

)	
In re:)	Chapter 11
)	
BUILDING MATERIALS HOLDINGS)	Case No. 09-12074 (KJC)
CORPORATION, et al.,)	Jointly Administered
)	
Debtors.)	Objection Deadline: May 12, 2010 @ 4:00 p.m.
)	Hearing Date: May 19, 2010 @ 11:30 a.m.

KB HOME Phoenix, Inc., (“KB Home”) hereby moves (the “Motion”) this Court for an order granting relief from the automatic bankruptcy stay so that it may proceed *only* against the available insurance assets of SelectBuild Arizona, LLC, (“SelectBuild Arizona”) f/k/a BBP Concrete Co.; SelectBuild Construction Co., (“SelectBuild Construction”) a/k/a BBP Concrete Co.; SelectBuild Construction Co., a/k/a BBP Concrete Co. (collectively “BBP”); and SelectBuild Nevada, LLC, (“SelectBuild Nevada”) f/k/a Knipp Brothers, Inc. (“Knipp Brothers”), pursuant to 11 U.S.C. § 362. In support of this Motion, KB Home avers as follows:

1. On June 16, 2009, SelectBuild Arizona, SelectBuild Construction, and SelectBuild Nevada each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). In each case an Order was entered directing joint administration with the above-captioned case.

2. KB Home is a creditor of SelectBuild Arizona, SelectBuild Construction, and SelectBuild Nevada and, therefore, qualifies as a party in interest in this case.

3. In SK Ranch Homeowners Association v. KB HOME Phoenix, Inc., Case No.

CV2005-00663, in the Pinal County Superior Court of the State of Arizona, KB Home had filed a Third-Party Complaint against SelectBuild, alleging negligence, breach of contract, breach of express and implied warranties, implied indemnity, express indemnity, declaratory relief re duty to defend, declaratory relief re duty to indemnify, declaratory relief re contractual duties, and breach of contract–additional insurance. A true and correct copy of the Complaint is attached as Exhibit “A.”

4. In KB HOME Phoenix, Inc. v. Construction Inspection & Testing Company, Case No. CV2007-005386, in the Maricopa County Superior Court of the State of Arizona, KB Home had filed an Amended Complaint against SelectBuild Construction, alleging negligence, breach of contract, breach of express and implied warranties, implied indemnity, express indemnity, declaratory relief re duty to indemnify, declaratory relief re contractual duties, and breach of contract–additional insurance. A true and correct copy of the Complaint is attached as Exhibit “B.”

5. In Danett M. Aguilar v. KB HOME Phoenix, Inc., Case No. CV2009-016814, in the Maricopa County Superior Court of the State of Arizona, KB Home had filed a Third-Party Complaint against SelectBuild Arizona and SelectBuild Nevada, alleging negligence, breach of contract, breach of express and implied warranties, implied indemnity, express indemnity, declaratory relief re duty to defend, declaratory relief re duty to indemnify, declaratory relief re contractual duties, and breach of contract–additional insurance. A true and correct copy of the Complaint is attached as Exhibit “C.”

6. In Suzanne Tracy v. KB HOME Phoenix, Inc., Case No. CV2009-019438, in the Maricopa County Superior Court of the State of Arizona, KB Home had filed a Third-Party Complaint against SelectBuild Arizona, alleging negligence, breach of contract, breach of express and implied warranties, implied indemnity, express indemnity, declaratory relief re duty to defend,

declaratory relief re duty to indemnify, declaratory relief re contractual duties, and breach of contract—additional insurance. A true and correct copy of the Complaint is attached as Exhibit “D.”

7. KB Home seeks recovery from SelectBuild Arizona, SelectBuild Construction, and SelectBuild Nevada for indemnification and payment of the total amount of any judgment rendered against KB Home based upon the Complaint, together with KB Home’s attorneys’ fees, expenses and costs of suit incurred in defending the state court litigation. Additionally, KB Home seeks recovery for any and all attorneys’ fees, experts’ fees, costs and discovery expenses incurred by KB Home in its defense of the state court litigation and in its pursuit of the Amended Complaint and Third-Party Complaints.

8. SelectBuild Arizona, SelectBuild Construction, and SelectBuild Nevada are insured under one or more general liability and excess liability insurance policies (“Insurance Policies”) and KB Home’s claims can or have been tendered under those Insurance Policies.

9. The Insurance Policies were issued by National Union Fire Insurance, CNA Insurance, American Guarantee & Liability Insurance, Federated Insurance, Steadfast Insurance Co., and American Safety Insurance. A matrix for each state court lawsuit is attached as Exhibit “E.”

10. Upon information and belief KB Home states that said insurance policies provide that insolvency or bankruptcy of SelectBuild Arizona, SelectBuild Construction, and SelectBuild Nevada shall not release the insurance company from the payment of damages for injuries sustained during the term within the area of coverage of said policies.

11. Upon information and belief KB Home states that the insurance policies at issue are not required or otherwise necessary to SelectBuild Arizona, SelectBuild Construction, and SelectBuild Nevada for an effective debt liquidation under chapter 11 of the Bankruptcy Code.

12. Upon information and belief KB Home states that its pending state court lawsuits

against SelectBuild Arizona, SelectBuild Construction, and SelectBuild Nevada will be defended at no expense to SelectBuild Arizona, SelectBuild Construction, and SelectBuild Nevada.

13. If KB Home is not permitted to pursue its interests in the insurance policies, then KB Home will suffer irreparable injury, loss and damage.

14. No issues of federal or bankruptcy laws are involved in the pending state court litigation, only questions of Arizona state law.

RELIEF REQUESTED

15. KB Home seeks a modification of the automatic stay imposed by Bankruptcy Code section 362 for the limited purpose of allowing KB Home to pursue its claims for indemnification and damages against SelectBuild Arizona's, SelectBuild Construction's, and SelectBuild Nevada's Insurance Policies.

16. KB Home agrees not to proceed against SelectBuild Arizona's, SelectBuild Construction's, and SelectBuild Nevada's bankruptcy estates in the event of judgment against SelectBuild Arizona, SelectBuild Construction, and SelectBuild Nevada in the state court lawsuits in excess of SelectBuild Arizona's, SelectBuild Construction's, and SelectBuild Nevada's insurance coverage.

17. Should SelectBuild Arizona, SelectBuild Construction, and SelectBuild Nevada be found liable for KB Home's damages in the state court litigation, to the extent that SelectBuild Arizona's, SelectBuild Construction's, and SelectBuild Nevada's insurance coverage does not satisfy such liability, KB Home agrees to waive its right to satisfaction of its claim and participation in any distribution of assets of SelectBuild Arizona's, SelectBuild Construction's, and SelectBuild Nevada's estate.

BASIS FOR RELIEF REQUESTED

18. The purpose of the automatic stay is “to prevent certain creditors from gaining a preference for their claims against the debtor; to forestall the depletion of the debtor’s assets due to legal costs in defending proceedings against it; and, in general, to avoid interference with the orderly liquidation or rehabilitation of the debtor.” St. Croix Condominium Owners v. St. Croix Hotel, 682 F.2d 446, 448 (3d Cir. 1982). However, the automatic stay is not meant to be absolute, and in appropriate instances relief may be granted. Wedgewood Inv. Fund, Ltd. v. Wedgewood Realty Group, Ltd. (In re Wedgewood), 878 F.2d 693, 697 (3d Cir. 1989).

19. Section 362(d)(1) of the Bankruptcy Code provides that “[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay – (1) for cause, including the lack of adequate protection of an interest in property of such party in interest” “Cause[, as defined in section 362(d)(1),] is a flexible concept and courts often conduct a fact intensive, case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the [automatic] stay.” In re The SCO Group, Inc., 395 B.R. 852, 856 (Bankr. D. Del. 2007) (internal citations omitted). This Court utilizes the following “three-prong balancing test to determine whether to grant relief from the stay: (1) whether any great prejudice to either the bankrupt estate or the debtor will result from continuation of the civil suit; (2) whether the hardship to the non-bankrupt party by maintenance of the stay considerably outweighs the hardship to the debtor; and (3) the probability of the creditor prevailing on the merits.” Id. at 857; Izzarelli v. Rexene (In re Rexene Prods. Co.), 141 B.R. 574, 576 (Bankr. D. Del. 1992). In particular, this Court confirmed that the legislative intent of section 362(d)(1) was to emphasize the “importance of allowing a case to continue in the original tribunal so long as there

is no prejudice to the estate.” Id.

20. Here, application of the Court’s balancing test favors granting KB Home relief from the automatic stay for three reasons. First, there will be no great prejudice to SelectBuild Arizona, SelectBuild Construction, and SelectBuild Nevada or SelectBuild Arizona's, SelectBuild Construction's, and SelectBuild Nevada's bankruptcy estates because KB Home agrees not to proceed against either SelectBuild Arizona, SelectBuild Construction, and SelectBuild Nevada or their estate in excess of SelectBuild Arizona's, SelectBuild Construction's, and SelectBuild Nevada's insurance coverage. In addition, to the extent that SelectBuild Arizona's, SelectBuild Construction's, and SelectBuild Nevada's insurance coverage does not satisfy such liability of SelectBuild Arizona, SelectBuild Construction, and SelectBuild Nevada, if any, KB Home agrees to waive its right to satisfaction of its claim and participation in any distribution of assets of SelectBuild Arizona's, SelectBuild Construction's, and SelectBuild Nevada's estates. Secondly, KB Home will suffer considerable hardship if the stay is not lifted because it will not be able to continue prosecution of its Amended Complaint and Third-Party Complaints and will be left to defend itself without the benefit of its additional insured status under SelectBuild Arizona's, SelectBuild Construction's, and SelectBuild Nevada's insurance policies. Thirdly, the likelihood of KB Home prevailing on the merits is extremely high because SelectBuild Arizona's, SelectBuild Construction's, and SelectBuild Nevada's obligations to defend, indemnify and name KB Home as an additional insured were agreed to and formalized by written contract, to which SelectBuild Arizona, SelectBuild Construction, and SelectBuild Nevada have never objected. Therefore, relief from the automatic stay should be granted.

WHEREFORE, KB HOME Phoenix, Inc., respectfully requests:

1. That the automatic stay imposed pursuant to 11 U.S.C. § 362 is hereby modified and

lifted to permit KB HOME Phoenix, Inc., to proceed with prosecution of its Amended Complaint and Third Party Complaints (the "Actions") against: SelectBuild Arizona, LLC, f/k/a BBP Concrete Co.; SelectBuild Construction Co., a/k/a BBP Concrete Co.; SelectBuild Construction Co., a/k/a BBP Concrete Co.; and SelectBuild Nevada, LLC, f/k/a Knipp Brothers, Inc., pursuant to 11 U.S.C. § 362, and others.

2. That KB HOME Phoenix, Inc., is hereby allowed to assert its claims against the Insurance Policies of BBP and Knipp Brothers. If any action by Claimant in prosecuting and/or settling the Actions causes an insurer to have a claim against any of the Debtors on account of any deductible and/or self-insured retention under the liability insurance policies (including, but not limited to, with respect to defense costs), KB HOME Phoenix, Inc., shall (i) negotiate, pay, or otherwise satisfy, such deductible and/or self-insured retention directly to the applicable insurer, or (ii) choose to withdraw all or a portion of its claim.

3. That in the event KB HOME Phoenix, Inc., obtains a judgment against BBP and Knipp Brothers or otherwise resolves the Actions, KB HOME Phoenix, Inc., may receive BBP's and Knipp Brothers' insurance policy proceeds without any further approval by this Court; and

4. For such other and further relief as the Court may deem proper, just and equitable.

BODELL, BOVÉ, GRACE & VAN HORN, P.C.

/s/ Bruce W. McCullough
Bruce W. McCullough (Del. ID 3112)
1225 N. King Street, Suite 1100
P.O. Box 397
Wilmington, DE 19899-0397
Phone: 302-655-6749
Fax: 302-655-6827
Email: bmccullough@bodellbove.com

and

LORBER, GREENFIELD & POLITO, LLP

Danielle M. Gross (Ariz. Bar No. 023238)

8222 South 48th Street, Suite 230

Phoenix, AZ 85044

Phone: 602-437-4177

Fax: 602-437-4180

Attorneys for KB HOME Phoenix, Inc.

Dated: April 14, 2010

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
)	
BUILDING MATERIALS HOLDINGS	)	Case No. 09-12074 (KJC)
CORPORATION, et al.,	)	Jointly Administered
)	
Debtors.	)	Objection Deadline: May 12, 2010 @ 4:00 p.m.
	)	Hearing Date: May 19, 2010 @ 11:30 a.m.

**NOTICE OF MOTION OF KB HOME PHOENIX, INC.,
FOR RELIEF FROM THE AUTOMATIC STAY**

PLEASE TAKE NOTICE that on April 14, 2010, KB HOME Phoenix, Inc., (“KB Home”) filed the Motion of KB HOME Phoenix, Inc., for Relief from the Automatic Stay (the “Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that any party wishing to oppose the entry of an order approving the Motion must file a response or an objection to the Motion (“Objection”) with the Court **ON OR BEFORE MAY 12, 2010, AT 4:00 P.M. (EDT)** (the “Objection Date”). At the same time, you must serve such Objection upon the undersigned counsel so as to be received by the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON MAY 19, 2010, AT 11:30 A.M. (EDT) BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM #5, WILMINGTON, DELAWARE 19801. ONLY PARTIES WHO HAVE FILED A TIMELY OBJECTION WILL BE HEARD AT THE HEARING.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT
MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE
OR HEARING.

BODELL, BOVÉ, GRACE & VAN HORN, P.C.

/s/ Bruce W. McCullough
Bruce W. McCullough (Del. ID 3112)
1225 N. King Street, Suite 1100
P.O. Box 397
Wilmington, DE 19899-0397
Phone: 302-655-6749
Fax: 302-655-6827
Email: bmccullough@bodellbove.com

and

LORBER, GREENFIELD & POLITO, LLP

Danielle M. Gross (Ariz. Bar No. 023238)
8222 South 48th Street, Suite 230
Phoenix, AZ 85044
Phone: 602-437-4177
Fax: 602-437-4180
Attorneys for KB HOME Phoenix, Inc.

Dated: April 14, 2010

)	Chapter 11
In re:)	
)	
BUILDING MATERIALS HOLDINGS)	Case No. 09-12074 (KJC)
CORPORATION, et al.,)	Jointly Administered
)	
Debtors.)	Ref. Dkt. No. _____
)	

Upon consideration of the Motion of KB HOME Phoenix, Inc., for Relief from the Automatic Stay (the “Motion”), and it appearing that due and adequate notice was provided, and after due consideration of the Motion and any responses thereto;

1. The Motion is **GRANTED**.

2. The automatic stay imposed pursuant to 11 U.S.C. § 362 is hereby modified and lifted to permit KB HOME Phoenix, Inc., to proceed with prosecution of its Amended Complaint and Third Party Complaints (the “Actions”) against: SelectBuild Arizona, LLC, f/k/a BBP Concrete Co.; SelectBuild Construction Co., a/k/a BBP Concrete Co.; SelectBuild Construction Co., a/k/a BBP Concrete Co. (“BBP”); and SelectBuild Nevada, LLC, f/k/a Knipp Brothers, Inc. (“Knipp Brothers”), pursuant to 11 U.S.C. § 362, and others;

3. KB HOME Phoenix, Inc., is hereby allowed to assert its claims against the liability insurance policies of BBP and Knipp Brothers. If any action by Claimant in prosecuting and/or settling the Actions causes an insurer to have a claim against any of the Debtors on account of any deductible and/or self-insured retention under the liability insurance policies (including, but not

limited to, with respect to defense costs), KB HOME Phoenix, Inc., shall (I) negotiate, pay, or otherwise satisfy, such deductible and/or self-insured retention directly to the applicable insurer, or (ii) choose to withdraw all or a portion of its claim.

4. In the event KB HOME Phoenix, Inc., obtains a judgment against BBP and Knipp Brothers or otherwise resolves the Actions, KB HOME Phoenix, Inc., may receive BBP's and Knipp Brothers' insurance policy proceeds without any further approval by this Court; and,

5. This Order shall be effective immediately.

BY THE COURT:

Wilmington, Delaware

Dated: _____

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

_____)	
In re:	)	Chapter 11
)	
BUILDING MATERIALS HOLDINGS	)	Case No. 09-12074 (KJC)
CORPORATION, et al.,	)	Jointly Administered
)	
Debtors.	)	Objection Deadline: May 12, 2010 @ 4:00 p.m.
_____	)	Hearing Date: May 19, 2010 @ 11:30 a.m.

CERTIFICATE OF SERVICE

I, BRUCE W. McCULLOUGH, hereby certify that on this date a copy of the foregoing Motion of KB HOME Phoenix, Inc., for Relief from the Automatic Stay was served, via first class mail, on the following:

SEE ATTACHED SERVICE LIST

BODELL, BOVÉ, GRACE & VAN HORN, P.C.

/s/ Bruce W. McCullough
Bruce W. McCullough (Del. ID 3112)

Date: April 14, 2010

BUILDING MATERIALS HOLDING CORPORATION

2002 SERVICE LIST

4/13/2010

David G. Aelvoet, Esq.
Linebarger Goggan Blair & Sampson LLP
Travis Building, 711 Navarro, Suite 300
San Antonio, TX 78205
(Counsel to Bexar County)

Christopher M. Alston, Esq.
Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101
(Counsel to JELD-WEN, inc.)

Sanjay Bhatnagar, Esq.
Cole, Schotz, Meisel, Forman & Leonard, P.A.
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801
(Counsel to CNH Capital America, LLC)

Brian W. Bisignani, Esq.
Post & Schell, P.C.
17 North 2nd Street, 12th Floor
Harrisburg, PA 17101-1601
(Counsel to Aon Consulting)

Robert McL. Boote, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
(Counsel to Westchester Fire Insurance
Company and ACE USA)

David Boyle
Airgas, Inc.
259 Radnor-Chester Road, Suite 100
P.O. Box 6675
Radnor, PA 19087-8675

Barbara L. Caldwell, Esq.
Aiken Schenk Hawkins & Ricciardi P.C.
4742 North 24th Street, Suite 100
Phoenix, AZ 85016
(Counsel to Maricopa County)

Andrew Cardonick, Esq.
Greenberg Traurig, LLP
77 West Wacker Drive, Suite 3100
Chicago, IL 60601
(Counsel to Grace Bay Holdings, II, LLC)

Craig W. Carlson, Esq.
The Carlson Law Firm, P.C.
P.O. Box 10520
Killeen, TX 76547-0520
(Counsel to Juanita Stace)

Scott T. Citek, Esq.
Lamm & Smith, P.C.
3730 Kirby Drive, Suite 650
Houston, TX 77098
(Counsel to Bay Oil Company)

Theodore A. Cohen, Esq.
Sheppard, Mullin, Richter & Hampton, LLP
333 South Hope Street, 48th Floor
Los Angeles, CA 90071
(Counsel to Southwest Management, Inc.)

