

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

In re:

BUILDING MATERIALS HOLDING
CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 09-12074 (KJC)
Jointly Administered

**Objections due by: June 22, 2011 @ 4:00 p.m.
Hearing Date: June 29, 2011 @ 2:00 p.m.**

**DECLARATION OF PHILIP KOPP IN SUPPORT OF THE MOTION OF CENTEX
HOMES, ET AL. FOR RELIEF FROM THE DISCHARGE INJUNCTION**

1. I am an attorney licensed to practice law in the State of California, and am a partner at Newmeyer & Dillion, LLP, attorneys for Centex Homes, Centex Real Estate Holding, L.P., Centex Real Estate Corporation, and Nomas Corp. (collectively, "Centex"). The facts stated herein are within my personal knowledge, and if called upon to testify, I could and would competently testify thereto.

2. On or about June 16, 2009, C Construction, Inc. dba Campbell Concrete of California ("Campbell"), a subsidiary of Building Materials Holding Corporation, filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, Case No. 09-12079 (which has since been consolidated into Case 09-12074).

3. Centex is a creditor of Campbell and, therefore, qualifies as a party in interest in this case.

4. On or about June 1, 2010, numerous homeowners ("Plaintiffs") from the residential development known as "Four Leaf Lane" in Corona, California (the "Project") commenced a construction defect action against Centex in the Riverside County Superior Court,

¹ The Debtors consist of the following 12 entities: Building Materials Holding Corporation, BMC West Corporation, SelectBuild Construction, Inc., SelectBuild Northern California, Inc., Illinois Framing, Inc., C Construction, Inc., TWF Construction, Inc., H.N.R. Framing Systems, Inc., SelectBuild Southern California, Inc., SelectBuild Nevada, Inc., SelectBuild Arizona, LLC, and SelectBuild Illinois, LLC.

in the State of California, entitled *Guillen, et al. v. Centex Homes*, Case No. RIC 10010749 (the "State Action"), alleging numerous causes of action and seeking damages based upon strict liability, breach of express and implied warranties, negligence and breach of contract (the "Complaint").² A true and correct copy of the Complaint is attached hereto as Exhibit "1".

5. On or about March 22, 2011, Centex filed a Cross-Complaint for breach of written contract, breach of oral contract to indemnify, to obtain insurance and to defend, breach of implied contract to indemnify, obtain insurance and to defend, total equitable indemnity, partial equitable indemnity, contribution and repayment, and declaratory relief (the "Cross-Complaint") against Campbell, among others, based upon the alleged construction defects caused by Campbell during Campbell's performance of work and/or services and/or providing of materials which were incorporated in the development, construction and/or sale of the Project. A true and correct copy of the Cross-Complaint is attached hereto as Exhibit "2".

6. Based on the information produced in discovery in the State Action, it appears that Plaintiffs' claims implicate Campbell.

7. Centex seeks recovery from Campbell for indemnification and payment of the total amount of any judgment rendered against Centex based upon the Complaint, together with Centex' attorneys' fees, expenses and costs of suit incurred in defending the State Action. Additionally, Centex seeks recovery for any and all attorneys' fees, experts' fees, costs and discovery expenses incurred by Centex in its defense of the State Action and in its pursuit of the Cross-Complaint.

8. Centex believes that Campbell is insured under one or more general and excess liability insurance policies and that Centex' claims can be or have been tendered under those

² When Plaintiffs first filed their Complaint on June 1, 2010, they consisted of the owners of 31 homes at the Project. On or about June 15, 2010, Plaintiffs filed their operative first amended complaint to add 18 additional homes into the State Action.

liability insurance policies.

9. I am informed and believe that, on or about February 10, 2006, Campbell and Centex executed a Subcontract Agreement whereby Campbell agreed to provide materials and labor at the Project. A true and correct copy of the subcontract is attached hereto as Exhibit "3". Pursuant to the Subcontract Agreement, Campbell also agreed to obtain general liability insurance with a limit of combined bodily injury and property damage of not less than \$1,000,000.

10. Centex believes that Campbell obtained a general liability insurance policy and excess liability insurance, wherein the insurers agreed to pay all sums, not to exceed \$1,000,000, which Campbell should become liable to pay as damages imposed upon it by law, for injury sustained in the course of business (including Campbell's work relating to the Project).

11. Centex believes that said insurance policies provide that insolvency or bankruptcy of Campbell 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.

12. Centex believes that the insurance policies at issue are not required or otherwise necessary to Campbell for an effective debt liquidation under chapter 11 of the Bankruptcy Code.

13. Centex believes that the State Action against Campbell will be defended at no expense to Campbell.

14. If Movant Centex is not permitted to pursue its interests in the insurance policies and proceeds, then Centex will suffer irreparable injury, loss and damage.

15. No issues of federal or bankruptcy laws are involved in the pending lawsuit against Campbell. The State Action, as it relates to Campbell, only involves questions of California state law.

16. Centex seeks a modification of the automatic stay imposed under Bankruptcy Code section 362 for the limited purpose of allowing Centex to pursue its claims for indemnification and damages against Campbell's liability insurance policies while waiving any deductibles.

17. Centex agrees not to proceed against Campbell's bankruptcy estate in the event of judgment against Campbell in the State Action in excess of Campbell's insurance coverage.

18. Should Campbell be found liable for Centex' damages in the State Action, to the extent that Campbell's insurance coverage does not satisfy such liability, Centex agrees to waive its right to satisfaction of its claim and participation in any distribution of assets to Campbell's estate.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in Newport Beach, California this 9th day of June, 2011.

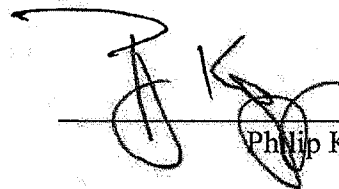

Philip Kopp

EXHIBIT “1”

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

NOTICE TO DEFENDANT: CENTEX HOMES, a Nevada General
(**AVISO AL DEMANDADO:**) Partnership; CENTEX REAL ESTATE
CORPORATION, a Nevada Corporation; NOMAS CORPORATION, a
Nevada Corporation; NOMAS CORPORATION, a Texas Corporation; and
DOES 1 through 600, Inclusive

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUN 01 2010

[Signature]

YOU ARE BEING SUED BY PLAINTIFF: EDWARD GUILLEN, et al.
(**LO ESTÁ DEMANDANDO EL DEMANDANTE:**)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
SUPERIOR COURT OF CALIFORNIA
4050 Main St.
P.O. Box 431
Riverside, CA. 92501

CASE NUMBER:
(Número del Caso): **AIC 10010749**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jerry La Cues, Esq., (SBN: 77088) (909) 627-3535 (909) 590-3388
Brett La Cues, Esq., (SBN: 234865)
LACUES LAW GROUP
Chino Hills, CA 91709

DATE: JUN 01 2010 Clerk, by *[Signature]*, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

Jerry La Cues, Esq. (SBN: 77088)
Brett La Cues, Esq. (SBN: 234865)
THE LA CUES LAW GROUP
3110 Chino Avenue, Suite 230
Chino Hills, CA 91709
Tel: (909) 627-3535
Fax: (909) 590-3388

Attorneys for Plaintiffs,
EDWARD GUILLEN, et al.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUN 01 2010

[Signature]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE**

EDWARD GUILLEN; MICHAEL I.
CASTRO ROYCE G. PIPER and
ROSEMARY MURPHY; KARLEEN AIKEN;
DESTINEE HUFFMAN; JOSE BEAS;
BARBARA M. WURTZ; ORLANDO M.
SALAZAR and E. IBIS SALAZAR, Trustees
of the Salazar Revocable Trust; BEVERLY A.
KELLMAN; SENG NAM CHIN and ANNA
HUANG; CARL ROWENS, JR and
CHARLENE ROWENS; BERTRAM L.
ROBISON and TRACY HERD; ROY
MARTINEZ, JR. and CHRISTY MARTINEZ;
ROBERT BELLIS; PAUL HOURANI and
JULIE HOURANI; JOSE GARCIA and UTE
GARCIA; JERRY BUTLER, JR; PAUL M.
FLOR and MARTHA E. ALVAREZ;
CARLISA HARRIS; RON COBOS, CARRIE
A. COBOS, and CARMELITA S. SAN JOSE;
REMEDIOS GONZALES and JERRY
GONZALES; PEDRO SANCHEZ and
MARIA DE LOS ANGEL SANCHEZ;
SHERELLE JOHNSON; PHONG THANH
VO; YA PING SHANG and MA LEE; COLIN
M. HARTWIG and VICTORIA L.
HARTWIG; N. BOTUMRATH PROM and
PONNA PROM.; DONNA L. HANSON;
PATRICIA M. ABARCA; MOHAMMED EL
ROUS ABOU, RASHA KASSEM, and
MOUDI KASSEM; JOHN L ALEXANDER
and BERTHA ALEXANDER,

Plaintiffs,

vs.

CASE NO.: *Lic* 10010749

COMPLAINT FOR:

1. STRICT PRODUCTS LIABILITY;
2. BREACH OF IMPLIED WARRANTY;
3. BREACH OF EXPRESS WARRANTY;
4. NEGLIGENCE;
5. BREACH OF CONTRACT; and
6. DECLARATORY RELIEF

1 CENTEX HOMES, a Nevada General
2 Partnership; CENTEX REAL ESTATE
3 CORPORATION, a Nevada Corporation;
4 NOMAS CORPORATION, a Nevada
Corporation; NOMAS CORPORATION, a
Texas Corporation; and DOES 1 through 600,
Inclusive,

5 Defendants.

6
7 Plaintiffs, for their complaint, allege as follows:

8 **GENERAL ALLEGATIONS**

9 1. Plaintiffs, looking forward to the security of owning new homes, purchased new homes
10 designed, built and sold by the defendants in a new development created by the defendants
11 known as The Four Leaf Lane Development (hereinafter referred to as the "Development"),
12 which is a community consisting of single family homes located in the City of Corona, County
13 of Riverside, State of California.

14 2. The Development consists of various models of single family homes containing
15 components and fixtures as referenced within this Complaint. The Development was designed,
16 built, and sold within the past 10 years, and more specifically, Plaintiffs are informed and believe
17 that the homes in the Development were sold by Defendants at various times between 2006-
18 2007.

19 3. Within the past year, Plaintiffs learned that the lots, homes and components therein
20 designed, built and sold to them by the Defendants have such significant defects and are violative
21 of relevant building code provisions and relevant plan specifications to such an extent that the
22 structural integrity of the Plaintiffs' homes have been compromised. For example, plans and
23 specifications submitted for approval by and approved by Riverside County based on
24 requirements of the building code specifically require that the homes be built on foundations
25 with footings embedded *at least* 18 inches below undisturbed ground surface. Defendants,
26 however, built and sold the homes with footings that were embedded far less than the specified
27 requirements. The construction defects complained of concern standard components for the
28 Development, including defective foundations, roofs, framing, windows, stucco, concrete,

1 plumbing and plumbing fixtures, electrical and electrical fixtures, HVAC, soil compaction and
2 preparation, and other defects to be proven at trial, including, *but not limited to*, those more
3 specifically described below.

4 4. Plaintiffs are individuals who own the homes within the Development located at the
5 following addresses:

6 Edward Guillen 12769 Eastern Shore Drive
7 Corona, CA 92880

8 Royce G. Piper and 7244 Morning Hills Drive
9 Rosemary Murphy Corona, CA 92880

10 Michael I. Castro 12722 Kristi Lynn Court
11 Corona, CA 92880

12 Karleen Aiken 12726 Eastern Shore Drive
13 Corona, CA 92880

14 Destinee Huffman 12756 Eastern Shore Drive
15 Corona, CA 92880

16 Jose Beas 12806 Eastern Shore Drive
17 Corona, CA 92880

18 Barbara M. Wurtz 12799 Eastern Shore Drive
19 Corona, CA 92880

20 Orlando M. Salazar and 12705 Kristi Lynn Court
21 E. Ibis Salazar, Trustees of Corona, CA 92880
22 the Salazar Revocable Trust

23 Beverley A. Kellman 7240 Bay Bridge Road
24 Corona, CA 92880

25 Sengnam Chin and Anna Huang 12946 Eastern Shore Drive
26 Corona, CA 92880

27 Carl Rowens, Jr. and Charlene 12829 Eastern Shore Drive
28 Rowens Corona, CA 92880

Bertram L. Robison and Tracy 7241 Blue Crab Court
Herd Corona, CA 92880

Roy Martinez, Jr. and Christy 12712 Kristi Lynn Court
Martinez Corona, CA 92880

Robert Bellis 7392 Morning Hills Drive
Corona, CA 92880

Paul Hourani and Julie 12716 Eastern Shore Drive
Hourani Corona, CA 92880

1	Jose Garcia and Ute Garcia	12895 Gingerwood Court
2	Jerry Butler, Jr.	Corona, CA 92880
3		7300 Altizer Court
4		Corona, CA 92880
5	Paul M. Flor and Martha E. Alvarez	7321 Hollyheath Court
6		Corona, CA 92880
7	Carlisa Harris	7233 Bay Bridge Road
8		Corona, CA 92880
9	Ron Cobos, Carrie A. Cobos, and Carmelita S. San Jose	12932 Gingerwood Court
10		Corona, CA 92880
11	Remedios Gonzales and Jerry Gonzales	12809 Eastern Shore Drive
12		Corona, CA 92880
13	Pedro Sanchez and Maria de Los Angel Sanchez	12796 Eastern Shore Drive
14		Corona, CA 92880
15	Sherelle Johnson	12906 Eastern Shore Drive
16		Corona, CA 92880
17	Phong Thanh Vo	7227 Beckett Field Lane
18		Corona, CA 92880
19	Ya Ping Shang and Ma Lee	12876 Eastern Shore Drive
20		Corona, CA 92880
21	Colin M. Hartwig and Victoria L. Hartwig	7400 Morning Hills Drive
22		Corona, CA 92880
23	N. Botumrath Prom and Ponna Prom	12892 Gingerwood Court
24		Corona, CA 92880
25	Donna L. Hanson	12793 Jack Lane
26		Corona, CA 92880
27	Patricia M. Abarca	7222 Excelsior Drive
28		Corona, CA 92880
	Mohamed El Rous Abou, Rasha Kassem, and Moudi Kassem	7268 Blue Crab Court
		Corona, CA 92880
	John L. Alexander and Bertha Alexander	7384 Morning Hills Drive
		Corona, CA 92880

5. Plaintiffs are informed and believe and based thereon allege that Defendant Centex Homes (hereinafter referred to as "Centex Homes") is a Nevada general partnership and that said Defendant builds and sells homes in Riverside County, California.

1 6. Plaintiffs are informed and believe and based thereon allege that Defendant Centex Real
2 Estate Corporation (hereinafter referred to as "Centex Real Estate Corporation Nevada") is a
3 Nevada corporation and that said defendant is the managing general partner of Centex Homes.

4 7. Plaintiffs are informed and believe and based thereon allege that Defendant Centex Real
5 Estate Corporation (hereinafter referred to as "Centex Real Estate Corporation Texas") is a
6 Texas Corporation and that said defendant is a general partner of Centex Homes.

7 8. Plaintiffs are informed and believe and based thereon allege that Defendant Nomas
8 Corporation (hereinafter referred to as "Nomas Nevada") is a Nevada corporation and that said
9 defendant is a general partner of Centex Homes.

10 9. Plaintiffs are informed and believe and based thereon allege that Defendant Nomas
11 Corporation (hereinafter referred to as "Nomas Texas") is a Texas Corporation and that said
12 defendant is a general partner of Centex Homes.

13 10. Plaintiffs are informed and believe and based thereon allege that Centex Homes, Centex
14 Real Estate Corporation Nevada, Centex Real Estate Corporation Texas, Nomas Nevada, Nomas
15 Texas, and DOES 1 through 600 (hereinafter collectively referred to as Defendants) inclusive,
16 were either: (a) developers of mass-produced residential housing, manufacturers, sellers, and/or
17 suppliers or distributors of finished products and/or components installed in the lots and/or
18 homes; (b) contractors, sub-contractors, professionals engaged in the design and/or construction
19 of residential housing; and/or (c) partners, joint venturers, affiliates, officers, and/or directors of
20 such defendants and/or other parties liable for the damages and causes of action alleged herein.

21 11. DOES 1 through 100 are developers of mass-produced residential housing,
22 manufacturers, sellers, and/or suppliers or distributors of finished products and/or components
23 installed in the lots and/or homes in the Development. DOES 101 through 200 are contractors,
24 sub-contractors, and/or professionals engaged in construction of the lots, homes and components
25 installed in the lots and/or homes in the Development. DOES 201 through 300 are professionals
26 involved in design, supervision and/or inspection of the lots, homes and components in the
27 Development; DOES 301 through 400 are in the business of designing, mass manufacturing,
28 producing, assembling, distributing, selling, reselling, distributing, and/or supplying components

1 used and/or installed in the lots and homes sold to Plaintiffs; and DOES 401 through 600 are
2 partners, joint venturers, officers, and/or directors of the foregoing defendants and/or other
3 parties liable for the damages and causes of action alleged herein. Said DOE Defendants are
4 unknown to Plaintiffs, who therefore sue these Defendants by such fictitious names. Plaintiffs
5 are informed and believe, and thereon allege that each of the Defendants designated as a DOE is
6 responsible in some manner for the events and happenings herein referred to, and proximately
7 caused injury and damages to Plaintiffs as herein alleged.

8 12. Plaintiffs are informed and believe and based thereon allege that the above Defendants
9 are the alter egos of each other. Plaintiffs are informed and believe, and thereon allege, that each
10 named Defendant is and was, at all times mentioned herein, acting as the agent, conduit and
11 employee of the other Defendants with respect to the Development. Plaintiffs are informed and
12 believe and based thereon allege that at all times herein mentioned each of the Defendants was
13 the agent, servant, employee and co-conspirator of each of the remaining Defendants, and at all
14 times herein mentioned each Defendant was acting within the course and scope of the agency,
15 employment and/or conspiracy with full knowledge, consent, permission and ratification of each
16 of their Co-Defendants.

17 13. Plaintiffs are informed and believe and based thereon allege that each named Defendant,
18 at all items mentioned herein, was comprised of and controlled by the same officers, directors,
19 shareholder, employees and/or agents, and/or utilized the same employees, business offices and
20 business equipment. Plaintiffs are informed and believe and based thereon allege there is a unity
21 of interest between and among Defendants. Plaintiffs are further informed and believe and based
22 thereon allege that, under the circumstances of this case if each named Defendant is not held
23 liable for the debts and obligations of the other Defendants fraud and injustice would result.

24 14. Prior to the filing of this action Plaintiffs complied with the requirements of Civil Code
25 §§ 910, *et. seq.*

26 ///

27 ///

28 ///

FIRST CAUSE OF ACTION

**(Strict Products Liability against Centex Homes, Centex Real Estate Corporation Nevada,
Centex Real Estate Corporation Texas, Nomas Nevada, Nomas Texas,
and DOES 1-100 and 301-600)**

15. Plaintiffs re-allege and incorporate by reference herein each of the allegations above as if set forth in full herein.

16. Plaintiffs are informed and believe and based thereon allege that the Development and each of the lots, homes and components therein was owned, installed, developed and/or sold by Defendants. The Development, lots, homes and components therein were designed, installed, constructed, manufactured, built, and sold at various times from 2006 through 2007.

17. Plaintiffs are informed and believe and based thereon allege that Defendants, and each of them, are, and at all times relevant herein were, among other things, in the business of developing, designing, installing, mass producing, manufacturing, and selling to the public residential housing and the components therein, including the residential lots, homes and components therein sold to Plaintiffs in the Development.

18. Defendants knew and intended that the Development and each of the residential lots, homes, and components therein would be sold to the members of the public, including Plaintiffs, and would be used by members of the public for single-family residential purposes without further inspection for defects in construction or design.

19. Plaintiffs purchased the lots, homes, and components therein in the Development from the Defendants.

20. At the time Defendants sold Plaintiffs the residential lots, homes, and components therein, unbeknownst to Plaintiffs, said lots, homes and components therein contained substantial latent defects in design and/or construction, including, *but not limited to*, the following:

a. The roofs, windows, foundations, soil, drainage, concrete, stucco, heating and air conditioning systems, flashing, doors, drywall, electrical fixtures and systems, framing, plumbing, and other components throughout the lots and homes are defective, unsound and are failing; they leak, and are staining, molding, corroding, eroding, cracking, breaking down, and

1 deteriorating due to Defendants' defective development, design, construction, installation,
2 workmanship and/or materials.

3 b. Plaintiffs are informed and believe that the above conditions are in violation of
4 California Civil Code § 896 et seq., including but not limited to specific violations of §§
5 896(a)(9), 896(b)(1)-(4), 896(g)(7), 896(c)(2)-(3), 896(g)(11), 896(a)(4), 896(g)(2), 896(a)(10)-
6 (11), 896(f), 896(g)(3A), 896(g)(4)-(5), and 896(e).

7 21. The defects alleged herein are defects that were not apparent or discoverable and could
8 not be apparent or discoverable by reasonable inspection of the property at the time of purchase.

9 22. Plaintiffs are informed and believe, and therein allege that as a direct and proximate
10 result of the above-alleged defects, property damages have occurred and each of the Plaintiffs
11 herein has suffered damages in a monetary sum in excess of the jurisdictional minimum of this
12 Court in amounts to be proven at trial. Such damages include, but are not limited to, damages
13 pursuant to Civil Code §944; the cost of repairing and investigating the defective construction
14 and damages therefrom; the cost of relocation; the cost of obtaining building permits and bonds;
15 and the cost of designing and administering the repairs; the diminution in market values; the loss
16 of the use and enjoyment of the property; and other monetary damages in an amount to be
17 proven at trial.

18 23. Defendants, and each of them, as developers, mass producers, builders, and sellers and/or
19 otherwise by reason of placing the defective lots, homes, and components therein into the stream
20 of commerce by reason of the sale of same to members of the general public, are strictly liable to
21 Plaintiffs for all damages suffered as a result of the above described defects and deficiencies in
22 lots, homes, and components therein sold to Plaintiffs in an amount to be proven at trial.

23 SECOND CAUSE OF ACTION

24 **(Breach of Implied Warranties against Centex Homes, Centex Real Estate Corporation**
25 **Nevada, Centex Real Estate Corporation Texas, Nomas Nevada, Nomas Texas,**
26 **and DOES 1-100 and 301-600)**

27 24. Plaintiffs re-allege and incorporate by reference herein each of the allegations above as if
28 set forth in full herein.

1 25. Plaintiffs are informed and believe and based thereon allege that at all relevant times,
2 Defendants were and are merchants, sellers, builders, developers and mass producers of lots,
3 homes, and components therein for sale to the general public for use as residences.

4 26. Defendants knew and intended that the Development and each of the lots, homes, and
5 components therein would be used as single-family residences by members of the general public,
6 without further inspection for defects in construction or design and without knowledge or reason
7 to know that the lots, homes, and components therein sold to them would suffer from defects
8 alleged herein.

9 27. Defendants knew or should have known that the purchasers of the lots, homes, and
10 components therein would rely upon Defendants' skill and judgment in the design, construction,
11 development, manufacture, and/or installation of the lots, homes, and components therein in the
12 Development.

13 28. Defendants impliedly warranted that the lots, homes, and components therein sold to
14 Plaintiffs were and would be fit for the particular purpose for which they were sold, were and
15 would be of merchantable quality, were and would be properly constructed, developed,
16 manufactured, designed, installed and/or constructed in compliance with applicable Federal,
17 State, and municipal requirements, including building codes, and were and would be in a safe,
18 habitable and useable condition.

