

**KEMP, JONES & COULTHARD, LLP**  
ATTORNEYS AT LAW  
WELLS FARGO TOWER • SEVENTEENTH FLOOR  
3800 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89169

E-10001

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HOMEOWNER OR CURRENT RESIDENT

DISTRICT COURT  
CLARK COUNTY, NEVADA

**IN RE KITEC FITTING LITIGATION**

Case No.: A493302  
Dept. No.: XVI  
(ELECTRONIC FILING CASE)

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

Hearing Date & Time: December 15, 2009, at 10:30 a.m.

**TO: ALL OWNERS OF RECORD OF LBM HOMES 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 LBM Development Co., Inc. (“Builder”) that contain Kitec plumbing systems and are located within the Copperhead Hills II, Copperhead Ranch, and Copperhead Trails Development(s) to notify the owners of these homes (“the Subclass”) that a settlement has been reached with Builder and Sharp Plumbing, Inc. (“Plumber”), the plumber responsible for installing those plumbing systems, that will create a settlement fund for the benefit of the Subclass members to pay for the replumb of these homes (“the Subclass Settlement”). **PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.** The Court has preliminarily approved the Subclass Settlement and set a hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. The Fairness Hearing will be held on **December 15, 2009, at 10:30 a.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 REPLUMB</b>	If you previously filed a request for exclusion from the class (“Opt-Out”) but wish to take part in this Subclass 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.	DECEMBER 1, 2009
<b>ACCEPT SETTLEMENT &amp; SEND IN CLAIM FORM</b>	If you wish to receive the replumb as set forth in this Subclass Settlement, you must return the claim form that will be mailed to you after this Subclass 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 Subclass Settlement. Class Counsel will provide all objections to all parties and the Court.	DECEMBER 1, 2009
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of this Subclass Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	DECEMBER 1, 2009
<b>DO NOTHING</b>	If you do nothing, <b>you will be bound by this Subclass Settlement</b> and will be eligible to receive the benefits of the Settlement if you are a member of the Subclass.	N/A

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

- The Court must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Subclass 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 Subclass 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 Subclass Settlement on behalf of the 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 Subclass. **(If you are a tenant or occupant of a home at this address, please ensure that this Notice is forwarded to the landlord or owner of the home.)** If you are a member of the Subclass, you have legal rights and choices to make before the Court decides whether to finally approve this Subclass 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 or PlumbBetter (“Kitec”) plumbing systems and/or components 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 plumbing system and/or components 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, and the Builders and Plumbers deny those allegations. 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 Subclass Settlement provide Subclass homeowners if approved by the Court?

If approved by the Court, this Subclass Settlement will create a settlement fund in the amount of \$1,676,400 to be used for the benefit of the Subclass to pay for the replumb of homes with Kitec plumbing systems. This Subclass Settlement resolves the claims against Builder related to 435 homes constructed and sold by Builder in the following neighborhoods: Copperhead Hills II, Copperhead Ranch, and Copperhead Trails (“the Subclass Homes”) and it resolves the claims against Plumber as to 164 of the Subclass Homes (“the Plumber-Settled Homes”); this Subclass Settlement does not resolve any claims against Plumber regarding Builder’s homes located in the Copperhead Trails development. The funds paid by or on behalf of the Builder and Plumber will be combined with the Builder’s negotiated share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below). This Subclass Settlement completely resolves all claims in this class action on behalf of the

Subclass members against Builder. The combined settlement funds will then be used on behalf of the Subclass to fund the replumb of the Subclass homes with a Court-approved repair.

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

This Subclass Settlement only resolves the Subclass's claims against Plumber for some of the homes in the Subclass, leaving the potential for additional recovery against or settlement funds from Plumber. Additionally, Class Counsel previously reached, and the Court approved, a \$90,000,000.00 settlement with the Iplex Defendants (the "Iplex Settlement"). Though the Iplex Settlement was approved by the District Court, several defendants appealed that approval to the Nevada Supreme Court. The Iplex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Subclass Settlement is **not contingent** upon the outcome of the Iplex Settlement appeal. Therefore, regardless of the outcome of the Iplex Settlement appeal, this Subclass Settlement will remain in full force and effect for the benefit of the Subclass. In the event the appeal against the Iplex Settlement is successful, Class Counsel, on behalf of the Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, the Iplex Defendants. Of course, the success of neither the additional claims against Plumber nor the Iplex Settlement appeal is guaranteed, but Class Counsel intends to pursue both vigorously on behalf of the Class.

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

The specific funding for this Subclass Settlement is as follows: \$1,348,400 from Builder and/or its insurance carriers; and \$328,000 from Plumber and/or its insurance carriers ("The Subclass Settlement Funds").

