

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

In re:

BUILDING MATERIALS HOLDING
CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 09-12074 (KJC)
Jointly Administered

Related Docket No. 1933

**DECLARATION OF PHILIP KOPP IN SUPPORT OF
THE MOTION OF CENTEX HOMES, ET AL. FOR ENTRY OF
AN ORDER ENLARGING THE CLAIMS BAR DATE**

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") in a construction defect lawsuit pending in the Riverside County Superior Court of the State of California entitled *Guillen, et al. v. Centex Homes*, Case No. RIC 10010749 (the "State Action"). The facts stated herein are within my personal knowledge, and if called upon to testify, I could and would competently testify thereto.

2. From 2006 through 2007, Centex developed a residential development known as "Four Leaf Lane" in Corona, California (the "Project").

3. I am informed and believe that on or about February 10, 2006, C Construction, Inc. dba Campbell Concrete of California, a subsidiary of Building Materials Holding Corporation ("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 Agreement is attached hereto as Exhibit "1." 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 for each occurrence.

4. I am informed and believe that Campbell obtained general liability insurance

policies through ACE American Insurance Company ("ACE American") for policy periods of 11/11/2005 to 11/11/2006 and 11/11/2006 to 11/11/2007, wherein ACE American agreed to pay all sums not to exceed \$2,000,000 per each policy period, which Campbell became obligated to pay because of property damage and/or personal injury at the Project caused by an occurrence during the effective coverage period of the policy, in any way related to the work of Campbell.

5. I am informed and believe that the aforementioned ACE American policies provide that insolvency or bankruptcy of Campbell does not release ACE American from its obligations under the policies to pay covered damages on behalf of Campbell.

6. I am informed and believe that the aforementioned ACE American policies further provide that in the event that Campbell is unable to pay any deductible amount subject to the policies, or any portion thereof, ACE American's obligation to pay covered damages includes the deductible amount.

7. I am informed and believe that on or about July 23, 2009, Centex's regional office in Corona, California received notice of the Claims Bar Date of August 31, 2009. However, Centex's claim against Campbell related to the Project did not exist at the time of the notice, or on the Claims Bar Date. Therefore, Centex had no reason to act upon the Claims Bar Date notice.

8. I am also informed and believe that Centex's San Diego Division received notice of the Debtors' bankruptcy in connection with an arbitration hearing entitled *Burrow v. Centex Homes*, prior to the Claims Bar Date. The *Burrow* matter involved a single home construction defect claim in a housing development located in San Diego County, California, that was built by a different business unit of Centex, and involved a different SelectBuild trade (*i.e.*, HNR Framing). Because the homeowners' claims giving rise to Centex's claim against Campbell in the underlying state court action did not exist, and because *Burrow* involved an entirely different project and claim, Centex had no reason to file a proof of claim for the Campbell claim at that time.

9. On or about September 29, 2009, approximately a month after the Claims Bar

Date had passed, the owners of nine homes at the Project served Centex with a Notice of Claim pursuant to California Civil Code section 895, *et seq.* (hereinafter "California's Right to Repair Act") contending that property damage occurred and exists at their homes due to violations of building standards, and defective development, workmanship, repairs, materials, and construction of the Project.

10. Between September 29, 2009 and August 5, 2010, the homeowners at the Project served Centex with a total of eleven separate Notices of Claim pursuant to California's Right to Repair Act, bringing the total number of claimant homes to seventy-one (collectively, the "Statutory Claims"). True and correct copies of the eleven Notices of Claim that comprise the Statutory Claims, dated September 29, 2009, October 7, 2009, October 26, 2009, November 12, 2009, November 30, 2009, December 24, 2009, January 28, 2010, March 3, 2010, April 14, 2010, June 10, 2010, and August 5, 2010 are collectively attached hereto as Exhibit "2."

11. California's Right to Repair Act was enacted in 2002, and applies to all new residential homes sold in California on or after January 1, 2003. I am informed and believe that California's Right to Repair Act was enacted to reduce the impact of construction defect litigation by diverting defect claims away from the courts and into non-adversarial dispute resolution process. I am informed and believe that the California legislature designed the statute to allow the builder an opportunity to learn the allegations against it and work directly with the homeowner to try to resolve them in advance of litigation. Thus, the cornerstone of California's Right to Repair Act is the requirement for a non-adversarial pre-litigation process which is commenced when a homeowner provides the builder with a written notice and detailed claim information. The builder is then entitled to inspect and repair the alleged defects before a lawsuit can be filed. The pre-litigation procedures also require the builder to notify the implicated subcontractors of the claims, and involve the trades in the inspection and repair process. The Right to Repair Act prescribes a strict and specific timeline for the parties to carry out the pre-litigation procedures. For instance, a builder has fourteen days from receipt of the homeowner's notice of claim to acknowledge the claim and request inspections, and fourteen days thereafter to

complete initial inspections. The builder then has thirty days to make a repair offer to the homeowner, and the homeowner has thirty days to respond to the offer. The homeowner and the builder are also required to engage in mediation to resolve any disputes concerning the repair offer, and such mediation must occur within fifteen days of the homeowner's mediation request.

12. Upon receipt of each Notice of Claim, Centex notified Campbell of the Statutory Claims, and provided a copy of each Notice of Claim. When applicable, Centex also notified Campbell of upcoming site inspections and repairs. True and correct copies of Centex's notification letters to Campbell, *sans* enclosures, are collectively attached hereto as Exhibit "3."

13. On December 9, 2009, Campbell advised my office that Campbell filed a voluntary petition under Chapter 11 of the Bankruptcy Code. A true and correct copy of correspondence from SelectBuild's Risk Management Specialist dated December 9, 2009 is attached hereto as Exhibit "4." However, because the homeowners' Statutory Claims were proceeding under the pre-litigation procedures, it was neither necessary nor appropriate for Centex to pursue its indemnity claim against Campbell at that time. It would have been premature for Centex to seek relief from this Court to file a proof of claim or to lift the stay injunction before completing the repair process to determine whether the homeowners' Statutory Claims could be resolved under California's Right to Repair Act.

14. Between November 10, 2009 and August 31, 2010, Centex conducted several multi-day inspections of sixty-nine homes implicated in the Statutory Claims.

15. Between January 22, 2010 and September 30, 2010, Centex made repair offers on each of the sixty-nine homes inspected during the pre-litigation repair process. True and correct copies of two exemplar repair offers, one made on January 22, 2010, and another made on September 30, 2010, are collectively attached hereto as Exhibit "5."

16. In addition, between February 23, 2010 and October 18, 2010, Centex and the homeowners engaged in seven mediation sessions pursuant to the pre-litigation procedures in California's Right to Repair Act in an effort to resolve disputes concerning the scope of Centex's repair offers.

17. On or about June 1, 2010, before the repair process under California's Right to Repair Act was completed, the homeowners in the Statutory Claim ("Plaintiffs") prematurely commenced 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. A true and correct copy of Plaintiffs' Complaint filed in the State Action is attached hereto as Exhibit "6."

18. On August 6, 2010, Centex filed a motion to stay the State Action on the basis that Plaintiffs failed to fully comply with the pre-litigation procedures under California's Right to Repair Act. A true and correct copy of Centex's Motion to Stay All Proceedings Pending Compliance with Civil Code Section 895 et seq. in Lieu of an Answer is attached hereto as Exhibit "7."

19. On September 20, 2010, the court in the State Action denied Centex's motion to stay, and ordered Centex to respond to Plaintiffs' operative complaint.

20. On October 25, 2010, Centex filed its Answer to Plaintiffs' operative complaint in the State Action. A true and correct copy of Centex's Answer is attached hereto as Exhibit "8."

21. On or about November 22, 2010, Centex completed repairs at the last of the Plaintiffs' homes implicated in the Statutory Claim.

22. Following the completion of the repairs, Centex negotiated the terms of a case management order mandated by the court in the State Action. On February 25, 2011, the court in the State Action entered a Case Management Order, wherein the court deemed the State Action to be a "complex litigation" that requires specialized management to avoid placing undue burden on the court system. Accordingly, the Case Management Order set forth a detailed guideline governing each facet of pleading, discovery, pretrial and settlement matters in the State Action. A true and correct copy of the Case Management Order entered in the State Action is attached hereto as Exhibit "9."

23. On March 22, 2011, pursuant to the Case Management Order timeline in effect in the State Action, 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 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 Centex's Cross-Complaint filed in the State Action is attached hereto as Exhibit "10."

24. On or about April 21, 2011, pursuant to the Case Management Order timeline in effect in the State Action, Plaintiffs made their settlement demand to Centex. Plaintiffs' settlement demand consists of repair and investigation costs for seventy-one homes in excess of forty-six million five hundred thousand dollars (\$46,500,000). Plaintiffs contend that the repair cost for concrete hardscape defects and structural defects alone attributable to Campbell's scope of work at the Project exceed fifteen million dollars (\$15,000,000). A true and correct copy of Plaintiffs' settlement demand and preliminary cost of repair summary is attached hereto as Exhibit "11."

25. Based on Plaintiffs' settlement demand and cost of repair produced in the State Action, Campbell's indemnity exposure in the State Action could easily exceed fifteen million dollars (\$15,000,000).

26. Centex acted promptly and diligently to prosecute its indemnity claim against Campbell upon learning of Plaintiffs' settlement demand and repair costs in late April, 2011. Prior to my current private practice at Newmeyer & Dillion, I was Centex's in-house counsel overseeing Centex's construction defect litigation in Southern California. In my experience, a typical contribution of a concrete subcontractor towards settlement of construction defect claims involving single family detached homes is approximately \$1,000 to \$1,200 a house. Based on my inspection of the subject homes in the State Action, the settlement exposure for Campbell would be in the same range. Until I received Plaintiffs' settlement demand and cost of repair estimate, I had no reason to anticipate that Plaintiffs would be making a claim of such magnitude

for concrete subcontractor.

27. On July 18, 2011, I wrote to Maureen Thomas, who I understand to be the Debtors' in-house risk manager, to request that the Debtors stipulate to allow Centex to pursue Campbell's insurance for indemnity of the State Action. I explained that Campbell's insurance requires the insurance company to pay the deductible amount to pay damages or effect a settlement on behalf of Campbell, and that Centex does not have an obligation to pay the deductible amount to trigger coverage. A true and correct copy of my July 18, 2011 letter to Ms. Thomas is attached hereto as Exhibit "12." Campbell refused to stipulate.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in San Diego, California this first day of September, 2011.

Philip Kopp

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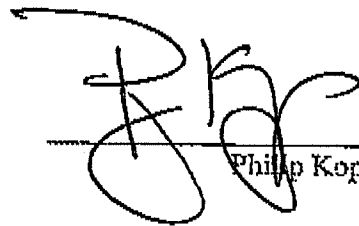

Philip Kopp

EXHIBIT 1

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.

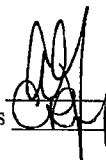
NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

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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Contractor Initials
Builder Initials

Handwritten initials for the Contractor and Builder. The Contractor's initials are 'CM' and the Builder's initials are 'CL'.

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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Contractor Initials

Builder Initials

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)

Contractor Initials

Builder Initials

[Handwritten signatures]

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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Handwritten initials for the Contractor and Builder. The Contractor's initials are 'AJ' and the Builder's initials are 'CEH'.

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.

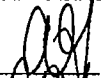

15. COMPLIANCE WITH LAWS; SAFETY.

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.

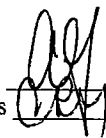
4. Subcontractor will not use any chemicals in its performance of the Work or incorporate any chemicals into materials or products supplied to Centex Homes or to the Site unless Subcontractor has given Centex Homes prior written notice of the existence and the possible exposure to such chemicals, has 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.

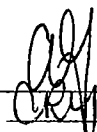
17. DRUGS AND ALCOHOL. No illegal drugs or alcohol will be permitted on the Site. Subcontractor's employees, agents, subcontractors or suppliers in possession of illegal drugs or alcohol on the Site will be subject to immediate termination. Individuals on the Site whose performance, coordination or ability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

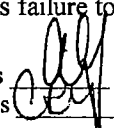
2. **Dispute Settlement.** Subcontractor accepts and agrees to be bound by the procedural rules and regulations and decisions of the National Joint Board for the settlement of jurisdictional disputes and will comply with any decisions of the National Joint Board which affect the performance of the Work.

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;

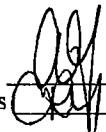
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- b. Occurrence Form only ("Claims Made" forms are not acceptable), with a provision that defense costs are paid in addition to and do not deplete any policy limits. If defense costs deplete policy limits, then the limits required above are increased 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:



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);

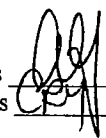
4. If leased employees are used, issuance of an Alternate Employer's Endorsement;
and

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 Construction Agreement – Traditional Contract (1-17-06

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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:

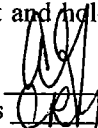
1. **Claim** (collectively, "**Claims**") shall mean demands, obligations, damages, actions, causes of action, suits, losses, judgments, settlements, fines, penalties, liabilities, costs and expenses (Including attorneys' fees, disbursements and court costs, and all other professional, expert or consultants' 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.

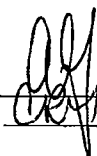
7. **Subcontractor Party** (collectively "**Subcontractor Parties**") shall mean Subcontractor, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts, errors, omissions or liabilities, including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

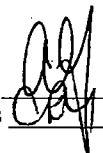
C. As part of the Work and prior to completion thereof, Subcontractor shall provide Centex Homes with copies of any and all plans, specifications, grading plans, soils reports, engineering calculations, maintenance and preventative maintenance recommendations, limited warranty or "useful life" information 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).

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Handwritten initials of the Contractor and Builder, written over the printed labels "Contractor Initials" and "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

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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.

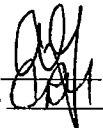
H. Arbitrator. The arbitrator shall be a neutral, impartial individual who is either a retired judge or an attorney licensed to practice law in California and having at least fifteen (15) years of experience with substantial experience in the type of matter in dispute and with a strong emphasis on the 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.

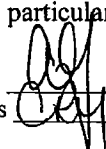
2. **Notice.** To appeal, Centex Homes or a Purchaser must file with the AAA and serve on all other parties a notice stating the general nature of the change it seeks in the award. The notice must be filed no later than thirty (30) days after the date of the award. If Centex Homes or a Purchaser appeals, 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

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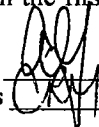



27. ASSIGNMENT; SUCCESSORS AND ASSIGNS. Subcontractor shall not assign or subcontract this Agreement or any portion thereof or any money due or which may become due hereunder without the prior written consent of Centex Homes. In addition to constituting a default under this Agreement, any assignment 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

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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.

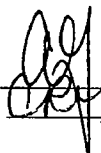
34. OTHER AGREEMENTS. Should there now or hereafter exist one or more other agreements between the parties or with any affiliated corporation or company of either concerning this or any other construction project, then a breach by Subcontractor under the terms of any such agreement, at the option of 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.

Handwritten initials for the Contractor and Builder. The Contractor's initials are 'AL' and the Builder's initials are 'CRH'.

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:

Title:

Christine R. Marquez
Purchasing Manager

"SUBCONTRACTOR"

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

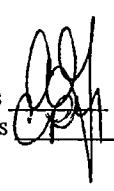
By: 

Name:

Title:

ARTHUR GARRATT

CHIEF ESTIMATOR



SCHEDULE A

Construction Agreement (1-17-06)

Contractor Initials
Builder Initials

Handwritten initials for Contractor and Builder, written over two horizontal lines.

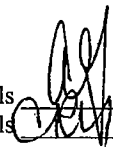
SCHEDULE B

DESCRIPTION OF THE WORK

(TO BE PROVIDED WHEN CONTRACT AWARDED)

Construction Agreement (1-17-06)

Contractor Initials
Builder Initials

Handwritten signatures for the Contractor and Builder, written over the labels 'Contractor Initials' and 'Builder Initials' respectively.

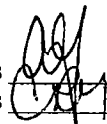
SCHEDULE C

CONTRACT PRICE

(TO BE PROVIDED WHEN CONTRACT AWARDED)

Construction Agreement (1-17-06)

Contractor Initials
Builder Initials

Handwritten signatures for the Contractor and Builder, consisting of stylized 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 'J. Smith', is written over a horizontal line.

HOLD HARMLESS AGREEMENT FOR SCAFFOLDING

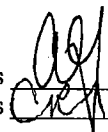
By his initials to this agreement, the Contractor agrees to the following provisions in consideration for allowing the owner, his employees and subcontractors the right to use scaffolding provided by the Scaffolding/Stucco/Framing Contractor:

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



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: _____

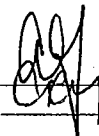
Name: _____ Title: _____ Phone: _____

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)

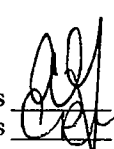
(Company Name)

By: _____

(Title)

Construction Agreement (1-17-06)

Contractor Initials _____
Builder Initials _____



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)

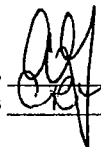
By: _____

(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.

Construction Agreement (1-17-06)

Contractor Initials
Builder Initials



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 Signature]
[Handwritten Signature]

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

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

Handwritten initials for Contractor and Builder. The Contractor's initials are 'CR' and the Builder's initials are 'CR'.

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.

JOB SITE 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** 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):
- Post Tension Slabs shall include
 - Post tension cables installed on center, spacing per plans by Post Tension Design Company of Record.
 - Concrete shall be **CENTEX HOME'S** 3000 psi standard mix, UON.
 - 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.
 - Cylinder breaks and test results.
 - Stressing and cutting cables and patching resultant cable holes. Cable ends are to be painted with rust preventing paint (Rustoleum) prior to patching.
 - 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 1/4 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.
- 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.
 - 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

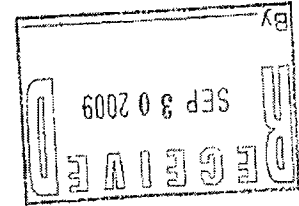
- a. **CONTRACTOR** shall provide and install foundation grade 2 x 4 (non CCA) pressure treated sleepers at all exterior door openings including optional doors.
 - b. **CONTRACTOR** shall provide and install foundation grade 2 x 6 (non CCA) pressure treated sleepers at Fire Door into Garage opening.
 - 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-

EXHIBIT 2

LAW OFFICES OF
Jerry La Cues
3110 Chino Avenue, Suite 230
Chino Hills, California 91709
(909) 627-3535 • (909) 590-3388 – Fax



September 29, 2009

Centex Homes
1265 Corona Pointe Court
Corona, California 92879

Via Certified Mail

RE: Civil Code §910 et seq. notice

To Whom It May Concern:

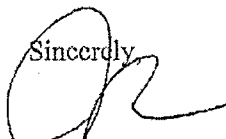
This office has been retained to represent several homeowners in Tract No. 30817 Corona, California 92880 concerning any and all defects arising from the construction of their homes. The specific addresses are as follows: 12691 Dairy Street, 12722 Kristi Lynn Court, 7244 Morning Hills Drive, 12769 Eastern Shore Drive, 12726 Eastern Shore Drive, 12756 Eastern Shore Drive, 12806 Eastern Shore Drive, 12799 Eastern Shore Drive, and 12705 Kristi Lynn Court. Pursuant to Civil Code §910 et seq., you are hereby noticed that, after a preliminary investigation, the following building violations and/or defects exist:

1. Site Conditions
 - a. Excessive subsurface soil moisture in non-irrigated areas.
 - b. Improper grading of lots restricting surface drainage.
2. Structural
 - a. Concrete footings are undersized. Concrete footing depths of 9" to 11" embedment below grade were observed in areas supporting two story structures.
 - b. Excessive cracking in FT slabs.
 - c. Concrete slab thickness may be below required minimums.
 - d. Concrete slabs constructed out of level.
 - e. Excessive cracking of concrete garage slabs.
 - f. Interior shear walls terminate at the bottom cord of the roof trusses and do not transfer to the roof.
 - g. Excessive roof deflection.
 - h. Walls constructed not plumb.
 - i. Attic access areas improperly constructed.
 - j. Roof sheathing improperly installed.
 - k. Roof sheathing nailing not fully set flush to plywood surface.

3. Concrete Tile Roofing
 - a. Hip and valley tiles unsecured.
 - b. Field tiles unsecured.
 - c. Improper tile spacing at valleys
 - d. Roof penetrations not properly sealed.
 - e. Cracked chipped or broken tiles.
4. Stucco
 - a. Excessive cracking.
 - b. Spauling.
 - c. Blocked weep screeds.
 - d. Excessive discoloration.
 - e. Improperly embedded wood.
 - f. Improper foam trim installation.
5. Drywall
 - a. Surface cracks were observed in numerous locations throughout the residences.
6. Electrical
 - a. Overloaded electrical circuit breakers.
 - b. Improper GFCI protection.
 - c. Non-working electrical outlets and switches.
7. HVAC
 - a. Exterior compressors installed out of level.
 - b. The insulated hose sets in the attic are not properly supported.
 - c. The insulated hose sets at the exterior compressors are not properly protected and the insulation is deteriorating.
 - d. Supply vents are missing to habitable rooms.
8. Plumbing
 - a. The PEX plastic piping is improperly terminated without the use of the required angle stops.
 - b. The PEX plastic piping is improperly supported.
 - c. The gas supply flex is improperly supported in the attic.
 - d. The attic installed condensate drains are installed improperly, without the required slope.
 - e. A gas leak was detected in an attic and was repaired at the time of the inspection.

Further, claimants hereby request copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations.

Sincerely,



Jerry La Cues

LAW OFFICES OF
Jerry La Cues
3110 Chino Avenue, Suite 230
Chino Hills, California 91709
(909) 627-3535 · (909) 590-3388 – Fax

October 7, 2009

Centex Homes
1265 Corona Pointe Court
Corona, California 92879

Via Certified Mail

RE: *Civil Code §910 et seq. notice*

To Whom It May Concern:

This office has been retained to represent several homeowners in Tract No. 30817 Corona, California 92880 concerning any and all defects arising from the construction of their homes. The specific addresses are as follows: 7240 Bay Bridge Road, 7241 Blue Crab Court, 12946 Eastern Shore Drive, 12829 Eastern Shore Drive, and 12712 Kristi Lynn Court. Pursuant to Civil Code §910 et seq., you are hereby noticed that, after a preliminary investigation, the following building violations and/or defects exist:

1. Site Conditions
 - a. Excessive subsurface soil moisture in non-irrigated areas.
 - b. Improper grading of lots restricting surface drainage.
2. Structural
 - a. Concrete footings are undersized. Concrete footing depths of 9" to 11" embedment below grade were observed in areas supporting two story structures.
 - b. Excessive cracking in PT slabs.
 - c. Concrete slab thickness may be below required minimums.
 - d. Concrete slabs constructed out of level.
 - e. Excessive cracking of concrete garage slabs.
 - f. Interior shear walls terminate at the bottom cord of the roof trusses and do not transfer to the roof.
 - g. Excessive roof deflection.
 - h. Walls constructed not plumb.
 - i. Attic access areas improperly constructed.
 - j. Roof sheathing improperly installed.
 - k. Roof sheathing nailing not fully set flush to plywood surface.
3. Concrete Tile Roofing
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 - b. Field tiles unsecured.
 - c. Improper tile spacing at valleys
 - d. Roof penetrations not properly sealed.

- e. Cracked chipped or broken tiles.
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 - f. Improper foam trim installation.
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 - b. Improper GFCI protection.
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 - d. Supply vents are missing to habitable rooms.
- 8. Plumbing
 - a. The PEX plastic piping is improperly terminated without the use of the required angle stops.
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 - c. The gas supply flex is improperly supported in the attic.
 - d. The attic installed condensate drains are installed improperly, without the required slope.
 - e. A gas leak was detected in an attic and was repaired at the time of the inspection.

Further, claimants hereby request copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations.

Sincerely,



Jerry La Cues, Esq.

LAW OFFICES OF
Jerry La Cues
3110 Chino Avenue, Suite 230
Chino Hills, California 91709
(909) 627-3535 · (909) 590-3388 – Fax

October 26, 2009

Centex Homes
1265 Corona Pointe Court
Corona, California 92879

Via Certified Mail

RE: *Civil Code §910 et seq. notice*

To Whom It May Concern:

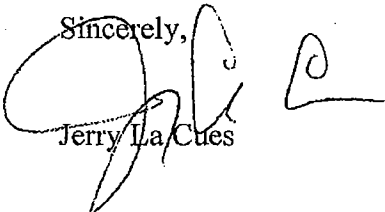
This office has been retained to represent several homeowners in Tract No. 30817 Corona, California 92880 concerning any and all defects arising from the construction of their homes. The specific addresses are as follows: 7392 Morning Hills Drive, 12716 Eastern Shore, 12895 Gingerwood Court, and 7300 Altizer Court. Pursuant to Civil Code §910 et seq., you are hereby noticed that, after a preliminary investigation, the following building violations and/or defects exist:

1. Site Conditions
 - a. Excessive subsurface soil moisture in non-irrigated areas.
 - b. Improper grading of lots restricting surface drainage.
2. Structural
 - a. Concrete footings are undersized. Concrete footing depths of 9" to 11" embedment below grade were observed in areas supporting two story structures.
 - b. Excessive cracking in PT slabs.
 - c. Concrete slab thickness may be below required minimums.
 - d. Concrete slabs constructed out of level.
 - e. Excessive cracking of concrete garage slabs.
 - f. Interior shear walls terminate at the bottom cord of the roof trusses and do not transfer to the roof.
 - g. Excessive roof deflection.
 - h. Walls constructed not plumb.
 - i. Attic access areas improperly constructed.
 - j. Roof sheathing improperly installed.
 - k. Roof sheathing nailing not fully set flush to plywood surface.
3. Concrete Tile Roofing
 - a. Hip and valley tiles unsecured.
 - b. Field tiles unsecured.
 - c. Improper tile spacing at valleys
 - d. Roof penetrations not properly sealed.

- e. Cracked chipped or broken tiles.
- 4. Stucco
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 - b. Spauling.
 - c. Blocked weep screeds.
 - d. Excessive discoloration.
 - e. Improperly embedded wood.
 - f. Improper foam trim installation.
- 5. Drywall
 - a. Surface cracks were observed in numerous locations throughout the residences.
- 6. Electrical
 - a. Overloaded electrical circuit breakers.
 - b. Improper GFIC protection.
 - c. Non-working electrical outlets and switches.
- 7. HVAC
 - a. Exterior compressors installed out of level.
 - b. The insulated hose sets in the attic are not properly supported.
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 - d. Supply vents are missing to habitable rooms.
- 8. Plumbing
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 - c. The gas supply flex is improperly supported in the attic.
 - d. The attic installed condensate drains are installed improperly, without the required slope.
 - e. A gas leak was detected in an attic and was repaired at the time of the inspection.

Further, claimants hereby request copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations.

Sincerely,


Jerry LaCues

LAW OFFICES OF

Jerry La Cues

3110 Chino Avenue, Suite 230
Chino Hills, California 91709
(909) 627-3535 · (909) 590-3388 – Fax

November 12, 2009

Philip D. Kopp, Esq.
Newmeyer & Dillion, LLP
895 Dove Street, 5th Floor
Newport Beach, California 92660

*Via Regular Mail
Per Agreement*

RE: *Civil Code §910 et seq. notice*

Dear Mr. Kopp:

This office has been retained to represent several homeowners in Tract No. 30817 Corona, California 92880 concerning any and all defects arising from the construction of their homes. The specific addresses are as follows: 7321 Hollyheath Court, 7233 Bay Bridge Road, 12932 Gingerwood Court, 12809 Eastern Shore Drive, 12796 Eastern Shore Drive, and 12906 Eastern Shore Drive. Pursuant to Civil Code §910 et seq., you are hereby noticed that, after a preliminary investigation, the following building violations and/or defects exist:

1. Site Conditions
 - a. Excessive subsurface soil moisture in non-irrigated areas.
 - b. Improper grading of lots restricting surface drainage.
2. Structural
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Jerry La Cues

LAW OFFICES OF

Jerry La Cues

3110 Chino Avenue, Suite 230
Chino Hills, California 91709
(909) 627-3535 · (909) 590-3388 – Fax

November 30, 2009

Philip D. Kopp, Esq.
Newmeyer & Dillion, LLP
895 Dove Street, 5th Floor
Newport Beach, California 92660

***Via Regular Mail
Per Agreement***

RE: Civil Code §910 et seq. notice

Dear Mr. Kopp:

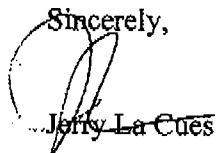
This office has been retained to represent several homeowners in Tract No. 30817 Corona, California 92880 concerning any and all defects arising from the construction of their homes. The specific addresses are as follows: 7227 Beckett Field Lane, 12876 Eastern Shore Drive, 7400 Morning Hills Drive, 12892 Gingerwood Court, 12793 Jack Lane, 7222 Excelsior Drive, 7268 Blue Crab Court, 7384 Morning Hills Drive, and 12701 Dairy Street. Pursuant to Civil Code §910 et seq., you are hereby noticed that, after a preliminary investigation, the following building violations and/or defects exist:

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 - b. Improper grading of lots restricting surface drainage.
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 - f. Improper foam trim installation.
- 5. Drywall
 - a. Surface cracks were observed in numerous locations throughout the residences.
- 6. Electrical
 - a. Overloaded electrical circuit breakers.
 - b. Improper GFIC protection.
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- 7. HVAC
 - a. Exterior compressors installed out of level.
 - b. The insulated hose sets in the attic are not properly supported.
 - c. The insulated hose sets at the exterior compressors are not properly protected and the insulation is deteriorating.
 - d. Supply vents are missing to habitable rooms.
- 8. Plumbing
 - a. The PEX plastic piping is improperly terminated without the use of the required angle stops.
 - b. The PEX plastic piping is improperly supported.
 - c. The gas supply flex is improperly supported in the attic.
 - d. The attic installed condensate drains are installed improperly, without the required slope.
 - e. A gas leak was detected in an attic and was repaired at the time of the inspection.

Further, claimants hereby request copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations.

Sincerely,



Jeffrey LaCues

1084-331
PDK/SSW/JCL/HS

LAW OFFICES OF
Jerry La Cues
3110 Chino Avenue, Suite 230
Chino Hills, California 91709
(909) 627-3535 · (909) 590-3388 – Fax

December 24, 2009

Philip D. Kopp, Esq.
Newmeyer & Dillion, LLP
895 Dove Street, 5th Floor
Newport Beach, California 92660

***Via Regular Mail
Per Agreement***

RE: Civil Code §910 et seq. notice

Dear Mr. Kopp:

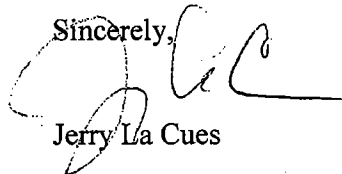
This office has been retained to represent several homeowners in Tract Nos. 30816, 30817, and 31323 in Corona, California 92880 concerning any and all defects arising from the construction of their homes. The specific addresses are as follows: 7313 Altizer Court, 7294 Morning Hills Drive, 7280 Bay Bridge Road, 7309 Canterwood Court, 7299 Canterwood Court, 12912 Gingerwood Court, 7225 Excelsior Drive, 7242 Excelsior Drive, 12783 Jack Lane, 12723 Jack Lane, 12773 Jack Lane, and 12728 Dairy Street. Pursuant to Civil Code §910 et seq., you are hereby noticed that, after a preliminary investigation, the following building violations and/or defects exist:

1. Site Conditions
 - a. Excessive subsurface soil moisture in non-irrigated areas.
 - b. Improper grading of lots restricting surface drainage.
2. Structural
 - a. Concrete footings are undersized. Concrete footing depths of 9" to 11" embedment below grade were observed in areas supporting two story structures.
 - b. Excessive cracking in PT slabs.
 - c. Concrete slab thickness may be below required minimums.
 - d. Concrete slabs constructed out of level.
 - e. Excessive cracking of concrete garage slabs.
 - f. Interior shear walls terminate at the bottom cord of the roof trusses and do not transfer to the roof.
 - g. Excessive roof deflection.
 - h. Walls constructed not plumb.
 - i. Attic access areas improperly constructed.
 - j. Roof sheathing improperly installed.
 - k. Roof sheathing nailing not fully set flush to plywood surface.
3. Concrete Tile Roofing
 - a. Hip and valley tiles unsecured.

- b. Field tiles unsecured.
 - c. Improper tile spacing at valleys
 - d. Roof penetrations not properly sealed.
 - e. Cracked chipped or broken tiles.
- 4. Stucco
 - a. Excessive cracking.
 - b. Spauling.
 - c. Blocked weep screeds.
 - d. Excessive discoloration.
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 - f. Improper foam trim installation.
- 5. Drywall
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 - d. The attic installed condensate drains are installed improperly, without the required slope.

Further, claimants hereby request copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations.

Sincerely,



Jerry La Cues

LAW OFFICES OF

Jerry La Cues

3110 Chino Avenue, Suite 230
Chino Hills, California 91709
(909) 627-3535 • (909) 590-3388 – Fax

January 28, 2010

Philip D. Kopp, Esq.
Newmeyer & Dillion, LLP
895 Dove Street, 5th Floor
Newport Beach, California 92660

*Via Regular Mail
Per Agreement*

RE: *Civil Code §910 et seq. notice*

Dear Mr. Kopp:

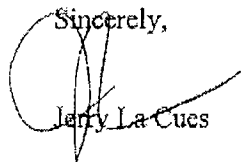
This office has been retained to represent several homeowners in Tract Nos. 30816, 30817, and 31323 in Corona, California 92880 concerning any and all defects arising from the construction of their homes. The specific addresses are as follows: 7278 Blue Crab Court, 12791 Dairy Street, 7215 Excelsior Drive, 12766 Eastern Shore, 7273 Bay Bridge Road, 7217 Beckett Field, 7252 Excelsior Drive, and 12902 Gingerwood Court. Pursuant to Civil Code §910 et seq., you are hereby noticed that, after a preliminary investigation, the following building violations and/or defects exist:

1. Site Conditions
 - a. Excessive subsurface soil moisture in non-irrigated areas.
 - b. Improper grading of lots restricting surface drainage.
2. Structural
 - a. Concrete footings are undersized. Concrete footing depths of 9" to 11" embedment below grade were observed in areas supporting two story structures.
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 - e. Excessive cracking of concrete garage slabs.
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 - c. The gas supply flex is improperly supported in the attic.
 - d. The attic installed condensate drains are installed improperly, without the required slope.

Further, claimants hereby request copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations.

Sincerely,



Jerry La Cues

1084-331
PRK/SSW/KCL/HS

LAW OFFICES OF
Jerry La Cues
3110 Chino Avenue, Suite 230
Chino Hills, California 91709
(909) 627-3535 • (909) 590-3388 – Fax

March 3, 2010

Philip D. Kopp, Esq.
Newmeyer & Dillion, LLP
895 Dove Street, 5th Floor
Newport Beach, California 92660

*Via Regular Mail
Per Agreement*

RE: Civil Code §910 et seq. notice

Dear Mr. Kopp:

This office has been retained to represent several homeowners in Tract Nos. 30816, 30817, and 31323 in Corona, California 92880 concerning any and all defects arising from the construction of their homes. The specific addresses are as follows: 12618 Dairy Street, 7428 Morning Hills Drive, 12678 Dairy Street, 7260 Bay Bridge Road, 7306 Canterwood Court, and 12628 Dairy Street. Pursuant to Civil Code §910 et seq., you are hereby noticed that, after a preliminary investigation, the following building violations and/or defects exist:

1. Site Conditions

- a. Excessive subsurface soil moisture in non-irrigated areas.
- b. Improper grading of lots restricting surface drainage.

2. Structural

- a. Concrete footings are undersized. Concrete footing depths of 9" to 11" embedment below grade were observed in areas supporting two story structures.
- b. Excessive cracking in PT slabs.
- c. Concrete slab thickness may be below required minimums.
- d. Concrete slabs constructed out of level.
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- f. Interior shear walls terminate at the bottom cord of the roof trusses and do not transfer to the roof.
- g. Excessive roof deflection.
- h. Walls constructed not plumb.
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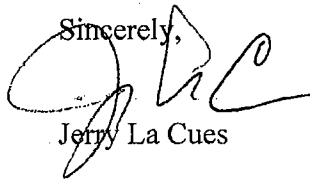
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- b. Field tiles unsecured.

- c. Improper tile spacing at valleys
- d. Roof penetrations not properly sealed.
- e. Cracked chipped or broken tiles.
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 - a. Excessive cracking.
 - b. Spauling.
 - c. Blocked weep screeds.
 - d. Excessive discoloration.
 - e. Improperly embedded wood.
 - f. Improper foam trim installation.
- 5. Drywall
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 - b. The PEX plastic piping is improperly supported.
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 - d. The attic installed condensate drains are installed improperly, without the required slope.