19 29. Plaintiffs are informed and believe, and thereon allege that their lots, homes, and
20 components therein are: (a) not fit for the particular purpose for which they were intended; (b)
21 are not of merchantable quality; (c) are not properly, developed, manufactured, designed,
22 installed and/or constructed in compliance with applicable statutory requirements, including
23 building codes; and (d) are not in a safe, habitable and useable condition, as a result of the
24 defective design, development, manufacture, construction, and/or installation by Defendants as
25 alleged in paragraph 20 above.

26 30. Plaintiffs first discovered the defects alleged above in the lots, homes, and components
27 therein within the past year. Plaintiffs could not have reasonably discovered such defects prior to
28 that time because the defects were latent and not known, apparent or discoverable upon a

1 reasonable inspection. Plaintiffs gave notice of such defects promptly upon the discovery
2 thereof.

3 31. As a direct and proximate result of the breach of implied warranties, Plaintiffs have
4 suffered and continue to suffer damages in an amount to be proven at trial.

5 **THIRD CAUSE OF ACTION**

6 **(Breach of Express Warranties against Centex Homes, Centex Real Estate Corporation**
7 **Nevada, Centex Real Estate Corporation Texas, Nomas Nevada, Nomas Texas,**
8 **and DOES 1-100 and 301-600)**

9 32. Plaintiffs re-allege and incorporate by reference herein each of the allegations above as if
10 set forth in full herein.

11 33. Defendants and each of them made express written warranties to Plaintiffs in the
12 purchase contracts against any defects in the original materials and workmanship in lots, homes,
13 and components therein sold to Plaintiffs. Further, in the purchase contracts, Defendants
14 warranted that the lots, homes, and components therein would be developed, designed,
15 constructed, manufactured, and/or installed in accordance with certain plans and specifications.

16 34. Plaintiffs first discovered the defects alleged above in the lots, homes, and components
17 therein within the past year. Plaintiffs could not have reasonably discovered such defects prior to
18 that time because the defects were latent and not known, apparent or discoverable upon a
19 reasonable inspection. Plaintiffs gave notice of such defects promptly upon the discovery
20 thereof.

21 35. Notwithstanding such notice, Defendants did not repair the lots, homes so and
22 components therein so as to comply with the express warranties. Accordingly, Defendants
23 breached the express warranties.

24 36. As a result of the breach of express warranty by the Defendants, and each of them, the
25 Plaintiffs have suffered and continue to suffer damages in an amount to be proven at trial.

26 **FOURTH CAUSE OF ACTION**

27 **(Negligence against All Defendants)**

28 37. Plaintiffs re-allege and incorporate by reference herein each of the allegation above as if

1 set forth in full.

2 38. Defendants developed, sold, marketed, designed, investigated, inspected, graded,
3 engineered, built, manufactured, constructed, mass produced, supervised, installed, and/or
4 supplied, the lots, homes, and components therein sold to Plaintiffs. Accordingly, Defendants,
5 and each of them, owed a duty to Plaintiffs to exercise ordinary care and to avoid reasonably
6 foreseeable injury to the users and purchasers of said lots, homes, and components therein.

7 39. Plaintiffs are informed and believe and based thereon allege that Defendants, and each of
8 them, breached their duty to Plaintiffs, in that they failed to use ordinary care when they
9 developed, sold, marketed, designed, investigated, inspected, graded, engineered, built,
10 manufactured, constructed, mass produced, supervised, installed, and/or supplied said lots,
11 homes, and components therein in that said lots, homes, and components therein are defective as
12 alleged in paragraph 20 above.

13 40. As a direct and proximate result of Defendants' negligence, Plaintiffs have suffered and
14 continue to suffer damages in an amount to be proven at trial.

15 **FIFTH CAUSE OF ACTION**

16 **(Breach of Contract against Centex Homes, Centex Real Estate Corporation Nevada,**

17 **Centex Real Estate Corporation Texas, Nomas Nevada, Nomas Texas,**

18 **and DOES 1-300 and 401-500)**

19 41. Plaintiffs re-allege and incorporate herein by reference each of the allegations above as if
20 set forth in full.

21 42. Plaintiffs and Defendants entered into written real estate purchase contracts for the
22 purchase and sale of lots, homes, and components therein in the Development. Pursuant to the
23 contracts, Plaintiffs agreed to purchase and Defendants agreed to sell the lots, homes, and
24 components therein in the Development. The contracts included promises by Defendants that the
25 lots, homes, and components therein would be developed, designed, constructed, and/or installed
26 in accordance with certain plans and specifications.

27 43. Implied in such agreements is that: (a) such plans and specifications necessarily would be
28 prepared in compliance with applicable Federal, State, and municipal law ordinances, including

1 building codes; (b) that such plans and specifications would require that the lots, homes, and
2 components therein be structurally sound and designed, built, constructed and/or installed for the
3 intended use as residential properties; and (c) that such plans and specifications would
4 necessarily require that the lots, homes, and components therein be constructed free of all
5 material defects and in good working order.

6 44. All conditions precedent to Defendants' performance of the contracts have been
7 performed, satisfied, excused or waived, or Plaintiffs' performance was prevented by
8 Defendants.

9 45. Defendants, and each of them, breached the contracts by delivering to Plaintiffs lots,
10 homes, and components therein that: (a) were not developed, designed, constructed and/or
11 installed in accordance with the specified plans and specifications; (b) were not designed,
12 developed, constructed and/or installed in compliance with applicable Federal, State, and
13 municipal law ordinances, including building codes; (c) that because of such lack of compliance,
14 are not structurally sound for the intended use as residential properties; and/or (d) were not
15 constructed and/or installed free of all material defects and in good working order.

16 46. As direct and proximate result of breach of contract, Plaintiffs have suffered and continue
17 to suffer damages in an amount to be proven at trial.

18 SIXTH CAUSE OF ACTION

19 (Declaratory Relief against All Defendants)

20 47. Plaintiffs re-allege and incorporate herein by reference each of the allegations above as if
21 set forth in full.

22 48. A dispute exists between Plaintiffs and the Defendants concerning the proper
23 construction and/or installation of the foundation footings for the homes within the Development
24 as per the applicable building code(s) and plans approved by Riverside County. Plaintiffs
25 contend that the foundation footings must be embedded *at least* 18 inches below undisturbed
26 ground surface. Defendants contend otherwise.

27 49. Plaintiffs request a declaration of the interpretation of the approved plans and/or
28 applicable building code requirements for the construction and/or installation of the foundation

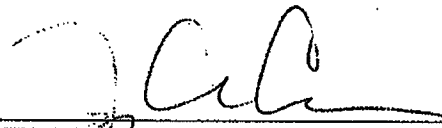
1 footings concerning the homes in the Development.

2 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
3 follows:

- 4 1. For compensatory and general damages according to proof;
- 5 2. For consequential and special damages according to proof;
- 6 3. For attorney fees;
- 7 4. For costs of suit incurred herein, including investigative costs;
- 8 5. For interest at the legal rate; and
- 9 6. For such other and further relief as the Court deems just and proper.

10 Dated: May 28, 2010

THE LA CUES LAW GROUP

11 
12 _____
13 JERRY LA CUES
14 Attorney for Plaintiffs,
15 EDWARD GUILLEN, et al.
16
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28

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jerry La Cues, Esq., (SBN: 77088) Brett La Cues, Esq., (SBN: 234865) LACUES LAW GROUP 3110 Chino Avenue, Suite 230 Chino Hills, CA 91709 TELEPHONE NO.: (909) 627-3535 FAX NO.: (909) 590-3388		FOR COURT USE ONLY
ATTORNEY FOR (Name): Plaintiff, EDWARD GUILLEN, et al.		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE STREET ADDRESS: 4050 Main St. MAILING ADDRESS: P.O. Box 431 CITY AND ZIP CODE: Riverside, CA. 92501 BRANCH NAME: Riverside Historic Courthouse		
CASE NAME: EDWARD GUILLEN, et al. v. CENTEX HOMES, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: RIC 10010749 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input checked="" type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): Six

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 28, 2010

Jerry La Cues, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CIVIL CASE COVER SHEET

SUPERIOR COURT, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

<input type="checkbox"/> BANNING 135 N. Alessandro Road, Banning, CA 92220	<input type="checkbox"/> MURRIETA 30755-D Auld Road, Murrieta, CA 92563
<input type="checkbox"/> BLYTHE 265 North Broadway, Blythe, CA 92225	<input checked="" type="checkbox"/> RIVERSIDE 4050 Main St., Riverside, CA 92501
<input type="checkbox"/> HEMET 880 N. State St., Hemet, CA 92543	<input type="checkbox"/> RIVERSIDE 4175 Main St., Riverside, CA 92501
<input type="checkbox"/> INDIO 46-200 Oasis St., Indio, CA 92201	<input type="checkbox"/> TEMECULA 41002 County Center Dr., #100, Temecula, CA 92591
<input type="checkbox"/> MORENO VALLEY 13800 Heacock St. #D201, Moreno Valley, CA 92553	

Name and Address (909) 627-3535
Jerry La Cues, Esq., (SBN: 77088)
Brett La Cues, Esq., (SBN: 234865)
LACUES LAW GROUP
3110 Chino Avenue, Suite 230
Chino Hills, CA 91709
Attorney for Plaintiff
or Party without Attorney

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUN 01 2010

[Signature]

EDWARD GUILLEN, et al.

Plaintiff(s)

vs.

CENTEX HOMES, et al.

Defendant(s)

CASE NO. *RIC* 10010749
CERTIFICATE OF COUNSEL

The undersigned certifies that this matter should be tried or heard in the
Riverside Historic Court for the following reason:

- ☐ The action arose in this judicial district.
☒ The action concerns real property located in this judicial district.
☐ The defendant resides in this judicial district.

Dated: May 28, 2010

Signed by: *[Signature]*

LACUES LAW GROUP
ATTORNEY FOR PLAINTIFF(S)
OR PARTY WITHOUT ATTORNEY
Jerry La Cues, Esq.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
4050 Main Street
Riverside, CA 92501
www.riverside.courts.ca.gov

NOTICE OF ASSIGNMENT TO DEPARTMENT FOR CASE MANAGEMENT PURPOSES
AND CASE MANAGEMENT CONFERENCE (CRC 3.722)

EDWARD GUILLEN VS CENTREX HOMES

CASE NO. RIC 10010749

This case is assigned to the Honorable Judge Douglas E. Weathers in Department 03 as the case management department. The Case Management Conference is scheduled for 11/30/10 at 8:30 in Department 03.

The plaintiff/cross-complainant shall serve a copy of this notice on all defendants/cross-defendants who are named or added to the complaint and file proof of service.

Any disqualification pursuant to CCP Section 170.6(2) shall be filed in accordance with that section.

CERTIFICATE OF MAILING

I certify that I am currently employed by the Superior Court of California, County of Riverside, and that I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the foregoing notice on this date, by depositing said copy as stated above.

Dated: 06/01/10

Court Executive Officer/Clerk

By: 
CYNTHIA CARLTON, Deputy Clerk

ac:cmc;cmcb;cmch;cmct;cmcc
cmccb;cmcch;cmcct

EXHIBIT “2”

COPY

SUMMONS
Cross-Complaint
(CITACION JUDICIAL-CONTRADEMANDA)

SUM-110

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO CROSS-DEFENDANT:
(AVISO AL CONTRA-DEMANDADO):
See Additional Parties Attachment

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

MAR 30 2011

YOU ARE BEING SUED BY CROSS-COMPLAINANT:
(Usted ESTÁ DEMANDANDO EL CONTRA-DEMANDANTE):
See Additional Parties Attachment

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the cross-complainant. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al contrademandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), o uniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California
2050 Main Street
Riverside, CA

SHORT NAME OF CASE (from Complaint): (Nombre de Caso):

Guillen, et al. v. Centex Homes, et al.

CASE NUMBER: (Número del Caso):

RIC10010749

The name, address, and telephone number of cross-complainant's attorney, or cross-complainant without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del contrademandante, o del contrademandante que no tiene abogado, es):

Philip D. Kopp (CBN: 090172)

(949)854-7000

(949)854-7099

Jennifer C. Lyons (CBN: 229020)

NEWMYER & DILLION, LLP, 895 Dove Street, 5th Fl.

Newport Beach, CA 92660

DATE:

Clerk, by

D. Barraza, Deputy

(Fecha)

(Secretario)

(Adjunto)

MAR 30 2011

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons (POS-010).)

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual cross-defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

SHORT TITLE: Guillen, et al. v. Centex Homes, et al.

CASE NUMBER:
RIC10010749

INSTRUCTIONS FOR USE

- ➔ This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- ➔ If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff ☐ Defendant ☐ Cross-Complainant ☒ Cross-Defendant

SELECTBUILD CONSTRUCTION, INC, a Delaware corporation, aka C. CONSTRUCTION, INC., dba CAMPBELL
 CONCRETE OF CALIFORNIA;
 CAPITAL DRYWALL, INC., a California corporation;
 CROWN SHEET METAL, INC., a dissolved California corporation;
 C & J CONCRETE, aka CARLOS SOTO, dba GOLDEN STATE CONCRETE, INC., a California corporation;
 KERDUS PLASTERING, INC., a California corporation;
 L.D. ANDERSON, INC., a California corporation;
 LEONARD ROOFING, INC., a California corporation;
 HERMANOS GRADING, INC., dba ORTEGA CONSTRUCTION, INC., a California corporation;
 SLOBO LANDSCAPE, INC., aka SLOBO LANDSCAPING, a California partnership;
 STEEL-T A/C, INC., a California corporation;
 STERLING PLUMBING, INC., a California corporation;
 T. MCGEE ELECTRIC, INC., a California corporation;
 T.W.R. ENTERPRISES, INC., a California corporation;
 and ROES 1 through 100, inclusive,

SHORT TITLE: Guillen, et al. v. Centex Homes, et al.

CASE NUMBER:
RIC10010749

INSTRUCTIONS FOR USE

- ➔ This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- ➔ If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff ☐ Defendant ☒ Cross-Complainant ☐ Cross-Defendant

Centex Homes;
Centex Real Estate Holding, LP;
Centex Real Estate Corporation; and
Nomas Corp.

COPY

NEWMEYER & DILLION LLP

NEWMEYER & DILLION LLP
PHILIP KOPP, CBN 090172
JENNIFER C. LYONS, CBN 229020
895 Dove Street, 5th Floor
Newport Beach, California 92660
(949) 854-7000; (949) 854-7099 (Fax)

Attorneys for Defendant and Cross-Complainant
Centex Homes; and Defendants Centex Real Estate
Holding, LP, Centex Real Estate Corporation, and
Nomas Corp.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

MAR 22 2011

A. Sanchez

SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE

EDWARD GUILLEN; et al.,

Plaintiffs,

vs.

CENTEX HOMES, et al.,

Defendants.

CENTEX HOMES, a Nevada General
Partnership,

Cross-Complainant,

vs.

SELECTBUILD CONSTRUCTION, INC., a
Delaware corporation, aka C.
CONSTRUCTION, INC., dba CAMPBELL
CONCRETE OF CALIFORNIA;
CAPITAL DRYWALL, INC., a California
corporation;
CROWN SHEET METAL, INC., a dissolved
California corporation;
C & J CONCRETE, aka CARLOS SOTO,
dba GOLDEN STATE CONCRETE, INC., a
California corporation;
KERDUS PLASTERING, INC., a California
corporation;
L.D. ANDERSON, INC., a California
corporation;

CASE NO.: RIC10010749
DEPT: 03
JUDGE: Douglas E. Weathers

**CENTEX HOMES' CROSS-
COMPLAINT FOR:**

1. BREACH OF WRITTEN CONTRACT;
2. BREACH OF ORAL CONTRACT TO INDEMNIFY, TO OBTAIN INSURANCE AND TO DEFEND;
3. BREACH OF IMPLIED CONTRACT TO INDEMNIFY, OBTAIN INSURANCE AND TO DEFEND;
4. TOTAL EQUITABLE INDEMNITY;
5. PARTIAL EQUITABLE INDEMNITY;
6. CONTRIBUTION AND REPAYMENT;
7. DECLARATORY RELIEF FOR DUTY TO INDEMNIFY;
8. DECLARATORY RELIEF FOR DUTY TO OBTAIN INSURANCE;
9. DECLARATORY RELIEF FOR DUTY TO DEFEND; AND
10. DECLARATORY RELIEF FOR DUTY TO CONTRIBUTE

FILE DATE: June 1, 2010
FAC FILED: June 15, 2010
TRIAL DATE SET: No Date Set

LEONARD ROOFING, INC., a California corporation;
 HERMANOS GRADING, INC., dba ORTEGA CONSTRUCTION, INC., a California corporation;
 SLOBO LANDSCAPE, INC., aka SLOBO LANDSCAPING, a California partnership;
 STEEL-T A/C, INC., a California corporation;
 STERLING PLUMBING, INC., a California corporation;
 T. MCGEE ELECTRIC, INC., a California corporation;
 T.W.R. ENTERPRISES, INC., a California corporation;
 and ROES 1 through 100, inclusive,

Cross-Defendants.

Defendant and Cross-Complainant CENTEX HOMES ("Centex Homes"), for causes of action against cross-defendants, and each of them, with knowledge as to itself and otherwise on information and belief, claims and alleges as follows:

1. Centex Homes is, and was at all times relevant to this action, a duly licensed Nevada general partnership in good standing and qualified to do business in California.

2. Centex Homes is informed and believes, and based thereon alleges, that cross-defendant SELECTBUILD CONSTRUCTION, INC, a Delaware corporation, aka C. CONSTRUCTION, INC., dba CAMPBELL CONCRETE OF CALIFORNIA, is and was at all times relevant to this action doing business in the County of Riverside, State of California.

3. Centex Homes is informed and believes, and based thereon alleges, that cross-defendant CAPITAL DRYWALL, INC., a California corporation, is and was at all times relevant to this action doing business in the County of Riverside, State of California.

4. Centex Homes is informed and believes, and based thereon alleges, that cross-defendant CROWN SHEET METAL, INC., a dissolved California corporation, is and was at all times relevant to this action doing business in the County of Riverside, State of California.

5. Centex Homes is informed and believes, and based thereon alleges, that cross-defendant C & J CONCRETE, aka CARLOS SOTO, dba GOLDEN STATE CONCRETE, INC.,

1 a California corporation, is and was at all times relevant to this action doing business in the
2 County of Riverside, State of California.

3 6. Centex Homes is informed and believes, and based thereon alleges, that cross-
4 defendant KRDUS PLASTERING, INC., a California corporation, is and was at all times
5 relevant to this action doing business in the County of Riverside, State of California.

6 7. Centex Homes is informed and believes, and based thereon alleges, that cross-
7 defendant L.D. ANDERSON, INC., a California corporation, is and was at all times relevant to
8 this action doing business in the County of Riverside, State of California.

9 8. Centex Homes is informed and believes, and based thereon alleges, that cross-
10 defendant LEONARD ROOFING, INC., a California corporation, is and was at all times relevant
11 to this action doing business in the County of Riverside, State of California.

12 9. Centex Homes is informed and believes, and based thereon alleges, that cross-
13 defendant HERMANOS GRADING, INC. dba ORTEGA CONSTRUCTION, INC., a California
14 corporation, is and was at all times relevant to this action doing business in the County of
15 Riverside, State of California.

16 10. Centex Homes is informed and believes, and based thereon alleges, that cross-
17 defendant SLOBO LANDSCAPE, INC. aka SLOBO LANDSCAPING, a California partnership,
18 is and was at all times relevant to this action doing business in the County of Riverside, State of
19 California.

20 11. Centex Homes is informed and believes, and based thereon alleges, that cross-
21 defendant STEEL-T A/C, INC., a California corporation, is and was at all times relevant to this
22 action doing business in the County of Riverside, State of California.

23 12. Centex Homes is informed and believes, and based thereon alleges, that cross-
24 defendant STERLING PLUMBING, INC., a California corporation, is and was at all times
25 relevant to this action doing business in the County of Riverside, State of California.

26 13. Centex Homes is informed and believes, and based thereon alleges, that cross-
27 defendant T. MCGEE ELECTRIC, INC., a California corporation, is and was at all times relevant
28 to this action doing business in the County of Riverside, State of California.

1 14. Centex Homes is informed and believes, and based thereon alleges, that cross-
2 defendant T.W.R. ENTERPRISES, INC., a California corporation, is and was at all times relevant
3 to this action doing business in the County of Riverside, State of California.

4 15. Centex Homes is unaware of the true names and capacities of cross-defendants sued
5 herein as Roes 1 through 100, inclusive, whether individual, corporate, associate or otherwise,
6 and therefore sue those cross-defendants by such fictitious names. Centex Homes will amend this
7 cross-complaint to allege their true names and capacities when ascertained.

8 16. Centex Homes alleges on information and belief, that cross-defendants and Roes 1
9 through 100, and each of them, inclusive, are and were owners, developers, contractors,
10 subcontractors, design professionals, engineering professionals, materialmen, suppliers,
11 manufacturers, property management entities, or other individuals and/or entities of as yet
12 unidentified form and/or description, which in whole or in part participated in some fashion in the
13 creation, construction, design, development, financing, manufacture, marketing, planning, sale or
14 other participation however described, of the real property project commonly known as Four Leaf
15 Lane, located in the City of Corona, County of Riverside, State of California (the "Project").

16 17. Centex Homes is informed and believes, and based thereon alleges, that at all
17 relevant times herein mentioned, cross-defendants and Roes 1 through 100, and each of them,
18 were acting as the agents, servants, employees, successors, predecessors, associates, employees,
19 partners, joint ventures, alter egos, conspirators, representatives and/or in some other capacity,
20 however termed and/or described, of each other and were acting within the course and scope of
21 each of the other cross-defendants, and Roes 1 through 100 and with full knowledge and consent,
22 such that cross-defendants, and Roes 1 through 100 are jointly and severally liable to Centex
23 Homes.

24 18. Plaintiffs who are owners of certain residential real properties located within the
25 Project, filed a complaint against Centex Homes and others for strict products liability, breach of
26 implied warranty, breach of express warranty, negligence, breach of contract, and declaratory
27 relief, seeking damages that they allegedly sustained as a result of Centex Homes' alleged failure
28 to properly and adequately investigate, design, plan, inspect, engineer, supervise, construct,

1 produce, manufacture, develop, and/or prepare their residential real property located in the
2 Project, as is more particularly set forth in their complaint.

3 **FIRST CAUSE OF ACTION**
4 **FOR BREACH OF WRITTEN CONTRACT**
5 **(Against all Cross-Defendants and Roes 1 – 100)**

6 19. Centex Homes incorporates herein by this reference each and every allegation
7 contained in the preceding paragraphs as though fully set forth herein.

8 20. On various dates prior to plaintiffs' purchase of their homes during the approximate
9 period of 2005 through 2008, the cross-defendants to this cause of action and Roes 1 through 100,
10 and each of them, entered into certain written contracts with Centex Homes.

