and discuss all issues was a letter dated August 4, 2009,
9 informing RUTHERFORDS that all further communication must go
10 through BIXBY's attorney. On that same date, RUTHERFORDS
11 informed BIXBY that no further payments would be made until all
12 the Contract work had been completed, because they were
13 questioning costs and quality of work. As specifically provided
14 in the Contract, RUTHERFORDS, on a basis of reasonable and
15 verifiable evidence, were entitled to withhold from any payment
16 due, such amounts as may be necessary for protection against
17 losses caused by defective work not remedied or failure of the
18 contractor to make payments properly to subcontractors. As of
19 August 4, 2009, the total Contract price, including approved
20 Change Orders requested by RUTHERFORDS came to \$239,770.36. As
21 of May 29, 2009, two months prior, BIXBY had already received
22 payments totaling \$225,088.69.

23 10. On August 27, 2009, the County issued a Stop Work Order
24 for all work related to the soil excavation, grading and
25 construction of the retaining wall until proper permits were
26 obtained. BIXBY never obtained the proper and/or necessary
27 permits to complete that work. Instead, on September 3, 2009,
28

1 BIXBY unilaterally terminated his Contract with RUTHERFORDS,
2 alleging non payment of benefits due. On that same day, on
3 behalf of RUTHERFORDS, an independent contractor completed a
4 detailed Home Inspection of the work completed to date by BIXBY.
5 That Detailed Report verifies the need to demolish and replace,
6 repair and/or complete much of the work BIXBY had initiated.

7 11. BIXBY's conduct and or work product breaches the terms
8 of the written Agreement in numerous ways. A partial list is as
9 follows:

- 10 a. Change Orders were drafted, work was started and often
11 completed before the prices were provided and/or there
12 was a signature to the Agreement. This is a violation
13 of Section 7 of the Contract.
- 14 b. BIXBY did not obtain the necessary and/or proper
15 permits for excavation and/or grading as related to the
16 slope behind the house. This is a violation of Section
17 6 of the Contract.
- 18 c. BIXBY'S work product and materials were not free of
19 mechanics liens when he stopped work. RUTHERFORDS are
20 aware of two Liens which were filed, one which is still
21 outstanding with Lumber 84. This is a violation of
22 Section 5 of the Contract.
- 23 d. The work performed by BIXBY exceeds his liability
24 coverages. BIXBY specifically agreed in his contract
25 to provide liability coverage for all work performed,
26 yet his policy does not cover him in such a fashion.
27 This is a violation of Section 11 of the Contract.
28

1 e. The approved plans and the permit with the Inspection
2 folder were not left at the job site. This is a
3 violation of paragraph 6.2 of the Contract and a
4 violation of the Building Code.

5 / / /

6 f. BIXBY did not provide RUTHERFORDS a copy of the signed
7 and dated Contract prior to initiating work under the
8 Contract, nor did BIXBY have Change Orders approved and
9 signed before he initiated work. This conduct violates
10 Section 7 of the Contract and also is a violation of
11 Business & Professions Code Sections 7159(c) (3) (A) and
12 (d).

13 g. The Construction Contract does not include a Mechanic's
14 Lien warning. This violates Section 6.2 of the
15 Contract as well as Business & Professions Code Section
16 7159(e) (4).

17 h. BIXBY deviated from the plans and/or written Agreement
18 without oral or written authorization. Violates
19 Section 7 of the Contract.

20 12. Much of the work completed by BIXBY falls below the
21 standard of care in the industry and had to be repaired and/or
22 replaced following BIXBY's departure from the project. Said work
23 includes but is not limited to, electrical, roofing, plumbing and
24 framing.

25 13. RUTHERFORDS have suffered damages legally caused by
26 BIXBY's breach of the Agreement in the amount of \$69,586.23.
27 Cross-complainants are also entitled to attorney fees by the
28

1 express terms of the Contract which as of this date are slightly
2 in excess of \$15,000.

3 WHEREFORE, cross-complainants pray for recovery as set forth
4 herein below.

5 / / /

6 / / /

7 SECOND CAUSE OF ACTION

8 (Negligence)

9 14. Cross-complainants refer to and incorporates as though
10 fully set forth herein Paragraphs 1 through 13.

11 15. BIXBY's conduct and work product as herein alleged
12 above falls below the standard of care required of licensed
13 general contractors and as such was negligent. BIXBY negligently
14 caused damage to the cross-complainants in failing to reasonably
15 perform the duties owed RUTHERFORDS under the Contract.