Further, claimants hereby request copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations.

Sincerely,



Jerry La Cues

1084-331
PDK/SSW/JCL/HS

LAW OFFICES OF

Jerry La Cues

3110 Chino Avenue, Suite 230
Chino Hills, California 91709
(909) 627-3535 · (909) 590-3388 – Fax

April 14, 2010

Philip D. Kopp, Esq.
Newmeyer & Dillion, LLP
895 Dove Street, 5th Floor
Newport Beach, California 92660

*Via Regular Mail
Per Agreement*

RE: *Civil Code §910 et seq. notice*

Dear Mr. Kopp:

This office has been retained to represent several homeowners in Tract Nos. 30816, 30817, and 31323 in Corona, California 92880 concerning any and all defects arising from the construction of their homes. The specific addresses are as follows: 12866 Eastern Shore Drive, 12735 Kristi Lynn Court, 7245 Excelsior Drive, and 7289 Canterwood Court. Pursuant to Civil Code §910 et seq., you are hereby noticed that, after a preliminary investigation, the following building violations and/or defects exist:

1. Site Conditions
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Further, claimants hereby request copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations.

Sincerely,


Jerry La Cues

LAW OFFICES OF
Jerry La Cues
3110 Chino Avenue, Suite 230
Chino Hills, California 91709
(909) 627-3535 · (909) 590-3388 – Fax

June 10, 2010

Philip D. Kopp, Esq.
Newmeyer & Dillion, LLP
895 Dove Street, 5th Floor
Newport Beach, California 92660

***Via Regular Mail
Per Agreement***

RE: Civil Code §910 et seq. notice

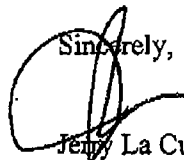
Dear Mr. Kopp:

This office has been retained to represent several homeowners in Tract Nos. 30816, 30817, and 31323 in Corona, California 92880 concerning any and all defects arising from the construction of their homes. The specific addresses are as follows: 7396 Morning Hills Drive, 12859 Eastern Shore, 7237 Beckett Field Lane, 12729 Eastern Shore Drive and 12688 Dairy Street. Pursuant to Civil Code §910 et seq., you are hereby noticed that, after a preliminary investigation, the following building violations and/or defects exist:

1. Site Conditions
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Further, claimants hereby request copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations.

Sincerely,

Jenny La Cues

LAW OFFICES OF
Jerry La Cues
3110 Chino Avenue, Suite 230
Chino Hills, California 91709
(909) 627-3535 · (909) 590-3388 – Fax

August 5, 2010

Via Regular Mail per Agreement

Philip D. Kopp, Esq.
Newmeyer & Dillion, LLP
895 Dove Street, 5th Floor
Newport Beach, California 92660

RE: Civil Code §910 et seq. notice

Dear Mr. Kopp:

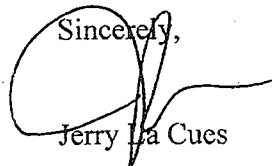
This office has been retained to represent several homeowners in Tract Nos. 30816, 30817, and 31323 in Corona, California 92880 concerning any and all defects arising from the construction of their homes. The specific addresses are as follows: 12885 Gingerwood Court, 12966 Eastern Shore Drive, and 7270 Bay Bridge Road. Pursuant to Civil Code §910 et seq., you are hereby noticed that, after a preliminary investigation, the following building violations and/or defects exist:

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Further, claimants hereby request copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations.

Sincerely,



Jerry La Cues

EXHIBIT 3



NEWMAYER & DILLION LLP
ATTORNEYS AT LAW

PHILIP D. KOPP
Philip.Kopp@ndlf.com

File No.:
1084.101

October 15, 2009

VIA CERTIFIED MAIL, U.S. MAIL & FACSIMILE

C Construction, Inc. dba Campbell Concrete of California
1640 W. Pellisier Road,
Colton, CA 92324

Re: Notice of Commencement of Legal Proceeding
Four Leaf Lane, Corona, California
Our Client: Centex Homes

To Whom It May Concern:

We represent Centex Homes ("Centex ") as personal counsel in the above-referenced matter. On September 29, 2009, Claimants provided Centex with a written Notice of Claim of Violation of Functionality Standards pursuant to Civil Code section 895, et seq ("Notice"). A copy of the claim notice is enclosed for your reference. Under California law, this notice has the same force and effect as a notice of commencement of legal proceeding.

The six Claimants reside in the Four Leaf Lane development located in Corona, California. In particular, your work is alleged to violate the functionality standards set forth in section 896.

By this letter, Centex requests that you defend and indemnify it with respect to this matter pursuant to your contract with Centex and California law. We have sent similar requests to Arch Insurance Company and Arch Excess & Surplus Insurance because they also insure Centex as an additional insured under your policies of insurance. If there are any insurers that we missed, please tender Centex's defense and indemnity when you tender your own or give us the names of the insurers so that we can notify them directly.

California Law requires Centex to acknowledge Claimants' Notice and inspect the residences, if at all, not later than October 27, 2009. Presently, we anticipate inspecting and testing the alleged violations in the Claimants residences within the time required. Please contact us immediately in writing should you wish to attend. Additionally, within 30 days after the inspection, a limited window of opportunity will exist for Centex to make a proposal to repair the observed violations, if any.

1861544.1

895 DOVE STREET	1333 N CALIFORNIA BLVD
5 th FLOOR	SUITE 440
NEWPORT BEACH CA 92660	WALNUT CREEK CA 94596
T 949 854 7000	T 925.988.3200
F 949 854 7099	F 925.988.3299

October 15, 2009

Page 2

We also wish to notify you that should Centex prevail on its claim for indemnity against you, it also will seek attorneys' fees pursuant to the contract and under California law [Code Civ. Proc., §1021.6.]

We thank you in advance for your prompt attention to this demand and look forward to hearing from you and your insurance carriers.

Very truly yours,

A handwritten signature in black ink, appearing to be "P.D. Kopp", written in a cursive style.

Philip D. Kopp

PDK:hs



NEWMAYER & DILLION LLP
ATTORNEYS AT LAW

PHILIP D. KOPP
Philip.Kopp@ndlf.com

File No.:
1084.331

October 23, 2009

VIA CERTIFIED MAIL, U.S. MAIL & FACSIMILE

C Construction, Inc. dba Campbell Concrete of California
1640 W. Pellisier Road
Colton, CA 92324

Re: Notice of Commencement of Legal Proceeding
SECOND SB800 Claim: 5 Additional Homes
Project: Four Leaf Lane, Corona, California

To Whom It May Concern:

We represent Centex Homes ("Centex ") as personal counsel in the above-referenced matter.

On October 7, 2009, Claimants provided Centex with an additional written Notice of Claim of Violation of Functionality Standards pursuant to Civil Code section 895, et seq ("Notice"). A copy of the claim notice is enclosed for your reference.

This SB800 claim is in addition to the first claim dated September 29, 2009 for a total of 14 homes in the Four Leaf Lane development in Corona, California.

A copy of the Homeowner matrix is also enclosed for your review and files.

Very truly yours,

Philip D. Kopp

PDK/hs

Enclosures

1872506.1

895 DOVE STREET	1333 N CALIFORNIA BLVD
5 th FLOOR	SUITE 440
NEWPORT BEACH CA 92660	WALNUT CREEK CA 94596
T 949 854 7000	T 925.988.3200
F 949 854 7099	F 925.988.3299

LAW OFFICES OF
Jerry La Cues
3110 Chino Avenue, Suite 230
Chino Hills, California 91709
(909) 627-3535 • (909) 590-3388 – Fax

October 7, 2009

Centex Homes
1265 Corona Pointe Court
Corona, California 92879

Via Certified Mail

RE: *Civil Code §910 et seq. notice*

To Whom It May Concern:

This office has been retained to represent several homeowners in Tract No. 30817 Corona, California 92880 concerning any and all defects arising from the construction of their homes. The specific addresses are as follows: 7240 Bay Bridge Road, 7241 Blue Crab Court, 12946 Eastern Shore Drive, 12829 Eastern Shore Drive, and 12712 Kristi Lynn Court. Pursuant to Civil Code §910 et seq., you are hereby noticed that, after a preliminary investigation, the following building violations and/or defects exist:

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 - d. The attic installed condensate drains are installed improperly, without the required slope.
 - e. A gas leak was detected in an attic and was repaired at the time of the inspection.

Further, claimants hereby request copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations.

Sincerely,


Jerry La Cues, Esq.

**Aiken v. Centex Homes
SB800 Claim**

File No: 1084.331

HOMEOWNER MATRIX

14 Homes located in Corona, CA
Project: Four Leaf Lane
Total Number of Homeowner Claimants: 14

Claimant Last	Claimant First	Address	Project	Tract	Lot	Phase	Plan	NOC	COE
Aiken	James & Karleen	12726 Eastern Shore Drive	Four Leaf Lane	30817	259	16	TBD	TBD	2/22/07
Beas	Jose	12806 Eastern Shore Drive	Four Leaf Lane	30817	251	9	TBD	TBD	3/17/06
Castro	Michael & Stephanie	12722 Kristi Lynn Court	Four Leaf Lane	30816	6	1	3808	8/25/05	8/10/05
Chin & Huang	Sengnam (Eddie) & Anna	12946 Eastern Shore Drive	Four Leaf Lane	30817	234	6	3568	12/20/05	12/30/05
Galvez	Ruben	12691 Dairy Street	Four Leaf Lane	30817	261	18	2916	10/26/07	7/13/07
Guillen	Edward	12769 Eastern Shore Drive	Four Leaf Lane	30817	193	17	2916	2/8/07	2/27/07
Huffman	Destinee	12756 Eastern Shore Drive	Four Leaf Lane	30817	256	17	TBD	TBD	1/31/07
Kellman	Andrew & Beverly	7240 Bay Bridge Road	Four Leaf Lane	30817	222	5	4603	11/29/05	12/9/05
Martinez	Roy & Christy	12712 Kristi Lynn Court	Four Leaf Lane	30816	5	1	2916	8/25/05	8/12/05
Murphy & Piper	Rosemary & Royce	7244 Morning Hills Drive	Four Leaf Lane	30817	134	16	3568	12/13/06	2/23/07
Robison & Hurd	Bertram & Tracy	7241 Blue Crab Court	Four Leaf Lane	30817	211	7	3808	1/12/06	1/31/06
Rowens	Carl & Charlene	12829 Eastern Shore Drive	Four Leaf Lane	30817	199	9	3808	3/22/06	3/22/06
Salazar	Orlanda & Ibis	12705 Kristi Lynn Court	Four Leaf Lane	30816	4	1	3808	8/25/05	8/26/05
Wurtz	Barbara	12799 Eastern Shore Drive	Four Leaf Lane	30817	196	9	2648	3/22/06	3/17/06



NEWMAYER & DILLION LLP
ATTORNEYS AT LAW

PHILIP D. KOPP
Philip.Kopp@ndlf.com

File No.:
1084.331

November 9, 2009

VIA CERTIFIED MAIL, U.S. MAIL & FACSIMILE

Lia Stivaletta
Risk Management Specialist
SelectBuild

On Behalf of C. Construction, Inc. dba Campbell Concrete of California
340 Rancheros Drive, Suite 174
San Marcos, CA 92069

Re: Notice of Commencement of Legal Proceeding
Third SB800 Claim: 4 Additional Homes
Project: Four Leaf Lane, Corona, California

Dear Ms. Stivaletta:

We represent Centex Homes ("Centex ") as personal counsel in the above-referenced matter.

On October 26, 2009, Claimants provided Centex with a **third** written Notice of Claim of Violation of Functionality Standards pursuant to Civil Code section 895, et seq ("Notice"). A copy of the claim notice is enclosed for your reference.

This third SB800 claim is in addition to the initial claim dated September 29, 2009 and the second claim dated 10/7/09 for a total of 18 homes in the Four Leaf Lane development in Corona, California.

A copy of the Homeowner matrix is also enclosed for your review and files.

Very truly yours,

Philip D. Kopp

PDK/hs
Enclosures

1892720.1

895 DOVE STREET 5 th FLOOR NEWPORT BEACH CA 92660 T 949 854 7000 F 949 854 7099	1333 N CALIFORNIA BLVD SUITE 440 WALNUT CREEK CA 94596 T 925.988.3200 F 925.988.3299
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NEWMAYER & DILLION LLP
ATTORNEYS AT LAW

PHILIP D. KOPP
Philip.Kopp@ndlf.com

File No.:
1084.331

November 18, 2009

VIA CERTIFIED MAIL, U.S. MAIL & FACSIMILE

Lia Stivaletta
Risk Management Specialist
SelectBuild

On Behalf of C. Construction, Inc. dba Campbell Concrete of California
340 Rancheros Drive, Suite 174
San Marcos, CA 92069

Re: Notice of Commencement of Legal Proceeding
Fourth SB800 Claim: 6 Additional Homes
Project: Four Leaf Lane, Corona, California

Dear Ms. Stivaletta:

We represent Centex Homes ("Centex ") as personal counsel in the above-referenced matter.

On November 12, 2009, Claimants provided Centex with a **fourth** written Notice of Claim of Violation of Functionality Standards pursuant to Civil Code section 895, et seq ("Notice"). A copy of the claim notice is enclosed for your reference.

This fourth SB800 claim is in addition to the initial claim dated September 29, 2009, the second claim dated October 7, 2009 and third claim dated October 26, 2009 for a total of 24 homes in the Four Leaf Lane development in Corona, California.

A copy of the Homeowner matrix is also enclosed for your review and files.

Very truly yours,

Philip D. Kopp

PDK/hs
Enclosures

1902862.1

895 DOVE STREET	1333 N CALIFORNIA BLVD
5 th FLOOR	SUITE 440
NEWPORT BEACH CA 92660	WALNUT CREEK CA 94596
T 949 854 7000	T 925.988.3200
F 949 854 7099	F 925.988.3299

LAW OFFICES OF
Jerry La Cues
3110 Chino Avenue, Suite 230
Chino Hills, California 91709
(909) 627-3535 • (909) 590-3388 – Fax

November 12, 2009

Philip D. Kopp, Esq.
Newmeyer & Dillion, LLP
895 Dove Street, 5th Floor
Newport Beach, California 92660

*Via Regular Mail
Per Agreement*

RE: Civil Code §910 et seq. notice

Dear Mr. Kopp:

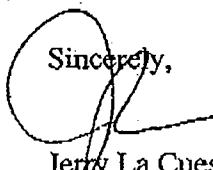
This office has been retained to represent several homeowners in Tract No. 30817 Corona, California 92880 concerning any and all defects arising from the construction of their homes. The specific addresses are as follows: 7321 Hollyheath Court, 7233 Bay Bridge Road, 12932 Gingerwood Court, 12809 Eastern Shore Drive, 12796 Eastern Shore Drive, and 12906 Eastern Shore Drive. Pursuant to Civil Code §910 et seq., you are hereby noticed that, after a preliminary investigation, the following building violations and/or defects exist:

1. Site Conditions
 - a. Excessive subsurface soil moisture in non-irrigated areas.
 - b. Improper grading of lots restricting surface drainage.
2. Structural
 - a. Concrete footings are undersized. Concrete footing depths of 9" to 11" embedment below grade were observed in areas supporting two story structures.
 - b. Excessive cracking in PT slabs.
 - c. Concrete slab thickness may be below required minimums.
 - d. Concrete slabs constructed out of level.
 - e. Excessive cracking of concrete garage slabs.
 - f. Interior shear walls terminate at the bottom cord of the roof trusses and do not transfer to the roof.
 - g. Excessive roof deflection.
 - h. Walls constructed not plumb.
 - i. Attic access areas improperly constructed.
 - j. Roof sheathing improperly installed.
 - k. Roof sheathing nailing not fully set flush to plywood surface.
3. Concrete Tile Roofing
 - a. Hip and valley tiles unsecured.
 - b. Field tiles unsecured.

- c. Improper tile spacing at valleys
 - d. Roof penetrations not properly sealed.
 - e. Cracked chipped or broken tiles.
4. Stucco
- a. Excessive cracking.
 - b. Spauling.
 - c. Blocked weep screeds.
 - d. Excessive discoloration.
 - e. Improperly embedded wood.
 - f. Improper foam trim installation.
5. Drywall
- a. Surface cracks were observed in numerous locations throughout the residences.
6. Electrical
- a. Overloaded electrical circuit breakers.
 - b. Improper GFIC protection.
 - c. Non-working electrical outlets and switches.
7. HVAC
- a. Exterior compressors installed out of level.
 - b. The insulated hose sets in the attic are not properly supported.
 - c. The insulated hose sets at the exterior compressors are not properly protected and the insulation is deteriorating.
 - d. Supply vents are missing to habitable rooms.
8. Plumbing
- a. The PEX plastic piping is improperly terminated without the use of the required angle stops.
 - b. The PEX plastic piping is improperly supported.
 - c. The gas supply flex is improperly supported in the attic.
 - d. The attic installed condensate drains are installed improperly, without the required slope.
 - e. A gas leak was detected in an attic and was repaired at the time of the inspection.

Further, claimants hereby request copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations.

Sincerely,



Jerry La Cues



NEWMAYER & DILLION LLP
ATTORNEYS AT LAW

JENNIFER C. LYONS
Jennifer.Lyons@ndlf.com

File No.:
1084.331

December 3, 2009

VIA CERTIFIED MAIL, U.S. MAIL & FACSIMILE

Lia Stivaletta
Risk Management Specialist
SelectBuild

On Behalf of C. Construction, Inc. dba Campbell Concrete of California
340 Rancheros Drive, Suite 174
San Marcos, CA 92069

Re: Notice of Commencement of Legal Proceeding
Fifth SB800 Claim: 9 Additional Homes
Project: Four Leaf Lane, Corona, California

Dear Ms. Stivaletta:

We represent Centex Homes ("Centex ") as personal counsel in the above-referenced matter.

This letter serves to notify you that on November 30, 2009, Claimants provided Centex with a **fifth** written Notice of Claim of Violation of Functionality Standards pursuant to Civil Code section 895, et seq ("Notice") with respect to additional homes in the above referenced project. A copy of the Notice is enclosed for your reference.

This fifth SB800 claim is in addition to the initial claim dated September 29, 2009, the second claim dated October 7, 2009, third claim dated October 26, 2009 and fourth claim dated November 12, 2009, for a total of 33 homes in the Four Leaf Lane development in Corona, California. A copy of the updated Homeowner matrix is also enclosed for your review and files.

As previously advised, the initial inspections of the first 14 homes occurred on November 10, 11 and 12, 2009. Centex has requested second inspections of those 14 homes which are currently being scheduled for December 15 & 16, 2009. In addition, the initial inspections of the 19 homes from the third, fourth and fifth notices of claims are being scheduled for the week of December 14 through 18, 2009, with the detailed daily schedule still being confirmed.

As with the prior inspections, in order to streamline and expedite the process, we will be posting the schedule, once available, as well as any revisions or modifications thereto, on a website. We expect that the detailed site inspection schedule will be published on or before December 9, 2009.

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895 DOVE STREET	1333 N CALIFORNIA BLVD
5 th FLOOR	SUITE 440
NEWPORT BEACH CA 92660	WALNUT CREEK CA 94596
T 949 854 7000	T 925.988.3200
F 949 854 7099	F 925.988.3299

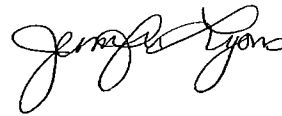
December 3, 2009

Page 2

To view the schedule, please visit the website www.jaxkneppers.com/fixitschedule, and click on the link to the SB-800 matter, Castro v. Centex Homes. The password for obtaining the schedule is **castro2785**.

Please do not hesitate to contact the undersigned or Helen Sierra, the paralegal assigned to this matter, if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer Lyons".

Jennifer C. Lyons

JCL/hs

enclosures



NEWMAYER & DILLION LLP
ATTORNEYS AT LAW

JENNIFER C. LYONS
Jennifer.Lyons@ndlf.com

File No.:
1084.331

January 8, 2010

VIA CERTIFIED MAIL, U.S. MAIL & FACSIMILE

Lia Stivaletta
Risk Management Specialist
SelectBuild

On Behalf of C. Construction, Inc. dba Campbell Concrete of California
340 Rancheros Drive, Suite 174
San Marcos, CA 92069

Re: Notice of Commencement of Legal Proceeding
Sixth SB800 Claim: 12 Additional Homes
Project: Four Leaf Lane, Corona, California

Dear Ms. Stivaletta:

We represent Centex Homes ("Centex ") as personal counsel in the above-referenced matter.

This letter serves to notify you that on December 24, 2009, Claimants provided Centex with a **sixth** written Notice of Claim of Violation of Functionality Standards pursuant to Civil Code section 895, et seq ("Notice") with respect to additional homes in the above referenced project. A copy of the Notice is enclosed for your reference.

This sixth SB800 claim is in addition to the initial claim dated September 29, 2009, the second claim dated October 7, 2009, third claim dated October 26, 2009, fourth claim dated November 12, 2009 and fifth claim dated November 30, 2009 for a total of 45 homes in the Four Leaf Lane development in Corona, California. A copy of the updated Homeowner matrix is also enclosed for your review and files.

As previously advised, the secondary inspections of the initial 14 homes occurred on December 15 & 16, 2009. In addition, the initial inspections of the 19 homes from the third, fourth and fifth claims occurred during the week of December 14 through 18, 2009. Centex has requested second inspections of the 19 homes from the third, fourth and fifth claims, as well as the initial inspections of the 12 additional homes from the sixth notice, all of which are currently being scheduled for January 18 through 20, 2010.

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895 DOVE STREET	1333 N CALIFORNIA BLVD
5 th FLOOR	SUITE 440
NEWPORT BEACH CA 92660	WALNUT CREEK CA 94596
T 949 854 7000	T 925.988.3200
F 949 854 7099	F 925.988.3299

January 8, 2010

Page 2

As with the prior inspections, in order to streamline and expedite the process, we will be posting the detailed daily schedule, once available, as well as any revisions or modifications thereto, on a website.

We expect that the detailed site inspection schedule will be published on or before January 15, 2010. To view the schedule, please visit the website www.jaxkneppers.com/fixitschedule, and click on the link to the SB-800 matter, **Castro v. Centex Homes**. The password for obtaining the schedule is **castro2785**.

Please do not hesitate to contact the undersigned or Helen Sierra, the paralegal assigned to this matter, if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Lyons", written in a cursive style.

Jennifer C. Lyons

JCL/hs

enclosures



NEWMAYER & DILLION LLP
ATTORNEYS AT LAW

JENNIFER C. LYONS
Jennifer.Lyons@ndlf.com

File No.:
1084.331

February 10, 2010

VIA CERTIFIED MAIL, U.S. MAIL & FACSIMILE

Lia Stivaletta
Risk Management Specialist
SelectBuild

On Behalf of C. Construction, Inc. dba Campbell Concrete of California
340 Rancheros Drive, Suite 174
San Marcos, CA 92069

Re: Notice of Commencement of Legal Proceeding
Seventh SB800 Claim: 8 Additional Homes
Project: Four Leaf Lane, Corona, California

Dear Ms. Stivaletta:

We represent Centex Homes ("Centex ") as personal counsel in the above-referenced matter.

This letter serves to notify you that on January 28, 2010, Claimants provided Centex with a **seventh** written Notice of Claim of Violation of Functionality Standards pursuant to Civil Code section 895, et seq ("Notice") with respect to additional homes in the above referenced project. A copy of the Notice is enclosed for your reference.

This seventh SB800 claim is in addition to the initial claim dated September 29, 2009, the second claim dated October 7, 2009, third claim dated October 26, 2009, fourth claim dated November 12, 2009, fifth claim dated November 30, 2009 and sixth claim dated December 24, 2009 for a total of 53 homes in the Four Leaf Lane development in Corona, California. A copy of the updated Homeowner matrix is also enclosed for your review and files.

As previously advised, the secondary inspections of the 19 homes from the third, fourth and fifth claims, **with the exception of 12701 Dairy Street**, and the initial inspections of the 12 homes from the sixth claim, **with the exceptions of 12783 Jack Lane and 12723 Jack Lane**, occurred on January 18, 19 and 20, 2010. Centex has requested the following inspections on **February 22, 23, and 24, 2010**:

1. Second inspection of 12701 Dairy Street of the 5th SB800 claim. The second inspection of this home had not been permitted when the other homes in that claim were completed;

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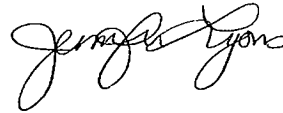
895 DOVE STREET	1333 N CALIFORNIA BLVD
5 th FLOOR	SUITE 440
NEWPORT BEACH CA 92660	WALNUT CREEK CA 94596
T 949 854 7000	T 925.988.3200
F 949 854 7099	F 925.988.3299

2. First inspections of 12783 Jack Lane and 12723 Jack Lane of the 6th SB800 claim;
3. Second inspections of the 10 homes in the 6th SB800 claim;
4. First inspection of all 8 homes in the 7th SB800 claim.

As with the prior inspections, in order to streamline and expedite the process, we will be posting the detailed daily schedule, once available, as well as any revisions or modifications thereto, on a website. We expect that the detailed site inspection schedule will be published on or before February 18, 2010. To view the schedule, please visit the website www.jaxkneppers.com/fixitschedule, and click on the link to the SB-800 matter, **Castro v. Centex Homes**. The password for obtaining the schedule is **castro2785**.

Please do not hesitate to contact the undersigned or Helen Sierra, the paralegal assigned to this matter, if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer C. Lyons". The signature is fluid and cursive, with the first name "Jennifer" and last name "Lyons" clearly distinguishable.

Jennifer C. Lyons

JCL/hs

enclosures



NEWMAYER & DILLION LLP
ATTORNEYS AT LAW

JENNIFER C. LYONS
Jennifer.Lyons@ndlf.com

File No.:
1084.331

March 23, 2010

VIA CERTIFIED MAIL, U.S. MAIL & FACSIMILE

Lia Stivaletta
Risk Management Specialist
SelectBuild
On Behalf of C. Construction, Inc. dba Campbell Concrete of California
340 Rancheros Drive, Suite 174
San Marcos, CA 92069

Re: Notice of Commencement of Legal Proceeding
Eighth SB800 Claim: 6 Additional Homes
Project: Four Leaf Lane, Corona, California

Dear Ms. Stivaletta:

We represent Centex Homes ("Centex ") as personal counsel in the above-referenced matter.

This letter serves to notify you that on March 3, 2010, Claimants provided Centex with an **eighth** written Notice of Claim of Violation of Functionality Standards pursuant to Civil Code section 895, et seq ("Notice") with respect to additional homes in the above referenced project. A copy of the Notice is enclosed for your reference.

This eighth SB800 claim is in addition to the initial claim dated September 29, 2009, the second claim dated October 7, 2009, third claim dated October 26, 2009, fourth claim dated November 12, 2009, fifth claim dated November 30, 2009, sixth claim dated December 24, 2009 and seventh claim dated January 28, 2010, for a total of 59 homes in the Four Leaf Lane development in Corona, California. A copy of the updated Homeowner matrix is also enclosed for your review and files.

With respect to the six homes in the eighth Notice, initial inspections have been scheduled for March 31 and April 1, 2010. As with the prior inspections, the detailed daily schedule, as well as any revisions or modifications thereto, will be posted on a website at **www.jaxkneppers.com/fixitschedule**. Once you have clicked on the link to the SB-800 matter, **Castro v. Centex Homes**, the password for obtaining the schedule is **castro2785**.

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895 DOVE STREET	1333 N CALIFORNIA BLVD
5th FLOOR	SUITE 440
NEWPORT BEACH CA 92660	WALNUT CREEK CA 94596
T 949 854 7000	T 925.988.3200
F 949 854 7099	F 925.988.3299

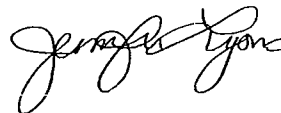
In order to keep you up to date on the status of this matter, the following is a brief summary of any outstanding inspections, as well as the progress of the prior seven claims:

- First and second claims (14 homes): SB800 repairs in progress;
- Third, forth and fifth claims (18 homes – 12701 Dairy Street not included): SB800 repairs in progress;
- Inspections completed and repair offers due by March 26, 2010 for the following homes: 12701 Dairy Street (5th SB800 claim), 11 of 12 homes in the 6th SB800 claim(12723 Jack Lane not included – on hold), five of eight homes in the 7th SB800 claim;
- March 31, 2010: Second inspections of footings (excavation and measurement) of three homes in the 7th SB800 claim: 7278 Blue Crab, 12791 Dairy Street and 7215 Excelsior Drive

You are welcome to have a representative attend and observe the March 31 and/or April 1, 2010 inspections; however, no additional invasive inspections other than those being performed by Centex's consultants will be permitted.

Please do not hesitate to contact the undersigned or Helen Sierra, the paralegal assigned to this matter, if you have any questions.

Sincerely,



Jennifer C. Lyons

JCL/hs

Enclosures



NEWMAYER & DILLION LLP
ATTORNEYS AT LAW

JENNIFER C. LYONS
Jennifer.Lyons@ndlf.com

File No.:
1084.331

AS

May 3, 2010

VIA CERTIFIED MAIL, U.S. MAIL & FACSIMILE

Lia Stivaletta
Risk Management Specialist
SelectBuild
c/o C Construction, Inc. dba Campbell Concrete of California (SelectBuild)
340 Rancheros Drive, Suite 174
San Marcos, CA 92069

Re: Notice of Commencement of Legal Proceeding
Ninth SB800 Claim: 4 Additional Homes
Project: Four Leaf Lane, Corona, California

Dear Ms. Stivaletta:

We represent Centex Homes ("Centex ") as personal counsel in the above-referenced matter.

This letter serves to notify you that on April 14, 2010, Claimants provided Centex with an **ninth** written Notice of Claim of Violation of Functionality Standards pursuant to Civil Code section 895, et seq ("Notice") with respect to additional homes in the above referenced project. A copy of the Notice is enclosed for your reference.

This ninth SB800 claim is in addition to the initial claim dated September 29, 2009, the second claim dated October 7, 2009, third claim dated October 26, 2009, fourth claim dated November 12, 2009, fifth claim dated November 30, 2009, sixth claim dated December 24, 2009 seventh claim dated January 28, 2010 and eighth claim dated March 3, 2010 for a total of 63 homes in the Four Leaf Lane development in Corona, California. A copy of the updated Homeowner matrix is also enclosed for your review and files.

With respect to the 4 homes in the ninth notice (as well as one remaining home from the eighth SB800 claim), initial inspections have been scheduled for May 6 through May 7, 2010. As with the prior inspections, the detailed daily schedule, as well as any revisions or modifications thereto, will be posted on a website at www.jaxkneppers.com/fixitschedule. Once you have clicked on the link to the SB-800 matter, **Castro v. Centex Homes**, the password for obtaining the schedule is **castro2785**.

2110642.1

895 DOVE STREET 5th FLOOR NEWPORT BEACH CA 92660 T 949 854 7000 F 949 854 7099	1333 N CALIFORNIA BLVD SUITE 440 WALNUT CREEK CA 94596 T 925.988.3200 F 925.988.3299
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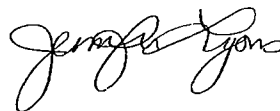
In order to keep you up to date on the status of this matter, the following is a brief summary of any outstanding inspections, as well as the progress of the prior eight claims:

- First and second claims (14 homes): SB800 repairs near completion;
- Third, fourth and fifth claims (18 homes – 12701 Dairy Street not included): SB800 repairs near completion;
- Offers to repair served on March 26, 2010 for the following homes: 12701 Dairy Street (5th SB800 claim), 11 of 12 homes in the 6th SB800 claim (12723 Jack Lane not included – on hold), five of eight homes in the 7th SB800 claim;
- Offers to Repair served on April 30, 2010 for the following homes: 7278 Blue Crab, 12791 Dairy Street and 7215 Excelsior Drive (7th SB800 Claim);
- May 7, 2010: Second inspections of footings at five of the six homes in the 8th SB800 claim.

You are welcome to have a representative attend and observe the May 6 through May 7, 2010 inspections; however, no additional invasive inspections other than those being performed by Centex's consultants will be permitted.

Please do not hesitate to contact the undersigned or Helen Sierra, the paralegal assigned to this matter, if you have any questions.

Sincerely,



Jennifer C. Lyons

JCL/hs

Enclosures



NEWMAYER & DILLION LLP
ATTORNEYS AT LAW

JENNIFER C. LYONS
Jennifer.Lyons@ndlf.com

File No.:
1084.331

June 30, 2010

VIA CERTIFIED MAIL, U.S. MAIL & FACSIMILE

Lia Stivaletta
Risk Management Specialist
SelectBuild
340 Rancheros Drive, Suite 174
San Marcos, CA 92069

Re: Notice of Commencement of Legal Proceeding
Tenth SB800 Claim: 5 Additional Homes
Project: Four Leaf Lane, Corona, California

Dear Ms. Stivaletta:

We represent Centex Homes ("Centex ") as personal counsel in the above-referenced matter.

This letter serves to notify you that on June 10, 2010, Claimants provided Centex with an **tenth** written Notice of Claim of Violation of Functionality Standards pursuant to Civil Code section 895, et seq ("Notice") with respect to additional homes in the above referenced project. A copy of the Notice is enclosed for your reference.

This **tenth** SB800 claim is in addition to the initial claim dated September 29, 2009, the second claim dated October 7, 2009, third claim dated October 26, 2009, fourth claim dated November 12, 2009, fifth claim dated November 30, 2009, sixth claim dated December 24, 2009 seventh claim dated January 28, 2010, eighth claim dated March 3, 2010 and ninth claim dated April 14, 2010 for a total of 68 homes in the Four Leaf Lane development in Corona, California. A copy of the updated Homeowner matrix is also enclosed for your review and files.

With respect to the 5 homes in the tenth notice (as well as one remaining home from the ninth SB800 claim), initial inspections have been scheduled for July 7, 2010. As with the prior inspections, the detailed daily schedule, as well as any revisions or modifications thereto, will be posted on a website at www.jaxkneppers.com/fixitschedule. Once you have clicked on the link to the SB-800 matter, **Castro v. Centex Homes**, the password for obtaining the schedule is **castro2785**.

2181451.1

895 DOVE STREET	1333 N CALIFORNIA BLVD
5 th FLOOR	SUITE 440
NEWPORT BEACH CA 92660	WALNUT CREEK CA 94596
T 949 854 7000	T 925.988.3200
F 949 854 7099	F 925.988.3299

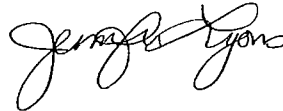
June 30, 2010

Page 2

You are welcome to have a representative attend and observe the inspections on July 7, 2010, however, no additional invasive inspections other than those being performed by Centex's consultants will be permitted.

Please do not hesitate to contact the undersigned or Helen Sierra, the paralegal assigned to this matter, if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Lyons", written in a cursive style.

Jennifer C. Lyons

JCL/hs

Enclosures



NEWMAYER & DILLION LLP
ATTORNEYS AT LAW

JENNIFER C. LYONS
Jennifer.Lyons@ndlf.com

File No.:
1084.331

August 27, 2010 ✓

VIA CERTIFIED MAIL, U.S. MAIL & FACSIMILE

Lia Stivaletta
Risk Management Specialist
SelectBuild
340 Rancheros Drive, Suite 174
San Marcos, CA 92069

Re: Notice of Commencement of Legal Proceeding
Eleventh SB800 Claim: 3 Additional Homes
Project: Four Leaf Lane, Corona, California

Dear Ms. Stivaletta:

We represent Centex Homes ("Centex ") as personal counsel in the above-referenced matter.

This letter serves to notify you that on August 5, 2010, Claimants provided Centex with an **eleventh** written Notice of Claim of Violation of Functionality Standards pursuant to Civil Code section 895, et seq ("Notice") with respect to additional homes in the above referenced project. A copy of the Notice is enclosed for your reference.

This **eleventh** SB800 claim is in addition to the initial claim dated September 29, 2009, the second claim dated October 7, 2009, third claim dated October 26, 2009, fourth claim dated November 12, 2009, fifth claim dated November 30, 2009, sixth claim dated December 24, 2009 seventh claim dated January 28, 2010, eighth claim dated March 3, 2010, ninth claim dated April 14, 2010 and tenth claim dated June 10, 2010 for a total of 71 homes in the Four Leaf Lane development in Corona, California. A copy of the updated Homeowner matrix is also enclosed for your review and files.