11 21. Each of the separate written contracts entered into by and between Centex Homes
12 and the cross-defendants and Roes 1 through 100, inclusive, provided in material part that these
13 cross-defendants and Roes 1 through 100, inclusive, would indemnify and hold Centex Homes
14 harmless from any and all liability or damages incurred by Centex Homes arising from the
15 actions, inactions, misfeasance, and/or nonfeasance of these cross-defendants and Roes 1 through
16 100, inclusive. Centex Homes is informed and believes, and on that basis alleges, that each of the
17 separate written contracts entered into between Centex Homes and each of the cross-defendants
18 and Roes 1 through 100, inclusive, provides the following or similar language:

19 9. INDEMNITY, RELEASE AND WAIVER. Subcontractor
20 shall Indemnify the Indemnified Parties from and against any and
21 all Claims to the extent such Claim(s) in whole or in part arise out
of or relate to Subcontractor's Work. Certain initial capitalized
terms used in this Section 9 are defined in Section 36.

22 * * *

23 9.4 Subcontractor releases the Indemnified Parties from
24 and waives as against them all Claims that arise out of or
25 relate to Subcontractor's Work, in whole or in part.
26 Subcontractor shall have no right to be indemnified by the
Indemnified Parties, whether in contract or equity.
Subcontractor further waives the protections of California
Civil Code Section 1542 as to such release and waiver.

27 * * *

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36. DEFINED TERMS. As used in this Agreement, the following terms shall have the following meanings:

(a) Claim (collectively, "Claims") shall mean demands, obligations, damages, actions, causes of action, suits, losses, judgments, settlements, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional, expert or consultants' fees, repair or replacement costs, and costs incurred as a result of such claims or in enforcing this indemnity provision) of every kind and nature whatsoever including, without limitation, those for Property Damage, Personal Injury and Other Damages.

(b) Indemnified Party (collectively, "Indemnified Parties") shall mean Centex Homes (and the owner of the Site if other than Centex Homes), all subsidiaries, divisions and affiliated companies of Centex Homes, its partners, Centex Real Estate Corporation, a Nevada corporation, and all of such parties' representatives, partners, members, designees, officers, directors, shareholders, employees, agents, successors and assigns, and any lender of Centex Homes with an interest in the Project.

(c) Indemnify shall mean to pay indemnity on behalf of, defend, protect and hold harmless, all at Subcontractor's sole cost and expense and with legal counsel with substantial experience representing developers/homebuilders reasonably approved by Centex Homes, regardless of any fault, act or omission to act, concurrent negligence (whether active or passive), breach of warranty or contract, or strict liability of an Indemnified Party or any Subcontractor Party.

* * *

(g) Subcontractor Party (collectively "Subcontractor Parties") shall mean Subcontractor, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts, errors, omissions or liabilities, including strict liability, they may be liable.

(h) Subcontractor's Work shall mean the Work and shall include, without limitation, defects in workmanship or materials and/or design defects, and the presence or activities conducted on the Project by any Subcontractor Party.

22. Each of the separate written contracts entered into by and between Centex Homes and the cross-defendants and Roes 1 through 100 requires cross-defendants and Roes 1 through 100 to obtain, carry and/or pay for insurance in accordance with the following or similar requirements:

1 8. INSURANCE: Subcontractor shall at all times maintain in
2 effect bodily injury and property damage liability insurance for all
3 operations, the Work, contractual obligations and products and
4 completed operations as set forth in this Section 8. The following
5 coverage, terms and limits are minimum requirements (the
6 "Required Insurance") to be provided by Subcontractor:

7 (a) Commercial General Liability:

8 i. \$1,000,000 each occurrence, limit, \$1,000,000
9 personal and advertising injury limit, \$1,000,000 general
10 aggregate limit, \$2,000,000 products-completed operations
11 aggregate limit or equivalent approved by Centex Homes, or
12 current limit carried, whichever is greater. If Subcontractor
13 is engaged in mass grading activities and/or trenching
14 activities over five (5) feet in depth, the products-completed
15 operations aggregate limit including any umbrella and
16 excess coverage shall be a minimum of \$10,000,000.00;

17 ii. ISO or comparable Occurrence Form (Occurrence
18 Form #CG0001-1093 or equivalent) (Modified Occurrence
19 and Claims Made forms are not acceptable);

20 iii. Bodily Injury and property damage coverage
21 including products liability/completed operations coverage
22 (including any product manufactured or assembled),
23 premises operations, blanket contractual liability (for this
24 Agreement), broad form property damage, personal and
25 advertising injury, independent contractor's liability, mobile
26 equipment, elevators, owners and contractors protective
27 liability, damage from explosion, collapse and underground
28 hazards (No "XCU" exclusions are acceptable), and cross-
liability and severability of interest clauses;

iv. At no expense to Centex Homes, an additional
insured endorsement approved by Centex Homes naming
Centex Homes, a Nevada general partnership, Centex Real
Estate Corporation, a Nevada corporation, and the owner of
the Site if other than Centex Homes, their respective
officers, directors, partners, members and employees, as
additional insureds. To the extent available, additional
insured status shall continue to apply to "bodily injury" and
to "property damage" occurring after all Work has been
completed and will continue after that portion of "your
work" out of which the injury or damage arises has been put
to its intended use;

v. The insurance afforded by the policy for the benefit
of the additional insureds will be primary and no
contribution shall be permitted nor required from any
insurance or self insurance maintained by the additional
insureds; ...

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23. Each of the separate written contracts entered into by and between Centex Homes and cross-defendants and Roes 1 through 100 provides the following or similar language:

Concurrently with the execution of the Agreement, Subcontractor will provide to Centex Homes original certificates of insurance and endorsements showing the Required Insurance to be in force. Certificates of insurance alone, without the requisite endorsements, are not acceptable to satisfy the provisions of the Required Insurance. Upon the request of Centex Homes, Subcontractor will provide Centex Homes with certified copies of all policies as well as any subsequent policies and endorsements which Subcontractor is required to procure and maintain.

24. Each of the separate written contracts entered into by and between Centex Homes and cross-defendants and Roes 1 through 100, and each of them, provides, among several other terms, the following or similar language:

- (a) All work is to be performed in strict compliance with the contract documents and all applicable laws, ordinances, building codes and all applicable governing bodies, and to the complete satisfaction of Contractor;
- (b) Subcontractor has performed all independent investigation and research necessary to complete its work in accordance with the contract;
- (c) Subcontractor shall not deviate from the requirements of the plans and specifications without the prior written approval of Contractor;
- (d) Subcontractor shall maintain the skill, experience, skilled employees and other workers, materials, equipment and/or tools necessary to perform the work as required under the contract;
- (e) Subcontractor shall exercise full time general supervision on all phases of its operation to insure correct performance of the contract;
- (f) Subcontractor shall properly inspect existing conditions in their entirety; and
- (g) Subcontractor shall provide protection for the work of other trades and/or adjacent property prior to commencing its work and during its complete operation.

25. Pursuant to the contracts, cross-defendants and Roes 1 through 100, and each of them, engaged in some or all of the designing, manufacturing, constructing, installing, supervising, and/or other acts and omissions complained of in the operative complaint in this

1 action. Centex Homes has at all material times hereto performed and complied with all
2 conditions and obligations required to be performed by it pursuant to the contracts.

3 26. Without peril to Centex Homes' denial of the allegations of the complaint in this
4 action, Centex Homes alleges that the cross-defendants and Roes 1 through 100, and each of
5 them, have, and at all times relevant herein had, an express duty and are obligated to:

6 (a) Indemnify and hold Centex Homes harmless in an amount
7 equal to the sum of any judgment, settlement, cost of repair and/or
8 cost of defense incurred by Centex Homes at the Project by way of
9 this action or otherwise;

10 (b) Obtain insurance in Centex Homes' name for the damages
11 alleged in the Complaint in this action; and/or

12 (c) Defend Centex Homes pursuant to the terms and conditions
13 of the contract.

14 27. Without peril to Centex Homes' denial of the allegations of the complaint in this
15 action, Centex Homes alleges that cross-defendants and Roes 1 through 100, and each of them,
16 have breached one or more provisions of the contracts in one or more of the following ways:

17 (a) By failing and refusing to indemnify and to hold Centex
18 Homes harmless pursuant to the terms of the contract;

19 (b) By failing and refusing to defend Centex Homes;

20 (c) By failing to obtain the insurance meeting the requirements
21 of the contract in Centex Homes' name and for Centex Homes'
22 benefit, for the damages alleged in the operative complaint;

23 (d) By failing to perform their work and/or supply materials in
24 strict compliance with the contract documents, and all applicable
25 laws, ordinances, building codes, and all applicable governing
26 bodies, and to the complete satisfaction of Centex Homes;

27 (e) By failing to perform all independent investigation and
28 research necessary to complete its work in accordance with the
contract;

(f) By failing to maintain the skill, experience, skilled
employees and other workers, materials, equipment and/or tools
necessary to perform the work as required under the contract;

(g) By unnecessarily deviating from the plans and/or
specifications;

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(h) By failing to exercise full time general supervision on all phases of its operation to insure correct performance of the contract;

(i) By failing to properly inspect existing conditions in their entirety; and/or

(j) By failing to provide protection for the work of other trades and/or adjacent property prior to commencing its work and during its complete operation.

28. As a direct, proximate and foreseeable result of the breaches of the cross-defendants and Roes 1 through 100, inclusive, Centex Homes has been compelled to incur attorneys' fees, court costs and the expenses of this action and other claims and actions, and may in the future be compelled to incur additional liability, expenses and fees by reason of settlement, judgment, repairs and/or defense. Centex Homes is entitled to be completely defended, held harmless and to be wholly indemnified and/or reimbursed by the cross-defendants and Roes 1 through 100, and each of them, for the costs, fees and expenses, according to proof.

29. To the extent that plaintiffs prove such breaches to have occurred, Centex Homes will be compelled to incur attorney's fees, court costs and the expenses of this action and other claims and actions, and may in the future be compelled to incur additional liability, expenses and fees by reason of settlement, judgment, repairs and/or defense. Centex Homes is entitled to be completely defended, held harmless and to be wholly indemnified by cross-defendants and Roes 1 through 100, and each of them, for the costs, fees and expenses, according to proof.

SECOND CAUSE OF ACTION

FOR BREACH OF ORAL CONTRACT TO INDEMNIFY,

TO OBTAIN INSURANCE, AND TO DEFEND

(Against All Cross-Defendants and Roes 1-100)

30. Centex Homes incorporates herein by this reference paragraphs 1 through 18 and 21 through 24, inclusive, as though fully set forth herein.

31. On various dates prior to plaintiffs' purchase of their respective homes during the approximate period of 2005 through 2008, cross-defendants and Roes 1 through 100, and each of them, entered into certain oral contracts with Centex Homes or its predecessors. Each oral

1 contract entered into provided in material part that cross-defendants and Roes 1 through 100
2 would indemnify and hold Centex Homes harmless from any and all liability or damages incurred
3 by Centex Homes arising from the actions, inactions, misfeasance and/or nonfeasance of cross-
4 defendants and Roes 1 through 100. Each oral contract entered into also provided in material part
5 that cross-defendants and Roes 1 through 100 would obtain insurance naming Centex Homes as
6 an insured for any and all liability or damages incurred by Centex Homes and arising from the
7 actions, inactions, misfeasance and/or nonfeasance of that cross-defendant. Each oral contract
8 entered into further provided in material part that cross-defendants and Roes 1 through 100 were
9 obligated to defend Centex Homes against any claim resulting directly or indirectly from work
10 performed by or related to work performed by cross-defendants and Roes 1 through 100, and each
11 of them.

12 32. Centex Homes is informed and believes, and on that basis alleges, that cross-
13 defendants and Roes 1 through 100 are and were aware of the express terms of the written
14 contract(s) set forth in paragraphs 21 through 24 herein, and orally agreed with Centex Homes to
15 all terms of the written contracts, including those aforesaid herein and therefore entered into the
16 oral contracts with Centex Homes.

17 33. Pursuant to the oral contracts, cross-defendants and Roes 1 through 100, and each of
18 them, engaged in some or all of the designing, manufacturing, constructing, installing,
19 supervising and/or other acts and omissions complained of in the complaint in this action. Centex
20 Homes has at all material times hereto performed and complied with all conditions and
21 obligations required to be performed by it pursuant to the contract.

22 34. Without peril to Centex Homes' denial of the allegations of the complaint in this
23 action, Centex Homes alleges that cross-defendants and Roes 1 through 100, and each of them,
24 have, and at all times relevant herein had, an express duty and are obligated to indemnify and
25 hold Centex Homes harmless in an amount equal to the sum of any judgment, settlement, costs of
26 repair and/or costs of defense incurred at the Project. Centex Homes hereby demands that cross-
27 defendants and Roes 1 through 100, and each of them, indemnify and hold Centex Homes
28 harmless as a result of the claims alleged in the operative complaint and pursuant to the terms of

the contract(s). Centex Homes is informed and believes, and thereby alleges on such information and belief, that cross-defendants and Roes 1 through 100 have failed and refused to indemnify and hold Centex Homes harmless pursuant to the terms of the oral contract and have thereby breached the oral contract(s).

35. Without peril to Centex Homes' denial of the allegations of the complaint in this action, Centex Homes alleges that cross-defendants and Roes 1 through 100, and each of them, have, and at all times relevant herein had, an express duty and were obligated to obtain insurance in Centex Homes' name for the damages alleged in the operative complaint. Centex Homes is informed and believes, and on that basis alleges, that each cross-defendant and Roes 1 through 100 have failed to obtain the required insurance in Centex Homes' name for the damages alleged and have thereby breached the contract(s).

36. Without peril to Centex Homes' denial of the allegations of the complaint in this action, Centex Homes alleges that cross-defendants and Roes 1 through 100, and each of them, have, and at all times relevant herein had, an express duty and are obligated to defend Centex Homes in this action. Centex Homes hereby demands that cross-defendants and Roes 1 through 100 defend Centex Homes in this action. Centex Homes is informed and believe, and on that basis alleges on such information and belief that each of these cross-defendants and Roes 1 through 100 have failed and refused to defend Centex Homes pursuant to the terms of the contract(s) and have thereby breached the contract.

37. As a direct, proximate and foreseeable result of the breaches of the cross-defendants and Roes 1 through 100, and each of them, Centex Homes has been compelled to incur attorneys' fees, court costs, and the expenses of this action and other claims and actions, and may in the future be compelled to incur additional liability, expenses and fees by reason of settlement, judgment, repairs and/or defense. Centex Homes is entitled to be defended, held harmless, indemnified, and reimbursed by cross-defendants and Roes 1 through 100, and each of them, for all costs, fees and expenses, according to proof.

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1 **THIRD CAUSE OF ACTION**

2 **FOR BREACH OF IMPLIED CONTRACT TO INDEMNIFY,**

3 **TO OBTAIN INSURANCE AND TO DEFEND**

4 **(Against All Cross-Defendants and Roes 1-100)**

5 38. Centex Homes incorporates herein by this reference paragraphs 1 through 18 and 21
6 through 24, inclusive, as though fully set forth herein.

7 39. Centex Homes is informed and believes, and on that basis alleges, that cross-
8 defendants and Roes 1 through 100 are and were aware of the express terms of the written
9 contract(s) set forth hereinabove at paragraphs 21 through 24, inclusive, and impliedly agreed
10 with Centex Homes to all terms of the written contract(s), including those aforementioned herein,
11 by virtue of each of cross-defendants and Roes 1 through 100 performing work at the Project,
12 engaging in some or all of the designing, manufacturing, constructing, installing, supervising
13 and/or other acts and omissions complained of in the operative complaint filed in this action
14 and/or by operation of the past dealings between each of these cross-defendants and Roes 1
15 through 100 and Centex Homes. These cross-defendants and Roes 1 through 100, and each of
16 them, therefore entered into the contract(s) with Centex Homes and accepted all of the terms
17 stated herein and otherwise.

18 40. Without peril to Centex Homes' denial of the allegations of the complaint in this
19 action, Centex Homes alleges that cross-defendants and Roes 1 through 100, and each of them,
20 have, and at all times relevant herein had, an implied duty and are obligated to indemnify and
21 hold Centex Homes harmless in an amount equal to the sum of any judgment, settlement, costs of
22 repair and/or costs of defense incurred at the Project. Centex Homes hereby demands that cross-
23 defendants and Roes 1 through 100, and each of them, indemnify and hold Centex Homes
24 harmless as a result of the claims alleged in the operative complaint and pursuant to the terms of
25 the implied contract(s). Centex Homes is informed and believes, and alleges on such information
26 and belief, that Centex Homes demanded cross-defendants and Roes 1 through 100, and each of
27 them, to indemnify or to provide defense to Centex Homes pursuant to the terms of the implied
28 contract(s). Centex Homes is informed and believes, and alleges on such information and belief;

that each of the cross-defendants and Roes 1 through 100 have failed and refused to indemnify and hold Centex Homes harmless pursuant to the terms of the implied contract(s) and have thereby breached the implied contract(s).

41. Without peril to Centex Homes' denial of the allegations of the complaint in this action, Centex Homes alleges that cross-defendants and Roes 1 through 100, and each of them, have, and at all times relevant herein had, an implied duty and were obligated to obtain insurance in Centex Homes' name for the damages alleged in the complaints in this action. Centex Homes is informed and believes, and on that basis alleges, that each of these cross-defendants and Roes 1 through 100 have failed to obtain the required insurance in Centex Homes' name for the damages alleged and have thereby breached the implied contract(s).

42. Without peril to Centex Homes' denial of the allegations of the complaint in this action, Centex Homes alleges that cross-defendants and Roes 1 through 100, and each of them, have, and at all times relevant herein had, an implied duty and are obligated to defend Centex Homes in this action. Centex Homes hereby demands that cross-defendants and Roes 1 through 100, and each of them, defend Centex Homes in this action. Centex Homes is informed and believes, and alleges on such information and belief, that each of the cross-defendants and Roes 1 through 100 have failed and refused to defend Centex Homes pursuant to the terms of the implied contract(s) and have thereby breached the implied contract(s).

43. As a direct, proximate and foreseeable result of the breaches of cross-defendants and Roes 1 through 100, and each of them, Centex Homes has been compelled to incur attorneys' fees, court costs, and the expenses of this action and other claims and actions, and may in the future be compelled to incur additional liability, expenses and fees by reason of settlement, judgment, repairs and/or defense. Centex Homes is entitled to be defended, held harmless, indemnified, and reimbursed by cross-defendants and Roes 1 through 100, and each of them, for all of their costs, fees and expenses, according to proof. Centex Homes is also entitled to attorneys' fees pursuant to Code of Civil Procedure section 1021.6

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FOURTH CAUSE OF ACTION
FOR TOTAL EQUITABLE INDEMNITY
(Against All Cross-Defendants and Roes 1-100)

44. Centex Homes incorporates herein by this reference paragraphs 1 through 18, inclusive, as though fully set forth herein.

45. Centex Homes expressly denies the allegations of the complaints and cross-complaints in this action, and any breach of warranty, negligence or other wrongdoing whatsoever on their part. Should Centex Homes nevertheless be found to have breached any warranty or to be liable for any other wrongdoing with respect to the allegations of this complaint, the actions or omissions of Centex Homes was passive and secondary, while those of cross-defendants and Roes 1 through 100, and each of them, were active, primary and/or superseding. Thus, as a direct, proximate and foreseeable result of the wrongdoing of cross-defendants and Roes 1 through 100, and each of them, Centex Homes is entitled to total equitable indemnity from any and all liability adjudged against it as to the Project.

46. As a direct, proximate and foreseeable result of the filing of the complaint in this action, Centex Homes has been compelled to incur attorneys' fees, court costs, and the expenses of this action and other claims and actions, and may in the future be compelled to incur additional liability, expenses and fees by reason of settlement, judgment, repairs and/or defense. Centex Homes is entitled in equity and pursuant to California Code of Civil Procedure section 1021.6 to be held harmless and to be indemnified by cross-defendants and Roes 1 through 100, and each of them, for their costs, fees and expenses, according to proof.

FIFTH CAUSE OF ACTION
FOR PARTIAL EQUITABLE INDEMNITY
(Against All Cross-Defendants And Roes 1-100)

47. Centex Homes incorporates herein by this reference paragraphs 1 through 18, inclusive, as though fully set forth herein.

48. Centex Homes expressly denies the allegations of the complaint in this action and any breach of warranty, negligence or other wrongdoing whatsoever on its part. Should Centex

Homes nevertheless be found liable to any party in this action on any theory as a result of the alleged damages purportedly suffered by them, said damages were directly, proximately and foreseeably caused or contributed to by the breaches of duty and any wrongful conduct of these cross-defendants and Roes 1 through 100, and each of them.

49. Should plaintiffs recover damages against Centex Homes by way of judgment, settlement or otherwise, then these cross-defendants and Roes 1 through 100, by reason of the foregoing and in equity and good conscience, Centex Homes is entitled to an equitable apportionment of the liability from cross-defendants and Roes 1 through 100, and each of them, on a comparative fault basis and a judgment against cross-defendants and Roes 1 through 100, and each of them, under the doctrine of equitable indemnity in an amount equal to their respective liabilities as so apportioned.

50. As a direct, proximate and foreseeable result of the filing of plaintiffs' operative complaints, Centex Homes has been compelled to incur attorneys' fees, court costs, and the expenses of this action, and other claims and actions, and may in the future be compelled to incur additional liability, expenses and fees by reason of settlement, judgment, repairs and/or defense. Centex Homes is entitled in equity and pursuant to Code of Civil Procedure section 1021.6 to be held harmless and to be indemnified by Roes 1 through 100, and each of them, for their costs, fees and expenses, according to proof.

SIXTH CAUSE OF ACTION

FOR CONTRIBUTION AND REPAYMENT

(Against All Cross-Defendants and Roes 1 through 100)

51. Centex Homes incorporates herein by this reference paragraphs 1 through 18, inclusive, as though fully set forth herein.

52. Centex Homes has denied and continues to deny the material allegations of plaintiffs' complaints in this action. Nevertheless, if it is determined that Centex Homes is liable to any party for any of their alleged damages, then cross-defendants and Roes 1 through 100, and each of them, are jointly liable and obligated to contribute toward the payment or repayment of said damages according to their respective proportions.

1 53. As a direct, proximate and foreseeable result of the complaint in this action, Centex
2 Homes has been compelled to incur attorneys' fees, court costs and expenses of this action, and
3 other claims and actions, and may in the future be compelled to incur additional liability,
4 expenses and fees by reason of settlement, judgment, repairs and/or defense. Centex Homes is
5 entitled to contribution and repayment from cross-defendants and Roes 1 through 100, and each
6 of them, for their costs, fees and expenses, according to proof.

7 **SEVENTH CAUSE OF ACTION**

8 **FOR DECLARATORY RELIEF FOR DUTY TO INDEMNIFY**

9 **(Against All Cross-Defendants and Roes 1-100)**

10 54. Centex Homes incorporates herein by this reference paragraphs 1 through 18,
11 inclusive, as though fully set forth herein.

12 55. A dispute and actual controversy has arisen and now exists between Centex Homes
13 and cross-defendants and Roes 1 through 100 as to whether cross-defendants and Roes 1 through
14 100 must indemnify Centex Homes.

15 56. Centex Homes therefore requests a judicial declaration of the parties' respective
16 rights and duties; the amount and degree of fault of cross-defendants and Roes 1 through 100, and
17 each of them; and the proportionate share owed by cross-defendants and Roes 1 through 100, and
18 each of them, of any settlement amounts paid, damages awarded, costs of repair, costs of defense,
19 and/or Centex Homes's costs, expenses and attorneys' fees.

20 **EIGHTH CAUSE OF ACTION**

21 **FOR DECLARATORY RELIEF FOR DUTY TO OBTAIN INSURANCE**

22 **(Against All Cross-Defendants and Roes 1-100)**

23 57. Centex Homes incorporates herein by this reference paragraphs 1 through 18,
24 inclusive, as though fully set forth herein.