David V. Cooke, Esq.
Assistant City Attorney - Municipal Operations
201 West Colfax Avenue, Dept. 1207
Denver, CO 80202-5332
(Counsel to the City and County of Denver)

Scott D. Cousins, Esq.
Dennis A. Melero, Esq.
Greenberg Traurig, LLP
1007 North Orange Street, Suite 1200
Wilmington, DE 19801
(Counsel to Grace Bay Holdings, II, LLC)

David N. Crapo, Esq.
Gibbons P.C.
One Gateway Center
Newark, NJ 07102-5310
(Counsel to Southwest Management, Inc.)

Raniero D. D'Aversa, Jr., Esq.
Laura D. Metzger, Esq.
Weston T. Eguchi, Esq.
Orrick, Herrington & Sutcliffe LLP
666 Fifth Avenue
New York, NY 10103-0001
(Counsel to Rabobank International)

Tobey M. Daluz, Esq.
Joshua E. Zugerman, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
919 North Market Street, 12th Floor
Wilmington, DE 19801
(Counsel to Westchester Fire Insurance
Company and ACE USA)

Robert J. Dehney, Esq.
Morris Nichols Arsht & Tunnell LLP
1201 North Market Street, 18th Floor
P.O. Box 1347
Wilmington, DE 19899-1347
(Counsel to D.R. Horton, Inc.)

John P. Dillman, Esq.
Linebarger Goggan Blair & Sampson LLP
P.O. Box 3064
Houston, TX 77253-3064
(Counsel to Cypress-Fairbanks ISD, Fort Bend
County, and Harris County)

Mark W. Eckard, Esq.
Reed Smith LLP
1201 North Market Street, Suite 1500
Wilmington, DE 19801
(Counsel to CIT Technology Financing
Services, Inc.)

William R. Firth, III, Esq.
Gibbons P.C.
1000 North West Street, Suite 1200
Wilmington, DE 19801
(Counsel to Southwest Management, Inc.)

Kevin B. Fisher, Esq.
Seth Mennillo, Esq.
Paul, Hastings, Janofsky & Walker LLP
55 Second Street, 24th Floor
San Francisco, CA 94105
(Counsel to Wells Fargo Bank, N.A.)

John M. Flynn, Esq.
Carruthers & Roth, P.A.
235 North Edgeworth Street
P.O. Box 540
Greensboro, NC 27401
(Counsel to Arrowood Indemnity Company)

Christopher J. Giaimo, Jr., Esq.
Katie A. Lane, Esq.
Arent Fox LLP
1050 Connecticut Avenue, NW
Washington, DC 20036-5339
(Counsel to the Official Committee of
Unsecured Creditors)

Adam C. Harris, Esq.
David J. Karp, Esq.
Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
(Counsel to DK Acquisition Partners, L.P.)

Paul N. Heath, Esq.
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801
(Counsel to Wells Fargo Bank, N.A.)

David G. Hellmuth, Esq.
Hellmuth & Johnson, PLLC
10400 Viking Drive, Suite 500
Eden Prairie, MN 55344
(Counsel to FCA Construction Company, LLC)

Melody C. Hogston
Royal Mouldings Limited
P.O. Box 610
Marion, VA 24354

Eric H. Holder, Jr., Esq.
U. S. Attorney General
Department of Justice - Commercial Litigation Branch
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

James E. Huggett, Esq.
Amy D. Brown, Esq.
Margolis Edelstein
750 Shipyard Drive, Suite 102
Wilmington, DE 19801
(Counsel to Eduardo Acevedo, et al.)

IKON Financial Services
Attn: Bankruptcy Administration
1738 Bass Road
P.O. Box 13708
Macon, GA 31208-3708

Internal Revenue Service
Attn: Insolvency Section
11601 Roosevelt Blvd., Mail Drop N781
P.O. Box 21126
Philadelphia, PA 19114

Thomas W. Isaac, Esq.
Dietrich, Glasrud, Mallek & Aune
5250 North Palm Avenue, Suite 402
Fresno, CA 93704
(Counsel to Wilson Homes, Inc.)

Neal Jacobson, Esq.
Senior Trial Counsel
Securities and Exchange Commission
3 World Financial Center, Suite 400
New York, NY 10281

Michael J. Joyce, Esq.
Cross & Simon, LLC
913 North Market Street, 11th Floor
Wilmington, DE 19801
(Counsel to Arrowood Indemnity Company)

Thomas L. Kent, Esq.
Paul, Hastings, Janofsky & Walker LLP
75 East 55th Street, 1st Floor
New York, NY 10022
(Counsel to Wells Fargo Bank)

Gary H. Leibowitz, Esq.
Cole, Schotz, Meisel, Forman & Leonard, P.A.
300 East Lombard Street, Suite 2600
Baltimore, MD 21202
(Counsel to CNH Capital America, LLC)

Louisiana-Pacific Corporation
Attn: Bruce J. Iddings
P.O. Box 4000-98
Hayden Lake, ID 83835-4000
(Top 50)

Cliff W. Marcek, Esq.
Cliff W. Marcek, P.C.
700 South Third Street
Las Vegas, NV 89101
(Counsel to Edward and Gladys Weisgerber)

Dan McAllister
San Diego County Treasurer-Tax Collector,
Bankruptcy Desk
1600 Pacific Highway, Room 162
San Diego, CA 92101

David B. McCall, Esq.
Gay, McCall, Issacks, Gordon & Roberts, P.C.
777 East 15th Street
Plano, TX 75074
(Counsel to the Collin County Tax Assessor/Collector)

Frank F. McGinn, Esq.
Bartlett Hackett Feinberg, P.C.
155 Federal Street, 9th Floor
Boston, MA 02110
(Counsel to Iron Mountain Information
Management, Inc.)

Joseph J. McMahon, Jr., Esq.
Office of the United States Trustee
844 King Street, Suite 2207
Lock Box 35
Wilmington, DE 19801

Joseph McMillen
Midlands Claim Administrators, Inc.
3503 N.W. 63rd Street, Suite 204
P.O. Box 23198
Oklahoma, OK 73123

Kathleen M. Miller, Esq.
Smith, Katzenstein & Furlow LLP
800 Delaware Avenue, 7th Floor
P.O. Box 410
Wilmington, DE 19801
(Counsel to Airgas, Inc.)

Sheryl L. Moreau, Esq.
Missouri Department of Revenue - Bankruptcy Unit
P.O. Box 475
Jefferson City, MO 65105-0475

Charles J. Pignuolo, Esq.
Devlin & Pignuolo, P.C.
1800 Bering Drive, Suite 310
Houston, TX 77057
(Counsel to Partners in Building, L.P.)

Margery N. Reed, Esq.
Wendy M. Simkulak, Esq.
Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196
(Counsel to ACE Companies)

Michael Reed, Esq.
McCreary, Veselka, Bragg & Allen, P.C.
P.O. Box 1269
Round Rock, TX 78680
(Counsel to Local Texas Taxing Authorities)

Jonathan Lee Riches
Federal Medical Center
P.O. Box 14500
Lexington, KY 40512

Debra A. Riley, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor
San Diego, CA 92101
(Counsel to D.R. Horton, Inc.)

Randall A. Rios, Esq.
Timothy A. Million, Esq.
Munsch Hardt Kopf & Harr, PC
700 Louisiana, 46th Floor
Houston, TX 77002
(Counsel to Cedar Creek Lumber, Inc.)

Martha E. Romero, Esq.
Romero Law Firm
6516 Bright Avenue
Whittier, CA 90601
(Counsel to Yuba County and San Bernardino County)

George Rosenberg, Esq.
Assistant Arapahoe County Attorney
5334 South Prince Street
Littleton, CO 80166
(Counsel to Arapahoe County Treasurer)

Howard C. Rubin, Esq.
Kessler & Collins, P.C.
2100 Ross Avenue, Suite 750
Dallas, TX 75201
(Counsel to CRP Holdings B, L.P.)

Bradford J. Sandler, Esq.
Jennifer R. Hoover, Esq.
Jennifer E. Smith, Esq.
Benesch, Friedlander, Coplan & Aronoff LLP
222 Delaware Avenue, Suite 801
Wilmington, DE 19801
(Counsel to the Official Committee of
Unsecured Creditors)

Secretary of State
Franchise Tax
Division of Corporations
P.O. Box 7040
Dover, DE 19903

Secretary of Treasury
Attn: Officer, Managing Agent or General Agent
P.O. Box 7040
Dover, DE 19903

Securities & Exchange Commission
Attn: Christopher Cox
100 F Street, NE
Washington, DC 20549

Securities & Exchange Commission
Bankruptcy Unit
Attn: Michael A. Berman, Esq.
450 Fifth Street NW
Washington, DC 20549

Ellen W. Slights, Esq.
Assistant United States Attorney
U.S. Attorney's Office
1007 Orange Street, Suite 700
P.O. Box 2046
Wilmington, DE 19899

Tennessee Department of Revenue
c/o Tennessee Attorney General's Office,
Bankruptcy Division
P.O. Box 20207
Nashville, TN 37202-0207

Kimberly Walsh, Esq.
Assistant Attorney General
Texas Comptroller of Public Accounts,
Bankruptcy & Collections Division
P.O. Box 12548
Austin, TX 78711-2548

Christopher A. Ward, Esq.
Shanti M. Katona, Esq.
Polsinelli Shughart PC
222 Delaware Avenue, Suite 1101
Wilmington, DE 19801
(Counsel to SunTrust Bank)

Paul M. Weiser, Esq.
Buchalter Nemer
16435 North Scottsdale Road, Suite 440
Scottsdale, AZ 85254-1754
(Counsel to Elwood HA, L.L.C.)

Elizabeth Weller, Esq.
Linebarger Goggan Blair & Sampson LLP
2323 Bryan Street, Suite 1600
Dallas, TX 75201
(Counsel to Dallas County and Tarrant County)

Duane D. Werb, Esq.
Julia B. Klein, Esq.
Werb & Sullivan
300 Delaware Avenue, Suite 1300
Wilmington, DE 19801
(Counsel to CRP Holdings B, L.P.)

Joanne B. Wills, Esq.
Sally E. Veghte, Esq.
Klehr, Harrison, Harvey, Branzburg & Ellers LLP
919 Market Street, Suite 1000
Wilmington, DE 19801
(Counsel to Rabobank International)

Jennifer St. John Yount, Esq.
Jennifer B. Hildebrandt, Esq.
Paul, Hastings, Janofsky & Walker, LLP
515 South Flower Street, Twenty-Fifth Floor
Los Angeles, CA 90071
(Counsel to Wells Fargo Foothill, LLC)

Sean M. Beach, Esq.
Donald J. Bowman, Jr., Esq.
Robert F. Poppiti, Jr., Esq.
Young Conaway Stargatt & Taylor, LLP
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, DE 19899-0391
(Counsel to the Reorganized Debtors)

Michael A. Rosenthal, Esq.
Matthew K. Kelsey, Esq.
Saeed M. Muzumdar, Esq.
Gibson, Dunn & Crutcher LLP
200 Park Avenue, 47th Floor
New York, NY 10166-0193
(Counsel to the Reorganized Debtors)

Aaron G. York, Esq.
Jeremy L. Graves, Esq.
Gibson, Dunn & Crutcher LLP
2100 McKinney Avenue, Suite 1100
Dallas, TX 75201-6911
(Counsel to the Reorganized Debtors)

EXHIBIT A

1 LORBER, GREENFIELD & POLITO, LLP
2 Holly P. Davies, Esq. [S.B. #018308]
3 Shane D. McFetridge, Esq. [S.B. #024860]
4 8222 S. 48th Street, Suite 230
5 Phoenix, Arizona 85044
6 TEL: (602) 437-4177
7 FAX: (602) 437-4180
8 hdavies@lorberlaw.com
9 smcfetridge@lorberlaw.com

10 Attorneys for Defendant/Third-Party Plaintiff KB HOME Phoenix Inc.

11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

12 IN AND FOR THE COUNTY OF PINAL

13 SK RANCH HOMEOWNERS
14 ASSOCIATION, an Arizona corporation,

15 Plaintiff,

16 v.

17 KB HOME PHOENIX INC., an Arizona
18 corporation, and DOES 1 through 200,
19 inclusive,

20 Defendant.

21 KB HOME PHOENIX INC., f.k.a.
22 Kaufman and Broad of Arizona, Inc., an
23 Arizona Corporation,

24 Third-Party Plaintiff,

25 v.

26 SELECT BUILD, a.k.a. B.B.P.
27 CONSTRUCTION COMPANY, a.k.a.
28 B.B.P. CONCRETE COMPANY, INC.;
GOthic LANDSCAPING, INC.; AND
WHEELER CONSTRUCTION, INC.;
ROES 1-100; AND MOES 1-100,

Third-Party Defendants

CASE NO. CV2005 00663

DEFENDANT KB HOME
PHOENIX INC.'S THIRD-PARTY
COMPLAINT

1. Negligence
2. Breach of Contract
3. Breach of Express and Implied Warranties
4. Implied Indemnity
5. Express Indemnity
6. Declaratory Relief Re: Duty to Defend
7. Declaratory Relief Re: Duty to Indemnify
8. Declaratory Relief Re: Contractual Duties
9. Breach of Contract - Additional Insurance

(Assigned to the Honorable Kevin D. White)

For its Third-Party Complaint against all named Third-Party Defendants, Defendant/Third-Party Plaintiff KB HOME Phoenix Inc., (hereafter "Third-Party Plaintiff"), alleges as follows:

GENERAL ALLEGATIONS

1
2 1. At all times herein mentioned, Third-Party Plaintiff KB HOME Phoenix Inc.,
3 f.k.a. Kaufman and Broad of Arizona, Inc., is and was an Arizona Corporation duly organized
4 and existing under and by virtue of the laws of the State of Arizona, and doing business in the
5 County of Pinal, State of Arizona. Third-Party Plaintiff served as the owner and developer of
6 a residential subdivision commonly known as SK Ranch, located in Casa Grande, Arizona
7 (hereinafter "the Project").

8 2. At all times herein mentioned, Third-Party Defendant Select Build, a.k.a. B.B.P.
9 Construction Company, a.k.a. B.B.P. Concrete Company, Inc., upon information and belief, is
10 and was an Arizona corporation, authorized and licensed to do business, and doing business, in
11 Pinal County and the State of Arizona. The scope of work for B.B.P. consisted of, among other
12 things, all concrete work for the Project, including the scuppers, rip rap and headwalls for the
13 Project.

14 3. At all times herein mentioned, Third-Party Defendant Gothic Landscaping, Inc.,
15 upon information and belief, is and was an Arizona corporation, authorized and licensed to do
16 business, and doing business, in Pinal County and the State of Arizona. The scope of work for
17 Gothic Landscape, Inc. consisted of, among other things, landscaping, including final grading
18 and ensuring proper drainage was provided in all landscaped areas and installation of
19 decomposed granite for the Project.

20 4. At all times herein mentioned, Third-Party Defendant Wheeler Construction, Inc.,
21 upon information and belief, is and was an Arizona corporation, authorized and licensed to do
22 business, and doing business, in Pinal County and the State of Arizona. The scope of work for
23 Wheeler Construction, Inc., consisted of, among other things, the grading work for the Project.

24 5. The Third-Party Defendants named in Paragraphs 2 through 4 and Third-Party
25 Defendants ROES 1 through 100, inclusive, which will be designated at a later date, shall at all
26 times hereafter be referred to as "SUBCONTRACTORS", and were business entities organized
27 and existing under and by virtue of the laws of the State of Arizona and doing business in Pinal
28 County, State of Arizona.

1 6. Third-Party Plaintiff is presently unaware of the true names and capacities and
2 liability of Third-Party Defendants named herein as ROES 1 through 100, inclusive, and Third-
3 Party Plaintiff will seek leave of Court to amend this Third-Party Complaint to allege their true
4 names and capacities after the same has been ascertained.

5 7. Third-Party Plaintiff is presently unaware of the true names and capacities and
6 liability of Third-Party Defendants named herein as MOES 1 through 100, inclusive, and Third-
7 Party Plaintiff will seek leave of Court to amend this Third-Party Complaint to allege their true
8 names and capacities after the same has been ascertained.

9 8. Third-Party Plaintiff is informed and believes, and thereon alleges, that at all times
10 herein mentioned, each of the Third-Party Defendants, including ROES and MOES, was the
11 agent, partner, co-developer, joint venturer and/or employee of each of the remaining Third-
12 Party Defendants and ROES and MOES; and each of them was at all times herein mentioned
13 acting within the course and scope of such agency and employment.

14 9. Third-Party Plaintiff is informed and believes and thereon alleges that said Third-
15 Party Defendants, and each of them, including ROES and MOES, participated in the design;
16 development; labor; manufacture or provision of materials; and/or construction of a single-
17 family residential development, the Project; wherein Third-Party Defendants were to furnish
18 their best skill and judgment; and to cooperate with Third-Party Plaintiff and its authorized
19 agents; including the engineers, the architects, and the City of Casa Grande and/or County of
20 Pinal, in furthering the interests of Third-Party Plaintiff.

21 10. On or about May 16, 2005, Plaintiff filed a Complaint for Breach of Express and
22 Implied Warranty of Habitability and Workmanlike Construction in the Pinal County Superior
23 Court, Case No. C2005-00663, against Third-Party Plaintiff; wherein Plaintiff alleges that
24 Defendant is liable to Plaintiff for damages arising from the construction, development,
25 products and materials provided by suppliers and materialmen of the Project.

26 11. Third-Party Plaintiff answered the counts of the Complaint and denied the
27 allegations therein. Without admitting the allegations contained therein, if Third-Party Plaintiff
28 is found liable for any such damage to Plaintiff, then Third-Party Plaintiff is informed and

1 believes, and thereon alleges, that such damage is primarily and ultimately caused by the acts,
2 breaches and/or omissions of Third-Party Defendants, and each of them, whereas Third-Party
3 Plaintiff's acts, if any, were secondary, passive, or derivative in nature.

