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5 Attorneys for Defendant
 6 MBH ARCHITECTS, INC. aka McNULTY
 BRISKMAN HEATH

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION

12 BOVIS LEND LEASE, INC. as assignee
 of LNR-LENNAR BRANNAN STREET,
 13 LLC,

14 Plaintiff,

15 vs.

16 MBH ARCHITECTS, INC. aka
 McNULTY BRISKMAN HEATH and
 17 DOES 1 through 150, inclusive,

18 Defendant.

CASE No. C 07-05262 JSW

**DECLARATION OF JOHN B. SULLIVAN
 IN SUPPORT OF MBH ARCHITECTS,
 INC.'S MOTION FOR LEAVE TO FILE A
 THIRD PARTY COMPLAINT AGAINST
 LNR-LENNAR BRANNAN STREET, LLC**

Date: April 4, 2008
 Time: 9:00 a.m.
 Courtroom: Hon. Jeffrey S. White

19 I, John B. Sullivan, declare:

- 20
 21 1. I am an attorney at law duly licensed to practice by the State of California.

22 If called as a witness herein, I would and could testify competently to the following.

- 23 2. I am an associate at Long & Levit LLP, attorneys of record for MBH
 24 Architects, Inc. ("MBH").

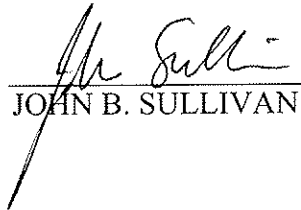
- 25 3. Attached to this Declaration as Exhibit A is a true and correct copy of the
 26 Complaint filed in this action by Bovis Lend Lease, Inc. ("Bovis"). Attached as Exhibit A to the
 27 Complaint is a copy of the contract entered into between LNR-Lennar Brannan Street, LLC and
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1 MBH that form that basis of Bovis' complaint.

2 4. MBH has already begun to incur attorneys' fees and costs defending itself
3 against the allegations in this Complaint.

4 5. Attached to this Declaration as Exhibit B is a true and correct copy of the
5 third party impleader complaint that MBH intends to file against LNR-Lennar Brannan Street,
6 LLC.

7 I declare under penalty of perjury that the foregoing is true and correct and that this
8 declaration was executed on February 26, 2008 in San Francisco, California.

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11 _____
12 JOHN B. SULLIVAN

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EXHIBIT A

1 JENNIFER A. BECKER State Bar # 121319
JOHN B. SULLIVAN State Bar # 238306
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3 San Francisco, CA 94104
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9 NORTHERN DISTRICT OF CALIFORNIA
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12 BOVIS LEND LEASE, INC. as assignee
of LNR-LENNAR BRANNAN STREET,
13 LLC,

14 Plaintiff,

15 vs.

16 MBH ARCHITECTS, INC. aka
McNULTY BRISKMAN HEATH and
17 DOES 1 through 150, inclusive,

18 Defendant.

19 MBH ARCHITECTS, INC. aka
McNULTY BRISKMAN HEATH,

20 Cross-
21 Complainant,

22 vs.

23 LNR-LENNAR BRANNAN STREET,
24 LLC, and ROES, 1 through 150,
inclusive,

25 Cross-
26 Defendant.

CASE No. C 07-05262 JSW

**THIRD PARTY IMPLEADER
COMPLAINT FOR EXPRESS
CONTRACTUAL INDEMNITY AND
DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

Action Removed: October 16, 2007
Judge: Hon. Jeffrey S. White
Trial Date: April 20, 2009

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Third Part Complainant MBH Architects, Inc. ("MBH") alleges:

1. MBH is and was at all times herein mentioned a citizen of the State of California.
2. On information and belief, LNR-LENNAR BRANNAN STREET, LLC ("Lennar") is a California limited liability company.
3. MBH alleges that the true names and capacities, whether individual, corporate or otherwise, of third party defendants Roes 1 through 30 are unknown to MBH at the present time, who therefore sues said third party defendants by such fictitious names. MBH is informed and believes and thereon alleges that each of said third party defendants named herein as a Roe is legally responsible in some manner for the events and happenings herein complained of and thereby proximately caused the damages suffered by MBH and alleged in this cross-complaint. MBH will amend this third party impleader complaint to allege their true names and capacities when ascertained.
4. In doing the things herein alleged, third party defendants, and each of them, including ROE third party defendants, were the agents, employees, and/or representatives of each other and/or acting in the course and scope of said agency, employment and/or representation in the matters herein alleged.
5. The jurisdiction of the court over this subject matter is predicated on 28 U.S.C. §1332 in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs. Such jurisdiction existed at the commencement of the action and at the time this action was removed to Federal Court.

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6. On or about January 24, 2000, MBH and Lennar entered into a written contract (the "Contract") whereby MBH agreed, in consideration for payment of \$2,511,000, by Lennar, to furnish and perform various professional services for the real property and residential homes known as Brannan Square located at 200 Brannan Street in San Francisco, California (hereinafter "Project") as summarized in the Contract attached to this Third Party Impelader Complaint as Exhibit A. As a term and condition of this Contract set forth in Paragraph 6.07, Lennar agreed to indemnify and hold harmless MBH from losses, costs, claims, damages, liabilities and attorneys' fees which MBH incurs as a result of any negligent errors, acts or omissions of Lennar or any contractor or subcontractor employed or retained directly by Lennar.