25 58. A dispute and actual controversy has arisen and now exists between Centex Homes
26 and cross-defendants and Roes 1 through 100, as to whether these cross-defendants and Roes 1
27 through 100, had a duty to provide insurance for Centex Homes.

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1 59. Centex Homes therefore requests a judicial declaration of the parties' respective
2 rights and duties regarding the provision of insurance. Each of the contracts pleaded hereinabove
3 between Centex Homes and cross-defendants and Roes 1 through 100 also include attorneys' fees
4 provisions entitling Centex Homes to recover against cross-defendants and Roes 1 through 100,
5 and reasonable attorneys' fees in any action arising out of the contract, according to proof.

6 **NINTH CAUSE OF ACTION**

7 **FOR DECLARATORY RELIEF FOR DUTY TO DEFEND**

8 **(Against All Cross-Defendants and Roes 1-100)**

9 60. Centex Homes incorporates herein by this reference paragraphs 1 through 18,
10 inclusive, as though fully set forth herein.

11 61. A dispute and actual controversy has arisen and now exists between Centex Homes
12 and cross-defendants and Roes 1 through 100 as to whether these cross-defendants and Roes 1
13 through 100 must defend Centex Homes.

14 62. Centex Homes therefore requests a judicial declaration of the parties' respective
15 rights and duties regarding defense fees and costs. Each of the contracts pleaded hereinabove
16 between Centex Homes and cross-defendants and Roes 1 through 100 also include attorneys' fees
17 provisions entitling Centex Homes to recover against these cross-defendants and Roes 1 through
18 100 reasonable attorneys' fees in any action arising out of the contract, according to proof.

19 **TENTH CAUSE OF ACTION**

20 **FOR DECLARATORY RELIEF FOR DUTY TO CONTRIBUTE**

21 **(Against All Cross-Defendants and Roes 1-100)**

22 63. Centex Homes incorporates herein by this reference paragraphs 1 through 18,
23 inclusive, as though fully set forth herein.

24 64. A dispute and actual controversy has arisen and now exists between Centex Homes
25 and cross-defendants and Roes 1 through 100, as to whether cross-defendants and Roes 1 through
26 100 must contribute to the payment or repayment of any settlement amounts paid or damages
27 adjudged due and owing from Centex Homes as to plaintiffs, or contribute to the payment or
28 repayment of any costs of repair spent as a result of other claims and actions.

65. Centex Homes therefore requests a judicial declaration of the parties' respective rights and duties; the amount and degree of fault of cross-defendants and Roes 1 through 100 and each of them; and the proportionate share owed by cross-defendants and Roes 1 through 100, and each of them, of any settlement amounts paid, damages awarded, costs of repair, costs of defense, and/or Centex Homes' costs, expenses and attorneys' fees. Each of the contracts pleaded hereinabove between Centex Homes and cross-defendants and Roes 1 through 100 also include attorneys' fees provisions entitling the Centex Homes to recover against cross-defendants and Roes 1 through 100 with said contract its reasonable attorneys' fees in any action arising out of the contract, according to proof.

PRAYER

WHEREFORE, Centex Homes prays for judgment against all cross-defendants and Roes 1 through 100, and each of them, as follows:

1. On the first, second and third causes of action, for compensatory and consequential damages according to proof;

2. On the fourth cause of action, for total equitable indemnity according to proof, and according to their proportionate share;

3. On the fifth cause of action, for partial equitable indemnity according to proof, and according to their proportionate share;

4. On the sixth cause of action, for contribution and repayment according to proof, and according to their proportionate share;

5. On the seventh cause of action, for a judicial declaration of the parties' rights and obligations regarding the duty to indemnify;

6. On the eighth cause of action for a judicial declaration of the parties' rights and obligations regarding the duty to obtain insurance;

7. On the ninth cause of action for a judicial declaration of the parties' rights and obligations regarding the duty to defend;

8. On the tenth cause of action, for a judicial declaration of the parties' rights and obligations regarding the duty to contribute, the amount and degree of fault of all cross-

1 defendants and Roes 1 through 100, and each of them, and the proportionate share owed by all
2 cross-defendants and Roes 1 through 100, and each of them, of any of Centex Homes's costs,
3 expenses, and attorneys' fees;

4 9. On all causes of action, for costs of suit incurred herein;

5 10. For attorneys' fees on the causes of action where pleaded; and

6 11. On all causes of action, for such other and further relief as the court may deem just
7 and proper.

8
9 Dated: March 22, 2011

NEWMEYER & DILLION LLP

10
11 By: 

Jennifer C. Lyons
Attorneys for Defendant and Cross-
Complainant Centex Homes; and
Defendants Centex Real Estate Holding,
LP, Centex Real Estate Corporation, and
Nomas Corp.

NEWMAYER & DILLION LLP


STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I am a citizen of the United States and employed in Orange County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 895 Dove Street, 5th Floor, Newport Beach, California 92660. On March 22, 2011, I served a copy of the within document(s):

1. BREACH OF WRITTEN CONTRACT; 2. BREACH OF ORAL CONTRACT TO INDEMNIFY, TO OBTAIN INSURANCE AND TO DEFEND; 3. BREACH OF IMPLIED CONTRACT TO INDEMNIFY, OBTAIN INSURANCE AND TO DEFEND; 4. TOTAL EQUITABLE INDEMNITY; 5. PARTIAL EQUITABLE INDEMNITY; 6. CONTRIBUTION AND REPAYMENT; 7. DECLARATORY RELIEF FOR DUTY TO INDEMNIFY; 8. DECLARATORY RELIEF FOR DUTY TO OBTAIN INSURANCE; 9. DECLARATORY RELIEF FOR DUTY TO DEFEND; AND 10. DECLARATORY RELIEF FOR DUTY TO CONTRIBUTE

- I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on March 22, 2011, at Newport Beach, California.


Evelyn S. Gomez

SERVICE LIST

Riverside County Superior Court
Guillen, et al. v. Centex Homes, et al. - RIC10010749

Jerry La Cues, Esq.
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[PLAINTIFFS GUILLEN, ET AL.]

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San Diego, CA 92101-8591

Tel: (619) 233-8591
Fax: (619) 233-8593
[KARDUS PLASTERING, INC.]

EXHIBIT “3”

CONTRACT NO. 201-74

**CENTEX HOMES
CONSTRUCTION AGREEMENT**

THIS CONSTRUCTION AGREEMENT ("Agreement") is made this 10th day of February, 2006 by and between C CONSTRUCTION, INC. dba CAMPBELL CONCRETE OF CALIFORNIA (Subcontractor's License No. 863761) ("Subcontractor") whose address is 1640 W. Pellisier Road, Colton, CA 92324, and CENTEX HOMES, a Nevada general partnership (Contractor's License No. 825943) ("Centex Homes"), whose address is 1265 Corona Pointe Court, Corona, CA 92879.

Subcontractor wishes to perform work for and/or furnish materials to Centex Homes for construction of improvements on property (the "Project") that may or may not be owned by Centex Homes (the "Site"), and Centex Homes desires to pay Subcontractor for such work and/or materials subject to and in accordance with the terms and conditions contained in this Agreement. The Project and the Site are more particularly described in Schedule A attached to this Agreement.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

1. **WORK.** In accordance with the terms and conditions in this Agreement, Subcontractor will perform and finish in a good and workmanlike manner, and will furnish all materials, labor, equipment, supplies and tools, for the work described on Schedule B attached to this Agreement (the "Work"). The Work will be performed in accordance with the plans, specifications, reports, drawings and schedules for the Work, and any supplemental terms and conditions to this Agreement, that have been provided for review by Subcontractor, and which shall be on file at the office of Centex Homes (collectively, the "Contract Documents"), which are incorporated into this Agreement by this reference as if fully set forth. Centex Homes will have the right at any time to supplement the Contract Documents with additional or replacement drawings and schedules and upon so doing such drawings and schedules will become part of the Contract Documents immediately upon delivery to Subcontractor. The Contract Documents, including any time schedules, may be amended and/or supplemented from time to time by giving Subcontractor written notice thereof. In the event a request by Centex Homes increases the cost, time or difficulty of performance of the Work for which the parties are unable to agree upon an amendment to the Contract Documents, Subcontractor's only remedy shall be to terminate this Agreement by written notice to Centex Homes within twenty-four (24) hours after the parties determine that they are unable to agree upon such amendment.

2. **LICENSE.** SUBCONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE SUBCONTRACTORS STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST SUBCONTRACTOR IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, SUBCONTRACTORS STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.

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3. SITE READY FOR WORK.

A. Subcontractor will be responsible for inspecting the Site, reading all of the Contract Documents and comparing the Site against the Contract Documents. Subcontractor's commencement of the Work is an acknowledgment by Subcontractor that the Site is safe and ready for the Work to commence and proceed in a good and workmanlike manner in compliance with the Contract Documents and all Law (as hereinafter defined) bearing on the Work.

B. It is understood by the parties that based upon the Contract Documents and inspection of the Site, Subcontractor is best able to evaluate the cost of the Work and that in arriving at the Contract Price (as defined in Section 8), Subcontractor has considered and assumed the risk that unforeseeable conditions or events may be encountered causing additional difficulty and expense not anticipated at the time of execution of this Agreement. Subcontractor further represents that it is fully familiar with the requirements of any governmental authority having jurisdiction over the Work and is prepared to and will comply with all such requirements without additional compensation.

C. To the extent applicable to the Work, Subcontractor shall promptly, and before the existing conditions at the Site are disturbed, give written notice to Centex Homes of (1) subsurface or latent physical conditions at the Site that differ from those indicated in the Contract Documents Including (as defined in Section 32 of this Agreement) subsurface utilities not accurately shown on plans or drawings, (2) unknown physical conditions at the Site which differ from those ordinarily encountered and generally recognized as inherent in work similar to the Work, or (3) the existence of Hazardous Materials (as defined in Section 15) not previously disclosed in the Contract Documents. Centex Homes shall in its sole discretion determine if the conditions of which Subcontractor gives notice materially change the Work and if so shall determine in its sole discretion whether to proceed with the Work as contracted, to amend this Agreement, or to terminate this Agreement.

4. PERFORMANCE OF THE WORK. Subcontractor will commence the Work immediately upon notice from Centex Homes and will proceed with the Work, during the working hours established by Centex Homes for the Project (unless other arrangements have been made), and every part thereof until completion in a prompt, diligent and workmanlike manner, in strict accordance with the Contract Documents, Centex Homes' time schedule and in such time so as not to delay the other trades. If in Centex Homes' opinion Subcontractor's ability or willingness to commence and perform the Work in accordance with the Contract Documents and Centex Homes' time schedule will result in delays for other trades, then Centex Homes may terminate this Agreement for that portion of the Work to be performed upon two (2) business days written notice to Subcontractor. If any persons performing the Work engage in a strike or work stoppage, or cease to work due to picketing or a labor dispute of any kind, Centex Homes may, at its option and without prejudice to any other remedies it may have, after five (5) business days written notice to Subcontractor, provide through whatever means Centex Homes determines is reasonable alternative persons or entities to perform the Work and deduct the cost thereof incurred by Centex Homes from any monies then due or thereafter to become due to Subcontractor. Centex Homes may at its option, without prejudice to any other remedies it may have, terminate this Agreement and enter upon the Site and complete the Work. In case of such termination, Subcontractor will not be entitled to receive further payments under the Agreement or otherwise but will nevertheless remain liable for any damages that Centex Homes incurs. If the expenses incurred by Centex Homes in completing the Work exceed the unpaid balance of the Contract Price, Subcontractor will pay the difference to Centex Homes together with any other damages incurred by Centex Homes as the result of Subcontractor's default. If Subcontractor fails to provide sufficient labor or equipment for the Work and is thereby unable

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to timely meet the requirements of Centex Homes, Centex Homes may obtain additional equipment and provide additional labor to assist Subcontractor, and all costs thereof, including a fee for expenses of administration and supervision equal to fifteen percent (15%) of such costs, will be promptly paid by Subcontractor to Centex Homes. In the event Subcontractor is delayed in the performance of the Work by causes beyond its reasonable control and without its fault or negligence, including only fire, flood, strikes, labor disputes, inclement weather, delays caused solely by Centex Homes, or its subcontractors, then Subcontractor shall be entitled to a time extension to complete the Work no greater than the delay caused by such event.

5. PROTECTION OF THE WORK. Subcontractor will supervise, administer and protect the Work against loss or damage from any cause and will be responsible for all parts of the Work, temporary or permanent, finished or not, until the Work is finally completed and inspected by Centex Homes except for loss or damage to the extent caused by Centex Homes, or others acting for or on behalf of or at the direction of Centex Homes. Subcontractor will take reasonable precautions and maintain reasonable safeguards to protect against loss or damage to persons or property as a result of weather conditions or arising out of Subcontractor's activities at or about the Site including bracing and reinforcing where necessary and providing for guards, locks, fences, signs, barricades, lights and such other warning and security devices applicable to the Work where appropriate. Except for loss or damage caused by a person other than a Subcontractor Party, Subcontractor will bear and be liable for any loss or damage to the Work and/or any material, equipment or other thing used in the Work or placed at the Site before final completion of the Work and inspection and acceptance of the Work by Centex Homes. The acceptance of the Work by Centex Homes shall not constitute a waiver or release of any rights of Centex Homes against Subcontractor under this Agreement, including liability for defective, deficient or non-conforming Work. Centex Homes will complete the final inspection within a reasonable time.

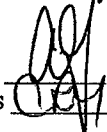
6. CLEAN UP. Subcontractor shall at all times keep the Site safe and free from the accumulation of waste materials or rubbish caused by its operations or related to the Work. Upon completion of the Work and each portion thereof, Subcontractor will remove from the Site or place as directed by Centex Homes all rubbish and waste produced by its operations or the Work as well as all of its tools, equipment, machinery and surplus materials no longer needed and leave the Site in a clean ("broom clean" or equivalent condition if the Work is in or around a residence) and safe for Subcontractor's employees and subsequent subcontractors to perform their work unless otherwise specified in writing. If Subcontractor fails to clean up, Centex Homes may do so after written notice to Subcontractor and the cost thereof will be charged to Subcontractor.

7. WARRANTY.

A. Warranty. In addition to any other warranty expressly made by Subcontractor or implied by Law, Subcontractor unconditionally guarantees and warrants for the benefit of Centex Homes and its successors and assigns that the Work shall (1) comply with all Laws, including the Right to Repair Act (as defined in Section 23), and the Contract Documents, (2) be of good quality, free of defects in materials and workmanship, (3) consist of new materials unless otherwise specified, and (4) be completed in strict accordance with the Contract Documents and the prevailing standards of the industry (collectively, the "Warranty"). The Warranty specifically inures to the benefit of and shall be enforceable by any purchaser of any residence constructed or to be constructed in the Project with respect to which the Work applies and, to the extent applicable, any municipal corporation, jurisdiction, agency or homeowners' association that will ultimately own and/or govern any

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portion of the Site ("Subsequent Owner"). The obligations of Subcontractor under the Warranty are separate and distinct from the obligations of Subcontractor under Section 23.

B. Commencement of Correction Period. The Warranty shall commence upon completion of the Work and continue (a) for a period of two (2) years after the close of escrow between Centex Homes and the original purchaser for each residence for the Fit and Finish components of the Work (as defined in the Limited Warranty provided by Centex Homes to such purchasers, a copy of which will be provided to Subcontractor upon request (the "**Limited Warranty**")); and (b) for all Work for the time provided under the functionality standards of the Right to Repair Act (the "**Correction Period**").

C. Correction of Work. Any portion of the Work that Centex Homes reasonably determines to be defective, deficient or non-conforming shall be repaired or replaced by Subcontractor in a manner reasonably satisfactory to Centex Homes and in accordance with procedures set forth in this Section 7. If a demand is made upon Subcontractor to perform work during the Correction Period, Subcontractor, at its sole cost and expense, shall use its best efforts to expeditiously repair or replace any and all defective, deficient or non-conforming Work, whether existing because of faulty workmanship, defective equipment or defective materials, and, except as provided in Section 23, shall repair and/or replace any and all damage to the work of others caused by the defective, deficient or non-conforming Work. Subcontractor shall commence such repair and/or replacement within eight (8) hours in an emergency (as reasonably determined by Centex Homes) and shall diligently complete the emergency repair within a reasonable time based on the circumstances, or forty-eight (48) hours in a non-emergency (Saturdays and Sundays excluded) after written notice from Centex Homes or a Subsequent Owner (as applicable). If such repair and/or replacement cannot be completed within forty-eight (48) hours despite Subcontractor's best efforts, Subcontractor shall diligently and continuously proceed toward completion of such repair and/or replacement. Subcontractors performing HVAC, electrical, roofing or plumbing services shall provide and maintain emergency telephone numbers for night, weekend and holiday calls. If Centex Homes requests, Subcontractor shall (1) contact homeowners directly to make necessary arrangements for punctual appointments and access to the residence in order to complete the repair and/or replacement within such forty-eight (48) hour period, (2) obtain the signature of the Subsequent Owner confirming completion of the repair and/or replacement, and (3) fax or mail such signed service requests to Centex Homes within twenty-four (24) hours after completion of the repair and/or replacement. Subcontractor warrants that it has and shall maintain sufficient materials, equipment and labor to perform Subcontractor's obligations during the Correction Period.

D. Centex Homes' Right to Correct. If Subcontractor refuses or fails to perform correction under Section 7C, and upon written notice from Centex to Subcontractor, the party entitled to performance or Centex Homes, as applicable, shall have the right to hire other persons to correct the defective, deficient or non-conforming Work without notice to Subcontractor, and Subcontractor shall be liable for the reasonable costs and expenses thereof, including costs, disbursements and reasonable attorneys' fees incurred in the enforcement of this provision. The cost of any such work shall be charged to Subcontractor and such cost plus a sum equal to five percent (5%) thereof (which additional sum represents an allowance for the administration by Centex Homes of such work) shall be charged against the account of Subcontractor. If the amount owing Subcontractor under this Agreement at the time others perform such work is less than the sum charged against its account, Subcontractor will remit the difference to Centex Homes within five (5) days after request therefore.

E. No Limitation. Nothing in this Section 7 shall be construed to establish a period of limitation with respect to other obligations that the Subcontractor might have under the Contract Construction Agreement - Traditional Contract (1-17-06

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Documents. Establishment of the Correction Period for correction of the Work relates only to the specific obligation of Subcontractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Subcontractor's liability with respect to the Subcontractor's obligations other than specifically to correct the Work. Neither Final Payment (as defined in Section 9B) nor the partial use or occupancy of a residence by Centex Homes or a Subsequent Owner shall be construed as an acknowledgement by Centex Homes that the Work has been completed in accordance with the terms of the Contract Documents or relieve Subcontractor of liability or responsibility for defective materials or workmanship or any breach of the Contract Documents. The correction obligation is independent from all other obligations of Subcontractor under this Agreement and shall not affect or otherwise limit the indemnity or other obligations of Subcontractor under this Agreement. The Warranty and the correction obligation shall survive termination of this Agreement.

8. CONTRACT PRICE. Centex Homes will pay to Subcontractor for the Work the sum calculated based upon the price schedule (the "**Price Schedule**") on Schedule C attached to this Agreement (the "**Contract Price**"), subject to the terms and conditions contained herein. The Contract Price includes all costs of construction, Including materials, labor, supervision, freight, safety, transportation and other permits specifically applicable to the Work, sales and other taxes, and any other applicable costs required to execute the Work. If Subcontractor elects to participate in "Centex Homes Accelerated Payment Service" paperless approval and payment system for vendors and is approved by Centex Homes for such participation, payment of the Contract Price may be made by direct deposit to a designated account at Subcontractor's bank or other financial institution. Participation in such service will not otherwise alter the rights and obligations of the parties under this Agreement.

9. PAYMENT SCHEDULE.

A. Progress Payments. Payments will be made in accordance with the payment schedule ("**Payment Schedule**") attached hereto as Schedule D.

B. Final Payment. Subject to Centex Home's right to withhold payment of one hundred fifty percent (150%) of disputed amounts described herein and to withhold amounts for Subcontractor's default as set forth in Section 28, final payment to Subcontractor ("**Final Payment**") shall not become due until forty-five (45) calendar days after the Project is completed, inspected and accepted by Centex Homes and approved by all applicable government agencies and when Subcontractor:

1. Submits duly executed and completed forms of conditional or unconditional lien waiver and release of rights upon final payment in accordance with the requirements of California Civil Code Section 3262 from all persons eligible to record mechanics' liens against the Project;
2. completes all Work;
3. submits all record drawings marked to indicate selections and changes made during construction;
4. submits all warranties and maintenance and operations manuals applicable to the Work;
5. submits a consent of surety, if any, to finalize payment; and

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6. submits such other documents as Centex Homes may reasonably require.


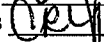
C. Withholding Payments. Any payment to Subcontractor will not be construed as acceptance of the Work or waiver of any rights by Centex Homes under this Agreement and will not relieve Subcontractor of any of its obligations hereunder. Notwithstanding any other provisions of this Agreement, Centex Homes shall have the right to withhold all or any portion of any payment to Subcontractor to protect Centex Homes from loss on account of any one or more of the following conditions:

1. Subcontractor has failed to perform any of its obligations hereunder or otherwise is in default under this Agreement.
2. Subcontractor has failed to furnish to Centex Homes such documents (e.g., invoices, signed receipts, vouchers, or lien releases and waivers in the form set forth in Schedule E) in form and manner satisfactory to Centex Homes.
3. Any part of a payment requested is attributable to Work that is defective or not performed in accordance with this Agreement and/or the Contract Documents; provided, however, if severable, payment will be made as to that part of the Work that appears to be proper after due allowance for the cost of correcting the defective part of the Work and the part which was not performed in accordance with this Agreement and/or the Contract Documents, as estimated by Centex Homes.
4. Subcontractor has failed to make payment promptly to any lien or stop notice claimants and to secure release of such liens and stop notices.
5. Centex Homes determines, in its good faith judgment, that the portion of the Contract Price then remaining unpaid will not be sufficient to complete the Work and correct deficiencies in the Work. In such case no additional payments will be due Subcontractor hereunder unless and until Subcontractor, at its sole cost, performs a sufficient portion of the Work so that such portion of the Contract Price then remaining unpaid is determined by Centex Homes to be sufficient to so complete and correct the Work.
6. Subcontractor has failed to procure, maintain or pay for Required Insurance (as defined in Section 21).

D. Withholding Payment of Disputed Amounts. In the event of a good faith dispute between Centex Homes and Subcontractor, Centex Homes may withhold from payments one hundred fifty percent (150%) of the disputed amount.

10. PAYMENTS BY SUBCONTRACTOR. Subcontractor will promptly pay in good funds all costs of labor, materials, services and equipment furnished and/or used to execute the Work. Centex Homes may, after giving Subcontractor five (5) days prior written notice, make payments due to Subcontractor directly to any union trust fund that has filed a stop notice or mechanics' lien, subcontractor, material or equipment supplier, utility or transportation company, insurance company, or any governmental agency for any labor, materials, equipment, utilities, transportation, insurance premiums, taxes or the like, performed, furnished, rendered or payable in connection with the performance of the Work, unless Subcontractor has first delivered written notice to Centex Homes of a Construction Agreement – Traditional Contract (1-17-06

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dispute with any such person or entity and has furnished security satisfactory to Centex Homes insuring against claims therefrom, which may include a release bond conforming to statutory requirements. Any payment so made will be credited against sums due Subcontractor in the same manner as if such payment had been made directly to Subcontractor. The provisions of this Section 10 are intended solely for the benefit of Centex Homes and will not inure to the benefit of any third persons, or obligate Centex Homes or its sureties in any way to any third party.

