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December 9, 2010

Ramsey County Court Administrator  
Ramsey County Courthouse  
15 Kellogg Boulevard West  
St. Paul, MN 55102

Via Messenger

Re: Builders Association of the Twin Cities v. Minnesota GreenStar  
Our File No. 21,981-19

Dear Administrator:

Enclosed for filing in the above-referenced matter, please find the following:

1. Summons and Verified Complaint;
2. Certificate of Representation and Parties;
3. Notice of Motion and Motion for a Temporary Restraining Order;
4. Memorandum of Law in Support of Plaintiff's Motion for Temporary Restraining Order;
5. Proposed Order (Temporary Restraining Order);
6. A check in the amount of \$320.00 for the filing fee; and
7. A check in the amount of \$100.00 for the motion fee.

Sincerely,

  
Tamara O'Neill Moreland, for  
Larkin Hoffman Daly & Lindgren Ltd.

Direct Dial: 952-896-6711  
Direct Fax: 952-842-1749  
Email: [ioneill@larkinhoffman.com](mailto:ioneill@larkinhoffman.com)

Enclosures

cc: Builders Association of the Twin Cities  
~~Minnesota GreenStar~~ \*

STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

-----  
Builders Association of the Twin Cities,  
a Minnesota non-profit corporation,

Plaintiff,

File No.

CASE TYPE: Breach of  
Contract/Declaratory Judgment/  
Injunction

v.

Minnesota GreenStar, a Minnesota non-  
profit corporation,

Defendant.

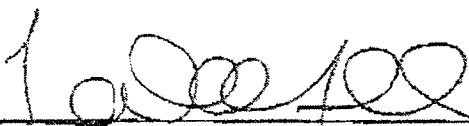
**NOTICE OF MOTION AND  
MOTION FOR A TEMPORARY  
RESTRAINING ORDER**

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To: Defendant Minnesota GreenStar, 339 Second Street, Excelsior, Minnesota 55331.

PLEASE TAKE NOTICE that on Monday, December 13, 2010 at 10:30 a.m., as soon as the parties may be heard, plaintiff Builders Association of the Twin Cities, by and through its attorneys, will bring on for a hearing before Judge Dale B. Lindman of the Ramsey County District Court at the Ramsey County Courthouse, 15 Kellogg Boulevard West, Room 1030, St. Paul, Minnesota 55102, a motion for a temporary restraining order preventing defendant Minnesota GreenStar from using, in any way altering or damaging, and/or making or attempting to make any transfer, sale, assignment, license, sublicense or grant of rights or interests to any other person or organization with respect to all or any part of the Green Homebuilding Guidelines, including both the New Home User Manual and the New Homes Checklist.

Builders Association of the Twin Cities' motion is based upon Minn. R. Civ. P. 65, and all files, records, accompanying affidavits, and pleadings on file herein.

Dated: 12/9/10



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Tamara O'Neill Moreland (278348)  
Larkin Hoffman Daly & Lindgren Ltd.  
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7900 Xerxes Avenue South  
Minneapolis, Minnesota 55431-1194  
(952) 835-3800

Attorneys for Plaintiff Builders Association of the Twin  
Cities

1333875.1

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

**CERTIFICATE OF REPRESENTATION AND PARTIES**

**\*\* (ONLY THE INITIAL FILING LAWYER/PARTY NEED TO COMPLETE THIS FORM. \*\***

Builders Association of the Twin Cities, a  
Minnesota non-profit corporation,

vs. Minnesota GreenStar, a Minnesota non-profit  
corporation,

Pursuant to Rule 104 of the General Rules of Practice for District Courts, this form must be completed and filed with the Court Administrator's Office at the time the case is filed. The court administrator shall, upon receipt of the completed certificate, notify all parties of their lawyers of the date of filing the action and the file number assigned.

LIST ALL LAWYERS/PRO SE PARTIES INVOLVED IN THIS CASE.

**LAWYERS FOR PLAINTIFF(S)**

**LAWYER FOR DEFENDANT(S)**

(If not known, name party and address)

Builders Association of the Twin Cities  
Name of Party

Minnesota GreenStar

Name of Party

Tamara O'Neill Moreland, Esq.  
Atty Name (Not firm name)

Atty Name (Not firm name)

Larkin Hoffman Daly & Lindgren, Ltd.  
Address

Address

1500 Wells Fargo Plaza  
7900 Xerxes Avenue South  
Bloomington, MN 55431

339 Second Street  
Excelsior, MN 55331

Phone Number

Phone Number

952-835-3800

MN Atty ID No.

MN Atty ID No.

Tamara O'Neill Moreland (278348)

Filing Lawyer/Party:

Dated:

1533838.1

12/9/10

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

File No.

-----  
Builders Association of the Twin Cities,  
a Minnesota non-profit corporation.

CASE TYPE: Breach of  
Contract/Declaratory Judgment/  
Injunction

Plaintiff,

v.

**SUMMONS**

Minnesota GreenStar, a Minnesota non-  
profit corporation,

Defendant.  
-----

THIS SUMMONS IS DIRECTED TO THE ABOVE-NAMED DEFENDANT.

1. **YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Verified Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this Summons.

2. **YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.**  
You must give or mail to the person who signed this Summons a **written response** called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this Summons located at:

Larkin Hoffman Daly & Lindgren, Ltd.  
1500 Wells Fargo Plaza  
7900 Xerxes Avenue South  
Minneapolis, MN 55431-1194

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Verified Complaint. In your Answer you must state whether you agree

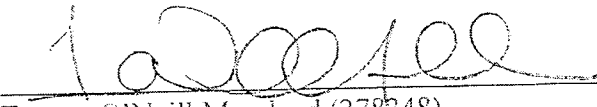
or disagree with each paragraph of the Verified Complaint. If you believe the Plaintiff should not be given everything asked for in the Verified Complaint, you must say so in your Answer.

4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE VERIFIED COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not Answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the Verified Complaint. If you do not want to contest the claims stated in the Verified Complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the Verified Complaint.

5. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

6. **ALTERNATIVE DISPUTE RESOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Verified Complaint even if you expect to use alternative means of resolving this dispute.

Dated: 12/9/10

  
Tamara O'Neill Moreland (278348)  
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(952) 835-3800

Attorneys for Plaintiff Builders Association of the Twin Cities

STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

-----  
Builders Association of the Twin Cities,  
a Minnesota non-profit corporation,

Plaintiff,

v.

Minnesota GreenStar, a Minnesota non-  
profit corporation.

Defendant.  
-----

File No.

CASE TYPE: Breach of  
Contract/Declaratory Judgment/  
Injunction

**PROPOSED ORDER (TEMPORARY  
RESTRAINING ORDER)**

The above-entitled matter came on for hearing before the undersigned Judge of the Ramsey County District Court on plaintiff Builders Association of the Twin Cities' motion for a temporary restraining order enjoining defendant Minnesota GreenStar from using, in any way altering or damaging, and/or making or attempting to make any transfer, sale, assignment, license, sublicense or grant of rights or interests to any other person or organization with respect to all or any part of the Green Homebuilding Guidelines, including both the New Home User Manual and the New Homes Checklist, pursuant to Rule 65 of the Minnesota Rules of Civil Procedure. Tamara O'Neill Moreland, Esq. of the law firm Larkin Hoffman Daly & Lindgren, Ltd. appeared on behalf of Builders Association of the Twin Cities. Other appearances were as noted on the record.

Based upon all files, records and proceedings herein, the Court makes the following:

**ORDER**

1. Plaintiff Builders Association of the Twin Cities' motion for a temporary restraining order is **Granted**.

2. Defendant Minnesota GreenStar shall be restrained from using, in any way altering or damaging, and/or making or attempting to make any transfer, sale, assignment, license, sublicense or grant of rights or interests to any other person or organization with respect to all or any part of the Green Homebuilding Guidelines, including both the New Home User Manual and the New Homes Checklist.
3. This matter is scheduled for a temporary injunction hearing on \_\_\_\_\_, 2010.

BY THE COURT:

Dated:

\_\_\_\_\_  
Judge of District Court

1333877.1



STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

-----  
Builders Association of the Twin Cities,  
a Minnesota non-profit corporation,

Plaintiff,

v.

Minnesota GreenStar, a Minnesota non-  
profit corporation.

Defendant.

File No.

CASE TYPE: Breach of  
Contract/Declaratory Judgment/  
Injunction

**MEMORANDUM OF LAW IN  
SUPPORT OF PLAINTIFF'S  
MOTION FOR A TEMPORARY  
RESTRAINING ORDER**

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**INTRODUCTION**

Plaintiff Builders Association of the Twin Cities ("BATC") developed intellectual property known as the Green Homebuilding Guidelines, which consist of a New Home User Manual and a New Homes Checklist. Despite demand and notice by BATC, defendant Minnesota GreenStar ("GreenStar") continues to use and disseminate the Green Homebuilding Guidelines and has expressed its intent to license the Green Homebuilding Guidelines to third parties. BATC moves this Court for a temporary restraining order preventing GreenStar from using, in any way altering or damaging, and/or making or attempting to make any transfer, sale, assignment, license, sublicense or grant of rights or interests to any other person or organization with respect to all or any part of the Green Homebuilding Guidelines until BATC can be heard on the merits of its case. If the Court does not grant the temporary restraining order, BATC will be irreparably harmed because, as the owner of these documents and the party that possesses the copyrights to these documents, BATC's exclusive rights to reproduce, prepare derivative works, distribute copies, and publically display the Green Homebuilding Guidelines and authorize any of these exclusive rights will forever be lost.

