

DISTRICT COURT  
CLARK COUNTY, NEVADA

IN RE KITEC FITTING LITIGATION

Case No.: A493302

Dept. No.: XVI  
(ELECTRONIC FILING CASE)

NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING

Hearing Date & Time: JANUARY 26, 2011, at 1:30 p.m.

*A court of law authorized this Notice. It is not from a lawyer. You are not being sued.*

**TO: ALL OWNERS OF RECORD OF KIMBALL HILL SUBCLASS B RESIDENCES IN THE BLACK MOUNTAIN VISTAS AND PALERMO WEST DEVELOPMENTS CONTAINING KITEC PLUMBING SYSTEMS – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.**

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all owners of record of homes constructed by KIMBALL HILL HOMES NEVADA, INC. and/or KIMBALL HILL, INC. (collectively referred to as “Kimball Hill” or “Builder”) and plumbed by D.R. BOWLES PLUMBING, THE SOLE PROPRIETORSHIP, or D.R. BOWLES PLUMBING, LLC (collectively referred to as “D.R. Bowles” or “Plumbers”) that may contain Kitec or PlumbBetter plumbing systems and are located within the Black Mountain Vistas and Palermo West developments (“the Settlement Subclass” or “Kimball Hill Subclass B”) to notify the Settlement Subclass members that Settlements have been reached with Builder and Plumbers that will create a settlement fund for the benefit of the Settlement Subclass members to help pay for the removal of Kitec or PlumbBetter plumbing components from the Settlement Subclass homes (“the Settlement”). **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPAIR. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE SETTLEMENT BENEFITS.**

**FAIRNESS & GOOD FAITH SETTLEMENT HEARING:** The Court has issued an Order of Preliminary Approval of the Subclass Settlement and set a Fairness and Good Faith Settlement Hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. **The hearing will be held on JANUARY 26, 2011, at 1:30 p.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.**

YOUR LEGAL RIGHTS AND CHOICES		DUE DATE
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS (“OPT-OUT”) AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPAIR</b>	If you previously filed a request for exclusion from the class (“Opt-Out”) but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin The Subclass Settlement. After your Request to Join The Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Settlement.	JANUARY 12, 2011
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the repair as set forth in this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	JANUARY 12, 2011
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	JANUARY 12, 2011
<b>DO NOTHING</b>	If you do nothing, <b>you will be bound by this Settlement</b> and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass.	N/A

Your rights and options under this Settlement – **and the Due Dates for each** – are explained in this Notice.

- The Court must still decide whether to approve this proposed Settlement. The repairs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

## **BASIC INFORMATION**

### **1. Why did I get this Notice?**

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Settlement on behalf of the Settlement Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Settlement Subclass. **If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home.** You have legal rights and choices to make before the Court decides whether to finally approve this Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this settlement for eligible recipients.

### **2. What is this lawsuit about?**

This is a case arising from allegedly defective Kitec plumbing systems and/or components (“Kitec”) manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, “Ipex Defendants”), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys’ fees and costs of suit from the Defendants on behalf of all Class Members. **This Class Action does not seek any damages for personal injury.**

### **3. What will this Settlement provide Subclass homeowners if approved by the Court?**

If approved by the Court, these Settlements will create a settlement fund in the amount of \$191,000 to be used for the benefit of the Settlement Subclass to pay for the removal of Kitec or PlumbBetter plumbing components from the Settlement Subclass homes. The Settlement with Builder and Plumbers resolves class claims against Builder and Plumbers related to approximately 241 homes constructed and sold by Builder and plumbed by Plumbers in the Black Mountain Vistas and Palermo West developments. The funds paid by or on behalf of Builder and Plumbers will be combined with the Settlement Subclass members’ share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below).

### **4. Are additional funds anticipated from other parties?**

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities (“Ipex Settlement”). Though the Ipex Settlement was approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court’s order approving the Ipex Settlement. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Settlement, however, is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Settlement will remain in full force and effect for the benefit of the Settlement Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a new settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund up to the Settlement Amount for the benefit of the Settlement Subclass.

### **5. How will this Settlement be funded?**

The specific funding for these Settlements is as follows: (1) \$104,500 from Builder’s insurance carrier, (2) \$86,500 from Plumbers and/or their insurance carriers.

### **6. Why is this a class action, and what is a Subclass?**

In a class action lawsuit, one or more people called “Representative Plaintiffs” sue on behalf of other people who have similar claims. All of these people together are known as the “Class” or “Class Members.” One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera, Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, Larry Maier, Dan Riordan, and Linda

McIntyre. A Subclass is a smaller subset of a larger Class. The Settlement Subclass representative is Gary Schmidt. The Settlement described in this Notice pertains only to the Settlement Subclass described in this Notice.