11. BONDS. Centex Homes, at its expense, shall have the right to require Subcontractor to provide a performance bond, completion bond, or maintenance bond naming Centex Homes as the sole beneficiary as a condition precedent to payment, the reasonable cost of which will be paid by Centex Homes. If Centex Homes requests a bond after the Agreement has been signed by Subcontractor, Subcontractor shall have seven (7) days to comply with the request and if Subcontractor fails to comply, Centex Homes may, but is not obligated to, terminate this Agreement.

12. TAXES. Subcontractor will bear sole and exclusive responsibility for the payment of all taxes imposed by local, state or federal law applicable to the Work, materials supplied by Subcontractor, payments received by Subcontractor and payments made by Subcontractor. Subcontractor will be solely responsible for the payment of all local, state and federal income taxes, withholding requirements, self-employment taxes, social security taxes and other taxes on the payments made to Subcontractor and payments made by Subcontractor to its employees and suppliers.

13. LIENS. Subcontractor will at all times keep the Site and each part thereof free from any attachment, lien, claim of lien or other encumbrance arising out of the Work and Subcontractor will indemnify, defend and hold Centex Homes harmless from and against all Claims arising by reason of any such lien, claim of lien, attachment or encumbrance. If any claim is filed to enforce any laborers, materialmen, mechanics, or other similar lien arising out of or relating to the Work, Subcontractor will immediately cause such lien (or the effect of such lien) to be released and discharged and if Subcontractor fails to do so, then Centex Homes will have the right to pay all sums, including attorney fees and any other costs and expenses incurred, necessary to obtain such release and discharge and will hold Subcontractor liable for the amount thereof, with the right to deduct all or a portion of such sum from amounts that may be due Subcontractor.

14. BACK CHARGES AND WITHHOLDING PAYMENTS.

A. Definitions. For purposes of this Agreement, the term "Back Charges" shall mean the amounts due from Subcontractor to Centex Homes as a result of Subcontractor's failure to fulfill its obligations under this Agreement and/or the Contract Documents, and a "Back Charge Notice" is a writing submitted by Centex Homes to Subcontractor to notify Subcontractor that Back Charges are being charged to the account of Subcontractor.

B. Withholding Payments. In addition to the reasons set forth in Section 9, Centex Homes upon prior written notice to Subcontractor, may withhold any and all payments, up to one hundred fifty percent (150%) of the reasonable value of the portion of the Work in dispute, as determined in the sole discretion of Centex Homes, due Subcontractor pursuant to this Agreement as a result of:

1. Third party Claims filed or reasonable evidence indicating the probable filing of such Claims;

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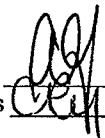
2. Failure of Subcontractor to make prompt payment when due for labor, materials, supplies or equipment, to its subcontractors, or to any other person(s) entitled to file a mechanic's lien claim or stop notice;
3. To the extent not covered by insurance procured by Subcontractor, any injury to another subcontractor performing work on the Site or damage to such subcontractor's work which injury or damage is allegedly caused by Subcontractor;
4. Reasonable evidence that the Work cannot be completed in accordance with the time schedule in the Contract Documents;
5. Any dispute or controversy between Subcontractor and Centex Homes under this Agreement or any dispute or controversy between Subcontractor and Centex Homes or any affiliated entity with respect to any other agreement;
6. Any dispute or controversy between Subcontractor and any other subcontractor or sub-subcontractor on the Site where Subcontractor has not satisfied Centex Homes that such payment should not be withheld within five (5) business days after notice by Centex Homes to Subcontractor that payment will be withheld;
7. Any failure or purported failure of Subcontractor (after notice from Centex Homes and Subcontractor's failure to cure) to make any required payment to any union (if applicable), other agency benefit plan, or to any local, state, or federal governmental agency;
8. Reasonable evidence that Subcontractor has sold, assigned or conveyed its business during the performance of Work without prior written notice to Centex Homes;
9. Reasonable evidence of Subcontractor's financial indebtedness which in Centex Homes' opinion may affect the Work; or
10. Any other matter as to which this Agreement specifically authorizes the withholding by Centex Homes of such payment.

Whenever the grounds giving rise to such withholding have been removed, Centex Homes shall pay to Subcontractor the amount withheld because of such grounds less any expenses incurred by Centex Homes or damages sustained by Centex Homes as a result of the withholding, the cause of the withholding or the removal of the cause of the withholding. Any payment made by Centex Homes directly to any of Subcontractor's laborers, subcontractors or materialmen shall be deemed payment to Subcontractor and credited against the Contract Price. Any such payment shall be made within ten (10) days after Centex Homes, in its reasonable discretion, determines that the grounds for withholding such payment have been removed.

C. Notice of Intent to Back Charge. In the event any of the conditions set forth in Section 9 or Sections 14B 1 - 10, inclusive, exist and Centex Homes intends to Back Charge Subcontractor as set forth in this Section 14, Centex Homes shall first provide Subcontractor with notice of the condition and intent to Back Charge. Subcontractor shall notify Centex Homes within three (3) business days after notice of the condition and intent to Back Charge of Subcontractor's proposed method of remedying such condition(s) (the "Subcontractor Response").

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D. Right to Back Charge Subcontractor. In the event Subcontractor fails to provide Centex Homes with the Subcontractor Response in accordance with the provisions of this Section 14 or if, in the sole opinion of Centex Homes, the Subcontractor Response is unsatisfactory, Centex Homes shall have the right to Back Charge Subcontractor for any and all sums expended by Centex Homes (Including Centex Homes' overhead in an amount not to exceed five percent [5%] of direct costs) with respect to any matters set forth in Section 9 or Sections 14B 1 - 10, inclusive. Centex Homes shall provide a Back Charge Notice to Subcontractor of any Back Charges charged to the account of Subcontractor. Failure of Subcontractor to object to a Back Charge Notice within forty-five (45) days after receipt thereof shall constitute Subcontractor's approval of such Back Charge Notice.

E. Method for Collection of Back Charges. In the event no payments remain outstanding to Subcontractor under this Agreement, or in the event the total amount of the remaining outstanding payments to Subcontractor under this Agreement is less than the amount of outstanding Back Charges, Subcontractor shall immediately pay to Centex Homes the outstanding Back Charges. In all other events, Subcontractor may notify Centex Homes within five (5) days after receipt of a Back Charge Notice that Subcontractor will issue a check or money order to Centex Homes in payment of the Back Charge. Upon payment of such check by the bank upon which it is drawn, and upon satisfaction of all payment procedures under Section 9, payments that have been withheld as a result of such Back Charge shall be paid. Subcontractor will not be responsible for Back Charges or costs expended or incurred absent advanced notice and the opportunity to propose a remedy and, to the extent such compromise is reasonably acceptable to Centex, to effect such remedy.

15. COMPLIANCE WITH LAWS; SAFETY.

A. Subcontractor shall comply with all local, state and federal laws, codes, rules, and regulations governing the Work (collectively, "Law") and will give all notices and comply with all Law Including safety and health rules and regulations initiated by Centex Homes and/or established by or pursuant to the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.), California Occupational Safety and Health Act (California Labor Code Section 6300 et seq.) or any other applicable public authority. Unless Centex Homes otherwise agrees in writing before commencement of the Work, Subcontractor will obtain at its sole cost and expense all safety, transportation and other permits directly attributable to the Work that are not provided by Centex Homes. Subcontractor will comply with product manufacturer's specifications. Subcontractor at all times will furnish to its agents and employees a safe place of employment. If Subcontractor observes any reasonably known violation of Law related to the Work, it will immediately report such violation to Centex Homes in writing and perform all reasonable requests of Centex Homes in response to such violation. Subcontractor will be responsible for any fines, charges or penalties related to the Work Including fines, charges and/or penalties related to the operation of equipment, Subcontractor's performance of the Work, the handling of materials or any other function of any Subcontractor Party that is in violation of the Law. All workmanship and materials will conform to the Contract Documents and Law and, if the Subcontractor performs or permits the performance of any Work not in compliance with Law, it will immediately cause such Work to be redone and bear all costs in connection therewith. The Work, as performed, will meet with the approval of, and pass any inspection of, any governmental authority having jurisdiction thereof. If the Work is being constructed under

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specifications of the Federal Housing Administration or the Veterans Administration, the Work will meet the requirements of these governmental agencies. No Work will be deemed complete until final inspection is made and approval is received from every governmental authority whose approval is required and all other obligations of Subcontractor with respect to the Work have been completed. Centex Homes will complete final inspection within a reasonable time.

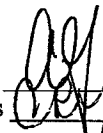
B. The Occupational Safety and Health Administration ("OSHA") has promulgated regulations ("Regulations") that are entitled OSHA Hazard Communication Standard. Among other things, the Regulations require all Subcontractors and sub-subcontractors to exchange Material Safety Data Sheets ("MSDS") and share information about precautionary measures necessary to protect all workers on a building project. Subcontractor agrees as follows:

1. Subcontractor will fully comply with the Regulations and will cooperate with and assist Centex Homes and all subcontractors of Centex Homes in order to assure compliance with the Regulations.
2. Subcontractor hereby accepts full responsibility and liability for the training of its employees as to all precautionary measures necessary to protect such employees during both routine and emergency situations on the Site.
3. Subcontractor will indemnify, defend and hold Centex Homes harmless from all Claims which arise from the failure of Subcontractor to comply with the Regulations.
4. Subcontractor will not use any chemicals in its performance of the Work or incorporate any chemicals into materials or products supplied to Centex Homes or to the Site unless Subcontractor has given Centex Homes prior written notice of the existence and the possible exposure to such chemicals, has delivered an MSDS to Centex Homes and has received a written consent of Centex Homes to use such chemicals.
5. Subcontractor shall, at its own expense, comply in all respects with all applicable federal, state, local and municipal laws, statutes, ordinances, codes, consent decrees, orders, rules, regulations and requirements of any governmental authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Materials or pertaining to occupational health, industrial hygiene, occupational or environmental conditions on, under, from or about the Project, or the regulation or protection of the environment, including ambient air, soil, soil vapor, ground water, surface water and/or land use. For purposes of this Agreement, the term "Hazardous Materials" includes: (i) any hazardous or toxic substance, material or waste which is or becomes designated, regulated or classified as hazardous or toxic under any applicable federal, state, local or municipal laws or regulations, (ii) any other substance, material or waste which results in liability to any person or entity from exposure to such substance, material or waste under any statutory or common law theory, (iii) petroleum, oil or gas or any direct or derivative product or by-product thereof, (iv) asbestos, (v) polychlorinated biphenyls, (vi) flammable explosives, and (vii) radioactive materials.

C. Subcontractor shall be solely responsible for the safety of Subcontractor's employees, including compliance with applicable regulations and the identification and correction or abatement of hazards.

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16. COMPLIANCE WITH STORM WATER POLLUTION AND EROSION CONTROL LAWS.

A. If required by the General Construction Permit, Centex Homes shall file or has filed a Notice of Intent with the State Water Resources Control Board to be covered by the General Construction Permit (the "Storm Water Permit") for the construction activities associated with the Project. If required by the General Permit, Centex Homes shall prepare or has prepared a Storm Water Pollution Prevention Plan (the "SWPPP") for the Site. The SWPPP includes the development and implementation of site inspection and reporting, site testing and reporting, and personnel training to eliminate unauthorized discharges of storm water and non-storm water. The SWPPP generally identifies the potential site-specific construction activities that could cause pollutants in storm water and provides a description of the temporary and permanent Best Management Practices ("BMPs") and other measures to be implemented to prevent storm water discharges that cause or contribute to the failure to satisfy a water quality objective. The goal of the SWPPP and BMPs is to eliminate unauthorized discharges of all construction related materials, wastes, spills and residues which must be securely stored and retained on-site to eliminate any increase in transport thereof to streets, drainage, receiving waters and adjacent properties by run-off or wind due to the construction activities.

B. It is essential that Subcontractor understand that the Work must be performed in accordance with the Storm Water Permit and the SWPPP including the BMPs set forth in the SWPPP. To insure compliance, Subcontractor shall not commence the Work until Subcontractor has (i) reviewed the Storm Water Permit, and (ii) reviewed and signed the SWPPP. Subcontractor shall comply with and require that all Subcontractor Parties comply with all requirements of the Storm Water Permit, the SWPPP and any other laws, plans, requirements, regulations and/or ordinances related to storm water management and discharge to the extent applicable to Subcontractor and/or the Work (including performing, submitting to and otherwise cooperating in good faith with all required inspections, monitoring, testing, sampling, reporting and training).



C. If Subcontractor observes a matter that is not in compliance with the Storm Water Permit, the SWPPP or is otherwise not in compliance with any Law, Subcontractor shall immediately inform Centex Homes of such matter. If a matter is not in compliance with the Storm Water Permit, the SWPPP or any Law and such non-compliance is caused or contributed to by Subcontractor or any Subcontractor Party, then Subcontractor shall remedy such non-compliant matter. If Subcontractor fails to remedy such matter within twenty-four (24) hours after notice by Centex Homes to remedy such matter, Centex Homes may remedy such matter and Subcontractor shall promptly reimburse Centex Homes for the cost of remedying the matter including any attorneys' fees, fines and penalties arising therefrom.

17. DRUGS AND ALCOHOL. No illegal drugs or alcohol will be permitted on the Site. Subcontractor's employees, agents, subcontractors or suppliers in possession of illegal drugs or alcohol on the Site will be subject to immediate termination. Individuals on the Site whose performance, coordination or ability to Work is impaired, in the opinion of Centex Homes' representatives, will be subject to immediate removal from the Site.

18. LABOR PEACE. Subcontractor shall be responsible for labor peace of every Subcontractor Party on the Site and shall at all times use its efforts and judgment as an experienced Subcontractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes or strikes where reasonably possible and practical under the circumstances and shall at all times maintain project-wide labor harmony. Except as specifically provided herein, Subcontractor shall be liable to Centex Homes for all damages incurred by Centex Homes as a result of work stoppages, slowdowns, disputes or strikes.

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19. EMPLOYEES - UNION AND LABOR MATTERS.

A. Satisfactory to Centex Homes. All persons employed on the Site by Subcontractor shall be employed under conditions satisfactory to Centex Homes. Upon notice, oral or written, by Centex Homes, Subcontractor shall remove, or cause to be removed, from the Site any employee considered by Centex Homes, in its sole discretion, to be unsatisfactory.

B. Union Labor Agreements. In the event that Subcontractor is bound by any collective bargaining agreement applicable to the Site and/or the Work, Subcontractor agrees to the following:

1. **Compliance.** Subcontractor will comply with the terms and conditions of any such agreements, including hourly rates of pay and payments to trust funds and other fringe benefits as required by the terms of any such agreements. Subcontractor shall require any subcontractor employed by it to agree in writing to comply with the terms of any such agreements. Subcontractor further agrees that it will bind, by contract, all of its subcontractors to such collective bargaining agreements or agreements for settlement of jurisdictional disputes in the same manner and to the same effect as herein provided with respect to Subcontractor. Any breach by Subcontractor or any subcontractors employed by it of any collective bargaining agreements shall constitute a material breach of this Agreement.

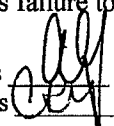
2. **Dispute Settlement.** Subcontractor accepts and agrees to be bound by the procedural rules and regulations and decisions of the National Joint Board for the settlement of jurisdictional disputes and will comply with any decisions of the National Joint Board which affect the performance of the Work.

3. **Indemnification Regarding Benefit Payments.** Subcontractor shall indemnify, defend (at Subcontractor's sole cost and expense and with legal counsel reasonably approved by Centex Homes), protect and hold harmless the Indemnified Parties from and against any and all Claims for union welfare, pension, unemployment insurance, vacation, apprenticeship, owner-operated, health and welfare, and related type payment obligations connected with the Project and/or the Work which arise from or relate to employment by Subcontractor or any subcontractors employed by Subcontractor. If Subcontractor or any subcontractors employed by Subcontractor are listed by the administrative office of the appropriate health and welfare pension, vacation, or apprenticeship fund as being delinquent in payment, Centex Homes may assume that the listing is correct and Subcontractor has breached this Agreement. In such event, Centex Homes shall give Subcontractor prompt notice and an opportunity to cure or explain such delinquency, and thereafter, Centex Homes may exercise any and all of the rights and remedies available under this Agreement. Centex Homes may pay any amounts which it believes are due directly to such funds and, at its sole option, (i) withhold and keep the amounts so paid from the payments to Subcontractor due hereunder or (ii) demand immediate reimbursement by Subcontractor.

4. **Work Entrances.** In the event of labor unrest, Centex Homes may implement a gate system. In such event, Subcontractor may be assigned a gate on the Project that is reserved for the sole and exclusive use of certain designated subcontractors, sub-subcontractors, their employees and suppliers. In the event such a system is established, Subcontractor shall strictly comply with all aspects and procedures related to such system. All costs associated with labor unrest attributable to a Subcontractor Party, work stoppages, or any other costs associated with Subcontractor's failure to

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strictly comply with such system or procedures or the invalidation of such system due to such failure to comply shall be the sole cost and responsibility of Subcontractor, and Subcontractor agrees to indemnify, defend, protect and hold harmless the Indemnified Parties from and against such costs and expenses.

20. TERMINATION OF AGREEMENT BY CENTEX HOMES. If conditions arise which in the opinion of Centex Homes make it inadvisable for Subcontractor to continue the Work, Centex Homes may terminate this Agreement by forty-eight (48) hours prior written notice to Subcontractor. Upon receipt of such notice, unless directed otherwise, Subcontractor will immediately discontinue prosecution of the Work and the placing of orders for materials, equipment, machinery and supplies in connection therewith and will, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Centex Homes. Then, unless otherwise instructed by Centex Homes, Subcontractor will do only such Work as may be necessary to preserve and protect that portion of the Work which has been incorporated into the Project and to protect materials, supplies and equipment at or about the Site or in transit thereto. On the date set for termination, the obligations of the parties to continue performance under this Agreement will cease and Subcontractor will be entitled to receive: (a) compensation for the portion of the Work already performed with the Contract Price being prorated accordingly; (b) payment for materials for which it has made firm contracts, provided that materials are delivered to Centex Homes; and (c) payment for any other bona fide obligations assumed by Subcontractor prior to receipt of notice of termination which obligations cannot with all reasonable effort be canceled, provided any benefits accruing from such obligations are assigned to Centex Homes. Payment to Subcontractor will be made in accordance with Section 9, with Final Payment being made only after expiration of the period allowed by Law for the filing of any claims to enforce mechanic's liens arising out of the Work. Notwithstanding any other provision to the contrary, termination of this Agreement will not (i) prejudice any claim of either party arising prior to termination, (ii) relieve either party from any liability arising prior to termination, (iii) affect Subcontractor's guarantee of the portion of the Work performed, or (iv) relieve Subcontractor of its duty to correct any defective Work performed or to indemnify, defend and hold Centex Homes harmless in those instances required by this Agreement.

21. INSURANCE. The following coverages, terms and limits are minimum Subcontractor insurance requirements (the "Required Insurance"):

A. Commercial General Liability:

1. For all Work performed by Subcontractor, the following limits will apply:

- a. \$1,000,000 each occurrence limit, \$1,000,000 personal and advertising injury limit, \$2,000,000 general aggregate limit, \$2,000,000 products-completed operations aggregate limit or equivalent approved by Centex Homes, or current limit carried, whichever is greater. If Subcontractor is engaged in mass grading activities and/or trenching activities over five (5) feet in depth, the limits (which may be satisfied with umbrella and excess liability coverage) shall be a minimum of \$5,000,000 each occurrence, \$1,000,000 personal and advertising injury limit, \$5,000,000 general aggregate limit, and \$5,000,000 products-completed operations aggregate limit;

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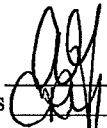
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- b. Occurrence Form only ("Claims Made" forms are not acceptable), with a provision that defense costs are paid in addition to and do not deplete any policy limits. If defense costs deplete policy limits, then the limits required above are increased by \$1,000,000 in each category and may be satisfied with an umbrella or excess liability policy;
2. No exclusions for bodily injury and property damage coverage including products liability/completed operations coverage (including any product manufactured or assembled), premises operations, blanket contractual liability (for this Agreement), broad form property damage, personal and advertising injury, independent contractor's liability, mobile equipment, elevators, damage from explosion, collapse and underground hazards ("XCU"), cross-liability, or cross suits are acceptable;
3. At no expense to Centex Homes, an Additional Insured Endorsement approved by Centex Homes naming Centex Homes, a Nevada general partnership, Centex Real Estate Corporation, a Nevada corporation, and the owner of the Site if other than Centex Homes, their respective officers, directors, partners, members and employees, as additional insureds;
4. The insurance afforded by the policy for the benefit of the additional insureds will be primary and no contribution shall be permitted from any insurance or self insurance maintained by the additional insureds with respect to injury or damage occurring during Subcontractor's performance of the Work;
5. An endorsement to the policy issued by the insurer affording 30 days prior notice to Centex Homes in the event of cancellation (10 days notice for non-payment of premium), non-renewal, modification or reduction in coverage;
6. A deductible or self-insured retention of not more than \$50,000 as to Subcontractor, unless approved in writing by Centex Homes;
7. If insurable by law, no exclusionary language or limitations relating to punitive or exemplary damages, fines or penalties, unless agreed in writing by Centex Homes;
8. No exclusionary language or limitations relating to residential construction;
9. No exclusionary language or limitations relating to condominiums, multi-family or multi-unit dwellings, if applicable to the Work;
10. No exclusionary language or limitations relating to soils subsidence or earth movement of any kind regardless of cause for any subcontractor engaged in any grading activities and/or trenching activities, unless agreed in writing by Centex Homes; and
11. No exclusionary language or limitations that are applicable to any additional insured that are not applicable to the named insured.

B. Automobile Liability:

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1. \$1,000,000 combined single limit for bodily injury and property damage or equivalent approved by Centex Homes;

2. Such coverage may be in the form of either:

a. Personal liability policy for vehicles owned by Subcontractor plus evidence of hired and non-owned liability coverage under a separate policy; or

b. Commercial auto liability policy with any of the following covered vehicles combinations:

i. Any auto; or

ii. Owned, hired, and non-owned; or

iii. Scheduled, hired and non-owned autos.

3. If a commercial automobile policy is provided, then an endorsement affording 30 days notice of cancellation (10 days notice for non-payment of premium) shall be given to Centex Homes;

C. Workers' Compensation / Employer's Liability:

1. Workers' compensation benefits as required by statute;

2. Employer's Liability with limits of no less than:

Bodily injury by accident – \$1,000,000 each accident

Bodily injury by disease – \$1,000,000 each employee

Bodily injury by disease – \$1,000,000 policy limit

3. Waiver of subrogation for Centex Homes and the owner of the Site if other than Centex Homes (in each case to the full extent permitted by law);

4. If leased employees are used, issuance of an Alternate Employer's Endorsement;
and

5. 30 days notice of cancellation to Centex Homes (10 days notice for non-payment of premium).

D. Provisions Applicable to All Coverages:

1. Unless otherwise approved in writing by Centex Homes, none of the provisions contained in Section 21A, B or C may be changed.