With respect to 2 of the 3 homes in the eleventh notice, initial inspections have been scheduled for August 31, 2010. Claimants' counsel are working with remaining homeowner to schedule the inspection date. As with the prior inspections, the detailed daily schedule, as well as any revisions or modifications thereto, will be posted on a website at **www.jaxkneppers.com/fixitschedule**. Once you have clicked on the link to the SB-800 matter, **Guillen v. Centex (formerly Castro v. Centex)**, the password for obtaining the schedule is **castro2785**.

2272595.1

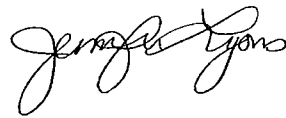
895 DOVE STREET	1333 N CALIFORNIA BLVD
5 th FLOOR	SUITE 440
NEWPORT BEACH CA 92660	WALNUT CREEK CA 94596
T 949 854 7000	T 925.988.3200
F 949 854 7099	F 925.988.3299

August 27, 2010
Page 2

You are welcome to have a representative attend and observe the inspections on August 31, 2010, however, no additional invasive inspections other than those being performed by Centex's consultants will be permitted.

Please do not hesitate to contact the undersigned or Helen Sierra, the paralegal assigned to this matter, if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Lyons", written in a cursive style.

Jennifer C. Lyons

JCL/hs

Enclosures

EXHIBIT 4



LIA STIVALETTA
340 Rancheros Drive, Suite 174
San Marcos, CA 92069

DIRECT TELEPHONE
(760) 736-8316
FACSIMILE
(760) 539-9958

Writers E-Mail:
Lia.Stivaletta@selectbuild.com

December 9, 2009

Philip Kopp, Esq.
Newmeyer & Dillion, LLP
895 Dove Street, 5th Floor
Newport Beach, CA 92660

RE: Builder Right to Repair Law - SB800 Claims
Aiken/Castro v. Centex
Project: Four Leaf Lane, Corona, CA

Dear Mr. Kopp,

This letter is written in response to yours dated October 15, 2009 and December 9, 2009, wherein you have requested that C Construction participate in the defense and indemnification of your client, Centex Homes, in the above referenced matter. As we previously advised C Construction's concrete division is no longer in operations. As such, C Construction can not attend site inspections or offer a repair in this matter.

In addition, please note that C Construction filed a petition under Chapter 11 of the bankruptcy code in the Delaware bankruptcy court on June 16, 2009, Case No. 09-12079, and as a result there is an automatic stay in place. For additional information of same, please visit our website at www.bmhcrestructuring.com.

Should you have any questions, please contact the undersigned at (760) 736-8316, ext. 1092.

Sincerely,

Lia Stivaletta
Risk Management Specialist

LS/s

**United States Bankruptcy Court
District of Delaware**

Name of Debtor (if individual, enter Last, First, Middle): C Construction, Inc.	Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names): N/A	All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all): 20-3168206	Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all):
Street Address of Debtor (No. and Street, City, and State): 720 Park Boulevard, Suite 200 Boise, Idaho <div style="text-align: right; border: 1px solid black; padding: 2px;">ZIP CODE 83712</div>	Street Address of Joint Debtor (No. and Street, City, and State): <div style="text-align: right; border: 1px solid black; padding: 2px;">ZIP CODE</div>
County of Residence or of the Principal Place of Business: Ada County	County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address): <div style="text-align: right; border: 1px solid black; padding: 2px;">ZIP CODE</div>	Mailing Address of Joint Debtor (if different from street address): <div style="text-align: right; border: 1px solid black; padding: 2px;">ZIP CODE</div>
Location of Principal Assets of Business Debtor (if different from street address above): <div style="text-align: right; border: 1px solid black; padding: 2px;">ZIP CODE</div>	

Type of Debtor (Form of Organization) (Check one box.) <input type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input checked="" type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)	Nature of Business (Check one box.) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input checked="" type="checkbox"/> Other Materials Distribution Tax-Exempt Entity (Check box, if applicable.) <input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).	Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box.) <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 15 Petition for <input type="checkbox"/> Chapter 9 Recognition of a Foreign <input checked="" type="checkbox"/> Chapter 11 Main Proceeding <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 15 Petition for <input type="checkbox"/> Chapter 13 Recognition of a Foreign Nonmain Proceeding Nature of Debts (Check one box.) <input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or house- hold purpose." <input checked="" type="checkbox"/> Debts are primarily business debts.
---	--	---

Filing Fee (Check one box.) <input checked="" type="checkbox"/> Full Filing Fee attached. <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.	Chapter 11 Debtors Check one box: <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input checked="" type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,190,000. ----- Check all applicable boxes: <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
---	--

Statistical/Administrative Information <input type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input checked="" type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors. Estimated Number of Creditors <input type="checkbox"/> 1-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100-199 <input type="checkbox"/> 200-999 <input type="checkbox"/> 1,000-5,000 <input checked="" type="checkbox"/> 5,001-10,000 <input type="checkbox"/> 10,001-25,000 <input type="checkbox"/> 25,001-50,000 <input type="checkbox"/> 50,001-100,000 <input type="checkbox"/> Over 100,000 Estimated Assets <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input checked="" type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion Estimated Liabilities <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input checked="" type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion	THIS SPACE IS FOR COURT USE ONLY
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Voluntary Petition <i>(This page must be completed and filed in every case.)</i>		Name of Debtor(s): C Construction, Inc.	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet.)			
Location Where Filed: -None-	Case Number:	Date Filed:	
Location Where Filed:	Case Number:	Date Filed:	
Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet.)			
Name of Debtor: Please see attached Schedule 1	Case Number: TBD	Date Filed: 6/16/2009	
District: District of Delaware	Relationship:	Judge: TBD	

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)

☐ Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts.)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b).

X _____
 Signature of Attorney for Debtor(s) (Date)

Exhibit C

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

☐ Yes, and Exhibit C is attached and made a part of this petition.

☒ No.

Exhibit D

(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)

☐ Exhibit D completed and signed by the debtor is attached and made a part of this petition.

If this is a joint petition:

☐ Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.

Information Regarding the Debtor - Venue
 (Check any applicable box.)

☒ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

☒ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding (in a federal or state court) in this District, or the interests of the parties will be served in regard to the relief sought in this District.

Certification by a Debtor Who Resides as a Tenant of Residential Property
 (Check all applicable boxes.)

☐ Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)

 (Name of landlord that obtained judgment)

 (Address of landlord)

☐ Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and

☐ Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.

☐ Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(f)).

Voluntary Petition

(This page must be completed and filed in every case.)

Name of Debtor(s):

C Construction, Inc.

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X

Signature of Debtor

X

Signature of Joint Debtor

Telephone Number (if not represented by attorney)

Date

Signature of Attorney*

X

Signature of Attorney for Debtor(s)

Sean M. Beach (No. 4070)

Printed Name of Attorney for Debtor(s)

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Firm Name

Address

The Brandywine Building, 1000 West Street, 17th Floor

Wilmington, DE 19801

Tel (302) 571-6600

Telephone Number

6/16/2009

Date

*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X

Signature of Authorized Individual

Paul S. Street

Printed Name of Authorized Individual

Senior Vice President and General Counsel

Title of Authorized Individual

6/16/2009

Date

Signature of a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only one box.)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached.

☐ Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X

(Signature of Foreign Representative)

(Printed Name of Foreign Representative)

Date

Signature of Non-Attorney Bankruptcy Petition Preparer

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(d), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

Printed Name and title, if any, of Bankruptcy Petition Preparer

Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social-Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

Address

X

Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social-Security number is provided above.

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual.

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

SCHEDULE 1

Pending Bankruptcy Cases Filed By the Debtor and Affiliates of the Debtor

The following affiliated debtors contemporaneously have filed chapter 11 petitions in the United States Bankruptcy Court for the District of Delaware:

Affiliated Debtors:

1. Building Materials Holding Corporation
2. BMC West Corporation
3. SelectBuild Construction, Inc.
4. SelectBuild Nevada, Inc.
5. C Construction, Inc.
6. TWF Construction, Inc.
7. H.N.R. Framing Systems, Inc.
8. SelectBuild Arizona, LLC
9. Illinois Framing, Inc.
10. SelectBuild Northern California, Inc.
11. SelectBuild Southern California, Inc.
12. SelectBuild Illinois, LLC

IN RE:)	
)	Chapter 11
BUILDING MATERIALS HOLDING)	
CORPORATION, <i>et al.</i> , ¹)	Case No. 09-_____ ()
)	
Debtors.)	Joint Administration Requested
)	
)	

Pursuant to Federal Rule of Bankruptcy Procedure 1007(a)(1), 1007(a)(3) and 7007.1,


Entity Name	Address of Entity	Ownership Interest
Building Materials Holding Corporation	720 Park Boulevard, Suite 200, Boise, Idaho 83712	100%

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

DECLARATION UNDER PENALTY OF PERJURY

Pursuant to 28 U.S.C. §1746, I, Paul S. Street, the duly authorized signatory of C Construction, Inc., declare under penalty of perjury that I have read the forgoing List of Equity Security Holders and that it is true and correct to the best of my information and belief.

Dated: June 16, 2009
New York, New York




By: Paul S. Street
Title: Senior Vice President, General Counsel,
Chief Administrative Officer, and
Corporate Secretary

DECLARATION UNDER PENALTY OF PERJURY

Pursuant to 28 U.S.C. §1746, I, Paul S. Street, the duly authorized signatory of C Construction, Inc., declare under penalty of perjury that I have read the forgoing Corporate Ownership Statement and that it is true and correct to the best of my information and belief.

Dated: June 16, 2009
New York, New York



By: Paul S. Street
Title: Senior Vice President, General Counsel,
Chief Administrative Officer, and
Corporate Secretary

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)	
)	Chapter 11
BUILDING MATERIALS HOLDING)	
CORPORATION, <i>et al.</i> , ¹)	Case No. 09-_____ ()
)	
Debtors.)	Joint Administration Requested
)	

**CONSOLIDATED LIST OF CREDITORS HOLDING
THE 50 LARGEST UNSECURED CLAIMS**

The above-captioned debtors (collectively, the "*Debtors*") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. section 101 *et seq.* The following is the consolidated list of the Debtors' creditors holding the 50 largest unsecured claims (the "*Consolidated List*") based on the Debtors' books and records as of approximately June 12, 2009. The Consolidated List is prepared in accordance with Rule 1007(d) of the Federal Rules of Bankruptcy Procedure for filing in these chapter 11 cases. The Consolidated List does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. section 101(31) or (2) secured creditors, unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 50 largest unsecured claims on a consolidated basis. None of these creditors are minor children. The information contained herein shall neither constitute an admission of liability by, nor is it binding on, the Debtors. The information herein, including the failure of the Debtors to list any claim as contingent, unliquidated, or disputed, does not constitute a waiver of the Debtors' right to contest the validity, priority or amount of any claim.

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

1.	Weyerhaeuser Company 7591 Collections Center Dr. Chicago, IL 60693	7591 Collections Center Dr. Chicago, IL 60693 Ph. (253) 924-5296	Trade		\$1,947,117.00
2.	Robert Garcia 740 Hawkecrest Circle Sacramento, CA 95835	740 Hawkecrest Circle Sacramento, CA 95835	Former Employee		\$1,144,724.00
3.	Boise Cascade 4300 Enterprise Boise, ID 83705	4300 Enterprise Boise, ID 83705 Ph. (208) 384-3599 Fax (208) 384-7189	Trade		\$948,859.00
4.	CalPortland Dept. No. 7409 Los Angeles, CA 90084- 7409	Dept. No. 7409 Los Angeles, CA 90084- 7409 Ph. (702) 893-6557 Fax (702) 593-8953	Trade		\$692,931.00
5.	Ellis C. Goebel 1070 Green, No. 702 San Francisco, CA 94133	1070 Green, No. 702 San Francisco, CA 94133	Former Employee		\$506,519.00
6.	Steven H. Pearson 1321 E Braemere Road Boise, ID 83702	1321 E Braemere Road Boise, ID 83702	Former Employee		\$496,700.00
7.	Simpson Strong Tie, Inc. P. O. Box 45687 San Francisco, CA 94145-0687	P. O. Box 45687 San Francisco, CA 94145- 0687 Ph. (925) 560-9013	Trade		\$478,632.00
8.	James Hardie Building Products Dept. 7151 Los Angeles, CA 90088- 7151	Dept. 7151 Los Angeles, CA 90088- 7151 Ph. (949) 348-1800 Fax (949) 367-1294	Trade		\$469,267.00
9.	Michael D. Mahre 167 Arends Drive Danville, CA 94506	167 Arends Drive Danville, CA 94506	Former Employee		\$453,185.00
10.	Milgard Manufacturing P. O. Box 39000 Dept. 05879 San Francisco, CA 94139- 5879	P. O. Box 39000 Dept. 05879 San Francisco, CA 94139- 5879 Ph. (888) 635-3451 Fax (888) 635-3452	Trade		\$447,123.00

11.	Sauder Mouldings 10134 Kings Dominion Blvd Doswell, WA 23047	10134 Kings Dominion Blvd Doswell, WA 23047 Ph. (804) 876-3588 Fax (804) 876-3688	Trade		\$438,685.00
12.	Masonite P. O. Box 934935 Atlanta, GA 31193-4935	P. O. Box 934935 Atlanta, GA 31193-4935 Ph. (800) 695-3667 Fax:	Trade		\$393,552.00
13.	Marvin Windows & Doors P. O. Box 1450 NW 7051 Minneapolis, MN 55485-7051	P. O. Box 1450 NW Minneapolis, MN 55485-7051 Ph. (800) 346-5044 Fax (218) 386-4206	Trade		\$391,006.00
14.	Michael D. Badgley 5146 N. Greyloch Way Boise, ID 83704	5146 N. Greyloch Way Boise, ID 83704	Current Employee		\$389,471.00
15.	White Cap P. O. Box 535209 Atlanta, GA 30353	P. O. Box 535209 Atlanta, GA 30353 Ph. (800) 944-8322 Fax (404) 873-6936	Trade		\$379,227.00
16.	Barr Lumber Co., Inc. P. O. Box 8517 San Bernadino, CA 92412	P. O. Box 8517 San Bernadino, CA 92412 Ph. (909) 884-4744 Fax (909) 884-9755	Trade		\$378,659.00
17.	Ready Mix, Inc. 3430 E Flamingo Road Suite 100 Las Vegas, NV 89121	3430 E Flamingo Road Suite 100 Las Vegas, NV 89121 Ph. (702) 435-1797	Trade		\$338,340.00
18.	David G. Ondrasek 26037 Andy Lane Magnolia, TX 77354-2815	26037 Andy Lane Magnolia, TX 77354-2815	Current Employee		\$335,129.00
19.	Joseph James Zuendel 2619 Bertella Road Cameron Park, CA 95682	2619 Bertella Road Cameron Park, CA 95682	Current Employee		\$301,196.00
20.	Cemex Inc. P. O. Box 307170 San Francisco, CA 93280	P. O. Box 307170 San Francisco, CA 93280 Ph. (916) 241-2800 Fax (916) 686-8233	Trade		\$300,209.00
21.	Jimmy D. Pask 1007 Ogden Court Ft. Collins, CO 80526	1007 Ogden Court Ft. Collins, CO 80526	Current Employee		\$297,694.00

22.	Coffman Stairs LLC 3399 Solutions Center Chicago, IL 60677-3003	3399 Solutions Center Chicago, IL 60677-3003 Ph. (276) 783-7251 Fax (540) 783-6937	Trade		\$293,675.00
23.	Douglas Alan Davidson 6914 Ridge Hollow Rd. Austin, TX 78750	6914 Ridge Hollow Rd. Austin, TX 78750	Current Employee		\$274,908.00
24.	Daniel McQuary 5132 Gillingham Drive Plano, TX 75093	5132 Gillingham Drive Plano, TX 75093	Current Employee		\$268,760.00
25.	ProBulld P. O. Box 878 Littleton, CO 80160-0878	P. O. Box 878 Littleton, CO 80160-0878 Ph. (303) 791-3715	Trade		\$265,239.00
26.	James A. Lee 222 Alverson Blvd. Everett, WA 98201	222 Alverson Blvd. Everett, WA 98201	Current Employee		\$261,922.00
27.	Roy E. Gardner 12426 Panola Way San Antonio, TX 78253	12426 Panola Way San Antonio, TX 78253	Former Employee		\$247,578.00
28.	Mark D. Whaley 5122 Mohawk Dr. Frisco, TX 75034	5122 Mohawk Dr. Frisco, TX 75034	Current Employee		\$246,319.00
29.	Leroy D. Custer 10303 W Rockwood St. Boise, ID 83704	10303 W Rockwood St. Boise, ID 83704	Former Employee		\$243,879.00
30.	Louisiana Pacific Corp. 4582 Collections Center Dr. Chicago, IL 60693	4582 Collections Center Dr. Chicago, IL 60693	Trade		\$243,729.00
31.	Dakeryn Industries Ltd. 221 West Esplanade St. Suite 301 North Vancouver BC Canada V7M 3J3	221 West Esplanade St. Suite 301 North Vancouver BC Canada V7M 3J3 Ph. (604) 986-0323 Fax (415) 643-2941	Trade		\$234,009.00
32.	Columbia Forest Products P. O. Box 404257 Atlanta, GA 30384-4257	P. O. Box 404257 Atlanta, GA 30384-4257 Ph. (800) 637-1609 Fax (336) 662-0373	Trade		\$233,581.00
33.	David B. Bello 1410 Braemere Rd. Boise, ID 83702	1410 Braemere Rd. Boise, ID 83702	Current Employee		\$225,723.00
34.	Lumber Products P. O. Box 28007 Portland, OR 97208	P. O. Box 28007 Portland, OR 97208 Ph. (541) 687-0411 Fax (541) 342-7545	Trade		\$224,929.00


35.	Atrium Companies, Inc. P. O. Box 848446 Dallas, TX 75284-8446	P. O. Box 848446 Dallas, TX 75284-8446 Ph. (214) 630-5757 Fax (214) 630-1407	Trade		\$223,324.00
36.	Jack D. LaRock 7958 S. Clayton Circle Centennial, CO 80122	7958 S. Clayton Circle Centennial, CO 80122	Former Employee		\$222,234.00
37.	True Value P. O Box 61000 File 1558 San Francisco, CA 94161- 1558	P. O Box 61000 File 1558 San Francisco, CA 94161- 1558 Ph. (877) 594-2269	Trade		\$221,672.00
38.	Professional Building Solutions - Scott Axelrod 465 Krameria Street Denver, CO 80220	465 Krameria Street Denver, CO 80220 Fax (720) 941-9900	Trade		\$217,823.00
39.	Logan D. Ballor 4020 Mesa Verde St. Fort Collins, CO 80525	4020 Mesa Verde St. Fort Collins, CO 80525	Current Employee		\$217,027.00
40.	Grove Lumber Ontario 1351 Accting Dept. Ontario, Canada 91761	Ontario 1351 Accting Dept. Ontario, Canada 91761 Ph. (909) 947-0277	Trade		\$211,120.00
41.	John M. Volkman 8762 Bronson Drive Granite Bay, CA 95746	8762 Bronson Drive Granite Bay, CA 95746	Former Employee		\$209,721.00
42.	Mitek Industries, Inc. 4399 Collections Center Drive Chicago, IL 60693	4399 Collections Center Drive Chicago, IL 60693 Ph. (800) 325-8075	Trade		\$198,778.00
43.	Robert L. Becci 1677 E Seaport Ct. Boise, ID 83706	1677 E Seaport Ct. Boise, ID 83706	Former Employee		\$198,778.00
44.	ODL, Inc. P. O. Box 535219 Atlanta, GA 30353-5219	P. O. Box 535219 Atlanta, GA 30353-5219 Ph. (616) 748-5331 Fax (616) 722-3840	Trade		\$198,258.00
45.	Neil B. Watterson 9295 W Lyle Boise, ID 83709	9295 W Lyle Boise, ID 83709	Current Employee		\$197,626.00

46.	Jerry Baird 61 Blackjack Circle Belton, TX 76513	61 Blackjack Circle Belton, TX 76513	Current Employee		\$197,092.00
47.	Exterior Wood, Inc. P. O. Box 206 Washougal, WA 98671	P. O. Box 206 Washougal, WA 98671 Ph. (800) 833-0838 Fax (800) 858-3879	Trade		\$196,812.00
48.	Cedar Creek Lumber, Inc. Dept. No. 289 P. O. Box 21228 Tulsa, OK 74121-1228	P. O. Box 21228 Dept. No. 289 Tulsa, OK 74121-1228 Ph. (405) 917- 8308 Fax (405) 917-8358	Trade		\$195,947.00
49.	Hardwood Specialty Products P. O. Box 6306 Arlington, TX 76005	P. O. Box 6306 Arlington, TX 76005 Ph. (817) 633-8333 Fax (817) 633-1967	Trade		\$194,217.00
50.	Primesource 2517 Paysphere Circle Chicago, IL 60674	2517 Paysphere Circle Chicago, IL 60674 Ph. (800) 676-7777 Fax (972) 417-8980	Trade		\$188,636.00

DECLARATION UNDER PENALTY OF PERJURY

Pursuant to 28 U.S.C. §1746, I, Paul S. Street, the duly qualified authorized signatory of C Construction, Inc., declare under penalty of perjury that I have reviewed the Consolidated List of Creditors Holding the 50 Largest Unsecured Claims and that it is true and correct to the best of my information and belief.

Dated: June 16, 2009
New York, New York


By: Paul S. Street
Title: Senior Vice President, General Counsel,
Chief Administrative Officer, and
Corporate Secretary

**RESOLUTIONS
OF THE
BOARD OF DIRECTORS
OF
C CONSTRUCTION, INC.**

June 15, 2009

The members constituting a majority of the votes of a quorum of the board of directors (the "**Board of Directors**") of C Construction, Inc., a Delaware corporation (the "**Company**"), acting pursuant to Section 141 of the Delaware General Corporations Law, took the following actions and adopted the following resolutions:

WHEREAS, the Board of Directors reviewed and considered the materials presented by the management and the financial and legal advisors of the Company regarding the liabilities and liquidity of the Company, the strategic alternatives available to it, and the impact of the foregoing on the Company's businesses; and

WHEREAS, the Board of Directors has had the opportunity to consult with the management and the financial and legal advisors to the Company and fully consider each of the strategic alternatives available to the Company.

**VOLUNTARY PETITION UNDER THE PROVISIONS OF
CHAPTER 11 OF TITLE 11 OF THE UNITED STATES CODE**

NOW, THEREFORE, BE IT RESOLVED, that in the judgment of the Board of Directors, it is desirable and in the best interests of the Company, its creditors, and other parties in interest, that the Company file or cause to be filed a voluntary petition for relief under the provisions of chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**");

RESOLVED FURTHER, that the officers of the Company (collectively, the "**Authorized Officers**"), acting alone or with one or more other Authorized Officers, with power of delegation, be, and they hereby are, authorized to execute and file on behalf of the Company all petitions, schedules, lists, and other motions, papers, or documents, including, without limitation, the proposed chapter 11 plan and accompanying disclosure statement to be filed in connection with the chapter 11 case under the Bankruptcy Code, and to take any and all action that they deem necessary or proper to obtain such relief, including, without limitation, any action necessary to maintain the ordinary course operation of the Company's businesses;

RETENTION OF PROFESSIONALS

RESOLVED FURTHER, that the Authorized Officers be, and they hereby are, authorized and directed to employ the law firm of Gibson, Dunn & Crutcher LLP as general bankruptcy counsel to represent and assist the Company in carrying out its duties under the Bankruptcy Code, and to take any and all actions to advance the Company's rights and obligations, including filing any pleadings; and in connection therewith, the Authorized Officers, with power of delegation, are hereby authorized and directed to execute appropriate retention

agreements, pay appropriate retainers, and to cause to be filed an appropriate application for authority to retain the services of Gibson, Dunn & Crutcher LLP;

RESOLVED FURTHER, that the Authorized Officers be, and they hereby are, authorized and directed to employ the law firm of Young Conaway Stargatt & Taylor, LLP as local bankruptcy counsel and conflicts counsel to represent and assist the Company in carrying out its duties under the Bankruptcy Code, and to take any and all actions to advance the Company's rights and obligations, including filing any pleadings; and in connection therewith, the Authorized Officers, with power of delegation, are hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers, and to cause to be filed an appropriate application for authority to retain the services of Young Conaway Stargatt & Taylor, LLP;

RESOLVED FURTHER, that the Authorized Officers be, and they hereby are, authorized and directed to employ the firm of Peter J. Solomon Company as investment banker and financial advisor to represent and assist the Company in carrying out its duties under the Bankruptcy Code, and to take any and all actions to advance the Company's rights and obligations; and in connection therewith, the Authorized Officers, with power of delegation, are hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers, and to cause to be filed appropriate applications for authority to retain the services of Peter J. Solomon Company;

RESOLVED FURTHER, that the Authorized Officers be, and they hereby are, authorized and directed to employ the firm of Alvarez & Marsal North America, LLC as restructuring advisor to represent and assist the Company in carrying out its duties under the Bankruptcy Code, and to take any and all actions to advance the Company's rights and obligations; and in connection therewith, the Authorized Officers are hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers, and to cause to be filed appropriate applications for authority to retain the services of Alvarez & Marsal North America, LLC;

RESOLVED FURTHER, that the Authorized Officers be, and they hereby are, authorized and directed to employ the firm of KPMG LLP, as auditors and tax consultants to represent and assist the Company in carrying out its duties under the Bankruptcy Code, and to take any and all actions to advance the Company's rights and obligations; and in connection therewith, the Authorized Officers are hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers, and to cause to be filed appropriate applications for authority to retain the services of KPMG LLP;

RESOLVED FURTHER, that the Authorized Officers be, and they hereby are, authorized and directed to employ the firm of PricewaterhouseCoopers LLP as tax advisors to represent and assist the Company in carrying out its duties under the Bankruptcy Code, and to take any and all actions to advance the Company's rights and obligations; and in connection therewith, the Authorized Officers are hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers, and to cause to be filed appropriate applications for authority to retain the services of PricewaterhouseCoopers LLP;

RESOLVED FURTHER, that the Authorized Officers, and they hereby are, authorized and directed to employ the firm of The Garden City Group, Inc. as notice, claims, solicitation, balloting, and tabulation agent to represent and assist the Company in carrying out its duties under Bankruptcy Code, and to take any and all actions to advance the Company's rights and obligations; and in connection therewith, the Authorized Officers, with power of delegation, are hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers, and to cause to be filed appropriate applications for authority to retain the services of The Garden City Group, Inc.;

RESOLVED FURTHER, that the Authorized Officers be, and they hereby are, authorized and directed to employ any other professionals to assist the Company in carrying out its duties under the Bankruptcy Code; and in connection therewith, the Authorized Officers, with power of delegation, are hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers, and to cause to be filed an appropriate application for authority to retain the services of any other professionals as necessary;

CASH COLLATERAL AGREEMENT

RESOLVED FURTHER, that in connection with the commencement of the chapter 11 case by the Company, any Authorized Officer be, and hereby is, authorized, empowered, and directed to negotiate, execute, and deliver agreements for the use of cash collateral in connection with the Company's chapter 11 case, which agreement(s) may require the Company to grant liens and pay interest to the Company's existing lender(s), and to take such additional action and to execute and deliver each other agreement, instrument, or document, to be executed and delivered by or on behalf of the Company pursuant thereto or in connection therewith, all with such changes therein and additions thereto as any Authorized Officer approves, such approval to be conclusively evidenced by the taking of such action or by the execution and delivery thereof;

DIP FINANCING

RESOLVED FURTHER, that the Authorized Officers of the Company shall be, and each of them, acting alone, hereby is, authorized, directed and empowered in the name of and on behalf of the Company, as debtor and debtor in possession, to negotiate, execute and deliver (i) a debtor in possession loan facility (the "*DIP Credit Facility*"), on the terms the Authorized Officers may deem necessary or appropriate for the consummation of the transactions contemplated thereby, and (ii) in connection with the DIP Credit Facility, such agreements, certificates, instruments, guaranties, notices and any and all other documents as the Designated Officers may deem necessary or appropriate to facilitate the execution and delivery of the DIP Credit Facility (collectively, the "*Financing Documents*") so long as such Financing Documents are approved by the Board of Directors;

RESOLVED FURTHER, that the proceeds of the DIP Credit Facility shall be used (i) to satisfy the obligations of the Company, (ii) to pay for fees and expenses associated with the DIP Credit Facility, (iii) to continue the conduct of the affairs of the Company under chapter 11, and (iv) for general corporate purposes;

GENERAL

RESOLVED FURTHER, that the Authorized Officers be, and they hereby are, authorized and empowered, with power of delegation, in the name of and on behalf of the Company, to take or cause to be taken any and all such other and further action, and to execute, acknowledge, deliver, and file any and all such instruments as each, in his/her discretion, may deem necessary or advisable in order to carry out the purpose and intent of the foregoing resolutions; and

RESOLVED FURTHER, that all acts, actions, and transactions relating to the matters contemplated by the foregoing resolutions done in the name of and on behalf of the Company, which acts would have been approved by the foregoing resolutions except that such acts were taken before these resolutions were certified, are hereby in all respects approved and ratified.

CERTIFICATE

The undersigned, Paul S. Street, Corporate Secretary of C Construction, Inc. (the "*Company*"), a Delaware corporation, hereby certifies as follows:

1. I am the duly qualified and elected Corporate Secretary and, as such, I am familiar with the facts herein certified and I am duly authorized to certify the same on behalf of the Company.
2. Attached hereto is a true, complete, and correct copy of the resolution of the board of directors of the Company (the "*Board of Directors*"), duly adopted at a properly convened meeting of the Board of Directors on June 15, 2009, by the members constituting a majority of the votes of the quorum of the directors there present, in accordance with the bylaws of the Company.
3. Such resolution has not been amended, altered, annulled, rescinded, or revoked and is in full force and effect as of the date hereof. There exists no other subsequent resolution of the Board of Directors relating to the matters set forth in the resolution attached hereto.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the 15th day of June, 2009.



By: Paul S. Street
Title: Corporate Secretary

EXHIBIT 5



NEWMAYER & DILLION LLP
ATTORNEYS AT LAW

PHILIP KOPP
Philip.Kopp@ndlf.com

File No.:
1084.331

January 22, 2010

VIA E-MAIL AND U. S. MAIL

Jerry La Cues, Esq.
Law Offices of Jerry La Cues
3110 Chino Avenue, Suite 230
Chino Hills, CA 91709

Re: Four Leaf Lane SB800 Claim
Centex Homes' Offer to Repair:
12712 Kristi Lynn Court, Corona, California

Dear Mr. La Cues:

Centex Homes ("Centex") has carefully inspected each of the items alleged to be violations of the residential construction standards contained in Civil Code Sections 895, et seq. ("SB800") in your October 7, 2009 notice of claim, except to the extent that the nature and/or location of the claimed violations could not be determined. Centex observed very few items that were violations of SB800's residential construction standards.

This offer to repair is made in accordance with Civil Code Sections 917, 924 and 944. Centex requests the opportunity to repair the items that were observed and which violate SB800's residential construction standards. The nature, scope and location of the proposed repair for each such item is described in the enclosed scope of repair for this home. Centex makes no offer to repair any item that is not listed in the scope of repair because the item was not observed, the item did not violate a residential construction standard, and/or the statutes of limitation for the item have expired.

Centex will perform the repairs described in the scope of repair, and estimates that the repairs will be completed within 120 days from the date the repairs at this home begin. Centex's address is 27101 Puerta Real, #300, Mission Viejo, California 92691. It can be reached through its counsel, Newmeyer & Dillion, located at 895 Dove Street, 5th Floor, Newport Beach, California 92660; (949) 854-7000. Centex's license number is 918199.

1985681.1

895 DOVE STREET	1333 N. CALIFORNIA BLVD.
5 TH FLOOR	SUITE 440
NEWPORT BEACH, CA 92660	WALNUT CREEK, CA 94596
T 949 854 7000	T 925 988 3200
F 949 854 7099	F 925 988 3290

Jerry La Cues, Esq.
January 22, 2010
Page 2

The homeowner has the right to request up to three additional contractors from which to select to perform the repairs described in the scope of repair. Centex hereby offers to compensate homeowner for damages recoverable under Civil Code Section 944. In accordance with Civil Code Section 919, Centex hereby offers to mediate this dispute if the homeowner so chooses.

We look forward to receiving the homeowner's response to this offer to repair. If you have any questions, please do not hesitate to contact me.

Thank you.

Very truly yours,

A handwritten signature in dark ink, appearing to be 'P. D. Kopp', written in a cursive style.

Philip D. Kopp

PDK/hs

enclosure

CASTRO v CENTEX

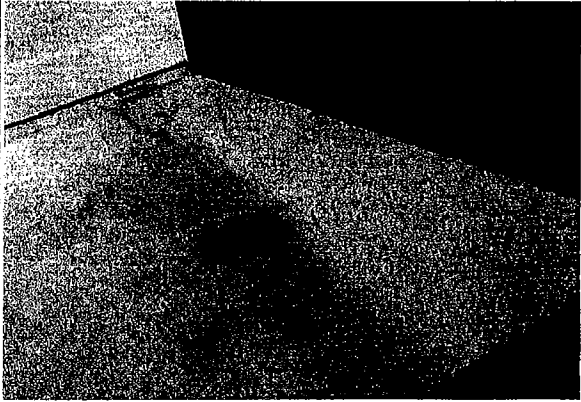

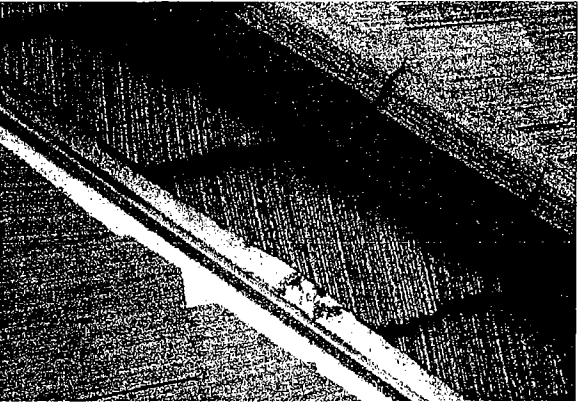
JKA # 09-2785-21

Scope of Repair

For settlement purposes only per Evidence Code Sections 1152 and 1119, et seq.

12712 Kristi Lynn Court

NOC date is August 25, 2005.
COE date is August 12, 2005.

Location	Note	SB800	Repair	Photo
Garage Slab	Cracking of concrete garage slabs.	896.b.01	Clean and epoxy inject visible cracks that have a minimum width of 1/8 inch.	
Roof	Hip and valley tiles unsecured.	896.g.11	See below.	
Roof	Hip and valley tiles unsecured.	896.g.11	See below.	

CASTRO v CENTEX

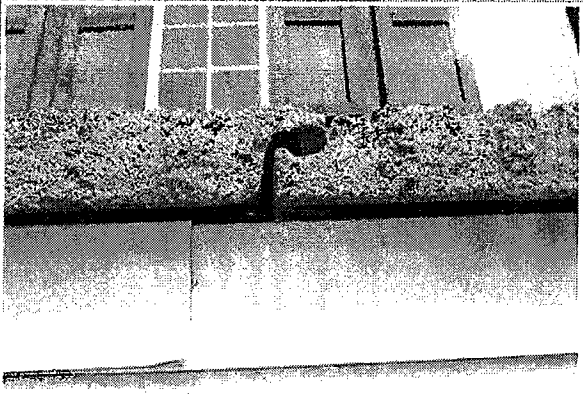

JKA # 09-2785-21

Scope of Repair

For settlement purposes only per Evidence Code Sections 1152 and 1119, et seq.

12712 Kristi Lynn Court

NOC date is August 25, 2005
COE date is August 12, 2005

Location	Note	SB800	Repair	Photo
Roof	Field tiles unsecured.	896.g.11	See below.	
Roof	Roof penetrations not properly sealed.	896.a.04	See below.	No photos available.
Roof	Cracked, chipped or broken tiles.	896.g.03.A	See below.	