Further, BATC has a substantial likelihood of success on the merits of its claims. The agreements entered into by the parties that comprised and formed GreenStar specifically state that BATC would retain ownership of the Green Homebuilding Guidelines. In addition to BATC's clear legal ownership of the Green Homebuilding Guidelines, BATC's copyright in the Green Homebuilding Guidelines vested prior to the formation of GreenStar. As the owner of the documents and the party that possesses the copyrights, BATC has the exclusive rights to the Green Homebuilding Guidelines. BATC is simply requesting that it be given the opportunity to be heard on these issues which are central to GreenStar's attempt to forever deny BATC's rights.

#### **STATEMENT OF THE ISSUE**

Whether the Court should issue a temporary restraining order to maintain the status quo and prevent irreparable harm to BATC until it has had an opportunity to dispose of its claims by trial, hearing or settlement.

#### **STATEMENT OF THE RECORD**

BATC relies on the Verified Complaint and the exhibits attached thereto to support its motion for a temporary restraining order.

#### **STATEMENT OF THE FACTS**

On September 18, 2006, BATC and the Green Institute, Inc. ("GI") entered into a Memorandum of Understanding ("MOU") establishing a partnership to develop and maintain a green home building program to promote the use of green building practices and products in the design and construction of homes and home renovations. *Verified Complaint ("V.Compl.")* at ¶ 4, *Ex. A*. Pursuant to Paragraph 2.4 of this MOU, BATC agreed to commit \$50,000 to fulfill the goals and objectives of the "Program," which included developing green building guidelines for residential construction and development. *Id.* at ¶ 5, *Ex. A*. Paragraph 5.5 of the MOU

specified that the intellectual property developed by the Program became the sole property of BATC:

The intellectual property developed by the Program shall become the sole property of BATC. BATC shall grant the Program the right to use these materials, without cost, for the purposes of advancing the Program's goals and objectives.

*Id.* at ¶ 6, Ex. A.

In 2006, BATC developed the Green Homebuilding Guidelines for residential construction and development, which consisted of a New Home User Manual and a New Homes Checklist. *V.Compl. at* ¶ 7. Pursuant to the September 18, 2006 MOU, this intellectual property became the sole property of BATC.

On April 13, 2007, BATC, GI and the National Association of the Remodeling Industry – Minnesota (“NARI-MN”) entered into a MOU in which they agreed to include NARI-MN in the partnership. *V.Compl. at* ¶ 8, Ex. B. Pursuant to Section 5.5 of this MOU, the intellectual property developed became the shared property of BATC and NARI-MN but the Green Homebuilding Guidelines, which consisted of the New Home User Manual and the New Homes Checklist, remained the sole property of BATC:

With the exception of the remodeling and homebuilding construction Guidelines, the intellectual property developed by the Programs shall become the shared property of BATC and NARI-MN. BATC and NARI-MN shall grant the Programs the right to use all property and materials, without cost, for purposes of advancing the Program's goals and objectives. Exception for Guidelines: The Green Remodeling Guidelines must remain in the public domain, and the Green Homebuilding Guidelines shall remain the sole property of BATC.

*Id.* at ¶ 9, Ex. B (emphasis added).

On January 7, 2008, BATC, GI and NARI-MN formed GreenStar as the entity to fulfill the partnership developed by BATC, GI and NARI-MN in the MOUs. *V.Compl. at* ¶¶ 10-11.

Ex. C. According to the Bylaws of GreenStar, the members of GreenStar consisted of BATC, GI and NARI-MN. *Id. at ¶ 11, Ex. D.*

On May 5, 2008, GreenStar began using the Green Homebuilding Guidelines developed by BATC. *V.Compl. at ¶ 12.* While GreenStar was authorized to use the Green Homebuilding Guidelines, according to the MOUs, the documents were to remain the intellectual property of BATC and BATC never assigned or otherwise transferred its ownership of the Green Homebuilding Guidelines when GreenStar was formed. *Id.* BATC believes that in or around 2008, GreenStar registered copyrights for BATC's Green Homebuilding Guidelines, including both the New Home User Manual and the New Homes Checklist. *Id. at ¶ 13, Exs. E and F.* GreenStar registered these copyrights even though the copyrights are vested in BATC, the initial author. 17 U.S.C. § 201.

Since the formation of GreenStar, BATC has made several loans to GreenStar to fund GreenStar's operating costs. *V.Compl. at ¶ 14.* On March 17, 2010, GreenStar executed a Promissory Note to secure these loans under which GreenStar, as borrower, agreed to pay BATC, as lender, the principal sum of \$306,418.19 in specified payments beginning January 1, 2011. *Id. at ¶ 14, Ex. G.* The loans secured by the Promissory Note were in addition to the initial \$50,000 investment by BATC to develop the Green Homebuilding Guidelines and approximately \$250,000 in additional in-kind contributions provided by BATC to GreenStar since its formation. *Id. at ¶ 15.*

On September 15, 2010, GreenStar conducted a meeting of its Board of Directors and disseminated its Business Plan and Funding Proposal Draft ("Business Plan") in which GreenStar relied on continued sponsorships, a one-year deferment on its Promissory Note obligations to BATC, and significant additional funding from BATC. *V.Compl. at ¶ 16, Ex. H.*

GreenStar also indicated its intent to license the Green Homebuilding Guidelines developed and owned by BATC to other states to raise revenue for GreenStar. *Id.*

On October 29, 2010, BATC sent GreenStar a letter in which it withdrew as a member of GreenStar and provided GreenStar notice that it was to vacate the office space occupied by GreenStar and owned by BATC, which was being provided rent-free to GreenStar, effective November 30, 2010. *V. Compl. at ¶ 17, Ex. I.* BATC also reminded GreenStar of its obligations under the Promissory Note and that the Promissory Note “does not include an additional \$50,000 payment by BATC for development of new home design guidelines and a related checklist for new home construction (“the New Home Materials”).” *Id. at ¶ 18, Ex. I.* In addition, BATC noted that its withdrawal from GreenStar “does not constitute a waiver, assignment or any other form of relinquishment of rights it has to the New Home Materials” and provided the following objection:

BATC objects immediately to any effort by MN GreenStar, or its remaining members, to secure assignments relating to the New Home Materials and further objects to any attempt by MN GreenStar, or any member, to use or license the New Home Materials in contravention of BATC’s ownership interest in them.

*Id. at ¶ 19, Ex. I.*

On November 10, 2010, BATC sent GreenStar a letter in which it reiterated its ownership of the Green Homebuilding Guidelines, including both the New Home User Manual and the New Homes Checklist, and again specifically demanded that GreenStar refrain from attempting to interfere with BATC’s ownership rights:

BATC’s withdrawal from MN GreenStar does not constitute a waiver, assignment or any other form of relinquishment of rights (including related intellectual property rights) it has to the New Home Design Guidelines and Checklist for new home construction which were paid for and are exclusively owned by BATC. BATC objects to any effort by MN GreenStar to secure assignments relating to the Design Guidelines and Checklist or any related

intellectual property rights, and will consider any such effort to be an intentional interference with BATC's rights. In addition, BATC demands that MN GreenStar, and/or any member, refrain from making or attempting to make, any transfer, sale, assignment, license, sublicense, or any other grant of any rights or interests to any other person or organization with respect to any part of the Design Guidelines and Checklist, regardless of where any such person or organization is located.

BATC intends to secure access to and use of the Design Guidelines and Checklist in order to reposition them for the new home construction marketplace; to that end, please immediately provide any source code or passcode information, together with any and all instruction and user manuals and other documentation that exists with respect to the development, operation, functionality, maintenance, support, access or use of the Design Guidelines and Checklist.