2. Insurance carriers must have a "Best's Rating" and a "Financial Size Category" acceptable to Centex Homes.



3. The Required Insurance will cover Subcontractor, its authorized representatives, employees, agents and any other person (including its authorized representatives, employees and agents) performing any work under any contract or agreement with Subcontractor.

4. Unless otherwise agreed in writing by Centex Homes, Subcontractor will cause each subcontractor retained by Subcontractor to purchase, obtain and maintain the Required Insurance prior to commencing any portion of the Work. Upon request of Centex Homes, Subcontractor will provide Centex Homes with a list of its subcontractors and with copies of certificates of insurance evidencing the Required Insurance for each subcontractor. Subcontractor will also obtain from each such subcontractor a written Indemnification in form and substance identical to the Indemnity set forth in Section 22 except that such Indemnity will be from such subcontractor for the benefit of Centex Homes and the Centex Indemnified Parties.

5. Subcontractor for itself and on behalf of its insurers, to the full extent permitted by law and without voiding or breaching the insurance required under this Agreement, hereby waives and releases the additional insureds from liability for loss, damage or loss of property at the Project, which loss or damage is covered by such insurance, to the extent such damages are covered or are required to be covered by the Required Insurance. This provision is intended to waive fully for the benefit of Centex Homes, the Centex Indemnified Parties and the other additional insureds any rights and/or Claims which might give rise to a right of subrogation in favor of any insurance carrier issuing the Required Insurance or any other insurance (including any first party coverage) maintained by Subcontractor. Prior to commencing Work Subcontractor will obtain a waiver of any subrogation right that its insurers may acquire against Centex Homes, the Centex Indemnified Parties and other additional insureds by virtue of payment of any such loss covered by such insurance.

6. The project/job description and/or description of operations on all certificates, endorsements and other insurance documentation will read "All Work Performed For The Additional Insureds at the Project" or other similar language.


7. Concurrently with the execution of the Agreement, Subcontractor will file with Centex Homes original certificates of insurance and endorsements showing the Required Insurance to be in force. Certificates of insurance alone, without the requisite endorsements, are not acceptable to satisfy the provisions of the Required Insurance. Prior to expiration of such insurance for a period of ten (10) years after completion of all works of improvement on the Project, Subcontractor will provide to Centex Homes renewal certificates and endorsements for commercial general liability insurance, the cost of which may be charged to Centex Homes at a cost not to exceed the cost charged by the insurer to Subcontractor, and which cost shall be approved by Centex Homes prior to issuance of such certificate and/or endorsement. Such continuing insurance will comply with the requirements set forth in this Section 21. Subcontractor shall not commence or be paid for any Work (including Final Payment) unless and until insurance documentation properly completed and executed has been delivered to and approved by Centex Homes.

8. All insurance documentation evidencing the Required Insurance will be sent to:
Centex Homes – Inland Empire Division

Attn: Risk Management
1265 Corona Pointe Court

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Corona, CA 92879

9. If Subcontractor fails to procure, maintain or pay for the Required Insurance, Centex Homes at its sole discretion may define other financial risk transfer mechanisms or secure the same or similar insurance coverage, in which event Subcontractor will pay the cost thereof and will furnish upon demand, all information that may be required. Centex Homes will have the right to backcharge Subcontractor for such costs. The failure of Centex Homes to demand certificates of insurance and endorsements evidencing the Required Insurance or to identify any deficiency in Subcontractor's coverage based upon the evidence of insurance provided by Subcontractor will not be construed as a waiver by Centex Homes of Subcontractor's obligation to procure, maintain and pay for the Required Insurance. Notwithstanding any provision to the contrary contained herein, any waiver of the Required Insurance, including the amount or extent of coverage, may only be obtained by the prior written consent of Centex Homes.

10. The insurance requirements set forth herein will in no way limit Subcontractor's liability arising out of the Work performed under the Agreement or related activities (including liability under the Indemnification provisions set forth in Section 22 or under any other provisions of the Contract Documents or at Law). The inclusions, coverage and limits set forth herein are minimum inclusions, coverage and limits. The required minimum policy limits set forth in this Section 21 will not be construed as a limitation of Centex Homes' rights under any policy with higher limits, and no policy maintained by Subcontractor will be endorsed to include such a limitation. Subcontractor will be responsible for determining appropriate inclusions, coverage and limits, which may be in excess of the minimum requirements set forth herein.

11. The failure of Subcontractor to fully and strictly comply at all times with the insurance requirements set forth herein will be deemed a material breach of the Agreement.

12. Subcontractor will immediately notify (or cause its insurers or insurance broker to notify) Centex Homes of receipt by Subcontractor of any notice of cancellation or rescission received from an insurance carrier referring to or relating to a policy which names or is required to name Centex Homes or the Centex Indemnified Parties as additional insureds, or which may otherwise impact the ability of Subcontractor to fully perform its obligations hereunder (including the Indemnity obligations of Subcontractor set forth in Section 22).

13. The Required Insurance set forth in this Section 21 is independent from all other obligations of Subcontractor under this Agreement, including all Indemnification provisions, and will apply whether or not required by any other provision of this Agreement and regardless of the enforceability of any other provision in this Agreement. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Contractor's obligation to Indemnify or other liability hereunder.

22. INDEMNITY, RELEASE AND WAIVER. Subcontractor shall Indemnify the Indemnified Parties from and against any and all Claims to the extent such Claim(s) arise out of or relate to Subcontractor's Work. Certain initial capitalized terms used in this Section 22 are defined in Section 22E.

A. Subcontractor's duty to defend the Indemnified Parties is entirely separate and independent from Subcontractor's duty to Indemnify the Indemnified Parties. Subcontractor's duty to

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defend the Indemnified Parties applies whether the issue of Subcontractor's liability, breach of this Agreement or other obligation or fault has been determined, and whether the Indemnified Parties (or any of them) have paid any sums or incurred any detriment from Subcontractor's Work. Such defense obligation shall arise immediately upon written notice of a Claim to Subcontractor. Such defense obligation Includes the obligation to defend the Indemnified Parties with respect to any alternative dispute resolution proceeding authorized under this Agreement as well as matters related to investigation and resolution of Claims Including Claims pursuant to Section 24, and Claims brought pursuant to statute by homebuyers, successive homebuyers or homeowners associations, or Claims arising out of the Limited Warranty.

B. To the extent available, Subcontractor shall procure contractual liability insurance covering its obligations under this Section 22. The Indemnified Parties' right to indemnification by Subcontractor under this Agreement shall be in addition to the Indemnified Parties' separate rights under the Required Insurance.

C. To the extent of its obligation to Indemnify, Subcontractor releases the Indemnified Parties from and waives as against them all Claims that arise out of or relate to Subcontractor's Work. Subcontractor shall have no right to be indemnified whether in contract or equity, by the Indemnified Parties for any such Claim. Subcontractor waives the protections of California Civil Code Section 1542 as to such release and waiver.

D. The indemnification provisions of this Agreement apply regardless of whether this Agreement is executed after Subcontractor begins the Work, shall extend to Claims arising after this Agreement is terminated, and shall continue until such time it is determined by final award or judgment that the Claim against the Indemnified Parties is fully and finally barred by the statute of limitations, after all tolling and equitable estoppel as to the running of the statute. Payment by any Indemnified Party is not a condition precedent to enforcing such Indemnified Party's rights to indemnification under this Agreement.

E. **Defined Terms.** As used in this Section 22, the following terms shall have the following meanings:

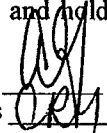
1. **Claim** (collectively, "**Claims**") shall mean demands, obligations, damages, actions, causes of action, suits, losses, judgments, settlements, fines, penalties, liabilities, costs and expenses (Including attorneys' fees, disbursements and court costs, and all other professional, expert or consultants' fees, repair or replacement costs, and costs incurred as a result of such claims or in enforcing this indemnity provision) of every kind and nature whatsoever Including those for **Property Damage, Personal Injury and Other Damages**.

2. **Indemnified Party** (collectively, "**Indemnified Parties**") shall mean Centex Homes (and the owner of the Site if other than Centex Homes), all subsidiaries, divisions and affiliated companies of Centex Homes, its partners, Centex Real Estate Corporation, a Nevada corporation, and all of such parties' representatives, partners, members, designees, officers, directors, shareholders, employees, agents (except as excluded in section 22(C)), successors and assigns, and any lender of Centex Homes with an interest in the Project.

3. **Indemnify** shall mean to pay indemnity on behalf of, defend, all at Subcontractor's sole cost and expense and with legal counsel with substantial experience representing developers/homebuilders reasonably approved by Centex Homes, protect and hold

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harmless, regardless of any fault, act, omission to act, negligence (whether active, passive, gross, or concurrent), breach of warranty, breach of contract, or strict liability of an **Indemnified Party** or any Subcontractor Party. Notwithstanding the foregoing, Subcontractor shall not be obligated to Indemnify the Indemnified Parties for Claims arising from the sole negligence or willful misconduct of Indemnified Parties or any agents, servants or independent contractors who are directly responsible to such persons, or for defects in design furnished by such persons. It is the intention of the Parties to this Agreement that the obligation of Subcontractor to Indemnify under this Agreement shall comply in all respects with California Civil Code Section 2782(c) and (d) (the "**Statute**"). Accordingly, under no circumstances shall Subcontractor's obligation to Indemnify extend to liability for Claims of construction defects (as that term is used in the Statute) to the extent the Claims arise out of, pertain to, or relate to the negligence of Centex Homes or its agents, servants, or other independent contractors who are directly responsible to Centex Homes, or for defects in design furnished by those persons, or to the extent the Claims do not arise out of, pertain to, or relate to the Work.

4. **Other Damages** shall mean penalties and/or response costs imposed on account of the violation of any law, order, citation, rule, regulation, standard, permit, requirement, ordinance, or statute Including the occupational health or safety of employees, the use by the **Indemnified Parties** of any other party's equipment, the failure to comply with the Storm Water Permit, the SWPPP and the terms and conditions of Section 16; infringement of any patent rights; claims and liens for labor performed or materials used or furnished to be used on the Project, including incidental or consequential damages resulting to an **Indemnified Party** from such **Claims** or liens; costs incurred by an **Indemnified Party** in the good faith settlement of any lawsuits, claims under the Calderon Act (California Civil Code §1375 et seq.), the Right to Repair Act or any similar statute, and warranty-related **Claims** in connection with investigations brought by third parties Including the Department of Real Estate and/or Contractor's State License Board of the State of California.

5. **Personal Injury** shall mean bodily injury, emotional injury, sickness or disease, or death to persons Including agents, guests or invitees of the **Indemnified Parties**, a Purchaser, a **Subcontractor Party** or any other contractor.

6. **Property Damage**, shall mean without limitation, damage to both real and/or personal property whether or not such property was manufactured by an **Indemnified Party** costs to repair defects in or to property, diminution in property value, loss of use, loss of economic value, consequential losses, and any other damages associated with damage to, destruction of, defects in, or loss of real or personal property.

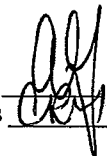
7. **Subcontractor Party** (collectively "**Subcontractor Parties**") shall mean Subcontractor, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts, errors, omissions or liabilities, including strict liability, they may be liable.

8. **Subcontractor's Work** shall mean the Work Including defects in workmanship or materials and/or defects in designs provided by Subcontractor, and the presence or activities conducted on the Project by any **Subcontractor Party**.

23. **RIGHT TO REPAIR ACT.**

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Contractor Initials
Builder Initials



A. California Civil Code Section 895 et seq. contained in Part 2 of Division 2 of the California Civil Code, as amended from time to time, (the "Right to Repair Act") governs standards and procedures for the resolution of construction defect claims. Pursuant to the terms and conditions of the contract entered into or to be entered into by Centex Homes and homeowners for the purchase and sale of residences in the Project, Centex Homes has (i) agreed that the functionality standards set forth in the Right to Repair Act (See California Civil Code Sections 896 – 897, inclusive) shall govern the rights and obligations of Centex Homes and such homeowners with respect to any construction defect claims regarding such residence, (ii) agreed to comply with the "pre-litigation" and "non-adversarial" procedures set forth in the Right to Repair Act (California Civil Code Sections 910 – 938, inclusive), and (iii) provided to such homeowners the Limited Warranty. Subcontractor and Centex Homes acknowledge and agree that the Right to Repair Act, Including the functionality standards and pre-litigation and non-adversarial procedures described therein, apply to this Agreement and the Work.

B. Subcontractor shall comply with the Right to Repair Act and cooperate in good faith with Centex Homes in resolving disputes governed by the Right to Repair Act. In addition to complying with any other requirements of this Agreement, the Work shall comply with the functionality standards set forth in the Right to Repair Act (California Civil Code Sections 896 and 897).

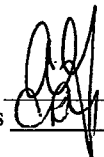
C. As part of the Work and prior to completion thereof, Subcontractor shall provide Centex Homes with copies of any and all plans, specifications, grading plans, soils reports, engineering calculations, maintenance and preventative maintenance recommendations, limited warranty or "useful life" information as to any "manufactured products" (as defined in California Civil Code Section 896(g)(3)), guarantees on consumer product (as defined in the Magnuson-Moss Act) and any other documentation relating to the Work which Centex Homes is required to provide to homeowners under the Right to Repair Act (See California Civil Code Section 912).

D. Any notice of a Claim by a homeowner given by Centex Homes to Subcontractor pursuant to California Civil Code Section 916(e) (or any alternative procedure adopted in place thereof) may be delivered to Subcontractor pursuant to the notice provisions set forth in Section 30. Centex Homes' delivery of such notice to Subcontractor at least two (2) business days prior to a scheduled inspection or other activity specified in such notice shall be deemed to constitute sufficient and reasonable notice under the Right to Repair Act. Subcontractor shall notify Centex Homes in writing of any change of address for purposes of receiving notices by Centex Homes under this Section 23 until such time as all Claims under the Right to Repair Act are fully and finally barred by the statute of limitations.

E. Subcontractor shall comply with and satisfy (and shall cooperate reasonably in good faith with Centex Homes so that Centex Homes may comply with and satisfy) any requirements and/or obligations related to the "non-adversarial" and "pre-litigation procedures" under the Right to Repair Act (California Civil Code Sections 910 – 938, inclusive) and the Limited Warranty with respect to any Claim arising out of or relating to the Work. Such cooperation shall include, without limitation, assisting Centex Homes (as determined by Centex Homes in its sole discretion) in complying with deadlines in responding to Claims by homeowners, participating in inspections, participating in mediation, and assisting Centex Homes (as determined by Centex Homes in its sole discretion) in preparing offers to repair and performing such repairs (to the extent requested or permitted under the Right to Repair Act to perform such repair).

Construction Agreement – Traditional Contract (1-17-06

Contractor Initials
Builder Initials



F. Subcontractor understands and acknowledges that a homeowner has the right under the Right to Repair Act to require the repair of any portion of the Work performed by Subcontractor (or of damage or conditions arising out of the Work) that constitutes an Unmet Standard to be performed by a Subcontractor other than Subcontractor (See California Civil Code Sections 917 and 918). Subcontractor shall be liable for and shall promptly reimburse Centex Homes for all costs and expenses incurred by Centex Homes if (1) Subcontractor fails or refuses to repair at Subcontractor's cost and expense any portion of the Work (or of damage or conditions arising out of the Work) that constitutes an Unmet Standard or (2) a homeowner exercises the right under the Right to Repair Act to require the repair of the portion of the Work (or of damage or conditions arising out of the Work) that constitutes an Unmet Standard to be performed by a Subcontractor other than Subcontractor.

24. DISPUTE RESOLUTION. Centex Homes and Subcontractor shall resolve any dispute between them arising out of this Contract and/or the performance of the Work in accordance with the following process:

A. All claims, disputes and other matters in question between the parties to this Contract arising out of or relating to this Contract, the Work or the improvements constructed based upon the Work, shall be decided by the process described in Section 25. Any such proceeding may include, by consolidation, joinder or any other manner, any additional person not a party to this Contract who is claimed to be liable for or who asserts any Claims arising out of the Work and who has agreed to be so bound.

B. In the event a Claim is made against Centex Homes by any person or entity arising out of or relating to the Work or the improvements constructed pursuant to the Work which is subject to an alternative dispute resolution process ("ADR") other than the process set forth in Section 25A or is not subject to any ADR process at all, any Claim by Centex Homes against Subcontractor arising out of such Claim shall be submitted to the same ADR, Subcontractor shall participate and present its interests in such ADR, and Centex Homes and Subcontractor shall be bound by the resolution under such ADR to the same extent that all other parties are bound.

25. NEUTRAL, BINDING ARBITRATION. From and after the date this Agreement is entered into any Claim by, between or among any two or more of the following: Subcontractor, Centex Homes, (including its partners and its and their officers, agents, employees, affiliated parent and subsidiary companies and each of them,) any other subcontractor, sub-subcontractor, design professional, engineer or supplier who provided labor, services or materials to the Project, and/or any purchaser of an interest in the Project (a "Purchaser") (collectively, the "Parties"), relating to or arising out of the Work Including design, estimating, purchasing, contracting, construction, sale, use, service, warranty of all or any portion of the Project, or any documents governing the homeowners association for the Project (if any), where the amount in controversy is greater than \$5,000 (collectively, "Dispute(s)"), shall be subject to the provisions set forth below.

A. **Disputes Governed By Right To Repair Act.** Resolution of a Dispute governed by the Right to Repair Act shall only be subject to binding arbitration under this Section 25 after the nonadversarial procedure under the Right to Repair Act is completed and such nonadversarial procedure fails to resolve the Dispute.

B. **Notice.** Any person with a Dispute shall give written notice of the Dispute to the party to whom the dispute is directed describing the nature of the Dispute and any proposed remedy by (1) Construction Agreement – Traditional Contract (1-17-06

Contractor Initials
Builder Initials



personal delivery (by hand delivery or professional messenger service), (2) registered or certified mail, with postage prepaid, return receipt requested, or (3) Express Mail of the U.S. Postal Service or Federal Express or any other courier service guaranteeing overnight delivery, charges prepaid.

C. Arbitration Procedure. Except as otherwise agreed to by the parties, the arbitration will be conducted by the American Arbitration Association (the "AAA") in accordance with the rules contained in the *Construction Industry Dispute Resolution Procedures* and the rules contained in the *Supplementary Procedures for Residential Construction Disputes* (collectively, the "Rules") to the extent the *Supplementary Procedures* apply to the Dispute. If the Rules have changed or been renamed by the time a Dispute arises, the successor rules identified by the AAA will apply. Despite the choice of the Rules (or any successor rules identified by the AAA) to govern the arbitration of any Dispute between the parties, if the AAA later identifies different rules that would specifically apply to the Dispute, those rules will apply instead of the Rules.

D. Conflict Between Rules And Right To Repair Act. If there is a conflict or discrepancy between the Rules and the terms and conditions of the Right to Repair Act, the provisions of the Right to Repair Act shall control to the extent of the conflict or discrepancy.

E. Participation By Other Parties. The parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration.

F. Small Claims. If the entire Dispute between the parties does not exceed Five Thousand Dollars (\$5,000.00) (or such other amount established by law for purposes of small claims), any party may elect to have the Dispute resolved in Small Claims Court in accordance with the Small Claims Act (California Code of Civil Procedure Section 116.110 et seq.).

G. Federal Arbitration Act. This Agreement evidences a transaction involving interstate commerce. The Federal Arbitration Act (9 U.S.C. Sections 1 – 16) now in effect and as it may be amended will govern the interpretation and enforcement of this provision to the exclusion of any different or inconsistent state or local law, ordinance, regulation or judicial rule.

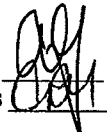
H. Arbitrator. The arbitrator shall be a neutral, impartial individual who is either a retired judge or an attorney licensed to practice law in California and having at least fifteen (15) years of experience with substantial experience in the type of matter in dispute and with a strong emphasis on the laws governing real estate matters, especially those dealing with residential real estate development and construction. The arbitrator shall not have any relationship to the parties to the Dispute or any interest in the subject property or the Project in which the subject property is located. The arbitrator shall be selected from a panel in accordance with the Rules, but in no event more than sixty (60) days after written submission to arbitrate.

I. Commencement and Timing of Arbitration. The arbitrator shall promptly commence the arbitration at the earliest convenient date in light of all of the facts and circumstances and shall conduct the arbitration without undue delay.

J. Place. The arbitration shall be conducted in the county in which the subject property is located unless the parties agree in writing to another location.

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K. Record. To preserve the rights of Centex Homes and a Purchaser to limited appeal under Section 25O., the oral evidence received by the arbitrator shall be preserved in a manner that can be converted into a written transcript, and the arbitrator shall preserve all tangible evidence.

L. Remedies. The arbitrator shall have the power to grant all legal and equitable remedies and award damages in the arbitration to the full extent permitted by law.

M. Award. The arbitrator's decision shall be based upon applicable law. The arbitrator shall issue a written award whether or not the Rules require and shall include findings of fact and conclusions of law to the extent required by law. If requested by a party, the arbitrator shall provide a written explanation of the award. The award shall be binding.

N. Judgment on the Award. After expiration of the time to serve a notice of limited appeal has expired under Section 25O.2, judgment on the award made by the arbitrator may be entered in any court having jurisdiction over the dispute.

O. Limited Appeal.

1. **Limited Appeal.** The award of the arbitrator shall be subject to limited appeal in accordance with the procedures set forth in this Section 25O. Although the Rules provide that there will be no appeal or other review of the arbitrator's award, this Section 25O completely replaces such portion of the Rules and provides instead a right for either Centex Homes or a Purchaser to have a panel of three (3) arbitrators conduct a limited appeal of the arbitrator's award. Subcontractor acknowledges and agrees that (i) only Centex Homes and/or a Purchaser have the right to a limited appeal under this Section 25, (ii) Subcontractor has no right to a limited appeal of the award of the arbitrator and no right to participate in such appellate process other than as set forth in Section 25O.5, (iii) Subcontractor shall be bound by the determination of the appellate panel under this Section 25O.

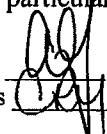
2. **Notice.** To appeal, Centex Homes or a Purchaser must file with the AAA and serve on all other parties a notice stating the general nature of the change it seeks in the award. The notice must be filed no later than thirty (30) days after the date of the award. If Centex Homes or a Purchaser appeals, the other party (*i.e.*, Centex Homes or a Purchaser) for whom or against whom the arbitrator awarded money or other relief may appeal by filing and serving on all other parties a notice stating the general nature of the change it seeks in the award. Such notice must be filed no later than sixty (60) days after the date of the award.

3. **Appellate Panel.** The panel of appeal arbitrators shall satisfy the standards set forth in Section 25H and be appointed by the AAA under the portion of the rules governing the appointment of arbitrators.

4. **Issues on Limited Appeal.** The only issues that can be considered in a limited appeal are: (1) the award of money was excessive; (2) the award of money was insufficient; (3) the arbitrator awarded nonmonetary relief that was inappropriate; (4) a party who received monetary or nonmonetary relief should have received other or additional monetary or nonmonetary relief; or (5) the award of the arbitrator is not based upon applicable law. The appeal arbitrators may affirm the arbitrator's award or may make any alternative award they find to be just and equitable, but shall not reject any of the arbitrator's decisions (1) that a particular

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party is entitled to relief of some nature or amount or (2) that a particular party is responsible to provide relief of some nature or amount.