4 12. Third-Party Plaintiff is informed and believes, and thereon alleges, that the defects
5 and damages alleged by Plaintiff in the Complaint involve defects, damage to, or destruction
6 of the subject Property; and Third-Party Plaintiff is informed and believes, and thereon alleges,
7 that said damages were caused by the Third-Party Defendants and/or their agents, and each of
8 them, including ROES and DOES, arising out of and in connection with the performance of
9 Third-Party Defendants' obligations as referenced above.

10 13. Jurisdiction and venue are proper.

11
12 **FIRST CAUSE OF ACTION**
13 **[Negligence]**
14 **(As to All Third-Party Defendants)**

15 14. Third-Party Plaintiff is informed and believes, and thereon alleges, that said Third-
16 Party Defendants, and each of them, participated in the development, labor, materials and/or
17 construction of the Project; wherein Third-Party Defendants were to furnish their best skill and
18 judgment and to cooperate with Third-Party Plaintiff, its authorized agents, and the City of Casa
19 Grande and/or County of Pinal, State of Arizona, in furthering the interests of Third-Party
20 Plaintiff.

21 15. Third-Party Plaintiff is informed and believes, and thereon alleges, that Third-
22 Party Defendants, and each of them, negligently, carelessly and wrongfully failed to use
23 reasonable care in the development; grading; supervision; maintenance; repair; manufacture or
24 supply of materials; installation; inspection and/or construction of the Project that is at issue in
25 Plaintiff's Complaint, and which is more particularly described therein.

26 16. Third-Party Plaintiff is further informed and believes and thereon alleges that
27 Third-Party Defendants, and each of them, negligently and carelessly failed to exercise
28 reasonable care and diligence to avoid loss; and to minimize and mitigate damages which could
have been prevented by reasonable efforts on the part of said Third-Party Defendants; or by

1 expenditures which should have been made in the exercise of due care.

2 17. Third-Party Plaintiff is informed and believes and thereon alleges that the failures
3 and damages alleged by Plaintiff in the Complaint occurred because of the negligence of Third-
4 Party Defendants, and each of them.

5 18. As a direct and proximate result of the negligence of Third-Party Defendants, and
6 each of them, it is herein alleged that Third-Party Plaintiff incurred and continues to incur costs
7 and expenses, including, but not limited to: litigation costs; contractor's fees; attorneys' fees; and
8 consultants' fees to inspect, repair and mitigate damages arising out of said negligent
9 construction, repair and maintenance; and to defend against Plaintiff's action herein.

10 19. As a direct and proximate result of the negligence of Third-Party Defendants, and
11 each of them, Third-Party Plaintiff has suffered, and continues to suffer, damage to its goodwill
12 and reputation.

13 **SECOND CAUSE OF ACTION**
14 **[Breach of Contract]**
(As to All Third-Party Defendants)

15 20. Third-Party Plaintiff refers to and incorporates herein by reference each and every
16 paragraph of all Causes of Action as though fully set forth herein.

17 21. Third-Party Plaintiff is informed and believes and thereon alleges that Third-Party
18 Plaintiff entered into written/oral contracts with Third-Party Defendants, and each of them, for
19 the development and/or construction of the Project which is the subject matter of this litigation.
20 Third-Party Plaintiff is informed and believes and thereon alleges that the written/oral contracts
21 provide that the Third-Party Defendants, and each of them, among other things, were to comply
22 with each and every term and condition.

23 22. Third-Party Plaintiff is informed and believes and thereon alleges that the defects
24 and damages claimed by Plaintiff in the Complaint involve defects and damage to, or
25 destruction of, property; and Third-Party Plaintiff herein is further informed and believes, and
26 thereon alleges, that said damages were caused by Third-Party Defendants, and each of them;
27 arising out of and connected with the performance of Third-Party Defendants' obligations
28 pursuant to the written/oral contracts entered into by each of them with Third-Party Plaintiff

1 herein.

2 23. Third-Party Defendants, and each of them, have breached the aforementioned
3 written/oral contracts by failing and neglecting to properly perform the labor and services as
4 contemplated by the parties to the agreements; and by failing to comply with each and every
5 term of the contract. Third-Party Defendants, and each of them, among other things, negligently
6 and carelessly built, supervised, constructed and/or maintained the subject Project, thereby
7 causing the defects alleged by Plaintiff in its Complaint.

8 24. Third-Party Plaintiff is informed and believes and thereon alleges that pursuant
9 to the terms of said written/oral contracts, Third-Party Defendants, and each of them, undertook
10 the obligation to maintain general liability insurance policies; and agreed to name Third-Party
11 Plaintiff as an additional insured under their respective policies of liability insurance.

12 25. Third-Party Plaintiff is informed and believes and thereon alleges that Third-Party
13 Defendants, and each of them, have breached said agreements by refusing and failing to comply
14 with their contractual obligations to maintain liability insurance and to name Third-Party
15 Plaintiff herein as an additional insured under said policies of liability insurance.

16 26. Third-Party Plaintiff has fully performed all conditions, covenants, and promises
17 required by it to be performed in accordance with the terms and conditions of said written/oral
18 contracts.

19 27. Third-Party Plaintiff is informed and believes and thereon alleges that Third-Party
20 Defendants, and each of them, entered into contracts with others in the performance of services
21 provided in the construction of the Project; and are responsible for all acts and omissions of
22 their agents and employees.

23 28. As a result of Third-Party Defendants' breach of the aforementioned written/oral
24 contracts, Third-Party Plaintiff has been damaged in an amount according to proof at the time
25 of trial.

26 29. The law firm of LORBER, GREENFIELD & POLITO was retained to defend the
27 action herein on behalf of Third-Party Plaintiff, thereby incurring costs, consultants' fees,
28 attorneys' fees and other litigation fees in the defense of this action and prosecution of this

1 Third-Party Complaint. Third-Party Plaintiff will seek leave of this court to amend this Third-
2 Party Complaint to show the amount of said costs and attorneys' fees when the same become
3 known to Third-Party Plaintiff.

4 **THIRD CAUSE OF ACTION**
5 **[Breach of Express and Implied Warranties]**
6 **(As to All Third-Party Defendants)**

7 30. Third-Party Plaintiff refers to and incorporates herein by reference each and every
8 paragraph of all Causes of Action as though fully set forth herein.

9 31. Third-Party Plaintiff is informed and believes and thereon alleges that Third-Party
10 Defendants, and each of them, entered into agreements with Third-Party Plaintiff and were to
11 comply with each and every term and condition.

12 32. Third-Party Plaintiff is informed and believes and thereon alleges that Third-Party
13 Defendants, and each of them, pursuant to the contracts, warranted that all work performed
14 would be in a first-class and workmanlike manner, in full accordance with the provisions of
15 conditions of the contract, all applicable provisions of the Uniform Building Code and any and
16 all other applicable federal, state, city or county laws, ordinances, codes or regulations, plans
17 and specifications; and that the subject property would be fit for its intended use and purpose,
18 namely that all labor performed and services provided would be in a good, workmanlike and
19 substantial manner.

20 33. Third-Party Plaintiff relied upon said warranties; and believed that the work was
21 performed in a first-class and workmanlike manner; and that the labor performed and services
22 provided were properly performed by Third-Party Defendants, and each of them, and their
23 agents or employees; and fit for their intended uses and purposes.

24 34. Third-Party Plaintiff is informed and believes and thereon alleges that Third-Party
25 Defendants, and each of them, breached said warranties; in that Plaintiff, in the Complaint,
26 alleged that the construction was defective, as is more particularly set forth in the Complaint;
27 and that, as a consequence of said defects, the homes have experienced damages, as are more
28 particularly alleged in Plaintiff's Complaint.

1 35. As a proximate result of the breach of the warranties by Third-Party Defendants,
2 and each of them, Third-Party Plaintiff alleges that it will suffer damages in a sum equal to any
3 sums paid by way of settlement; or, in the alternative, judgment rendered against Third-Party
4 Plaintiff in the action herein, based upon Plaintiffs' Complaint on file herein.

5 36. This Third-Party Complaint will serve as notice of such conditions, and Third-
6 Party Plaintiff is informed and believes and thereon alleges that Third-Party Defendants
7 declined to acknowledge their responsibility to repair the alleged defects as referenced above.

8 37. The law firm of LORBER, GREENFIELD & POLITO was retained to defend
9 the action herein on behalf of Third-Party Plaintiff, thereby incurring costs, consultants' fees,
10 attorneys' fees and other litigation fees in the defense of this action and prosecution of this
11 Third-Party Complaint. Third-Party Plaintiff will seek leave of this Court to amend this Third-
12 Party Complaint to show the amount of said costs and attorneys' fees when the same become
13 known to Third-Party Plaintiff.

14 **FOURTH CAUSE OF ACTION**
15 **[Implied Indemnity]**
 (As to All Third-Party Defendants)

16 38. Third-Party Plaintiff refers to and incorporates herein by reference each and every
17 paragraph of all Causes of Action as though fully set forth herein.

18 39. By reason of the foregoing, if Plaintiff's Complaint recovers any sum against
19 Third-Party Plaintiff, then Third-Party Plaintiff is entitled to indemnity from the Third-Party
20 Defendants, and each of them, for injuries and damages sustained by Plaintiff, if any, for any
21 sums paid by way of settlement; or in the alternative, any judgment rendered against Third-Party
22 Plaintiff in the action herein based upon Plaintiff's Complaint, and any cause of action alleged
23 therein.

24 **FIFTH CAUSE OF ACTION**
25 **[Express Indemnity]**
 (As to Third-Party Defendants)

26 40. Third-Party Plaintiff refers to and incorporates herein by reference each and every
27 paragraph of all Causes of Action as though fully set forth herein.

28

1 41. Third-Party Plaintiff is informed and believes and thereon alleges that Third-Party
2 Defendants, and each of them, as designated above, entered into written agreements with Third-
3 Party Plaintiff; and which stated, among other things, that Subcontractor shall protect and
4 indemnify Third-Party Plaintiff against any claim, loss or damage suffered by anyone arising
5 through the acts or omissions of Subcontractor and those employed by it.

6 42. Third-Party Plaintiff is informed and believes and thereon alleges that the defects
7 and damages claimed by Plaintiff in the Complaint involve defects and damage to, or
8 destruction of, property; and Third-Party Plaintiff herein is further informed and believes, and
9 thereon alleges, that said damages were caused by Third-Party Defendants, and each of them,
10 arising out of and connected with the performance of Third-Party Defendants' obligations
11 pursuant to the written agreement entered into by each of them with Third-Party Plaintiff herein.

12 43. Third-Party Plaintiff is informed and believes and thereon alleges that Third-Party
13 Defendants, and each of them, entered into contracts with others in the performance of services
14 provided in the construction of the Project; and said Third-Party Defendants are responsible for
15 all acts and omissions of their agents and employees.

16 44. Third-Party Plaintiff, by this action, demands that Third-Party Defendants, and
17 each of them, defend, indemnify and hold harmless Third-Party Plaintiff from and against any
18 and all claims; causes of action; damages (including direct, liquidated, consequential, incidental
19 or other damages); judgments; awards; losses; liabilities; interest; attorneys' fees; costs; and
20 expenses of whatsoever kind or nature at any time arising out of any failure of Subcontractor
21 to perform any of the terms and conditions of this subcontract, or which are in any manner
22 directly or indirectly caused or occasioned by or contributed to, or claimed to be caused or
23 occasioned by, or contributed to, by any act, omission, fault or negligence, whether active or
24 passive, of Subcontractor to Plaintiff by way of settlement, judgment or otherwise.

25 45. The law firm of LORBER, GREENFIELD & POLITO was retained to defend
26 the action herein on behalf of Third-Party Plaintiff, thereby incurring costs, consultants' fees,
27 attorneys' fees and other litigation fees in the defense of this action and prosecution of this
28 Third-Party Complaint. Third-Party Plaintiff will seek leave of this court to amend this Third-

LORBER, GREENFIELD & POLITO, LLP
8772 South 48th Street, Suite 230
Phoenix, Arizona 85044
(602) 437-4177
Fax (602) 437-4180

1 Party Complaint to show the amount of said costs and attorneys' fees when the same become
2 known to Third-Party Plaintiff.

3 SIXTH CAUSE OF ACTION
4 [Declaratory Relief re: Duty to Defend]
(As to All Third-Party Defendants)

5 46. Third-Party Plaintiff refers to and incorporates herein by this reference each and
6 every paragraph of all Causes of Action as though fully set forth at this point.

7 47. An express/oral indemnity contract exists between Third-Party Plaintiff and
8 Third-Party Defendants, and each of them. Each said express/oral contract is incorporated
9 herein by reference as though fully set forth at this point.

10 48. The express/oral contract provided that Third-Party Defendants, and each of them,
11 would indemnify and hold Third-Party Plaintiff free and harmless and would indemnify each
12 of the foregoing for and against any and all expenses, including, without limitation: reasonable
13 attorneys' fees; claims; losses; damages; and costs, caused by or connected with the
14 performance or nonperformance of any act pursuant hereto by Third-Party Defendants or their
15 agents, materialmen, licensees, or employees.

16 49. A claim or loss within the meaning of the express/oral contract has arisen by
17 virtue of the fact that the Plaintiff, in the Complaint against Third-Party Plaintiff, claims
18 damages for construction deficiencies; and that the construction deficiencies claimed in
19 Plaintiff's Complaint pertain to the scope of work performed and/or materials provided by the
20 Third-Party Defendants, and each of them.

21 50. Third-Party Defendants, and each of them, have a present duty to defend against
22 any claims made against Third-Party Plaintiff pursuant to the agreement; and as a result of the
23 assertion of a claim and/or loss arising out of the work of the Third-Party Defendants, and each
24 of them. Third-Party Plaintiff has a present legal right to be provided a defense by the Third-
25 Party Defendants, and each of them.

26 51. Third-Party Plaintiff tendered the defense of this action to Third-Party
27 Defendants, each of which rejected, ignored, or failed to properly accept the tender of defense.

28

1 52. A dispute has arisen and an actual controversy now exists between Third-Party
2 Plaintiff and the Third-Party Defendants, and each of them; in that Third-Party Plaintiff
3 contends that it is entitled to a present defense from the Third-Party Defendants, and each of
4 them; while the Third-Party Defendants, and each of them, deny such obligations under the
5 contract.

6 53. Third-Party Plaintiff hereby seeks a Declaration by the Court as to its respective
7 rights and said Third-Party Defendants' duties and obligations as to the duty to defend in
8 connection with the matters herein alleged; and a judgment in Third-Party Plaintiff's favor as
9 to any obligations by said Third-Party Defendants, and each of them, to Third Party Plaintiff
10 herein.

11 **SEVENTH CAUSE OF ACTION**
12 **[Declaratory Relief re: Duty to Indemnify]**
(As to All Third Party Defendants)

13 54. Third-Party Plaintiff refers to and incorporates herein by this reference each and
14 every paragraph of all Causes of Action as though fully set forth at this point.

15 55. Under the indemnity agreements identified above, and as contained in the
16 contracts referenced therein, the Third-Party Defendants, and each of them, are obligated to
17 indemnify Third-Party Plaintiff from all liability, loss, or damage in this action relating to
18 matters embraced by the indemnity and arising out of the scope of work of the Third-Party
19 Defendants, and each of them.

20 56. A dispute has arisen and an actual controversy now exists between Third-Party
21 Plaintiff and Third-Party Defendants, and each of them; in that Third-Party Plaintiff contends
22 that it is entitled to defense and indemnity pursuant to the express indemnity provision; and
23 damages arising from negligence, indemnity, contribution, and damages for breach of contract,
24 and breach of warranties; while Third-Party Defendants, and each of them, deny such
25 obligations.

26 57. Third-Party Plaintiff seeks a Declaration by the Court as to its respective rights
27 and said Third-Party Defendants' duties and obligations as to the matters herein alleged; and
28 a judgment in Third-Party Plaintiff's favor as to the existence of the indemnity agreement.

EIGHTH CAUSE OF ACTION
[Declaratory Relief re: Contractual Duties]
(As to All Third-Party Defendants)

58. Third-Party Plaintiff refers to and incorporates herein by this reference each and every paragraph of all Causes of Action as though fully set forth at this point.

59. An actual controversy has arisen and now exists between Third-Party Plaintiff and Third-Party Defendants, and each of them, concerning their respective rights, duties, and obligations under the contract; in that Third-Party Plaintiff claims that Third-Party Defendants, and each of them, breached their duties and obligations under their contracts.

60. Third-Party Plaintiff alleges that a declaration by the Court as to the rights, duties, and obligations of the parties herein is required in order to resolve the existing controversies and disputes, so that the parties may ascertain their true obligations and discharge those obligations accordingly. Specifically, Third-Party Plaintiff requests this Court to determine that Third-Party Plaintiff's interpretation of the contractual provisions is correct; including the indemnity provision, the requirement for Third-Party Defendants to name Third-Party Plaintiff as additional insured, and the payment for attorneys' fees and costs, among others; that Third-Party Defendants breached those obligations; and that Third-Party Defendants are obligated to defend and indemnify Third-Party Plaintiff against any claim, demand, damages, or liability, or any other loss.

NINTH CAUSE OF ACTION
[Breach of Contract - Additional Insurance]
(As to Defendants Wheeler and Gothic)

61. Third-Party Plaintiff refers to and incorporates herein by this reference each and every paragraph set forth above as though fully set forth at this point.

62. Third-Party Plaintiff is informed and believes and thereon alleges that Third-Party Defendants entered into written agreements with Third-Party Plaintiff which stated, among other things, that Third-Party Plaintiff would be named as an additional insured by the liability insurers for Third-Party Defendants with specific requirements.

63. Third-Party Plaintiff has performed all conditions, covenants and promises required of it in accordance with the terms and conditions of the aforementioned agreements.

1 64. Third-Party Plaintiff is informed and believes and thereon alleges that Third-Party
2 Defendants, and each of them, have breached the aforementioned written contracts by failing
3 to obtain such insurance complying with all such above requirements; leaving Third-Party
4 Plaintiff without such insurance coverage in whole or part.

5 65. As a result of Third-Party Defendants' breach of the aforementioned written
6 contracts, Third-Party Plaintiff has been damaged in an amount according to proof at the time
7 of trial.