*V.Compl. at ¶ 20, Ex. J.* BATC also requested that GreenStar explain how it would calculate the payments required under the Promissory Note. *Id. at ¶ 21, Ex. J.*

On December 1, 2010, GI also withdrew as a member of GreenStar. *V.Compl. at ¶ 22, Ex. K.* It is also BATC's belief that NARI-MN intends to withdraw as a member of GreenStar. *Id. at ¶ 23.*

It is unclear to BATC for what purpose GreenStar used the monies loaned by BATC, but BATC believes that GreenStar only has approximately \$20,000 in funds remaining from the loans. *V.Compl. at ¶ 24.* BATC also believes that several previous sponsors of GreenStar have not renewed their sponsorship and GreenStar will lose significant revenue due to the continued withdrawal of sponsors. *Id. at ¶ 25.* In addition, members of the Board of Directors of GreenStar have admitted to BATC that the Business Plan submitted to BATC in September 2010 was unrealistic and arbitrary. *Id. at ¶ 26.* Further, GreenStar has failed to respond to BATC regarding how GreenStar intends to calculate the payments required under the Promissory Note or identify how it will pay the amounts owed. *Id. at ¶ 27.* As a result of: 1) GreenStar's unrealistic and arbitrary Business Plan, including its reliance on dwindling sponsorship, a one-

year deferment on GreenStar's Promissory Note obligations to BATC, and significant additional funding from BATC: 2) GreenStar's failure to respond to BATC regarding its calculation of payments and how it will pay the amounts owed; and 3) the amount of funds currently held by GreenStar, it is clear that GreenStar will not be able to meet its payment obligations to BATC as set forth in the Promissory Note. *Id. at* ¶ 28.

Pursuant to Paragraph 4(ii) of the Promissory Note, "the inability of Borrower to pay its debts in the ordinary course of its business" constitutes an Event of Default. *Id. at* ¶ 29, *Ex. G*. The Promissory Note also specifies that upon default, BATC is entitled to declare the entire amount of the loan immediately due and payable at which time the unpaid principal balance of the loan plus accrued interest and all other charges, fees and expenses shall immediately become due and payable in full. *Id. at* ¶ 30, *Ex. G*.

Due to GreenStar's inability to pay its debts in the ordinary course of its business, on December 6, 2010, BATC exercised its right to call the Promissory Note and demanded immediate payment of the amounts due and owing under the Promissory Note. *V.Compl. at* ¶ 31, *Ex. L*. In this notice, BATC also made its final demand for the return of BATC's Green Homebuilding Guidelines and demanded that GreenStar "refrain from making or attempting to make any transfer, sale, assignment, license, sublicense, or other grant of rights or interests to any other person or organization with respect to any part of the Design Guidelines and Checklist, regardless of where any such person or organization is located." *Id. at* ¶ 32, *Ex. L*.

To date, GreenStar has not made payment to BATC under the Promissory Note and has not agreed to refrain from selling, licensing or attempting to sell or license BATC's intellectual property. *V.Compl. at* ¶ 33. GreenStar has wholly failed or refused to recognize BATC's ownership of and copyright in the Green Homebuilding Guidelines, including both the New Home User Manual and the New Homes Checklist. *Id. at* ¶ 36.

## ARGUMENT

### **I. THE DAHLBERG FACTORS SUPPORT THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER.**

Under Rule 65, a temporary restraining order should be issued when it is necessary to prevent immediate and irreparable injury, loss or damage to the moving party, pending a hearing on a temporary injunction. Minn. R. Civ. P. 65.01. The five-factor test used to determine whether a temporary injunction should issue applies equally to the determination of whether a temporary restraining order should issue. *MGM Liquor Warehouse Int'l, Inc. v. Forsland*, 371 N.W.2d 75, 77 (Minn. Ct. App. 1985). The Supreme Court has specified five factors for a district court to consider in exercising its discretion to issue a temporary injunction:

1. The nature of the relationship between the parties before the dispute giving rise to the request for relief;
2. The harm to be suffered by the moving party if the temporary injunctive relief is denied as compared to that inflicted on the nonmoving party if the injunction issues pending a hearing;
3. The likelihood of success on the merits;
4. The public interest; and
5. The administrative burdens in enforcing a temporary decree.

*Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (Minn. 1965); *Eakman v. Brutger*, 285 N.W.2d 95, 97 (Minn. 1979).

Although these factors must be considered in the determination of a temporary restraining order, the evaluation is somewhat different than in a temporary injunction setting because of the expedited nature of a temporary restraining order. See 2A Herr & Haydock, *Minnesota Practice*, Section 65.3 (Supp. 1986). Necessarily, the primary focus will be on whether any immediate irreparable injury will occur to the moving party in the absence of the issuance of the temporary restraining order. See Minn. R. Civ. P. 65.01 (requiring a showing of "immediate and irreparable



injury, loss, or damage” where TRO sought ex parte). Considering the irreparable harm that will result in this case if GreenStar uses, destroys or sells BATC’s intellectual property, as well as the other *Dahlberg* factors, BATC is entitled to a temporary restraining order to preserve the status quo and enjoin GreenStar from using, in any way altering or damaging, and/or making or attempting to make any transfer, sale, assignment, license, sublicense or grant of rights or interests to any other person or organization with respect to all or any part of the Green Homebuilding Guidelines, including both the New Home User Manual and the New Homes Checklist.

A. **BATC Will Be Irreparably Harmed If It Loses Its Exclusive Rights To Control Its Green Homebuilding Guidelines.**

A temporary restraining order may be granted when the “impending conduct threatens real, substantial, and irreparable injury to a party’s rights which are the subject of the action and such injury would tend to make a judgment in his favor ineffectual.” *Cramond v. AFL-CIO*, 126 N.W.2d 252, 256 (Minn. 1964); see *Jordan v. Leonard*, 137 N.W. 740, 741 (1912). In this case, GreenStar’s conduct denies BATC its ownership in and exclusive rights over the Green Homebuilding Guidelines, which is, as a matter of law, an irreparable harm.

1. **BATC is clearly the legal owner of the Green Homebuilding Guidelines.**

In the September 18, 2006 MOU between BATC and GI, BATC agreed to commit \$50,000 to fulfill the goals and objectives of the “Program,” which included developing green building guidelines for residential construction and development and the parties agreed that the intellectual property developed by the Program became the sole property of BATC. *V.Compl. at* ¶¶ 4-6. *Ex. A at* ¶¶ 2.4 and 5.5. As a result of this agreement, in 2006, BATC developed the Green Homebuilding Guidelines for residential construction and development, which consisted

of the New Home User Manual and the New Homes Checklist. *Id. at* ¶ 7. Pursuant to the September 18, 2006 MOU, this intellectual property became the sole property of BATC.

The April 13, 2007 MOU was entered into by BATC, GI and NARI-MN to include NARI-MN in the partnership. *V.Compl. at* ¶ 8, *Ex. B*. At that time, BATC had already developed the Green Homebuilding Guidelines, including both the New Home User Manual and the New Homes Checklist, and, therefore, Section 5.5 of this MOU contained a specific exclusion for the Green Homebuilding Guidelines:

With the exception of the remodeling and homebuilding construction Guidelines, the intellectual property developed by the Programs shall become the shared property of BATC and NARI-MN. BATC and NARI-MN shall grant the Programs the right to use all property and materials, without cost, for purposes of advancing the Program's goals and objectives. Exception for Guidelines: The Green Remodeling Guidelines must remain in the public domain, and the Green Homebuilding Guidelines shall remain the sole property of BATC.

*Id. at* ¶ 9, *Ex. B* (emphasis added). These MOUs clearly demonstrate that BATC has sole ownership of the Green Homebuilding Guidelines.

2. BATC is also the copyright owner of the Green Homebuilding Guidelines.

Under the federal Copyright Act, “[t]he owner of copyright” has certain “exclusive rights.” 17 U.S.C. § 106 (emphasis added). The copyright owner is the “the author or authors of the work,” 17 U.S.C. § 201(a), and such ownership vests at the moment an original creative work of authorship is “fixed in a tangible medium of expression.” 17 U.S.C. § 102. A creative work is “fixed in a tangible medium of expression” when it exists in a sufficiently permanent or stable medium that permits it to be perceived or reproduced. 17 U.S.C. § 101. While copyright ownership may be expressly conveyed, “no action by governmental or other official or organization purporting to seize, expropriate, transfer, or exercise rights of ownership with

respect to the copyright, or any of the exclusive rights under a copyright, shall be given effect . . .  
.” 17 U.S.C. § 201 (e).

After the Green Homebuilding Guidelines were developed by BATC, BATC entered into the second MOU which specified that these documents were the sole property of BATC. *V.Compl. at ¶ 9, Ex. B.* Subsequently, BATC, GI and NARI-MN formed GreenStar as the entity to fulfill the partnership developed by the parties in the MOUs. *V.Compl. at ¶¶ 10-11, Ex. C.* While GreenStar was authorized by BATC to use the Green Homebuilding Guidelines, according to the MOUs, the documents were to remain the intellectual property of BATC and BATC never assigned or otherwise transferred its ownership of the Green Homebuilding Guidelines when GreenStar was formed. *Id. at ¶ 12.* Therefore, even before GreenStar was formed, the copyright to the Green Homebuilding Guidelines was vested in BATC and this copyright was never conveyed by BATC to GreenStar.

3. BATC has the exclusive right to control the use of the Green Homebuilding Guidelines.

The Copyright Act expressly states that the copyright owner has exclusive right to:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;  
[and]
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending[.]

17 U.S.C. § 106. Accordingly, BATC has the exclusive right to reproduce, prepare derivative works, distribute copies and publicly display the Green Homebuilding Guidelines. In addition, only BATC can authorize any of the foregoing exclusive rights.