16 16. As a legal result of BIXBY's negligence, RUTHERFORDS
17 have been damaged to the extent that they have had to spend money
18 well in excess of the original Contract price to repair and/or
19 complete work started by BIXBY. The timing for the completion of
20 the repairs had to be extended, because much of the work
21 initiated by BIXBY had to be re-done and/or simply completed
22 after BIXBY unilaterally canceled the Contract. Even after
23 taking into consideration Rutherford's requested additions to the
24 scope of work, RUTHERFORDS had to pay out of their pocket, nearly
25 \$70,000 over the amount it should have cost to complete the
26 Contract. This amount does not include legal fees and costs
27 incurred to date.

28

1 WHEREFORE, cross-complainants pray for judgment against
2 cross-defendants and each of them as set forth below.

3 THIRD CAUSE OF ACTION
4 (Fraud)

5 17. Cross-complainants refer to and incorporates as though
6 fully set forth herein Paragraphs 1 through 16.

7 18. At or about the time of execution of the building
8 Contract for the addition and other miscellaneous work, BIXBY
9 intentionally and/or negligently misrepresented to RUTHERFORDS,
10 that he was willing to complete all of the addition and/or the
11 repairs for the agreed Contract price of \$235,904.28.
12 RUTHERFORDS have since been informed that it is BIXBY's custom
13 and practice to agree on a Contract price and then during the
14 course of construction require owners to agree to significant and
15 multiple Change Orders in order to increase what he will make as
16 profit on each job. Said intent was misrepresented and/or
17 concealed from RUTHERFORDS at the time they agreed to the
18 Contract price and signed the Construction contract.

19 19. When BIXBY made the representations to RUTHERFORDS that
20 he could, and would, complete the Contract for the agreed-upon
21 amount, BIXBY knew that he would be generating Change Orders in
22 the future. BIXBY made the representations with the intent to
23 defraud and induce cross-complainants to enter into the Contract
24 for an agreed amount, knowing that said amount would be increased
25 by Change Orders. At the time RUTHERFORDS entered into the
26 Contract, they did not know the representations made by BIXBY
27 were false and believed they were true and acted in justifiable
28

1 reliance upon the truth of the representations.

2 20. BIXBY further concealed and suppressed from
3 RUTHERFORDS, that he had failed to comply with all Building Code
4 regulations and had failed to obtain the proper building permits
5 to complete the work necessary. BIXBY had a duty to disclose
6 said facts, yet concealed or suppressed them from cross-
7 complainants with the intent to defraud cross-complainants and/or
8 induce plaintiffs to enter into extra-contractual Change Orders.
9 At all times relevant herein, RUTHERFORDS were unaware of the
10 concealed and/or suppressed facts and would not have entered into
11 the Contract if they had known what BIXBY intended.

12 21. In justifiable reliance upon BIXBY's conduct,
13 RUTHERFORDS were induced to enter into the Construction Contract.
14 As a direct result thereof, they have been forced to spend
15 \$70,000 over the original contract price to fix and/or complete
16 the work initiated by BIXBY. Said misrepresentations and/or
17 concealment were fraudulent as defined in Civil Code Section
18 3294, and cross-complainants are entitled to recover, in addition
19 to actual damages, damages to make an example of and to punish
20 BIXBY.

21 WHEREFORE, cross-complainants pray for judgment against
22 defendant and each of them as set forth below.

23 **FIRST CAUSE OF ACTION - Breach of Insurance Contract**

- 24 1. For Contract damages in the amount of \$69,586.23;
25 2. For attorney fees incurred by cross-complainants;
26 3. For costs of suit incurred herein;
27 4. For such other relief as the court may deem proper;
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SECOND CAUSE OF ACTION - Negligence

- 1. Forspecial damages in the amount of \$69,586.23;
- 2. For attorney fees incurred by cross-complainants;
- 3. For costs of suit incurred herein;
- 4. For such other relief as the court may deem proper;

THIRD CAUSE OF ACTION - Fraud

- 1. Forspecial damages in the amount of \$69,586.23;
- 2. For attorney fees incurred by cross-complainants;
- 3. For costs of suit incurred herein;
- 4. Punitive damages as the court may deem just and proper;
- 5. For such other relief as the court may deem proper;

Dated: February 9, 2010 LAW OFFICES OF STANLEY R. PARRISH

By: *Stanley R. Parrish*
 STANLEY R. PARRISH
 Attorneys for
 Defendants/Cross-Complainants
 ROY RUTHERFORD and
 TANGIE RUTHERFORD

DEMAND FOR TRIAL BY JURY

Cross-complainants demand trial by jury of all issues so triable.