7. The Contract also provides that "Should any claim or action or proceeding be commenced between the parties hereto or their representatives concerning any provision of this Agreement or the rights and duties of any person or entity in relation thereto, the party prevailing in such action, claim or proceeding, as the case may be whether by out of court settlement or final judgment, shall be entitled, in addition to other such relief as may be granted, to the reasonable sum for attorneys' fees, expert witness and consulting fees, court costs, and all other costs incurred in such action or proceeding and any other appeals in connection therewith."

8. On June 12, 2007, an action was commenced in the Superior Court of the State of California in and for the County of San Francisco, entitled Bovis Lend Lease, Inc., Plaintiff vs. MBH Architects, Inc., as Case Number CGC07-464235. According to the Complaint, Lennar assigned to Bovis all of its rights and remedies against MBH and each of MBH's subconsultants arising out of the Contract. Bovis subsequently filed this action arising out of MBH's alleged failure to provide proper plans and details for the Project, which in turn delayed the completion of the project as well as contributed to significant construction defect claims by the residents of 200 Brannan

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FIRST CAUSE OF ACTION

(Contractual Indemnity)

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2 9. MBH refers to and incorporates herein by reference the allegations of
3 paragraphs 1 through 8 above.

4 10. MBH and Lennar entered into the Contract in which MBH agreed to
5 furnish and perform various professional services. Under the terms of the Contract, Lennar
6 agreed to indemnify and hold harmless MBH from losses, costs, claims, damages, liabilities and
7 attorneys' fees which MBH incurs as a result of any negligent, errors, acts or omissions of Lennar
8 or any contractor or subcontractor employed or retained directly by Lennar.

9 11. MBH furnished and performed such professional services.

10 12. Bovis has filed a Complaint in this action seeking damages arising out of
11 such professional services, and encompassed by the aforementioned indemnity obligations.

12 13. By virtue of the above-described contracts and/or applicable law Lennar
13 and Roes 1 through 150 must hold MBH harmless and indemnify it for the amount of any
14 judgment or settlement, and for expenses, costs of suit, attorneys' fees and other damages and
15 costs which MBH incurs in connection with this litigation as a result of any negligent, errors, acts
16 or omissions of Lennar or any contractor or subcontractor employed or retained directly by
17 Lennar.

18 14. MBH has incurred, and continues to incur, necessary and reasonable
19 attorneys' fees and other legal costs in defending this action against Bovis. To the extent that
20 MBH suffers any losses, costs, claims, damages, liabilities or attorneys' fees as a result of any
21 negligent errors and/or omissions of Lennar or any contractor or subcontractor employed or
22 retained directly by Lennar, MBH is entitled to all such losses, costs, claims, damages, liabilities
23 and attorneys' fees from Lennar. The total amount of MBH's costs and attorneys' fees is not yet
24 known and MBH will seek leave of court to insert such amount at the time of trial.

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SECOND CAUSE OF ACTION
(Declaratory Relief)

15. MBH refers to and incorporates herein by reference the allegations of Paragraphs 1 – 14 above.

16. An actual controversy has arisen and now exists between MBH and Lennar concerning their respective rights and duties under the Contract concerning the costs and attorneys' fees provision of the Contract.

17. On the one hand, MBH contends that Lennar is liable for a reasonable sum for attorneys' fees, expert witness and consulting fees, court costs, and all other costs incurred in this action or proceeding brought against MBH by Bovis in the event that MBH is determined to be the prevailing party on the contract. On the other hand, on information and belief, Lennar denies that it is liable to MBH for a reasonable sum for attorneys' fees, expert witness and consulting fees, court costs, and all other costs incurred in this action or proceeding brought against MBH by Bovis in the event that MBH is determined to be the prevailing party on the contract.

18. MBH desires a judicial determination of it and Lennar's right and duties related to this provision in the Contract which allows for an award of reasonable sum for attorneys' fees, expert witness and consulting fees, court costs, and all other costs incurred to the prevailing party.

19. A judicial declaration is necessary and appropriate at this time under the circumstances in order that MBH may ascertain it and Lennar's rights and obligations related to this provision in the Contract which allows for an award of reasonable sum for attorneys' fees, expert witness and consulting fees, court costs, and all other costs incurred to the prevailing party.

20. To date, MBH has begun to incur attorneys' fees, expert witness and consulting fees, court costs, and other costs related to this action by Bovis.

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

1. For a declaration that Lennar is liable to MBH for a reasonable sum for attorneys' fees, expert witness and consulting fees, court costs, and all other costs incurred in this action or proceeding brought against MBH by Bovis in the event that MBH is determined to be the prevailing party;
2. For general damages according to proof;
3. For reasonable attorneys' fees;
4. For punitive damages;
5. For costs of suit herein incurred; and
6. For such other and further relief as the court may deem proper.

Dated: February 26, 2008


LONG & LEVIT LLP

By 
 JENNIFER A. BECKER
 JOHN B. SULLIVAN
 Attorneys for Defendant and Third Party
 Plaintiff MBH ARCHITECTS, INC. aka
 McNULTY BRISKMAN HEATH

MBH hereby demands trial by jury.

Dated: February 26, 2008

LONG & LEVIT LLP

By 
 JENNIFER A. BECKER
 JOHN B. SULLIVAN
 Attorneys for Defendant and Third Party
 Plaintiff MBH ARCHITECTS, INC. aka
 McNULTY BRISKMAN HEATH

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