4. Denying BATC its exclusive rights to the Green Homebuilding Guidelines is irreparable harm as a matter of law.

Recognizing the irreparable harm that results to a copyright owner when it loses exclusive control of its work, the Copyright Act expressly authorizes any court having jurisdiction to “grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.”<sup>1</sup> 17 U.S.C. § 502(a). The irreparable harm from copyright infringement is so great that courts have even granted injunctive relief to prohibited infringement of works not yet in existence. *See Olan Mills, Inc. v. Linn Photo Co.*, 23 F.3d 1345, 1349 (8th Cir. 1994) (citing *Pacific and Southern Co. v. Duncan*, 744 F.2d 1490, 1499 n. 17 (11th Cir. 1984), *cert. denied*, 471 U.S. 1004, 105 S.Ct. 1867, 85 L.Ed.2d 161 (1985)). As the Eighth Circuit recently recognized, a copyright owner “certainly has the right to control the use of its copyrighted materials, and irreparable harm inescapably flows from the denial of that right.” *Taylor Corp. v. Four Seasons Greetings, LLC*, 403 F.3d 958, 968 (8th Cir. 2005) (emphasis added). The Eighth Circuit acknowledged that refusal to grant injunctive relief to secure the exclusive rights of a copyright holder, “amount[s] to a forced license to use the creative work of another.” *Id.* at 967-68 (quoting *Silverstein v. Penguin Putnam, Inc.*, 368 F.3d 77, 84 (2d Cir. 2004)).

As the owner of the Green Homebuilding Guidelines and the party in which the copyrights to these documents are vested, BATC has the exclusive right to control when and how these materials are copied, disseminated and/or transferred. Exercising that exclusive control, BATC has expressly and unambiguously stated that GreenStar is not authorized to use or license the Green Homebuilding Guidelines. On October 29, 2010, BATC sent GreenStar a letter in

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<sup>1</sup> We note the fact that BATC has not registered its copyright in the material is irrelevant to the right to injunctive relief. *See Olan Mills, Inc. v. Linn Photo Co.*, 23 F.3d 1345, 1349 (8th Cir. 1994).

which BATC noted that its withdrawal from GreenStar “does not constitute a waiver, assignment or any other form of relinquishment of rights it has to the New Home Materials” and provided the following objection:

BATC objects immediately to any effort by MN GreenStar, or its remaining members, to secure assignments relating to the New Home Materials and further objects to any attempt by MN GreenStar, or any member, to use or license the New Home Materials in contravention of BATC’s ownership interest in them.

*V.Compl. at ¶ 19, Ex. I.*

Further, BATC has expressly and unambiguously instructed GreenStar to refrain from making or attempting to make, any transfer, sale, assignment, license, sublicense, or any other grant of any rights or interests to any other person or organization of the Green Homebuilding Guidelines. On November 10, 2010, BATC sent GreenStar a letter demanding that GreenStar “refrain from making or attempting to make, any transfer, sale, assignment, license, sublicense, or any other grant of any rights or interests to any other person or organization with respect to any part of the Design Guidelines and Checklist.” *V.Compl. at ¶ 20, Ex. J.* On December 6, 2010, BATC also made its final demand for the return of BATC’s Design Guidelines and Checklist and demanded that GreenStar “refrain from making or attempting to make any transfer, sale, assignment, license, sublicense, or other grant of rights or interests to any other person or organization with respect to any part of the Design Guidelines and Checklist, regardless of where any such person or organization is located.” *Id. at ¶ 32, Ex. L.*

Despite BATC’s clear exercise of its exclusive rights to control use and dissemination of the Green Homebuilding Guidelines, GreenStar continues to use, disseminate and permit copying of BATC’s materials. In addition, GreenStar continues to attempt to license BATC’s materials to third parties. Such conduct denies BATC the exclusive right over the Green Homebuilding Guidelines, and irreparable harm inescapably flows from the denial of that right.

If the temporary restraining order does not issue, BATC will be denied its exclusive right to reproduce, prepare derivative works, distribute copies and publicly display the Green Homebuilding Guidelines. This loss of exclusive control over documents its owns and to which it possesses copyrights is, as a matter of law, irreparable harm. Clearly, GreenStar's actions present real, substantial, and irreparable injury to BATC's rights and such injury would make a judgment in BATC's favor ineffectual. Therefore, BATC requests that the Court issue a temporary restraining order.

**B. BATC Has A Substantial Likelihood Of Success On The Merits Because Its Ownership Of The Green Homebuilding Guidelines Is Clear.**

*Dahlberg* further requires the court to consider "the likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief." *Dahlberg*, 137 N.W.2d at 322. In this case, BATC has a substantial likelihood of success on the merits of its claim because the evidence clearly demonstrates that BATC owns the Green Homebuilding Guidelines and BATC's copyrights in the Green Homebuilding Guidelines vested prior to the formation of GreenStar.

As fully set forth in Section I(A) above, there can be no credible argument to contradict BATC's clear legal ownership of the Green Homebuilding Guidelines. In addition, as fully set forth in Section I(A) above, BATC possesses the copyrights to the Green Homebuilding Guidelines and possessed these rights even before GreenStar was formed.

As the owner of the documents and the party that possesses the copyrights to the documents, BATC has the exclusive rights to reproduce, prepare derivative works, distribute copies, and publically display the Green Homebuilding Guidelines and to authorize any of these exclusive uses. 17 U.S.C. § 106. Based on these rights, BATC specifically notified GreenStar it was not authorized to use or license the Green Homebuilding Guidelines. *V.Compl. at ¶ 19. Ex.*

I. In addition, BATC demanded that GreenStar refrain from making or attempting to make, any transfer, sale, assignment, license, sublicense, or any other grant of any rights or interests to any other person or organization of the Green Homebuilding Guidelines. *Id.* at ¶¶ 20 and 32, Exs. J and L. There is nothing to which GreenStar can point which would give it any ownership or copyright interests in BATC's Green Homebuilding Guidelines. Despite these facts, GreenStar has wholly failed and refused to recognize BATC's ownership of Green Homebuilding Guidelines and continues to use, disseminate and permit copying of BATC's materials and continues to attempt to license BATC's materials to third parties.

BATC clearly has a substantial likelihood of success on the merits of its claim for declaratory judgment. Therefore, BATC requests that the Court issue a temporary restraining order.

C. **The Relationship Of The Parties Favors Issuance Of The Temporary Restraining Order.**

Courts analyze the relationship between the parties in considering whether to grant a temporary restraining order because that relationship may affect the parties' reasonable expectations. *Dahlberg*, 137 N.W.2d at 322, and because the purpose of a temporary restraining order is to preserve the status quo until adjudication on the merits. *Pacific Equip. & Irrigation, Inc. v. Toro Co.*, 519 N.W.2d 911, 915 (Minn. Ct. App. 1996) (citing *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982)), *rev. denied*, (Minn. Sept. 16, 1994). The relationship BATC has with GreenStar as a founder, former member and primary contributor, supports granting a temporary restraining order.

BATC, GI and NARI-MN formed GreenStar as the entity to fulfill the partnership developed by BATC, GI and NARI-MN in the MOUs. *V. Compl.* at ¶¶ 10-11, Ex. C. In addition, according to the Bylaws of GreenStar, the members of GreenStar consisted of BATC,

GI and NARI-MN. *Id.* at ¶ 11, Ex. D. Further, BATC provided the initial \$50,000 investment to develop the Green Homebuilding Guidelines, provided GreenStar approximately \$250,000 in additional in-kind contributions, and loaned GreenStar \$306,418.19.

The reasonable expectations of the parties as the result of this relationship is that GreenStar would honor the MOUs agreed to by its founders, which were the basis of the formation of GreenStar itself, and respect BATC's clear ownership of and copyright to the Green Homebuilding Guidelines. A temporary restraining order in this case will merely preserve the status quo and protect BATC's intellectual property until there can be an adjudication on the merits.

**D. Public Policy Considerations Also Support Issuance Of The Temporary Restraining Order.**

This court must also consider "the aspects of a fact situation, if any, which permit or require consideration of public policy expressed by statutes, state and federal." *Dahlberg*, 137 N.W.2d at 321-22. Public policy encourages the recognition and enforcement of intellectual property rights. Therefore, public policy supports the issuance of a temporary restraining order.

**E. The Administrative Burden On The Court Would Be Minimal If The Temporary Restraining Order Is Issued.**

The final factor to be considered is "the administrative burdens involved in judicial supervision and enforcement of the temporary decree." *Dahlberg*, 137 N.W.2d at 322. In this case, the administrative burden and the supervision and enforcement of a temporary restraining order is minimal or non-existent. A temporary restraining order in this case would only maintain the status quo between the parties. It does not appear that court supervision would be necessary.



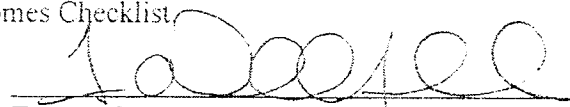
II. NO SECURITY IS REQUIRED FOR ISSUANCE OF THE TEMPORARY RESTRAINING ORDER.