**7. Why have the Subclass, Builder and Plumbers decided to settle?**

The Court has not decided in favor of the Subclass, Builder, or Plumbers. Builder and Plumbers vigorously deny any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder and Plumbers contend that the homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and “good practice,” that Class claims have no basis in law or fact, that Builder and Plumbers have meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

**8. How do I know if I am part of this Settlement?**

You are part of this Settlement if: a) You own a Kimball Hill Subclass B home constructed by Builder or plumbed by Plumber that contains, or at any time contained, Kitec plumbing components and is located within the Black Mountain Vistas or Palermo West developments; b) You did not previously opt out of this class action. If you do not own one of the homes within the Settlement Subclass, you are not a part of this Settlement. If you own a home in the Settlement Subclass but previously opted out of this class action, you may still take part in this Settlement by timely submitting a Request to Rejoin the Class.

**9. What happens if this Settlement is approved by the Court?**

If this Settlement is approved by the Court, then you will be notified of the Court’s final approval and provided with a Claim Form to request a repair. The notice of the Court’s final approval will explain how to obtain the repair provided by the Settlement and will include the Claim Form that you will be required to return to the Claims Administrator to take part in this Settlement.

**10. What happens if this Settlement is not approved by the Court?**

If the Settlement is not approved by the Court at the Fairness Hearing, the Settlement will terminate and all the Settlement Subclass Members and parties will be restored to the position they were in before the Settlement was reached.

**11. How soon will repairs be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges to the Settlement are resolved, if any, and as soon as sufficient funds necessary to perform the repairs of the Settlement Subclass Homes have been aggregated and collected, the Claims Administrator will begin to schedule repairs for those the Settlement Subclass Members who have returned their Claim Form, with priority given to homes, if any, that are at greater risk for Kitec failures.

**12. What if I already repaired my home or have already suffered damages from a Kitec fitting leak?**

Under this settlement, **you are only entitled to a repair, you are not entitled to a monetary payment.** If, however, you already repaired your home or have suffered damage from a Kitec fitting failure, you **may** be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior repair or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPAIR. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE SETTLEMENT BENEFITS.**

**YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION**

**13. If I previously excluded myself as a member from the Class Action, can I still accept the Settlement benefits?**

Yes, but you must first timely withdraw your prior “opt-out” and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. **If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before JANUARY 12, 2011, you will not be eligible to receive the benefits provided in this Settlement.**

**YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT**

**14. What if I do not want to be part of this Settlement?**

If you do not wish to receive the benefits provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. **If you exclude yourself, then you will not receive the Settlement benefits and you will give up your right to sue Builder and Plumbers on these claims later.**

**15. If I exclude myself, may I pursue a claim against Builder or Plumbers independently?**

**If you exclude yourself from this Settlement, you will not be entitled to pursue an independent claim against Builder or Plumbers concerning Kitec Fittings.**

## **YOUR RIGHTS – OBJECTING TO THE SETTLEMENT**

### **16. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Settlement Subclass, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. **The Court, however, may approve the Settlement despite objections, and all members of the Settlement Subclass will be bound by the Settlement.**

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE – **Kimball Hill Subclass B Settlement**
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Subclass Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- **Your objection letter must be mailed and postmarked before JANUARY 12, 2011, with copies sent to the following address:**

Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169  
*Attention: Subclass Settlement Objection*

## **IF YOU DO NOTHING**

### **17. What happens if I do nothing?**

If you do nothing, **you will be bound by this Settlement** and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass. If this Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Settlement. If you do not return your Claim Form, you will **not** receive a repair or any other benefits of this Settlement and you will **give up your right to sue** Builder or Plumbers on these claims later. Therefore, if the Court approves this Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have **no** further rights against Builder or Plumbers.

## **THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SETTLEMENT**

### **18. Do I have a lawyer in this lawsuit?**

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes this Subclass. Together, these attorneys are called Class Counsel. ***You will not be individually charged for these lawyers.*** The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17<sup>th</sup> Floor  
3800 Howard Hughes Parkway  
Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano  
Lynch, Hopper & Salzano, LLP  
1640 Alta Drive, Suite #11  
Las Vegas, NV 89106

### **19. How will these attorneys be paid?**

Class Counsel negotiated with Builder and Plumbers to be paid 25% of the Settlements as their fee as part of the Settlements, but have agreed to defer the collection of any fees awarded by the Court until after all Settlement Subclass repairs have been completed. This fee **will not** reduce the amount ultimately dedicated to fund the repairs of the Settlement Subclass homes. This fee does not include any fees previously awarded to Class Counsel by way of the IpeX Settlement or in conjunction with any other settlement or partial settlement in this action. These fees are contingent upon District Court final approval during the Fairness Hearing.