8 **WHEREFORE**, Third-Party Plaintiff prays for judgment as follows:

9 A. For an Order from the Court requiring Third-Party Defendants, and each of them,
10 to defend and indemnify (via express and/or implied indemnity) Third-Party Plaintiff for any
11 and all claims, loss, damage or expense arising out of or in connection with Third-Party
12 Defendants' work at the Project;

13 B. For this Court's declaration(s) regarding Third-Party Defendants' contractual
14 duties owed to Third-Party Plaintiff, as set forth above, including the duties to defend and
15 indemnify Third-Party Plaintiffs for the claims asserted in Plaintiff's Complaint;

16 C. For damages resulting from Third-Party Defendants' breach of contract, as
17 alleged herein, in an amount to be proven at trial;

18 D. For damages resulting from Third-Party Defendants' negligence, as alleged
19 herein, in an amount to be proven at trial;

20 E. For damages resulting from Third-Party Defendants' breach of express and/or
21 implied warranties, as alleged herein, in an amount to be proven at trial;

22 F. For costs of suit and attorneys' fees incurred by Third-Party Plaintiff herein
23 pursuant to contract and/or statute or Court rule, including but not limited to A.R.S. §§ 12-341,
24 12-341.01, and 12-684;

25 G. For such other relief as this Court may deem just and proper.

26 ///

27 ///

28 ///

LORBER, GREENFIELD & POLITO, LLP
8222 South 48th Street, Suite 230
Phoenix, Arizona 85044
(602) 437-4177
Fax (602) 437-4180

DATED this 2nd day of May, 2007.

LORBER, GREENFIELD & POLITO, LLP

By *Holly P. Davies*

Holly P. Davies, Esq.

Shane D. McFetridge, Esq.

8222 S. 48th Street, Suite 230

Phoenix, Arizona 85044

Attorneys for Defendant/Third-Party Plaintiff

ORIGINAL of the foregoing filed

this 2nd day of May, 2007, with:

Clerk of the Court

Pinal County Superior Court

971 Jason Lopez Circle

Building A

Florence, Arizona 85232

COPY of the foregoing hand-delivered

this 2nd day of May, 2007, to:

The Honorable Kevin D. White, Div. VII

Pinal County Superior Court

971 Jason Lopez Circle

Building A

Florence, Arizona 85232

COPY of the foregoing mailed

this 2nd day of May, 2007, to:

John F. McGuire, Jr., Esq.

c/o Eric Smith, Case Manager

THORSNES BARTOLOTTA McGUIRE

14545 North Frank Lloyd Wright, Suite 147

Scottsdale, Arizona 85260

Attorneys for Plaintiff

Carla Lavender

EXHIBIT B

LORBER, GREENFIELD & POLITO, LLP
Holly Davies, Esq. [S.B. #020010]
Danielle Gross, Esq. [S.B. #023238]
8222 South 48th Street, Suite 230
Phoenix, Arizona 85044
TEL: (602) 437-4177
FAX: (602) 437-4180
hdavies@lorberlaw.com
dgross@lorberlaw.com

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

KB HOME PHOENIX INC. f.k.a.
Kaufman and Broad of Arizona, Inc., an
Arizona corporation.

Plaintiff,

v.

CONSTRUCTION INSPECTION &
TESTING COMPANY, an Arizona
corporation, MESA VERDE CONCRETE
CONSTRUCTION, LLC., f.k.a. PRATTE
CONCRETE CONSTRUCTION, LLC. an
Arizona corporation, SELECT BUILD
CONSTRUCTION COMPANY, an
Arizona corporation, a.k.a. BBP
CONCRETE COMPANY, MASTEC
SERVICES COMPANY, INC., a Florida
corporation, EARTHBLEND CUSTOM
LANDSCAPES, INC., an Arizona
corporation, d.b.a. EARTH BLEND
CUSTOM LANDSCAPES, PORTER-
JARVIS, LLC., an Arizona corporation,
d.b.a. JADE GRADING, D.J. GRADING
AND LANDSCAPING, INC., an Arizona
corporation, and DOWN DIVERSIFIED,
INC., an Arizona corporation d.b.a.
DOWN DIRTYWORKS, f.k.a. UP-
GRADING.

Defendants.

CASE NO. CV2007-005386

AMENDED COMPLAINT

- 1) Negligence
- 2) Breach of Contract
- 3) Breach of Express and Implied Warranties
- 4) Express Indemnity
- 5) Implied Indemnity
- 6) Declaratory Relief Re: Duty to Indemnify
- 7) Declaratory Relief Re: Contractual Duties
- 8) Breach of Contract - Additional Insurance

(Assigned to the Honorable Peter B. Swann)

For its Amended Complaint, KB Home Phoenix Inc. alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1
2 1. At all times herein mentioned, KB Home Phoenix Inc., f.k.a. Kaufman & Broad
3 of Arizona, Inc., (hereinafter collectively referred to as "KB Home"), was an Arizona
4 corporation, duly organized and existing under and by virtue of the laws of the State of Arizona,
5 and doing business in the County of Maricopa, Arizona.

6 2. KB Home served as owner and developer of the residential developments
7 commonly referred to as: Acacia (a.k.a Roundtree Ranch, Willow), Bolero (a.k.a. Terracita),
8 Brisas, Buttes (a.k.a Legends, Canyon, Vista), Dynasty (a.k.a. Ray Ranch, Ray & Recker),
9 Espirit (a.k.a Radiance, Hawes, Medina, Lesueur Estates), Medallion (a.k.a. Ray Ranch, Ray
10 & Recker), Providence (a.k.a Sheely Farms), Ridge, Summit (a.k.a Alta Vista), Westland (a.k.a.
11 Hillcrest), Westview (a.k.a I17 & Dymanite) and Westwood (a.k.a Hillcrest, Pinnacle Vista)
12 (collectively referred to as "Projects").

13 3. Upon information and belief, Defendant, Construction Inspection & Testing
14 Company ("CIT"), is an Arizona corporation, authorized and licensed to do business, and doing
15 business, in Maricopa County, Arizona. The scope of work for CIT consisted of, among other
16 things, the performance of soils analysis, and geotechnical reports containing, among other
17 things, recommendations for earth work and foundation designs, and geotechnical quality
18 assurance on the Projects.

19 4. Upon information and belief, Defendant, Mesa Verde Concrete Construction, Inc.
20 ("Mesa Verde"), f.k.a. Pratte Concrete Construction, Inc., is an Arizona corporation, authorized
21 and licensed to do business, and doing business, in Maricopa County, Arizona. The scope of
22 work for Mesa Verde consisted of, among other things, concrete work at the Projects.

23 5. Upon information and belief, Defendant, Select Build Construction Company,
24 a.k.a. BBP Concrete Company ("BBP Concrete"), is an Arizona corporation, authorized and
25 licensed to do business, and doing business, in Maricopa County, Arizona. The scope of work
26 for BBP Concrete consisted of, among other things, concrete work at the Projects.

27 6. Upon information and belief, Defendant, Mastec North America, Inc.,
28 ("Mastec"), is a Florida corporation, authorized and licensed to do business, and doing business,

1 in Maricopa County, Arizona. The scope of work for Mastec consisted of, among other things,
2 grading work at the Projects.

3 7. Upon information and belief, Defendant, Earthblend Custom Landscapes, Inc.,
4 an Arizona Corporation, d.b.a. Earthblend Custom Landscapes, ("Earthblend"), is an Arizona
5 corporation, authorized and licensed to do business, and doing business, in Maricopa County,
6 Arizona. The scope of work for Earthblend consisted of, among other things, grading work at
7 the Projects.

8 8. Upon information and belief, Defendant, Porter-Jarvis, LLC, d.b.a. Jade Grading
9 ("Jade Grading"), is an Arizona corporation, authorized and licensed to do business, and doing
10 business, in Maricopa County, Arizona. The scope of work for Jade Grading consisted of,
11 among other things, grading work at the Projects.

12 9. Upon information and belief, Defendant, D.J. Grading and Landscaping, Inc.
13 ("D.J. Grading"), is an Arizona corporation, authorized and licensed to do business, and doing
14 business, in Maricopa County, Arizona. The scope of work for DJ Grading consisted of, among
15 other things, grading work at the Projects.

16 10. Upon information and belief, Defendant, Down Diversified, Inc., d.b.a. Down
17 Dirtyworks, f.k.a. UP Grading ("UP Grading"), is an Arizona corporation, authorized and
18 licensed to do business, and doing business, in Maricopa County, Arizona. The scope of work
19 for UP Grading consisted of, among other things, grading work at the Projects.

20 11. The amounts in controversy relevant to this Complaint are sufficient to confer
21 jurisdiction on this Court.

22 12. Venue is proper in this Court.

23 **GENERAL ALLEGATIONS**

24 13. Pursuant to the Subcontract Agreements, Defendants, and each of them, warranted
25 that its work would be of the finest quality, and free from faults and defects of design and
26 workmanship.

27 14. Pursuant to the Subcontract Agreements, KB Home and Defendants, and each of
28 them, agreed that, should a dispute arise relating to the performance of services under the

1 subcontracts resulting in litigation, the prevailing party shall be entitled to recover all reasonable
2 attorneys' fees, costs, charges, and expenses expended or incurred therein.

3 15. The Subcontract Agreements contain express indemnity provisions.

4 16. Pursuant to the Subcontract Agreements, Defendants, and each of them, agreed
5 to procure and maintain specific liability and other insurance coverage relevant to the Projects,
6 and to name KB Home, its officers, directors, and employees as additional insureds under the
7 comprehensive general liability policy, which shall be primary coverage.

8 17. Since substantial completion of Defendants' work on the Projects, KB Home has
9 incurred substantial expense, including, but not limited to, repair costs, attorneys' fees, and
10 expert/consultant fees and expenses, associated with claims which have been brought, and may
11 continue to be brought, by residents and homeowners in the Subdivisions regarding damage
12 including: cracking and separating of wall/ceiling drywall joints, drywall cracks at re-entrant
13 door/window corners, misaligned partition door frames and lifting of the partition bottom plate
14 off the doors.

15 **FIRST CAUSE OF ACTION - NEGLIGENCE**

16 **(Against All Defendants)**

17 18. KB Home incorporates herein the allegations set forth in paragraphs 1 through 17
18 above.

19 19. KB Home is informed and believes, and thereon alleges, that said Defendants, and
20 each of them, participated in the design, development, labor, materials, and/or construction of
21 the Projects, wherein Defendants were to furnish their best skill and judgment and to cooperate
22 with KB Home, its authorized agents, and any and all municipalities, in furthering the interests
23 of KB Home.

24 20. KB Home is informed and believes, and thereon alleges, that Defendants, and
25 each of them, negligently, carelessly and wrongfully failed to use reasonable care in the design,
26 development, grading, supervision, maintenance, repair, manufacture or supply of materials,
27 installation, inspection and/or construction of the Projects.

28

21. KB Home is informed and believes and thereon alleges that CIT carelessly and wrongfully failed to use reasonable care in the design, development, management, supervision, analysis and/or inspection with respect to its work in characterizing the soil conditions at the Project site, making recommendations for earth work and foundation designs, conducting geotechnical quality assurance on the Projects, by failing, among other things, to adequately characterize the subsurface conditions at the Projects, provide appropriate slab and foundation recommendations, appropriately test compacted fills, recognize changed conditions, update recommendations and properly certify building plans.

22. KB Home is further informed and believes and thereon alleges that Defendants, and each of them, negligently and carelessly failed to exercise reasonable care and diligence to avoid loss and to minimize and mitigate damages which could have been prevented by reasonable efforts on the part of said Defendants, or by expenditures which should have been made in the exercise of due care.

23. Defendants owed a duty to KB Home to perform their work in a reasonable and workmanlike manner, consistent with the prevailing professional standards of their respective fields, and free from defects.

24. The defects, as implicated by the homeowners' claims, are the direct result of Defendants' negligence.

25. As a direct and proximate result of Defendants' negligence, KB Home has incurred, and continues to incur, damage, including, but not limited to: repair costs, litigation costs, attorneys' fees, expert/consultant fees and damage to good will and reputation in an amount to be proven at trial.

SECOND CAUSE OF ACTION - BREACH OF CONTRACT

(Against All Defendants)

26. KB Home incorporates herein the allegations set forth in paragraphs 1 through 25 above.

27. KB Home is informed and believes and thereon alleges that Defendants, and each of them, entered into written Subcontracts with KB Home, which provided that, among other

1 things, Defendants, and each of them, were obligated to comply with each and every term and
2 condition contained therein, and perform and complete their respective scopes of work in
3 conformity with the Subcontracts, all applicable laws, regulations, ordinances and standards.

4 28. KB Home is informed and believes and thereon alleges that Defendants, and each
5 of them, have breached their Subcontracts by failing and neglecting to properly perform the
6 labor and services as contemplated by the parties to the Subcontracts, and by failing to comply
7 with each and every term of the Subcontracts.

8 29. KB Home has fully performed all conditions, covenants, and promises required
9 by it to be performed in accordance with the terms and conditions of the Subcontracts.

10 30. As a result of Defendants' breach of the aforementioned written contracts, KB
11 Home has incurred, and will continue to incur, damages, including, but not limited to, repair
12 costs, litigation costs, attorneys' fees and expert/consultant fees to be proven at trial.

13 31. KB Home is informed and believes and thereon alleges that Defendants, and each
14 of them, entered into written agreements with KB Home which stated, among other things, that
15 it would be liable for attorneys' fees and costs incurred by KB Home in the event of a dispute
16 regarding the work performed by Defendants.

17 32. Additionally, KB Home is entitled to recover its reasonable attorneys' fees from
18 Defendants, and each of them, pursuant to A.R.S. §12-341.01.

19 **THIRD CAUSE OF ACTION - BREACH OF EXPRESS**
20 **AND IMPLIED WARRANTIES**

21 **(Against All Defendants)**

22 33. KB Home incorporates herein the allegations set forth in paragraphs 1 through 32
23 above.

24 34. KB Home is informed and believes and thereon alleges that Defendants, and each
25 of them, entered into Subcontracts, pursuant to which Defendants, and each of them, expressly
26 and impliedly warranted that all work would be performed in conformity with the subcontracts,
27 to be of the finest quality and free from faults and defects of design, material and workmanship
28 and in conformity with all applicable laws, regulations, ordinances and standards, and that the

1 subject properties would be fit for their intended use and purpose.

2 35. KB Home relied upon said warranties and believed that the work performed by
3 Defendants, and each of them, was of the finest quality and performed in a workmanlike manner
4 and was fit for its intended use and purpose.

5 36. KB Home is informed and believes and thereon alleges that Defendants, and each
6 of them, breached said warranties, by virtue of the claimed defects by the homeowners, and the
7 damages incurred by KB Home.

8 37. As a direct and proximate result of the breach of the express and implied
9 warranties by Defendants, and each of them, KB Home has incurred, and will continue to incur,
10 damages, including but not limited to costs and attorneys' fees, and any sums paid by way of
11 addressing the homeowners' claims.

12 38. Defendants, and each of them, have notice of such conditions, but have declined
13 to acknowledge their responsibilities to repair the alleged defects.

14 39. KB Home is entitled to recover its damages from Defendants, and each of them,
15 including its attorneys' fees and costs, pursuant to the terms of the Subcontracts.

16 40. Alternatively, KB Home is entitled to recover its reasonable attorneys' fees from
17 Defendants, and each of them, pursuant to A.R.S. §12-341.01.

18 **FOURTH CAUSE OF ACTION - EXPRESS INDEMNITY**

19 **(Against All Defendants)**

20 41. KB Home incorporates herein the allegations set forth in paragraphs 1 through 40
21 above.

22 42. KB Home is informed and believes and thereon alleges that Defendants, and each
23 of them, entered into written agreements with KB Home which included express indemnity
24 provisions.

25 43. KB Home is informed and believes and thereon alleges that the defects, as
26 implicated by the homeowners' claims, involve defects and damage to or destruction of
27 property, caused by Defendants, and each of them, and arising out of, and in connection with,
28 the performance of the obligations set forth in the Subcontracts.

1 44. By this action, KB Home demands that Defendants, and each of them defend,
2 indemnify, and hold harmless KB Home from claims, sums paid, repairs made, and amounts
3 incurred, by way of settlement, judgment, or otherwise, in regard to the homeowners' claims.

4 45. KB Home is entitled to recover its damages from Defendants, and each of them,
5 including its attorneys' fees and costs, pursuant to the terms of the Subcontracts.

6 46. Alternatively, KB Home is entitled to recover its reasonable attorneys' fees from
7 Defendants, and each of them, pursuant to A.R.S. §12-341.01.

8 **FIFTH CAUSE OF ACTION - IMPLIED INDEMNITY**

9 **(Against All Defendants)**

10 47. KB Home incorporates herein the allegations set forth in paragraphs 1 through 46
11 above.

12 48. Homeowners have made claims which implicate defects and resultant damages,
13 stemming from construction of the Projects.

14 49. KB Home is informed and believes and thereon alleges that the defects as
15 implicated by the homeowners' claims, involve defects and damage to or destruction of property
16 caused by Defendants, and each of them, arising out of, and in connection with, the performance
17 of Defendants' work.

18 50. To the extent KB Home incurs expenses and/or other damages by way of repairs
19 or otherwise, arising out of the homeowners' claims regarding the work performed by
20 Defendants, and each of them, KB Home is entitled to a common law defense and indemnity
21 from Defendants, and each of them, for claims, sums paid, repairs made, and amounts incurred,
22 by way of settlement, judgment, or otherwise, in regards to the homeowners' claims.

23 **SIXTH CAUSE OF ACTION - DECLARATORY RELIEF**
24 **RE: DUTY TO INDEMNIFY**

25 **(Against All Defendants)**

26 51. KB Home incorporates herein the allegations set forth in paragraphs 1 through 50
27 above.

1 52. KB Home is informed and believes and thereon alleges that Defendants, and each
 2 of them, are obligated to indemnify KB Home for any and all liability, loss, or damage arising
 3 from performance of the Subcontracts.

4 53. A dispute has arisen, and an actual controversy now exists, between KB Home and
 5 Defendants, and each of them, in that KB Home is entitled to indemnity, while Defendants deny
 6 such an obligation.

7 54. KB Home hereby seeks a declaration from the Court as to the rights of KB Home,
 8 and that Defendants, and each of them, are obligated to indemnify KB Home, in connection with
 9 the matters set forth herein.

10 **SEVENTH CAUSE OF ACTION - DECLARATORY RELIEF**
 RE: CONTRACTUAL DUTIES
 (Against All Defendants)

12 55. KB Home incorporates herein the allegations set forth in paragraphs 1 through 54
 13 above.

14 56. An actual controversy has arisen and now exists between KB Home and
 15 Defendants, and each of them, and the parties' respective rights, duties, and obligations under
 16 the Subcontracts, in that Defendants, and each of them, breached their duties and obligations
 17 under their contracts, while Defendants deny such obligations.