The court of appeals has ruled that the amount of security required for a temporary restraining order is within the trial court's discretion and may be waived entirely if appropriate. *State by Drabik v. Martz*, 451 N.W.2d 893, 897 (Minn. Ct. App. 1990). Here, GreenStar owes BATC \$306,418.19 under the Promissory Note, which GreenStar clearly has no intention or ability to repay. In addition to this outstanding loan amount, BATC provided GreenStar approximately \$250,000 in additional in-kind contributions, which included free rent through the end of November 2010. Accordingly, the court should exercise its discretion to grant the temporary restraining order without requiring BATC to give any additional security.

CONCLUSION

As demonstrated above, BATC will be irreparably harmed if the Court does not enjoin GreenStar's actions. In addition, BATC is likely to succeed on the merits of its claims and the remaining Dahlberg factors favor issuance of a temporary restraining order. Therefore, BATC respectfully requests that the Court grant a temporary restraining order enjoining GreenStar from using, in any way altering or damaging, and/or making or attempting to make any transfer, sale, assignment, license, sublicense or grant of rights or interests to any other person or organization with respect to all or any part of the Green Homebuilding Guidelines, including both the New Home User Manual and the New Homes Checklist.

Dated: 12/9/10

  
\_\_\_\_\_  
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Attorneys for Plaintiff Builders Association of the Twin Cities

STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

-----  
Builders Association of the Twin Cities,  
a Minnesota non-profit corporation,

Plaintiff,

File No.

CASE TYPE: Breach of  
Contract/Declaratory Judgment/  
Injunction

v.

Minnesota GreenStar, a Minnesota non-  
profit corporation,

Defendant.

**VERIFIED COMPLAINT**

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For its Verified Complaint against defendant Minnesota GreenStar, plaintiff Builders Association of the Twin Cities states and alleges as follows:

**PARTIES**

1. Plaintiff Builders Association of the Twin Cities ("BATC") is a Minnesota non-profit corporation with its registered office located at 2960 Center Pointe Drive, Roseville, Minnesota 55113.

2. Defendant Minnesota GreenStar ("GreenStar") is a Minnesota non-profit corporation with its registered office located at 2960 Center Pointe Drive, Suite 100, Roseville, Minnesota 55113 and is currently located at 339 Second Street, Excelsior, Minnesota 55331.

**VENUE**

3. Venue is proper in this court pursuant to the Promissory Note executed by GreenStar which contained the following provision:

This Note and all disputes, whether equitable or legal in nature, that arise under this Note that relate in any way to the rights or duties of the parties hereto or thereto, shall be governed by the

internal laws of the State of Minnesota, without regard to the conflict or choice of laws provisions thereof. The undersigned consent to the exclusive jurisdiction of the courts of the State of Minnesota, and County of Ramsey, with respect to any action or proceeding, whether equitable or legal in nature, that relates to this Note, and further consent in such circumstances, to service of process and venue in the courts of the State of Minnesota, and County of Ramsey, for any such action or proceeding.

#### **FACTUAL BACKGROUND**

4. On or about September 18, 2006, BATC and the Green Institute, Inc. ("GI") entered into a Memorandum of Understanding ("MOU") establishing a partnership to develop and maintain a green home building program to promote the use of green building practices and products in the design and construction of homes and home renovations. A true and correct copy of the September 18, 2006 MOU is incorporated herein and attached hereto as Exhibit A.

5. Pursuant to Paragraph 2.4 of the September 18, 2006 MOU, BATC agreed to commit \$50,000 to fulfill the goals and objectives of the "Program," which included developing green building guidelines for residential construction and development.

6. Pursuant to Paragraph 5.5 of the September 18, 2006 MOU, the intellectual property developed by the Program became the sole property of BATC:

The intellectual property developed by the Program shall become the sole property of BATC. BATC shall grant the Program the right to use these materials, without cost, for the purposes of advancing the Program's goals and objectives.

7. In or around 2006, BATC developed the Green Homebuilding Guidelines for residential construction and development, which consisted of a New Home User Manual and a New Homes Checklist.

8. On or about April 13, 2007, BATC, GI and the National Association of the Remodeling Industry – Minnesota ("NARI-MN") entered into a MOU to include NARI-MN in

the partnership to develop green homebuilding and remodeling programs to promote the use of green building practices and products in the design and construction of homes and home renovations. A true and correct copy of the April 13, 2007 MOU is incorporated herein and attached hereto as Exhibit B.

9. Pursuant to Section 5.5 of the April 13, 2007 MOU, the intellectual property developed by the Programs became the shared property of BATC and NARI-MN but the Green Homebuilding Guidelines, which consisted of a New Home User Manual and a New Homes Checklist, remained the sole property of BATC:

With the exception of the remodeling and homebuilding construction Guidelines, the intellectual property developed by the Programs shall become the shared property of BATC and NARI-MN. BATC and NARI-MN shall grant the Programs the right to use all property and materials, without cost, for purposes of advancing the Program's goals and objectives. Exception for Guidelines: The Green Remodeling Guidelines must remain in the public domain, and the Green Homebuilding Guidelines shall remain the sole property of BATC.

(emphasis added).

10. On or about January 7, 2008, BATC, GI and NARI-MN formed GreenStar by filing the Articles of Incorporation with the Minnesota Secretary of State. A true and correct copy of the Articles of Incorporation is incorporated herein and attached hereto as Exhibit C.

11. GreenStar was formed as the entity to fulfill the partnership developed by BATC, GI and NARI-MN in the MOUs. According to the Bylaws of GreenStar, the members of GreenStar consisted of BATC, GI and NARI-MN. A true and correct copy of the Bylaws is incorporated herein and attached hereto as Exhibit D.

12. On or about May 5, 2008, GreenStar began using the Green Homebuilding Guidelines, which consisted of the New Home User Manual and the New Homes Checklist.

developed by BATC. While GreenStar was authorized to use the Green Homebuilding Guidelines, according to the MOUs, the documents were to remain the intellectual property of BATC and BATC never assigned or otherwise transferred its ownership of the Green Homebuilding Guidelines when GreenStar was formed.

13. Upon information and belief, in or around 2008, GreenStar registered copyrights for BATC's Green Homebuilding Guidelines, including both the New Home User Manual and the New Homes Checklist, even though, pursuant to 17 U.S.C. § 201, the copyrights vested in BATC, the initial author. True and correct copies of the New Home User Manual and the New Homes Checklist are incorporated herein and attached hereto as Exhibits E and F, respectively.

14. Since the formation of GreenStar, BATC made several loans to GreenStar to fund GreenStar's operating costs. On or about March 17, 2010, GreenStar executed a Promissory Note to secure these loans under which GreenStar, as borrower, agreed to pay BATC, as lender, the principal sum of \$306,418.19 in specified payments beginning January 1, 2011. A true and correct copy of the Promissory Note is incorporated herein and attached hereto as Exhibit G.

15. The loans secured by the Promissory Note were in addition to the initial \$50,000 investment by BATC to develop the Green Homebuilding Guidelines, which consisted of the New Home User Manual and the New Homes Checklist, and approximately \$250,000 in additional in-kind contributions from BATC to GreenStar.

16. On or about September 15, 2010, GreenStar conducted a meeting of its Board of Directors and disseminated its Business Plan and Funding Proposal Draft ("Business Plan") in which GreenStar relied on continued sponsorships, a one-year deferment on its Promissory Note obligations to BATC, and significant additional funding from BATC. GreenStar also indicated its intent to license the Green Homebuilding Guidelines developed by BATC to other states to

raise revenue for GreenStar. A true and correct copy of the Business Plan is incorporated herein and attached hereto as Exhibit H.

17. On or about October 29, 2010, BATC sent GreenStar a letter in which it withdrew as a member of GreenStar effective November 5, 2010 and provided GreenStar notice that it was to vacate the office space occupied by GreenStar and owned by BATC effective November 30, 2010. A true and correct copy of the October 29, 2010 letter is incorporated herein and attached hereto as Exhibit I.

18. In the October 29, 2010 letter, BATC reminded GreenStar of its obligations under the Promissory Note and that the Promissory Note “does not include an additional \$50,000 payment by BATC for development of new home design guidelines and a related checklist for new home construction (“the New Home Materials”).”

19. In the October 29, 2010 letter, BATC also noted that its withdrawal from GreenStar “does not constitute a waiver, assignment or any other form of relinquishment of rights it has to the New Home Materials” and provided the following objection:

BATC objects immediately to any effort by MN GreenStar, or its remaining members, to secure assignments relating to the New Home Materials and further objects to any attempt by MN GreenStar, or any member, to use or license the New Home Materials in contravention of BATC’s ownership interest in them.