Dated: February 9, 2010 LAW OFFICES OF STANLEY R. PARRISH

By: *Stanley R. Parrish*
 STANLEY R. PARRISH
 Attorneys for Defendants/
 Cross-Complainants
 ROY RUTHERFORD and
 TANGIE RUTHERFORD

EXHIBIT “1”



MJB/Bixby Construction, Inc.

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Phone 916-386-4017 - Fax 916-387-8140

E-mail: bixbyconstruction@yahoo.com - CCL #571821

CONTRACT

THIS CONTRACT (this "Agreement") is entered into this *February 19th* 2009, by and between *Roy and Tangie Rutherford*, located is at *8600 Gunner Way, Fair Oaks, CA* ("Owner"), and MJB/Bixby Construction, Inc., whose principal place of business is at 5852 88th Street, #800, Sacramento, CA 95828 ("Contractor").

RECITALS

A. Owner desires to contract with Contractor for the construction of

1258 square foot addition (and other misc work) at 8600 Gunner Way, Fair Oaks, CA a residential home

This includes (but not limited to):

SOFT COSTS: Plans & Permit Fees, Architectural Fees, School Fees, and Structural Engineering

SITE DEVELOPMENT: Demo/Clearing, Excavation, Rough Grading, 65 LF Retaining Wall, Electrical Panel upgrade, necessary utilities, etc.

CONSTRUCTION: Foundation for new addition, Plumbing, Electrical, Rough Carpentry, Finish Carpentry, Roofing, Painting, Insulation, Drywall, Interior Finishes, Flooring, etc.

(the "Project"), in accordance with the plans and specifications dated *August 2008*, consisting of *eleven [11]* pages as set forth in **Exhibit A** attached hereto and incorporated herein (the "Plans and Specifications"), to be located at *8600 Gunner Way, Fair Oaks, CA* on the terms and conditions contained herein

B Contractor desires to construct the Project on the terms and conditions contained herein

NOW THEREFORE, for good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the parties agree as follows

Section 1. Definitions.

(a) Work As used herein the "Work" shall mean the labor and materials, or both, and



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shall consist of the components shown on **Exhibit A**, attached hereto and incorporated herein by this reference, that shall be constructed as per the Plans and Specifications. The Work shall be done and the materials furnished in accordance with the Plans and Specifications

(b) **Schedule of Values** As used herein, the "Schedule of Values" means a schedule of values prepared by Contractor and approved by Owner allocating the Contract Price (as hereinafter defined) among the various components of the Work designated in **Exhibit B** and setting forth the allowance amounts (if any) that Contractor has included in the Contract Price for designated components and units of the Work

Section 2. Obligations of Contractor.

Contractor agrees to furnish and transport all necessary labor, materials, tools, implements, and appliances required to perform and finish completely in a workmanlike manner, to the satisfaction and approval of Owner, free of any and all liens and claims of laborers, materialmen, suppliers, and subcontractors, and in conformity with the Plans and Specifications

Section 3. The Work.

3.1 Contractor has reviewed the Plans and Specifications and represents that
(i) if the Work is performed in accordance therewith, the Work shall have been constructed in accordance with all applicable state, county, and municipal laws, codes, and regulations, including, but not limited to, all applicable building codes, and

(ii) the Plans and Specifications are sufficiently complete and detailed to permit Contractor to perform the entire Work on the basis of the Plans and Specifications and matters reasonably inferable therefrom for the Contract Price

3.2 If at any time or times during the process of the Work, Owner desires to add to, alter, deviate from, or make omissions from the Work to be performed under the Plans and Specifications, Owner shall be at liberty to do so and the same shall in no way affect or make void this Agreement. Any such alterations, deviations, or omissions that decrease the cost of the Work shall be evaluated on a lump-sum basis and this amount shall be deducted from the Contract Price. Any such additions, alterations, deviations, or omissions that increase the cost of the Work shall be evaluated on a lump-sum basis, the amount thereof to be agreed on in writing before execution of the Work, and the amount thereof shall be added to the Contract Price. This Agreement shall be held to be completed when the Work is finished in



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accordance with the original Plans and Specifications as amended by such changes

Section 4. Contract Time.

Contractor agrees to commence the Work within *ten (10)* calendar days after receiving written notification to proceed from Owner Contractor shall carry out and complete the entire Work under this Agreement within *one hundred fifty (150)* working days (the "Completion Date")

Section 5. Contract Price.