18 57. KB Home hereby seeks a declaration from the Court as to the rights, duties, and
 19 obligations of the parties herein as required in order to resolve the existing controversies and
 20 disputes, so that the parties may ascertain their true obligations and discharge those obligations
 21 accordingly. Specifically, KB Home requests this Court to determine that KB Home's
 22 interpretation of the contractual provisions, including Defendants' obligations to KB Home
 23 under the Subcontracts, is correct, and that Defendants, and each of them, breached those
 24 obligations.

25

26

27

28 ///

EIGHTH CAUSE OF ACTION - BREACH OF CONTRACT
- ADDITIONAL INSURANCE

(Against All Defendants)

58. KB Home incorporates herein the allegations set forth in paragraphs 1 through 57 above.

59. KB Home is informed and believes and thereon alleges that Defendants, and each of them, entered into written agreements with KB Home, which stated, among other things that KB Home would be named as an additional insured by the liability insurers for Defendants, with specific requirements.

60. KB Home has performed all conditions, covenants and promises required by them in accordance with the terms and conditions of the aforementioned agreements.

61. KB Home is informed and believes and thereon alleges that Defendants, and each of them, have breached the aforementioned written contracts by failing to obtain such insurance complying with all such above requirements, leaving KB Home without such coverage in whole or in part.

62. As a result of Defendants' breach of the aforementioned written contracts, KB Home has been damaged in an amount according to proof at the time of trial.

PRAYER FOR RELIEF

WHEREFORE, KB Home prays for judgment against Defendants as follows:

- A. For KB Home's damages to be proven at trial;
- B. For costs of suit and attorneys' fees incurred herein, pursuant to contract, statute or Court rule, including A.R.S. §§12-341 and 12-349;
- C. For this Court's declarations, as set forth above, regarding the contractual duties owed to KB Home, including contractual duties and the duty to indemnify KB Home for the defects;
- D. For interest at the highest legal rate; and

E. For such other relief as this Court may deem just and proper.

DATED this 18th day of September, 2007.

LORBER, GREENFIELD & POLITO, LLP

By: 

Holly Davies, Esq.
Danielle Gross, Esq.
8222 South 48th Street, Suite 230
Phoenix, Arizona 85044
Attorneys for Plaintiff

ORIGINAL of the foregoing filed
this 18th day of September, 2007, with:

The Clerk of Court
MARICOPA COUNTY SUPERIOR COURT
201 West Jefferson Street
Phoenix, AZ 85003

COPY of the foregoing hand-delivered
this 18th day of September, 2007, to:

Honorable Peter B. Swann
MARICOPA COUNTY SUPERIOR COURT
201 West Jefferson Street
Phoenix, AZ 85003

COPY of the foregoing mailed
this 18th day of September, 2007, to:

Kevin M. Kasarjian, Esq.
Kevin M. Estevez, Esq.
HOLDEN WILLITS MURHPHY PLC
2425 East Camelback Road, Suite 1050
Phoenix, Arizona 85016
*Attorneys for Defendant Construction
Inspection & Testing, Inc.*

Michelle Black

EXHIBIT C

COPY

JUL 06 2009



MICHAEL K. JEANES, CLERK
A. ASHER
DEPUTY CLERK

LORBER, GREENFIELD & POLITO LLP
8222 South 48th Street, Suite 230
Phoenix, Arizona 85044
(602) 437-4177
Fax (602) 437-4180

1 LORBER, GREENFIELD & POLITO LLP
2 Holly P. Davies, Esq. [S.B. #018308]
3 Danielle M. Gross, Esq. [S.B. #023238]
4 8222 South 48th Street, Suite 230
5 Phoenix, Arizona 85044
6 TEL: (602) 437-4177
7 FAX: (602) 437-4180
8 hdavies@lorberlaw.com
9 dgross@lorberlaw.com

6 Attorneys for Defendants

7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

8 IN AND FOR THE COUNTY OF MARICOPA

10 DANETT M. AGUILAR; ANTHONY L.
11 and MAURY L. AMORELLI; TODD D.
12 and KATERINA K. ANDERSON; LISA
13 COLEMAN; CLINT J. and ANNAKA L.
14 CROCKETT; ANTHONY FEESE and
15 CARRIE KREBS; JOSHUA and ROBIN
16 GIBBS; GEORGE E. and LYNN
17 HADAWAY, a.k.a. Lynnmarie Hadaway;
18 MARC R. HICKS; GEORGE R. and
19 LANE A. HYSONG; ROBERT J.
20 JOHNSTON; ROBERT KEYS;
21 MARSHALL and CHRISTINE
22 KLIPPERT; ROBERT A. KRATOCHVIL;
23 THOMAS A. TURNER; CAROL J.
24 WRIGHT; and DEBRA LYNN WELCH,
25 Trustee of the Debra Webster Family
26 Trust,

19 Plaintiffs,

20 V.

21 KB HOME SALES - PHOENIX INC., an
22 Arizona Corporation, f.k.a. KAUFMAN
23 AND BROAD HOMES SALES OF
24 ARIZONA, INC., an Arizona Corporation,
25 f.k.a. KAUFMAN AND BROAD OF
26 ARIZONA, INC., an Arizona Corporation;
27 and DOES 1-100 inclusive,

25 Defendants.

26 KB HOME PHOENIX INC., an Arizona
27 corporation,

28 Third-Party Plaintiff,

CASE NO. CV2009-016814

KB HOME PHOENIX INC.'S
THIRD-PARTY COMPLAINT

(Assigned to the Honorable Douglas
Rayes)

1. Negligence
2. Breach of Contract
3. Breach of Express and Implied Warranties
4. Implied Indemnity
5. Express Indemnity
6. Declaratory Relief Re: Duty to Defend
7. Declaratory Relief Re: Duty to Indemnify
8. Declaratory Relief Re: Contractual Duties
9. Breach of Contract - Additional Insurance)

1 ABLE DRYWALL, INC., an Arizona
2 corporation; BBP CONCRETE CO. nka
3 SELECTBUILD ARIZONA LLC, an
4 Arizona corporation; BEEBE BROTHERS
5 PLUMBING dba BEEBE PLUMBING,
6 INC., an Arizona corporation; CHAS
7 ROBERTS AIR CONDITIONING, INC.,
8 an Arizona corporation; DIVERSIFIED
9 ROOFING CORPORATION, an Arizona
10 corporation; DOUBLE "D" PAINTING,
11 INC., an Arizona corporation; FISHER
12 ROOFING, INC., an Arizona corporation;
13 ALENCO HOLDING CORPORATION
14 d/b/a GLAZING INDUSTRIES, INC.,
15 a Texas corporation; GOTHIC
16 LANDSCAPING, INC., an Arizona
17 corporation; HORIZON WASTE
18 SERVICES OF ARIZONA, INC., an
19 Arizona corporation; INFINITY
20 BUILDING PRODUCTS, L.L.C. OF
21 ARIZONA, INC., and Arizona
22 corporation; SELECTBUILD NEVADA,
23 LLC, fka KNIPP BROTHERS, INC., an
24 Arizona corporation; KULAK ELECTRIC,
25 INC., an Arizona corporation; PALO
26 VERDE PLASTERING, INC., an Arizona
27 corporation; PETERSEN-DEAN, INC.
28 a California corporation; TEMPE PAINT
AND DECORATOR CENTER, INC., an
Arizona corporation; TODD WHITAKER
DRYWALL, INC., an Arizona
corporation; TRIPLE S FENCING, an
Arizona corporation; and ROES and
MOES 1 through 100, inclusive

Third-Party Defendants.

For its Third-Party Complaint, Plaintiff, KB Home Phoenix Inc., alleges as follows:

GENERAL ALLEGATIONS

1. At all times herein mentioned, Plaintiff, KB HOME Phoenix Inc., formerly known as Kaufman and Broad of Arizona Inc., and sometimes commonly referred to as "KB Home" (hereinafter referred to as "KB Home"), is and was an Arizona Corporation duly organized and existing under and by virtue of the laws of the State of Arizona, and doing business in the County of Maricopa, State of Arizona. KB Home served as the owner and developer of certain lots within the residential subdivision known as the Greenway Parc project (a.k.a. Groves, and Orchards) located in Surprise, Arizona (hereinafter "the Project").

1 2. At all times herein mentioned, Third-Party Defendant Able Drywall, Inc., upon
2 information and belief, is and was an Arizona corporation, authorized and licensed to do
3 business, and doing business, in Maricopa County and the State of Arizona. The scope of work
4 for Able Drywall, Inc. at the Project consisted of, among other things, drywall work.

5 3. At all times herein mentioned, Third-Party Defendant BBP Concrete Co. nka
6 Selectbuild Arizona, LLC, upon information and belief, is and was an Arizona corporation,
7 authorized and licensed to do business, and doing business, in Maricopa County and the State
8 of Arizona. The scope of work for BBP Concrete Co. at the Project consisted of, among other
9 things, concrete work.

10 4. At all times herein mentioned, Third-Party Defendant Beebe Brothers Plumbing
11 dba Beebe Plumbing, Inc., upon information and belief, is and was an Arizona corporation,
12 authorized and licensed to do business, and doing business, in Maricopa County and the State
13 of Arizona. The scope of work for Beebe Brothers Plumbing at the Project consisted of, among
14 other things, plumbing work.

15 5. At all times herein mentioned, Third-Party Defendant Chas Roberts Air
16 Conditioning, Inc., upon information and belief, is and was an Arizona corporation, authorized
17 and licensed to do business, and doing business, in Maricopa County and the State of Arizona.
18 The scope of work for Chas Roberts Air Conditioning, Inc. at the Project consisted of, among
19 other things, HVAC and air conditioning work.

20 6. At all times herein mentioned, Third-Party Defendant Diversified Roofing
21 Corporation, upon information and belief, is and was an Arizona corporation, authorized and
22 licensed to do business, and doing business, in Maricopa County and the State of Arizona. The
23 scope of work for Diversified Roofing Corporation at the Project consisted of, among other
24 things, roofing work.

25 7. At all times herein mentioned, Third-Party Defendant Double "D" Painting, Inc.,
26 upon information and belief, is and was an Arizona corporation, authorized and licensed to do
27 business, and doing business, in Maricopa County and the State of Arizona. The scope of work
28 for Double "D" Painting, Inc. at the Project consisted of, among other things, painting work.

1 8. At all times herein mentioned, Third-Party Defendant Fisher Roofing, Inc., upon
2 information and belief, is and was an Arizona corporation, authorized and licensed to do
3 business, and doing business, in Maricopa County and the State of Arizona. The scope of work
4 for Fisher Roofing, Inc. at the Project consisted of, among other things, roofing work.

5 9. At all times herein mentioned, Third-Party Defendant Alenco Holding
6 Corporation d/b/a Glazing Industries, Inc., upon information and belief, is and was a Texas
7 corporation, authorized and licensed to do business, and doing business, in Maricopa County
8 and the State of Arizona. The scope of work for Glazing Industries, Inc. at the Project consisted
9 of, among other things, the supply and installation of windows and doors.

10 10. At all times herein mentioned, Third-Party Defendant Gothic Landscaping, Inc.,
11 upon information and belief, is and was an Arizona corporation, authorized and licensed to do
12 business, and doing business, in Maricopa County and the State of Arizona. The scope of work
13 for Gothic Landscaping, Inc. at the Project consisted of, among other things, landscaping work.

14 11. At all times herein mentioned, Third-Party Defendant Horizon Waste Services of
15 Arizona, Inc., upon information and belief, is and was an Arizona corporation, authorized and
16 licensed to do business, and doing business, in Maricopa County and the State of Arizona. The
17 scope of work for Horizon Waste Services of Arizona, Inc. at the Project consisted of, among
18 other things, grading work.

19 12. At all times herein mentioned, Third-Party Defendant Infinity Building Products,
20 L.L.C. of Arizona, Inc., upon information and belief, is and was an Arizona corporation,
21 authorized and licensed to do business, and doing business, in Maricopa County and the State
22 of Arizona. The scope of work for Infinity Building Products, L.L.C. at the Project consisted
23 of, among other things, the supply and installation of windows and doors.

24 13. At all times herein mentioned, Third-Party Defendant Selectbuild Nevada, LLC,
25 fka Knipp Brothers Inc., upon information and belief, is and was an Arizona corporation,
26 authorized and licensed to do business, and doing business, in Maricopa County and the State
27 of Arizona. The scope of work for Knipp Brothers, Inc. at the Project consisted of, among other
28 things, framing work.

1 14. At all times herein mentioned, Third-Party Defendant Kulak Electric, Inc., upon
2 information and belief, is and was an Arizona corporation, authorized and licensed to do
3 business, and doing business, in Maricopa County and the State of Arizona. The scope of work
4 for Kulak Electric, Inc. at the Project consisted of, among other things, electrical work.

5 15. At all times herein mentioned, Third-Party Defendant Palo Verde Plastering, Inc.,
6 upon information and belief, is and was an Arizona corporation, authorized and licensed to do
7 business, and doing business, in Maricopa County and the State of Arizona. The scope of work
8 for Palo Verde Plastering, Inc. at the Project consisted of, among other things, stucco work.

9 16. At all times herein mentioned, Third-Party Defendant Petersen-Dean, Inc. upon
10 information and belief, is and was a California corporation, authorized and licensed to do
11 business, and doing business, in Maricopa County and the State of Arizona. The scope of work
12 for Petersen-Dean, Inc. at the Project consisted of, among other things, roofing work.

13 17. At all times herein mentioned, Third-Party Defendant Tempe Paint and Decorator
14 Center, Inc. upon information and belief, is and was an Arizona corporation, authorized and
15 licensed to do business, and doing business, in Maricopa County and the State of Arizona. The
16 scope of work for Tempe Paint and Decorator Center, Inc. at the Project consisted of, among
17 other things, flooring work.

18 18. At all times herein mentioned, Third-Party Defendant Todd Whitaker Drywall,
19 Inc. upon information and belief, is and was an Arizona corporation, authorized and licensed
20 to do business, and doing business, in Maricopa County and the State of Arizona. The scope
21 of work for Todd Whitaker Drywall, Inc. at the Project consisted of, among other things,
22 drywall work.

23 19. At all times herein mentioned, Third-Party Defendant Triple S Fencing, upon
24 information and belief, is and was an Arizona corporation, authorized and licensed to do
25 business, and doing business, in Maricopa County and the State of Arizona. The scope of work
26 for Triple S Fencing at the Project consisted of, among other things, masonry fence work.

27 20. KB Home is presently unaware of the true names and capacities and liability of
28 Third-Party Defendants named herein as ROES 1 through 100, inclusive, and KB Home will

1 seek leave of Court to amend this Complaint to allege their true names and capacities after the
2 same have been ascertained.

3 21. KB Home is presently unaware of the true names and capacities and liability of
4 Third-Party Defendants named herein as MOES 1 through 100, inclusive, and KB Home will
5 seek leave of Court to amend this Complaint to allege their true names and capacities after the
6 same have been ascertained.

7 22. KB Home is informed and believes, and thereon alleges, that at all times herein
8 mentioned each of the Third-Party Defendants, including ROES and MOES, were the agent,
9 partner, co-developer, joint venturer and/or employee of each of the remaining Third-Party
10 Defendants; and ROES and MOES, and were at all times herein mentioned acting within the
11 course and scope of such agency and employment.

12 23. KB Home is informed and believes and thereon alleges that said Third-Party
13 Defendants, and each of them, including ROES and MOES, participated in the design,
14 development, labor, manufacture or provision of materials, and/or construction of a single-
15 family residential development, the Project, wherein Third-Party Defendants were to furnish
16 their best skill and judgment and to cooperate with Plaintiff and its authorized agents, including
17 the engineers, the architects, and the City of Phoenix, and/or County of Maricopa, in furthering
18 the interests of KB Home.

19 24. On or about June 16, 2009, Plaintiffs filed a Second Amended Complaint for
20 Breach of Implied Warranty of Workmanship and Habitability, Breach of Express Warranty,
21 and Breach of Contract, in the Maricopa County Superior Court, Case No. CV2009-016814
22 against KB Home, wherein Plaintiffs allege that Defendants therein are liable to Plaintiffs for
23 damages arising from the construction, work, design, engineering, development, products, and
24 materials provided by subcontractors, suppliers, and materialmen of the Project, as more fully
25 set forth in Plaintiffs' Second Amended Complaint.

26 25. KB Home alleges that it has incurred warranty repair costs in relation to this
27 project, which KB Home alleges were a result of Third-Party Defendants' work; and as such,
28 these costs are being sought from Third-Party Defendants per the obligations agreed to under

1 the contract between KB Home and Third-Party Defendants.

2 26. KB Home answered the counts of the Complaint and denied the allegations
3 therein. Without admitting the allegations contained therein, if KB Home is found liable for any
4 such damage to Plaintiffs, then KB Home is informed and believes, and thereon alleges, that
5 such damage is primarily and ultimately caused by the acts, breaches and/or omissions of Third-
6 Party Defendants, and each of them; whereas KB Home's acts, if any, were secondary, passive,
7 or derivative in nature.

8 27. KB Home is informed and believes, and thereon alleges, that the defects and
9 damages alleged by Plaintiffs in the Complaint involve defects, damage to, or destruction of the
10 subject Property; and KB Home is informed and believes, and thereon alleges, that said damages
11 were caused by the Third-Party Defendants and/or their agents, and each of them, including
12 ROES and DOES, arising out of and in connection with the performance of Third-Party
13 Defendants' obligations as referred to above.

14 28. Jurisdiction and venue are proper.

15 **FIRST CAUSE OF ACTION**

16 **[Negligence]**

17 29. KB Home is informed and believes, and thereon alleges, that Third-Party
18 Defendants, and each of them participated in the design, development, labor, materials, and/or
19 construction of the Project, wherein Third-Party Defendants were to furnish their best skill and
20 judgment and to cooperate with KB Home, its authorized agents, and the City of Phoenix,
21 and/or County of Maricopa, State of Arizona, in furthering the interests of KB Home.

22 30. KB Home is informed and believes, and thereon alleges, that Third-Party
23 Defendants, and each of them, negligently, carelessly and wrongfully failed to use reasonable
24 care in the design, development, supervision, maintenance, repair, manufacture or supply of
25 materials, installation, inspection and/or construction of the Project.

