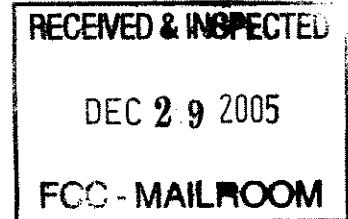


CGB-CC-0109

# CLIFFDWELLER PRODUCTIONS, LLC

3517 Calle Suenos, SE, Rio Rancho, New Mexico 87124-6713  
(505) 242.7266 - Telephone  
(505) 892.1926 - Fax



December 28, 2005

Commission's Secretary/Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Attn: CGB Room 3-B431

Re: #47 C.F. R. § 79.1 (d) and 47 C.F.R. § 79.1 (f)  
CliffDweller Productions, LLC dba HomeBuilders' Gallery Television, Petition for EXEMPTION from Closed Captioning Requirement.

To Whom it May Concern:

As owner of CliffDweller Productions, dba HomeBuilders' Gallery Television, please note our request to PETITION for EXEMPTION from CLOSED CAPTIONING requirement for our company. In our opinion, the evidence overwhelmingly shows an exemption be granted as a result of UNDUE BURDEN IMPOSED BY CAPTIONING REQUIREMENTS.

We submit the following evidence of EXEMPTION from CLOSED CAPTIONING requirements:

1. 2004 Corporate Balance Sheet and Profit and Loss Statement – Programming provided by program provider with annual gross revenues below three million dollars.
2. Statement of Business Purpose – Describes programming provided by program provider as a local advertisement for local homebuilders and homebuilding related suppliers.
3. Statement of Burden imposed by captioning requirement.

I welcome any inquiries the F.C.C. may have to help our company obtain the exemption we need to continue in business.

Sincerely,

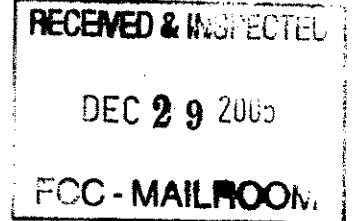


Richard D. Holcomb  
Owner

CGB-CC-0109

# CLIFFDWELLER PRODUCTIONS, LLC

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(505) 242.7266 - Telephone  
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## Statement of Burden Imposed by Captioning Requirement

As owner of this Limited Liability Corporation DBA HomeBuilders' Gallery, I do declare cause for a petition for exemption from close captioning #47 C.F. R. § 79.1 (d) and 47 C.F.R. § 79.1 (f) on the grounds of the following:

1. Our total revenue in 2004 was under \$3,000,000 as stated by the F.C.C. requirement for burden. In 2004 our gross revenues were \$777,418.63 as stated by the enclosed Balance Statement and Profit and Loss Statement for HomeBuilders' Gallery for the FYE December 31, 2004.
2. The nature of our business is LOCAL advertising. The cost to close caption the two (three in 2006) weekly ½ hour programs in our opinion puts an added cost on our service which will result in lost business.
3. The nature of the material itself being time sensitive to sales pricing and the time it takes to close caption will result in lost business.
4. The fact of these programs being aired on Sunday morning at 7:30am and 9:30am should warrant exemption.
5. The fact these programs have a short shelf life, are not repeated or scripted, and are on a local basis only in the Albuquerque/Santa Fe DMA where the clients are located should also warrant and exemption.

I swear under oath that the above statements are true.

A handwritten signature in black ink, appearing to read "Richard D. Holcomb".

Richard D. Holcomb, Owner



## Closed Captioning Compliance Statement

CliffDweller Productions, LLC, dba HomeBuilders' Gallery, certifies to KASA-TV, Albuquerque/Santa Fe, New Mexico that the broadcast by the Station of our weekly homebuilders television program(s) is exempt from the closed captioning requirements of the Federal Communications Commission (47 CFR § 79.1) under the § 79.1(d)(8) exemption for "locally produced and distributed non-news programming with no repeat value" because the weekly program, which is co-produced in cooperation with the Station:

- is not news programming;
- is of specific local interest to residents of the Station's service area;
- is not repeated or redistributed; and
- is not scripted so that electronic news room closed captioning would be unavailable.