20. On or about November 10, 2010, BATC sent GreenStar a letter in which it reiterated its ownership of the Green Homebuilding Guidelines, which consist of the New Home User Manual and the New Homes Checklist, and again specifically demanded that GreenStar refrain from attempting to interfere with BATC’s ownership rights:

BATC’s withdrawal from MN GreenStar does not constitute a waiver, assignment or any other form of relinquishment of rights (including related intellectual property rights) it has to the New Home Design Guidelines and Checklist for new home construction

which were paid for and are exclusively owned by BATC. BATC objects to any effort by MN GreenStar to secure assignments relating to the Design Guidelines and Checklist or any related intellectual property rights, and will consider any such effort to be an intentional interference with BATC's rights. In addition, BATC demands that MN GreenStar, and/or any member, refrain from making or attempting to make, any transfer, sale, assignment, license, sublicense, or any other grant of any rights or interests to any other person or organization with respect to any part of the Design Guidelines and Checklist, regardless of where any such person or organization is located.

BATC intends to secure access to and use of the Design Guidelines and Checklist in order to reposition them for the new home construction marketplace; to that end, please immediately provide any source code or passcode information, together with any and all instruction and user manuals and other documentation that exists with respect to the development, operation, functionality, maintenance, support, access or use of the Design Guidelines and Checklist.

A true and correct copy of the November 10, 2010 letter is incorporated herein and attached hereto as Exhibit J.

21. In the November 10, 2010 letter, BATC also requested that GreenStar explain how it would calculate the payments required under the Promissory Note:

On March 17, 2010, MN GreenStar executed a Promissory Note in favor of BATC in the amount of \$306,418.19. MN GreenStar is required to begin making regular monthly payments to BATC commencing on January 1, 2011, supplemented by regular quarterly payments tied to gross revenue, beginning on or before April 1, 2011. Please specify how MN GreenStar will confirm to BATC the basis for determining the required quarterly payments.

22. On or about December 1, 2010, GI also withdrew as a member of GreenStar. A true and correct copy of GI's December 1, 2010 letter is incorporated herein and attached hereto as Exhibit K.

23. Upon information and belief, NARI-MN also intends to withdraw as a member of GreenStar.

24. It is unclear to BATC for what purpose GreenStar used the monies loaned by BATC but, upon information and belief, GreenStar only has approximately \$20,000 in funds remaining from the loan.

25. Upon information and belief, several previous sponsor of GreenStar have not renewed their sponsorship and GreenStar will lose significant revenue due to the continued withdrawal of sponsors.

26. Members of the Board of Directors of GreenStar have admitted to BATC that the Business Plan submitted to BATC in September 2010 was unrealistic and arbitrary.

27. GreenStar has failed to respond to BATC regarding how GreenStar intends to calculate the payments required under the Promissory Note or identify how it will pay the amounts owed.

28. Due to: 1) GreenStar's unrealistic and arbitrary Business Plan, including its reliance on now dwindling sponsorship, a one-year deferment on GreenStar's Promissory Note obligations to BATC, and significant additional funding from BATC; 2) GreenStar's failure to respond to BATC regarding its calculation of payments and how it will pay the amounts owed; and 3) the amount of funds currently held by GreenStar, it is clear that GreenStar will not be able to meet its payment obligations to BATC as set forth in the Promissory Note.

29. Pursuant to Paragraph 4(ii) of the Promissory Note, "the inability of Borrower to pay its debts in the ordinary course of its business" constitutes an Event of Default.

30. Pursuant to Paragraph 4 of the Promissory Note, upon default, BATC is entitled to declare the entire amount of the loan immediately due and payable:

[upon the occurrence of an Event of Default the default rate of interest described in Paragraph 2 above shall commence to accrue and at any time thereafter the then holder of this Note may, at its option, declare this Note to be immediately due and payable in full



and thereupon the unpaid principal balance of this Note plus accrued interest and all other charges, fees and expenses under this Note shall immediately become due and payable in full.

31. Due to GreenStar's inability to pay its debts in the ordinary course of its business, on or about December 6, 2010, BATC exercised its right to call the Promissory Note and demanded immediate payment of the amounts due and owing under the Promissory Note. A true and correct copy of the December 6, 2010 letter is incorporated herein and attached hereto as Exhibit L.

32. In the December 6, 2010 letter, BATC also made its final demand for the return of BATC's Design Guidelines and Checklist and demanded that GreenStar "refrain from making or attempting to make any transfer, sale, assignment, license, sublicense, or other grant of rights or interests to any other person or organization with respect to any part of the Design Guidelines and Checklist, regardless of where any such person or organization is located."

33. To date, GreenStar has not made payment to BATC under the Promissory Note and has not agreed to refrain from selling, licensing or attempting to sell or license BATC's intellectual property.

34. Pursuant to Paragraph 2 of the Promissory Note, no interest was to accrue on the loan except in the event of a default:

[i]n the Event of Default, the default rate of interest shall be 2% percentage points in excess of the Prime Rate of Interest, calculated on the basis of the actual number of days elapsed in a 360 day year. The term "Prime Rate of Interest" shall mean the Prime Rate of Interest as quoted or offered by Wells Fargo Bank in Minnesota on the date of default.

35. Pursuant to Paragraph 5(a) of the Promissory Note, if BATC incurs costs and expenses in the collection of amounts due under the Promissory Note, GreenStar is liable for BATC's costs and expenses, including attorneys' fees:

[i]n the event this Note is placed in the hands of an attorney for collection, the Borrower, its successor and assigns, will pay on demand all costs and expenses of collection so incurred, including reasonable attorneys' fees, whether or not suit or legal proceeding is actually commenced for the collection thereof.

36. To date, GreenStar has failed or refused to recognize BATC's ownership of the Green Homebuilding Guidelines, which consist of the New Home User Manual and the New Homes Checklist.

## COUNT I

### BREACH OF CONTRACT

37. BATC restates and realleges paragraphs 1 through 36 as though fully set forth herein.

38. As fully set forth above, pursuant to the terms and conditions of the Promissory Note, the inability of GreenStar to pay its debts in the ordinary course of its business constitutes an Event of Default.

39. As fully set forth above, pursuant to the terms and conditions of the Promissory Note, upon default, BATC is entitled to declare the entire amount of the loan immediately due and payable.

40. As fully set forth above, due to: 1) GreenStar's unrealistic and arbitrary Business Plan, including its reliance on now dwindling sponsorship, a one-year deferment on GreenStar's Promissory Note obligations to BATC, and significant additional funding from BATC; 2) GreenStar's failure to respond to BATC regarding its calculation of payments and how it will pay the amounts owed; and 3) the amount of funds currently held by GreenStar, it is clear that GreenStar will not be able to meet its payment obligations to BATC as set forth in the Promissory Note.

41. As fully set forth above, BATC declared the entire amount of the loan immediately due and payable, but GreenStar has not repaid the funds to BATC.

42. As a direct and proximate result of GreenStar's breach of contract, BATC has suffered and will suffer damages in an amount in excess of \$50,000, the precise amount to be determined at trial, as well as interest, costs, disbursements, and attorneys' fees.

## COUNT II

### DECLARATORY JUDGMENT

43. BATC restates and realleges paragraphs 1 through 42 as though fully set forth herein.

44. This cause of action is brought pursuant to Minn. Stat. § 555.01, et seq., for a judicial declaration by this Court.

45. There is a real, immediate, substantial, continuing, and justiciable controversy between BATC and GreenStar requiring the intervention of this Court with respect to whether, under applicable Minnesota law and the facts and circumstances of this case, the Green Homebuilding Guidelines, which consist of the New Home User Manual and the New Homes Checklist, are the intellectual property of BATC and whether GreenStar is required to refrain from using and making or attempting to make any transfer, sale, assignment, license, sublicense, or other grant of rights or interests to any other person or organization with respect to all or any part of the Green Homebuilding Guidelines, including both the New Home User Manual and the New Homes Checklist.

46. As fully set forth above, the MOUs specifically stated that the Green Homebuilding Guidelines, which consist of both the New Home User Manual and the New Homes Checklist, remained the sole property of BATC.

47. As fully set forth above, GreenStar is intending to license the Green Homebuilding Guidelines developed by BATC to other states to raise revenue for GreenStar.

48. As fully set forth above, GreenStar has refused to recognize BATC's ownership rights to the Green Homebuilding Guidelines, despite numerous notices and demands from BATC.

49. Accordingly, BATC is entitled to a judgment declaring and adjudging as follows: 1) the Green Homebuilding Guidelines, which consist of the New Home User Manual and the New Homes Checklist, are the intellectual property of BATC; and 2) GreenStar is required to refrain from using, in any way altering or damaging, and making or attempting to make any transfer, sale, assignment, license, sublicense, or other grant of rights or interests to any other person or organization with respect to all or any part of the Green Homebuilding Guidelines, including both the New Home User Manual and the New Homes Checklist.

### **COUNT III**

#### **INJUNCTIVE RELIEF**

50. BATC restates and realleges paragraphs 1 through 49 as though fully set forth herein.

51. As fully set forth above, GreenStar is violating BATC's rights by attempting to transfer, sell, assign, license, sublicense or grant rights or interest to other persons or organizations with respect to all or part of the Green Homebuilding Guidelines, including both the New Home User Manual and the New Homes Checklist.