CASTRO v CENTEX

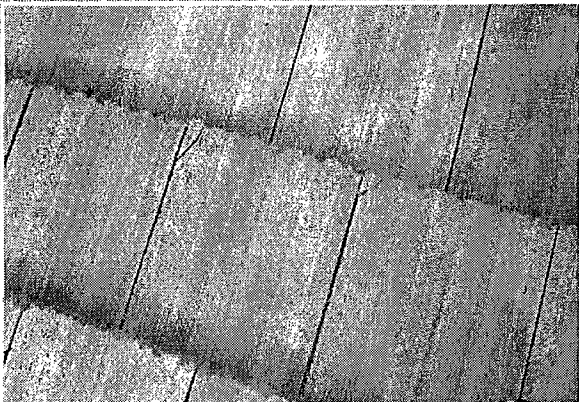
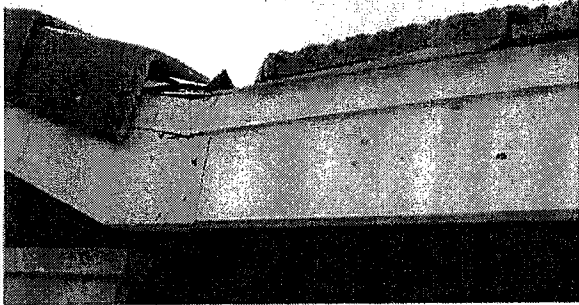
JKA # 09-2785-21

Scope of Repair

For settlement purposes only per Evidence Code Sections 1152 and 1119, et seq.

12712 Kristi Lynn Court

NOC date is August 25, 2005.
COE date is August 12, 2005.

Location	Note	SB800	Repair	Photo
Roof	Cracked, chipped or broken tiles.	896.g.03.A	Perform a roof tune-up consisting of the following tasks as required: a) Fasten hip and valley tiles b) Secure field tiles c) Sealing of roof penetrations and headwall flashings d) Replace cracked, chipped or broken tiles	
Roof	Termination of sheet metal flashing at lower end of valley.	896.a.04	Remove roofing materials as required from the vicinity of the lower end of the valley. Install a new sheet metal flashing piece to extend metal past the eave framing as required by tile manufacturer recommendations and industry standards. Tune-up underlayment and re-install roof tiles as required. Provide a clear and open path for drainage. Secure any loose tiles as required.	
Attic	Insulated hose sets in the attic not properly supported.	896.g.03.A	Secure and properly support loose insulated hose sets in attic.	No photos available.

CASTRO v CENTEX

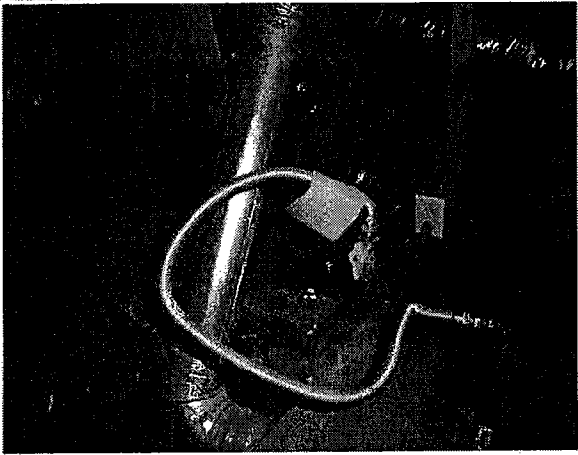
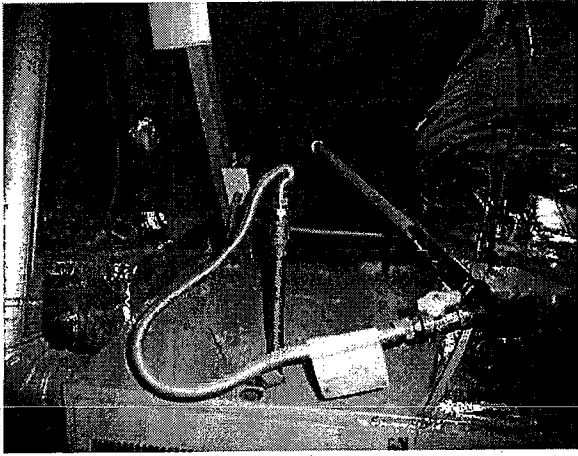
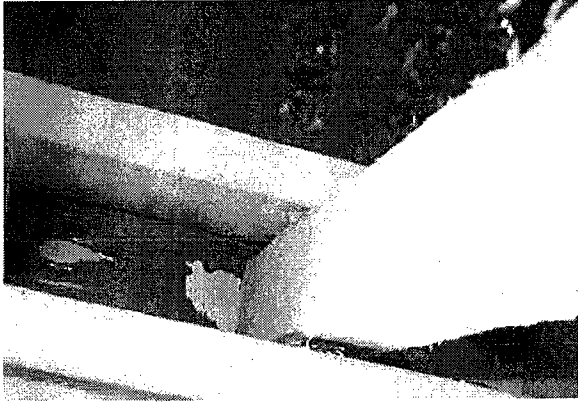
JKA # 09-2785-21

Scope of Repair

For settlement purposes only per Evidence Code Sections 1152 and 1119, et seq.

12712 Kristi Lynn Court

NOC date is August 25, 2005.
COE date is August 12, 2005.

Location	Note	SB800	Repair	Photo
Attic	Gas supply flex improperly supported in the attic.	896.g.05	Secure gas line to adjacent framing.	
Attic	Gas supply flex improperly supported in the attic.	896.g.05	Secure gas line to adjacent framing.	
Porch	Uneven paint application.	896.g.10	Prepare surfaces. Apply sealant and paint.	

CASTRO v CENTEX

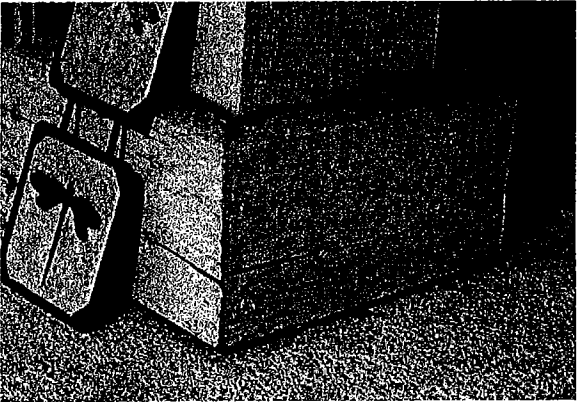
JKA # 09-2785-21

Scope of Repair

For settlement purposes only per Evidence Code Sections 1152 and 1119, et seq.

12712 Kristi Lynn Court

NOC date is August 25, 2005.
COE date is August 12, 2005.

Location	Note	SB800	Repair	Photo
Porch	Splits at wood trim.	896.g.02	Patch and paint to match existing.	



NEWMAYER & DILLION LLP
ATTORNEYS AT LAW

PHILIP KOPP
Philip.Kopp@ndlf.com

File No.:
1084.331

September 30, 2010

VIA E-MAIL AND U. S. MAIL

Brett La Cues, Esq.
Law Offices of Jerry La Cues
3110 Chino Avenue, Suite 230
Chino Hills, CA 91709

Re: Four Leaf Lane SB800 Claim
Centex Homes' Offer to Repair:
12966 Eastern Shore Drive, Corona, California

Dear Mr. La Cues:

Centex Homes ("Centex") has carefully inspected each of the items alleged to be violations of the residential construction standards contained in Civil Code Sections 895, et seq. ("SB800") in your August 5, 2010 notice of claim, except to the extent that the nature and/or location of the claimed violations could not be determined. Centex observed very few items that were violations of SB800's residential construction standards.

This offer to repair is made in accordance with Civil Code Sections 917, 924 and 944. Centex requests the opportunity to repair the items that were observed and which violate SB800's residential construction standards. The nature, scope and location of the proposed repair for each such item is described in the enclosed scope of repair for this home. Centex makes no offer to repair any item that is not listed in the scope of repair because the item was not observed, the item did not violate a residential construction standard, and/or the statutes of limitation for the item have expired.

Centex will perform the repairs described in the scope of repair, and estimates that the repairs will be completed within 120 days from the date the repairs at this home begin. Centex's address is 27101 Puerta Real, #300, Mission Viejo, California 92691. It can be reached through its counsel, Newmeyer & Dillion, located at 895 Dove Street, 5th Floor, Newport Beach, California 92660; (949) 854-7000. Centex's license number is 918199.

895 DOVE STREET	1333 N. CALIFORNIA BLVD.
5 TH FLOOR	SUITE 440
NEWPORT BEACH, CA 92660	WALNUT CREEK, CA 94596
T 949 854 7000	T 925 988 3200
F 949 854 7099	F 925 988 3290

2302631.1

Brett La Cues, Esq.
September 30, 2010
Page 2

The homeowner has the right to request up to three additional contractors from which to select to perform the repairs described in the scope of repair. Centex hereby offers to compensate homeowner for damages recoverable under Civil Code Section 944. In accordance with Civil Code Section 919, Centex hereby offers to mediate this dispute if the homeowner so chooses.

We look forward to receiving the homeowner's response to this offer to repair. If you have any questions, please do not hesitate to contact me.

Thank you.

Very truly yours,



Philip D. Kopp

PDK/hs

enclosure

GUILLEN v CENTEX

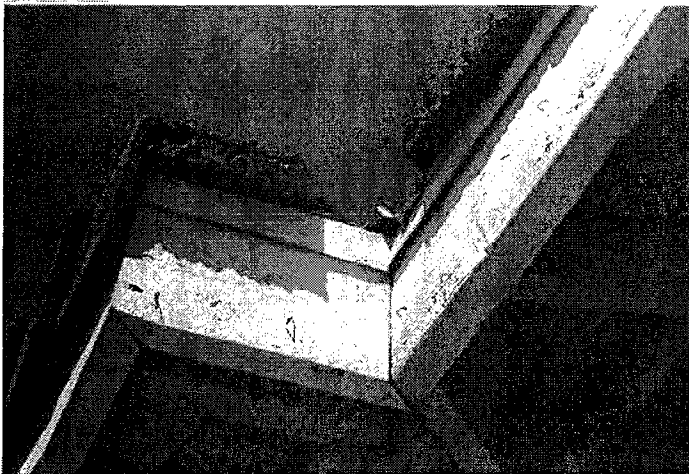

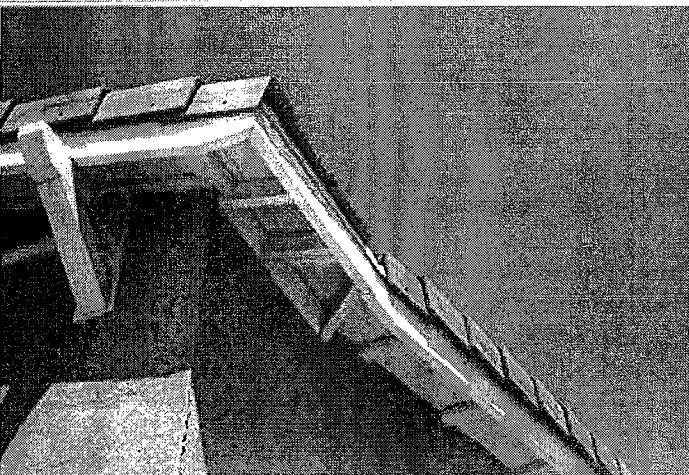
JKA # 09-2785-45

Scope of Repair

For settlement purposes only per Evidence Code Sections 1152 and 1119, et seq.

12966 Eastern Shore Drive

NOC date is November 29, 2005.
COE date is December 23, 2005.

Location	Note	SB800	Repair	Photo
Roof	Termination of sheet metal flashing at lower end of valley.	896.a.04	Remove roofing materials as required from the vicinity of the lower end of the valley. Install a new sheet metal flashing piece to extend metal past the eave framing as required by tile manufacturer recommendations and industry standards. Tune-up underlayment and re-install roof tiles as required.	
Roof	Termination of sheet metal flashing at lower end of valley.	896.a.04	Remove roofing materials as required from the vicinity of the lower end of the valley. Install a new sheet metal flashing piece to extend metal past the eave framing as required by tile manufacturer recommendations and industry standards. Tune-up underlayment and re-install roof tiles as required.	
Roof	Termination of sheet metal flashing at lower end of valley.	896.a.04	Remove roofing materials as required from the vicinity of the lower end of the valley. Install a new sheet metal flashing piece to extend metal past the eave framing as required by tile manufacturer recommendations and industry standards. Tune-up underlayment and re-install roof tiles as required.	

GUILLEN v CENTEX

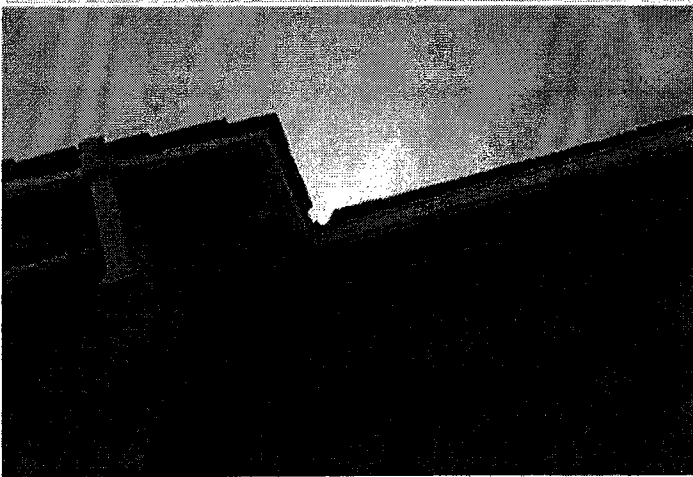
JKA # 09-2785-45

Scope of Repair

For settlement purposes only per Evidence Code Sections 1152 and 1119, et seq.

NOC date is November 29, 2005.
COE date is December 23, 2005.

12966 Eastern Shore Drive

Location	Note	SB800	Repair	Photo
Roof	Termination of sheet metal flashing at lower end of valley.	896.a.04	Remove roofing materials as required from the vicinity of the lower end of the valley. Install a new sheet metal flashing piece to extend metal past the eave framing as required by tile manufacturer recommendations and industry standards. Tune-up underlayment and re-install roof tiles as required.	
Roof	Hip and valley tiles unsecured.	896.g.11	See below.	No photos available.
Roof	Field tiles unsecured.	896.g.11	See below.	No photos available.

GUILLEN v CENTEX


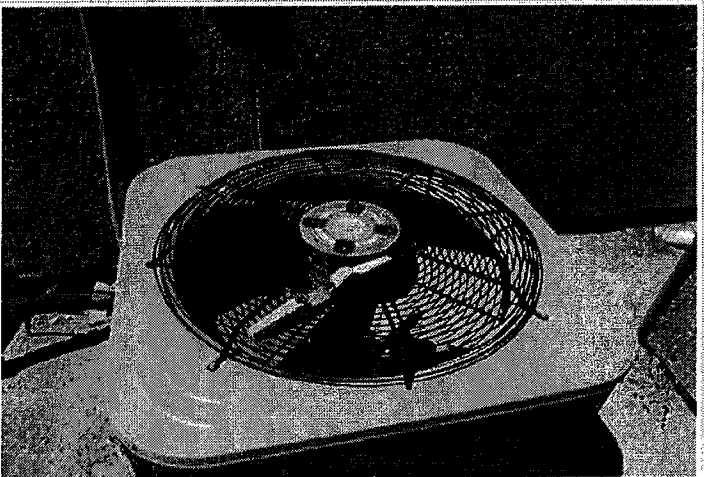
JKA # 09-2785-45

Scope of Repair

For settlement purposes only per Evidence Code Sections 1152 and 1119, et seq.

NOC date is November 29, 2005.
COE date is December 23, 2005.

12966 Eastern Shore Drive

Location	Note	SB800	Repair	Photo
Roof	Roof penetrations not properly sealed.	896.a.04	See below.	No photos available.
Roof	Cracked, chipped or broken tiles.	896.g.03.A	Perform a roof tune-up consisting of the following tasks as required: a) Fasten hip and valley tiles b) Secure field tiles c) Sealing of roof penetrations and headwall flashings d) Replace cracked, chipped or broken tiles	
Elevation, Rear	Exterior compressors installed out of level.	896.g.03.A	If on Centex-provided platform that exceeds 1 inch out of level, adjust and provide proper level to A / C unit.	

GUILLEN v CENTEX

JKA # 09-2785-45

Scope of Repair

For settlement purposes only per Evidence Code Sections 1152 and 1119, et seq.

12966 Eastern Shore Drive

NOC date is November 29, 2005.

COE date is December 23, 2005.


Location	Note	SB800	Repair	Photo
Attic	Insulated hose sets in the attic not properly supported.	896.g.03.A	Secure and properly support loose insulated hose sets in attic.	

EXHIBIT 6

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

acc

**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* 110010749

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
Corona, CA 92880

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

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

10 Karleen Aiken 12726 Eastern Shore Drive
11 Corona, CA 92880

12 Destinee Huffman 12756 Eastern Shore Drive
Corona, CA 92880

13 Jose Beas 12806 Eastern Shore Drive
14 Corona, CA 92880

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

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

18 Beverley A. Kellman 7240 Bay Bridge Road
19 Corona, CA 92880

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

21 Carl Rowens, Jr. and Charlene 12829 Eastern Shore Drive
22 Rowens Corona, CA 92880

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

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

26 Robert Bellis 7392 Morning Hills Drive
27 Corona, CA 92880

28 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 ///

**(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)**

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.

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.

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

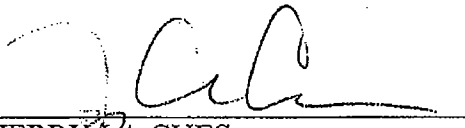
11 
12 _____
13 JERRY LA CUES
14 Attorney for Plaintiffs,
15 EDWARD GUILLEN, et al.

EXHIBIT 7

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

FILED
 COUNTY OF RIVERSIDE
 AUG 06 2010
 A. Sanchez

SUPERIOR COURT 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 HERRY
 GONZALES; PEDRO SANCHES and
 MARIA DE LOS ANGEL SANCHEZ;
 SHERELLE JOHNSON; PHONG THANH
 BO; YA PING SHANG and LEE MA;
 COLIN M. HARTWIG; and VICTORIA
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 HARTWIG; N. BOTUMRATH PROM
 and PONNA PROM; DONNA L.
 HANSON; PATRICIA M. ABARCA;
 MOHAMMED EL ROUS ABOUM
 RASHA KASSEM and MOUDI
 KASSEM; JOHN L. ALEXANDER and
 BERTHA ALEXANDER; JSEUS
 MANUEL LOERA and ELIZABETH M.

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

**NOTICE OF MOTION AND MOTION TO
 STAY ALL PROCEEDINGS PENDING
 COMPLIANCE WITH CIVIL CODE
 SECTION 895 ET SEQ. IN LIEU OF AN
 ANSWER; DECLARATION OF JENNIFER
 C. LYONS**

[Proposed Order filed concurrently herewith]

Hearing Date: 9/20
 Hearing Time: 4:00
 Department: 3

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

LOERA; DAVID RICHARD UNFRIED
and CATHERINE ELEANOR UNFRIED;
CESAR PEREZ; VIVIAN HARRY and
CHARMAINE HARRY; GERARDO
MARQUEZ and YADHIRA MARQUEZ;
ROGELIO ALONZO and JOSEPPA
ALONZO; TARA C. BROWN; JOSE
FRANCISCO G. FERNANDEZ;
DEBORAH PAPANIC and NICHOLAS
PAPNIC; ANITA F. RODRIGUEZ;
TONY JABS; ALFREDO D. GUZMAN;
BENJAMIN L. LIU and SHOUHWEI S.
LIU; DUYN NGUYEN; CHRISTINA I.
RODRIGUEZ; KELLY DUMAS;
CARLOS VASQUEZ; and TERRY
BUCKHANNON,

Plaintiffs,

vs.

CENTEX HOMES, a Nevada General
Partnership; CENTEX REAL ESTATE
CORPORATION, a Nevada Corporation;
NOMAS CORP, a Nevada Corporation;
CENTEX REAL ESTATE HOLDING LP,
a Delaware Limited Partnership; and
DOES 1 through 600, Inclusive,

Defendants.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on _____, 2010 at _____,
(hearing date and time shall be set by the Court upon receipt of these moving papers), or as soon
thereafter as the matter may be heard in **Department 3** of the above-entitled court, Defendants
Centex Homes; Centex Real Estate Holding, LP; Centex Real Estate Corporation; and Nomas
Corp. (hereinafter collectively "Centex") will and do move for an order staying all proceedings
pending plaintiffs' compliance with Civil Code section 895, et seq. (the "Right to Repair Act").
In the alternative, Centex seeks an order staying the claims in the First Amended Complaint that
were not administered under the pre-litigation procedures of the Right to Repair Act.

The motion is made pursuant to Civil Code section 930(b), on the grounds that the
plaintiffs failed to comply with Civil Code section 910(a). Specifically, the notices of claim

1 served by the plaintiffs failed to "describe [their] claim[s] in reasonable detail sufficient to
2 determine the nature and location, to the extent known, of the claimed violation[s]." (Civ. Code, §
3 910(a).) Centex requests that plaintiffs be ordered to provide home-by home lists of each specific
4 claimed violation of a functionality standard, the room(s) where each such violation is located,
5 the number of instances of each such violation, and references to the specific functionality
6 standard(s) at issue for each claimed violation.

7 The motion is also made on the grounds that plaintiffs failed to comply with Civil Code
8 section 932. Plaintiffs have made claims in the First Amended Complaint for defects in windows,
9 plumbing fixtures, soil compaction, flashing, and doors. None of these alleged violations of the
10 functionality standards of the Right to Repair Act were asserted in any of the pre-litigation
11 Notices of Claim. As such, Centex requests an order staying these claims until plaintiffs comply
12 the pre-litigation procedures of the Right to Repair Act.

13 This motion is based on this notice, the attached memorandum of points and authorities,
14 the declaration of Jennifer C. Lyons and exhibits thereto, the documents on file with this court in
15 this action, and on such further evidence as may be presented at the hearing on this matter.

16
17 Dated: August 6, 2010

NEWMEYER & DILLION LLP

18
19 By: 

Jennifer C. Lyons
Attorneys for Defendants
Centex Homes; Centex Real Estate
Holding, LP; Centex Real Estate
Corporation; and Nomax Corp.

MEMORANDUM OF POINTS AND AUTHORITIES

1. INTRODUCTION.

In August 2002, the California State Legislature passed a landmark reform of construction defect law, which became effective as of January 1, 2003 as California Civil Code section 895, et seq. (the "Right to Repair Act" or "SB800"). The stated intent of the Right to Repair Act is to promote the "*prompt and fair resolution of construction defect claims*" and to "improve the procedures for the administration of civil justice, including standards and procedures for *early disposition* of construction defects." (§ 1 of Stats. 2002, c. 722 (S.B.800), emphasis added.)

With the enactment of the Right to Repair Act, the California Legislature implemented sweeping reform of construction defect litigation in California. The Right To Repair Act establishes: (1) standards for the construction of new homes ("Functionality Standards") and corresponding statutes of limitation for violation of the Functionality Standards; (2) mandatory pre-litigation procedures which require homeowners to specifically identify each alleged violation of the Functionality Standards to the builder prior to filing suit; and (3) the builder's absolute right to repair any violations of the Functionality Standards identified by homeowners. The law is intended to relieve the strain that numerous construction defect lawsuits placed on California's overburdened court systems and result in more available and less costly construction insurance to builders. The ultimate goal behind this reform is the creation of more affordable housing throughout the State.

A crucial element of the pre-litigation procedures articulated in the Right to Repair Act is the full disclosure by the homeowner of all alleged violations of the Functionality Standards, which facilitates the builder's right to repair any violations without the need for the involvement of the courts. More specifically, the homeowners are required to serve a Notice of Claim on the builder that "describe[s] the claim in reasonable detail sufficient to determine the nature and location, to the extent known, of the claimed violation." (Civil Code, § 910(a).)

Rather than availing themselves of the benefits and protections of these legislative reforms, however, plaintiffs have abused the process in a clear attempt to get to the courthouse as quickly as possible. Plaintiffs' boilerplate Notices of Claim allege that the exact same 36 generic

defects exist at each of the 49 homes. Even after they were advised of the insufficiency of their Notices of Claim, plaintiffs' counsel continued to serve the identical, generic Notices. With no indication of each individual homeowner's specific concerns, Centex was forced to conduct inefficient, overbroad inspections of all homes searching for potential violations of Functionality Standards. Such a tack defeats the purpose of the Right to Repair Act by depriving homeowners of an opportunity to have their legitimate concerns addressed, cheating builders out of their statutory right to stand behind their products by inspecting and repairing conditions that violate Functionality Standards, and wasting court time and resources that the Legislature fought so ardently to preserve.

Centex respectfully requests that this court stay this action until such time as plaintiffs comply with the Right to Repair Act, which would include providing an individual list for each of the 49 subject homes identifying each specific claimed violation of a Functionality Standard, the room(s) where each such violation is located, the number of instances of each such violation, and references to the specific Functionality Standard(s) at issue for each claimed violation. Upon receipt of proper Notices of Claim, Centex will be able to determine whether new inspections are necessary, or whether offers to repair can be made without the need for further inspections. Proper Notices of Claim also will facilitate productive pre-litigation mediations pursuant to Civil Code section 919, as the parties will all have a finite list of issues to discuss.

Centex alternatively requests that the court stay all claims alleged in the First Amended Complaint that were not asserted in any of the Notices of Claim until they are administered separately under the pre-litigation procedures of the Right to Repair Act.

There is no question that the Legislature expected homeowners and builders to use their best efforts to resolve construction defect claims without the need for the court's intervention. Plaintiffs' attempts to circumvent those reforms must not be permitted.

2. FACTUAL BACKGROUND.

This is a construction defect case currently involving 49 single family homes in Corona, California. (Declaration of Jennifer C. Lyons ("Lyons Decl.") at ¶ 2.) The homes in this case are subject to the Right to Repair Act, as they were sold on or after January 1, 2003. (Lyons Decl. at ¶

1 2.)

2 On behalf of the owners of the 49 homes currently at issue in this litigation, plaintiffs'
3 counsel, Jerry LaCues of The LaCues Law Group (formerly Law Offices of Jerry LaCues), served
4 seven Notices of Claim pursuant to Civil Code section 910 between September 29, 2009 and
5 January 28, 2010.¹ (Lyons Decl. at ¶¶ 3, 4; see Exhibits A through G.) A cursory review of those
6 seven Notices of Claim reveals that they fail to comply with Civil Code section 910(a). First, all
7 seven Notices of Claim are identical, except for the addresses listed in each. (See Exhibits A
8 though G.) In addition, unlike the notices of claim served in many other cases, plaintiffs' Notices
9 of Claim do not contain home-by home lists of each specific claimed violation of a Functionality
10 Standard, the room(s) where each such violation is/are located, the number of instances of each
11 such violation, or references to the specific Functionality Standard(s) at issue. (Lyons Decl. at ¶ 5;
12 see Exhibits A through G.)

13 On October 13, 2010, within the time period prescribed by Civil Code section 913,
14 counsel for Centex sent a letter to claimants'/plaintiffs' counsel, acknowledging the September
15 29, 2010 Notice of Claim. (Lyons Decl. at ¶ 6; Exhibit H.) In its letter, counsel for Centex stated:

16 As a preliminary matter, we must object to the content of the Claim,
17 which fails to describe the alleged defects with the detail required
18 by Civil Code Section 910(a). Centex reserves its rights to compel
your clients to comply fully with all of their statutory and
contractual requirements.

19 (*Id.*) A similar letter was sent to acknowledge each of the seven Notices of Claim listed above.
20 (Lyons Decl. at ¶ 6.)

21 Because Centex did not want to waive any of its rights under the Right to Repair Law,
22 Centex proceeded with prelitigation inspections pursuant to Civil Code section 916(a). (Lyons
23 Decl. at ¶ 7.) Unfortunately, however, Centex had no guidance as to which potential
24 Functionality Standards violations were at issue for each home. As a result, they were forced to
25 conduct top-to-bottom scavenger hunts in each home. For example, without any reference to the
26 specific Functionality Standard(s) allegedly violated, Centex could not determine whether the

27 ¹ Three additional Notices of Claims have been served, but the prelitigation procedures for those homes have not yet
28 been completed. Centex expects that plaintiffs' counsel will file amendments to the complaint to add those homes
upon completion of the repairs.

1 reference to “drywall - surface cracks were observed in numerous locations throughout the
2 residences” was a claim of structural defects, non-structural framing issues, plumbing issues, a
3 poor drywall application, or something else, and every inch of drywall in each home had to be
4 inspected in an attempt to figure out what *might* be at issue.

5 With each new Notice of Claim, Centex was forced to attempt to solve the defect mystery
6 for each home. Inspections were made and offers to repair those Functionality Standards
7 violations that Centex was able to identify were served. (Lyons Decl. at ¶ 7.) Following
8 unsuccessful mediations pursuant to Civil Code section 919, the repairs offered by Centex were
9 undertaken as set forth in the Right to Repair Act. (Lyons Decl. at ¶ 7.)

10 Upon completion of the repair for the first 52 homes, Centex was served with the First
11 Amended Complaint (“FAC”) listing the owners of 49 of those homes as plaintiffs in the action
12 (it appears three homes have opted not to pursue litigation). (Lyons Decl. at ¶ 8.) Not
13 surprisingly, the FAC reads as though Centex never touched any of the homes. For the first time
14 in the entire process, however, plaintiffs acknowledge the existence of the Functionality
15 Standards set forth at Civil Code section 896. (See FAC at ¶ 19(b); Lyons Decl at ¶ 8.)

16 Plaintiffs’ Notices of Claim fall far short of the requirements of Civil Code section 910(a),
17 discussed below. Instead of utilizing the procedures crafted by the Legislature to obtain the
18 repairs contemplated by the Right to Repair Act, plaintiffs have heaved the burden back onto the
19 court to administer the relief they seek. Their disregard for the letter and intent of these
20 significant legislative amendments must not be tolerated.

21 **3. PLAINTIFFS’ NOTICES OF CLAIM ARE DEFECTIVE AND IT IS**
22 **APPROPRIATE TO MAKE PLAINTIFFS COMPLY WITH THE RIGHT TO**
23 **REPAIR LAW BEFORE THEY MAY BRING SUIT.**

24 The Right to Repair Act is not an optional mechanism that homeowners can elect to use at
25 their whim. Rather, the plain language of Civil Code section 910 establishes that in order to bring
26 a construction defect action, a homeowner must first comply with the Right to Repair Act pre-
27 litigation process:

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- 7 -

Prior to filing an action against any party alleged to have contributed to a violation of the standards set forth in Chapter 2 (commencing with Section 896), the claimant shall initiate the following prelitigation procedures:

(a) The claimant or his or her legal representative shall provide written notice... to the builder in the manner prescribed in this section, of the claimant's claim that the construction of his or her residence violates any of the standards set forth in Chapter 2 (commencing with Section 896). That notice shall provide the claimant's name, address, and preferred method of contact, and shall state that the claimant alleges a violation pursuant to this part against the builder, **and shall describe the claim in reasonable details sufficient to determine that nature and location, to the extent known, of the claimed violation.**

(Civ. Code, § 910, emphasis added.)

None of plaintiffs' Notices of Claim contain any details regarding the nature or location of any violations. (See Exhibits A through G.) Rather, plaintiffs provided a long, generic list of 36 defects to which they merely attached a list of addresses. (*Id.*) This falls well below the mandatory statutory requirements of Civil Code section 910(a). Centex immediately recognized that plaintiffs' first Notice of Claims was defective and expressly reserved its rights to object to plaintiffs' Notice in its initial acknowledgement and in each subsequent acknowledgement of the six other Notices of Claims. (Lyons Decl. at ¶ 6; Exhibit H.)

Although Centex endeavored to conduct thorough inspections to locate any potential violations of the Functionality Standards, the generic, broad and uninformative Notices of Claim made it impossible for Centex to determine whether the offers to repair address the specific issues with which each homeowner is concerned. An order staying this action until plaintiffs comply with the Right to Repair Act is appropriate and necessary.

4. PLAINTIFFS HAVE FAILED TO COMPLY WITH THE RIGHT TO REPAIR ACT BY INCLUDING CLAIMS OF SUBSEQUENTLY DISCOVERED VIOLATIONS OF CONSTRUCTION STANDARDS IN THE FAC.

In addition to the failure of plaintiffs' Notices of Claim to comply with the right to Repair Act, plaintiffs have now inserted defect claims in their FAC that were not included in their Notices of Claim or administered through the pre-litigation process. Civil Code section 932 provides in pertinent part:

1 Subsequently discovered claims of unmet standards **shall be**
2 **administered separately under this chapter**, unless otherwise
3 agreed to by the parties.

4 (Civ. Code, § 932.) This means that any claims not raised in the prelitigation Notices of Claims
5 must be administered separately under the prelitigation procedures.

6 Despite the generality of the Notices of Claims, it is clear that there are no claims
7 pertaining to windows, plumbing fixtures, soil compaction issues, flashing, or doors. (Se Exhibits
8 A through G.) In their FAC, however, plaintiffs have alleged that:

9 [t]he construction defects complained of concern standard
10 components for the Development, including defective foundations,
11 roofs, framing, *windows*, stucco, concrete, plumbing and *plumbing*
12 *fixtures*, electrical and electrical fixtures, HVAC, *soil compaction*
13 and preparation, and *other defects* to be proven at trial, including,
14 *but not limited to*, those more specifically described below.

15 (FAC at ¶ 3, new defect claims emphasized.)

16 Plaintiffs further allege that:

17 “said lots, homes and components therein contained substantial
18 latent defects in design and/or construction, including, *but not*
19 *limited to*, the following:

20 a. The roofs, *windows*, foundations, soil, drainage, concrete,
21 stucco, heating and air conditioning systems, *flashing, doors*,
22 drywall, electrical fixtures and systems, framing, plumbing, and
23 *other components* throughout the lots and homes are defective,
24 unsound and are failing; they leak, and are staining, molding,
25 corroding, eroding, cracking, breaking down, and deteriorating due
26 to Defendants’ defective development, design, construction,
27 installation, workmanship and/or materials.

28 (FAC at ¶ 19(a), new defect claims emphasized.)

Plaintiffs are precluded from pursuing subsequently discovered claims in this lawsuit
unless they have first administered them under the Right to Repair Act. (Civ. Code, § 932.) This
would include any aspects of their broad claims for “other defects” or “other components” that
were not submitted to the pre-litigation process. By adding these new claims to the FAC,
plaintiffs have again ignored their statutory obligations.

As such, the claims in the FAC pertaining to defects in windows, plumbing fixtures, soil
compaction, flashing, and doors must be stayed pursuant to Civil Code sections 930(b) and 932,

///

and these new claims should be administered separately under the pre-litigation procedures set forth in the Right to Repair Act prior to being included in a lawsuit.

5. CONCLUSION

The stated policy behind the Right to Repair Act is to resolve homeowner claims quickly and efficiently, preferably without resort to litigation. Indeed, when it enacted the Right to Repair Act, the Legislature noted:

The prompt and fair resolution of construction defect claims is in the interest of consumers, homeowners, and the builders of homes, and is vital to the state's continuing growth and vitality. . . . It is the intent of the Legislature that this act improve the procedures for the administration of civil justice, including standards and procedures for early disposition of construction defects.

(§ 1 of Stats.2002, c. 722 (S.B.800).)

Plaintiffs seek to circumvent the reforms enacted by the Legislature by cutting corners in a race to the courthouse that undermines the entire prelitigation scheme of the Right to Repair Act. Centex urges the court to uphold the will of the Legislature and the landmark reforms embodied in the Right to Repair Act.

Centex respectfully requests that this court enter the following orders:

1. That the entire action is stayed until such time as plaintiffs comply with the Right to Repair Act;
2. That in order to comply with the Right to Repair Act, plaintiffs must serve Centex with new Notices of Claims, which shall consist of individual lists for each of the 49 subject homes identifying:
 - a. each specific claimed violation of a Functionality Standard;
 - b. the room(s) where each such violation is/are located;
 - c. the number of instances of each such violation; and
 - d. references to the specific Functionality Standard(s) at issue for each claimed violation.
3. That the date of service of the new Notices of Claims shall serve to restart the prelitigation procedures outlined in the Right to Repair Act;

1 In the alternative, Centex requests an order staying the claims in the FAC pertaining to
2 defects in windows, plumbing fixtures, soil compaction, flashing, and doors, until these new
3 claims are administered separately under the pre-litigation procedures of the Right to Repair Act.

4
5 Dated: August 6, 2010

NEWMEYER & DILLION LLP

6
7 By: 

8 Jennifer C. Lyons
9 Attorneys for Defendants
10 Centex Homes; Centex Real Estate
11 Holding, LP; Centex Real Estate
12 Corporation; and Nomas Corp.
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DECLARATION OF JENNIFER C. LYONS

I, Jennifer C. Lyons, declare as follows:

1. I am an attorney at law duly admitted to practice before all courts of the State of California and am an associate at Newmeyer & Dillion, LLP, counsel of record for Defendants Centex Homes; Centex Real Estate Holding, LP; Centex Real Estate Corporation; and Nomas Corp. (collectively "Centex") in this matter. I have personal knowledge of the matters stated herein and if called to testify thereupon I could and would do so competently.