#### **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. A Subclass is a smaller subset of a larger Class. Your Subclass Representative is Kimberly Gladden.

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

The Court has not decided in favor of the Subclass, Builder, or Plumber. Builder and Plumber vigorously deny any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contends that its 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 Plumber 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 Subclass Settlement?**

You are part of this Subclass Settlement if: a) You own a Subclass Home **and** b) You did not previously opt out of this class action. If you do not own a Subclass Home, you are not a part of this Subclass Settlement; if you own a Subclass Home but previously opted out of this class action, you may still take part in this Subclass Settlement by timely submitting a Request to Rejoin the Class.

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

If this Subclass Settlement is approved by the Court, you will be notified of the Court's final approval and provided with a Claim Form to request a replumb. The notice of the Court's final approval will explain how to obtain the replumb 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 Subclass Settlement.

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

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

#### **11. How soon will the replumb be scheduled?**

As soon as the Court gives final approval to this settlement, and after all appeals or other challenges related to the settlement are resolved, if any, the Claims Administrator will begin to schedule replumbs for those the 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 replumbed my home or have already suffered damages from a Kitec fitting leak?**

Under this settlement, **you are only entitled to a replumb, you are not entitled to a monetary payment.** If, however, you already replumbed 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 replumb 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 REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE REPLUMB.**

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

### **13. If you previously excluded yourself as a member from the Class Action, can you still accept the Settlement replumb?**

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 December 1, 2009, you will not be eligible to receive the replumb or any other benefits provided in this Subclass Settlement.**

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

### **14. What if I don’t want to be part of this Subclass Settlement?**

If you do not wish to receive the replumb or benefits provided in this Subclass 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 Subclass Settlement. **If you exclude yourself, then you will not receive a replumb or benefits and you will give up your right to sue Builder on these claims later.**

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

No. If you exclude yourself from this Subclass Settlement, you will not be entitled to pursue an independent claim against Builder or the plumbing subcontractor responsible for installing the Kitec Plumbing system at your residence 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 Subclass, then you can tell the Court that you do not like the Subclass 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 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- **The LBM Subclass 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 December 1, 2009, with copies sent to Kemp, Jones & Coulthard, LLP, 3800 Howard Hughes Parkway, Las Vegas, Nevada 89169, Attention: Subclass Settlement Objections**

## **IF YOU DO NOTHING**

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

If you do nothing, **you will be bound by this Subclass Settlement** and will be eligible to receive the benefits of the Settlement if you are a member of the Subclass. If this Subclass Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Subclass Settlement. If you do not return your Claim Form, you will **not** receive a replumb or benefit of this Subclass Settlement and you will **give up your right to sue** Builder and/or its plumbing subcontractors on these claims later. Therefore, if the Court approves this Subclass 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 any of its plumbing subcontractors.

## **THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SUBCLASS 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  
231 South Third Street, #130  
Las Vegas, NV 89101

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

Class Counsel negotiated with Builder and Plumber to be paid 25% of the total Subclass Settlement Funds as their fee plus a litigation cost reimbursement as part of this Subclass Settlement ("Class Counsel's Fees and Costs"). As the full settlement amount is intended to contemplate sufficient funds for fees, costs, and repairs, this fee will not reduce the amount ultimately dedicated to fund the replumb of the 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 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 December 15, 2009, at 10:30 a.m. at the Regional Justice Center, Courtroom 12D (12<sup>th</sup> Floor/Department 16), 200 Lewis Avenue, Las Vegas, Nevada 89101.** 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.

### **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 timely 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 Subclass Settlement?**

This Notice summarizes the settlement below. More details may be found in the Motion for Approval filed by Class Counsel or the transcript of the hearing in which the settlement was put on the Court's record. You can 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**

**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.**

**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 Subclass Settlement Funds (the "Qualified Settlement Fund").

**2. Use of the Qualified Settlement Fund.** Upon the funding of the Qualified Settlement Fund, Class Counsel's 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 Subclass Members via settlement or otherwise with the goal and intention of funding full replumbs of the Subclass Homes. Those funds will be generally segregated or dedicated to three purposes: a) the Replumbing Fund (to fund the standard costs associated with the replacement of the plumbing systems in the Subclass Homes); b) the Contingency Fund (to cover the unforeseen costs arising from or in any way related to the Replacement Plumbing which includes, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes, any other design, engineering, construction, repairs, replacement, or inspection necessitated, and the cost of emergency repairs necessitated by leaks, breaks or failures within the Kitec plumbing fittings that may occur before the Replacement Plumbing has been, or can be, completed in the normal course); and c) the Claims Administration Fund equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing, which will be set aside for payment to the Claims Administrator for its services to the Class under this Settlement. Thus, **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE CLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT**, except in those limited circumstances provided for in Section C below. The Settlement Fund will be administered by a Court-appointed Claims Administrator, Total Claims Solutions.