5 1 Owner agrees, in consideration of Contractor's performance of this Agreement, to pay Contractor the sum of *two hundred thirty five thousand nine hundred four dollars and twenty eight cents* (\$235,904.28), subject to additions and deductions as provided in this Agreement (the "Contract Price") This sum shall constitute payment in full for all costs incurred by Contractor under this Agreement in performing and completing the Work, including, but not limited to, the costs incurred for required permits and Social Security, unemployment, sales, use, and all other taxes; if the Contract Price of the Work exceeds this sum, subject to additions and deductions provided for in this Agreement, contractor shall pay for such excess and Owner shall have no liability for same No payment at premium rates for overtime, Sunday, or holiday work shall be included in Contractor's bills to Owner, unless specifically authorized in advance in writing by Owner.

5 2 Progress payments on account of the Contract Price shall be made as follows

5 2.1 The Owner shall pay to the Contractor the Contract Price, as may be amended pursuant to Article 13, as full compensation for the Work Before commencing work, the Contractor shall provide to the Owner a breakdown of the Contract Price according to the various items of work to be performed, including reasonable sums for mobilization Such breakdown shall be the basis of payment to the Contractor

5 2.2 Periodically, but not less frequently than monthly, the Owner shall pay the Contractor for the value of the work performed, less the amount of previous payments and other amounts permitted to be withheld under this Contract. Payment shall be made within ten (10) working days after submission of a properly documented requisition containing the above breakdown and reflecting the quantity of the various items that have been performed

5 2.3 The Contractor agrees that all work, materials and equipment covered by an application for payment will pass to the Owner free and clear of all liens, claims, security interest or encumbrances upon payment by the Owner At the request of the Owner, the



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Contractor shall provide waivers and lien releases in accordance with Civil Code Section 3262 from all persons who may be potential lien claimants as a prerequisite to the Owner's obligation to disburse progress and final payments

5 2 4 When the Contractor has achieved Substantial Completion, the Owner shall pay to the Contractor the Contract Price, including retention and other amounts previously withheld, less the value of the Work remaining to be completed and other amounts permitted to be withheld under this Contract.

5 2 5 Upon Final Completion and acceptance of the Work, the Owner shall pay the Contractor all amounts remaining to be paid under the Contract, less any amounts the Owner is entitled to retain under the other provisions of this Contract

5 2 6 The Owner, on the basis of reasonable and verifiable evidence, may withhold from any payment such amounts as may be necessary for protection against loss caused by (a) defective work not remedied or (b) failure of the Contractor to make payments properly to Subcontractors or for material or labor (unless a labor and material payment bond has been furnished by the Contractor) When these grounds are removed or the Contractor provides a surety bond or other security to protect the Owner in the amount withheld, payment shall be made of the amount withheld.

Section 6. Permits, License and Regulations

6 1 Permits and license of a temporary nature necessary for the prosecution of the Work shall be obtained by the Contractor and paid for by the Owner The Owner shall assist the Contractor in obtaining such permits and licenses Unless otherwise provided, permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner

6 2 The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the performance of the Work If the Contractor observes that the drawings and specifications are at variance with such laws, ordinances, rules and regulations, the Owner shall promptly be notified Any necessary changes in the Work as a result of such variance will entitle the Contractor to an equitable adjustment in the Contract Price and the Contract Time

Section 7. Changes

7 1 The Work shall be subject to change by additions, deletions or revisions by Owner The Contractor will be notified of such changes by receipt of additional and/or



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revised drawings, specifications, exhibits or written orders

7.2 Whenever an equitable adjust in the Contract Price or the Contract Time is provided for under the Contract Documents, or if the Owner has notified the Contractor of a change, the Contractor shall submit to the Owner within a reasonable time an estimate with supporting calculations and pricing together with any adjustments in the schedule reflecting any changes in the Contract Price and the Contract Time Pricing shall be in accordance with the pricing structure of this Contract, however, to the extent that such pricing is inapplicable, the cost of the change or the amount of the adjustment shall be determined on the basis of cost to the Contractor (except in the case of Contractor-owned equipment rates) plus reasonable amounts for overhead and profit

7.3 The Contractor shall not perform changes in the Work in accordance with Paragraphs 7.1 and 7.2 until the Owner has approved in writing the changes in the Contract Price and Contract Time, except as set forth in Paragraph 7.4 below Upon receiving such written approval from the Owner, the Contractor shall diligently perform the change in strict accordance with this Contract