5. **Evidence; Decision on Appeal.** The appeal arbitrators shall make their decision based upon the evidence received by the arbitrator and applicable law, except that they may also visit any site (including the subject property) involved in the Dispute. The appeal arbitrators may receive written briefs from all parties (including Subcontractor) involved in the Dispute and may hear arguments but shall not receive new evidence other than any site visit. The appeal arbitrators shall issue a written decision deciding the issues raised by Centex Homes and/or a Purchaser. A majority of the appeal arbitrators is sufficient to decide an issue. The decision shall be final and binding, and judgment may be entered in any court having jurisdiction over the dispute.

6. **Fees and Costs on Appeal.** The appeal arbitrators shall award attorneys' fees and costs and arbitration fees and costs in accordance with Section 25P and Q.

P. **Fees And Costs.** Except as otherwise agreed by the Parties or as required by applicable law, the fees and costs of the arbitration shall be borne by all parties to the arbitration pro rata to the number of parties in the proceeding. The fees and costs of the arbitration shall be borne ultimately as determined by the arbitrator as set forth in the arbitrator's award. The party producing such witnesses shall pay the expenses of witnesses.

Q. **Attorneys' Fees.** Each party to the arbitration and any limited appeal shall bear its own attorneys' fees and costs (including expert costs) in connection with such proceeding or appeal. Notwithstanding the foregoing or any provision to the contrary contained in this Agreement, nothing herein is intended or shall be construed to modify or abrogate obligations under Section 22, Including the obligation to defend (including payment of attorneys' fees and costs) and indemnify.

R. **Restriction Upon Award Of Costs And Fees.** Notwithstanding any provision to the contrary contained in this Agreement, under no circumstances shall a Purchaser be required to pay Centex Homes' share of fees and costs (Including fees and costs of the arbitrator, provider organization, attorney or witnesses) if Purchaser does not prevail in the arbitration or limited appeal.

S. **Survival.** The provisions of this Section 25 shall survive the termination of this Agreement and/or the default of either Centex Homes or Subcontractor.

26. **LIST OF SCHEDULES.** Attached hereto and made a part hereof are the following schedules (*check all that apply*):

_____ Schedule A – The Legal Description of the Project and Site

_____ Schedule B – Description of the Work

_____ Schedule C – Contract Price

_____ Schedule D – Payment Schedule

_____ Schedule E – Lien Releases

Construction Agreement – Traditional Contract (1-17-06

Contractor Initials
Builder Initials



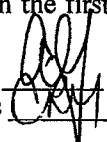
27. ASSIGNMENT; SUCCESSORS AND ASSIGNS. Subcontractor shall not assign or subcontract this Agreement or any portion thereof or any money due or which may become due hereunder without the prior written consent of Centex Homes. In addition to constituting a default under this Agreement, any assignment or attempted assignment made in violation of this Section 27 will be null and void and the assignee will acquire no rights there under. If Centex Homes consents to an assignment of or subcontract under this Agreement, the assignee or subcontractor will be bound to the terms of this Agreement, Including the Required Insurance. If an assignment or subcontract is made in breach of this Agreement, Subcontractor will be liable to Centex Homes for all damages resulting therefrom. Notwithstanding anything to the contrary contained herein, Centex Homes may assign this Agreement without the consent of Subcontractor. Centex Homes shall give written notice to Subcontractor of any such assignment by Centex Homes. Subject to the foregoing provisions of this Section 27 relating to assignment, this Agreement will be binding upon and inure to the benefit of the parties and their heirs, successors and permitted assigns.

28. DEFAULT. In addition to any other remedies available under Law or in equity: (a) if Subcontractor fails or refuses, except in cases where extension of time is provided, to supply enough properly skilled workmen or proper materials for the Work; or (b) if Subcontractor fails to make payment to its subcontractors or suppliers for material or labor; or (c) if Subcontractor fails to keep and comply with any of the terms and provisions of this Agreement or the Contract Documents; or (d) if Subcontractor is adjudged bankrupt or files or suffers to be filed a petition for relief under the Bankruptcy Act, or makes a general assignment for the benefit of creditors; or (e) if a receiver is appointed on account of Subcontractor's insolvency; then, in any such event, Centex Homes may, without prejudice to any other right or remedy and after giving Subcontractor and its surety, if any, three (3) days written notice, terminate its obligation to Subcontractor under this Agreement and take possession of the Site and complete (or cause to be completed) the Work by whatever method Centex Homes may deem expedient. In such event, Subcontractor will not be entitled to receive any further payment until the Work is finally completed and inspected and accepted by Centex Homes and approved by all applicable governmental agencies. Upon completion of the Work, Centex Homes will pay to Subcontractor an amount equal to (x) the unpaid portion of the Contract Price attributable to the Work performed up to the termination less (y) the amount by which (i) the costs incurred by Centex Homes to complete the Work, Including costs for architectural, managerial and administrative services and reasonable attorneys' fees (if legal counsel is employed) exceed (ii) the portion of the Contract Price attributable to the balance of the Work yet to be performed at the time of termination. If the amount calculated under part (y) in the preceding sentence exceeds the amount owing under part (x), Subcontractor will pay the difference to Centex Homes. If the amount in part (x) exceeds the amount in part (y), Centex Homes will pay the difference to Subcontractor; however, Centex Homes will have the right at its option to withhold such amount from Subcontractor until the expiration of one year from the date of the termination of this Agreement.

29. WAIVER. No consent or waiver, express or implied, by either party to this Agreement relating to any breach or default by the other in the performance of any obligation hereunder will be deemed or construed to be a consent to or waiver of any other breach or default by such party. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default irrespective of how long such failure continues will not constitute a waiver of the rights of such party.

30. NOTICE. Unless otherwise provided herein, any notice provided for herein will be in writing and deemed delivered to the other party when delivered to the address shown for such party in the first Construction Agreement – Traditional Contract (1-17-06

Contractor Initials
Builder Initials



paragraph of this Agreement, or to such other address as may be designated by either party by written notice in accordance with this Agreement, (a) in person, (b) by facsimile transmission prior to 5:00 p.m. (PST) on a business day (or prior to 12:00 noon on any Friday) (with the original and a copy of the facsimile confirmation following in the United States mail), (c) by overnight delivery service, or (d) by certified mail, return receipt requested. If such notice is given in person or via facsimile transmission, such notice will be deemed to have been given when delivered or transmitted. If such notice is given by overnight delivery service, such notice is deemed received the first business day after delivery to the overnight delivery service. If such notice is given by certified mail, such notice will be deemed received three (3) business days after a certified letter containing such notice, properly addressed with postage prepaid, is deposited in the United States mail.

31. TIME. Time is of the essence of this Agreement and each provision herein contained.

32. INCLUDING. The term "**Including**" as used in this Agreement shall mean including, without limitation, or including, but not limited to.

33. WORDS AND MEANINGS; SECTION HEADINGS. Words used herein will include the plural as well as the singular. Words used in the masculine gender include the feminine and neuter. The section headings used herein are for convenience only and will have no affect upon the construction or interpretation of any part of this document.

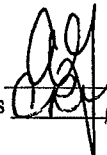
34. OTHER AGREEMENTS. Should there now or hereafter exist one or more other agreements between the parties or with any affiliated corporation or company of either concerning this or any other construction project, then a breach by Subcontractor under the terms of any such agreement, at the option of Centex Homes, will be considered a breach of this Agreement and all such other agreements. In such event, Centex Homes or its affiliates may declare a default under any or all agreements so breached in accordance with their terms and may withhold money due or to become due under any such agreement and apply the same toward payment of any damages suffered.

35. INDEPENDENT CONTRACTOR. Subcontractor will be an independent contractor with respect to the Work, and neither Subcontractor nor anyone employed by Subcontractor will be deemed for any purpose to be the agent, employee, servant or representative of Centex Homes in the performance of the Work. Subcontractor acknowledges and agrees that Centex Homes will have no direction or control over the means, methods, procedures or manner of the Work performed by Subcontractor or any of its subcontractors, or any of their employees, vendors or suppliers.

36. AUTHORIZED PERSONS. Only the president, any vice president, division president, division vice president, division manager, or any persons designated in writing by the aforementioned, as well as the division CFO, controller, assistant controller, purchasing manager, construction services manager, land development manager, project manager, land acquisition manager and the regional CFO and controller of Centex Real Estate Corporation, the managing general partner of Centex Homes, have the authority under this Agreement to: (i) execute change orders; (ii) allow Subcontractor additional time for performance of the Work; (iii) amend, modify, supplement or terminate this Agreement; and (iv) do any other act which waives any right or privilege of Centex Homes under this Agreement or the Contract Documents. Any of the foregoing acts not properly authorized will not be binding upon Centex Homes. Any party executing this Agreement on behalf of Subcontractor shall be deemed to have the authority to bind Subcontractor.

Construction Agreement – Traditional Contract (1-17-06)

Contractor Initials
Builder Initials



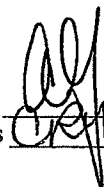
37. SEVERABILITY. If any paragraph, section, sentence, clause or phrase contained in this Agreement shall become illegal, null or void, against public policy or otherwise unenforceable for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void, against public policy, or otherwise unenforceable, the remaining paragraphs, sections, sentences, clauses or phrases contained in this Agreement shall not be affected thereby.

38. GOVERNING LAW. This Agreement will be governed by, and construed and interpreted in accordance with, the substantive laws of the State of California (without giving effect to any conflict-of-laws rule or principle that would result in the application of the laws of any other jurisdiction) and with the laws of the United States of America.

39. ENTIRE AGREEMENT. This Agreement, together with the Contract Documents, which are incorporated herein by reference, constitutes the entire Agreement between the parties. Neither this Agreement nor the Contract Documents may be amended or supplemented except by written instrument duly executed by both parties hereto. No estimates or bids of Subcontractor preceding this Agreement and no verbal agreement or conversation with any representative of Centex Homes, either before or after execution of this Agreement, will affect or modify any of the terms or provisions contained in this Agreement or the Contract Documents.

Construction Agreement – Traditional Contract (1-17-06)

Contractor Initials
Builder Initials

Handwritten signatures for Contractor and Builder initials. The Contractor's signature is a stylized 'C' and 'H' combined. The Builder's signature is a stylized 'C' and 'H' combined.

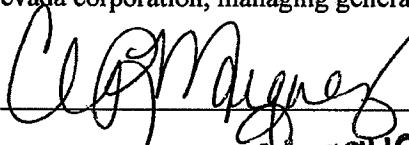
40. **CONSENT TO AGREEMENT.** This Agreement shall be enforceable as to any and all Work commenced prior to its execution.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

"CENTEX HOMES"

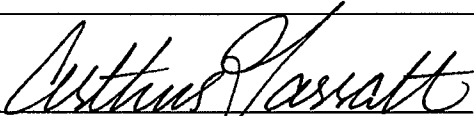
CENTEX HOMES, a Nevada general partnership

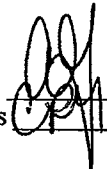
By: **CENTEX REAL ESTATE CORPORATION**,
a Nevada corporation, managing general partner

By: 
Name: **Christine R. Marquez**
Title: **Purchasing Manager**

"SUBCONTRACTOR"

C. CONSTRUCTION INC.
a **DBA CAMPBELL CONCRETE OF CALIFORNIA**


By: 
Name: **ARTHUR GARRATT**
Title: **CHIEF ESTIMATOR**



SCHEDULE A

Construction Agreement (1-17-06)

Contractor Initials
Builder Initials

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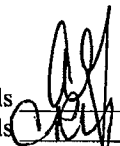
SCHEDULE B

DESCRIPTION OF THE WORK

(TO BE PROVIDED WHEN CONTRACT AWARDED)

Construction Agreement (1-17-06)

Contractor Initials
Builder Initials

Handwritten initials for Contractor and Builder, with the Contractor's initials above the Builder's initials.


SCHEDULE C

CONTRACT PRICE

(TO BE PROVIDED WHEN CONTRACT AWARDED)

Construction Agreement (1-17-06)

Contractor Initials
Builder Initials

Handwritten initials for Contractor and Builder, with the Contractor's initials above the Builder's initials.

SCHEDULE D

PAYMENT SCHEDULE

SUBCONTRACTOR INVOICING AND REQUIREMENTS FOR PAYMENT

Subcontractor agrees to submit all invoices in accordance with Items 1-11 of this Schedule C. Subcontractor's failure to comply with one or more of Centex's billing requirements will result in payment delay.

1. Subcontractor shall submit each request for payment on his own invoice form and shall include the following:
 - a. Contract, Change Order, or Purchase Order number.
 - b. Name and location of neighborhood.
 - c. Tract number and phase number.
 - d. Lot numbers with corresponding plan numbers, unit prices and totals.
 - e. Total invoice amount.
 - f. Attach with Purchase Order the Cost Code ("CC") and unit prices corresponding exactly with contract "Schedule C".
 - g. If billing is for non-contract work, invoice must have an attached pink copy of the corresponding Purchase Order, with approval initials of the Field Manager who ordered the work. Purchase Order invoices must be billed separately from contract invoices.
 - h. If billing is for Change Order, invoice must include Change Order and Contract number.
 - i. If billing includes the 2% discount, the invoice must reflect the discount and the new total.
 - j. If billing is for option(s), invoice must contain the above information **and** include copy of Purchase Order, initialed by appropriate Field Manager.
2. Subcontractor shall bill only for amount of work in place. Payment requests for more than actual work performed will be returned unpaid.
3. Subcontractor shall submit properly completed Centex Homes Lien Release(s) with each invoice. Releases are required from all suppliers, subcontractors, rental companies, etc., who have provided materials or equipment to our project and by all vendors who have filed California Preliminary Notices. Releases must also be signed by all persons who have furnished labor or services. It is the Subcontractor's responsibility to obtain and submit all necessary releases with each invoice.
4. All Subcontractor invoices, complete with all required attachments and approvals, must be received by Centex Homes no later than 45 days after completion of work or delivery of materials or services in order to be eligible for payment.
5. All invoices must be covered by signed Contract, Change Order, Purchase Order, or Option Purchase Order, in order for payment to be made. Subcontractor agrees that he will not perform extra work without first obtaining written authorization from Builder. In no case shall the Subcontractor's invoice differ from contract quantities, unit prices, or hourly rates.
6. All T & M invoices must be accompanied by signed field tickets and attach pink Purchase Order.
7. **Field Measurements:** In all cases where payment is based on unit price(s) multiplied by a quantity, a field measurement shall be performed by a representative of both the Builder and the Contractor. At the completion of the measurement, the Builder's representative shall retain a copy of the notes, which will be attached to the Contractor's invoice prior to submitting for payment. **IN NO CASE** shall a Contractor invoice for field measure work which has not been field measured. In the event of a dispute over the quantities, the Builder's Engineer's quantities will be final.
8. All payments to Contractor will be MAILED on the scheduled payment date, WITHOUT EXCEPTION. Contractor shall not pick up checks in the office.
9. All contract requirements must be met in order for payment to be processed. This includes, but shall not be limited to: current insurance certificates; compliance with all Centex insurance requirements; fully executed Contract and any subsequent Change Orders; City business license; etc. All documents must be in Builder's possession and in proper order **PRIOR TO PROCESSING PERIOD** in order to avoid delay.
10. Invoices which are not submitted in accordance with the above requirements shall be returned unpaid, without notice. **PAYMENT WILL BE MADE PER THE ABOVE TERMS BASED UPON THE DATE OF OUR RECEIPT OF THE CORRECTED INVOICE.**

Construction Agreement (1-17-06)

Contractor Initials
Builder Initials

[Handwritten initials]

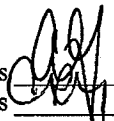
SCHEDULE E

LIEN RELEASES

(TO BE PROVIDED WHEN CONTRACT AWARDED)

Construction Agreement (1-17-06)

Contractor Initials
Builder Initials

A handwritten signature in black ink, appearing to be 'CJH', is written over the 'Contractor Initials' and 'Builder Initials' labels.

HOLD HARMLESS AGREEMENT FOR SCAFFOLDING

Hampton @ The Lakes

By his initials to this agreement, the Contractor agrees to the following provisions in consideration for allowing the owner, his employees and subcontractors the right to use scaffolding provided by the Scaffolding/Stucco/Framing Contractor:

1. Inspect the Scaffolding/Stucco/Framing Contractor's scaffolding both before and after his using said scaffolding and bring any deficiencies to the attention of the Builder.

2. Replace or repair any modifications or damage caused by him during his use of the scaffolding.

The Contractor agrees to hold both the Builder and the Scaffolding/Stucco/Framing Contractor, who supplies the scaffolding, harmless from any liability, claim, demand, fine or loss whatsoever resulting.

Construction Agreement (1-17-06)

Contractor Initials
Builder Initials

[Handwritten initials]

CONTRACTOR INFORMATION

1. Contractor's License Number: _____ Type _____
2. Phone Numbers: Business Office _____ 24 HR Emergency _____
Customer Service _____ FAX: _____
3. Employer's State I.D. Number, under which S.U.I and S.D.I. taxes are reported: _____
4. Employer's Federal I.D. Number, under which F.I.C.A. is reported: _____
5. **Major Material Vendors for this Project:**
 - a. Firm Name: _____ Contact: _____ Phone: _____
 - b. Firm Name: _____ Contact: _____ Phone: _____
6. **Major Equipment Rental Vendors for this Project:**
 - a. Firm Name: _____ Contact: _____ Phone: _____
 - b. Firm Name: _____ Contact: _____ Phone: _____
7. **All Union Organizations having Jurisdiction over Contractor's Employees:**
 - a. Union Name: _____ Agent: _____ Phone: _____
 - b. Union Name: _____ Agent: _____ Phone: _____
8. **Subcontractor's used by Contractor for this Project:**
 - a. Firm Name: _____ Type of Work: _____
Contact: _____ Phone: _____
Subcontractor's License Number: _____ Type _____
 - b. Firm Name: _____ Type of Work: _____
Contact: _____ Phone: _____
Subcontractor's License Number: _____ Type _____
9. **Employee Pension Funds Offered by Contractor:**
 - a. Name of Organization: _____ Contact: _____ Phone: _____
 - b. Name of Organization: _____ Contact: _____ Phone: _____
10. **Contractors Company Structure:**
 - a. Type of Ownership: _____ Partnership _____ Sole Ownership _____ Corporation, Incorporated in the State of _____
11. **Names of Officers or Partners:**

Name: _____	Title: _____	Phone: _____
Name: _____	Title: _____	Phone: _____
Name: _____	Title: _____	Phone: _____

CENTEX HOMES

Construction Agreement (1-17-06)

Contractor Initials
Builder Initials


CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Upon receipt by the undersigned of a check from Centex Homes* in the sum of
\$ _____ payable to _____ (Amount of Check)
(Payee or Payees of Check)

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice or bond right the undersigned has on the job of Centex Homes located at

(Job Description)
to the following extent. This release covers a progress payment for labor, services, equipment or material furnished to _____ through _____
(Your Customer) (Date)

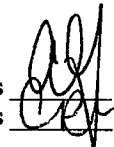
only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based on a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

(Date)

(Company Name)

By: _____

(Title)



CENTEX HOMES

UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

The undersigned has been paid and has received a progress payment in the sum of

\$ _____ for labor, services, equipment of material furnished to
(Amount of Check)

_____ on the job of Centex Homes* located at
(Your Customer)

_____ and does hereby release any mechanic's lien, stop notice
(Job Description)

or bond right that the undersigned has on the above-reference job to the following extent. This release covers a progress payment for labor, services equipment or materials furnished to _____

_____ through _____ only and does not cover
(Your Customer) (Date)

any retentions retained before or after the release date; extras or items furnished before the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release.

This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based on a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

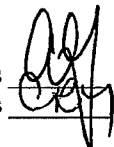
(Date)

(Company Name)

By: _____

(Title)

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.



CENTEX HOMES
CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

Upon receipt by the undersigned of a check from Centex Homes* in the sum of \$_____ payable to
_____ and when the

(Payee or Payees of Check)

check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of Centex Homes* located at _____.

(Job Description)

This release covers the final payment to the undersigned for all labor, services, equipment of material furnished on the job, except for disputed claims for additional work in the amount of \$_____. Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned.

(Date)

(Company Name)

By: _____

(Title)

Construction Agreement (1-17-06)

Contractor Initials
Builder Initials

[Handwritten initials]
[Handwritten initials]

CENTEX HOMES

UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

The undersigned has been paid in full for all labor, services, equipment or material furnished to

_____ on the job of Centex Homes* _____
(Your Customer) (Job Description)

and does hereby waive and release any right to a mechanic's lien, stop notice, or any right against a labor and material bond on the job, except for disputed claims for extra work in the amount of \$_____.

(Date)

(Company Name)


By: _____

(Title)

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

Construction Agreement (1-17-06)

Contractor Initials
Builder Initials



PRELIMINARY INFORMATION

Hampton @ The Lakes

OWNER: Centex Homes, a Nevada general partnership
1265 Corona Pointe Court
Corona, California 92879

BUILDER: Centex Homes, a Nevada general partnership
1265 Corona Pointe Court
Corona, California 92879

(951) 479-9300

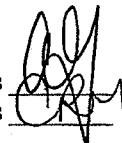
LENDER: None

CONTRACTORS
LICENSE NO.: 734094

WORKMAN'S
COMP. NO.: WC8322096-01

Construction Agreement (1-17-06)

Contractor Initials
Builder Initials



CENTEX HOMES - INLAND DIVISION

DATE: October 26, 2005
PROJECT: FOUR LEAF LANE
CONTRACT #: 200.54
CONTRACTOR: Campbell Concrete

SCHEDULE "B"
SCOPE OF WORK
FOUNDATIONS AND FLATWORK

1. The **CONTRACTOR** shall comply with the latest requirements of: All Federal Agencies (i.e. HUD, VA, OSHA/CAL OSHA); State of California; County of Riverside; City of Mira Loma; California State Senate Bill 198 (Illness and Injury Prevention Program); Title 24 (California Energy Conservation Law); and any and all other agencies having jurisdiction thereof.
2. The work shall include but not necessarily be limited in the specific conditions, as per the Models and as per all plans/drawings most current date issue as prepared by:
 - a. Architectural Drawings: KTGy
 - b. Structural Engineering Drawings: Performance Plus Engineering
 - c. Civil Engineering Drawings: CSL Engineering
 - d. Soils Engineering Reports: LGC Inland Inc.,
 - e. California Title 24 Report: Rick Maurer
 - f. Mechanical Engineer: Consol
 - g. Landscape Architect: Borthwick Guy Bettenhausen Inc.
 - h. Methane Mitigation: GeoKinetics

REQUIREMENTS:

3. The **CONTRACTOR** under this agreement has represented himself as an expert and as such has included all of the following unless noted otherwise, labor, material, installation, storage, transportation, supervision and all applicable taxes, permits and inspection/reinspection fees. Construction drawings, described in (Schedule B, item 2 above), listed herein or not specifically shown, but reasonably inferable for the completion of the project indicated, shall be included in this Contract.
4. Notwithstanding the exercise by **CENTEX HOMES** any remedies provided in this agreement, including but not limited to the termination of **CONTRACTOR'S** right to proceed with the work, **CONTRACTOR** shall not be discharged from any guarantee or responsibilities for work performed or materials supplied and shall remain liable therefore.
5. **CONTRACTOR** is to be familiar with and abide by the neighborhood Storm Water Pollution Protection Plan (SWPPP) located at the field construction office. If **CONTRACTOR** removes any erosion control or storm water control materials, **CONTRACTOR** is responsible to replace and/or repair the control measures daily or after completing their work. Additional materials to be supplied by **CENTEX HOMES**. Any damage to the erosion and storm water control measures shall be immediately reported to the field manager. **CONTRACTOR** is responsible for SWPPP requirements as it relates to their scope of work. **CONTRACTOR** is also responsible for SWPPP fines and fees due to their negligence. **CENTEX HOMES** is responsible for all SWPPP requirements related to silt transferred off the lot during normal business operations. **CONTRACTOR** shall clean equipment to minimize silt transfer and immediately notify field manager if silt is removed off the lot. **CENTEX HOMES** to coordinate cleaning location.
6. **CONTRACTOR** agrees to correct any and all pick up work that is not completed during construction or that is found unsatisfactory due to **CONTRACTOR'S** workmanship or faulty materials. In the event **CONTRACTOR** has failed to correct said defect within 48 hours of initial contact, **CENTEX HOMES** shall employ another **CONTRACTOR** to correct said work and back charge against your contract. If **CONTRACTOR** has been paid in full, he shall remit upon receipt of written demand and supporting back charge documents, the amount paid by **CENTEX HOMES** to another **CONTRACTOR**.
7. **CONTRACTOR** will begin work in the area designated by **CENTEX HOMES** and cooperate with the designated Field Manager with regard to the scheduling of construction and subsequent trades.
8. **CONTRACTOR** acknowledges that he has visited the site and reviewed all construction documents and is familiar with and has provided for the conditions that exist thereon and that he has checked with appropriate governing agencies and has made provisions for any and all requirements of those agencies.
9. Any expense incurred through error, incompetence, or negligence on the part of the **CONTRACTOR** will be borne by the **CONTRACTOR**.
10. The parties agree that commencement of all or any portion of the work pursuant to this contract shall be in the sole discretion of **CENTEX HOMES**. The work authorized by this contract may be implemented in

phases in the sole discretion of CENTEX HOMES. All or any portion of the work authorized by this contract may be canceled due to market conditions or other factors in the sole discretion of CENTEX HOMES and the CONTRACTOR shall be paid for the portion of the work completed and other actual costs incurred at the time of such cancellation.