26 31. KB Home is further informed and believes and thereon alleges that Third-Party
27 Defendants, and each of them, negligently and carelessly failed to exercise reasonable care and
28 diligence to avoid loss and to minimize and mitigate damages which could have been prevented

1 by reasonable efforts on the part of Third-Party Defendants, or by expenditures which should
2 have been made in the exercise of due care.

3 32. KB Home is informed and believes and thereon alleges that the failures and
4 damages as claimed by the Plaintiffs occurred because of the negligence of Third-Party
5 Defendants, and each of them.

6 33. As a direct and proximate result of the negligence of Third-Party Defendants, and
7 each of them, it is herein alleged that KB Home incurred and continues to incur costs and
8 expenses, including but not limited to litigation costs, contractors' fees, attorneys' fees and
9 consultants' fees to inspect, repair and mitigate damages arising out of said negligent design,
10 construction, repair and maintenance, and to respond to the Plaintiffs' claims.

11 34. As a direct and proximate result of the negligence of Third-Party Defendants, and
12 each of them, KB Home has suffered, and continues to suffer, damage to its goodwill and
13 reputation.

14 SECOND CAUSE OF ACTION

15 [Breach of Contract]

16 35. KB Home refers to and incorporates herein by reference each and every paragraph
17 of all Causes of Action as though fully set forth herein.

18 36. KB Home is informed and believes and thereon alleges that KB Home entered into
19 written/oral contracts with Third-Party Defendants, and each of them, for the design,
20 development and/or construction of the Project, which is the subject matter of this litigation.
21 KB Home is informed and believes and thereon alleges that the written/oral contracts provide
22 that Third-Party Defendants, and each of them, among other things, were to comply with each
23 and every term and condition.

24 37. KB Home is informed and believes and thereon alleges that the defects and
25 damages claimed by the Plaintiffs against KB Home involve defects and damage to, or
26 destruction of, property, and KB Home is further informed and believes, and thereon alleges,
27 that said damages were caused by Third-Party Defendants, and each of them, arising out of and
28 connected with the performance of Third-Party Defendants' obligations pursuant to the

1 written/oral contracts entered into with KB Home.

2 38. Third-Party Defendants, and each of them, have breached the aforementioned
3 written/oral contracts by failing and neglecting to properly perform the labor and services as
4 contemplated by the parties to the agreements, and by failing to comply with each and every
5 term of the contract. Third-Party Defendants, and each of them, among other things, negligently
6 and carelessly built, supervised, designed, constructed and/or maintained the subject Project,
7 thereby causing the defects and damages claimed by the Plaintiffs.

8 39. KB Home is informed and believes and thereon alleges that pursuant to the terms
9 of said written/oral contracts, Third-Party Defendants, and each of them, undertook the
10 obligation to maintain general liability insurance policies and agreed to name KB Home as an
11 additional insured under their policies of liability insurance.

12 40. KB Home is informed and believes and thereon alleges that Third-Party
13 Defendants, and each of them, have breached said agreements by refusing and failing to comply
14 with their contractual obligations to maintain liability insurance and to name KB Home as an
15 additional insured under said policies of liability insurance.

16 41. KB Home has fully performed all conditions, covenants, and promises required
17 by it to be performed in accordance with the terms and conditions of said written/oral contracts.

18 42. KB Home is informed and believes and thereon alleges that Third-Party
19 Defendants, and each of them, entered into contracts with others in the performance of services
20 provided in the construction of the Project, and are responsible for all acts and omissions of
21 their agents and employees.

22 43. As a result of Third-Party Defendants' breach of the aforementioned written/oral
23 contracts, KB Home has been damaged in an amount according to proof at the time of trial.

24 44. The law firm of LORBER, GREENFIELD & POLITO was retained to defend the
25 action herein on behalf of KB Home, thereby incurring costs, consultants' fees, attorneys' fees
26 and other litigation fees in the defense of the allegations made by the Plaintiffs and prosecution
27 of this Third-Party Complaint. KB Home will seek leave of this court to amend this Third-Party
28 Complaint to show the amount of said costs and attorneys' fees when the same become known

1 to KB Home.

2 **THIRD CAUSE OF ACTION**

3 **[Breach of Express and Implied Warranties]**

4 45. KB Home refers to and incorporates herein by reference each and every paragraph
5 of all Causes of Action as though fully set forth herein.

6 46. KB Home is informed and believes and thereon alleges that Third-Party
7 Defendants, and each of them, entered into agreements with KB Home and were to comply with
8 each and every term and condition.

9 47. KB Home is informed and believes and thereon alleges that Third-Party
10 Defendants, and each of them, pursuant to the contracts, warranted that all work performed
11 would be in a first-class and workmanlike manner, in full accordance with the provisions of
12 conditions of the contracts, all applicable provisions of the Uniform Building Code and any and
13 all other applicable federal, state, city or county laws, ordinances, codes or regulations, plans
14 and specifications, and that the subject property would be fit for its intended use and purpose,
15 namely that all labor performed and services provided would be in a good, workmanlike and
16 substantial manner.

17 48. KB Home relied upon said warranties and believed that the work was performed
18 in a first-class and workmanlike manner, and that the labor performed and services provided
19 were properly performed by Third-Party Defendants, and each of them, and their agents or
20 employees, and fit for their intended uses and purposes.

21 49. KB Home is informed and believes and thereon alleges that Third-Party
22 Defendants, and each of them, breached said warranties, in that the homeowners at the Project
23 have claimed that the construction at the Project was defective; and that, as a consequence of
24 said defects, the homes at the Project have experienced damages.

25 50. As a proximate result of the breach of the warranties by Third-Party Defendants,
26 and each of them, KB Home alleges that it will suffer damages in a sum equal to any sums paid
27 by KB Home in addressing the claims made by the Plaintiffs.

28 51. This Third-Party Complaint will serve as notice of such conditions, and KB Home

1 is informed and believes and thereon alleges that Third-Party Defendants have declined to
2 acknowledge its responsibility to repair the alleged defects as referenced above.

3 52. The law firm of LORBER, GREENFIELD & POLITO was retained to respond
4 to the claims made by the Project homeowners against KB Home, thereby incurring costs,
5 consultants' fees, attorneys' fees and other litigation fees in responding to the Plaintiffs' claims
6 and prosecution of this Third-Party Complaint. KB Home will seek leave of this Court to
7 amend this Third-Party Complaint to show the amount of said costs and attorneys' fees when
8 the same become known to KB Home.

9 **FOURTH CAUSE OF ACTION**

10 **[Implied Indemnity]**

11 53. KB Home refers to and incorporates herein by reference each and every paragraph
12 of all Causes of Action as though fully set forth herein.

13 54. To the extent KB Home incurs expenses and/or other damages by way of repairs
14 or otherwise, arising out of the Project homeowners' claims regarding the work performed by
15 Third-Party Defendants, KB Home is entitled to a common law defense and indemnity from
16 Third-Party Defendants, and each of them, for claims, sums paid, repairs made, and amounts
17 incurred, by way of settlement, judgment, or otherwise, in regards to the Plaintiffs' claims.

18 **FIFTH CAUSE OF ACTION**

19 **[Express Indemnity]**

20 55. KB Home refers to and incorporates herein by reference each and every paragraph
21 of all Causes of Action as though fully set forth herein.

22 56. KB Home is informed and believes and thereon alleges that Third-Party
23 Defendants, and each of them, entered into written agreements with KB Home which stated,
24 among other things, that Subcontractor shall protect and indemnify Contractor against any
25 claim, loss or damage suffered by anyone arising through the acts or omissions of Subcontractor
26 and those employed by it.

27 57. KB Home is informed and believes and thereon alleges that the defects and
28 damages claimed by the Plaintiffs involve defects and damage to, or destruction of, property;

1 and KB Home is further informed and believes, and thereon alleges, that said damages were
2 caused by Third-Party Defendants, and each of them, arising out of and connected with the
3 performance of Third-Party Defendants' obligations pursuant to the written agreements entered
4 into by Third-Party Defendants with KB Home.

5 58. KB Home is informed and believes and thereon alleges that Third-Party
6 Defendants, and each of them, entered into contracts with others in the performance of services
7 provided in the construction of the Project and are responsible for all acts and omissions of their
8 agents and employees.

9 59. KB Home, by this action, demands that Third-Party Defendants, and each of them,
10 defend, indemnify and hold harmless KB Home from and against any and all claims, causes of
11 action, damages (including direct, liquidated, consequential, incidental or other damages),
12 judgments, awards, losses, liabilities, interest, attorneys' fees, costs and expenses of whatsoever
13 kind or nature at any time arising out of any failure of Third-Party Defendants to perform any
14 of the terms and conditions of this subcontract; or which are in any manner directly or indirectly
15 caused or occasioned by or contributed to, or claimed to be caused or occasioned by, or
16 contributed to, by any act, omission, fault or negligence, whether active or passive, of Third-
17 Party Defendants to the Plaintiffs by way of settlement, judgment or otherwise.

18 60. The law firm of LORBER, GREENFIELD & POLITO was retained to respond
19 to the claims made by the Plaintiffs on behalf of KB Home, thereby incurring costs, consultants'
20 fees, attorneys' fees and other litigation fees in responding to the Project homeowners' claims
21 and prosecution of this Third-Party Complaint. KB Home will seek leave of this court to amend
22 this Third-Party Complaint to show the amount of said costs and attorneys' fees when the same
23 become known to KB Home.

24 **SIXTH CAUSE OF ACTION**

25 **[Declaratory Relief re: Duty to Defend]**

26 61. KB Home refers to and incorporates herein by this reference each and every
27 paragraph of all Causes of Action as though fully set forth at this point.

28 62. An express/oral indemnity contract exists between KB Home and Third-Party

1 Defendants, and each of them. Each said express/oral contract is incorporated herein by
2 reference as though fully set forth at this point.

3 63. The express/oral contract provided that Third-Party Defendants, and each of them,
4 would indemnify and hold Contractor, Contractor's property, the Owner and the property of the
5 Owner free and harmless and would indemnify each of the foregoing for and against any and
6 all expenses, including, without limitation, reasonable attorneys' fees, claims, losses, damages,
7 and costs, caused by or connected with the performance or nonperformance of any act pursuant
8 hereto by Third-Party Defendants or their agents, materialmen, licensees, or employees.

9 64. A claim or loss within the meaning of the express/oral contract has arisen by
10 virtue of the fact that homeowners at the Project have claimed damages for construction
11 deficiencies, and that the construction deficiencies claimed by the Plaintiffs pertain to the scope
12 of work performed and/or materials provided by Third-Party Defendants.

13 65. Third-Party Defendants, and each of them, has a present duty to defend against
14 any claims made against KB Home pursuant to the agreement, and as a result of the assertion
15 of a claim and/or loss arising out of the work of the Third-Party Defendants. KB Home has a
16 present legal right to be provided a defense by Third-Party Defendants, and each of them.

17 66. KB Home has tendered the defense of this action to Third-Party Defendants, and
18 each of them, whom rejected, ignored, or failed to properly accept the tender of defense.

19 67. A dispute has arisen and an actual controversy now exists between KB Home and
20 Third-Party Defendants, and each of them, in that KB Home contends that it is entitled to a
21 present defense from Third-Party Defendants while Third-Party Defendants deny such
22 obligations under the contracts.

23 68. KB Home hereby seeks a Declaration by the Court as to its respective rights and
24 Third-Party Defendants' duties and obligations as to the duty to defend in connection with the
25 matters herein alleged, and a judgment in KB Home's favor as to any obligations by Third-Party
26 Defendants, and each of them, to KB Home.

27 ///

28 ///

SEVENTH CAUSE OF ACTION

[Declaratory Relief re: Duty to Indemnify]

69. KB Home refers to and incorporates herein by this reference each and every paragraph of all Causes of Action as though fully set forth at this point.

70. Under the indemnity agreements identified above, and as contained in the contracts referenced therein, Third-Party Defendants, and each of them, are obligated to indemnify KB Home from all liability, loss, or damage claimed by the homeowners at the Project relating to matters embraced by the indemnity and arising out of the scope of work of Third-Party Defendants.

71. A dispute has arisen and an actual controversy now exists between KB Home and Third-Party Defendants in that KB Home contends that it is entitled to defense and indemnity pursuant to the express indemnity provision, and damages arising from negligence, indemnity, contribution, and damages for breach of contract, and breach of warranties, while Third-Party Defendants deny such obligations.

72. KB Home seeks a Declaration by the Court as to its respective rights and Third-Party Defendants' duties and obligations as to the matters herein alleged, and a judgment in KB Home's favor as to the existence of the indemnity agreements.

EIGHTH CAUSE OF ACTION

[Declaratory Relief re: Contractual Duties]

73. KB Home refers to and incorporates herein by this reference each and every paragraph of all Causes of Action as though fully set forth at this point.

74. An actual controversy has arisen and now exists between KB Home and Third-Party Defendants, and each of them, concerning their respective rights, duties, and obligations under the contracts, in that KB Home claims that Third-Party Defendants, and each of them, breached their duties and obligations under their contracts.

75. KB Home alleges that a declaration by the Court as to the rights, duties, and obligations of the parties herein is required in order to resolve the existing controversies and disputes so that the parties may ascertain their true obligations and discharge those obligations

1 accordingly. Specifically, KB Home requests this Court to determine that KB Home's
2 interpretation of the contractual provisions is correct, including the indemnity provision, the
3 requirement for Third-Party Defendants to name KB Home as an additional insured, and the
4 payment for attorneys' fees and costs, among others; that Third-Party Defendants breached
5 those obligations; and that Third-Party Defendants are obligated to defend and indemnify KB
6 Home against any claim, demand, damages, or liability, or any other loss.

7 **NINTH CAUSE OF ACTION**

8 **[Breach of Contract - Additional Insurance]**

9 76. KB Home refers to and incorporates herein by this reference each and every
10 paragraph set forth above as though set forth at this point.

11 77. KB Home is informed and believes and thereon alleges that Third-Party
12 Defendants, and each of them, entered into written agreements with KB Home which stated,
13 among other things, that KB Home would be named as an additional insured by the liability
14 insurers for Third-Party Defendants with specific requirements.

15 78. KB Home has performed all conditions, covenants and promises required of it in
16 accordance with the terms and conditions of the aforementioned agreements.

17 79. KB Home is informed and believes and thereon alleges that Third-Party
18 Defendants, and each of them, have breached the aforementioned written contracts by failing
19 to obtain such insurance complying with all such above requirements, leaving KB Home
20 without such insurance coverage in whole or in part.

21 80. As a result of Third-Party Defendants' breach of the aforementioned written
22 contracts, KB Home has been damaged in an amount according to proof at the time of trial.

23 **WHEREFORE**, KB Home prays for judgment as follows:

24 A. For an Order from the Court requiring Third-Party Defendants to defend and
25 indemnify (via express and/or implied indemnity) KB Home for any and all claims, loss,
26 damage, or expense arising out of or in connection with Third-Party Defendants' work at the
27 Project;

28 B. For this Court's declaration(s) regarding Third-Party Defendants' contractual

LORBER, GREENFIELD & POLITO LLP
8222 South 48th Street, Suite 230
Phoenix, Arizona 85044
(602) 437-4177
Fax (602) 437-4180

1 duties owed to KB Home, as set forth above, including the duties to defend and indemnify KB
2 Home for the claims asserted by the Plaintiffs;

3 C. For damages resulting from Third-Party Defendants' breach of contract, as alleged
4 herein, in an amount to be proved at trial;

5 D. For damages resulting from Third-Party Defendants' negligence, as alleged herein,
6 in an amount to be proved at trial;

7 E. For damages resulting from Third-Party Defendants' breach of express and/or
8 implied warranties, as alleged herein, in an amount to be proved at trial;

9 F. For costs of suit and attorneys' fees incurred by KB Home herein pursuant to
10 contract and/or statute or Court rule, including but not limited to A.R.S. §§ 12-341,
11 12-341.01, and 12-684;

12 G. For such other relief as this Court may deem just and proper.

13 DATED this 6th day of July, 2009.

14 LORBER, GREENFIELD & POLITO LLP

15 By: Holly P. Davies

16 Holly P. Davies, Esq.
17 Danielle M. Gross, Esq.
18 8222 S. 48th Street, Suite 230
19 Phoenix, Arizona 85044
Attorneys for Defendants

20 ORIGINAL of the foregoing filed
21 this 6th day of July, 2009, with:

22 Clerk of the Court
23 MARICOPA COUNTY SUPERIOR COURT
201 West Jefferson Street
Phoenix, Arizona 85003

24 COPY of the foregoing HAND DELIVERED
25 this 6th day of July, 2009, to:

26 The Honorable Douglas L. Rayes
27 MARICOPA COUNTY SUPERIOR COURT
101 West Jefferson Street
Phoenix, AZ 85003

LORBER, GREENFIELD & POLITO LLP
8222 South 48th Street, Suite 230
Phoenix, Arizona 85044
(602) 437-4177
Fax (602) 437-4180

1 COPY of the foregoing mailed
2 this 14th day of July, 2009, to:
3 Kenneth S. Kasdan, Esq.
4 Michael J. White, Esq.
5 Scott A. Booth, Esq.
6 KASDAN SIMONDS RILEY & VAUGHAN LLP
7 2425 E. Camelback Road, Ste. 550
8 Phoenix, Arizona 85016
9 *Attorneys for Plaintiff*

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EXHIBIT D

COPY

JUL 31 2009



MICHAEL K. JAMES, CLERK
M. Righetti
DEPUTY CLERK

LORBER, GREENFIELD & POLITO, LLP
Holly P. Davies, Esq. [S.B. #018308]
Lily C. Compton, Esq. [S.B. #025419]
8222 South 48th Street, Suite 230
Phoenix, Arizona 85044
TEL: (602) 437-4177
FAX: (602) 437-4180
hdavies@lorberlaw.com
lcompton@lorberlaw.com
Attorneys for Defendants/Third-Party Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN THE COUNTY OF MARICOPA

SUZANNE TRACY; et al., and DOES 1-100,

Plaintiffs,

v.

KB HOME SALES-PHOENIX INC. f.k.a. KAUFMAN AND BROAD HOME SALES OF ARIZONA, INC.; KB HOME PHOENIX INC. f.k.a. KAUFMAN AND BROAD OF ARIZONA, INC.; and DOES 1-100,

Defendants.

KB HOME PHOENIX INC., an Arizona Corporation,

Third-Party Plaintiff,

v.