7.4 Notwithstanding Paragraph 7.3, the Owner may expressly authorize the Contractor in writing to perform the change prior to approval of price and schedule adjustments by the Owner The Contractor shall not suspend performance of this Contract during the review and negotiation of any change, except as may be directed by the Owner pursuant to Article 10, so long as the change is a reasonable foreseeable alteration to the Work originally contemplated by the Contract Documents

7.5 The Contractor shall promptly, before such conditions are disturbed, notify the Owner in writing of

7.5.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents, or

7.5.2 Previously unknown physical or other conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract

7.6 The Owner shall promptly investigate the conditions and, if it finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or the time required for, performance of this Contract, an equitable adjustment in the Contract Price and the Contract Time shall be made Any claim of the Contractor for adjustment shall not be allowed unless he has given prompt notice of such event, provided, however, that the Owner



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may, if it determines that the facts so justify, consider and adjust any such claims that are later asserted before the date of final settlement of the Contract

7.7 The discovery of hazardous material, not specifically identified in the Contract Documents with respect to its location and quantity, shall be deemed to be a differing site condition pursuant to this article. Hazardous material is defined as PCB's, asbestos, or any other material removal of which is governed by the doctrine of strict liability under federal or California law. If hazardous material is discovered.

7.7.1 The Contractor shall immediately (a) give notice to the Owner of such discovery; (b) stop that portion of the Work affected by such material; and (c) sufficiently protect the work to prevent exposure of persons to such material.

7.7.2 The Contractor shall have no obligation to perform any corrective or remedial work that would require the handling of or exposure to hazardous material.

Article 8. Extensions of Time

8.1 The Contract Time shall be extended as necessary to compensate for delay in the progress of the Work, resulting from changes in the Work, suspension of the Work (in whole or in part) by the Owner, any other act or omission by the Owner or its employees, agents or representatives contrary to the provisions of the Contract or by another contractor employed by the Owner, or any other cause which could not have been reasonably foreseen, or which is beyond the control of the Contractor, its subcontractors or suppliers, and which is not the result of their sole fault or sole negligence, including, but not restricted to, acts of any governmental authority, acts of a public enemy, fire, unusual delay in transportation, abnormal weather conditions, or labor disputes.

8.2 The Contractor shall give to the Owner notice of any delay within a reasonable time after the occurrence or commencement of a cause of delay. Failure to give notice of any delay within a reasonable time shall constitute a waiver by the Contractor of any claim for extension of the Contract Time resulting from that cause of delay. The Contractor's notice shall include an estimate of the probable effect of the cause of delay on the progress of the Work.

8.3 With respect to any delay resulting from any act or neglect by the Owner or its employees, agents or representatives or by another contractor employed by the Owner, and which delay is not otherwise specifically provided for in the Contract Documents, the Contractor may recover from the Owner any damages incurred as a result of such delay in accordance with Article 9.



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ARTICLE 9. CLAIMS

9.1 Subject to the provisions of Article 7, the Contractor shall give to the Owner written notice within a reasonable time after the happening of any event which the Contractor believes may give rise to a claim for an equitable adjustment in the Contract Price or the Contract Time. Within a reasonable time after the happening of such event, the Contractor shall supply the Owner with a statement supporting such claim, which statement shall include a detailed estimate of the change in the Contract Price and the Contract Time. If requested by the Owner in writing, the Contractor shall provide reasonable documentation to substantiate its claim. The Contractor agrees to continue performance of the Work during the time any claim is pending, so long as the work requested is a reasonably foreseeable addition to the Work originally contemplated in the Contract Documents. The Owner shall not be bound to any adjustment in the Contract Price or the Contract Time unless expressly agreed to by the Owner in writing. No claim shall be allowed if asserted after final payment under this Contract.

9.2 Claims by either party for damages due to injury or damage to person or property or for delay, interference, suspension or interruption of work or for any other damage shall be made in writing to the other party within a reasonable time after the happening of such event or the first observance of such cause for damage.

Section 10. Warranty.

10.1 The Contractor warrants to the Owner that the Work will be performed in accordance with the Contract.

10.2 Prompt written notice of all defects shall be given to the Contractor within one year of Substantial Completion. The Contractor shall promptly make the necessary corrections, including the repair of any work damaged in making such corrections. However, the Owner may accept any defective work and agree with the Contractor on an appropriate adjustment in payment.

Section 11. Insurance.

Before commencement of any Work under this Agreement, Contractor shall obtain and maintain in full force and effect the following:

11.1 Comprehensive general liability insurance that names Owner as an additional insured and that protects Contractor and Owner against any liability that Contractor may



MJB/Bixby Construction, Inc.

