

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**CORRECTED COPY**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 55030 / December 29, 2006**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 2529 / December 29, 2006**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12521**

**In the Matter of**

**WHITEMARK HOMES, INC.,**  
**KENNETH L. WHITE,**  
**ROBERT B. EARLY, AND**  
**MITCHELL R. GORDON,**

**Respondents.**

**ORDER INSTITUTING CEASE-AND-DESIST**  
**PROCEEDINGS, MAKING FINDINGS, AND**  
**IMPOSING A CEASE-AND-DESIST ORDER**  
**PURSUANT TO SECTION 21C OF THE**  
**SECURITIES EXCHANGE ACT OF 1934**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Whitemark Homes, Inc. (“Whitemark”), Kenneth L. White, Robert B. Early, and Mitchell R. Gordon (collectively, “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have each submitted an Offer of Settlement (collectively, the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting

Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

### **III.**

On the basis of this Order and Respondents’ Offers, the Commission finds<sup>1</sup> that:

#### **Respondents**

1. Whitemark, a Colorado corporation based in Oveido, Florida, develops and builds residential communities. Whitemark stock is registered under Section 12(g) of the Exchange Act, and has been traded on the Over the Counter Bulletin Board since April 2001.

2. Kenneth L. White, age 57, is a resident of Winter Springs, Florida. White was the founder of Whitemark and served as its chief executive officer until July 2005. White obtained a Texas CPA license in 1975, but his license is not currently active. White sold Whitemark stock in April 2002 at a price that was inflated as a result of Whitemark’s false financial reporting as further described below.

3. Robert B. Early, age 49, is a resident of Abilene, Texas. Early served as Whitemark’s chief financial officer (“CFO”) from June 2000 until March 2002. Early has held a Texas CPA license since 1981.

4. Mitchell R. Gordon, age 39, is a resident of Orlando, Florida. Gordon served as Whitemark’s CFO from April 2002 until November 2003. Gordon has held a Maryland CPA license since 1994.

#### **Improper Consolidation**

5. In the Fall of 2001, Whitemark acquired North Florida Consulting, Inc. (“NFC”). With the acquisition of NFC, Whitemark’s reported inventory increased from approximately \$9.5 million before the acquisition to approximately \$77.1 million after the acquisition. In 2003, Whitemark and NFC settled litigation and rescinded the acquisition.

6. After it acquired NFC, Whitemark improperly consolidated the financial statements of five entities which NFC had an option to acquire. NFC did not have an ownership interest in these entities, and the options it held did not provide control of these entities’ management or direction sufficient to support consolidation under generally accepted accounting principles (“GAAP”). As a result of this improper consolidation, inventory was overstated in Whitemark’s financial statements and other information included in Whitemark’s Form 10-K for the year ended

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<sup>1</sup> The findings herein are made pursuant to Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

December 31, 2001; its Forms 8-K filed in November 2001, January 2002, and July 2002; and its Forms 10-Q for the first three quarters of 2002.

7. White, Early, and Gordon were responsible for assuring the accuracy of Whitemark's periodic and current filings during the time periods they were employed at Whitemark. Although each of them knew that Whitemark had consolidated the financial statements of entities in which Whitemark did not have any ownership interest, none of these officers took the steps necessary to assure that Whitemark's consolidation practices conformed with GAAP. Each of these officers signed filings with the Commission in which Whitemark materially overstated its inventory as a result of Whitemark's improper consolidation.

#### **Failure to Disclose and Adjust for Expired Purchase Options**

8. After it acquired NFC, Whitemark included in its reported inventory the value of certain options NFC held to purchase development properties or to purchase entities that owned development properties. Pursuant to the terms of NFC's contracts with property owners, five of these purchase options were set to expire in the first quarter of 2002.

9. The value of these options represented approximately 30% of Whitemark's reported inventory balance in its financial statements for the year ended December 31, 2001. Although Whitemark filed its Form 10-K for the year ended December 31, 2001 after the expiration of these options, Whitemark did not disclose the status of these options in its Form 10-K.

10. Whitemark failed to make the appropriate adjustments to its financial statements, including a reduction in the inventory balance and corresponding expense adjustments, when these options expired in the first quarter of 2002. As a result, Whitemark materially overstated its inventory, materially understated its associated expenses, and materially understated its net loss in its Form 10-Q for the first quarter of 2002. Whitemark also failed to disclose the expiration of these options in its first quarter 2002 Form 10-Q.

11. Whitemark continued to carry values associated with the expired purchase options in its inventory account through the second and third quarters of 2002. As a result, Whitemark materially overstated its inventory balance, materially understated its associated year-to-date expenses, and materially understated its year-to-date net losses in its Forms 10-Q filed for the second and third quarters of 2002. Whitemark also failed to disclose the expiration of these options in its Forms 10-Q for the second and third quarters of 2002.

12. White, Early, and Gordon each knew that Whitemark included in its reported inventory account the value of purchase options Whitemark had acquired at the time it acquired NFC. Although these officers were responsible for the accuracy of Whitemark's books, records, and filings with the Commission, none of them took the steps necessary to assure that Whitemark made required adjustments and included appropriate disclosures in Whitemark's filings when these purchase options expired. White and Gordon signed filings with the Commission in which Whitemark materially misstated its financial results and omitted to disclose information relating to

the status of purchase options. Early signed filings with the Commission in which Whitemark omitted to disclose information relating to the status of purchase options.