A.R.C.I. AMERICA ROOFING LLC dba AMERICA ROOFING, an Arizona corporation, ARROWHEAD GRADING AND EXCAVATION, LLC, an Arizona corporation, SELECTBUILD ARIZONA,

Case No. CV2009-019438

DEFENDANT/THIRD-PARTY PLAINTIFF
KB HOME PHOENIX INC.'S THIRD-PARTY COMPLAINT

1. Negligence
2. Breach of Contract
3. Breach of Express and Implied Warranties
4. Implied Indemnity
5. Express Indemnity
6. Declaratory Relief Re: Duty to Defend
7. Declaratory Relief Re: Duty to Indemnify
8. Declaratory Relief Re: Contractual Duties
9. Breach of Contract - Additional Insurance

(Assigned to the Honorable Robert Oberbillig)

1 LLC fka BBP CONCRETE CO., an Arizona
2 corporation, CHAS ROBERTS AIR
3 CONDITIONING, INC., an Arizona
4 corporation, CRUM PLUMBING, INC., an
5 Arizona corporation, ENERGY EFFICIENT
6 WINDOWS & DOORS, INC., an Arizona
7 corporation, FISHER ROOFING, INC., an
8 Arizona corporation, GUZMAN
9 CONSTRUCTION STOCK OWNERSHIP,
10 LLC, an Arizona corporation, HASKINS
11 ELECTRIC, LLC, an Arizona corporation,
12 METRO VALLEY PAINTING
13 CORPORATION, an Arizona corporation,
14 PALO VERDE PLASTERING, INC., an
15 Arizona corporation, TPC MANAGEMENT,
16 LLC dba THE PLUMBING COMPANY, an
17 Arizona corporation, SUN MASTER
18 MASONRY, INC., an Arizona corporation,
19 SUPERIOR DRYWALL COMPANY, INC.,
20 an Arizona corporation, YOUNG AND
21 YOUNGER dba ALTERNATIVE
22 PAINTING, and ROES and MOES 1
23 through 100, inclusive,

Third-Party Defendants.

For its Third-Party Complaint against all named Third-Party Defendants,
Defendant/Third-Party Plaintiff KB HOME Phoenix Inc. ("KB Home") allege as follows:

GENERAL ALLEGATIONS

1. At all times herein mentioned, Third-Party Plaintiff KB Home is and was an
Arizona Corporation duly organized and existing under and by virtue of the laws of the State of
Arizona, and doing business in the County of Pinal, State of Arizona. Third-Party Plaintiff
served as the owner and developer of lots within the residential subdivision known as the SK
Ranch project (a.k.a. Oasis and Mirage II) located in Casa Grande, Arizona (hereinafter "the
Project").

2. At all times herein mentioned, Third-Party Defendant Young and Younger Inc.
dba Alternative Painting (hereinafter "Alternative Painting"), upon information and belief, is and

1 was an Arizona corporation, authorized and licensed to do business, and doing business, in Pinal
2 County and the State of Arizona. The scope of work for Alternative Painting consisted of,
3 among other things, interior and exterior painting work at the Project.

4 3. At all times herein mentioned, Third-Party Defendant A.R.C.I. America Roofing,
5 LLC dba America Roofing (hereinafter "America Roofing"), upon information and belief, is and
6 was an Arizona corporation, authorized and licensed to do business, and doing business, in Pinal
7 County and the State of Arizona. The scope of work for America Roofing consisted of, among
8 other things, roofing work at the Project.

9 4. At all times herein mentioned, Third-Party Defendant Arrowhead Grading and
10 Excavation, LLC (hereinafter "Arrowhead Grading"), upon information and belief, is and was
11 an Arizona corporation, authorized and licensed to do business, and doing business, in Pinal
12 County and the State of Arizona.

13 5. At all times herein mentioned, Third-Party Defendant B.B.P. Concrete Co. nka
14 SelectBuild Arizona, LLC (hereinafter "B.B.P. Concrete"), upon information and belief, is and
15 was an Arizona corporation, authorized and licensed to do business, and doing business, in Pinal
16 County and the State of Arizona. The scope of work for B.B.P. Concrete consisted of, among
17 other things, concrete work at the Project.

18 6. At all times herein mentioned, Third-Party Defendant Chas Roberts Air
19 Conditioning, Inc. (hereinafter "Chas Roberts"), upon information and belief, is and was an
20 Arizona corporation, authorized and licensed to do business, and doing business, in Pinal
21 County and the State of Arizona. The scope of work for Chas Roberts consisted of, among other
22 things, HVAC work at the Project.

23 7. At all times herein mentioned, Third-Party Defendant Crum Plumbing, Inc., upon
24 information and belief, is and was an Arizona corporation, authorized and licensed to do
25 business, and doing business, in Pinal County and the State of Arizona. The scope of work for
26 Crum Plumbing, Inc. consisted of, among other things, plumbing work at the Project.

27 8. At all times herein mentioned, Third-Party Defendant Energy Efficient Window &
28 Doors, Inc. ("Energy Efficient"), upon information and belief, is and was an Arizona

1 corporation, authorized and licensed to do business, and doing business, in Pinal County and the
2 State of Arizona. The scope of work for Energy Efficient consisted of, among other things,
3 installation of windows and doors at the Project.

4 9. At all times herein mentioned, Third-Party Defendant Fisher Roofing, Inc., upon
5 information and belief, is and was an Arizona corporation, authorized and licensed to do
6 business, and doing business, in Pinal County and the State of Arizona. The scope of work for
7 Fisher Roofing, Inc. consisted of, among other things, roofing work at the Project.

8 10. At all times herein mentioned, Third-Party Defendant Guzman Construction Stock
9 Ownership, LLC dba Guzman Construction (hereinafter "Guzman Construction"), upon
10 information and belief, is and was an Arizona corporation, authorized and licensed to do
11 business, and doing business, in Pinal County and the State of Arizona. The scope of work for
12 Guzman Construction consisted of, among other things, framing work and trim carpentry work
13 at the Project.

14 11. At all times herein mentioned, Third-Party Defendant Haskins Electric, LLC
15 (hereinafter "Haskins Electric"), upon information and belief, is and was an Arizona
16 corporation, authorized and licensed to do business, and doing business, in Pinal County and the
17 State of Arizona. The scope of work for Haskins Electric consisted of, among other things,
18 electrical work at the Project.

19 12. At all times herein mentioned, Third-Party Defendant Metro Valley Painting
20 Corporation ("Metro Valley"), upon information and belief, is and was an Arizona corporation,
21 authorized and licensed to do business, and doing business, in Pinal County and the State of
22 Arizona. The scope of work for Metro Valley consisted of, among other things, painting work
23 at the Project.

24 13. At all times herein mentioned, Third-Party Defendant Palo Verde Plastering, Inc.
25 ("Palo Verde"), upon information and belief, is and was an Arizona corporation, authorized and
26 licensed to do business, and doing business, in Pinal County and the State of Arizona. The
27 scope of work for Palo Verde, consisted of, among other things, stucco work at the Project.
28

1 14. At all times herein mentioned, Third-Party Defendant TPC Management, LLC dba
2 The Plumbing Company ("The Plumbing Company"), upon information and belief, is and was
3 an Arizona corporation, authorized and licensed to do business in Pinal County and the State of
4 Arizona. The scope of work for The Plumbing Company consisted of, among other things,
5 plumbing work at the Project.

6 15. At all times herein mentioned, Third-Party Defendant Sun Master Masonry, Inc.
7 ("Sun Master Masonry"), upon information and belief, is and was an Arizona corporation,
8 authorized and licensed to do business, and doing business, in Pinal County and the State of
9 Arizona. The scope of work for Sun Master Masonry consisted of, among other things, masonry
10 fence work at the Project.

11 16. At all times herein mentioned, Third-Party Defendant Superior Drywall Company,
12 Inc. ("Superior Drywall"), upon information and belief, is and was an Arizona corporation,
13 authorized and licensed to do business, and doing business, in Pinal County and the State of
14 Arizona. The scope of work for Superior Drywall consisted of, among other things, drywall
15 installation at the Project.

16 17. The Third-Party Defendants named in Paragraphs 2 through 16 and Third-Party
17 defendant ROES 1 through 100, inclusive, which will be designated at a later date, shall at all
18 times hereafter be referred to as "SUBCONTRACTORS," and were business entities organized
19 and existing under and by virtue of the laws of the State of Arizona and doing business in Pinal
20 County, State of Arizona.

21 18. At all times herein mentioned, MOES 1 through 100, inclusive, which will be
22 designated at a later date, shall at all times hereafter be referred to as "DESIGN
23 PROFESSIONALS," and were business entities organized and existing under and by virtue of
24 the laws of the State of Arizona and doing business in Pinal County, State of Arizona.

25 19. Third-Party Plaintiff is presently unaware of the true names and capacities and
26 liability of Third-Party Defendants named herein as ROES 1 through 100, inclusive, and Third-
27 Party Plaintiff will seek leave of Court to amend this Third-Party Complaint to allege their true
28 names and capacities after the same have been ascertained.

1 20. Third-Party Plaintiff is presently unaware of the true names and capacities and
2 liability of Third-Party Defendants named herein as MOES 1 through 100, inclusive, and Third-
3 Party Plaintiff will seek leave of Court to amend this Third-Party Complaint to allege their true
4 names and capacities after the same have been ascertained.

5 21. Third-Party Plaintiff is informed and believes, and thereon alleges, that at all times
6 herein mentioned, each of the Third-Party Defendants, including ROES and MOES, were the
7 agent, partner, co-developer, joint venture and/or employer of each of the remaining Third-Party
8 Defendants, and ROES and MOES, and were at all times herein mentioned acting within the
9 course and scope of such agency and employment.

10 22. Third-Party Plaintiff is informed and believes and thereon alleges that said Third-
11 Party Defendants, and each of them, including ROES and MOES, participated in the design,
12 development, labor, manufacture or provision of materials, and/or construction of a single-
13 family residential development, the Project, wherein Third-Party Defendants were to furnish
14 their best skill and judgment and to cooperate with Third-Party Plaintiff and its authorized
15 agents, including the engineers, the architects, and the City of Case Grande, and/or County of
16 Pinal, in furthering the interests of Third-Party Plaintiff.

17 23. On or about June 16, 2009, Plaintiffs filed a Complaint for Breach of Implied
18 Warranty of Workmanship and Habitability, Breach of Express Warranty, and Breach of
19 Contract, in Maricopa County Superior Court Case No. CV2009-019438 against
20 Defendants/Third-Party Plaintiff, wherein Plaintiffs allege that Defendants therein are liable to
21 Plaintiffs for damages arising from the construction, work, design, engineering, development,
22 products, and materials provided by subcontractors, suppliers, and materialman of the Project, as
23 more fully set forth in Plaintiffs' Complaint.

24 24. Third-Party Plaintiff alleges that it has incurred warranty repair costs in relation to
25 this project, which Third-Party Plaintiff alleges were a result of Third-Party Defendants' work,
26 and as such, these costs are being sought from Third-Party Defendants per the obligations
27 agreed to under the contract between Third-Party Plaintiff and Third-Party Defendants.

1 25. Third-Party Plaintiff answered the counts of the Complaint and denied the
2 allegations therein. Without admitting the allegations contained therein, if Third-Party Plaintiff
3 is found liable for any such damage to Plaintiffs, the Third-Party Plaintiff is informed and
4 believes, and thereon alleges, that such damage is primarily and ultimately caused by the acts,
5 breaches, and/or omissions of Third-Party Defendants, and each of them, whereas Third-Party
6 Plaintiff's acts, if any, were secondary, passive, or derivative in nature.

7 26. Third-Party Plaintiff is informed and believes, and thereon alleges, that the defects
8 and damages alleged by Plaintiffs in the Complaint involve defects, damage to, or destruction of
9 the subject Property; and Third-Party Plaintiff is informed and believes, and thereon alleges, that
10 said damages were caused by Third-Party Defendants and/or their agents, and each of them,
11 including ROES and DOES, arising out of and in connection with the performance of Third-
12 Party Defendants' obligations as referred to above.

13 27. Jurisdiction and venue are proper.

14 **FIRST CAUSE OF ACTION**
15 **[Negligence]**
16 **(As to All Third-Party Defendants)**

17 28. Third-Party Plaintiff is informed and believes, and thereon alleges, that said Third-
18 Party Defendants, and each of them, participated in the design, development, labor, materials,
19 and/or construction of the Project, wherein Third-Party Defendants were to furnish their best
20 skill and judgment and to cooperate with Third-Party Plaintiff, its authorized agents, and the
21 City of Casa Grande, and/or County of Pinal, State of Arizona, in furthering the interests of
22 Third-Party Plaintiff.

23 29. Third-Party Plaintiff is informed and believes, and thereon alleges, that Third-
24 Party Defendants, and each of them, negligently, carelessly, and wrongfully failed to use
25 reasonable care in the design, development, grading, supervision, maintenance, repair,
26 manufacture or supply of materials, installation, inspection, and/or construction of the Project
27 that is at issue in Plaintiffs' Complaint, and which is more particularly described therein.

1 30. Third-Party Plaintiff is further informed and believes, and thereon alleges, that
2 Third-Party Defendants, and each of them, negligently and carelessly failed to exercise
3 reasonable care and diligence to avoid loss and to minimize and mitigate damages which could
4 have been prevented by reasonable efforts on the part of said Third-Party Defendants, or by
5 expenditures which should have been made in the exercise of due care.

6 31. Third-Party Plaintiff is informed and believes, and thereon alleges, that the failures
7 and damages alleged by Plaintiffs against Third-Party Plaintiff in the Complaint occurred
8 because of the negligence of Third-Party Defendants and each of them.

9 32. As a direct and proximate result of the negligence of Third-Party Defendants, and
10 each of them, it is herein alleged that Third-Party Plaintiff incurred and continues to incur costs
11 and expenses, including, but not limited to, litigation costs, contractors' fees, attorneys' fee, and
12 consultants' fees to inspect, repair and maintenance, and to defend against Plaintiffs' action
13 herein.

14 33. As a direct and proximate result of the negligence of Third-Party Defendants, and
15 each of them, Third-Party Plaintiff has suffered, and continues to suffer, damage to its goodwill
16 and reputation.

17 **SECOND CAUSE OF ACTION**
18 **[Breach of Contract]**
19 **(As to All Third-Party Defendants)**

20 34. Third-Party Plaintiff refers to and incorporates herein by reference each and every
21 paragraph of all Causes of Action as though fully set forth herein.

22 35. Third-Party Plaintiff is informed and believes, and thereon alleges, that Third-
23 Party Plaintiff entered into written/oral contracts with Third-Party Defendants, and each of them,
24 for the design, development, and/or construction of the Project which is the subject matter of
25 this litigation. Third-Party Plaintiff is informed and believes, and thereon alleges, that the
26 written/oral contracts provide that the Third-Party Defendants, and each of them, among other
27 things, were to comply with each and every term and condition.

1 36. Third-Party Plaintiff is informed and believes, and thereon alleges, that the defects
2 and damages claimed by Plaintiffs against Third-Party Plaintiff in the Complaint involve defects
3 and damage to, or destruction of, property, and Third-Party Plaintiff herein is further informed
4 and believes, and thereon alleges, that said damages were caused by Third-Party Defendants,
5 and each of them, arising out of and connected with the performance of Third-Party Defendants'
6 obligations pursuant to the written/oral contracts entered into by each of them with Third-Party
7 Plaintiff herein.

8 37. Third-Party Defendants, and each of them, have breached the aforementioned
9 written/oral contracts by failing and neglecting to properly perform the labor and services as
10 contemplated by the parties to the agreements, and by failing to comply with each and every
11 term of the contract. Third-Party Defendants, and each of them, among other things, negligently
12 and carelessly built, supervised, designed, constructed, and/or maintained the subject Project,
13 thereby causing the defects alleged by Plaintiffs in their Complaint.

14 38. Third-Party Plaintiff is informed and believes, and thereon alleges, that pursuant to
15 the terms of said written/oral contracts, Third-Party Defendants, and each of them, undertook the
16 obligation to maintain general liability insurance policies and, as quoted above, agreed to name
17 Third-Party Plaintiff as an additional insured under their respective policies of liability
18 insurance.

19 39. Third-Party Plaintiff is informed and believes, and thereon alleges, that Third-
20 Party Defendants, and each of them, have breached said agreements by refusing and failing to
21 comply with their contractual obligations to maintain liability insurance and to name Third-Party
22 Plaintiff herein as an additional insured under said policies of liability insurance.

23 40. Third-Party Plaintiff has fully performed all conditions, covenants, and promises
24 required by it to be performed in accordance with the terms and conditions of said written/oral
25 contracts.

26 41. Third-Party Plaintiff is informed and believes and thereon alleges that Third-Party
27 Defendants, and each of them, entered into contracts with others in the performance of services
28

1 provided in the construction of the Project, and are responsible for all acts and omissions of their
2 agents and employees.

3 42. As a result of Third-Party Defendants' breach of the aforementioned written/oral
4 contracts, Third-Party Plaintiff has been damaged in an amount according to proof at the time of
5 trial.

6 43. The law firm of LORBER, GREENFIELD & POLITO was retained to defend the
7 action herein on behalf of Third-Party Plaintiff, thereby incurring costs, consultants' fees,
8 attorneys' fees, and other litigation fees in the defense of this action and prosecution of this
9 Third-Party Complaint. Third-Party Plaintiff will seek leave of this court to amend this Third-
10 Party Complaint to show the amount of said costs and attorneys' fees when the same become
11 known to Third-Party Plaintiff.

12 **THIRD CAUSE OF ACTION**
13 **[Breach of Express and Implied Warranties]**
14 **(As to All Third-Party Defendants)**

15 44. Third-Party Plaintiff refers to and incorporates herein by reference each and every
16 paragraph of all Causes of Action as though fully set forth herein.

17 45. Third-Party Plaintiff is informed and believes, and thereon alleges, that Third-
18 Party Defendants, and each of them, entered into agreements with Third-Party Plaintiff and were
19 to comply with each and every term and condition.

20 46. Third-Party Plaintiff is informed and believes, and thereon alleges, that Third-
21 Party Defendants, and each of them, pursuant to the contracts, warranted that all work
22 performed would be in a first-class and workmanlike manner, in full accordance with the
23 provisions of conditions of the contract, all applicable provisions of the Uniform Building Code
24 and any and all other applicable federal, state, city or county laws, ordinances, codes or
25 regulations, plans and specifications, and that the subject property would be fit for its intended
26 use and purpose, namely that all labor performed and services provided would be in a good,
27 workmanlike and substantial manner.

1 47. Third-Party Plaintiff relied upon said warranties and believed that the work was
2 performed in a first-class and workmanlike manner, and that the labor performed and services
3 provided were properly performed by Third-Party Defendants, and each of them, and their
4 agents or employees, and fit for their intended uses and purposes.