"Excellence in Building since 1986"

5852 – 88th St. #800, Sacramento, CA 95828

Phone 916-386-4017 – Fax 916-387-8140

E-mail: bixbyconstruction@yahoo.com - CCL #571821

incur

(a) Because of bodily injuries to or the death of one person other than an employee of Contractor and consequential damages arising therefrom to the extent of not less than \$1,000,000.00 and on account of bodily injuries to or the death of more than one such person, subject to the same limit for each

(b) Because of damage to or destruction of any property, to the extent of not less than \$1,000,000.00 for each incident and aggregate

11.2 Worker's compensation insurance in statutory form and amount and employer's liability insurance covering Contractor's liability to the extent of not less than \$1,000,000.00 for damages because of bodily injuries to or death of such person or persons

Written proof of compliance with these requirements shall be filed with and approved by Owner before commencement of Work

Section 12. Work Stoppage.

12.1 The Owner may at any time by notice to the Contractor suspend further performance of all or any portion of the Work by the Contractor. The notice shall specify the date and the estimated duration of the suspension. Any suspension shall not exceed forty-five (45) consecutive calendar days nor shall the total of all suspensions exceed ninety (90) calendar days. Upon receiving any such notice, the Contractor shall promptly suspend further performance of the Work to the extent specified in the notice, and during the period of such suspension shall properly care for and protect all work in progress and materials, supplies, and equipment that the Contractor has on hand for performance of the Work. The Owner may at any time withdraw the suspension of performance of the Work as to all or part of the suspended work by notice to the Contractor specifying the effective date and scope of withdrawal, and the Contractor shall resume diligent performance of the Work for which the suspension is withdrawn, as soon thereafter as is reasonably possible.

12.2 Unless suspension pursuant to this section is caused by the default of the Contractor or any of the provisions of the Contract Documents, the Contractor shall be entitled to recover from the Owner any damages as a result of any suspension in accordance with Article 7

12.3 If any suspension not caused by the default of the Contractor exceeds the time periods set forth in Paragraph 12.1, the Contractor may at its option terminate this Contract in accordance with Paragraph 13.3



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Section 13. Termination.

13.1 Should the Owner become insolvent or commit a material breach or default under the Contract, including, but limited to, failure to pay timely undisputed sums due to the Contractor, and fail to act in good faith to remedy the same within ten (10) days after notice from the Contractor, then the Contractor may terminate this Contract. The Contractor shall be entitled to all damages incurred as a result of such termination.

13.2 Should the Contractor become insolvent, or should the Contractor refuse or neglect to supply a sufficient number of properly skilled workmen, tools, or material within the Contractor's control, or should the Contractor commit a substantial breach of this Contract and should the Contractor fail to act in good faith to remedy such within ten (10) days after written demand by the Owner, the Owner may terminate this Contract. Upon any such termination, the Contractor shall be compensated for all costs incurred for that portion of the Work then performed. The Contractor shall be liable for any costs incurred by the Owner in completing the Contract in excess of the difference between the Contract Price and the amount paid to the Contractor to the date of termination.

13.3 The Owner reserves the right to terminate the Work for its convenience upon notice in writing to the Contractor. In such event, the Contractor shall be paid its actual costs for that portion of the Work performed to the date of termination and for all costs of termination, including demobilization and any termination charges by vendors and subcontractors, plus 15 percent of all such costs for overhead and profit. If, for any reason, within six (6) months of the actual date of cessation of work the Owner elects to resume the Work, using another contractor, the Contractor shall be entitled to payment of its actual profits for performance of all of the Work.

Section 14. Independent Contractor.

Contractor agrees to perform the Work as an independent contractor and not as the agent, employee, or servant of Owner. Contractor has and hereby retains the right to exercise full control and supervision of the Work and full control over the employment, direction, method of performing, compensation, and discharge of all persons assisting in the Work. Contractor agrees to be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other regulations governing such matters. Contractor agrees to be responsible for its own acts and those of its subordinates, employees, and subcontractors during this Agreement.

Section 15. Notice



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Any notice required by this Contract to be given shall be in writing and shall be delivered during normal business hours or mailed first class postage prepaid. If notice is to be given to the Owner or the Contractor, it shall be sent to the postal address shown in the signature block at the end of this Contract, or to such other address as either party may designate for itself by notice to the other. Notice shall be effective upon personal delivery or five (5) calendar days after the date of mailing.

Section 16. Attorney Fees.