### **Improper Reallocation of the NFC Purchase Price**

13. When Whitemark acquired NFC in 2001, it allocated the price it paid to purchase NFC to the various assets it acquired based on the appraised value of each asset. Later, in its financial statements for the third quarter of 2002, Whitemark changed its method for allocating the purchase price for the NFC acquisition and instead based its allocation on the projected cash flows Whitemark expected to realize from each development project. When Whitemark reallocated the NFC purchase price, Whitemark calculated the expected future cash flows from the development projects based in part on events that occurred after the NFC acquisition.

14. Whitemark's change in method for accounting for the NFC acquisition and consideration of post-acquisition events when reallocating the NFC purchase price were improper under GAAP. In addition, Whitemark did not disclose its change in allocation method in its original and amended Forms 10-Q for the third quarter of 2002.

15. Also in the third quarter of 2002, Whitemark decided to reduce its inventory account to write off most of the value associated with two development projects for which its purchase options had expired. Whitemark wrote off values associated with these projects based on its reallocation of the NFC purchase price, and as a result reported a net loss for the quarter of approximately \$1.9 million. Had Whitemark written off the same assets without reallocating the NFC purchase price, it would have reported a net loss for the quarter of approximately \$29.9 million. Since Whitemark's reallocation of the NFC purchase price was improper, its adjustments to write off the value of these development projects were insufficient. As a result, Whitemark materially overstated its inventory, materially understated its associated expenses, and materially understated its net loss for the third quarter of 2002. Whitemark also did not disclose the impact of the reallocation on its adjustments associated with these two development projects.

16. In its original and amended Forms 10-Q for the third quarter of 2002, as in previous filings, Whitemark represented that it valued purchase options based on the excess of their fair market value over their respective option prices. In light of its new method for allocating the NFC purchase price, this statement was incorrect.

17. Gordon, in consultation with White and others, performed the reallocation of the NFC purchase price. Although White and Gordon were responsible for the accuracy of Whitemark's periodic filings, neither of these officers took the steps necessary to assure that Whitemark's reallocation of the NFC purchase price conformed with GAAP, that Whitemark made appropriate financial statement adjustments for discontinued development projects, or that Whitemark made appropriate disclosures about the reallocation and its effect. White and Gordon signed filings with the Commission in which Whitemark materially misstated its financial results and valuation methodology, and omitted to disclose information associated with the reallocation of the NFC purchase price.

### **Books, Records, and Internal Controls**

18. As described above, Whitemark improperly recorded its inventory and expenses for the year ended December 31, 2001, and for each of the first three quarters of 2002. Therefore, its books, records and accounts did not, in reasonable detail, accurately and fairly reflect its transactions and dispositions of assets. White, Early, and Gordon were responsible for Whitemark's books, records, and accounts but failed to take the steps necessary to assure their accuracy.

19. Whitemark failed to implement internal accounting controls relating to its inventory, expenses, and net income which were sufficient to provide reasonable assurances that its accounts were accurately stated in conformity with GAAP. White, Early, and Gordon were responsible for Whitemark's internal accounting controls but failed to take the steps necessary to assure their sufficiency.

### **Violations**

20. As a result of the conduct described above, Whitemark violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, which require an issuer to file annual, current, and quarterly reports that are accurate and that contain such further material information as may be necessary to make the required statements, in light of the circumstances under which they were made, not misleading. Due to acts or omissions they knew or should have known would contribute to such violations during their respective tenures at Whitemark, White was a cause of Whitemark's violations of each of these provisions; Early was a cause of Whitemark's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-11 thereunder; and Gordon was a cause of Whitemark's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-11, and 13a-13 thereunder.

21. As a result of the conduct described above, Whitemark violated Section 13(b)(2)(A) of the Exchange Act and Rule 13b2-1 thereunder, which require reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets, and prohibit persons from directly or indirectly falsifying or causing to be falsified any book, record, or account. White and Gordon each were a cause of Whitemark's violations of Section 13(b)(2)(A) of the Exchange Act and Rule 13b2-1 thereunder, and Early was a cause of Whitemark's violations of Section 13(b)(2)(A) of the Exchange Act, due to acts or omissions they knew or should have known would contribute to such violations.

22. As a result of the conduct described above, Whitemark violated Section 13(b)(2)(B) of the Exchange Act, which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP. White, Early, and Gordon each were a cause of Whitemark's violations of Section 13(b)(2)(B) of the Exchange Act due to acts or omissions they knew or should have known would contribute to such violations.

#### IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Respondent Whitemark cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, 13a-13, and 13b2-1 thereunder.

B. Respondent White cease and desist from causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, and cease and desist from committing or causing any violations and any future violations of Rule 13b2-1 under the Exchange Act.

C. Respondent Early cease and desist from causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-11 thereunder.

D. Respondent Gordon cease and desist from causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-11, and 13a-13 thereunder, and cease and desist from committing or causing any violations and any future violations of Rule 13b2-1 under the Exchange Act.

E. IT IS FURTHERED ORDERED that Respondent White shall, within thirty days of the entry of this Order, pay disgorgement in the amount of \$31,180 and prejudgment interest in the amount of \$5,374 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies Kenneth L. White as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Laura M. Metcalfe, Assistant Regional Director, Securities and Exchange Commission, 1801 California St., Ste. 1500, Denver, Colorado 80202.

By the Commission.

Nancy M. Morris  
Secretary