5 48. Third-Party Plaintiff is informed and believes and thereon alleges that Third-Party
6 Defendants, and each of them, breached said warranties in that Plaintiffs, in the Complaint,
7 alleged that the construction was defective, as is more particularly set forth in the Complaint,
8 and that, as a consequence of said defects, the homes have experienced damages, as are more
9 particularly alleged in Plaintiffs' Complaint.

10 49. As a proximate result of the breach of the warranties by Third-Party Defendants,
11 and each of them, Third-Party Plaintiff alleges that it will suffer damages in a sum equal to any
12 sums paid by way of settlement, or, in the alternative, judgment rendered against Third-Party
13 Plaintiff in the action herein based upon Plaintiffs' Complaint on file herein.

14 50. This Third-Party Complaint will serve as notice of such conditions, and Third-
15 Party Plaintiff is informed and believes and thereon alleges that Third-Party Defendants declined
16 to acknowledge their responsibility to repair the alleged defects as referenced above.

17 51. The law firm of LORBER, GREENFIELD & POLITO was retained to defend the
18 action herein on behalf of Third-Party Plaintiff, thereby incurring costs, consultants' fees,
19 attorneys' fees, and other litigation fees in the defense of this action and prosecution of this
20 Third-Party Complaint. Third-Party Plaintiff will seek leave of this Court to amend this Third-
21 Party Complaint to show the amount of said costs and attorneys' fees when the same become
22 known to Third-Party Plaintiff.

23 **FOURTH CAUSE OF ACTION**
24 **[Implied Indemnity]**
25 **(As to All Third-Party Defendants)**

26 52. Third-Party Plaintiff refers to and incorporates herein by reference each and every
27 paragraph of all Causes of Action as though fully set forth herein.

1 53. By reason of the foregoing, if Plaintiffs' Complaint recovers any sum against
2 Third-Party Plaintiff, then Third-Party Plaintiff is entitled to indemnity from the Third-Party
3 Defendants, and each of them, for injuries and damages sustained by Plaintiffs, if any, for any
4 sums paid by way of settlement, or in the alternative, any judgment rendered against Third-Party
5 Plaintiff in the action herein based upon Plaintiffs' Complaint and any cause of action alleged
6 therein.

7 **FIFTH CAUSE OF ACTION**
8 **[Express Indemnity]**
9 **(As to All Third-Party Defendants)**

10 54. Third-Party Plaintiff refers to and incorporates herein by reference each and every
11 paragraph of all Causes of Action as though fully set forth herein.

12 55. Third-Party Plaintiff is informed and believes and thereon alleges that Third-Party
13 Defendants, and each of them, as designated above, entered into written agreements with Third-
14 Party Plaintiff, and which stated, among other things, that Subcontractor shall protect and
15 indemnify Contractor against any claim, loss or damage suffered by anyone arising through the
16 acts or omissions of Subcontractor and those employed by it.

17 56. Third-Party Plaintiff is informed and believes and thereon alleges that the defects
18 and damages claimed by Plaintiffs in the Complaint involve defects and damage to, or
19 destruction of, property; and Third-Party Plaintiff herein is further informed and believes, and
20 thereon alleges, that said damages were caused by Third-Party Defendants, and each of them,
21 arising out of and connected with the performance of Third-Party Defendants' obligations
22 pursuant to the written agreement entered into by each of them with Third-Party Plaintiff herein.

23 57. Third-Party Plaintiff is informed and believes and thereon alleges that Third-Party
24 Defendants, and each of them, entered into contracts with others in the performance of services
25 provided in the construction of the Project and are responsible for all acts and omissions of their
26 agents and employees.

27 58. Third-Party Plaintiff, by this action, demands that Third-Party Defendants, and
28 each of them, defend, and indemnify and hold harmless Third-Party Plaintiff from and against

1 any and all claims, causes of action, damages (including direct, liquidated, consequential,
2 incidental, or other damages), judgments, awards, losses, liabilities, interest, attorneys' fees, and
3 costs and expenses of whatsoever kind or nature at any time arising out of any failure of
4 Subcontractor to perform any of the terms and conditions of this subcontract, or which are in
5 any manner directly or indirectly caused or occasioned by or contributed to, or claimed to be
6 caused or occasioned by, or contributed to, by any act, omission, fault or negligence, whether
7 active or passive, of Subcontractor to Plaintiffs by way of settlement, judgment or otherwise.

8 59. The law firm of LORBER, GREENFIELD & POLITO was retained to defend the
9 action herein on behalf of Third-Party Plaintiff, thereby incurring costs, consultants' fees,
10 attorneys' fees, and other litigation fees in the defense of this action and prosecution of this
11 Third-Party Complaint. Third-Party Plaintiff will seek leave of this court to amend this Third-
12 Party Complaint to show the amount of said costs and attorneys' fees when the same become
13 known to Third-Party Plaintiff.

14 **SIXTH CAUSE OF ACTION**
15 **[Declaratory Relief re: Duty to Defend]**
16 **(As to All Third-Party Defendants)**

17 60. Third-Party Plaintiff refers to and incorporates herein by this reference each and
18 every paragraph of all Causes of Action as though fully set forth at this point.

19 61. An express/oral indemnity contract exists between Third-Party Plaintiff and Third-
20 Party Defendants, and each of them. Each said express/oral contract is incorporated herein by
21 reference as though fully set forth at this point.

22 62. The express/oral contract provided that Third-Party Defendants, and each of them,
23 would indemnify and hold Contractor, Contractor's property, and the Owner and the property of
24 the Owner free and harmless and would indemnify each of the foregoing for and against any and
25 all expenses, including, without limitation, reasonable attorneys' fees, claims, losses, damages,
26 and costs, caused by or connected with the performance or nonperformance of any act pursuant
27 hereto by Third-Party Defendants or their agents, materialmen, licensees, or employees.

1 63. A claim or loss within the meaning of the express/oral contract has arisen by virtue
2 of the fact that the Plaintiffs, in the Complaint against Third-Party Plaintiff, claim damages for
3 construction deficiencies, and that the construction deficiencies claimed in Plaintiffs' Complaint
4 pertain to the scope of work performed and/or materials provided by the Third-Party
5 Defendants, and each of them.

6 64. Third-Party Defendants, and each of them, have a present duty to defend against
7 any claims made against Third-Party Plaintiff pursuant to the agreement, and as a result of the
8 assertion of a claim and/or loss arising out of the work of the Third-Party Defendants, and each
9 of them. Third-Party Plaintiff has a present legal right to be provided a defense by the Third-
10 Party Defendants, and each of them.

11 65. Third-Party Plaintiff tendered the defense of this action to Third-Party Defendants,
12 each of whom rejected, ignored, or failed to properly accept the tender of defense.

13 66. A dispute has arisen and an actual controversy now exists between Third-Party
14 Plaintiff and the Third-Party Defendants, and each of them, in that Third-Party Plaintiff
15 contends that it is entitled to a present defense from the Third-Party Defendants, and each of
16 them, while the Third-Party Defendants, and each of them, deny such obligations under the
17 contract.

18 67. Third-Party Plaintiff hereby seeks a Declaration by the Court as to its respective
19 rights and said Third-Party Defendants' duties and obligations as to the duty to defend in
20 connection with the matters herein alleged, and a judgment in Third Party Plaintiff's favor as to
21 any obligations by said Third Party Defendants, and each of them, to Third Party Plaintiff
22 herein.

23 **SEVENTH CAUSE OF ACTION**
24 **[Declaratory Relief re: Duty to Indemnify]**
25 **(As to All Third Party Defendants)**

26 68. Third-Party Plaintiff refers to and incorporates herein by this reference each and
27 every paragraph of all Causes of Action as though fully set forth at this point.

69. Under the indemnity agreements identified above, and as contained in the contracts referenced therein, the Third-Party Defendants, and each of them, are obligated to indemnify Third-Party Plaintiff from all liability, loss, or damage in this action relating to matters embraced by the indemnity and arising out of the scope of work of the Third-Party Defendants, and each of them.

70. A dispute has arisen and an actual controversy now exists between Third-Party Plaintiff and Third-Party Defendants, and each of them, in that Third-Party Plaintiff contends that it is entitled to defense and indemnity pursuant to the express indemnity provision, and damages arising from negligence, indemnity, contribution, and damages for breach of contract, and breach of warranties, while Third-Party Defendants, and each of them, deny such obligations.

71. Third-Party Plaintiff seeks a Declaration by the Court as to its respective rights and said Third-Party Defendants' duties and obligations as to the matters herein alleged, and a judgment in Third-Party Plaintiff's favor as to the existence of the indemnity agreement.

EIGHTH CAUSE OF ACTION
[Declaratory Relief re: Contractual Duties]
(As to All Third-Party Defendants)

72. Third-Party Plaintiff refers to and incorporates herein by this reference each and every paragraph of all Causes of Action as though fully set forth at this point.

73. An actual controversy has arisen and now exists between Third-Party Plaintiff and Third-Party Defendants, and each of them, concerning their respective rights, duties, and obligations under the contract, in that Third-Party Plaintiff claims that Third-Party Defendants, and each of them, breached their duties and obligations under their contracts.

74. Third-Party Plaintiff alleges that a declaration by the Court as to the rights, duties, and obligations of the parties herein is required in order to resolve the existing controversies and disputes so that the parties may ascertain their true obligations and discharge those obligations accordingly. Specifically, Third-Party Plaintiff requests this Court to determine that Third-Party Plaintiff's interpretation of the contractual provisions is correct, including the indemnity

1 provision, the requirement for Third-Party Defendants to name Third-Party Plaintiff as
2 additional insured, and the payment for attorneys' fees and costs, among others; that Third-Party
3 Defendants breached those obligations; and that Third Party Defendants are obligated to defend
4 and indemnify Third-Party Plaintiff against any claim, demand, damages, or liability, or any
5 other loss.

6
7 **NINTH CAUSE OF ACTION**
8 **[Breach of Contract - Additional Insurance]**
9 **(As to all Third-Party Defendants)**

10 75. Third-Party Plaintiff refers to and incorporates herein by this reference each and
11 every paragraph set forth above as though set forth at this point.

12 76. Third-Party Plaintiff is informed and believes and thereon alleges that Third-Party
13 Defendants entered into written agreements with Third-Party Plaintiff which stated, among other
14 things, that Third-Party Plaintiff would be named as an additional insured by the liability
15 insurers for Third-Party Defendants with specific requirements.

16 77. Third-Party Plaintiff has performed all conditions, covenants, and promises
17 required of it in accordance with the terms and conditions of the aforementioned agreements.

18 78. Third-Party Plaintiff is informed and believes and thereon alleges that Third-Party
19 Defendants, and each of them, have breached the aforementioned written contracts by failing to
20 obtain such insurance complying with all such above requirements, leaving Third-Party Plaintiff
21 without such insurance coverage in whole or in part.

22 79. As a result of Third-Party Defendants' breach of the aforementioned written
23 contracts, Third-Party Plaintiff has been damaged in an amount according to proof at the time of
24 trial.

25 **WHEREFORE**, Third-Party Plaintiff prays for judgment as follows:

26 A. For an Order from the Court requiring Third-Party Defendants, and each of them,
27 to defend and indemnify (via express and/or implied indemnity) Third-Party Plaintiff for any
28 and all claims, loss, damage, or expense arising out of or in connection with Third-Party
Defendants' work at the Project;

1 B. For this Court's declaration(s) regarding Third-Party Defendants' contractual
2 duties owed to Third-Party Plaintiff, as set forth above, including the duties to defend and
3 indemnify Third-Party Plaintiff for the claims asserted in Plaintiff's Complaint;

4 C. For damages resulting from Third-Party Defendants' breach of contract, as alleged
5 herein, in an amount to be proved at trial;

6 D. For damages resulting from Third-Party Defendants' negligence, as alleged herein,
7 in an amount to be proved at trial;

8 E. For damages resulting from Third-Party Defendants' breach of express and/or
9 implied warranties, as alleged herein, in an amount to be proved at trial;

10 F. For costs of suit and attorneys' fees incurred by Third-Party Plaintiff herein
11 pursuant to contract and/or statute or Court rule, including, but not limited to, A.R.S. §§ 12-341,
12 12-341.01, and 12-684;

13 G. For such other relief as this Court may deem just and proper.

14 Dated: July 31, 2009

LORBER, GREENFIELD & POLITO, LLP

15 By: L. C. Compton

16 Holly P. Davies, Esq.
17 Lily C. Compton, Esq.
18 8222 South 48th Street, Suite 230
19 Phoenix, Arizona 85044
20 Attorneys for KB HOME

21 ORIGINAL of the foregoing filed this
22 31st day of July 2009 with:

23 The Clerk of the Court
24 MARICOPA COUNTY SUPERIOR COURT
25 101 W. Jefferson
Phoenix, Arizona 85003

26 COPY of the foregoing hand-delivered this
27 31st day of July 2009, to:

28 The Honorable Robert Oberbillig

1 MARICOPA COUNTY SUPERIOR COURT
2 101 W. Jefferson
3 Phoenix, Arizona 85003

4 COPY of the forgoing mailed this
5 31st day of July 2009, to:

6 Steven J. Weber, Esq.
7 Michael J. White, Esq.
8 Scott A. Booth, Esq.
9 KASDAN SIMONDS RILEY & VAUGHAN LLP
10 2425 E. Camelback Road, Suite 550
11 Phoenix, Arizona 85016
12 *Attorneys for Plaintiffs*

13 Canikuo

LORBER, GREENFIELD & POLITO, LLP
8222 South 48th Street, Suite 230, Phoenix, Arizona 85044
Telephone (602) 437-4177 / Facsimile (602) 437-4180

EXHIBIT E

SK Ranch Homeowners Association v. KB Home Phoenix Inc.

LG Our File No: 08837.1436.02/ Case No: CV2005-00663

SUBCONTRACTOR	INSURANCE CARRIER	POLICY NO.	POLICY PERIOD
BBP CONCRETE	NATIONAL UNION FIRE INSURANCE c/o AIG	BE3577706	6/26/98-99
BBP CONCRETE	CNA INSURANCE	CO1062590500	6/26/98-99
BBP CONCRETE	AMERICAN GUARANTY & LIABILITY	GL05217154-00 SUO05218647	6/26/01-02
BBP CONCRETE	FEDERATED INSURANCE	6-31648E+12	6/26/00-01
BBP CONCRETE	STEADFAST INSURANCE	SCO521715401 SUO521864701	6/26/01-03
BBP CONCRETE	AMERICAN SAFETY INSURANCE	XG103-1164-001 Binder ESL006099-04-02 ESU006495-04-01-EXCESS	6/26/03-05

**KB Home v. CIT, et al.
Lorber, Greenfield & Polito, LLP**

Maricopa County Superior Court Case No.: CV2007-005386

SUBCONTRACTOR	INSURANCE CARRIER	POLICY NO.	POLICY - PERIOD
BBP CONCRETE CO. nka SELECTBUILD ARIZONA, LLC	AMERICAN GUARANTEE & LIABILITY INSURANCE C/O ZURICH	GLO5217154-00	6/26/01-6/26/02
BBP CONCRETE CO. nka SELECTBUILD ARIZONA, LLC	CNA INSURANCE	CO1062590500	6/26/98-99
BBP CONCRETE CO. nka SELECTBUILD ARIZONA, LLC	FEDERATED INSURANCE c/o FEDERATED MUTUAL GROUP	0631648; 0632461	6/26/00-6/26/04
BBP CONCRETE CO. nka SELECTBUILD ARIZONA, LLC	AMERICAN SAFETY INDEMNITY COMPANY	BINDER; XGI03-4464-001; ESCL006099-04-02 ESL 006099-03-01	6/26/03-6/26/05
BBP CONCRETE CO. nka SELECTBUILD ARIZONA, LLC	STEADFAST INSURANCE COMPANY c/o ZURICH	SC0521715401; SU0521864701	6/26/02-6/26/03; 6/26/01-6/26/03

Aguilar, et al v. KB Home Phoenix Inc. (Greenway Parc)
 LGE-001-ELE No: 088372030/02 / Case No: CV2009-01681X

SUBCONTRACTOR	INSURANCE CARRIER AND ADDRESS	POLICY NO.	POLICY PERIOD
BBP Concrete Co. nka SelectBuild Arizona, LLC	FEDERATED INSURANCE	0631648 0632461 <i>Excess</i>	6/26/00 - 6/26/01 6/26/00 - 6/26/01
BBP Concrete Co. nka SelectBuild Arizona, LLC	AMERICAN GUARANTEE & LIABILITY INSURANCE	GLO5217154-00	6/26/01 - 6/26/02
BBP Concrete Co. nka SelectBuild Arizona, LLC	STEADFAST INSURANCE COMPANY	SC0521715401; SU05218647 SU0521864701; <i>Excess</i>	6/26/02- 6/26/03 6/26/01 - 6/26/02 6/26/02- 6/26/03

Aguilar et al. v. KB Home Phoenix Inc. (Greenway Park)
LC# Court File No. 0885-2030-02 Case No. CV2009406814

SUBROGATION		INSURANCE CARRIER AND ADDRESS	QUANTITY NO.	POLICY PERIOD
BBP Concrete Co. nka SelectBuild Arizona, LLC	AMERICAN SAFETY INDEMNITY COMPANY	XGI034464001	6/26/03 - 6/26/04;	
		ESL006099-04-02;	6/26/04 - 6/26/05	
		ESU006495-04-01 Excess	6/26/04 - 6/26/05	

Tracy, et al. v. KB Homes Phoenix (Boatner)
 Lorber, Greenfield, Polito File # 08837.2088.02, Maricopa Sup'r Court No. CV2009-019438

BBP CONCRETE	FEDERATED INSURANCE	0631648	06/26/99-06/26/01
BBP CONCRETE	NATIONAL UNION FIRE INSURANCE CO. c/o AIG	BE706701 Excess Policy	06/26/99-06/26/00
BBP CONCRETE	AMERICAN GUARANTEE & LIABILITY INSURANCE	GLO5217154-00	06/26/01-06/26/02
BBP CONCRETE	STEADFAST INSURANCE	SUO5218647	06/26/01-06/26/02
		SUO521864701	06/26/02-06/26/03
		Excess Policies	
BBP CONCRETE	AMERICAN SAFETY INDEMNITY COMPANY	XGI034464001	06/26/03-06/26/04
		ESL0060099-04-02	06/26/04-07/1/05