2. This is a construction defect case involving 49 single family homes in Corona, California. The homes in this case are subject to the Right to Repair Act, set forth at California Civil Code section 895, *et seq.*, as they were sold on or after January 1, 2003.

3. On behalf of the owners of the 49 homes currently at issue in this litigation, plaintiffs' counsel, Jerry LaCues of The LaCues Law Group (formerly Law Offices of Jerry LaCues), served Notices of Claims pursuant to Civil Code section 910 as follows:

Claim Number	Date of Claim	Plaintiff(s)	Address
1 (Exhibit A)	9/29/09 <i>(Originally 9 homes – 1 is not named in the First Amended Complaint)</i>	Guillen	12769 Eastern Shore Drive
		Aiken	12726 Eastern Shore Drive
		Beas	12806 Eastern Shore Drive
		Castro	12722 Kristi Lynn Court
		Huffman	12756 Eastern Shore Drive
		Murphy & Piper	7244 Morning Hills Drive
		Salazar	12705 Kristi Lynn Court
		Wurtz	12799 Eastern Shore Drive
2 (Exhibit B)	10/7/09	Chin & Huang	12946 Eastern Shore Drive
		Kellman	7240 Bay Bridge Road
		Martinez	12712 Kristi Lynn Court
		Robison & Herd	7241 Blue Crab Court
		Rowens	12829 Eastern Shore Drive
3 (Exhibit C)	10/26/09	Bellis	7392 Morning Hills Drive
		Butler	7300 Altizer Court
		Garcia	12895 Gingerwood Court
		Hourani	12716 Eastern Shore Drive
4 (Exhibit D)	11/12/09	Cobos & San Jose	12932 Gingerwood Court
		Flor & Alvarez	7321 Hollyheath Court
		Gonzales	12809 Eastern Shore Drive
		Harris	7233 Bay Bridge Road
		Johnson	12906 Eastern Shore Drive
		Sanchez	12796 Eastern Shore Drive

Claim Number	Date of Claim	Plaintiff(s)	Address
5 (Exhibit E)	11/30/09	Abarca	7222 Excelsior Drive
		Abou & Kassem	7268 Blue Crab Court
		Alexander	7384 Morning Hills Drive
		Hanson	12793 Jack Lane
		Hartwig	7400 Morning Hills Drive
		Loera	12701 Dairy Street
		Prom	12892 Gingerwood Court
		Shang & Ma	12876 Eastern Shore Drive
		Vo	7227 Beckett Field Lane
6 (Exhibit F)	12/24/09 <i>(Originally 12 homes – 3 are not named in the First Amended Complaint)</i>	Alonzo	7299 Canterwood Court
		Brown	12912 Gingerwood Court
		Fernandez, J.	7242 Excelsior Drive
		Harry	7280 Bay Bridge Road
		Marquez	7309 Canterwood Court
		Papanic	12773 Jack Lane
		Perez	7294 Morning Hills Drive
		Rodriguez	12728 Dairy Street
		Unfried	7313 Altizer Court
7 (Exhibit G)	1/28/10	Buckhannon	7215 Excelsior Drive
		Dumas	7278 Blue Crab Court
		Guzman	7273 Bay Bridge Road
		Jabs	12766 Eastern Shore
		Liu	7217 Beckett Field Lane
		Nguyen	7252 Excelsior Drive
		Rodriguez	12902 Gingerwood Court
		Vasquez	12791 Dairy Street

4. Attached hereto at Exhibits A through G are true and correct copies of each of the seven Notices of Claims listed above. These seven Notices of Claims fail to comply with Civil Code section 910(a).

5. I have personally reviewed the notices of claims in at least 10 other Right to Repair Act cases. Of all of the notices of claims I have reviewed, the Notices of Claims in this case are the most generic, broad and uninformative. Unlike most of the notice of claims I have reviewed in other cases, plaintiffs' Notices of Claims do not contain home-by home lists of each specific claimed Functionality Standards violation, the room(s) where each such violation is located, the number of instances of each such violation, or references to the specific Functionality Standard(s) at issue.

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6. On October 13, 2010, within the time period prescribed by Civil Code section 913, my office sent a letter to claimants'/plaintiffs' counsel, acknowledging the September 29, 2010 Notice of Claim. In that letter, Centex objected to the content of the Notice of Claim, which failed to describe the alleged defects with the detail required by Civil Code Section 910(a), and reserved its rights to compel the claimants to comply fully with their statutory requirements. A true and correct copy of that letter is attached hereto at Exhibit H. A similar letter was sent to acknowledge each of the seven Notices of Claims listed above.

7. Because Centex did not want to waive any of its rights under the Right to Repair Law, Centex proceeded with prelitigation inspections pursuant to Civil Code section 916(a). Inspections were made and offers to repair those Functionality Standards violations that Centex was able to identify were served for each of the 49 homes in this litigation. Following unsuccessful mediations pursuant to Civil Code section 919, the repairs offered by Centex were undertaken.

8. In June 2010, upon completion of the repair for the first 52 homes, Centex was served with the First Amended Complaint ("FAC") listing the owners of 49 of those homes as plaintiffs in the action (it appears three homes have opted not to pursue litigation). Not surprisingly, the FAC reads as though Centex never touched any of the homes. It is in the FAC, however, that plaintiffs finally acknowledge the existence of the functionality standards set forth at Civil Code section 896 for the first time in the entire process.

I declare, under the penalty of perjury of the laws of the State of California, that the foregoing is true and correct.

Executed on August 6, 2010, in Newport Beach, California.

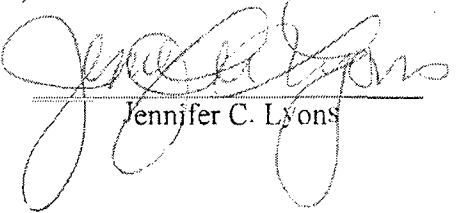
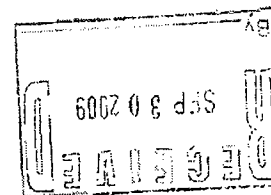

Jennifer C. Lyons

EXHIBIT "A"

LAW OFFICES OF
Jerry La Cues
3110 Chino Avenue, Suite 230
Chino Hills, California 91709
(909) 627-3535 · (909) 590-3388 – Fax



September 29, 2009

Centex Homes
1265 Corona Pointe Court
Corona, California 92879

Via Certified Mail

RE: Civil Code §910 et seq. notice

To Whom It May Concern:

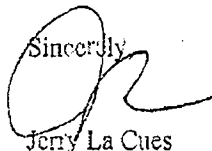
This office has been retained to represent several homeowners in Tract No. 30817 Corona, California 92880 concerning any and all defects arising from the construction of their homes. The specific addresses are as follows: 12691 Dairy Street, 12722 Kristi Lynn Court, 7244 Morning Hills Drive, 12769 Eastern Shore Drive, 12726 Eastern Shore Drive, 12756 Eastern Shore Drive, 12806 Eastern Shore Drive, 12799 Eastern Shore Drive, and 12705 Kristi Lynn Court. Pursuant to Civil Code §910 et seq., you are hereby noticed that, after a preliminary investigation, the following building violations and/or defects exist:

1. Site Conditions
 - a. Excessive subsurface soil moisture in non-irrigated areas.
 - b. Improper grading of lots restricting surface drainage.
2. Structural
 - a. Concrete footings are undersized. Concrete footing depths of 9" to 11" embedment below grade were observed in areas supporting two story structures.
 - b. Excessive cracking in PT slabs.
 - c. Concrete slab thickness may be below required minimums.
 - d. Concrete slabs constructed out of level.
 - e. Excessive cracking of concrete garage slabs.
 - f. Interior shear walls terminate at the bottom cord of the roof trusses and do not transfer to the roof.
 - g. Excessive roof deflection.
 - h. Walls constructed not plumb.
 - i. Attic access areas improperly constructed.
 - j. Roof sheathing improperly installed.
 - k. Roof sheathing nailing not fully set flush to plywood surface.

3. Concrete Tile Roofing
 - a. Hip and valley tiles unsecured.
 - b. Field tiles unsecured.
 - c. Improper tile spacing at valleys
 - d. Roof penetrations not properly sealed.
 - e. Cracked chipped or broken tiles.
4. Stucco
 - a. Excessive cracking.
 - b. Spauling.
 - c. Blocked weep screeds.
 - d. Excessive discoloration.
 - e. Improperly embedded wood.
 - f. Improper foam trim installation.
5. Drywall
 - a. Surface cracks were observed in numerous locations throughout the residences.
6. Electrical
 - a. Overloaded electrical circuit breakers.
 - b. Improper GFIC protection.
 - c. Non-working electrical outlets and switches.
7. HVAC
 - a. Exterior compressors installed out of level.
 - b. The insulated hose sets in the attic are not properly supported.
 - c. The insulated hose sets at the exterior compressors are not properly protected and the insulation is deteriorating.
 - d. Supply vents are missing to habitable rooms.
8. Plumbing
 - a. The PEX plastic piping is improperly terminated without the use of the required angle stops.
 - b. The PEX plastic piping is improperly supported.
 - c. The gas supply flex is improperly supported in the attic.
 - d. The attic installed condensate drains are installed improperly, without the required slope.
 - e. A gas leak was detected in an attic and was repaired at the time of the inspection.

Further, claimants hereby request copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations.

Sincerely,



Jerry La Cues

EXHIBIT "B"

LAW OFFICES OF
Jerry La Cues
3110 Chino Avenue, Suite 230
Chino Hills, California 91709
(909) 627-3535 • (909) 590-3388 – Fax

October 7, 2009

Centex Homes
1265 Corona Pointe Court
Corona, California 92879

Via Certified Mail

RE: Civil Code §910 et seq. notice

To Whom It May Concern:

This office has been retained to represent several homeowners in Tract No. 30817 Corona, California 92880 concerning any and all defects arising from the construction of their homes. The specific addresses are as follows: 7240 Bay Bridge Road, 7241 Blue Crab Court, 12946 Eastern Shore Drive, 12829 Eastern Shore Drive, and 12712 Kristi Lynn Court. Pursuant to Civil Code §910 et seq., you are hereby noticed that, after a preliminary investigation, the following building violations and/or defects exist:

1. Site Conditions
 - a. Excessive subsurface soil moisture in non-irrigated areas.
 - b. Improper grading of lots restricting surface drainage.
2. Structural
 - a. Concrete footings are undersized. Concrete footing depths of 9" to 11" embedment below grade were observed in areas supporting two story structures.
 - b. Excessive cracking in PT slabs.
 - c. Concrete slab thickness may be below required minimums.
 - d. Concrete slabs constructed out of level.
 - e. Excessive cracking of concrete garage slabs
 - f. Interior shear walls terminate at the bottom cord of the roof trusses and do not transfer to the roof.
 - g. Excessive roof deflection.
 - h. Walls constructed not plumb.
 - i. Attic access areas improperly constructed.
 - j. Roof sheathing improperly installed.
 - k. Roof sheathing nailing not fully set flush to plywood surface.
3. Concrete Tile Roofing
 - a. Hip and valley tiles unsecured.
 - b. Field tiles unsecured.
 - c. Improper tile spacing at valleys
 - d. Roof penetrations not properly sealed.

- c. Cracked chipped or broken tiles.
- 4. Stucco
 - a. Excessive cracking.
 - b. Spalling.
 - c. Blocked weep screeds.
 - d. Excessive discoloration.
 - e. Improperly embedded wood.
 - f. Improper foam trim installation.
- 5. Drywall
 - a. Surface cracks were observed in numerous locations throughout the residences.
- 6. Electrical
 - a. Overloaded electrical circuit breakers.
 - b. Improper GFC protection.
 - c. Non-working electrical outlets and switches.
- 7. HVAC
 - a. Exterior compressors installed out of level.
 - b. The insulated hose sets in the attic are not properly supported.
 - c. The insulated hose sets at the exterior compressors are not properly protected and the insulation is deteriorating.
 - d. Supply vents are missing to habitable rooms.
- 8. Plumbing
 - a. The PEX plastic piping is improperly terminated without the use of the required angle stops.
 - b. The PEX plastic piping is improperly supported.
 - c. The gas supply flex is improperly supported in the attic.
 - d. The attic installed condensate drains are installed improperly, without the required slope.
 - e. A gas leak was detected in an attic and was repaired at the time of the inspection.

Further, claimants hereby request copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations.

Sincerely,

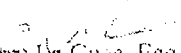

Jerry La Cues, Esq.

EXHIBIT "C"

LAW OFFICES OF
Jerry La Cues
3110 Chino Avenue, Suite 230
Chino Hills, California 91709
(909) 627-3535 · (909) 590-3388 – Fax

October 26, 2009

Centex Homes
1265 Corona Pointe Court
Corona, California 92879

Via Certified Mail

RE: *Civil Code §910 et seq. notice*

To Whom It May Concern:

This office has been retained to represent several homeowners in Tract No. 30817 Corona, California 92880 concerning any and all defects arising from the construction of their homes. The specific addresses are as follows: 7392 Morning Hills Drive, 12716 Eastern Shore, 12895 Gingerwood Court, and 7300 Altizer Court. Pursuant to Civil Code §910 et seq., you are hereby noticed that, after a preliminary investigation, the following building violations and/or defects exist:

1. Site Conditions
 - a. Excessive subsurface soil moisture in non-irrigated areas.
 - b. Improper grading of lots restricting surface drainage.
2. Structural
 - a. Concrete footings are undersized. Concrete footing depths of 9" to 11" embedment below grade were observed in areas supporting two story structures.
 - b. Excessive cracking in PT slabs.
 - c. Concrete slab thickness may be below required minimums.
 - d. Concrete slabs constructed out of level.
 - e. Excessive cracking of concrete garage slabs.
 - f. Interior shear walls terminate at the bottom cord of the roof trusses and do not transfer to the roof.
 - g. Excessive roof deflection.
 - h. Walls constructed not plumb.
 - i. Attic access areas improperly constructed.
 - j. Roof sheathing improperly installed.
 - k. Roof sheathing nailing not fully set flush to plywood surface.
3. Concrete Tile Roofing
 - a. Hip and valley tiles unsecured.
 - b. Field tiles unsecured.
 - c. Improper tile spacing at valleys
 - d. Roof penetrations not properly sealed.

- e. Cracked chipped or broken tiles.
- 4. Stucco
 - a. Excessive cracking.
 - b. Spauling.
 - c. Blocked weep screeds.
 - d. Excessive discoloration.
 - e. Improperly embedded wood.
 - f. Improper foam trim installation.
- 5. Drywall
 - a. Surface cracks were observed in numerous locations throughout the residences.
- 6. Electrical
 - a. Overloaded electrical circuit breakers.
 - b. Improper GFCI protection.
 - c. Non-working electrical outlets and switches.
- 7. HVAC
 - a. Exterior compressors installed out of level.
 - b. The insulated hose sets in the attic are not properly supported.
 - c. The insulated hose sets at the exterior compressors are not properly protected and the insulation is deteriorating.
 - d. Supply vents are missing to habitable rooms.
- 8. Plumbing
 - a. The PEX plastic piping is improperly terminated without the use of the required angle stops.
 - b. The PEX plastic piping is improperly supported.
 - c. The gas supply flex is improperly supported in the attic.
 - d. The attic installed condensate drains are installed improperly, without the required slope.
 - e. A gas leak was detected in an attic and was repaired at the time of the inspection.

Further, claimants hereby request copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations.

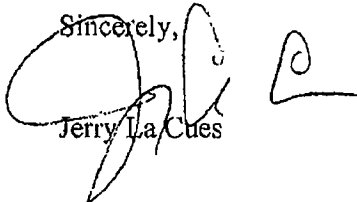
Sincerely,

Jerry LaCues

EXHIBIT “D”

LAW OFFICES OF
Jerry La Cues
3110 Chino Avenue, Suite 230
Chino Hills, California 91709
(909) 627-3535 · (909) 590-3388 – Fax

November 12, 2009

Philip D. Kopp, Esq.
Newmeyer & Dillion, LLP
895 Dove Street, 5th Floor
Newport Beach, California 92660

*Via Regular Mail
Per Agreement*

RE: *Civil Code §910 et seq. notice*

Dear Mr. Kopp:

This office has been retained to represent several homeowners in Tract No. 30817 Corona, California 92880 concerning any and all defects arising from the construction of their homes. The specific addresses are as follows: 7321 Hollyheath Court, 7233 Bay Bridge Road, 12932 Gingerwood Court, 12809 Eastern Shore Drive, 12796 Eastern Shore Drive, and 12906 Eastern Shore Drive. Pursuant to Civil Code §910 et seq., you are hereby noticed that, after a preliminary investigation, the following building violations and/or defects exist:

1. Site Conditions
 - a. Excessive subsurface soil moisture in non-irrigated areas.
 - b. Improper grading of lots restricting surface drainage.
2. Structural
 - a. Concrete footings are undersized. Concrete footing depths of 9" to 11" embedment below grade were observed in areas supporting two story structures.
 - b. Excessive cracking in PT slabs.
 - c. Concrete slab thickness may be below required minimums.
 - d. Concrete slabs constructed out of level.
 - e. Excessive cracking of concrete garage slabs.
 - f. Interior shear walls terminate at the bottom cord of the roof trusses and do not transfer to the roof.
 - g. Excessive roof deflection.
 - h. Walls constructed not plumb.
 - i. Attic access areas improperly constructed.
 - j. Roof sheathing improperly installed.
 - k. Roof sheathing nailing not fully set flush to plywood surface.
3. Concrete Tile Roofing
 - a. Hip and valley tiles unsecured.
 - b. Field tiles unsecured.

- c. Improper tile spacing at valleys
- d. Roof penetrations not properly sealed.
- e. Cracked chipped or broken tiles.
- 4. Stucco
 - a. Excessive cracking.
 - b. Spauling.
 - c. Blocked weep screeds.
 - d. Excessive discoloration.
 - e. Improperly embedded wood.
 - f. Improper foam trim installation.
- 5. Drywall
 - a. Surface cracks were observed in numerous locations throughout the residences.
- 6. Electrical
 - a. Overloaded electrical circuit breakers.
 - b. Improper GFIC protection.
 - c. Non-working electrical outlets and switches.
- 7. HVAC
 - a. Exterior compressors installed out of level.
 - b. The insulated hose sets in the attic are not properly supported.
 - c. The insulated hose sets at the exterior compressors are not properly protected and the insulation is deteriorating.
 - d. Supply vents are missing to habitable rooms.
- 8. Plumbing
 - a. The PEX plastic piping is improperly terminated without the use of the required angle stops.
 - b. The PEX plastic piping is improperly supported.
 - c. The gas supply flex is improperly supported in the attic.
 - d. The attic installed condensate drains are installed improperly, without the required slope.
 - e. A gas leak was detected in an attic and was repaired at the time of the inspection.

Further, claimants hereby request copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations.

Sincerely,

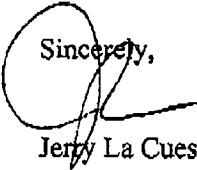

Jerry La Cues

EXHIBIT "E"

LAW OFFICES OF
Jerry La Cues
3110 Chino Avenue, Suite 230
Chino Hills, California 91709
(909) 627-3535 • (909) 590-3388 – Fax

November 30, 2009

Philip D. Kopp, Esq.
Newmeyer & Dillion, LLP
895 Dove Street, 5th Floor
Newport Beach, California 92660

*Via Regular Mail
Per Agreement*

RE: *Civil Code §910 et seq. notice*

Dear Mr. Kopp:

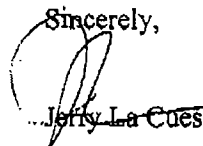
This office has been retained to represent several homeowners in Tract No. 30817 Corona, California 92880 concerning any and all defects arising from the construction of their homes. The specific addresses are as follows: 7227 Beckett Field Lane, 12876 Eastern Shore Drive, 7400 Morning Hills Drive, 12892 Gingerwood Court, 12793 Jack Lane, 7222 Excelsior Drive, 7268 Blue Crab Court, 7384 Morning Hills Drive, and 12701 Dairy Street. Pursuant to Civil Code §910 et seq., you are hereby noticed that, after a preliminary investigation, the following building violations and/or defects exist:

1. Site Conditions
 - a. Excessive subsurface soil moisture in non-irrigated areas.
 - b. Improper grading of lots restricting surface drainage.
2. Structural
 - a. Concrete footings are undersized. Concrete footing depths of 9" to 11" embedment below grade were observed in areas supporting two story structures.
 - b. Excessive cracking in PT slabs.
 - c. Concrete slab thickness may be below required minimums.
 - d. Concrete slabs constructed out of level.
 - e. Excessive cracking of concrete garage slabs.
 - f. Interior shear walls terminate at the bottom cord of the roof trusses and do not transfer to the roof.
 - g. Excessive roof deflection.
 - h. Walls constructed not plumb.
 - i. Attic access areas improperly constructed.
 - j. Roof sheathing improperly installed.
 - k. Roof sheathing nailing not fully set flush to plywood surface.
3. Concrete Tile Roofing
 - a. Hip and valley tiles unsecured.
 - b. Field tiles unsecured.

- c. Improper tile spacing at valleys
- d. Roof penetrations not properly sealed.
- e. Cracked chipped or broken tiles.
- 4. Stucco
 - a. Excessive cracking.
 - b. Spauling.
 - c. Blocked weep screeds.
 - d. Excessive discoloration.
 - e. Improperly embedded wood.
 - f. Improper foam trim installation.
- 5. Drywall
 - a. Surface cracks were observed in numerous locations throughout the residences.
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- 7. HVAC
 - a. Exterior compressors installed out of level.
 - b. The insulated hose sets in the attic are not properly supported.
 - c. The insulated hose sets at the exterior compressors are not properly protected and the insulation is deteriorating.
 - d. Supply vents are missing to habitable rooms.
- 8. Plumbing
 - a. The PEX plastic piping is improperly terminated without the use of the required angle stops.
 - b. The PEX plastic piping is improperly supported.
 - c. The gas supply flex is improperly supported in the attic.
 - d. The attic installed condensate drains are installed improperly, without the required slope.
 - e. A gas leak was detected in an attic and was repaired at the time of the inspection.

Further, claimants hereby request copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations.

Sincerely,



Jeff LaCues

EXHIBIT “F”

LAW OFFICES OF
Jerry La Cues
3110 Chino Avenue, Suite 230
Chino Hills, California 91709
(909) 627-3535 · (909) 590-3388 – Fax

December 24, 2009

Philip D. Kopp, Esq.
Newmeyer & Dillion, LLP
895 Dove Street, 5th Floor
Newport Beach, California 92660

*Via Regular Mail
Per Agreement*

RE: Civil Code §910 et seq. notice

Dear Mr. Kopp,

This office has been retained to represent several homeowners in Tract Nos. 30816, 30817, and 31323 in Corona, California 92880 concerning any and all defects arising from the construction of their homes. The specific addresses are as follows: 7313 Altizer Court, 7294 Morning Hills Drive, 7280 Bay Bridge Road, 7309 Canterwood Court, 7299 Canterwood Court, 12912 Gingerwood Court, 7225 Excelsior Drive, 7242 Excelsior Drive, 12783 Jack Lane, 12723 Jack Lane, 12773 Jack Lane, and 12728 Dairy Street. Pursuant to Civil Code §910 et seq., you are hereby noticed that, after a preliminary investigation, the following building violations and/or defects exist:

1. Site Conditions
 - a. Excessive subsurface soil moisture in non-irrigated areas.
 - b. Improper grading of lots restricting surface drainage.
2. Structural
 - a. Concrete footings are undersized. Concrete footing depths of 9" to 11" embedment below grade were observed in areas supporting two story structures.
 - b. Excessive cracking in PT slabs.
 - c. Concrete slab thickness may be below required minimums.
 - d. Concrete slabs constructed out of level.
 - e. Excessive cracking of concrete garage slabs.
 - f. Interior shear walls terminate at the bottom cord of the roof trusses and do not transfer to the roof.
 - g. Excessive roof deflection.
 - h. Walls constructed not plumb.
 - i. Attic access areas improperly constructed.
 - j. Roof sheathing improperly installed.
 - k. Roof sheathing nailing not fully set flush to plywood surface.
3. Concrete Tile Roofing
 - a. Hip and valley tiles unsecured.

- b. Field tiles unsecured.
 - c. Improper tile spacing at valleys
 - d. Roof penetrations not properly sealed.
 - e. Cracked chipped or broken tiles.
- 4. Stucco
 - a. Excessive cracking.
 - b. Spauling.
 - c. Blocked weep screeds.
 - d. Excessive discoloration.
 - e. Improperly embedded wood.
 - f. Improper foam trim installation.
- 5. Drywall
 - a. Surface cracks were observed in numerous locations throughout the residences.
- 6. Electrical
 - a. Overloaded electrical circuit breakers.
 - b. Improper GFI protection.
 - c. Non-working electrical outlets and switches.
- 7. HVAC
 - a. Exterior compressors installed out of level.
 - b. The insulated hose sets in the attic are not properly supported.
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 - d. The attic installed condensate drains are installed improperly, without the required slope.

Further, claimants hereby request copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations.

Sincerely,

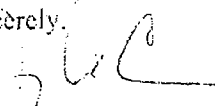

Jerry La Cues

EXHIBIT "G"

LAW OFFICES OF
Jerry La Cues
3110 Chino Avenue, Suite 230
Chino Hills, California 91709
(909) 627-3535 · (909) 590-3388 – Fax

January 28, 2010

Philip D. Kopp, Esq.
Newmeyer & Dillion, LLP
895 Dove Street, 5th Floor
Newport Beach, California 92660

*Via Regular Mail
Per Agreement*

RE: Civil Code §910 et seq. notice

Dear Mr. Kopp:

This office has been retained to represent several homeowners in Tract Nos. 30816, 30817, and 31323 in Corona, California 92880 concerning any and all defects arising from the construction of their homes. The specific addresses are as follows: 7278 Blue Crab Court, 12791 Dairy Street, 7215 Excelsior Drive, 12766 Eastern Shore, 7273 Bay Bridge Road, 7217 Beckett Field, 7252 Excelsior Drive, and 12902 Gingerwood Court. Pursuant to Civil Code §910 et seq., you are hereby noticed that, after a preliminary investigation, the following building violations and/or defects exist:

1. Site Conditions
 - a. Excessive subsurface soil moisture in non-irrigated areas.
 - b. Improper grading of lots restricting surface drainage.
2. Structural
 - a. Concrete footings are undersized. Concrete footing depths of 9" to 11" embedment below grade were observed in areas supporting two story structures.
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 - d. Concrete slabs constructed out of level.
 - e. Excessive cracking of concrete garage slabs.
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 - g. Excessive roof deflection.
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 - a. Excessive cracking.
 - b. Spauling.
 - c. Blocked weep screeds.
 - d. Excessive discoloration.
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Further, claimants hereby request copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations.

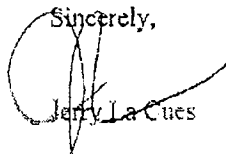
Sincerely,

Jerry LaCues

EXHIBIT "H"



NEWMAYER DILLON LLP
ATTORNEYS AT LAW

PHILIP KOPP
Philip.Kopp@ndllf.com

File No.
1084 999

October 13, 2009

VIA FACSIMILE AND U. S. MAIL

Jerry La Cues, Esq.
Law Offices of Jerry La Cues
3110 Chino Avenue, Suite 230
Chino Hills, CA 91709

Re: Centex Homes' Response to Claim Pursuant to Civil Code Section 913
Four Leaf Lane: Tract No. 30817, Corona, California

Dear Mr. La Cues:

We represent Centex Homes in regard to the claim brought by you on behalf of six homeowners in the Four Leaf Lane project in located in Corona, California ("Four Leaf Lane"). Pursuant to Civil Code Section 913, this shall serve as formal written acknowledgement of the notice of claim contained in your letter dated September 29, 2009 ("Claim").

As a preliminary matter, we must object to the content of the Claim, which fails to describe the alleged defects with the detail required by Civil Code Section 910(a). Centex reserves its rights to compel your clients to comply fully with all of their statutory and contractual requirements.

Based upon the limited information provided in your letter, Centex believes that an inspection and certain testing may need to be performed at the six homes. Pursuant to Civil Code Section 916, Centex requests that it be allowed to perform an initial inspection of each home at a mutually convenient date and time scheduled no later than October 27, 2009. One hour for each home should be sufficient time for the initial inspection.

The documents that you requested will be made available in our Newport Beach office on Thursday, October 29, 2009, or at any other mutually agreeable date, for review and copying.

895 COVE STREET 5 TH FLOOR NEWPORT BEACH, CA 92660 T 949 854 7000 F 949 854 7099	1039 N. CALIFORNIA BLVD SUITE 440 WALNUT CREEK, CA 94596 T 925 953 5700 F 925 953 3298
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Jerry La Cues, Esq.
October 13, 2009
Page 2

Please contact my paralegal, Helen Sierra, to select a date and time for your review of the documents.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to be 'P. D. Kopp', written in a cursive style.

Philip D. Kopp

PDK/lis

PROOF OF SERVICE

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

STATE OF CALIFORNIA)
) ss.
 COUNTY OF ORANGE)

I, Evelyn S. Gomez, declare:

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 August 6, 2010, I served a copy of the within document(s):

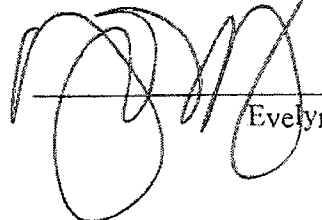
**NOTICE OF MOTION AND MOTION TO STAY ALL PROCEEDINGS
 PENDING COMPLIANCE WITH CIVIL CODE SECTION 895 ET SEQ. IN
 LIEU OF AN ANSWER; DECLARATION OF JENNIFER C. LYONS**

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Newport Beach, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed Overnight Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Overnight Express agent for delivery.

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.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 6, 2010, 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.
Brett La Cues, Esq.
THE LA CUES LAW GROUP
3110 Chino Avenue, Suite 230
Chino Hills, CA 91709

Tel: (909) 627-3535
Fax: (909) 590-3388
[PLAINTIFFS GUILLEN, ET AL.]

EXHIBIT 8

03
FAXED ORIGINAL

1 NEWMEYER & DILLION LLP
2 PHILIP KOPP, CBN 090172
3 JENNIFER C. LYONS, CBN 229020
4 895 Dove Street, 5th Floor
5 Newport Beach, California 92660
6 (949) 854-7000; (949) 854-7099 (Fax)

7 Attorneys for Defendants
8 Centex Homes; Centex Real Estate Holding, LP;
9 Centex Real Estate Corporation; and Nomas Corp.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
OCT 25 2010
R. Mc Elyea

AAA
OCT 26 2010

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SUPERIOR COURT 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 HERRY
GONZALES; PEDRO SANCHES and
MARIA DE LOS ANGEL SANCHEZ;
SHERELLE JOHNSON; PHONG THANH
BO; YA PING SHANG and LEE MA;
COLIN M. HARTWIG; and VICTORIA L.
HARTWIG and VICTORIA L. HARTWIG;
N. BOTUMRATH PROM and PONNA
PROM; DONNA L. HANSON; PATRICIA
M. ABARCA; MOHAMMED EL ROUS
ABOUM RASHA KASSEM and MOUDI
KASSEM; JOHN L. ALEXANDER and
BERTHA ALEXANDER; JESUS MANUEL
LOERA and ELIZABETH M. LOERA;
DAVID RICHARD UNFRIED and
CATHERINE ELEANOR UNFRIED;

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

ANSWER OF DEFENDANTS CENTEX
HOMES, CENTEX REAL ESTATE
HOLDING, LP, CENTEX REAL
ESTATE CORPORATION AND NOMAS
CORP. TO FIRST AMENDED
COMPLAINT

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

2243333-1

DEFENDANTS' ANSWER TO FIRST AMENDED COMPLAINT

CESAR PEREZ; VIVIAN HARRY and
CHARMAINE HARRY; GERARDO
MARQUEZ and YADHIRA MARQUEZ;
ROGELIO ALONZO and JOSEFA
ALONZO; TARA C. BROWN; JOSE
FRANCISCO G. FERNANDEZ; DEBORAH
PAPANIC and NICHOLAS PAPANIC;
ANITA F. RODRIGUEZ; TONY JABS;
ALFREDO D. GUZMAN; BENJAMIN L.
LIU and SHOUHWEI S. LIU; DUY
NGUYEN; CHRISTINA I. RODRIGUEZ;
KELLY DUMAS; CARLOS VASQUEZ; and
TERRY BUCKHANNON,

Plaintiffs,

vs.

CENTEX HOMES, a Nevada General
Partnership; CENTEX REAL ESTATE
CORPORATION, a Nevada Corporation;
NOMAS CORP., a Nevada Corporation;
CENTEX REAL ESTATE HOLDING LP, a
Delaware Limited Partnership; and DOES 1
through 600, Inclusive,

Defendants.

Defendants CENTEX HOMES, a Nevada General Partnership; CENTEX REAL ESTATE
HOLDING, LP, a Delaware Limited Partnership; CENTEX REAL ESTATE CORPORATION, a
Nevada Corporation; and NOMAS CORP., a Nevada Corporation (hereinafter "Defendants"), for
themselves and no others, hereby respond to plaintiffs' First Amended Complaint ("First
Amended Complaint") as follows:

GENERAL DENIAL

1. By virtue of the provisions of Code of Civil Procedure Section 431.30, Defendants
deny each and every allegation contained in the First Amended Complaint, and each purported
cause of action contained therein, and further deny that plaintiffs sustained damage in the sums
alleged, or in any sum, or at all, by reason of any act, breach or omission on the part of
Defendants or on the part of any agent, servant, representative, employee, predecessor or
successor of Defendants.

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2243333-1

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

2. The First Amended Complaint fails to state facts sufficient to constitute a cause of action upon which relief can be granted against Defendants. The First Amended Complaint also seeks relief against Defendants that is not properly recoverable by plaintiffs, and plaintiffs are therefore barred from any recovery against Defendants.

SECOND AFFIRMATIVE DEFENSE

(Statutes of Limitations)

3. Plaintiffs' First Amended Complaint and the allegations contained therein are barred or diminished, in whole or in part, by the applicable statutes of limitations, including, but not limited to, California Code of Civil Procedure sections 337(1) and (2), 337.1, 337.15, 338, 339, 340 and 343, and Civil Code section 895, et seq.

THIRD AFFIRMATIVE DEFENSE

(Unclean Hands)

4. Plaintiffs, through their conduct, acts and omissions, are barred by the doctrine of unclean hands from recovering any damages or other relief herein against Defendants.

FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

5. Plaintiffs, through their conduct, acts and omissions, are estopped from asserting or recovering under any of their causes of actions alleged against Defendants in the First Amended Complaint because of their own conduct at the subject property at issue in this action. Defendants allege that plaintiffs knew or should have known of the damages claimed in their First Amended Complaint but failed to take any corrective measures and failed to notify any other party of the need for such corrective measures, thereby estopping plaintiffs from claiming damages as a result of these purported conditions, defect or otherwise, if any there be.

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FIFTH AFFIRMATIVE DEFENSE

(Waiver)

6. Plaintiffs, through their conduct, acts and omissions, have waived their causes of action and any recovery against Defendants alleged in their First Amended Complaint.

SIXTH AFFIRMATIVE DEFENSE

(Laches)

7. Plaintiffs' claims alleged in their First Amended Complaint against Defendants are barred or diminished by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

8. Without peril to Defendants' denial of the existence of every alleged defect and claimed damage, Defendants allege that plaintiffs, while knowing of the purported defects and damages complained of, if any there be, failed to undertake to mitigate their damages and/or increased their damages, if any there be. Accordingly, if plaintiffs suffered any damages proximately caused by Defendants, which Defendants expressly deny, such damages should have been mitigated by reasonable efforts on the part of plaintiffs.

EIGHTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

9. The First Amended Complaint and each cause of action contained therein are barred by the doctrine of unjust enrichment.

NINTH AFFIRMATIVE DEFENSE

(Assumption of the Risk)

10. The injuries and damages, if any, of which plaintiffs complain were directly and proximately caused and contributed to by a risk(s) known to plaintiffs and of which plaintiffs appreciated the danger and magnitude, but which plaintiffs nevertheless voluntarily assumed, thus barring plaintiffs from recovery herein and/or reducing plaintiffs' recovery thereby.

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TENTH AFFIRMATIVE DEFENSE

(Defective Performance)

11. Plaintiffs' failure to perform pursuant to the agreements, if any, between the parties, excused Defendants from performing any obligations allegedly not performed, if any there be.