## **The Court's Fairness Hearing**

### **20. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Fairness Hearing on **JANUARY 26, 2011, at 1:30 p.m.** At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Regional Justice Center  
**Courtroom 12D** (12<sup>th</sup> Floor/Department 16)  
200 Lewis Avenue  
Las Vegas, Nevada 89101

**21. Do I have to come to the Fairness Hearing?**

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

**22. May I speak at the hearing?**

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

**Getting More Information**

**23. Where can I receive more information about this Settlement?**

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself or motion for approval, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk’s Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89101.

**SUMMARY OF SETTLEMENT AGREEMENT**

**Your Review of the Settlement Agreement.** The Settlement Agreement is described in general terms below. **This is only a summary of the Settlement Agreement; it has no legal impact upon the terms as provided in the parties’ actual agreement, which control.** You may also review, in consultation with such advisors, such as your attorney, as you deem appropriate, the settlement agreement and accompanying documents, to the extent that written documents have been prepared, for a full explanation of the settlement in order to familiarize yourself with the precise terms of the settlement and to determine the effect on you of the settlement. You may obtain a copy of the settlement agreement or other documents memorializing the agreement by making a written request to class counsel at the addresses provided in question 18 above.

**1. Creation of Qualified Settlement Fund.** A fund will be established in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, as a vehicle for holding the funds to be paid by Builder, Plumbers and/or their insurers in settlement of the claims of the Settlement Subclass Members (the “Qualified Settlement Fund”). Subject to the terms of the Settlement Agreement, Builder and Plumbers will pay a total sum of **\$191,000.00** to the Qualified Settlement Fund for the benefit of the Settlement Subclass Members.

**2. Use of the Qualified Settlement Fund.** Upon the funding of the Qualified Settlement Fund, Class Counsel’s court-approved fees and costs will be paid from the Qualified Settlement Fund to Class Counsel. The remaining Settlement sums will then be combined with any other money recovered for the Settlement Subclass Members via settlement or otherwise with the goal and intention of funding repairs of the Settlement Subclass Homes. Thus, **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE CLASS MEMBERS IS TO RECEIVE THE REPAIRS WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT,** except in certain limited circumstances. The Settlement Fund will be administered by a Court-appointed Claims Administrator, Total Claims Solutions.

**3. Dismissal of Claims Against Builder and Plumbers.** Within five (5) days after notice of entry of a Final Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Class in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and only after full payment by Builder and Plumbers of the Settlement Funds to the Qualified Settlement Fund, and assuming that there have been no timely appeals of the Final Order, all of the claims against Builder and Plumbers relating to the Settlement Subclass Homes will be dismissed with prejudice.

**4. Releases.** As a result of the Settlement and following Final Approval, the Settlement Subclass Members will be deemed to have fully and finally released, acquitted, forever discharged, and absolved Builder and Plumbers from any and all conceivable losses, damages or injuries arising from or in any way related to the Settlement Subclass Homes, including, without limitation, causes of action, claims, demands, damages, losses, costs or expenses, whether known or unknown, fixed or contingent, asserted or unasserted, foreseeable or unforeseeable, liquidated or unliquidated, unanticipated or unsuspected, which claims were asserted, or may be asserted in the future, that these class members have or may have against Builder or Plumbers arising from or in any way related to the installation of the Kitec or PlumbBetter Plumbing Systems in the Settlement Subclass Homes, specifically excluding any claims for personal injury. The Settlement Subclass Members reserve any claims, rights, or remedies against: 1) any parties other than Builder or Plumbers, and 2) any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to

the Work for the Replacement Plumbing. Additionally, the Settlement Subclass Members recognize that they may have some claim, demand, or cause of action against Builder or Plumbers of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement and that this Settlement Agreement will deprive them of each such claim, demand or cause of action and prevent them from asserting it against the Builder or Plumbers. They further acknowledge that the facts upon which the Settlement Agreement is made may turn out to be other than, or different from, the facts now believed by the Class to be true, and the Settlement Subclass Members therefore expressly assume the risk of the facts turning out to be different than they believed them to be and agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief.

**5. Potential Risk to the Settlement Subclass Members.** This Settlement is **NOT CONTINGENT** upon the outcome of the Ipex Settlement (\$90 Million settlement) appeal. Therefore, regardless of the outcome of the Ipex Settlement – and the related funding of the Ipex Settlement – this Settlement will remain in full force and effect. Therefore, the Settlement Subclass Members bear the risk of failing to recover any funds from the manufacturer of the Kitec Plumbing systems. In the event the \$90 Million from the Ipex Settlement is not released to Class Counsel for the benefit of and use by the Class, then Class Counsel, on behalf of the Class, will make efforts to secure a renewed settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a settlement with, or obtains a judgment against, IPEX relating to the Settlement Subclass Homes, Class Counsel will fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund for the benefit of the Settlement Subclass Members.