11. CONTRACTOR shall be solely responsible for personally verifying with the CENTEX HOMES designated Field Manager that CONTRACTOR has the latest sets of plans and specifications prepared and approved for construction and guarantees the system to function for the purpose for which it was designed.
12. CONTRACTOR shall at all times provide responsible on-site supervision of this operation.
13. CONTRACTOR shall endeavor at all times to keep his work neat.
14. CONTRACTOR shall provide drinking water for its employees.
15. It is understood and agreed heron that alcoholic beverages, children and pets are not permitted on the construction site at any time. It is the responsibility of the CONTRACTOR to enforce this policy with its workers. Failure to comply will constitute grounds for revocation of this contract agreement.
16. CONTRACTOR understands that CENTEX HOMES DOES NOT allow the use of Luan in any form Underlayment, Doors, Furring Material Etc. Do not bring it onto the jobsite in any form at any time. This is a Corporate Mandate. Failure to comply will constitute grounds for revocation of this contract agreement.
17. CONTRACTOR shall, upon receipt of signed contract, order and have in stock all necessary materials so as to prevent any loss of time on the CENTEX HOMES production schedule.
18. CONTRACTOR shall, prior to contract signing, provide CENTEX HOMES with all warranty documents and maintenance requirements for all materials installed in homes. This will be in accordance with SB800.

JOBSITE PERFORMANCE:

19. CONTRACTOR shall provide all labor, material and equipment necessary to complete the job and all the work reasonably inferable from the construction documents.
20. CONTRACTOR shall take every precaution and provide suitable means to protect finished work from damage.
21. CONTRACTOR shall, at its own expense, correct any work, which is not acceptable to CENTEX HOMES, it's Director of Construction and designated Field Manager.
22. CONTRACTOR shall be responsible for repairing any damage caused by him to the site or the work of other trades. If repairs are not made within a reasonable length of time, CENTEX HOMES will have the damage repaired and back charge the CONTRACTOR.
23. CONTRACTOR shall be responsible for the repair/replacement of His work as necessary at no extra charge to CENTEX HOMES, if His work is placed over the faulty workmanship of others in relation to the installation of his work.
24. CONTRACTOR shall neatly pile in designated area(s) all trash that has accumulated or accumulates and debris which has accumulated or accumulates as a result of the CONTRACTORS performance (under the terms and conditions stated herein) for removal by others. Any debris left outside the determined area for more than 24 hours will be removed and CONTRACTOR will be billed.
25. All material will be free from defects occurring in manufacturing and /or delivery process. CONTRACTOR shall replace merchandise if so damaged.
26. CONTRACTOR is responsible for the unloading of all their material.
27. CONTRACTOR agrees to six day a week schedule during construction of models, at no extra charge. CONTRACTOR agrees to the schedule as per the CENTEX HOME'S designated Field Manager
28. **SAFETY:**

29. CONTRACTOR shall comply with CENTEX HOME'S safety program at all times. It is understood that all personnel shall be required to wear a hard hat and any other personal protective equipment necessary. If any unsafe condition should exist it is the CONTRACTOR'S responsibility to notify the Field Manager promptly.

30. SERVICE REQUIREMENTS

- A. All **CONTRACTORS** will have a representative (service person) responsible for warranty work. This person shall be professionally attired with proper identification as to the company he or she represents. He or she must be able to communicate in English with the customer. He or she must be able to work in an environment that may be stressful due to adversarial situations. The service person must be able to remain focused and work effectively, efficiently and cheerfully under these conditions.
- B. If additional work is required by other trades following completion of work, the **CONTRACTOR** shall notify **CENTEX HOME'S** Field Manager or Customer Service Representative of the necessary follow-up trades.
- C. **CONTRACTOR** shall be responsible for coordinating service appointments with **CENTEX HOME'S** Field Manager or Customer Service Representative and completing service work as scheduled.
- D. **CONTRACTOR** will, at the request of **CENTEX HOMES**, periodically inspect the models and will provide parts to repair any damages.
- E. Emergency service requests will require **IMMEDIATE** attention by the **CONTRACTOR**. **CONTRACTOR** shall provide **CENTEX HOME'S** Field Manager, Customer Service Representative and Main Office with an after hours emergency phone number for requesting such service.

After hours-emergency phone number: Area Code _____ Number _____

- F. **CONTRACTOR** understands and agrees that if **CONTRACTOR'S** trash is found to be in any bathtubs and/or shower units at any time, that **CONTRACTOR** will pay for any and all damage found to be present in and/or on said unit and/or units at the time of tub finals, there will be no exceptions in any way to this measure.

SPECIFIC SCOPE FOUNDATIONS/FLATWORK

31. **CONTRACTOR** understands that all foundations shall be constructed in accordance with the Minimum Foundation and Slab Design Recommendations from, the Soils Report of Record and the Structural Engineer of record and, if post tension slabs are required the Drawings by the Post Tension Design Company of record.
32. **CONTRACTOR** is aware and has reviewed in its entirety the methane mitigation plan produced by GeoKinetics and will coordinate with methane mitigation contractor the installation of all necessary appurtenances as required by the methane mitigation plan. **CONTRACTOR** acknowledges having received a copy of these reports and drawings. The following is a summary of the foundation requirements and is not intended to replace the report or drawings. See Soils Report.
33. **CONTRACTOR** is aware that this work is being completed on a public through street and will maintain such access as required.
34. **CENTEX HOMES** will provide flat pads to a grading tolerance of +/- 1/10-foot. **CONTRACTOR** shall check and verify that pad is within the tolerance prior to layout. If not, **CONTRACTOR** shall verbally notify **CENTEX HOMES** immediately and in writing of any discrepancy.
35. **CENTEX HOMES** shall provide building stakes, in the form of corners or points 'on-line'.
36. Concrete Mix CENTEX HOME'S 3000 psi standard mix:
- a. Strength: All concrete supplied shall be a minimum Type II water/cement ratio (.55 max) Gal/Sk 6.21 (34 gal per batch), 5.48 sack content, fly ash class F maximum 10%, entrapped air 1.25%, aggregate size maximum 1", Compressive strength shall be a minimum 3000 psi at 28 days, slump shall be 4" (+/- 1"). Fritz-Pak Supercizer-5 may be added to mix per manufacturer instructions to increase slump in place of excess water. No other additives shall be used without prior written permission from **CENTEX HOMES**. All delivery tickets showing time, temperature, mix, water, etc. will be given to the **CENTEX HOME'S** Field Manager, indicating the lot & location of the pour.
- b. **CONTRACTOR** understands that at no time under any conditions shall water be added in excess of the maximum allowed Water/Cement Ratio for the proposed mix. If the amount of Batched Water is LESS than the Maximum allowed for the mix then the remaining allowable amount of water to meet the Water/Cement Ratio can be added on the jobsite, after part or all of the remaining

allowable water has been added the drum shall be revolved not less than 30 revolutions at mixing speed before the concrete is discharged.

- c. Fritz-Pak Supercizer-5 may be added to mix per manufacturer instructions to increase slump in place of excess water.
- d. This CONTRACTOR shall follow and understand that the soils report or structural engineering documents may require a more stringent mix design, for instance to combat sulfate in the soil. The .55 water cement ratio is to be considered the minimum requirement.
- e. NO Calcium Chloride shall be added to any concrete mix at any time.

37. Concrete Mix CENTEX HOME'S 3500 psi mix at Moderate Sulfate Conditions:

- a. Strength: All concrete supplied shall be a minimum Type V water/cement ratio (.50 max) 5.5 sack content, fly ash class F maximum 10%, entrapped air 1.25%, aggregate size maximum 1", Compressive strength shall be a minimum 3500 psi at 28 days, slump shall be 4" (+/- 1"). Fritz-Pak Supercizer-5 may be added to mix per manufacturer instructions to increase slump in place of water. No other additives shall be used without prior written permission from CENTEX HOMES. All delivery tickets showing time, temperature, mix, water, etc. will be given to the CENTEX HOME'S Field Manager, indicating the lot & location of the pour.
- b. **CONTRACTOR** understands that at no time under any conditions shall water be added in excess of the maximum allowed Water/Cement Ratio for the proposed mix. If the amount of Batched Water is LESS than the Maximum allowed for the mix then the remaining allowable amount of water to meet the Water/Cement Ratio can be added on the jobsite, after part or all of the remaining allowable water has been added the drum shall be revolved not less than 30 revolutions at mixing speed before the concrete is discharged.
- c. Fritz-Pak Supercizer-5 may be added to mix per manufacturer instructions to increase slump in place of excess water.
- d. NO Calcium Chloride shall be added to any concrete mix at any time.

38. Concrete Mix CENTEX HOME'S 4000 psi mix at High Sulfate Conditions:

- a. Strength: All concrete supplied shall be a minimum Type V water/cement ratio (.45 max) 5.5 sack content, fly ash class F maximum 10%, entrapped air 1.25%, aggregate size maximum 1", Compressive strength shall be a minimum 4000 psi at 28 days, slump shall be 4" (+/- 1"). Fritz-Pak Supercizer-5 may be added to mix per manufacturer instructions to increase slump in place of water. No other additives shall be used without prior written permission from CENTEX HOMES. All delivery tickets showing time, temperature, mix, water, etc. will be given to the CENTEX HOME'S Field Manager, indicating the lot & location of the pour.
- b. **CONTRACTOR** understands that at no time under any conditions shall water be added in excess of the maximum allowed Water/Cement Ratio for the proposed mix. If the amount of Batched Water is LESS than the Maximum allowed for the mix then the remaining allowable amount of water to meet the Water/Cement Ratio can be added on the jobsite, after part or all of the remaining allowable water has been added the drum shall be revolved not less than 30 revolutions at mixing speed before the concrete is discharged.
- c. Fritz-Pak Supercizer-5 may be added to mix per manufacturer instructions to increase slump in place of excess water.
- d. NO Calcium Chloride shall be added to any concrete mix at any time.

39. Placement: Concrete shall be rodded or vibrated to insure proper contact with forms and reinforcing. Honeycombs shall be sack finished on exposed surfaces. Builder shall remove all excess concrete from site.

- a. No Concrete will be accepted and will be returned to plant if the time from plant to unload is 90 minutes or greater.
- b. This **CONTRACTOR** shall protect wet Concrete from vandalism and weather. **CONTRACTOR IS RESPONSIBLE FOR CONCRETE UNTIL IT SETS.**

40. Lockstop: **CONTRACTOR** shall apply Lockstop Waterstop or an approved equivalent product at all Exterior Footing /Slab contact points on Two Pour Foundations. Note: exterior footings shall include a "key" for placement of the lockstop and be cleaned and primed in accordance with Manufacturers recommendations

41. Post Tension Slab (when required by Soils Report and/or structural engineering):

- a. Post Tension Slabs shall include
- b. Post tension cables installed on center, spacing per plans by Post Tension Design Company of Record.
- c. Concrete shall be **CENTEX HOME'S** 3000 psi standard mix, UON.
- d. There will be special post tension inspections. An independent inspector, provided by Builder, shall be present at time of pour, during stressing and while breaking cylinders.
- e. Cylinder breaks and test results.
- f. Stressing and cutting cables and patching resultant cable holes. Cable ends are to be painted with rust preventing paint (Rustoleum) prior to patching.
- g. Finished stem walls in garage.

42. Excavation: The **CONTRACTOR** shall excavate all piers, footings, foundation walls, column footings and any other miscellaneous areas as shown and/or specified, in order to receive forms to place the required concrete in those dimensions as shown and/or specified on the plans. Spoils from trench and pier excavation shall not interfere with the plumber's backhoe or other trades work. **CONTRACTOR** shall remove excessive spoils after trenching or cleaning footings and spread them evenly at the front of the lot. Footings and pier excavations shall be cleaned of loose soils or debris prior to pouring concrete.43. If pre-saturation is necessary, **CONTRACTOR** shall berm the living area of the slab for pre-saturation and /or per soil engineer's requirements. Note: presaturation by wetting down slab area is included when required by Code or structural engineer.44. Forms: Forms shall be maintained in an acceptable condition and shall be scraped and oiled prior to reuse. Wall forms shall be adequately braced and tied to prevent greater than ¼ inch from square. Forms shall not be stripped until concrete can safely carry its own weight and deck weight. Once stripped, all exposed ties shall be broken and sealed. Beam pockets shall be formed at locations shown on plans to 1/8 inch in centerline and depth. Openings and chases shall be formed as necessary to pass other work. Sizes must be verified with mechanical **CONTRACTORS**.45. Embedded & Reinforcing Steel: The **CONTRACTOR** shall supply and install structural steel members, embedded in concrete footings, walls or slabs including, but not limited to: column anchors, tie-down anchors, J-bolts, reinforcing steel and any other miscellaneous hardware items incidental to the correct installation of the concrete. Post anchors supplied by others. Note: bolts to be installed so as to eliminate the need for redheads. The **CONTRACTOR** shall supply and install all reinforcing steel, as shown and/or specified on the plans. All reinforcing steel shall be adequately supported to insure proper clearance from the forms and earth during placement of the concrete. Grade of steel bars, size, splice lengths, number and location shall be as noted on the structural plans, soils report or UBC 2607 and ASTM A-615 Grade 60, whichever is more severe. At least 16-gauge, annealed wire shall be used to support bar splices. The **CONTRACTOR** shall furnish and install dowels for all porches, stoops and fireplaces (standard and optional) not poured integral with the foundation.46. UFER Grounds: **CONTRACTOR** shall supply and install UFER ground twenty feet minimum and extending from foundation 12" ready to receive clamps. Copper grounds by others as required.47. Conventional Slab Reinforcing: Per Soils Report use either 6-6/10-10 WWM or #3 Rebar at 18" O/C. EW.48. Miscellaneous Hardware: **CONTRACTOR** shall furnish any and all miscellaneous hardware shown on the plans to be embedded in the foundation or incidental to correct installation.

- a. The **FRAMING CONTRACTOR** shall be responsible for providing the initial anchor bolt layout, including options and plate breaks, to the **CONCRETE CONTRACTOR** and the **CENTEX HOME'S** Field manager for the model construction. After models are complete, the **FRAMING CONTRACTOR** shall adjust this layout if necessary and confirm with the **CONCRETE CONTRACTOR** and **CENTEX HOME'S** Field Manager. For production, the **CONCRETE CONTRACTOR** is responsible for placing the anchor bolts according to this confirmed layout and the **FRAMING CONTRACTOR** will be responsible for consistently framing according to this anchor bolt layout. Any cost for epoxy bolt installation will be born by the responsible party.
- b. **CONTRACTOR** shall supply and install anchor bolts and hold down bolts, and shall supply nuts for all bolts embedded in concrete per plans and specifications. **CONTRACTOR** will turn over nuts to **FRAMING CONTRACTOR** directly.

49. Miscellaneous Materials: The **CONTRACTOR** shall furnish and install all materials as shown on the plans and specified herein, including, but not limited to: imported aggregate and/or sand fill, vapor barrier,

sleepers and asphalt impregnated expansion joint material where required by plans or soils report. Foundations recommendations on plans may supercede this requirement

- a. **CONTRACTOR** shall provide and install foundation grade 2 x 4 (non CCA) pressure treated sleepers at all exterior door openings including optional doors.
 - b. **CONTRACTOR** shall provide and install foundation grade 2 x 6 (non CCA) pressure treated sleepers at Fire Door into Garage opening.
 - c. **CONTRACTOR** shall install bumper post in garage where required. Pipe supplied by plumbing Contractor. Bumper Posts shall be installed plumb using a level and cleaned of any concrete after placement.
50. **HOUSE SLAB:** shall be 4" nominal thickness over 2" clean ASTM C-33 sand, over 10 mil Vapor Barrier; over 2" clean ASTM C-33 sand. 10 mil Vapor Barrier shall be installed with a minimum 6" overlap at all seams, all seams shall be taped with approved materials, all penetrations Plumbing, Electrical, Ect. through 10 mil Vapor Barrier shall be taped with approved materials. Staking will not be permitted through 10 mil Vapor Barrier. Wooden Stakes and or Tubular Type Stakes Will Not be used inside the foundation/slab area at any time for any reason. **CONTRACTOR** shall provide and place sand for plumbing and electrical trench backfill and compaction if required within the foundation/slab area at the time **CONTRACTOR** grades to pour, See soils report.
 51. **GARAGE SLAB:** shall 4" nominal thickness over 2" clean ASTM C-33 sand, over 10 mil Vapor Barrier, over 2" clean ASTM C-33 sand. 10 mil Vapor Barrier shall be installed with a minimum 6" overlap at all seams, all seams shall be taped with approved materials, all penetrations Plumbing, Electrical, Ect. through 10 mil Vapor Barrier shall be taped with approved materials. Staking will not be permitted through 10 mil Vapor Barrier. Wooden Stakes and or Tubular Type Stakes Will Not be used inside the foundation/slab area at any time for any reason.
 52. The Garage Slab shall be placed (started) at 4" inches below finished floor and/or top of stem wall at the farthest rear section of garage, The garage slab shall slope 3" inches from the rear of the garage towards the garage roll up door finishing 7" inches below top of inside face of front stem wall before depression under roll up door.
 53. Garage slab at roll up door opening (between stem walls) shall have a 1" inch stepdown at the entrance of the garage to form a water resistant lip to the inside of the roll-up garage door. It shall be depressed using a 1" x 8" with fall toward the street. NOTE: When the flatwork concrete driveway is formed, set and pour with a drop 1/2" net below garage slab, with felt joint. This contract includes positive garage separation.
 54. **CONTRACTOR.** Shall provide a minimum 4" free board (stepdown) at exterior doorways from top of slab to top of porches stoops and/or walks.
 55. The height from the final grade, including finished landscaping, to the finished floor elevation shall be a minimum of 8" inches
 56. The finished grade shall slope away from the foundation at a 5% grade toward the drainage swale.
 57. Backfill and compaction of plumbing and electrical trenches inside forms and plate breaks are included in Contract price.
 58. **Conventional Slab Saw Cuts:** **CONTRACTOR** shall saw cut house slab and garage slab per the Centex Homes Field Managers direction; all saw cuts will be to the depth of 1/4 the thickness of the slab being cut. No Saw Cuts will be made in Post Tension Slabs.
 59. **Stem Walls:** **CONTRACTOR** shall smooth finish all stem walls. Stem wall shall be 8" Wide.
 60. **Deepened Footings:** Shall be installed in accordance with plans and specifications and are included in Contract price as an alternate.
 61. **Dropped Garages:** Shall be installed in accordance with the precise grading plans and are included in Contract as an alternate.
 62. **Tolerances:** **CONTRACTOR** shall provide the following finishing tolerances:
 - A. Class "A". Finishes with a Class "A" tolerance shall be true planes within 1/8 inch in 10 feet as determined by a 10 foot straight-edge placed anywhere on the slab in any direction. These slabs will receive a troweled finish; slope to drain as indicated on drawings. Class "A" finish will be applied to all interior slabs, including garage slab.

63. Defective Work: **CONTRACTOR** shall, at **CENTEX HOME'S** discretion, remove from the site and replace any work **CENTEX HOMES** feels is defective.
64. Clean Up: **CONTRACTOR** shall maintain a clean job at all times. Equipment and materials used for future work for this project shall be stockpiled in a neat manner at an onsite location as designated by the Builder's representative. It is agreed that should the **CONTRACTOR** fail to abide by this requirement, the Builder reserves the rights to remove any such accumulated debris and to back charge the **CONTRACTOR** for costs of removal. **CONTRACTOR** shall be responsible for complete protection of his work against adverse weather, until concrete is adequately set and properly finished.
65. **CONTRACTOR** shall not dispose of any excess concrete on job site. Concrete truck chutes shall be rinsed only at location approved by **CENTEX HOME'S** Field Manager.
66. **CONTRACTOR** shall be responsible for complete protection of his work against adverse weather, until concrete is adequately set and properly finished.
67. Isolation Joints: **CONTRACTOR** shall provide isolation joints (expansion joints) to isolated fixed objects abutting or within slab area. And at changes in direction of concrete, ie. Driveway and lead walks, lead walk turns. They shall contain pre-molded joint filler for the full depth of the slab but shall not extend above the surface.
68. Landscape Contractor to provide 3" PVC Irrigation sleeves under sidewalks and drives to exposed planting areas surrounded by concrete areas. Intervals will not exceed eight feet or coordinate with landscape **CONTRACTOR** to run actual irrigation lines when forms are set and before flatwork is poured; also sub-base material for walks in these areas will be the type that will promote free flow, i.e. gravel.
69. Flatwork Driveways & Walks: **CONTRACTOR** shall be reinforced (per Soils Report). Reinforcements to be placed within the middle one third of the slab thickness. Jointing at maximum spacing of 8 feet.
70. Bid Excludes: Engineer's staking, masonry work, clean pad, rock or hard pan dig, slip sheeting for tile surfaces, backfilling exterior plumbing ditches or any other work not specified unless included in plans or drawings.

-END DOCUMENT-

CERTIFICATE OF SERVICE

I, William A. Hazeltine, do hereby certify that I am not less than 18 years of age and that on this 10th day of June 2010, I caused a copy of the written *Declaration of Philip Kopp in Support of Motion of Centex Homes et al. for Relief from Discharge Injunction* to be served upon the parties on the attached service list via U.S. Mail, First Class, postage pre-paid.

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Under penalty of perjury, I declare the foregoing to be true and correct.

June 10, 2011
Date

/s/ William A. Hazeltine
William A. Hazeltine