52. This cause of action is brought pursuant to Minn. R. Civ. P. 65, seeking temporary and permanent injunctive relief enjoining GreenStar from using, in any way altering or damaging, and/or making or attempting to make any transfer, sale, assignment, license,

sublicense or grant of rights or interests to any other person or organization with respect to all or any part of the Green Homebuilding Guidelines, including both the New Home User Manual and the New Homes Checklist.

53. If injunctive relief is not granted, BATC will suffer irreparable harm that cannot be compensated solely by monetary damages. Additionally, BATC does not have a plain, speedy and adequate remedy in the ordinary course of the law.

#### **COUNT IV**

##### **ATTORNEYS' FEES AND COSTS**

54. BATC restates and realleges paragraphs 1 through 53 as though fully set forth herein.

55. As fully set forth above, as a result of GreenStar's breach of the Promissory Note, BATC has incurred and will continue to incur attorneys' fees and costs,

56. As fully set forth above, pursuant to the Promissory Note, if BATC incurs costs and expenses in the collection of amounts due under the Promissory Note, GreenStar is liable to BATC for these costs and expenses, including reasonable attorneys' fees.

57. BATC is entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred in connection with GreenStar's breach of the Promissory Note.

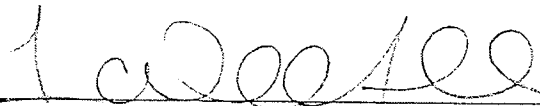
**WHEREFORE**, plaintiff Builders Association of the Twin Cities prays for judgment from the court as follows:

1. Awarding Builders Association of the Twin Cities a money judgment against Minnesota GreenStar for its breach of the Promissory Note in an amount in excess of \$50,000, the precise amount to be determined at trial, as well as interest, costs, disbursements, and attorneys' fees;
2. Declaring and adjudging that: 1) the Green Homebuilding Guidelines, which consist of the New Home User Manual and the New Homes Checklist, are the intellectual property of BATC; and 2) GreenStar is required to refrain from using,

in any way altering or damaging, and/or making or attempting to make any transfer, sale, assignment, license, sublicense, or other grant of rights or interests to any other person or organization with respect to all or any part of the Green Homebuilding Guidelines, including both the New Home User Manual and the New Homes Checklist:

3. Temporarily and permanently enjoining Minnesota GreenStar from using, in any way altering or damaging, and/or making or attempting to make any transfer, sale, assignment, license, sublicense or grant of rights or interests to any other person or organization with respect to all or any part of the Green Homebuilding Guidelines, including both the New Home User Manual and the New Homes Checklist:
4. Awarding Builders Association of the Twin Cities a money judgment against Minnesota GreenStar for all costs, disbursements, and reasonable attorneys' fees incurred by Builders Association of the Twin Cities in connection with Minnesota GreenStar's breach of the Promissory Note; and
5. Granting such other and further relief as the court deems just and equitable.

Dated: 12/9/10



Tamara O'Neill Moreland (278348)

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7900 Xerxes Avenue South

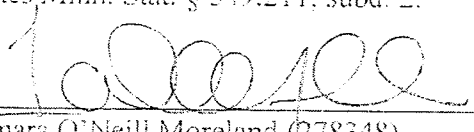
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#### ACKNOWLEDGMENT

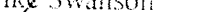
I hereby acknowledge that sanctions may be awarded pursuant to Minn. Stat. § 549.211, subd. 3, if the court determines that this document violates Minn. Stat. § 549.211, subd. 2.

  
Tamara O'Neill Moreland (278348)

## VERIFICATION

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF HENNEPIN )

Mike Swanson, being first duly sworn, deposes and states that he is the Immediate Past President and current officer of plaintiff Builders Association of the Twin Cities, that he has read and fully understands the allegations of the Verified Complaint herein, and that the same are true and correct, except as to those matters stated on information and belief, which matters he believes to be true and correct.

  
Mike Swanson

Subscribed and sworn to before me this  
8th day of December, 2010.

Sally O. Hootz  
Notary

[illegible]

SALLY O'HOLTZ  
 NURSERY FUDGE  
 BIRMINGHAM  
 10/10/2012

**MEMORANDUM OF UNDERSTANDING**  
**between**  
**Builders Association of the Twin Cities**  
**and**  
**Green Institute**

**1. Introduction**

This Memorandum of Understanding ("MOU") is made between the Builders Association of the Twin Cities ("BATC") and The Green Institute, Inc. ("GI"). BATC and GI are referred to herein as "the Parties" to this MOU.

1.1. The Parties intend by this MOU to establish a partnership to jointly develop and maintain a Green Home Building Program, referred to herein as "the Program".

1.2. This MOU will address the basic relationship, roles and responsibilities of the Parties but leaves for later agreement the more precise terms that will constitute the substance of the partnership

**2. Purpose**

The purpose of this MOU is for the Parties to enter into a partnership to promote the use of green building practices and products in the design and construction of homes and home renovations. This will be accomplished by a cooperative effort to develop the Program.

2.1. This MOU identifies the following objectives for the Program:

- Demonstrate that an industry-initiated voluntary program can positively affect the energy and environmental impacts of buildings and the building industry.
- Position BATC and its members as leaders in the emerging green building industry.
- Utilize market influences to increase the application of green building practices and products.
- Create market distinction for builders who implement encouraged green building practices
- Educate homebuyers about the benefits of green building practices and products

2.2. To meet the above objectives, the Parties agree to the following Program components and goals.

- *Standards:* Green building guidelines for residential construction and development
- *Project Certification:* Protocol and system for voluntarily certifying building projects
- *Professional Education:* Training programs and continuing education for building professionals
- *Professional Certification:* Protocol and system for voluntarily certifying building professionals
- *Financial Incentives:* Work with financial institutions, utilities, and governmental organizations to develop financial incentives that recognize the Program and its Standards and Certification as a means for achieving the incentives
- *Marketing & Promotion:* Advertising and promotion, real estate broker training, public education, awards and other recognition of green builders and projects
- *Government Recognition:* Official recognition of Program Standards by interested local governments, and consideration of monetary and non-monetary incentives
- *Information Portal:* Web-based resource for general information, product directory, professional directory



2.3 The Parties hereby agree that the principles of good faith partnership and steadfast adherence to the purposes of this MOU will govern their conduct hereunder.

### 3. Responsibilities of the Parties

#### 3.1. Both Parties agree to:

- Jointly appoint an Advisory Board consisting of 12 members that will guide the Program and its staff in the preparation of guidelines and standards and other program development activities. BATC's Board of Directors will appoint 7 Advisory Board members selected from its own membership and employees. GI's Board of Directors will appoint 5 Advisory Board members selected from architecture and engineering service firms, non-profit sector, and/or relevant local and state government agencies.
- Develop draft guidelines and standards (for residential construction and development) appropriate to Minnesota's climate, building codes, and marketplace. Guideline development will draw from the experience of other relevant programs including the National Association of Homebuilders and be coordinated with the Minnesota residential green remodeling guidelines currently under development by GI and the National Association of the Remodeling Industry – Minnesota.
- Jointly seek funding for general operations of the Program from third parties, including corporations, utilities, governmental units, and private foundations. Long term program funding will be supplemented by earned-income sources such as project registration and program education fees.
- The official launch of the Program will coincide with the Fall 2007 Parade of Homes<sup>SM</sup> showcase.
- Jointly seek to develop the Program with the intent of organizing it as a standalone non-profit entity within two (2) years from the date upon which this MOU becomes fully executed. The board of directors of the independent entity shall be comprised of not less than 60% BATC members appointed by BATC's Board of Directors, and not less than 35% members appointed by GI's Board of Directors.

#### 3.2. BATC agrees to:

- Promote participation by its members in the Program
- Develop and coordinate a green home segment as part of BATC's Parade of Homes<sup>SM</sup> program
- Incorporate green building awards into BATC's various awards programs

#### 3.3. GI agrees to:

- Provide day-to-day management of the Program
- Allocate personnel for developing and maintaining program services. This is expected to be 1.25 FTE during the first year of this MOU. First year activities are expected to include:
  - Program fundraising
  - Guidelines development (draft and piloting)
  - Education program development
  - Certification protocols,
  - Financial incentives and local government coordination
  - Development of resources for the general public
  - Providing support and content for program marketing
- Facilitate and support the Program Advisory Board
- Serve as the lead Program representative in communications with external stakeholders consistent with the defined goals and objectives of the program as established by the Advisory Board.

#### 4. Funding

The development and maintenance of the Program will require adequate on-going funding resources.

- 4.1. The Parties agree to jointly seek funding for the Program from corporations, utilities, governmental units, and private foundations and to develop earned-income sources from Program activities including project registration and education fees.
- 4.2. BATC agrees to commit \$50,000 to fulfill the goals and objectives of the Program. Any future financial request will be considered by BATC's Board of Directors upon recommendation of the Program Advisory Board.