If there is any change in the above information, we will provide immediate written notice to the Station.

CliffDweller Productions, LLC

[Richard D. Holcomb, Owner]

Dated: 12-28-05

# **CLIFFDWELLER PRODUCTIONS, LLC**

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3517 Calle Suenos, SE, Rio Rancho, New Mexico 87124-6713  
(505) 242.7266 - Telephone  
(505) 892.1926 - Fax

December 28, 2005

Office of the Secretary  
Federal Communications Commission  
Attention: CGB Room 3-B431  
445 12th Street SW  
Washington, DC 20554

## **Petition for Exemption from Closed Captioning Requirements**

### **Introduction**

CliffDweller Productions, LLC, dba HomeBuilders' Gallery, for profit company, produces a local weekly television program comprised of interview segments with local builders, suppliers and developers involved in new home construction within the greater Albuquerque/ Santa Fe metropolitan area.

This program, HomeBuilders' Gallery Television, provides valuable information to the local community on the types of new homes that are available for purchase as well as information on land development projects and suppliers who offer their goods for inclusion into a new home.

HomeBuilders' Gallery Television is two 30-minute programs, each different in content, that airs at 7:30am and 9:30am every Sunday morning on KASA Fox2 Television licensed to the Albuquerque/Santa Fe, New Mexico television market. The two programs are co-produced with KASA Fox2 and CliffDweller Productions, LLC. The program demographics are primarily people 35+ years of age who are looking for information to help them in the purchase of a new home. In February 2006, the Company plans to expand into a third :30 minute program for the resale home market. This program will also be co-produced with KASA Fox2.

For the reasons set forth below, CliffDweller Productions, LLC hereby requests an undue burden exemption from the closed captioning rules for HomeBuilders' Gallery Television, pursuant to § 79.1(f) of the Commission's rules.

### **Nature and Cost of Closed Captions**

Allied Vaughn in Wisconsin has indicated they will provide roll-up closed captioning for \$730 per 30 minutes and \$842 per 30 minutes for pop-up captioning (personal communication, account representative Joanne Edmundson, September 20, 2005). Transcription for 30 minutes is \$375 additional. Closed Caption Maker of Maryland charges \$10/minute plus \$50 plus \$2/minute for transcript, or a total of \$410 per 30 minutes. A New York company, Elrom will close caption a 30minute program of \$250 including transcription but will not accept subtitles as a substitute for closed captioning.

### **Impact on the Operation of the Program Provider**

The total cost of producing and airing the two HomeBuilders' Gallery television programs in 2004 was in excess of \$250,000, approximately 1/3<sup>rd</sup> the total revenues received from advertisers. We estimate the cost of closed captioning at approximately \$850 per program or \$1,600 per week for a total of \$83,200 per year. This does not include the 3<sup>rd</sup> program scheduled for launch in February, 2006, which would bring the annual cost to \$132,000 or increasing total cost of production and airing of the three programs to over \$400,000 per year.

Our current advertisers would find the additional cost of producing the programs too great to bare the additional costs and as such would force us to cease our business operations. Homebuilders are real estate agents normally allocate a set percentage of the cost of each home

toward advertising. This includes all in house brochures and marketing materials, yard signs, MLS listings and other forms of advertising. The increased cost of closed captioning would price our products out of the realm of what builders, suppliers and developers would consider a reasonable cost would seek other, and more reasonably priced, forms of advertising to promote their homes and services. The only means of revenue CliffDweller Productions, LLC has is the advertising revenue generated from these sponsors. The Company has no other business interests outside of this venture and would therefore be forced to cease business operations.

### **Financial Resources of the Program Provider**

KASA Fox2, while providing production assistance has indicated they are not in a position to take on the responsibility for closed captioning of the three programs and would have to pass that expense onto CliffDweller Productions, LLC, who would have to outsource closed captioning to a outside vendor since the company does not have in-house production facilities or the expertise to take on this additional burden.