ELEVENTH AFFIRMATIVE DEFENSE

(Non-Performance)

12. To the extent there is any enforceable agreement or agreements as to Defendants, plaintiffs were obligated to perform certain conditions in order to enforce any rights thereunder. Plaintiffs have failed to perform the conditions as required, thereby discharging Defendants from any obligations thereunder, if any there be.

TWELFTH AFFIRMATIVE DEFENSE

(Performance by Law)

13. Each claimed act or failure to act alleged by plaintiffs was performed or not performed under the express authority of statute or pursuant to other requirements of law and, therefore, the First Amended Complaint and each cause of action asserted against Defendants is barred.

THIRTEENTH AFFIRMATIVE DEFENSE

(Complete Performance)

14. Defendants have appropriately, completely, and fully performed and discharged any and all obligations and legal duties arising out of the matters alleged in the First Amended Complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

(Failure to Fulfill Conditions Precedent)

15. Any recovery on plaintiffs' First Amended Complaint, or any purported cause of action alleged therein, is barred on the ground that as to each and every oral, implied, or other contract alleged therein, plaintiffs have failed to fulfill a condition or conditions precedent to the enforcement of said contract.

FIFTEENTH AFFIRMATIVE DEFENSE

(Compliance with Industry Standards)

16. The subject project was not designed or manufactured negligently and conformed to generally accepted industry standards and was safe for its intended uses. Any alleged defects associated with the subject project, if any there be, were known at the time of plaintiffs' alleged damage. At all relevant times, the subject project conformed to the "state of the art" in its industry and Defendants should not be held liable for any unknown and undiscoverable dangers allegedly associated with the subject project, if any there be.

SIXTEENTH AFFIRMATIVE DEFENSE

(Breach of Covenant of Good Faith and Fair Dealing)

17. To the extent there is any enforceable agreement or agreements as to Defendants, each such agreement is accompanied by a covenant and duty of good faith and fair dealing in fulfilling its terms and conditions. Such covenant and duty of good faith and fair dealing was breached by plaintiffs herein, barring plaintiffs from the recovery they seek, and excusing Defendants from performing any obligations allegedly not performed, if any there be.

SEVENTEENTH AFFIRMATIVE DEFENSE

(No Liability for Non-Economic Damages)

18. In the event a judgment is rendered against it and in favor of plaintiffs, Defendants can only be held responsible, if at all, for that portion of the "non-economic" damages for which they are found liable by jury or judicial determination in direct proportion to each Defendant's percentage of fault, pursuant to Civil Code Section 1431.2, as the rule of joint and several liability does not apply under such circumstances.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Satisfaction of Obligations)

19. The obligations and conditions of Defendants to any agreements between the parties have been satisfied.

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NINETEENTH AFFIRMATIVE DEFENSE

(No Indemnity)

20. To the extent there is any enforceable indemnity agreement as to Defendants, the existence of which Defendants deny in total, plaintiffs were obligated to perform certain conditions in order to enforce any rights thereunder. Plaintiffs have failed to perform the conditions as required, thereby discharging Defendants from any obligations thereunder, if any there be.

TWENTIETH AFFIRMATIVE DEFENSE

(Indemnification)

21. Defendants are entitled to right of indemnification by apportionment against all other parties and persons whose negligence contributed proximately to the happening of the claimed accident or alleged injuries.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Statute of Frauds)

22. To the extent that plaintiffs request relief based upon an oral contract or agreement, plaintiffs' claims are barred by the applicable Statute of Frauds.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Negligence of Others)

23. Damages and claims for which plaintiffs seek indemnity, apportionment and declaratory relief in their First Amended Complaint, if any, were caused by the acts, errors or omissions of plaintiffs and/or third parties and/or contributed to and/or caused by the acts, errors, omissions or negligence of plaintiffs and/or third parties, for whose conduct Defendants are not responsible.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Comparative Negligence of Plaintiffs)

24. Plaintiffs failed to exercise ordinary care on their own behalf, which negligence and carelessness was a proximate cause of some portion, up to and including the whole thereof, of

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1 the injuries and damages complained of in this action. Plaintiffs' recovery, therefore, against
2 these Defendants should be barred or reduced according to principles of comparative negligence.

3 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

4 **(Comparative Negligence of Others)**

5 25. Defendant(s) other than these answering Defendants, if any others there are, failed
6 to exercise ordinary care on their own behalf, which negligence and carelessness was a proximate
7 cause of some portion, up to and including the whole thereof, of the injuries and damages
8 complained of by plaintiffs in this action. The fault, if any, of Defendants should be compared
9 with the fault of such other defendant(s), and damages, if any, should be apportioned among those
10 other defendant(s) in direct relation to each defendant(s)' comparative fault. Defendants should
11 be obligated to pay only such damages, if any, which are directly attributable to their percentages
12 of comparative fault. To require Defendants to pay any more than their percentages of
13 comparative fault violates the Equal Protection and Due Process clauses of the Constitution of the
14 United States and the Constitution of the State of California.

15 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

16 **(Superseding Cause)**

17 26. If plaintiffs suffered any damage, which is denied, then any such damage was
18 proximately caused by the intervening and superseding actions of others, which bar plaintiffs'
19 recovery, if any, against Defendants.

20 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

21 **(Independent Causes)**

22 27. The alleged injuries, damages or loss, if any, for which plaintiffs' seek recovery
23 were the result of causes independent of any purported acts or omissions on the part of
24 Defendants, or any of its agents, representatives or employees, thereby eliminating or reducing
25 the alleged liability of Defendants.

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TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(No Proximate Cause)

28. The acts and/or omissions, if any, of Defendants were not the proximate cause of the losses, damage or injuries alleged in the First Amended Complaint.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Act of God)

29. The damages and defects of which plaintiffs complain, if any there are, were caused by acts of God for which Defendants have no responsibility.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Unavoidable Conditions)

30. The alleged injuries, damages or loss, if any, for which plaintiffs seek recovery were the direct and proximate result of unavoidable accidents or conditions without fault or liability on the part of Defendants.

THIRTIETH AFFIRMATIVE DEFENSE

(Passive Acts)

31. If Defendants are found to have been negligent or liable in any manner, such negligence or liability was passive and secondary while the negligence or liability of plaintiffs and others was active and primary, and such active and primary negligence and liability bars, in whole or in part, the recovery requested, or any recovery, against Defendants.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Intentional Conduct)

32. The First Amended Complaint, and each cause of action alleged therein, is barred by plaintiffs' intentional conduct.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(Justified Conduct)

33. The conduct of Defendants with respect to the matters alleged in the First Amended Complaint was justified, and, by reason of the foregoing, plaintiffs are barred from any recovery against Defendants.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(Acquiescence)

34. Plaintiffs acquiesced to any conduct engaged in by Defendants.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

(Ratification)

35. Plaintiffs expressly ordered, approved, authorized, participated in and ratified the actions and transactions complained of and the actions upon which recovery is allegedly sought, and plaintiffs are accordingly precluded from recovery.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(Express Consent)

36. Plaintiffs expressly consented to the actions alleged to have caused them damages.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

(Implied Consent)

37. Plaintiffs impliedly consented to the actions alleged to have caused them damages.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

(Privilege and Consent)

38. Plaintiffs' claims against Defendants are barred in that any conduct by Defendants was privileged and/or fully consented to by the parties.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

(Lack of Notice)

39. The First Amended Complaint, and each cause of action alleged therein, is barred by plaintiffs' failure to timely notify Defendants of the alleged defects, breach and/or damages, if any, which any party may have sustained.

THIRTY-NINTH AFFIRMATIVE DEFENSE

(No Reliance)

40. Plaintiffs did not rely on any representations or conduct of Defendants and therefore Defendants are not responsible for any damages, if any exist.

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FORTIETH AFFIRMATIVE DEFENSE**(Excuse)**

41. Plaintiffs' failure to perform pursuant to the agreements, if any, between the parties excused Defendants from performing any obligations they did not perform, if there was any such performance due.

FORTY-FIRST AFFIRMATIVE DEFENSE**(Setoff)**

42. By virtue of the acts, omissions and misrepresentations of plaintiffs, Defendants have incurred damages and expenses, all in amounts to be ascertained and applied as an offset against the claims of plaintiffs.

FORTY-SECOND AFFIRMATIVE DEFENSE**(No Breach of Warranties)**

43. Defendants did not breach any warranties, express or implied, and no warranties, express or implied, arose in the instant situation.

FORTY-THIRD AFFIRMATIVE DEFENSE**(Lack of Privity)**

44. Plaintiffs do not stand in privity with Defendants.

FORTY-FOURTH AFFIRMATIVE DEFENSE**(Lack of Standing)**

45. Plaintiffs lack standing to seek the relief against Defendants that they pursue in their First Amended Complaint.

FORTY-FIFTH AFFIRMATIVE DEFENSE**(Lack of Consideration)**

46. The purported contract(s) alleged in the First Amended Complaint is (are) unsupported by consideration, or such consideration has materially failed, thereby barring any and all relief requested by the First Amended Complaint.

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FORTY-SIXTH AFFIRMATIVE DEFENSE**(Natural Causes)**

47. The alleged injuries, damages or loss, if any, for which plaintiffs seek recovery were the direct and proximate result of natural deterioration, wear and tear or other natural causes which were unforeseeable without fault or liability on the part of Defendants.

FORTY-SEVENTH AFFIRMATIVE DEFENSE**(Subsequent Modification)**

48. The subject construction and products incorporated therein were modified, changed or altered so as to change their character with respect to the defects complained of in the First Amended Complaint. Any defect in the subject construction and/or product, if any there be, resulted solely from modification, change or alteration of the products, and not from any act or omission on the part of Defendants. Furthermore, the defects created by the aforesaid alteration, change or modification, if any there be, were the sole and proximate cause of damages, if any, alleged in the First Amended Complaint, if any there be.

FORTY-EIGHTH AFFIRMATIVE DEFENSE**(Subsequent Misuse)**

49. Plaintiffs' claimed damages arising from the incident sued upon herein resulted from misuse of the subject construction and products incorporated therein. If there was any defect in the product or property referred to in the First Amended Complaint at the time of said damages, that such defect did not exist at the time said product or property left the possession or control of Defendants and were caused by the misuse, abuse, changes, modification, improper maintenance, and alterations of others, including plaintiffs herein, and that said damages were caused by such misuse, abuse, changes, alterations, lack of maintenance, and modifications. The misuse was without Defendants' knowledge, approval or consent. This misuse was not reasonably foreseeable to Defendants either before the time of the sale or construction of the lot or house or at any time prior to the manifestation of the alleged defects, if any there be. Said misuse of the subject construction lots and products completely bars, if not proportionately reduces, any ultimate recovery against Defendants.

FORTY-NINTH AFFIRMATIVE DEFENSE**(Absence of Necessary Parties)**

50. The purported claims and causes of action contained in the First Amended Complaint require, for their complete adjudication, the joining of additional, necessary or indispensable parties, without whom the purported claims and causes of action cannot be fully, finally and completely resolved.

FIFTIETH AFFIRMATIVE DEFENSE**(ADR Provisions)**

51. To the extent that there is any agreement between the parties to utilize Alternative Dispute Resolution ("ADR") procedures to resolve any or all of the issues or disputes raised in plaintiffs' First Amended Complaint, Defendants expressly reserve the right to enforce those ADR provisions and does not waive the right to enforce those ADR provisions by filing this Answer. ADR procedures include, without limitation, arbitration, mediation or a judicial reference.

FIFTY-FIRST AFFIRMATIVE DEFENSE**(Preclusion by Civil Code section 895, et seq.)**

52. Plaintiffs are, in whole or in part, barred from commencing this suit pursuant to the provisions of Civil Code section 895, et seq. (SB 800).

FIFTY-SECOND AFFIRMATIVE DEFENSE**(Preclusion by Civil Code section 945.5)**

53. Plaintiffs' claims are barred, in whole or part, by the affirmative defenses enumerated in Civil Code section 945.5. (SB 800).

FIFTY-THIRD AFFIRMATIVE DEFENSE**(Unstated Additional Defenses)**

54. Defendants presently have insufficient knowledge and information on which to form a belief as to whether there exist additional, as yet unstated, affirmative defenses. Defendants reserve herein the right to assert additional affirmative defenses in the event that discovery indicates that such a defense would be appropriate.

PRAYER

WHEREFORE, Defendants respectfully pray for entry of judgment in their favor and against plaintiffs as follows:

1. That plaintiffs take nothing by way of their First Amended Complaint;
2. That plaintiffs' recovery against Defendants, if any, be diminished by an amount equal to the degree of negligence of fault attributable to plaintiffs;
3. That plaintiffs' recovery against Defendants, if any, be diminished by an amount equal to the degree of negligence or fault attributable to parties, individuals and/or entities other than Defendants in this action.
4. For the cost of suit incurred herein, including reasonable attorneys' fees; and
5. For any other and further relief as the Court may deem just and proper.

Dated: October 25, 2010

NEWMAYER & DILLION LLP

By: 

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

PROOF OF SERVICE

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

STATE OF CALIFORNIA)
) ss.
 COUNTY OF ORANGE)

I, Evelyn S. Gomez, declare:

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 October 25, 2010, I served a copy of the within document(s):

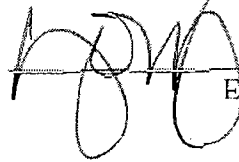
**ANSWER OF DEFENDANTS CENTEX HOMES, CENTEX REAL
 ESTATE HOLDING, LP, CENTEX REAL ESTATE CORPORATION AND
 NOMAS CORP. TO FIRST AMENDED COMPLAINT**

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Newport Beach, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed Overnight Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Overnight Express agent for delivery.

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.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 25, 2010, 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.
Brett La Cues, Esq.
THE LA CUES LAW GROUP
3110 Chino Avenue, Suite 230
Chino Hills, CA 91709

Tel: (909) 627-3535
Fax: (909) 590-3388
[PLAINTIFFS GUILLEN, ET AL.]

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EXHIBIT 9

COPY

FEB 15 2011

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

FEB 25 2011

FILED

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

EDWARD GUILLEN, et al.;

Plaintiffs,

vs.

CENTEX HOMES, et al.

Defendants.

CASE NO.: RIC10010749

*Assigned for Case Management purposes to:
Hon. Mac R. Fisher, Dept. 1*

*Assigned for Law and Motion purposes to:
Hon. Paul E. Zellerbach, Dept. 2*

**[PROPOSED] STIPULATED CASE
MANAGEMENT ORDER**

Complaint filed: June 1, 2010

IT IS HEREBY ORDERED that the provisions set forth below shall be the Case Management Order ("Order") for the above-captioned action ("Action"):

1. GENERAL PROVISIONS.

1.1 Purpose.

The court deems this Action to be complex litigation within the meaning of the California Standards of Judicial Administration for Complex Litigation § 19. As such, this is a case that requires specialized management to avoid placing unnecessary burdens on the court or the litigants. This Order is entered to reduce the costs of litigation, to assist the parties in resolving their disputes if possible and, if not, to reduce the costs and difficulties of discovery and trial. This Order shall govern all further

1 pleadings, discovery, pretrial and settlement matters in this Action and may be modified and
2 supplemented by further orders of the court or recommendations of the Settlement Referee and/or the
3 Discovery Referee.

4 The court acknowledges the size and complexity of this Action and also recognizes the need for
5 specialized management of the discovery and settlement conference procedures to facilitate proper and
6 efficient management of this litigation.

7 **1.2 Code Governs Where Silent.**

8 On any matter as to which this Order is silent, the California Code of Civil Procedure, the
9 California Rules of Court, other applicable statutes and the Local Rules of this court shall be controlling.

10 **1.3 Project.**

11 The term "Project" refers to the Four Leaf Lane Development in the City of Corona, County of
12 Riverside County, State of California.

13 **2. SERVICE OF THIS ORDER AND OBJECTIONS THERETO.**

14 A copy of this Order and any subsequent case management order or amendments hereto shall be
15 served with the operative complaint and any operative cross-complaint bringing in a new party. This
16 service requirement shall be the responsibility of the party bringing in a new party by complaint or
17 cross-complaint. Failure to comply with this paragraph by the serving party will not bind the party
18 served to this or to additional orders until such party is served by any party to the Action with such
19 orders.

20 All new parties shall comply with this Order (or any subsequent case management order) within
21 fifteen (15) days after the date of that party's first appearance in the Action, unless otherwise specified
22 by provision in the Order.

23 Any party who appears in the Action after the date the Order is entered, and who objects to any
24 term in the Order, shall bring those objections to the attention of the court in a noticed motion to amend
25 the Order no later than fifteen (15) days after the date of that party's first appearance in the Action.

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1 **3. MEDIATOR AND DISCOVERY REFEREE.**

2 **3.1 Discovery Referee.**

3 The court finds that because of the complex technical issues, numerous parties and potential
4 parties and the document intensive nature and length of trial if not settled, among other considerations,
5 the designation of a discovery referee for general case management and resolution of discovery disputes
6 which may arise, is appropriate.

7 The court appoints Hon. Jonathan H. Cannon (Ret.) as the "Discovery Referee" pursuant to
8 California Code of Civil Procedure §§ 187, 638 and 639(a)(5) and California Rules of Court Rules 3.920
9 *et seq.* All matters of any kind pertaining to discovery shall be noticed to be heard in the first instance
10 before the Discovery Referee. The Discovery Referee shall hear and determine all discovery disputes
11 and motions pursuant to the procedures set forth in Paragraph 5.5 of this CMO. However, the Discovery
12 Referee shall not be responsible for hearing and ruling on demurrers, motions to strike, motions for
13 summary judgment, motions for summary adjudication, motions for dismissal, other motions not related
14 to discovery, or matters involving substantive legal issues.

15 In his capacity as Discovery Referee or referee of any disputed matters, ex parte communications
16 between him and the parties are inappropriate and impermissible. The Discovery Referee may conduct
17 ex parte communications with the trial judge without the consent of the parties.

- 18 a) Judge Cannon may be contacted through JAMS at 500 N. State College Blvd., 14th Floor,
19 Orange, California 92868; (800) 352-5267.
- 20 b) The Discovery Referee's hourly rate is \$600.
- 21 c) The maximum number of hours is estimated as 50. (Upon written application,
22 the court may, for good cause shown, modify the maximum number of hours).
- 23 d) No party has established an economic inability to pay a pro rata share of the
24 Discovery Referee's fee.
- 25 e) The division of fees shall be set by the Discovery Referee, based upon an equal
26 contribution from each of the parties litigating the particular motion, subject to review by
27 the court if an objection is made.

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- 1 f) The Discovery Referee may, according to law, recommend appropriate sanctions against
2 any party who fails to comply with this Order. The sanctions which may be
3 recommended include monetary sanctions, exclusions of witnesses at trial, striking of
4 expert designations, and exclusion of documentary and/or other evidence.
- 5 g) By accepting this appointment, the Discovery Referee agrees that he is aware of, and will
6 comply with the applicable provisions of Canon 6 of the Code of Judicial Ethics and the
7 applicable California Rules of Court.

8 **3.2 Mediator.**

9 The court finds that because of the complex technical issues, numerous parties, potential parties,
10 and the document intensive nature of the dispute, designation of a mediator for mediations and
11 settlement discussions is appropriate. Settlement efforts in a complex case of this nature are most
12 efficiently and effectively handled by a person with expertise in the various areas with a track record of
13 successfully settling cases of this nature and magnitude.

14 Therefore, the court hereby appoints Ross Hart, Esq. (California Bar Number 71126) of AMC
15 Center as mediator ("Mediator"), pursuant to California Code of Civil Procedure section 187 and *Lu v.*
16 *Superior Court* (1997) 55 Cal.App.4th 1264, to preside over mediations. This appointment includes the
17 power to order personal appearances and make recommendations for further case management orders
18 governing these issues.

19 Ex parte communications between the Mediator and the parties are appropriate and permissible
20 for purposes of settlement discussions.

- 21 a) The Mediator's address for correspondence and phone number is: AMC Center, 3055
22 Wilshire Blvd., 5th Floor, Los Angeles, CA 90010; Tel (213) 487-8660; Fax (213) 383-
23 2843 (Case Manager: Brigitte Macias).
- 24 b) All Mediations will be held at: AMC Center, 3055 Wilshire Blvd., 5th Floor, Los
25 Angeles, CA 90010; Tel (213) 487-8660; Fax (213) 383-2843.
- 26 c) The Mediator's hourly cost is \$750.00.
- 27 d) The maximum number of hours is estimated as 80. (Upon written application,
28 the court may, for good cause shown, modify the maximum number of hours).

- 1 e) No party has established an economic inability to pay a pro rata share of the Mediator's fee.
- 2 f) The Mediator shall be compensated at his usual and customary rates. Apportionment of
- 3 fees and costs by the Mediator shall be binding upon all parties, subject to review by the
- 4 court. The compensation of the Mediator shall be paid 1/3 by plaintiffs, 1/3 by direct
- 5 defendants and 1/3 among the remaining parties (each portion shall be divided equally
- 6 per party in each group) unless otherwise provided in this Order or by the Mediator.
- 7 Where fewer than all parties are involved in a particular settlement effort or event, the
- 8 Mediator may bill the parties in a different proportion based upon his judgment of what is
- 9 fair and just based upon the participants in the particular effort of event. It is the intent
- 10 that the fees be equitably distributed among the parties based upon all the factors which
- 11 may be brought to the Mediator's attention. All issues regarding compensation of the
- 12 Mediator shall be subject to judicial review.
- 13 g) By accepting this appointment, the Mediator agrees that he is aware of, and will comply
- 14 with, the applicable provisions of Canon 6 of the Code of Judicial Ethics and the
- 15 applicable California Rules of Court.

16 **4. NEW PARTIES AND PLEADINGS.**

17 **4.1 Naming Additional Plaintiffs.**

18 Plaintiffs may name additional plaintiffs that own homes in the Project or additional defendants

19 up to sixty (60) days after the entry of this Order without leave of court, subject to the requirements of

20 Civil Code section 895, *et seq.* This timeframe may be extended by the court upon a motion by

21 Plaintiffs with good cause shown. Prior to this deadline, Plaintiffs may add additional plaintiffs that

22 have completed the pre-litigation requirements of Civil Code section 895, *et seq.* by filing a pleading

23 entitled "Amendment No. ___ to First Amended Complaint," which identifies each new plaintiff and

24 his/her property address within the Project.

25 No new answer(s) or other responsive pleadings, cross-complaint(s), or doe or roe amendment(s)

26 are required to be filed and served in response to such amended complaint, and the previously filed

27 answer(s), cross-complaint(s) and/or doe or roe amendment(s) shall apply and operate in response to

28 such amended complaint.

1 Nothing herein shall be deemed a waiver of the requirements of Code of Civil Procedure § 411.35.

2 **4.2 Naming Additional Defendants or Cross-Defendants.**

3 Additional defendants or cross-defendants, except Doe or Roe cross-defendants which were
4 previously named by any party, may be named within sixty (60) days after Plaintiffs have served and
5 deposited into the document depository their Final Defect and Final Cost of Repair Statements. This
6 timeframe may be extended by the Discovery Referee or the court for good cause shown. Good cause
7 shall include, but not be limited to, the discovery of additional parties pursuant to discovery conducted
8 or inability to locate said parties for service despite due diligence. Service shall be effected on new
9 defendants or cross-defendants within seventy-five (75) days after Plaintiffs have served and deposited
10 into the document depository their Final Defect and Final Cost of Repair Statements, unless extended by
11 the Discovery Referee for good cause shown.

12 Any party already named who has appeared as a cross-defendant on the developer defendants'
13 cross-complaint may be named and served by Plaintiffs on their complaint merely by forwarding a copy
14 of the doe amendment, summons, operative complaint, and two copies of the notice and
15 acknowledgment of receipt to the party's counsel. The party served shall have thirty-five (35) days to
16 respond from the date of mailing by Plaintiffs of the above-referenced documents.

17 Nothing herein shall be deemed a waiver of the requirements of Code of Civil Procedure § 411.35.

18 **4.3 Cross-Complaints Deemed Filed and Served on All Parties.**

19 With the exception of the complaints or cross-complaints against professionals for whom a
20 certificate of merit is required under Code of Civil Procedure § 411.35, all defendants and cross-
21 defendants appearing in this action are deemed to have filed and served cross-complaints for implied
22 and equitable indemnity, apportionment of fault and declaratory relief against one another. Said cross-
23 complaints are deemed to have been answered and generally denied and all available affirmative
24 defenses set forth in Exhibit "A" to this Order are deemed raised in connection therewith. Cross-
25 complaints for express indemnity shall include the text of the indemnity provisions in the relevant
26 contract on which the plaintiff or cross-complainant relies either quoted verbatim in the allegations of
27 the pleading or as an exhibit thereto.

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1 Any party who does not wish to be deemed to have filed a cross-complaint for implied and
2 equitable indemnity, apportionment of fault and declaratory relief against one or more parties must file
3 and serve a pleading notifying all parties and the court of its intent to wholly or partially opt out of this
4 provision.

5 **4.4 Tender Deadline.**

6 Within thirty (30) days of this Order or a party's first appearance in this case, counsel for each
7 party shall make reasonable efforts to identify all comprehensive general liability carriers that provide
8 coverage for their client, from the date of construction up through the present, and shall make a written
9 tender of defense to each carrier. Counsel shall be prepared to confirm to the Discovery Referee, upon
10 request, compliance with this provision of the Order.

11 **4.5 Notice of Appearance.**

12 Each new party to this Action may file with the court and serve upon all parties a written Notice
13 of Appearance ("Notice of Appearance") in lieu of an answer to the complaint or cross-complaint. Such
14 Notice of Appearance shall identify with specificity the name, address, telephone, and facsimile
15 numbers of counsel for each party and shall identify with specificity each party which counsel purports
16 to represent. By filing and serving the Notice of Appearance, the party agrees to submit to the
17 jurisdiction of the court such that the Notice of Appearance shall be deemed an uncontroverted general
18 appearance. It shall be the responsibility of counsel for the party serving the complaint or cross-
19 complaint to provide counsel for the newly-served defendants and cross-defendants with updated service
20 lists. Any party appearing in the Action by filing a Notice of Appearance is deemed to have answered
21 and generally denied the complaint or cross-complaint, and all available affirmative defenses listed in
22 **Exhibit "A"** to this Order are deemed raised in connection therewith.

23 **4.6 Certificate of Merit Required.**

24 Pursuant to California Code of Civil Procedure section 411.35, complaints or cross-complaints
25 against professionals for whom a certificate of merit is required pursuant to said section shall be
26 accompanied by a certificate of merit by each party asserting any complaint or cross-complaint.

27 All complaints or cross-complaints filed and served against any and all professionals for whom a
28 certificate of merit is required under California Code of Civil Procedure section 411.35, must be

1 answered separately by said professional and any and all affirmative defenses must be raised in said
2 pleading in the normal manner.

3 Nothing in this Order, nor subsequent orders of the Discovery Referee, shall alter the
4 requirements of California Code of Civil Procedure section 411.35. However, the Discovery Referee is
5 empowered to hear and recommend rulings on all issues regarding compliance with California Code of
6 Civil Procedure section 411.35.

7 **4.7 Defaulting Non-Responsive Parties.**

8 All parties are ordered to take the default of any newly served party if no responsive pleading is
9 filed by the ninetieth (90th) day following service on any such new party. A party seeking to take the
10 default of a new party must send to that party at least one written warning at least fifteen (15) days prior
11 to taking the default of the new party.

12 **5. DISCOVERY.**

13 **5.1 Stay of Written Discovery.**

14 Written discovery, including, interrogatories, inspection demands, and requests for admissions,
15 shall only be permitted as set forth in this Order. The parties reserve all rights to object to any document
16 request, interrogatory, or other discovery under this Order, or any discovery response, and the stipulation
17 to the form and content of this Order is not intended to waive any such objections. All other written
18 discovery is stayed except upon order of the court for good cause shown. The parties are ordered to
19 respond to the written discovery pursuant to the schedule set forth in **Exhibit "T"**.

20 **5.2 Third Party Discovery Permitted.**

21 Discovery shall not be stayed as to depositions and Public Records Act requests of individuals
22 and entities not a party of this litigation or individuals currently or previously affiliated with any party to
23 this litigation. A copy of any and all documents obtained through such third party discovery shall be
24 deposited into the Document Depository within 30 days of receipt with notice to all parties as provided
25 herein with respect to the deposit of other documents, in conformance with the provisions of section 5.6
26 of this Order, below.

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1 **5.3 Document Depository.**

2 A Document Depository shall be established at *Esquire Solution* located at 3801 University
3 Avenue, Suite 640, Riverside, California 92501; phone number (951) 784-1525; facsimile number (951)
4 784-9520 ("Depository"). The Depository Coordinator shall be an employee of the Depository. The
5 parties shall deposit documents received through the discovery process into the Depository within 30
6 days of receipt, with notice to all parties of the deposit, as set forth herein. The Depository shall provide
7 all parties access to review the documents and allow CD disc and/or hard (standard paper) copies to be
8 obtained.

9 **5.4 Deposit of Pleadings and Discovery.**

10 A copy of all pleadings already served by a party shall be deposited in the Depository so that
11 later-appearing parties may obtain them from the depository rather than from the other parties. Further,
12 all subsequent pleadings and discovery shall also be served upon the Depository as well as on all parties.

13 **5.5 Discovery Motions.**

14 All matters of any kind pertaining to discovery, including disputes regarding discovery
15 objections, the issuance of subpoenas, requests to alter or augment the discovery permitted by the
16 exhibits to this Order, and motions to limit or compel responses to the discovery permitted by the
17 exhibits to this Order, excluding therefrom matters involving substantive legal issues, shall be noticed to
18 be heard in the first instance before the Discovery Referee.

19 If Plaintiffs file any motions to compel further responses by Developer Defendants to Form
20 Interrogatories (Set One) or Requests for Production (Set One), which were propounded prior to entry of
21 this Order, such motions are exempt from the provisions of this section and may be filed directly with
22 the court between March 25, 2011 and May 27, 2011 after a good faith attempt to meet and confer,
23 unless otherwise stipulated by counsel for Plaintiffs and Developer Defendants.

24 Any party may bring a motion before the Discovery Referee to limit or compel the production
25 and deposit of documents, the production of the statement of work, the production of the statement of
26 insurance, responses to interrogatories or any other motion to limit or compel discovery. Such motions
27 to compel are not limited to the deadlines imposed by the Code of Civil Procedure.

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1 The Discovery Referee may hear and determine discovery matters on an ex parte basis, and may
2 do so by telephonic hearings. This provision does not alter any substantive or procedural or other notice
3 requirements for ex parte applications, except as set forth herein.

4 Before submitting any discovery disputes or scheduling disputes to the Discovery Referee, the
5 parties shall meet and confer in a good faith attempt to reach resolution of the dispute. If meet and
6 confer efforts are unsuccessful, the moving party shall set forth the issues and arguments either in a
7 letter request or in a formal ex parte application or motion to the Discovery Referee and serve the
8 request, application or motion on all counsel. The Discovery Referee may set a briefing and/or hearing
9 schedule if necessary and notify all counsel of same. Any matter which would qualify as a proper ex
10 parte application under the Riverside County Rules of Court may be presented to the Discovery Referee
11 as an ex parte application with proper ex parte notice and may be presented by letter and/or argued
12 telephonically. However, any matter which is argued shall require at least the minimum ex parte notice
13 required under the Riverside County Rules of Court, except where good cause is shown to the Discovery
14 Referee.

15 All requests or formal motions made to the Discovery Referee are to be held for a minimum of
16 seven (7) calendar days to allow for any objections, requests for further briefings, or other responses to
17 be made. The Discovery Referee shall then review the request or motion and any objections or
18 responses thereto and either set a briefing schedule and hearing date or make his decision without further
19 briefing. As to contested matters determined by the Discovery Referee, the Discovery Referee shall
20 submit a written "Report and Recommendation", which shall include a proposed order, to the moving
21 party and to the court within seven (7) calendar days after the determination. The moving party shall
22 serve all parties with the Report and Recommendation within two (2) court days after receiving same.

23 In the event of an objection to the Discovery Referee's ruling, the objecting party shall have ten
24 (10) court days from service of the Report and Recommendation on such party to file a noticed motion
25 in court after meeting and conferring with parties regarding the same. The motion shall comply with the
26 provisions of the Code of Civil Procedure, unless modified by the provisions of this Order. A copy of
27 the motion and any responses thereto shall be served upon the Discovery Referee, as well as the parties.
28 Recommendations of the Discovery Referee shall be entitled to *de novo* review by the Superior Court.

1 In the absence of a motion raising an objection to the Discovery Referee's Report and Recommendation
2 within the proscribed ten-day period, the court may enter the Discovery Referee's proposed order.

3 **5.6 Production and Deposit of Documents.**

4 **5.6(i) Documents Defined.** The term "document" shall have the same meaning as the
5 term "writing", defined in Evidence Code section 250, and is meant to be all-inclusive.

6 **5.6(ii) Documents To Be Deposited.** All documents deposited into the Depository may
7 be deposited in an electronic format on CD-ROM by all parties. Additionally, all pleadings shall be
8 deposited in the Depository by the filing party to avoid unnecessary requests for prior pleadings. A Notice
9 of Deposit identifying the deposit of such documents shall be served on all parties, as set forth, *infra*.

10 **5.6(ii)(a) By the Plaintiffs.** The Plaintiffs shall provide to the Depository all
11 non-privileged, non-protected documents, including oversized and color documents, relating to the
12 subject real properties. The documents to be deposited by the Plaintiffs are more particularly described
13 in **Exhibit "B."** If a homeowner is unable to comply with a request, then a Notice of Inability to
14 Comply shall be filed on behalf of that homeowner.

15 **5.6(ii)(b) By the Developer Defendants.** The Developer Defendants shall
16 provide to the Depository all non-privileged, non-protected documents, including oversized and color
17 documents, relating to the subject real properties. The documents to be deposited by the Developer
18 Defendants are more particularly described in **Exhibit "C-1."** If a defendant is unable to comply with a
19 request, then a Notice of Inability to Comply shall be filed on behalf of that defendant.

20 **5.6(ii)(c) By the Subcontractors, Design Professionals and Materialmen.**
21 Within thirty-five (35) days of the date this Order is entered or thirty-five (35) days after a party's first
22 appearance, whichever is later, each subcontractor, design professional and materialman shall provide to
23 the Depository all non-privileged, non-protected documents, including oversized and color documents,
24 relating to the subject real properties. The documents to be deposited are more particularly described in
25 **Exhibit "C-2"** and also include insurance policy documentation required under section 5.8(ii). If a
26 subcontractor, design professional or materialman is unable to comply with a request, then a Notice of
27 Inability to Comply shall be filed on behalf of that party.

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1 **5.6(iii) Notice of Deposit Required.** All parties shall serve a "Notice of Deposit"
2 within three (3) days of depositing any and all documents into the Depository other than those which are
3 also served on all parties, including, but not limited to, the deposit of third party documents pursuant to
4 Section 5.2 and expert witness documents. The "Notice of Deposit" shall contain an index with a
5 description of the documents produced. The documents must be consecutively bates-stamped as
6 discussed at paragraph 5.6(vii), below.

7 **5.6(iv) Supplemental Document Deposits Required.** If any party discovers additional
8 documents (other than documents received from the Depository itself), they shall be deposited within
9 thirty-five (35) days of the party's receipt of the additional documents. All parties are under a
10 continuing obligation to deposit all non-privileged responsive documents discovered after the initial
11 production. In the event that a party subsequently discovers documents, that party shall serve an
12 additional Notice of Deposit which reflects the number of the deposit by that party (e.g., Second Notice
13 of Deposit; Third Notice of Deposit; etc.).

14 **5.6(v) Privileged and Protected Documents.** Any party withholding any document(s)
15 on grounds of privilege or other protection shall deposit in the Depository and serve upon all parties a
16 log listing the author, all recipients, the date, a description of the document(s), and the privilege claimed.

17 **5.6(vi) Oversized Documents.** The parties are not required to produce full-size drawings
18 in their possession, unless such drawings contain marginalia. The parties shall, however, deposit a list of
19 all plans, drawings, vellums and all other oversized documents in their possession, custody or control, and
20 allow copies of said drawings and/or oversized documents to be made within 15 days of receipt of a
21 written request from any party, at the requesting party's expense.

22 **5.6(vii) Copying and Indexing.** Each party shall number each page of all documents
23 deposited and provide an index of the documents which identifies the documents with reasonable
24 specificity. Each document's number shall be preceded by a unique letter code identifying the
25 depositing party. Prior to numbering each page, each party shall contact the Depository to confirm that
26 the letter code identifying the depositing party has not already been selected or used by another party.