**A. Replumbs.** The Replacement Plumbing, if any, provided by this settlement will generally consist of the following: (a) a plumbing contractor approved by the Claims Administrator will drain and remove (or abandon in place, in part or in whole, as permitted by the homeowner) the existing Kitec Plumbing Systems at the Subclass Homes; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Subclass Homes consisting of CPVC, PEX with C314 Fittings, or other Claims Administrator approved system; (c) the Approved Plumbing Contractor will repair or replace any loss, damage or injury to the home and other property in or on the home to include, by way of illustration and example only, gypsum wallboard, textures, paints, floor coverings, cabinetry, millwork and/or stucco, arising from or in any way related to their Replacement Plumbing; and (d) the Approved Plumbing Contractor will obtain all necessary permits and licenses for the completion of the Replacement Plumbing. Should any Class Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Class Member will **NOT** be entitled to any other or any further relief of any time or nature from Builder or from the Claims Administrator. However, it is the intent of the Parties that Builder and Plumber will be entitled to a full and complete release for the settled homes, regardless of whether Replacement Plumbing is accepted.

**B. Warranty.** Replacement Plumbing and all other Work performed, including the issuance of a warranty for the Replacement Plumbing and Work, at a Subclass Home under the Settlement Agreement will be accomplished at the direction of the Claims Administrator. Neither Builder, Plaintiff, Class Counsel, nor the Claims Administrator guarantee nor warrant the workmanship and/or materials of any person, contractor (including the Approved Plumbing Contractor), supplier or manufacturer performing such Replacement Plumbing and/or Work. Each of the Class Members will look solely to the guarantees and warranties, if any, provided by the contractors (including the Approved Plumbing Contractors), suppliers and/or manufacturers as the sole and exclusive guarantors and/or warrantors for the Replacement Plumbing and/or other work provided under or as a result of the Settlement Agreement.

**C. Reimbursements.** In the limited circumstance where the owner of a Subclass Home or his agent or representative has, prior to the Formal Fairness Hearing, replaced the original Kitec Plumbing System with an alternative and approved system (to be administered and subject to the approval of the Claims Administrator), or has incurred monetary damages caused by a failure of the Kitec Plumbing System, then that homeowner may be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of the Settlement. **IN NO EVENT WILL A CLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB.** If funds remain after all Subclass Home repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse qualifying Class Members who have incurred and can demonstrate monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the homeowner must submit a claim form ("Claim Form") to the Claims Administrator and the Claims Administrator will review the merits of the Claim Form and provide a response within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each owner of a Subclass Home following the Final Fairness Hearing.

**D. Class Members Who Previously Accepted Funds from Builders and Executed a Release.** If the owner of a Subclass Home previously received funds from the Builder of his/her home to pay for a Kitec replumb and executed a release of all claims, then that Subclass Member will not be entitled to a replumb or initial pro-rata distribution from this Settlement, but **may** be eligible for reimbursement for additional out-of-pocket expenses because of a prior replumb or damages from a Kitec fitting leak that exceed the amount previously received. To request reimbursement for reasonable costs above the amount previously accepted, Subclass Member must follow the procedures that will be outlined in the Final Notice of Approval.

**3. Dismissal of Claims Against Builder and Plumber.** 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 Plumber of the Subclass 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 relating to the Subclass Homes will be dismissed with prejudice and all of the claims against Plumber relating to the Plumber-Settled Homes will be dismissed with prejudice.

**4. Releases.** As a result of the Settlement and following Final Approval, the Subclass Members will be deemed to have fully and finally released, acquitted, forever discharged, and absolved Builder from any and all conceivable losses, damages or injuries arising from or in any way related to the 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 arising from or in any way related to the installation or existence of the Kitec plumbing systems in the Subclass Homes and against Plumber arising from or in any way related to the installation or existence of the Kitec plumbing systems in the Plumber-Settled Homes, specifically excluding any claims for personal injury. The Subclass reserves: 1) any non-Kitec or non-PlumbBetter claim regarding the Subclass Homes (as to Builder) or the Plumber-Settled Homes (as to Plumber); 2) any Class claim not specifically related to the Subclass Homes (as to Builder) or the Plumber-Settled Homes (as to Plumber); 3) any claim(s) arising out of or related to any plumbing system or component thereof installed by Builder, Plumber and/or its subcontractor, agent, representative, or employee to replace the Kitec plumbing system in any home constructed by Builder; and 4) any personal injury claim. Additionally, the Subclass members recognize that they may have some claim, demand, or cause of action against the Builder 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. 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 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 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 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 Subclass Homes, Class Counsel will immediately 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 Subclass Members.