### **Type of Operations of the Program Provider**

CliffDweller Productions, LLC, is a sales and marketing company engaged in the for profit business of providing alternative advertising sources for companies involved in the new home building and resale home markets. The company uses purchased television time to broadcast targeted market programs in a non-scripted interview format that gives new home builders, suppliers and developers the opportunities to showcase their homes and offer reasons why homebuyers would want to purchase a home from them. In addition, the same format is used to show and describe the services available from various suppliers who deal with a wide

variety of products including, but not limited to, window coverings and treatments, landscaping, mortgage lending, title insurance, in home sound systems, flooring and many more.

The nature of the program gives these companies the opportunity to showcase their products in a format not available anywhere else and in a format of greater length than the standard :30 second commercial.

The unscripted nature of the programs and the fact that new programs are produced each week offers a very viable alternative for showcasing these homes and products and the added burden and cost of closed captioning would eliminate this “lead source” from their marketing plans.

#### **Other factors**

Petitioner believes that the local, non-news exemption to the closed captioning rules also applies to HomeBuilders’ Gallery Television.<sup>1</sup> As noted above, the program is produced and distributed locally, and the content is of great interest to the viewing community in helping them select a builder and determine what interior and exterior furnishings would fit their new home and lifestyle. The episodes are not news, they do not have repeat value, and the electronic newsroom technique is not available. Notwithstanding the applicability of the exemption, we have filed this petition in abundance of caution and for the purpose of establishing certainty.

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<sup>1</sup> This exemption is self-implementing, and therefore Petitioner notes its applicability without expecting or requesting FCC action on it.

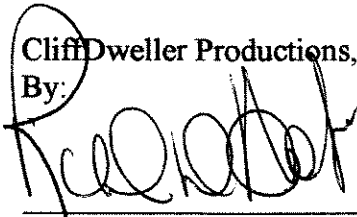
**Conclusion**

While CliffDweller Productions, LLC appreciates the intent of giving greater programming access to the hearing-impaired public, the closed caption requirement will place an undue financial burden on the company, making future programming impossible and thus depriving the general public of the valuable information provided within this unique and specialized broadcast. As shown by this Petition and its attachments, the Commission should grant a waiver of the closed captioning requirements in this case, because requiring closed captioning would create an undue burden. The costs of captioning would be excessively high and would have a significant impact on Petitioner's operations. The Petitioner's type of operations and financial resources are different in kind and magnitude from a mainstream programming provider. Because of the significant difficulty and expense of providing closed captions, a waiver under § 79.1(f) is warranted. If more information is needed, please contact me at the address provided below.

Respectfully submitted,

CliffDweller Productions, LLC

By:



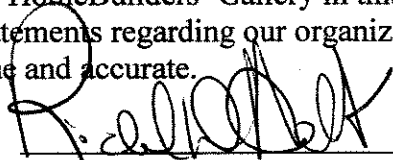
Richard D. Holcomb, Owner  
3517 Calle Suenos, SE  
Rio Rancho, NM 87124-6713  
505-242-7266

Dated: 12.25.05



**Declaration:**

I, Richard D. Holcomb, am Owner of CliffDweller Productions, LLC, dba HomeBuilders' Gallery, and I have reviewed the Petition for Exemption for Closed Captioning Requirements filed on behalf of HomeBuilders' Gallery in this matter, and, upon information and belief, believe the statements regarding our organization and HomeBuilders' Gallery Television to be true and accurate.