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1 **5.6(viii) Inspection of Originals.** For good cause, any party may request an opportunity
2 to review the originals of any document in the Depository. After a good faith attempt at informal
3 resolution, any party may make a motion to the Discovery Referee for an opportunity to view the originals.

4 **5.6(ix) Costs of Compliance.** The depositing party shall bear the costs of compliance.
5 The fees for maintaining and utilizing the Depository shall be set by the custodian of same.

6 **5.7 Statement of Work.**

7 Within thirty-five (35) days of the date this Order is entered or within thirty-five (35) days of
8 first appearance, whichever is later, each cross-defendant subcontractor, design professional and
9 materialman shall complete under oath and serve on all parties and place into the Depository a statement
10 of work ("Statement"), in the form attached hereto as **Exhibit "D"**, which describes in detail the work
11 they performed and/or their involvement in any construction and/or development at the Project. In
12 providing the Statement, the documents comprising any and all contracts with direct defendants shall be
13 listed by inclusive document numbers for each contract on the Statement. Where counsel represents
14 more than one party, a separate Statement shall be completed under oath, served and deposited by each
15 party. Any party may bring a motion before the Discovery Referee to limit or compel responses to the
16 Statement, and such motions to compel are not limited to the deadlines imposed by the Code of Civil
17 Procedure. Upon the granting of a motion to compel, the Discovery Referee shall consider, as a
18 potential remedy, the advancement of a deposition of a person most knowledgeable for each
19 subcontractor, design professional and materialman, against whom such a motion is granted, without
20 prejudice to any party noticing the deposition of such person most knowledgeable at a later time in
21 accordance with the deposition schedule set forth below.

22 **5.8 Insurance Information.**

23 **5.8(i) Statement of Insurance.** Within thirty-five (35) days of the date this Order is
24 entered or within thirty-five (35) days of first appearance, whichever is later, each cross-defendant
25 subcontractor, design professional and materialman shall complete under oath, serve on all other parties
26 and place into the Depository, a written statement identifying each primary and excess or umbrella
27 insurance carrier and each policy which is providing is investigating coverage for the claims asserted by
28 plaintiffs and/or any other party to this Action, including, but not limited to, any policies by which that

1 party is named as an additional insured (the "Statement of Insurance"). The Statement of Insurance
2 shall be in the form attached hereto as **Exhibit "E"** for each policy.

3 **5.8(ii) Deposit of Policies.** All cross-defendant subcontractors, design professionals,
4 and materialmen are to deposit in the Depository a complete copy of each policy identified in the
5 Statement of Insurance, including all related binders, declaration pages, jacket provisions, manuscript
6 provisions, endorsements, certificates of insurance, non-renewal and renewal notices and cancellation
7 notices, in conformance with the provisions of section 5.6 of this Order, above.

8 **5.8(iii) No Admission of Admissibility.** Submission of this insurance information shall
9 not be deemed an admission by any party that such information can be introduced into evidence at trial.

10 **5.8(iv) Motions Regarding Insurance Information.** Any party may bring a motion
11 before the Discovery Referee to limit or compel the insurance information, and such motions are not
12 limited to the deadlines imposed by the Code of Civil Procedure. Upon the granting of a motion to
13 compel, the Discovery Referee shall consider, as a potential remedy, the advancement of a deposition of
14 a person most knowledgeable for each subcontractor, design professional and materialman, against
15 whom such a motion is granted, without prejudice to any party noticing the deposition of such person
16 most knowledgeable at a later time in accordance with the deposition schedule set forth below.

17 **5.9 Written Interrogatories.**

18 **5.9(i) Interrogatories for Plaintiffs.** Attached hereto as **Exhibit "F"** are
19 interrogatories which shall be answered under oath by each plaintiff. Responses to the interrogatories
20 shall be served on all parties and placed in the Depository not later than sixty (60) days after the date of
21 entry of this Order.

22 **5.9(ii) Interrogatories for Developer Defendants.** Attached hereto as **Exhibit "G-1"**
23 are interrogatories which shall be answered under oath by each developer defendant. Responses to the
24 interrogatories shall be served on all parties and placed in the Depository not later than sixty (60) days
25 after the date of service of this Order.

26 **5.9(iii) Interrogatories for Cross-Defendants, Subcontractors, Design Professionals,**
27 **and Materialmen.** Attached hereto as **Exhibit "G-2"** are interrogatories which shall be answered
28 under oath by each cross-defendant, subcontractor, design professional and materialman. Responses to

1 the interrogatories shall be served on all parties and placed in the Depository not later than thirty-five
2 (35) days after the date of service of this Order or within thirty-five (35) days of first appearance,
3 whichever is later.

4 **5.9(iv) Motions for Interrogatories.** Any party may bring a motion before the
5 Discovery Referee to limit or compel responses to these interrogatories or to propound further
6 interrogatories to a party, and such motions to compel are not limited to the deadlines imposed by the
7 Code of Civil Procedure. Upon the granting of a motion to compel, the Discovery Referee may
8 consider, as a potential remedy, the advancement of a deposition of a person most knowledgeable for
9 each subcontractor, design professional and materialman, against whom such a motion is granted,
10 without prejudice to any party noticing the deposition of such person most knowledgeable at a later time
11 in accordance with the deposition schedule set forth below.

12 **5.10 Supplemental Discovery Responses.**

13 Thirty (30) days prior to the third mediation session or settlement conference, each cross-
14 defendant, subcontractor, design professional and materialman shall serve all parties and the Depository
15 with supplemental responses, under oath, as to the Notice of Deposit, Interrogatories, Statement of Work
16 and Statement of Insurance, or a verified statement that there are no changes to its earlier-served
17 responses.

18 **5.11 Additional Discovery By Leave of Discovery Referee.**

19 After notice and an opportunity to be heard, discovery additional to that permitted under this
20 Order may be permitted to any party, for good cause shown, or pursuant to further orders of the
21 Discovery Referee. Before requesting leave of the Discovery Referee to serve discovery requests,
22 counsel requesting leave shall meet and confer with other counsel affected by the discovery request in a
23 good faith effort to resolve the dispute.

24 **6. SCOPE OF WORK AND ALLOCATION MEETINGS.**

25 Scope of Work and Allocation Meetings will be held on the dates set forth in **Exhibit "I"** at the
26 offices of Developer Defendants' counsel, Newmeyer & Dillion LLP, located at 895 Dove Street, Fifth
27 Floor, Newport Beach, California 92660, Tel: (949) 854-7000, Fax: (949) 854-7099. The meetings will
28 be coordinated by the developer's counsel, and the detailed schedule will be given to all parties at least

1 three days prior to the commencement of the meetings. Counsel for all contractors, subcontractors,
2 design professionals and materialmen defendants and cross-defendants are required to attend the Scope
3 of Work and Allocation Meetings.

4 **7. DEPOSITIONS.**

5 **7.1 Plaintiffs' Depositions.**

6 Plaintiffs' counsel shall offer one homeowner from each home which is the subject of the
7 litigation who shall be designated as the person most knowledgeable for that home for deposition during
8 the time period set forth in **Exhibit "I."** If, at a later date, Plaintiffs determine another plaintiff
9 homeowner's testimony is required, that plaintiff homeowner will be made available for deposition upon
10 mutually agreed shortened notice by any party, at least forty-five (45) days before trial. Only plaintiff
11 homeowners that have been made available for deposition shall testify at the trial on Plaintiffs' behalf
12 for that particular home.

13 **7.2 Person Most Qualified (PMQ) Depositions.**

14 **7.2(i) Developer Defendants' PMQ Depositions.** On or before the date set forth in
15 **Exhibit "I"**, the Developer Defendants, and all subcontractors, design professionals and/or materialmen
16 shall serve on all parties and deposit in the Depository a "Notification of Person(s) Most Qualified,"
17 identifying the persons most qualified concerning the following matters, and providing three dates
18 during which the individuals identified as PMQ's are available for their PMQ deposition within the time
19 frame provided in **Exhibit "I"**:

- 20 (a) the construction of the homes in the project;
- 21 (b) the preparation of the soils reports;
- 22 (c) the preparation of the plans and specifications for construction of the project;
- 23 (d) the approval of and changes to the plans and specifications for
24 construction of the project;
- 25 (e) communications with the County or Riverside concerning approval and
26 changes to the plans and specifications for construction of the project;
- 27 (f) compliance with or deviations from the plans and specifications for
28 construction of the project;

- 1 (g) compliance with or deviations from applicable building code provisions
2 for construction of the project; and
3 (h) compliance with or deviations from the soil reports concerning the project.

4 **7.2(ii) PMQ Depositions of Subcontractors, Design Professionals and/or**

5 **Materialmen.** On or before the date set forth in **Exhibit "I"**, all subcontractors, design professionals
6 and/or materialmen shall serve on all parties and deposit in the Depository a "Notification of Person(s)
7 Most Qualified," identifying the persons most qualified concerning the following matters, and providing
8 three dates during which the individuals identified as PMQ's are available for their PMQ deposition
9 within the time frame provided in **Exhibit "I"**:

- 10 (a) The negotiation and execution of the subcontract agreement for the
11 project;
12 (b) The procurement of liability insurance to cover the project, including
13 liability insurance naming the developer defendants
14 as an additional insured;
15 (c) The scope of work performed by the subcontractor at the project; and
16 (d) The work performed in the field by the subcontractor during the time of
17 original construction.

18 **7.3 Deposition Scheduling.**

19 Plaintiffs'/Homeowners' depositions shall commence during the period set forth in **Exhibit "I"**
20 and proceed for a period of two weeks. Two homeowner depositions shall be scheduled each day (at
21 9:00 a.m. and 1:30 p.m.), with the understanding that the second deposition may have to be rescheduled
22 if the first deposition cannot be completed within four hours (assuming a 30-minute break for lunch).

23 Following this two-week period, depositions of the persons most qualified ("PMQ") for the
24 Developer Defendants, cross-defendants, subcontractors, design professionals and materialmen and any
25 other percipient witnesses shall commence and proceed for two weeks. Homeowner depositions shall
26 then re-commence for two weeks, followed by another two-week period of PMQ and percipient witness
27 depositions. This pattern of alternating groups of depositions for two-week periods shall continue until
28 all homeowner, PMQ and percipient witness depositions are completed. Should it be deemed necessary

1 to double-track depositions (i.e. take concurrent depositions) the parties shall meet and confer to
2 schedule these depositions.

3 Counsel for Plaintiffs shall prepare and coordinate the Plaintiffs' deposition schedule for each
4 two-week period and serve it on counsel for all parties at least two weeks prior to the commencement of
5 the first Plaintiff's deposition. Counsel for Developer shall prepare and coordinate the PMQ deposition
6 schedule and serve it on counsel for all parties at least two weeks prior to the commencement of the first
7 PMQ deposition.

8 Unless otherwise agreed by the parties, all homeowner, percipient witnesses and PMQ
9 depositions shall be conducted at *Esquire Solutions* located at 3801 University Avenue, Suite 640,
10 Riverside, California 92501; phone number (951) 784-1525; facsimile number (951) 784-9520.

11 **8. EXPERT DISCOVERY.**

12 **8.1 Expert Witness Designations.**

13 Expert witness designations and declarations pursuant to Code of Civil Procedure § 2034.210 *et*
14 *seq.* shall be exchanged pursuant to the schedule set forth in **Exhibit "I."**

15 **8.2 Supplemental Expert Witness Designations.**

16 Supplemental expert witness designations and declarations pursuant to Code of Civil Procedure §
17 2034.210 *et seq.* shall be exchanged pursuant to the schedule set forth in **Exhibit "I."**

18 **8.3 Protocol for Expert Depositions.**

19 Expert depositions shall proceed in accordance with the schedule set forth in **Exhibit "I."** The
20 parties shall meet and confer to agree on the schedule for expert depositions. If the parties cannot agree,
21 the Discovery Referee shall prepare and publish an expert deposition schedule. Except as otherwise
22 stipulated or by order of the court for good cause, plaintiffs' expert in a particular discipline shall be
23 deposed before any defense expert in that same discipline is deposed, and the expert of any party
24 deemed to be a developer shall be deposed before any subcontractors' or design professionals' expert in
25 that same discipline is deposed.

26 At least fourteen (14) calendar days before the deposition of an expert, the expert or the counsel
27 who retained the expert shall deposit into the Document Depository hard copies of the discoverable
28 writings of that expert (including photographs and test data then available), and all writings relied upon

1 by that expert, including those documents requested in any Notice of Deposition and Notice to Produce
2 served by any party. This deposit may be accomplished by depositing a CD-ROM, provided that the
3 expert is able to refer to the documents on the CD-ROM at the time of deposition by utilizing a projector
4 or similar audio/video device. The originals of such writings shall also be produced at the deposition.
5 Any party conducting an expert witness deposition shall present a check at the deposition to compensate
6 the expert pursuant to the experts' fees and time of questioning. Payment shall be made at the
7 conclusion of that session of the deposition. The failure to produce a check at the deposition shall
8 preclude the examination of the expert at that deposition, unless other arrangements for payment of the
9 expert are agreed upon.

10 Unless otherwise agreed by the parties, expert witness depositions shall be conducted at *Esquire*
11 *Solutions*, 3801 University Avenue, Suite 640, Riverside, California 92501; phone number (951) 784-
12 1525; facsimile number (951) 784-9520.

13 **9. SPECIFICATION AND IDENTIFICATION OF DEFECTS AND COSTS OF REPAIRS.**

14 **9.1 Plaintiffs' Preliminary Defect Report and Preliminary Cost of Repair Report.**

15 Plaintiffs shall deposit in the Depository a Preliminary Defect Report and a Preliminary Cost of
16 Repair Report and shall serve a Notice of Compliance on all parties pursuant to the schedule set forth in
17 **Exhibit "I".**

18 The Preliminary Defect Report shall set forth, for each home, the homeowners' names and
19 address, the general type, extent, and locations of each alleged defect in matrix format, plaintiffs'
20 contentions as to the cause of each defect or group of defects, and as to each defect and location.

21 The Preliminary Cost of Repair Report shall set forth, for each home, a detailed line-by-line item
22 description of the repair methodology, the nature of each repair that plaintiffs claim must be made, and
23 the specific cost of each such repair. The Cost of Repair Report should provide sufficient information to
24 enable a professional cost estimator to ascertain the specific nature of the repair and the cost of the repair
25 being recommended. The plaintiffs' Preliminary Cost of Repair Estimate shall also identify all damages
26 claimed pursuant to Civil Code section 944, including the amount of each such damage claim.

27 Plaintiffs' Preliminary Defect Report and Preliminary Cost of Repair Report shall be subject to
28 Evidence Code §§ 1115, et seq. and 1152, unless plaintiffs or their counsel waive this protection.

1 **9.2 Plaintiffs' Final Defect and Cost of Repair Statements.**

2 On or before the date set forth in **Exhibit "I"**, plaintiffs shall deposit in the Depository the Final
3 Defect Statement and the Final Cost of Repair Statement, and notice of deposit thereof, and shall serve a
4 Notice of Compliance on all parties. The Final Defect Statement and the Final Cost of Repair Statement
5 shall not be protected under Evidence Code sections 1115, et seq. and 1152, and shall be admissible as
6 evidence.

7 The Final Defect Statement shall provide a complete, descriptive, specific and final statement
8 of each alleged defect at each home, providing quantities and repair methodologies.

9 The Final Cost of Repair Statement shall set forth a description of the repair methodology and
10 cost of repair for each defect alleged. The Final Cost of Repair Statement should provide sufficient
11 information for a professional cost estimator to ascertain the specific nature of the repairs, the specific
12 locations of the repairs, and the quantities of labor and material estimated to make the repairs. The Final
13 Cost of Repair Statement shall also include a detailed explanation of all other damages claimed pursuant
14 to Civil Code section 944.

15 If the Plaintiffs amend the Final Defect Statement or Final Cost of Repair Statement thereafter,
16 any party objecting may bring their objection before the Referee for resolution within thirty (30) days of
17 the amendment.

18 **9.3 Developer Defendants' Responsive Report to Plaintiff(s)' Final Defect Statement**
19 **and the Final Cost of Repair Statement.**

20 On or before the date set forth in **Exhibit "I"**, the developer defendants shall publish a
21 responsive report setting forth their opinions and conclusions regarding Plaintiffs' Final Defect
22 Statement. This responsive report shall not be protected under Evidence Code sections 1115, et seq.
23 and 1152 and shall be admissible as evidence.

24 **9.4 Developer Defendants' Responsive Report to Plaintiffs' Final Cost of Repair**
25 **Statement.**

26 On or before the date set forth in **Exhibit "I"**, developer defendants shall deposit a Defense
27 Cost of Repair Statement with a Notice of Deposit to all parties. The statement shall set forth a
28 description of the repair methodology and cost of repair for each alleged defect, and include a detailed

1 explanation of any relocation costs. The statement should provide sufficient information for a
2 professional cost estimator to ascertain the specific nature of the repairs, the specific locations of the
3 repairs, and the quantities of labor and material estimated to make the repairs.

4 The Defense Cost of Repair Statement and any attached documents shall not be protected under
5 Evidence Code sections 1115, et seq. and 1152, and shall be admissible as evidence. However, if
6 developer is asked to prepare a revised cost of repair statement by the Mediator solely for mediation,
7 such revised statement shall be protected under such Evidence Code sections, and shall not be
8 admissible as evidence.

9 **10. INSPECTIONS AND TESTING.**

10 **10.1 Non-Invasive Inspections.**

11 The defendants and cross-defendants collectively shall have the opportunity to perform one non-
12 invasive inspection of each of the subject homes. Said inspection shall not exceed two hours per home.
13 Because the homes were inspected during the pre-litigation proceedings pursuant to Civil Code section
14 895, *et seq.*, any defendant or cross-defendant requesting non-invasive inspections shall provide
15 facsimile notice to plaintiffs' counsel of the specific homes sought to be inspected and the scope of the
16 inspections on or before the date set forth in **Exhibit "I"**. One of the purposes of the non-invasive
17 request procedure is to coordinate inspections and to minimize the cost and inconvenience to the
18 homeowners, parties and counsel.

19 Plaintiffs shall serve all parties with notice of the schedule for the defendants' and cross-
20 defendants' non-destructive inspections via Lexis-Nexis E-Serve on the date set forth in **Exhibit "I"**.
21 Party representatives, counsel, consultants and parties have the right to be present at all inspections. The
22 parties shall be entitled to inspect, photograph and videotape the homes, but there shall be no sampling,
23 testing or markings made during these non-destructive site inspections. Conversations with homeowners
24 by party representatives, consultants and parties during these inspections are prohibited.

25 **10.2 Invasive Testing Request.**

26 All defendants and cross-defendants who are interested in conducting interior or exterior
27 destructive testing shall complete the Interior/Exterior Destructive Testing Request form attached hereto
28 as **Exhibit "H"** and serve it on all parties on or before the date set forth in **Exhibit "I."** Plaintiffs shall

1 coordinate the dates of such tests in order to minimize cost and inconvenience to the parties and counsel.
2 If an agreement cannot be reached, the parties shall submit the issue to the Discovery Referee for
3 resolution.

4 **10.3 Invasive Testing by Defendants and Cross-Defendants.**

5 The parties shall meet and confer regarding a destructive testing schedule upon service of the first
6 Destructive Testing Request by any party, and the Discovery Referee shall resolve all disputes regarding
7 the scheduling of such destructive testing. Plaintiffs shall publish the final schedule for defense destructive
8 testing on or before the date set forth in **Exhibit "L"** Plaintiffs shall serve the detailed daily schedule for
9 such destructive testing at least three (3) days prior to each day of testing. Party representatives, counsel,
10 consultants and parties have the right to be present at all inspections. Conversations with homeowners by
11 party representatives, consultants and parties during these inspections are prohibited. Visual inspections of
12 areas not being tested will not be allowed during this inspection, absent consent of counsel for plaintiffs.
13 Destructive testing by defendants or cross-defendants after the period prescribed herein shall only be
14 permitted with a recommendation and order of the Discovery Referee upon a showing of good cause.

15 Should plaintiffs subsequently identify a new issue not covered by the Preliminary Defect Report
16 and/or plaintiffs' testing plan, plaintiffs will provide notice to all parties of the new issue and provide a
17 reasonable opportunity for further investigation, inspection and testing as soon as said new issue is
18 identified.

19 **10.3(i) Time and Manner of Invasive Tests.**

20 Defense invasive testing by all parties shall occur between Monday and Friday, holidays
21 excluded, pursuant to the schedule set forth in **Exhibit "I"**. The party or parties requesting and/or
22 conducting the testing ("Conducting Parties") are encouraged to combine their destructive testing efforts
23 where feasible and share the costs thereof. All parties shall be permitted to observe, photograph,
24 videotape, record, or otherwise attend the testing of any other party, without charge, so long as they do
25 not delay, interfere with, take samples from, or otherwise increase the cost of testing. A passive
26 observer shall be any party who simply observes and/or photographs testing, without impairing the
27 process. Any party who directs the location of testing, takes samples or otherwise delays, interferes with
28 or increases the cost of the testing process shall be deemed a "Participating Party".

1 Participating Parties and the Conducting Party shall pay for cost of the invasive testing and the
2 cost of restoration of the tested area to the pre-test condition ("Testing Cost") on a pro rata basis.
3 Passive observers have no obligation to share in the Testing Cost. The Conducting Party shall maintain
4 written records of the Testing Cost. All reimbursement payments shall be made within 30 days
5 following presentment of the bill by the Conducting Party to Participating Party. By way of example, if
6 the developer defendant performs destructive testing and restoration which costs \$1,000, and four other
7 cross-defendants participate, as defined herein, the developer shall be responsible for \$200 and each
8 Participating Party shall provide payment of \$200 to the developer within 30 days of receipt of the
9 billing invoice.

10 **10.3(ii) Evidence of Insurance by Testing Party.**

11 A Conducting Party's consultants and contractors conducting invasive testing shall provide to
12 plaintiffs' counsel evidence of general liability insurance at least one (1) day before testing is scheduled
13 to commence, in a minimum amount of \$1,000,000 from an insurance carrier admitted in California.

14 **10.3(iii) Repair by Testing Party.**

15 The Conducting Party shall repair, restore and clean the property dismantled or exposed during
16 the invasive testing and return it to the condition in which it existed before the testing. The repair,
17 restoration, or clean up work shall be completed within 2 calendar days of the completion of the testing
18 on the dismantled or exposed home, except as to items which cannot reasonably be completed within 2
19 calendar days due to time required to allow items to set or dry. An extended amount of time will be
20 allowed for repairs if the plaintiffs have expressly agreed in writing to such an extension of time. The
21 Conducting Party shall also protect the property from the effects of inclement weather until it is restored
22 to its pre-test condition.

23 **11. HOMEOWNER REPAIRS AND ADDITIONAL INSPECTIONS AND TESTING.**

24 Except for repairs to a plumbing leak, roof leak or a life/safety issue, as to which plaintiffs shall
25 give as much advance notice as is possible under the circumstances, plaintiffs shall give no less than
26 twenty-four (24) hours advance notice of emergency repair work performed which relates to a deficiency
27 put at issue in this lawsuit. The purpose of this provision is to allow defendants/cross-defendants and
28 their experts to observe and photograph the condition and the repair before such evidence is spoliated.

1 **12. PLAINTIFFS' SETTLEMENT DEMAND.**

2 Pursuant to the schedule set forth in **Exhibit "I,"** plaintiffs shall prepare and serve on developer
3 defendants a Settlement Demand for resolution of all claims in the Action. This Settlement Demand is
4 for settlement purposes only and is subject to Evidence Code §§ 1115, *et seq.* and 1152.

5 **13. DEFENSE SETTLEMENT DEMANDS.**

6 Pursuant to the schedule set forth in **Exhibit "I,"** developer defendants shall give notice to all
7 cross-defendants of their respective settlement demands as to those cross-defendants, subject to the
8 protections of Evidence Code §§ 1115, *et seq.* and 1152. Said settlement demands shall be specific with
9 regard to the defect items allocated.

10 **14. MEDIATIONS AND MANDATORY SETTLEMENT CONFERENCES.**

11 **14.1 Mediations.**

12 As set forth at section 3.2 of this Order, the court appoints Ross R. Hart, Esq. as the Mediator in
13 this action to assist the parties with settlement efforts.

14 Mediation sessions between Plaintiffs, Defendants, and Cross-Defendants are scheduled for the
15 dates set forth in **Exhibit "I."**

16 **14.2 Mandatory Settlement Conference.**

17 If the matter is not resolved at the mediations, the Court may schedule one or more Mandatory
18 Settlement Conferences to be conducted pursuant to California Rules of Court Rule 3.1380. The
19 Settlement Conference Referee will be appointed by the court. If the Settlement Conference Referee
20 appointed by the court enlists the services of Ross Hart, Esq. to assist in conducting the Mandatory
21 Settlement Conference(s), the fees of Mr. Hart shall be paid as follows: Plaintiffs one-third, direct
22 developer defendants one-third, and cross-defendants one-third on a pro-rated basis.

23 All parties, including the representatives of all of their insurance carriers providing or with the
24 potential to provide any coverage or alleged to provide any coverage under any primary, secondary or
25 excess policy, are required to personally attend any Mandatory Settlement Conferences with full
26 settlement authority as required by California Code of Civil Procedure, Rules of Court, and Local Rules,
27 except that a party's attendance may be excused on application to the court or Settlement Conference
28 Referee, by written request provided to all parties. The provision of Rule 3.180(c) requiring Mandatory

1 Settlement Conference statements or briefs is waived, except as provided by further order of the
2 Settlement Conference Referee.

3 **15. MEET AND CONFER SESSIONS.**

4 The Mediator and Discovery Referee deem it necessary and appropriate to encourage all counsel
5 to meet and confer to discuss inter alia the issues, damages, liability and claims, to determine what
6 discovery is necessary, what discovery can be mutually agreed upon, and to help evaluate the case. All
7 meet and confer sessions among counsel and/or their consultants, including, but not limited to, all
8 communications, statements of claims, offers to compromise and settlement negotiations, or the like, are
9 hereby protected pursuant to Evidence Code sections 1152 and 1115. The Mediator and Discovery
10 Referee may or may not attend these meetings upon the request of the parties involved. In addition, the
11 Mediator and Discovery Referee may request the parties to attend a meet and confer session, as deemed
12 necessary and appropriate by the Mediator and Discovery Referee.

13 **16. PRE-TRIAL AND TRIAL.**

14 At present, the court contemplates that trial of the Action shall begin on the date set forth in
15 **Exhibit "P"**. However, the Mediator and Discovery Referee are empowered to recommend a different
16 trial date to the court. The motion and discovery cut-off dates shall be pursuant to California Code of
17 Civil Procedure based on the ultimate trial date, unless extended by the Discovery Referee or the court
18 or stipulation of all parties. All non-settled parties shall meet and confer in advance of the Pre-Trial
19 Conference for purposes of finalizing the "Trial Readiness Conference Report".

20 **17. CMO TIMELINE.**

21 A summary of relevant dates under this Order ("CMO Timeline") is attached hereto, as **Exhibit "P"**.

22 **18. CONSENT TO LEXIS NEXIS E-SERVE SERVICE.**

23 In the absence of any objection to this provision made pursuant to section 2 of this Order,
24 express and/or implied consent is given by all parties to service of papers in the Action by LexisNexis E-
25 Serve pursuant to Code of Civil Procedure section 1010.6(a)(6). Counsel for Developer Defendants
26 shall set up a new matter with LexisNexis within fifteen (15) days of entry of this order.


27 Due to the number of Plaintiffs in the action, Plaintiffs' responses to the CMO Discovery shall
28 be exempt from the Lexis Nexis e-service requirement. Unless specifically objected to by a party,

1 Plaintiffs shall serve their CMO Discovery responses by electronic mail. In the event of an objection by
2 a party to service by electronic mail, Plaintiffs shall serve the responses on that party by mail.

3
4 **APPROVED AS TO FORM AND CONTENT:**

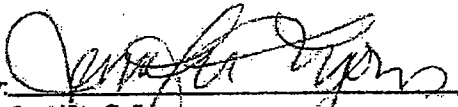
5 Dated: February 10, 2011

THE LA CUES LAW GROUP

7 By: 
8 Brett LaCues
9 Attorneys for Plaintiffs

10 Dated: February 10, 2011


NEWMEYER & DILLION LLP

11 By: 
12 Jennifer C. Lyons
13 Attorneys for Defendants
14 Centex Homes; Centex Real Estate
15 Holding, LP; Centex Real Estate
16 Corporation; and Nomax Corp.

17 *[Signatures continued on following page.]*
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1 THE APPOINTMENT IS ACCEPTED. THE DISCOVERY REFEREE AND MEDIATOR
2 AGREE THAT THEY ARE AWARE OF AND WILL COMPLY WITH THE APPLICABLE
3 PROVISIONS OF CANON 6 OF THE CODE OF JUDICIAL ETHICS, AS WELL AS THE
4 APPLICABLE CALIFORNIA RULES OF COURT.

5
6 DATED: 2/11/2011


Ross R. Hart, Esq.
Mediator

7
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9 DATED: _____

Hon. Jonathan H. Cannon
Discovery Referee

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13 **ORDER**

14 **IT IS SO ORDERED:**

15
16 DATED: _____

JUDGE OF THE SUPERIOR COURT

1 THE APPOINTMENT IS ACCEPTED. THE DISCOVERY REFEREE AND MEDIATOR
2 AGREE THAT THEY ARE AWARE OF AND WILL COMPLY WITH THE APPLICABLE
3 PROVISIONS OF CANON 6 OF THE CODE OF JUDICIAL ETHICS, AS WELL AS THE
4 APPLICABLE CALIFORNIA RULES OF COURT.

5
6 DATED: _____

Ross R. Hart, Esq.
Mediator

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9 DATED: 2-11-11 _____

Jonathan H. Cannon
Hon. Jonathan H. Cannon
Discovery Referee

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13 **ORDER**

14 **IT IS SO ORDERED:**

15
16 DATED: _____

JUDGE OF THE SUPERIOR COURT

1 THE APPOINTMENT IS ACCEPTED. THE DISCOVERY REFEREE AND MEDIATOR
2 AGREE THAT THEY ARE AWARE OF AND WILL COMPLY WITH THE APPLICABLE
3 PROVISIONS OF CANON 6 OF THE CODE OF JUDICIAL ETHICS, AS WELL AS THE
4 APPLICABLE CALIFORNIA RULES OF COURT.

5
6 DATED: _____

Ross R. Hart, Esq.
Mediator

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9 DATED: _____

Hon. Jonathan H. Cannon
Discovery Referee

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13 **ORDER**

14 **IT IS SO ORDERED:**

15
16 DATED: FEB 23 2011 _____

J.C. JACKSON

JUDGE OF THE SUPERIOR COURT

EXHIBIT "A"

AFFIRMATIVE DEFENSES

1. The Cross-Complaint, and each cause of action thereof, fails to state facts sufficient to constitute a cause of action against this answering Cross-Defendant.

2. The Cross-Complaint, and each cause of action thereof, is barred by the statutes of limitation set forth in the California Code of Civil Procedure, commencing with section 335 and continuing through section 349.4, more particularly, but not limited to, the following: sections 337(1), 337.1, 337.15, 338, 339, 340, and 343; and by sections 2607(3)(a) and 2725(1) and (2) of Uniform Commercial Code of the State of California.

3. Plaintiffs are, in whole or in part, barred from commencing this suit pursuant to the provisions of Civil Code section 895, et seq. ("Right to Repair Act" or "Fit It Law" or "SB 800").

4. Plaintiffs' claims are barred, in whole or part, by the Affirmative Defenses enumerated in Civil Code section 945.5, et seq. (SB 800).

5. Cross-Complainant has unreasonably delayed in bringing this action to the prejudice of this answering Cross-Defendant and is therefore barred from bringing this action by the doctrine of laches.

6. Cross-Complainant is at fault in and about the matters referred to in the Cross-Complaint, and such fault on the part of Cross-Complainant proximately caused and contributed to the damages complained of, if any exist. This answering Cross-Defendant further alleges that any fault not attributable to said Cross-Complainant was a result of fault on the part of persons and/or entities other than this answering Cross-Defendant. Such fault bars and/or proportionately reduces any recovery by Cross-Complainant against this answering Cross-Defendant.

7. Should Cross-Complainant recover damages from this answering Cross-Defendant, this answering Cross-Defendant is entitled to indemnification, either in whole or in part, from all persons or entities whose negligence and/or fault proximately contributed to Cross-Complainant's damages, if any there are.

8. Cross-complainant directed, ordered, approved and/or ratified Cross-Defendant's conduct, and Cross-Complainant is therefore estopped from asserting any claim based thereon.

1 9. Cross-Complainants, through their conduct, acts and omissions, have waived their causes
2 of action and any recovery against Cross-Defendant alleged in their Cross-Complaint.

3 10. Cross-Complainant has failed and neglected to use reasonable care to minimize and
4 mitigate the losses, injuries and damages complained of, if any exist.

5 11. The Cross-Complaint, and each cause of action thereof, is barred by virtue of Cross-
6 Complainant's conduct in causing the damages alleged by Plaintiffs under the doctrine of unclean hands.

7 12. Prior to the commencement of this action, this answering Cross-Defendant duly
8 performed, satisfied and discharged all duties and obligations it may have owed to plaintiffs and/or
9 Cross-Complainants arising out of any and all agreements, representations or contracts made by it or on
10 behalf of this answering Cross-Defendant, and this action is therefore barred by the provisions of Civil
11 Code section 1473.

12 13. Plaintiffs, Cross-Complainants and others unrelated to this answering Cross-Defendant
13 modified, altered, abused and/or misused the materials and/or equipment provided by this Cross-
14 Defendant, and such conduct caused and/or contributed to the damages which are alleged in this lawsuit.

15 14. By the terms of its contract, this answering Cross-Defendant is not responsible for the
16 method or means of construction used by the contractor, nor is this answering Cross-Defendant
17 responsible for the contractor's failure to carry out the work in accordance with the contract documents.

18 15. The Cross-Complaint, and each cause of action thereof, is barred by the following
19 provisions of the Uniform Commercial Code sections: 1201(25)(c), 2601, 2602(1), 2513(1) and (3),
20 2510(1), 2605(1)(a) and (b), 2606(1)(a) and (b), 2607, 2715(2)(a) and 2719(3).

21 16. The Cross-Complaint, and each cause of action thereof, is barred by the provisions of
22 Civil Code section 2784.5.

23 17. The Cross-Complaint, and each cause of action thereof, fails to state a cause of action
24 against this answering Cross-Defendant as there is no privity between Cross-Complainant and this
25 answering Cross-Defendant.

26 18. The Cross-Complaint, and each cause of action thereof, fails to state a cause of action
27 against this answering Cross-Defendant since Cross-Complainant failed to give timely and proper notice
28 of any breach of warranty.

1 19. Cross-Complainant acted with full knowledge of all the facts and circumstances
2 surrounding its alleged injuries and damages, and thus assumed the risk of its injuries and damages, if
3 any exist.

4 20. The subject project was not manufactured negligently and conformed to generally
5 accepted industry standards and was safe for its intended uses. At all relevant times, the subject project
6 conformed to the "state of the art" in its industry and Cross-Defendant should not be held liable for any
7 unknown and undiscoverable dangers allegedly associated with the subject project, if any there be.

8 21. The purported claims and causes of action contained in the Cross-Complaint require, for
9 their complete adjudication, the joining of additional, necessary or indispensable parties, without whom
10 the purported claims and causes of action cannot be fully, finally and completely resolved.

EXHIBIT "B"

DOCUMENTS TO BE PRODUCED AND DEPOSITED BY PLAINTIFFS

(Due Ninety (90) Days After Entry of CMO)

Plaintiffs are required to produce to the Depository all relevant, non-privileged, non-protected documents in its possession, custody or control in the following categories:

1. Any and all non-privileged documents of Plaintiff(s) regarding the complaints which are the subject of this litigation.

2. Any and all plans, specifications, contracts or other documents relating to the design and construction of the subject property, in Plaintiff(s)' possession or subject to Plaintiff(s)' control which are applicable to the complaints which are the subject of this litigation.

3. All documents in Plaintiff(s)' possession or subject to Plaintiff(s)' control relating to landscaping, grading, flatwork, and/or post completion improvements undertaken by Plaintiff(s), tenants of Plaintiff(s) and/or submitted to Plaintiff(s) for approval relating to any defect issue raised by Plaintiff(s).

4. Any and all non-privileged reports, notes, writings, correspondence, memoranda, and/or any other writing which references or contains complaints by tenants, owners, or other individuals of the alleged construction deficiencies relating to the subject real property and improvements.