#### 5. Agreements

In order to foster the successful completion of this MOU, the Parties agree to the following terms and conditions:

- 5.1. Each Party pledges in good faith to go forward with this MOU and to further the goals and purposes of this MOU, subject to the terms and conditions of this MOU. The Parties shall attempt to resolve disputes through good faith discussions.
- 5.2. Either Party may unilaterally withdraw at any time from this MOU by transmitting a signed writing to that effect to the other Party. This MOU and the private partnership created thereby shall be considered terminated sixty (60) days from the date the non-withdrawing Party actually receives the notice of withdrawal from the withdrawing Party.
- 5.3. By mutual agreement, which may be either formal or informal, the Parties may modify the list of intended activities set forth in the MOU determine the practical manner by which the goals, purposes and activities of this MOU will be accomplished. However, any modification to any other written part of this MOU must be made in writing and signed by both Parties or their designees.
- 5.4. Nothing in this MOU shall be construed to authorize or permit any violation of any Federal, State or local law imposed upon the Parties.
- 5.5. The intellectual property developed by the Program shall become the sole property of BATC. BATC shall grant the Program the right to use these materials, without cost, for purposes of advancing the Program's goals and objectives.

#### 6. Primary Contacts

The Parties intend that the work under this MOU shall be carried out in the most efficient manner possible. To that end, the Parties intend to designate individuals that will serve as primary contacts between the Parties. The Parties intend that, to the maximum extent possible and unless otherwise approved by the other Party, all significant communications between the Parties shall be made through the primary contacts. The designated primary contacts for the Parties are as follows:

##### BATC contact:

Dennis Flaherty  
Executive Vice President  
Builders Association of the Twin Cities  
2950 Centre Pointe Drive  
Roseville, MN 55113  
Phone: (651) 697-7561  
Email: dennis@batc.org


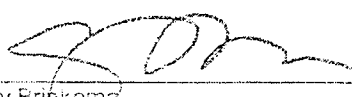
##### Green Institute contact:

Corey Brinkema  
Executive Director  
Green Institute  
2801 21<sup>st</sup> Avenue South  
Minneapolis, MN 55407  
Phone: 612-278-7113  
Email: cbrinkema@greeninstitute.org

7. Duration and Termination

Unless extended by a written agreement executed by both Parties, this MOU shall terminate exactly two (2) years from the date upon which this MOU becomes fully executed by all signatories listed below. The Parties, on this 1st day of October, 2006, hereby agree to the foregoing MOU, which shall be effective immediately upon full execution by the signatories listed below.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the last written date below.

		10-5-06
Dennis Flaherty	Corey Brinkema	
Builders Association of the Twin Cities	Green Institute	

**MEMORANDUM OF UNDERSTANDING between  
National Association of the Remodeling Industry – Minnesota,  
Builders Association of the Twin Cities,  
And Green Institute**

**1. Introduction**

This Memorandum of Understanding ("MOU") is made between the National Association of the Remodeling Industry – Minnesota ("NARI-MN"), the Builders Association of the Twin Cities ("BATC") and The Green Institute, Inc. ("GI"). NARI-MN, BATC and GI are referred to herein as "the Parties" to this MOU.

1.1. The Parties intend by this MOU to establish a partnership to jointly develop and maintain a Green Home Building Program and Green Remodeling Program, referred to herein as "the Programs".

1.2. This MOU will address the basic relationship, roles and responsibilities of the Parties but leaves for later agreement on the more precise terms that will constitute the substance of the partnership.

**2. Purpose**

The purpose of this MOU is for the Parties to enter into a partnership to develop green homebuilding and remodeling programs to promote the use of green building practices and products in the design and construction of homes and home renovations. This will be accomplished by a cooperative effort to develop the Programs.

2.1. This MOU identifies the following objectives for the Program:

- Demonstrate that an industry-initiated voluntary program can positively affect the energy and environmental impacts of buildings and the building industry.
- Position NARI-MN & BATC and its members as leaders in the emerging green building industry.
- Utilize market influences to increase the application of green building practices and products.
- Create market distinction for remodelers and builders who implement encouraged green building practices
- Educate homeowners and homebuyers about the benefits of green building practices and products

2.2. To meet the above objectives the Parties agree to the following Program components and goals:

- *Standards:* Green building guidelines for residential remodeling, new construction, and development
- *Project Certification:* Protocol and system for voluntarily certifying building projects
- *Professional Education:* Training programs and continuing education for building professionals
- *Financial Incentives:* Work with financial institutions, utilities, and governmental organizations to develop financial incentives that recognize the Program and its Standards and Certification as a means for achieving the incentives
- *Marketing & Promotion:* Advertising and promotion, real estate broker training, public education, awards and other recognition of green builders and projects
- *Government Recognition:* Official recognition of Program Standards by interested local governments, and consideration of monetary and non-monetary incentives
- *Information Portal:* Web-based resource for general information, product directory, professional directory

2.3. The Parties hereby agree that the principles of good faith partnership and steadfast adherence to the purposes of this MOU will govern their conduct hereunder.

### 3. Responsibilities of the Parties

SEE ATTACHMENT A

### 4. Funding

The development and maintenance of the Program will require adequate on-going funding resources.

- 4.1. The Parties agree to jointly seek funding for the Program from corporations, utilities, governmental units, and private foundations and to develop earned-income sources from Program activities including project registration and education fees.
- 4.2. Unless designated to a specific program, all corporate sponsorships and other general operating funds secured by the Programs shall be used to provide sufficient administrative and other support to both the Green Remodeling and the Green Homebuilding Programs.
- 4.3. The Steering Committee, jointly formed by NARI-MN, BATC and GI, shall determine the allocation of resources across the Programs.

### 5. Agreements

In order to foster the successful completion of this MOU, the Parties agree to the following terms and conditions:

- 5.1. Each Party pledges in good faith to go forward with this MOU and to further the goals and purposes of this MOU, subject to the terms and conditions of this MOU. The Parties shall attempt to resolve disputes through good faith discussions.
- 5.2. Either Party may unilaterally withdraw at any time from this MOU by transmitting a signed writing to that effect to the other Party. This MOU and the private partnership created thereby shall be considered terminated sixty (60) days from the date the non-withdrawing Party actually receives the notice of withdrawal from the withdrawing Party.
- 5.3. By mutual agreement, which may be either formal or informal, the Parties may modify the list of intended activities set forth in the MOU determine the practical manner by which the goals, purposes and activities of this MOU will be accomplished. However, any modification to any other written part of this MOU must be made in writing and signed by both Parties or their designees.
- 5.4. Nothing in this MOU shall be construed to authorize or permit any violation of any Federal, State or local law imposed upon the Parties.
- 5.5. With the exception of the remodeling and homebuilding construction Guidelines, the intellectual property developed by the Programs shall become the shared property of BATC and NARI-MN. BATC and NARI-MN shall grant the Programs the right to use all property and materials, without cost, for purposes of advancing the Program's goals and objectives. Exception for Guidelines: the Green Remodeling Guidelines must remain in the public domain, and the Green Homebuilding Guidelines shall remain the sole property of BATC.
- 5.6. Programs logos and other brand images shall become the shared property of BATC and NARI-MN. BATC and NARI-MN shall grant the Programs the right to use all property and materials, without cost, for purposes of advancing the Program's goals and objectives. BATC and NARI-MN shall retain the right to license and charge fees for the use of such logos and other brand images by their respective members.

### 6. Primary Contacts

The Parties intend that the work under this MOU shall be carried out in the most efficient manner possible. To that end, the Parties intend to designate individuals that will serve as primary contacts between the Parties. The Parties intend that, to the maximum extent possible and unless otherwise approved by the other Party, all significant communications between the Parties shall be made through the primary contacts. The designated primary contacts for the Parties are as follows:

**NARI-MN Contact:**

Sandra Meyer  
NARI-MN  
275 Market St, C-13  
Minneapolis, MN 55405  
[sandra@narimn.org](mailto:sandra@narimn.org)  
612-332-6274

**BATC contact:**

James Vagle  
BATC  
2960 Centre Pointe Drive  
Roseville, MN 55113 USA  
[james@batc.org](mailto:james@batc.org)  
651-697-1954

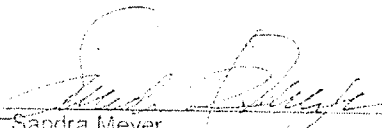
**Green Institute contact:**

Corey Brinkema  
Green Institute  
2801 21<sup>st</sup> Ave S, Ste 110  
Minneapolis, MN 55407  
[cbrinkema@greeninstitute.org](mailto:cbrinkema@greeninstitute.org)  
612-278-7113


**7. Duration and Termination**

Unless extended by a written agreement executed by both Parties, this MOU shall terminate exactly two (2) years from the date upon which this MOU becomes fully executed by all signatories listed below. The Parties, on this 13th day of April, 2007, hereby agree to the foregoing MOU, which shall be effective immediately upon full execution by the signatories listed below.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the last written date below:

  
Sandra Meyer  
National Association of the Remodeling  
Industry - Minnesota

Date

  
Michael Noonan  
Builders Association of the Twin Cities

Date

  
Corey Brinkema  
Green Institute

Date

4-13-07

April 16, 2007