In the event of litigation between the parties, or if a party becomes involved in litigation because of wrongful acts of the other party, the court will award reasonable attorney fees to the prevailing or innocent party.

Section 17. Time of Essence.

Time is of the essence of this Agreement.

Section 18. Governing Law.

This Agreement shall be governed by the laws of the State of California.



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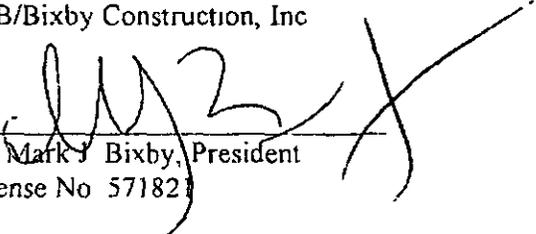
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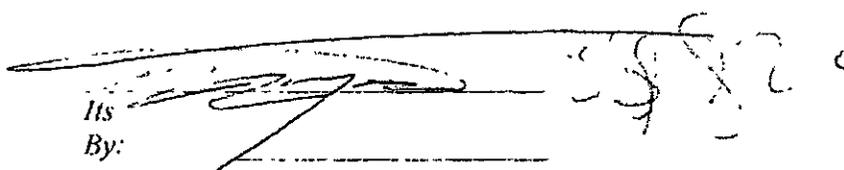
E-mail: bixbyconstruction@yahoo.com - CCL #571821

CONTRACTOR:

MJB/Bixby Construction, Inc

By  Mark J. Bixby, President
License No 571821

OWNER

His
By: 



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Plan Sheet Index

Exhibit A

Sheet -01	Title Sheet –Site Plan	Aug 2008
Sheet-02	Existing Floor Plan	Aug. 2008
Sheet-03	Proposed Floor Plan	Aug 2008
Sheet-04	Elevations	Aug 2008
Sheet-05	Foundation Plan	Aug 2008
Sheet-06	Roof Framing Plan	Aug 2008
Sheet-07	Electrical Plan	Aug 2008
Sheet-08	Brace Wall Panel Plan	Aug 2008
Sheet-09	Details	Aug 2008
Sheet-10	Details and Sections	Aug. 2008
Sheet-11	General Notes	Aug. 2008

SCHEDULE OF VALUES

Rutherford

EXHIBIT B

Contact Mr and Mrs. Rutherford

Job Site Address 8600 Gunner Way
 Fair Oaks, CA

Description	Unit Cost	Open Items	Total Costs
SOFT COSTS			
Owner Deposit for Project In-house Services	\$1,000.00		
Plan Check Fees		\$800.00	\$ 966.32
Building Permit Fees		\$3,000.00	\$ 3,000.00
Impact Fees			n/a
School Fees		\$2,750.00	\$ 2,692.12
Building Architect, Drafting Plans			\$ 5,000.00
Structural Engineering			\$ 600.00
Plumbing Engineering			n/a
Mechanical Engineering			n/a
Electrical Engineering			n/a
Soils Engineer - Inspection			n/a
DDR: Costs			n/a
Environmental Consultants			n/a
Landscape Architect			n/a
Blue Printing			n/a
Project Supervision			n/a
Project Security/Builders Risk			n/a
Structural Engineering			\$ 600.00
Soft Costs Subtotal		\$6,550.00	\$ 12,858.44

*Paid 11/20/08 with 1
 * Paid-Invoice #2
 * Paid-Invoice #2
 * Paid-Invoice #1
 * Paid-Invoice #1
 * Paid-Invoice #1

SITE DEVELOPMENT			
Concrete Cutting			n/a
Cleaning/Grub/Demo			\$ 1,500.00
Excavation - For Retaining Wall			\$ 3,000.00
Rough Grading - For New Addition			\$ 2,000.00
Storm Drainage System - per drain, gravel - For new add only			\$ 2,500.00
Utilities - Electrical, new 200 amp panel			\$ 4,600.00
Utilities - Phone & Data, 4 drops			\$ 100.00
65 Lin ft of retaining wall approx 4 ft tall			\$ 19,000.00
Rough Clean-up			\$ 2,000.00
Final Clean-up			\$ 600.00
Paving			n/a
Trash Enclosures			n/a
Street Lighting			n/a
Culverts			n/a
Site Development Total			\$ 35,300.00