5. Any and all non-privileged notes, minutes, correspondence, memoranda, photographs, and reports in Plaintiff(s)' possession relating to:

- (a) Original design and/or construction of the subject property;
- (b) Maintenance of the subject property;
- (c) Proposed or actual repairs of any defects or alleged defects existing with respect to the subject property;
- (d) Sales and marketing literature;
- (e) Appraisals.

6. Any and all documents showing ownership by Plaintiff(s) in the subject property.

1 7. Any and all invoices, billing statements, itemizations of charges or statements of account
2 reflecting any expert fees being sought as an element of damage under the complaint herein pursuant to
3 Civil Code section 944.
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EXHIBIT "C-1"

DOCUMENTS TO BE DEPOSITED BY DEVELOPER DEFENDANT(S)

(Due Ninety (90) Days After Entry of CMO)

The Developer Defendants are required to produce to the Depository all relevant, non-privileged, non-protected documents in its possession in the following categories:

1. Any and all relevant non-privileged and non-protected documents (consistent with Evidence Code section 250), including but not limited to job files, building contracts, agreements, notes, correspondence, photographs, videotapes, diagrams, plans, specifications, shop drawings, "as-built" plans, calculations, journals, invoices, purchase orders, change orders, addenda reports (including reports prepared by consultants and design professionals for the original construction), job diaries, receipts, project files, site records, daily job logs, field orders, superintendent reports, requests for clarification, requests for information, time cards, governmental inspection punch lists and sign off sheets and invoices relating to the construction, repair, or maintenance of the real property and improvements involved in this lawsuit, including SB800 inspections and repairs.

2. Any and all Additional Insured Endorsements and certificates which potentially provide insurance coverage for any claim asserted against each party, regardless of whether coverage has been reserved or denied by any insurance company.

3. Any and all contract proposals, contracts, agreements, invoices, purchase orders, change orders, addenda, diaries, and other writings related to any and all repairs and all alterations, modifications, and/or improvements which relate to the real property and improvements in this lawsuit.

4. Any and all purchase contracts, sales files, customer service files, advertisement files, marketing documents, warranty claims and warranty documents which relate to the real property and improvements in this lawsuit.

5. Any and all documents subpoenaed from third parties.

6. Any and all invoices, billing statements, itemizations of charges or statements of account reflecting any expert fees, attorneys fees or defense costs being sought as an element of damage under any indemnity cause of action herein. (Counsel may redact any allegedly protected information,

1 allegedly protected by the attorney-client or work product privileges, and any party objecting to the
2 redaction can present their objections to the Discovery Referee.)
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EXHIBIT "C-2"

DOCUMENTS TO BE DEPOSITED BY CROSS-DEFENDANT SUBCONTRACTORS, DESIGN PROFESSIONALS AND MATERIALMEN

(Due Thirty-Five (35) Days After First Appearance or Service of CMO)

Each subcontractor, design professional and materialman is required to produce to the Depository all relevant, non-privileged, non-protected documents in its possession in the following categories:

1. Any and all relevant non-privileged and non-protected documents (consistent with Evidence Code section 250), including but not limited to job files, building contracts, agreements, notes, correspondence, photographs, videotapes, diagrams, plans, specifications, shop drawings, "as-built" plans, calculations, journals, invoices, purchase orders, change orders, addenda reports (including reports prepared by consultants and design professionals for the original construction), job diaries, receipts, project files, site records, daily job logs, field orders, superintendent reports, requests for clarification, requests for information, time cards, governmental inspection punch lists and sign off sheets and invoices relating to the construction, repair, or maintenance of the real property and improvements involved in this lawsuit, including SB800 inspections and repairs.

2. Any and all Additional Insured Endorsements and certificates which potentially provide insurance coverage for any claim asserted against each party, regardless of whether coverage has been reserved or denied by any insurance company.

3. Any and all contract proposals, contracts, agreements, invoices, purchase orders, change orders, addenda, diaries, and other writings related to any and all repairs and all alterations, modifications, and/or improvements which relate to the real property and improvements in this lawsuit.

4. Any and all purchase contracts, sales files, customer service files, advertisement files, marketing documents, warranty claims and warranty documents which relate to the real property and improvements in this lawsuit.

5. Any and all documents subpoenaed from third parties.

///

1 6. Any and all invoices, billing statements, itemizations of charges or statements of account
2 reflecting any expert fees, attorneys fees or defense costs being sought as an element of damage under
3 any indemnity cause of action herein. (Counsel may redact any allegedly protected information,
4 allegedly protected by the attorney-client or work product privileges, and any party objecting to the
5 redaction can present their objections to the Discovery Referee.)
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EXHIBIT "D"

STATEMENT OF WORK

(Due: Thirty-Five (35) Days After First Appearance or Service of CMO)

1. Name of Party:
2. Name of Trial Attorney:
3. Detailed description of work performed (including work performed or services provided under verbal or written contracts, change orders and/or extras):
4. Location of work performed (by project name, tract, phase and lot numbers, unit number, building number and/or address):
5. Inclusive dates between which work was performed:
6. Identity of person or entity with whom you contracted to perform the above-described work:
7. Did you supply materials?
8. If you supplied materials, describe the materials you provided:
9. If you supplied materials, identify the person or entity from whom you purchased the materials:
Name:
Address:
Telephone No:
10. Did you subcontract any of the work that was to be performed by you to another person or entity?
11. If you did subcontract any of your work to another, identify the person or entity with whom you subcontracted:
Name:
Address:
Telephone No:
12. If you did subcontract any of your work to another, was that subcontract in writing?
13. If you did subcontract any of your work to another, identify the nature of work and/or services.

- 1 14. Name, address and telephone number of person(s) most knowledgeable regarding the contracts
2 entered into for the supply of labor and/or materials by you regarding the subject project. If
3 more than one person, identify each and their particular area of knowledge.
- 4 15. Name, address and telephone number of person(s) most knowledgeable regarding the field
5 conditions and/or work performed by you at the subject project. if more than one person,
6 identify each and their particular area of knowledge.
- 7 16. Name, address and telephone number of all foremen and/or superintendents at the subject
8 project. If more than one person, identify each and their particular area of knowledge.
- 9 17. If you manufactured a product for construction of the project, please identify each product,
10 including its name, model, series, date of design and type.
- 11 18. If you manufactured a product for construction of the project, please identify the individual(s)
12 who designed each product by stating their name, title, dates of employment, present address
13 and telephone number.
- 14 19. If you manufactured a product for construction of the project, please identify the plant
15 manager(s) who supervised the manufacturing of each product by stating their name, title,
16 dates of employment, present address and telephone number.
- 17 20. If you manufactured a product for construction of the project, please identify the individual(s)
18 at your entity who sold or negotiated the terms of the sale of each product by stating their
19 name, title, dates of employment, present address and telephone number.
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EXHIBIT "E"

STATEMENT OF INSURANCE

(Due: Thirty-Five (35) Days After First Appearance or Service of CMO)

1. Policy number;
2. The name, address and telephone number of the insurance carrier and any adjuster assigned to the claim;
3. The name, address and telephone number of any retail and wholesale brokers;
4. Whether the insurance company is admitted, non-admitted, surplus-lines, risk retention, etc.
5. Type of policy (e.g., comprehensive general liability, professional liability, first party property, occurrence and/or claims made);
6. Whether the policy provides operations, completed operations and/or Broad Form Property Damage coverage;
7. Effective dates of the policy;
8. Whether there is a deductible or self-insured retention and, if so, any per occurrence, per claim or aggregate amount;
9. Original per occurrence and aggregate policy limits and the policy limits for each type of coverage contained in the policy;
10. Remaining policy limits;
11. Whether the limits of coverage are impacted by a burning or reducing limits provision;
12. Identity of all relevant named insureds;
13. Identity of all relevant additional insureds;
14. The date(s) any tender was made;
15. Whether the carrier accepted or declined coverage and, if accepted, whether it did so under a reservation of rights;
16. Whether any reservation of rights and/or controversy of coverage dispute exists between you and the insurance company;
17. Whether any reservation of rights and/or controversy of coverage dispute exists between the insurance company and any party in this litigation listed as an additional insured under the policy; and
18. The name, address and telephone number of the custodian of the policy.

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1 **SPECIAL INTERROGATORY NO. 3:**

2 As to any problems or DEFECTS that YOU may claim with this lawsuit, have YOU attempted
3 to repair or have YOU repaired any of these problems or DEFECTS? If yes, state:

- 4 (a) What problem or DEFECT was attempted to be repaired;
5 (b) Who attempted to repair the problem or DEFECT;
6 (c) What date(s) was the attempt made;
7 (d) What problem or DEFECT was repaired;
8 (e) Who did the repair;
9 (f) What date(s) was the repair made.
10 (g) The cost of repair.

11 **SPECIAL INTERROGATORY NO. 4:**

12 With respect to any problems, DEFECTS or damage YOU claim exists in this lawsuit, have
13 YOU ever had a professional contractor or engineer, except those hired through YOUR attorney,
14 inspect the problems, DEFECTS or damage? If yes, then for each professional, provide:

- 15 (a) The date(s) of the inspection(s).
16 (b) Identify the individual and/or company inspecting the problem, DEFECT or damage;
17 (c) Identify the general nature of the problem, DEFECT or damage inspected.
18 (d) The cost of inspection.
19

20 **NOTE: A VERIFICATION SIGNED BY THE PARTY UNDER PENALTY OF PERJURY**
21 **MUST ACCOMPANY THE RESPONSES TO THE "SPECIAL**
22 **INTERROGATORIES TO PLAINTIFF(S)."**
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EXHIBIT "G-1"

INTERROGATORIES TO DEVELOPER DEFENDANTS

(Due: Sixty (60) Days After Entry of CMO)

SPECIAL INTERROGATORY NO. 1:

Are you or have you ever been a corporation? If so, state:

- (a) The name stated in the current articles of incorporation;
- (b) All other names used by the corporation during the past ten years and the dates each was used;
- (c) The date and place of incorporation;
- (d) The address of the principal place of business;
- (e) Whether you are qualified to do business in California.

SPECIAL INTERROGATORY NO. 2:

Are you or have you ever been a partnership? If so, state:

- (a) The current partnership name;
- (b) All other names used by the partnership during the past ten years and the dates each was used;
- (c) Whether you are a limited partnership and, if so, under the laws of what jurisdiction;
- (d) The name and address of each general partner;
- (e) The address of the principal place of business.

SPECIAL INTERROGATORY NO. 3:

Are you or have you ever been a joint venture? If so, state:

- (a) The current joint venture name;
- (b) All other names used by the joint venture during the past ten years and the dates each was used;
- (c) The name and address of each joint venturer.

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1 **SPECIAL INTERROGATORY NO. 4:**

2 Are you or have you ever been an unincorporated association? If so, state:

- 3 (a) The current unincorporated association name;
- 4 (b) All other names used by the unincorporated association during the past ten years and the
- 5 dates each was used;
- 6 (c) The address of the principal place of business.

7 **SPECIAL INTERROGATORY NO. 5:**

8 Have you done business under a fictitious name during the last ten years? If so, for each

9 fictitious name, state:

- 10 (a) The name;
- 11 (b) The dates each was used;
- 12 (c) The state and country of each fictitious name filing;
- 13 (d) The address of the principal place of business.

14 **SPECIAL INTERROGATORY NO. 6:**

15 Within the past five years, or since the start of construction of the home or project, has any

16 public entity registered or licensed your businesses? If so, for each license or registration:

- 17 (a) Identify the license or registration;
- 18 (b) State the name of each individual qualifying you for such license;
- 19 (c) State the name of the public entity;
- 20 (d) State the license or registration number.
- 21 (e) For each registration or license, indicate whether there was a period in which said
- 22 registration or license was suspended, non-renewed, lapsed or expired.

23 **SPECIAL INTERROGATORY NO. 7:**

24 Please set forth the name, job title, job duties and last known address of all of your past or

25 present employees who were involved in the construction or supervision of construction of any

26 improvement to real property that is the subject of this action.

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1 **SPECIAL INTERROGATORY NO. 8:**

2 With regard to the persons identified in your answer to Interrogatory No. 7 above, please list
3 those who are no longer in your employ.
4

5 **NOTE: A VERIFICATION SIGNED BY THE PARTY UNDER PENALTY OF PERJURY**
6 **MUST ACCOMPANY THE RESPONSES TO THE SPECIAL**
7 **INTERROGATORIES.**
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EXHIBIT "G-2"

**INTERROGATORIES TO CROSS-DEFENDANT SUBCONTRACTORS, DESIGN
PROFESSIONALS AND MATERIALMEN**

(Due Thirty-Five (35) Days After First Appearance or Service of CMO)

SPECIAL INTERROGATORY NO. 1:

Are you or have you ever been a corporation? If so, state:

- (a) The name stated in the current articles of incorporation;
- (b) All other names used by the corporation during the past ten years and the dates each was used;
- (c) The date and place of incorporation;
- (d) The address of the principal place of business;
- (e) Whether you are qualified to do business in California.

SPECIAL INTERROGATORY NO. 2:

Are you or have you ever been a partnership? If so, state:

- (a) The current partnership name;
- (b) All other names used by the partnership during the past ten years and the dates each was used;
- (c) Whether you are a limited partnership and, if so, under the laws of what jurisdiction;
- (d) The name and address of each general partner;
- (e) The address of the principal place of business.

SPECIAL INTERROGATORY NO. 3:

Are you or have you ever been a joint venture? If so, state:

- (a) The current joint venture name;
- (b) All other names used by the joint venture during the past ten years and the dates each was used;
- (c) The name and address of each joint venturer.

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1 **SPECIAL INTERROGATORY NO. 4:**

2 Are you or have you ever been an unincorporated association? If so, state:

- 3 (a) The current unincorporated association name;
- 4 (b) All other names used by the unincorporated association during the past ten years and the
- 5 dates each was used;
- 6 (c) The address of the principal place of business.

7 **SPECIAL INTERROGATORY NO. 5:**

8 Have you done business under a fictitious name during the last ten years? If so, for each

9 fictitious name, state:

- 10 (a) The name;
- 11 (b) The dates each was used;
- 12 (c) The state and country of each fictitious name filing;
- 13 (d) The address of the principal place of business.

14 **SPECIAL INTERROGATORY NO. 6:**

15 Within the past five years, or since the start of construction of the home or project, has any

16 public entity registered or licensed your businesses? If so, for each license or registration:

- 17 (a) Identify the license or registration;
- 18 (b) State the name of each individual qualifying you for such license;
- 19 (c) State the name of the public entity;
- 20 (d) State the license or registration number.
- 21 (e) For each registration or license, indicate whether there was a period in which said
- 22 registration or license was suspended, non-renewed, lapsed or expired.

23 **SPECIAL INTERROGATORY NO. 7:**

24 Please set forth the name, job title, job duties and last known address of all of your past or

25 present employees who were involved in the construction or supervision of construction of any

26 improvement to real property that is the subject of this action.

27 ///

28 ///

1 **SPECIAL INTERROGATORY NO. 8:**

2 With regard to the persons identified in your answer to Interrogatory No. 7 above, please list
3 those who are no longer in your employ.
4

5 **NOTE: A VERIFICATION SIGNED BY THE PARTY UNDER PENALTY OF**
6 **PERJURY MUST ACCOMPANY THE RESPONSES TO THE SPECIAL**
7 **INTERROGATORIES.**
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EXHIBIT "H"

INTERIOR/EXTERIOR DESTRUCTIVE TESTING REQUEST

PARTY: _____

HOMES TO BE TESTED: _____

GENERAL TYPE OF TESTING TO BE PERFORMED: _____

SPECIAL EQUIPMENT REQUIRED: _____

ESTIMATED TIME: _____

EXHIBIT "I"

CMO TIMELINE

<u>Event:</u>	<u>Date:</u>
Deadline for Developer Defendants to file cross-complaint.	Within 30 days after entry of CMO. ✓
All non-privileged documents to be deposited by Subcontractors, Design Professionals, and Materialmen [See Exhibit "C-2"].	Within 35 days after service of CMO or first appearance.
Response to Statement of Work by cross-defendant Subcontractors, Design Professionals, and Materialmen [See Exhibit "D"].	Within 35 days after service of CMO or first appearance.
Response to Statement of Insurance by cross-defendant Subcontractors, Design Professionals, and Materialmen [See Exhibit "E"].	Within 35 days after service of CMO or first appearance.
Response to Interrogatories by cross-defendant Subcontractors, Design Professionals, and Materialmen [See Exhibit "G-1"].	Within 35 days after service of CMO or first appearance.
Deadline to add Plaintiffs without leave of Court.	Within 60 days after entry of CMO. ✓
Deadline to add Defendants/Cross-Defendants without leave of Court.	Within 60 days after entry of CMO. ✓
Response to Interrogatories by Plaintiffs [See Exhibit "F"].	Within 60 days after entry of CMO. ✓
Response to Interrogatories by Developer Defendants [See Exhibit "G-2"].	Within 60 days after entry of CMO. ✓
Plaintiffs to deposit documents [See Exhibit "B"].	Within 90 days after entry of CMO. ✓
Developer Defendants to deposit documents [See Exhibit "C-1"].	Within 90 days after entry of CMO. ✓
Parties to serve request for Visual Inspections (per section 10.1 of this Order).	April 11, 2011 ✓
Further Status Conference	April 13, 2011 @ 9:30 a.m. ✓ Riverside Superior Court, Department 1
Plaintiffs to deposit Preliminary Defect Report and Preliminary Cost of Repair.	April 18, 2011 ✓
Plaintiffs to publish schedule for site inspections.	April 20, 2011 ✓
Plaintiffs' settlement demand to Developer Defendant due.	April 22, 2011 ✓
Site inspections	April 25 through May 6, 2011. ✓

1	Defense allocations and Developer Defendants' demand to Cross-defendants due.	May 13, 2011 ✓
2	Scope of work and allocation meetings between Developer Defendants and Cross-defendants.	May 24 and May 25, 2011 ✓
3		
4	Mediation #1	June 20, 2011 ✓
5	Mediation #2	August 2, 2011
6	Developer Defendants and Cross-defendants to serve request for destructive testing [See Exhibit "H"].	August 5, 2011 ✓
7	Plaintiffs to publish schedule for destructive testing.	August 19, 2011 ✓
8	Developer defendants and Cross-defendants' destructive testing.	August 29 through September 9, 2011 ✓
9		
10	First expert witness exchange	September 30, 2011 ✓
11	Plaintiffs to serve final Defect Report and Cost of Repair.	October 7, 2011 ✓
12	Supplemental Responses to CMO Discovery by cross-defendant Subcontractors, Design Professionals, and Materialmen	October 10, 2011 ✓
13		
14	Mediation #3	November 9, 2011 ✓
15	Depositions of Plaintiffs, PMQ/PMK, and percipient witnesses.	November 21, 2011 through April 13, 2012
16	Supplemental expert witness exchange	March 16, 2012 ✓
17	Developer defendants to serve Defense Cost of Repair.	April 13, 2012 ✓
18	Depositions of experts	April 30, 2012 through June 8, 2012 ✓
19	Trial	July 18, 2012
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EXHIBIT 10

COPY

NEWMAYER & DILLION LLP

1 NEWMAYER & DILLION LLP
2 PHILIP KOPP, CBN 090172
3 JENNIFER C. LYONS, CBN 229020
4 895 Dove Street, 5th Floor
5 Newport Beach, California 92660
6 (949) 854-7000; (949) 854-7099 (Fax)

7 Attorneys for Defendant and Cross-Complainant
8 Centex Homes; and Defendants Centex Real Estate
9 Holding, LP, Centex Real Estate Corporation, and
10 Nomax Corp.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

MAR 22 2011

A. Sanchez

11 SUPERIOR COURT OF CALIFORNIA

12 COUNTY OF RIVERSIDE

13 EDWARD GUILLEN; et al.,

14 Plaintiffs,

15 vs.

16 CENTEX HOMES, et al.,

17 Defendants.

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

18 CENTEX HOMES, a Nevada General
19 Partnership,

20 Cross-Complainant,

21 vs.

22 SELECTBUILD CONSTRUCTION, INC, a
23 Delaware corporation, aka C.
24 CONSTRUCTION, INC., dba CAMPBELL
25 CONCRETE OF CALIFORNIA;
26 CAPITAL DRYWALL, INC., a California
27 corporation;
28 CROWN SHEET METAL, INC., a dissolved
California corporation;
C & J CONCRETE, aka CARLOS SOTO,
dba GOLDEN STATE CONCRETE, INC., a
California corporation;
KRDUS PLASTERING, INC., a California
corporation;
L.D. ANDERSON, INC., a California
corporation;

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

2525147.1

- 1 -

CENTEX HOMES' CROSS-COMPLAINT

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 KERDUS 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.

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

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

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

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

18. Plaintiffs who are owners of certain residential real properties located within the Project, filed a complaint against Centex Homes and others for strict products liability, breach of implied warranty, breach of express warranty, negligence, breach of contract, and declaratory relief, seeking damages that they allegedly sustained as a result of Centex Homes' alleged failure 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:

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

(a) Commercial General Liability:

i. \$1,000,000 each occurrence, limit, \$1,000,000 personal and advertising injury limit, \$1,000,000 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 products-completed operations aggregate limit including any umbrella and excess coverage shall be a minimum of \$10,000,000.00;

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

iii. 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, owners and contractors protective liability, damage from explosion, collapse and underground 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; ...

///

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;

///

(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

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

5 35. Without peril to Centex Homes' denial of the allegations of the complaint in this
6 action, Centex Homes alleges that cross-defendants and Roes 1 through 100, and each of them,
7 have, and at all times relevant herein had, an express duty and were obligated to obtain insurance
8 in Centex Homes' name for the damages alleged in the operative complaint. Centex Homes is
9 informed and believes, and on that basis alleges, that each cross-defendant and Roes 1 through
10 100 have failed to obtain the required insurance in Centex Homes' name for the damages alleged
11 and have thereby breached the contract(s).

12 36. Without peril to Centex Homes' denial of the allegations of the complaint in this
13 action, Centex Homes alleges that cross-defendants and Roes 1 through 100, and each of them,
14 have, and at all times relevant herein had, an express duty and are obligated to defend Centex
15 Homes in this action. Centex Homes hereby demands that cross-defendants and Roes 1 through
16 100 defend Centex Homes in this action. Centex Homes is informed and believe, and on that
17 basis alleges on such information and belief that each of these cross-defendants and Roes 1
18 through 100 have failed and refused to defend Centex Homes pursuant to the terms of the
19 contract(s) and have thereby breached the contract.

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

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THIRD CAUSE OF ACTION
FOR BREACH OF IMPLIED CONTRACT TO INDEMNIFY,
TO OBTAIN INSURANCE AND TO DEFEND
(Against All Cross-Defendants and Roes 1-100)

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

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

40. 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 indemnify and hold Centex Homes harmless in an amount equal to the sum of any judgment, settlement, costs of repair and/or costs of defense incurred at the Project. Centex Homes hereby demands that cross-defendants and Roes 1 through 100, and each of them, indemnify and hold Centex Homes harmless as a result of the claims alleged in the operative complaint and pursuant to the terms of the implied contract(s). Centex Homes is informed and believes, and alleges on such information and belief, that Centex Homes demanded cross-defendants and Roes 1 through 100, and each of them, to indemnify or to provide defense to Centex Homes pursuant to the terms of the implied contract(s). Centex Homes is informed and believes, and alleges on such information and belief,

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

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

11 42. Without peril to Centex Homes' denial of the allegations of the complaint in this
12 action, Centex Homes alleges that cross-defendants and Roes 1 through 100, and each of them,
13 have, and at all times relevant herein had, an implied duty and are obligated to defend Centex
14 Homes in this action. Centex Homes hereby demands that cross-defendants and Roes 1 through
15 100, and each of them, defend Centex Homes in this action. Centex Homes is informed and
16 believes, and alleges on such information and belief, that each of the cross-defendants and Roes 1
17 through 100 have failed and refused to defend Centex Homes pursuant to the terms of the implied
18 contract(s) and have thereby breached the implied contract(s).

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

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1 **FOURTH CAUSE OF ACTION**

2 **FOR TOTAL EQUITABLE INDEMNITY**

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

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

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

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

22 **FIFTH CAUSE OF ACTION**

23 **FOR PARTIAL EQUITABLE INDEMNITY**

24 **(Against All Cross-Defendants And Roes 1-100)**

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

27 48. Centex Homes expressly denies the allegations of the complaint in this action and
28 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.

53. As a direct, proximate and foreseeable result of the complaint in this action, Centex Homes has been compelled to incur attorneys' fees, court costs and 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 contribution and repayment from cross-defendants and Roes 1 through 100, and each of them, for their costs, fees and expenses, according to proof.

SEVENTH CAUSE OF ACTION
FOR DECLARATORY RELIEF FOR DUTY TO INDEMNIFY
(Against All Cross-Defendants and Roes 1-100)

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

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

56. 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's costs, expenses and attorneys' fees.

EIGHTH CAUSE OF ACTION
FOR DECLARATORY RELIEF FOR DUTY TO OBTAIN INSURANCE
(Against All Cross-Defendants and Roes 1-100)

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

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

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

NINTH CAUSE OF ACTION
FOR DECLARATORY RELIEF FOR DUTY TO DEFEND
(Against All Cross-Defendants and Roes 1-100)

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

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

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

TENTH CAUSE OF ACTION
FOR DECLARATORY RELIEF FOR DUTY TO CONTRIBUTE
(Against All Cross-Defendants and Roes 1-100)

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

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

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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.

PROOF OF SERVICE

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

STATE OF CALIFORNIA)
) ss.
 COUNTY OF ORANGE)

I, Evelyn S. Gomez, declare:

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):

CENTEX HOMES' CROSS-COMPLAINT FOR:

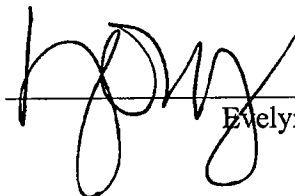
1. BREACH OF WRITTEN CONTRACT; 2. BREACH OF ORAL CONTRACT TO INDEMNIFY, TO OBTAIN INSURANCE AND TO DEFEND; 3. BREACH OF IMPLIED CONTRACT TO INDEMNIFY, OBTAIN INSURANCE AND TO DEFEND; 4. TOTAL EQUITABLE INDEMNITY; 5. PARTIAL EQUITABLE INDEMNITY; 6. CONTRIBUTION AND REPAYMENT; 7. DECLARATORY RELIEF FOR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

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Newport Beach, California addressed as set forth below.

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.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

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.
 Brett La Cues, Esq.
 THE LA CUES LAW GROUP
 3110 Chino Avenue, Suite 230
 Chino Hills, CA 91709

Tel: (909) 627-3535
 Fax: (909) 590-3388
[PLAINTIFFS GUILLEN, ET AL.]

James P. Souza, Esq.
 KENNEDY & SOUZA, APC
 1230 Columbia St., Suite 600
 San Diego, CA 92101-8591

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

EXHIBIT 11

1 Jerry La Cues, Esq. (SBN: 77088)
2 Brett La Cues, Esq. (SBN: 234865)
3 THE LA CUES LAW GROUP
4 3110 Chino Avenue, Suite 230
5 Chino Hills, CA 91709
6 Tel: (909) 627-3535
7 Fax: (909) 590-3388

8 Attorneys for Plaintiffs,
9 EDWARD GUILLEN, et al.

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF RIVERSIDE**

13 EDWARD GUILLEN, et al.;

14 Plaintiffs,

15 vs.

16 CENTEX HOMES, et al.

17 Defendants.

) CASE NO.: RIC10010749

) *Assigned for Case Management purposes to:*
) *Hon. Jacqueline C. Jackson, Dept. 7*

) *Assigned for Law and Motion purposes to:*
) *Hon. Paul E. Zellerbach, Dept. 2*

) **SETTLEMENT DEMAND**

) Complaint filed: June 1, 2010


18
19 **SETTLEMENT DEMAND**

20 Plaintiffs hereby make their Settlement Demand pursuant to the Case Management Order.

21 In accordance with the Preliminary Cost To Repair Report, Plaintiffs demand the sum of forty
22 six million five hundred twenty four thousand (\$46,524,000.00) dollars.

23
24 Dated: April 21, 2011

25 THE LA CUES LAW GROUP

26 
27 JERRY LA CUES
28 Attorney for Plaintiffs,
EDWARD GUILLEN, et al.

1 Jerry La Cues, Esq. (SBN: 77088)
Brett La Cues, Esq. (SBN: 234865)
2 THE LA CUES LAW GROUP
3 3110 Chino Avenue, Suite 230
Chino Hills, CA 91709
Tel: (909) 627-3535
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5 Attorneys for Plaintiffs,
EDWARD GUILLEN, et al.
6
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF RIVERSIDE**
10

11 EDWARD GUILLEN, et al.;

12 Plaintiffs,

13 vs.

14 CENTEX HOMES, et al.

15 Defendants.
16
17

) CASE NO.: RIC10010749
)

) *Assigned for Case Management purposes to:*
) *Hon. Jacqueline C. Jackson, Dept. 7*
)

) *Assigned for Law and Motion purposes to:*
) *Hon. Paul E. Zellerbach, Dept. 2*
)

) **PLAINTIFFS' PRELIMINARY COST OF**
) **REPAIR SUMMARY (BY CATEGORY)**
)
)
)

) Complaint filed: June 1, 2010
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Guillen vs Centex

Preliminary Cost of Repairs - Summary

<i>Totals by Category:</i>		<i>Direct</i>	<i>Burdened</i>	<i>Investigative</i>
1.0	Site/Civil	\$34,250.00	\$49,662.50	\$257.52
2.0	Hardscaping	\$2,929,750.00	\$4,248,137.50	\$22,028.18
3.0	Structurals	\$21,668,252.66	\$31,418,966.36	\$162,919.05
4.0	Roofing	\$184,700.00	\$267,815.00	\$1,388.72
5.0	Exterior Finishes	\$743,311.50	\$1,077,801.68	\$5,588.80
6.0	Exterior Windows & Doors	\$23,225.00	\$33,676.25	\$174.62
8.0	Insulation	\$14,800.00	\$21,460.00	\$111.28
9.0	Interior Finishes	\$3,091,165.50	\$4,482,189.98	\$23,241.83
10.0	Plumbing & Mechanical	\$830,745.00	\$1,204,580.25	\$6,246.20
11.0	Electrical	\$214,710.00	\$311,329.50	\$1,614.36
12.0	Painting	\$221,477.50	\$321,142.38	\$1,665.24
13.0	Trash, Hauling & Clean-up	\$543,641.00	\$788,279.45	\$4,087.52
14.0	Relocation	\$1,420,000.00	\$2,059,000.00	\$10,676.68
Total		\$31,920,028.16	\$46,284,040.83	\$240,000.00
Burdened and Investigative Total			\$46,524,040.83	

<i>Administrative</i>	<i>Percentage</i>	<i>Burden</i>
General Conditions	5%	\$1,596,001.41
Architectural Engineering	5%	\$1,596,001.41
Insurance	3%	\$957,600.84
City Fees	2%	\$638,400.56
Contingency	10%	\$3,192,002.82
Profit and Overhead	20%	\$6,384,005.63
Total	45%	\$14,364,012.67

EXHIBIT 12



NEWMAYER & DILLION LLP
ATTORNEYS AT LAW

PHILIP D. KOPP
Philip.Kopp@ndlf.com

File No.
1084.331

July 18, 2011

VIA E-MAIL ONLY

Ms. Maureen Thomas
Maureen.Thomas@buildwithbmc.com

Re: *Guillen v. Centex Homes, et al.*
Riverside Superior Court Case No. RIC1001749

Dear Ms. Thomas:

As you know, my office represents Centex Homes (hereinafter "Centex") in the above-referenced construction defect litigation in California. The plaintiffs in this case are alleging that the concrete work performed by Centex's subcontractor, C Construction, Inc., now a part of Building Materials Holding Corporation (hereinafter "BMHC"), has caused significant and substantial damage to their homes.

Centex understands that BMHC is a named insured under ACE American Insurance Company policy numbers G18072889, effective 11/11/05 to 11/11/06 (hereinafter "2005-2006 Policy") and G2170250A, effective 11/11/06 to 11/11/07 (hereinafter "2006-2007 Policy"). The 2005-2006 Policy provides that any entity that BMHC acquires or has an ownership interest in is also a named insured under the policy. C Construction is specifically identified as a named insured under the 2006-2007 Policy. Centex is an additional insured under both policies pursuant to "blanket" additional insured endorsements issued on both ACE policies.

The 2005-2006 Policy has a \$2 million policy limit and a \$2 million deductible per occurrence. The 2006-2007 Policy has a \$1.9 million policy limit and a \$1.9 million deductible amount. The deductible endorsements on both policies state that only the named insured can satisfy the deductible requirements. Notwithstanding this requirement, however, the ACE policies expressly recognize that:

[i]n the event you [i.e., BMHC] are unable to pay the Deductible amount or any portion thereof, *our obligation* to pay damages to satisfy a judgment or pay a settlement *shall include the Deductible amount* or any portion thereof. ...

(Paragraph 2 of the Deductible Endorsements, emphasis added.)

895 DOVE STREET	1277 TREAT BLVD.
5TH FLOOR	SUITE 600
NEWPORT BEACH, CA 92660	WALNUT CREEK, CA 94597
T 949 949 854 7099	T 925 968 3200
	F 925 968 3290

Thus, even though the ACE policies require BMHC to pay the deductible amounts, ACE is obligated to pay damages, including the deductible amounts, if BMHC is unable to pay. Here, because BMHC's bankruptcy has effectively foreclosed BMHC's ability to pay the deductibles, ACE must provide indemnity coverage up to the full policy limits of each policy.

Moreover, it is clear that ACE's obligations under the policies are not affected by BMHC's bankruptcy. The policies provide:

SECTION IV – CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate *will not* relieve us of our obligations under this Coverage Part.

(Section IV, paragraph 1, of Commercial General Liability Coverage Form, emphasis added.)

Similarly, Centex also has no obligation to pay the deductibles under the ACE policies. The policies define "you" to mean the named insured, i.e., BMHC. The policies' Commercial General Liability Coverage Form states:

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. ...

(Page 1 of Commercial General Liability Coverage Form.)

The deductible endorsements to the policies provide: "**You** will pay all sums the insured becomes legally obligated to pay within the Deductible per Occurrence ..." (Paragraph 7 of the Deductible Endorsements, emphasis added.)

In contrast, Centex is an *additional insured* under the ACE policies by virtue of the blanket additional insured endorsements to the policies. The additional insured endorsements provide:

SCHEDULE

Name of Additional Insured Person(s) or Organization(s)

Any person or organization whom you have agreed to include as an additional insured under written contract, provided such contract was executed prior to the date of loss.

Section II – Who Is An Insured is amended to include as an additional insured any person(s) or organization(s) shown in the

Schedule, but only with respect to liability for "bodily injury",
"property damage" or "personal and advertising injury" caused, in
whole or in part, by your acts or omissions or the acts or omissions
of those acting on your behalf ...

(Additional Insured – Designated Person or Organization Endorsement.)

Centex's subcontract agreement with C Construction duly required C Construction to include Centex as an additional insured to its insurance. As an additional insured, Centex has neither the right nor the duty to pay the deductibles under the ACE policies.

Furthermore, there is nothing in the ACE policies requiring an additional insured to assume the deductible obligations of the named insured. Simply put, under the terms of the ACE policies, the deductible obligations are to be borne by the named insured, but if the named insured cannot pay the deductible, *ACE must pay the deductible* as part of its obligation to pay covered damages.

Accordingly, notwithstanding BMHC's bankruptcy, or BMHC's inability to pay the deductible amounts under the ACE policies, it is Centex's position that ACE is obligated to fully indemnify its insureds up to the respective limits of insurance in the ACE policies, and that BMHC will not be prejudiced in any way in stipulating to allow Centex to go after coverage under the ACE policies.

It is undisputed that the homeowners' defect claims asserted in this matter implicate the work of C Construction, and that coverage under the ACE policies has been triggered by this litigation. We understand that the trustee of BMHC's bankruptcy estate has entered into stipulations with other developers to allow the developers to pursue BMHC's insurance in other construction defect cases. The *Guillen* matter should be no different. Centex requests that BMHC consent to its trustee entering into a similar stipulation with Centex to pursue coverage under the ACE policies.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Thank you.

Sincerely,


Philip D. Kopp

CERTIFICATE OF SERVICE

I, William A. Hazeltine, hereby certify that on the 2nd day of September 2011, I caused a copy of the foregoing *Declaration of Philip Kopp in Support of the Motion of Centex Homes, et al. for Entry of an Order Enlarging the Claims Bar Date* to be served upon the parties on the attached service list via U.S. Mail, First Class, postage pre-paid.

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

September 2, 2011
Date

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