Richard D. Holcomb, Owner

12.28.05

Date

HomeBuilders' Gallery  
Balance Sheet  
As of December 31, 2004

	Dec 31, 04
<b>ASSETS</b>	
Current Assets	
Accounts Receivable	0.06
Accounts Receivable	0.06
Total Accounts Receivable	0.06
Other Current Assets	
Due from Member	1,500.00
Organizational Costs	5,027.71
Total Other Current Assets	6,527.71
Total Current Assets	6,527.77
Fixed Assets	
Accumulated Amortization	-2,430.06
Accumulated Depreciation	-15,209.83
Computer Software	1,874.02
Computers Equipment	10,796.93
Office Equipment	2,196.14
Vehicles	8,950.94
Total Fixed Assets	6,178.14
<b>TOTAL ASSETS</b>	<b>12,705.91</b>
<b>LIABILITIES &amp; EQUITY</b>	
Liabilities	
Current Liabilities	
Accounts Payable	-424.63
Accounts Payable	-424.63
Total Accounts Payable	-424.63
Other Current Liabilities	
Bank Overdraft	3,842.91
Payroll Liabilities	4,818.86
Sales Tax Payable	916.60
Total Other Current Liabilities	9,578.37
Total Current Liabilities	9,153.74
Total Liabilities	9,153.74
Equity	
A. Malott Equity	
Member Capital - Malott	-1,819.00
Total A. Malott Equity	-1,819.00
R. Holcomb Equity	
Member Capital - Holcomb	-10,937.86
R. Holcomb Draws	-84,000.00
Total R. Holcomb Equity	-94,937.86
Net Income	100,309.03
Total Equity	3,552.17
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>12,705.91</b>

**HomeBuilders' Gallery**  
**Profit & Loss**  
 January through December 2004

	Jan - Dec 04
<b>Ordinary Income/Expense</b>	
<b>Income</b>	
Fee Income	777,418.63
Other Income	0.00
<b>Total Income</b>	777,418.63
<b>Expense</b>	
Advertising	279,358.88
Amortization	1,005.54
<b>Automobile Expense</b>	
Automobile Loan	0.00
Parking/Tolls	89.00
Automobile Expense - Other	8,091.85
<b>Total Automobile Expense</b>	8,180.85
Bank Service Charges	941.81
Computers	
Repair & Maintenance	225.00
<b>Total Computers</b>	225.00
Contract Labor	874.93
Depreciation	9,616.60
Dues and Subscriptions	8,033.03
<b>Gifts</b>	
Charitable Contributions	140.00
Gifts - Other	5,872.96
<b>Total Gifts</b>	6,012.96
<b>Insurance</b>	
Auto	1,429.00
Health	13,296.10
Life	2,193.00
Insurance - Other	1,917.99
<b>Total Insurance</b>	18,836.09
Interest Expense	223.95
Licenses and Permits	95.50
<b>Magazine Design &amp; Production</b>	
Distribution	51,495.81
Mechanical Prep	6,273.27
Photo	174.95
Printing and Reproduction	81,551.61
Magazine Design & Production - Other	4,780.44
<b>Total Magazine Design &amp; Production</b>	144,276.08
Miscellaneous	0.00
Office Supplies	4,452.00
<b>Payroll</b>	
Commission	40,398.17
Payroll Expenses	59.97
Payroll Process Fee	0.00
Payroll Taxes	9,360.29
Salary	74,175.02
<b>Total Payroll</b>	123,993.45
Postage and Delivery	2,236.01
Professional Development	2,197.33
<b>Professional Fees</b>	
Accounting	15,032.57
Consultant	1,500.00
Legal Fees	4,256.18
<b>Total Professional Fees</b>	20,788.75
Seminars & Training	807.57

1:04 PM  
12/28/05  
Cash Basis

**HomeBuilders' Gallery**  
**Profit & Loss**  
January through December 2004

	<u>Jan - Dec 04</u>
<b>Supplies</b>	
Office	109.97
Supplies - Other	805.56
<b>Total Supplies</b>	<u>915.53</u>
<b>Taxes</b>	
Gross Receipts Tax	0.00
Workers Comp	20.30
Taxes - Other	977.00
<b>Total Taxes</b>	<u>997.30</u>
<b>Telephone</b>	5,365.39
<b>Television Production</b>	1,463.82
<b>Travel &amp; Ent</b>	
Entertainment	9,967.87
Meals	2,589.15
Travel	1,865.71
Travel & Ent - Other	5,000.00
<b>Total Travel &amp; Ent</b>	<u>19,422.73</u>
<b>Web Development</b>	
Web Sales	5,468.50
Web Development - Other	11,320.00
<b>Total Web Development</b>	<u>16,788.50</u>
<b>Total Expense</b>	<u>677,109.60</u>
<b>Net Ordinary Income</b>	<u>100,309.03</u>
<b>Net Income</b>	<u><u>100,309.03</u></u>