Date 2/19/09 Initial 

Date 3/11/09 Initial 

SCHEDULE OF VALUES
Rutherford
EXHIBIT B

Contact: Mr. and Mrs. Rutherford

Job Site Address: 8600 Gunner Way
 Fair Oaks, CA

Description	Unit Cost	Open Items	Total Costs
Hard Construction Costs			
Foundation			\$ 19,000.00
Flatwork/Landscape - <i>Rough Grade Only</i>			\$ 800.00
Plumbing - <i>Bathtub provided by Owner</i>			\$ 9,000.00
Plumbing Finish			\$ 2,000.00
Fire Sprinklers			n/a
Electrical Rough - Inc Can Lights install			\$ 9,900.00
Rough Carpentry - new addition			\$ 17,000.00
Rough Lumber - new addition			\$ 14,000.00
<i>California Roofing - Open Item</i>		\$ 5,000.00	
Roof Trusses			\$ 7,700.00
Painting walls, etc - interior and exterior - new addition			\$ 6,000.00
Water Proofing - new addition			\$ 1,000.00
Phone/TV Prewire - 2 drops			\$ 100.00
Alarm Prewire	Optional	\$ 1,000.00	
HVAC - (1) 3.5 ton split system, (1) 5 ton split system			\$ 11,600.00
Windows - aluminum, (13), 3 closets, 1 double door			\$ 4,800.00
Roof - three dimensional composition - for addition and affected areas			\$ 6,500.00
Insulation - addition only			\$ 3,000.00
Drywall - addition only			\$ 5,800.00
Stair Railings			n/a
Finish Lumber - new addition			\$ 1,500.00
Finish Carpentry - new addition			\$ 2,000.00
Cabinets - bar area, 30 LF of base, 3 LF of pantry, 6 LF of bathroom			\$ 6,200.00
Interior Door - (6), 3 closets, 1 double door			\$ 2,800.00
Front Door - (1)			\$ 2,000.00
Exterior Door			n/a
T-bar ceiling			n/a
Batt and Board siding - new addition - prime and paint			\$ 6,800.00
Tile Materials - kitchen/bath			\$ 5,000.00
Tile Labor - kitchen/bath			\$ 6,000.00
Electrical Fixtures - can lights only			\$ 2,800.00
Laminated Plastics			n/a
Concrete Finish			n/a
Fire Extinguishers/Hood			n/a
Hardware			\$ 600.00

* Does not include w.

Date 2/19/07 Initial 

Date 2/19/07 Initial ML

SCHEDULE OF VALUES

Rutherford

EXHIBIT B

Contact Mr and Mrs Rutherford

Job Site Address: 8600 Gunner Way
 Fair Oaks, CA

Description	Unit Cost	Open Items	Total Costs
Hard Construction Costs Continued			
Appliances - <i>Fireplace Insert</i>			\$ 3,600.00
Mirrors - (1)			\$ 300.00
Floor Coverings - Pergo type wood floor - Material And Labor			\$ 3,600.00
Floor Base			\$ 1,000.00
Floor - Pergo type wood flooring - kitchen/bath			\$ 2,800.00
Rough Clean-up			\$ 800.00
Finish Clean-up			\$ 300.00
		Hard Construction Total	\$ 166,300.00
		Sub Total	\$ 214,458.44
		Profit & Overhead = 10% of Proposed Bid	\$ 21,445.84
		Grand Total	\$ 235,904.28

* Items marked with an asterisk, constitute work beyond the work required for the addition. Any open items mean the price is not exact, however receipts will be provided upon payment. The alarm prewire is included as an optional cost and IS NOT included in the total amount.

Here is the calculation for the addition only. Soft Costs and Site Development (retaining wall, electrical panel) are not included:

Soft Costs	\$	12,858.44
Site Development (retaining wall, electrical panel)	\$	35,300.00
Total for non-addition related expenses:	\$	48,158.44
Project Sub Total	\$	214,458.44
Non-addition expenses:	\$	48,158.44
New Sub Total	\$	166,300.00
Profit & Overhead = 10% of new sub total		\$16,630.00

Cost for Addition only: \$ 182,930.00

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PROOF OF SERVICE BY HAND DELIVERY

I am a citizen of the United States and employed in the County of Sacramento. I am over the age of 18 and not a party to the within action. My business address is P.O. Box 302, Fair Oaks, CA 95628.

On the date below, I served the within document described as **CROSS-COMPLAINT FOR BREACH OF CONTRACT, NEGLIGENCE AND FRAUD; DEMAND FOR JURY TRIAL** on the interested parties in said action by hand delivering, addressed as follows:

Charles A. Tweedy
Parshall & Tweedy, LLP
11341 Gold Express Dr., #110
Gold River, CA 95670

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed February 9, 2010, at Sacramento, California.


STANLEY R. PARRISH