

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: April 21, 2010 at 11:00 A.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 HOMES LOCATED WITHIN RHODES SUBCLASS A THAT CONTAIN, OR, AT ANY TIME CONTAINED, A KITEC OR PLUMBETTER (“KITEC”) PLUMBING SYSTEM – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DON’T ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

PURPOSE OF THIS NOTICE: This Notice is being mailed to all owners of record of homes located within the Rhodes Subclass A (“Subclass”) and published pursuant to Court Order to notify the Subclass members that:

- A proposed settlement (“Settlement”) resolving Subclass claims in this case has been reached between Plaintiff Subclass Representatives and Defendant Rhodes Design and Development Corp., dba Rhodes Homes (“Builder” or the “Released Party” – see Paragraph 7D on Page 8).
- This Settlement will create a settlement fund for the benefit of the Subclass members to pay for the replumb of homes with Kitec and PlumbBetter plumbing systems. Under certain circumstances approved by the Claims Administrator over this Settlement, settlement funds may also be used to reimburse homeowners for reasonable costs, or a portion of reasonable costs, already expended by homeowners in the replumb or repair of their Kitec or PlumbBetter plumbing system.

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 April 21, 2010 at 11:00 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
WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS (“OPT-OUT”) AND SUBMIT REQUEST TO REJOIN IN ORDER TO RECEIVE REPLUMB	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 Subclass Settlement. After your Request to Join Subclass Settlement is received, you will be eligible to receive the benefit contemplated by the Rhodes Settlement.	APRIL 4, 2010
ACCEPT SETTLEMENT	If you wish to participate 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
OBJECT TO SETTLEMENT	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.	APRIL 4, 2010
APPEAR AT FAIRNESS HEARING	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 deadline.	APRIL 4, 2010
DO NOTHING	If you do nothing, you will be bound by this Settlement and 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 Settlement – **and the deadlines for each** – are explained in this Notice.
- The Court in charge of this litigation must still decide whether to approve this proposed Settlement. The replumbs and other benefits contemplated by this Settlement will be made after the Court approves the Settlement and after all appeals 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 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 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 or PlumBetter (“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 within homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec or PlumBetter 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 and PlumBetter 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.** Any proceeds from this Class Action, after attorneys fees and costs have been paid, will be used for the benefit of Class Members under Court supervision.

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

If approved by the Court, this Settlement will create a \$200,000.00 Settlement Fund (less attorneys fees and costs set forth below) to be used for the benefit of the Subclass to pay for the replumb of homes with Kitec plumbing systems. This Settlement resolves claims related to 26 homes constructed by Builder. This Settlement will ultimately be combined with the Subclass’s pro rata share of settlement funds, if any, recovered from other defendants (such as the \$90 million dollar settlement with manufacturer of Kitec plumbing, discussed below in paragraph 4) involved in this class action on behalf of the Subclass. The combined settlement funds will then be used on behalf of the Subclass to fund the replumb of the Kitec plumbing system with a Court-approved repair. Under certain circumstances approved by the Claims Administrator over this Settlement, Settlement funds may also be used to reimburse homeowners for reasonable costs, or a portion of reasonable costs, already expended by homeowners in the replumb or repair of their Kitec plumbing system:

- a) For homeowners who have not already replumbed their home, this Settlement will seek to fund the replumb of the Kitec plumbing system currently installed at their home with the Court-approved repair approved by this Settlement.
- b) For homeowners who have previously paid for a replumb out of pocket, this Settlement will initially provide a pro rata distribution of the Settlement to reimburse the homeowner for out-of-pocket expenses. If homeowners’ existing out-of-pocket expenses exceed the amount of the initial pro-rata distribution, homeowners may request additional reimbursement for reasonable expenses from the Claims Administrator. If the request is approved, additional reimbursement for reasonable costs may be provided from a contingency fund if additional funds are available after the initial pro-rata distribution of the Settlement and the replumb of all non-repaired Subclass homes is completed.

4. Are additional funds anticipated from other parties?

Class Counsel has reached a \$90,000,000.00 settlement with the manufacturer of the Kitec plumbing system and related entities that has been finally approved by the Court (the “Ipex Settlement”). After the final size of the Class is determined following trial and any appeal, the pro rata share of the Ipex Settlement will be combined with this Settlement, if it receives final approval, to create a combined settlement fund to carry out replumbs and reimbursements on behalf of the Subclass. If sufficient money is not recovered on behalf of the Subclass, Class Counsel will petition the Court for further direction regarding how Settlement funds should be distributed for the benefit of the Class. Before this Settlement can be used for the replumb or reimbursement of Subclass homes, however, it must first receive final approval from the Court and survive any appeals that may be filed by other parties to this action.

5. 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, and Larry Maier. A Subclass is a smaller subset of a larger Class. The Settlement described in this Notice pertains only to Rhodes Subclass A.

6. Why have the Subclass and Builder decided to settle?

The Court has not decided in favor of the Subclass or Builder. Builder vigorously denies any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder contend that their 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 has meritorious affirmative defenses to all claims; and that the class action should be dismissed. Both sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

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

You are part of this Settlement if: a) you own a home within Rhodes Subclass A that contains a Kitec plumbing system; and b) you have not previously opted out of the class action. If you do not own one of the homes within Subclass, you are not a part of this settlement. If you are a tenant of a home listed within Subclass, please ensure that this Notice is given to the landlord or owner of the home because it concerns their legal rights and obligations. If you own a home in Subclass, but previously opted out of this class action, you may still take part in this settlement by submitting a Request to Rejoin the Class.

8. 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 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 Claim Administrator to take part in this Settlement.

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

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

10. 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 to the Settlement are resolved, the Claims Administrator will begin to schedule replumbs for Subclass homes that have returned their Claim Form.

11. 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 paid out-of-pocket for the replumb of your home, then you **may** be entitled to reimbursement. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form (which you will receive upon final approval of this Settlement) and any supporting documentation that you have to the Claim Administrator, who will then review the merits of the Claim Form and supporting documentation and provide a response to you within 60 days of receipt of the Claim Form. If the Claim Form is approved by the Claim Administrator for reimbursement, you will then be entitled to a pro-rata share of the Settlement Fund for your home. If your existing out-of-pocket expenses exceed the amount of the initial pro-rata distribution, you may request additional reimbursement for reasonable expenses from the Claims Administrator. If the request is approved, additional reimbursement for reasonable costs may be provided from a contingency fund if additional funds are available after the initial pro-rata distribution of the Settlement and the replumb of all non-repaired Subclass homes is completed.

12. What if I previously accepted money from Builder and executed a release of claims?

If you previously received funds from Builder to pay for a Kitec replumb and executed a release of all claims, then you are not entitled to an initial pro-rata distribution from this Settlement, but **may** be eligible for reimbursement if you have additional out-of-pocket expenses because of your replumb or damages from a Kitec fitting leak that exceed the amount you previously accepted from Builder. To request reimbursement for reasonable costs above the amount you previously accepted from Builder, you must submit a Claim Form and any supporting documentation that you have to the Claim Administrator, who will then review the merits of the Claim Form and supporting documentation and provide a response to you within 60 days of receipt of the Claim Form. If your request is approved, additional reimbursement for reasonable costs may be provided from a contingency fund if additional funds are available after the initial pro-rata distribution of the Settlement and the replumb of all non-repaired Subclass homes is completed.

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 get back in to accept the Settlement replumb?

Yes, but you must first withdraw your prior “opt-out” and submit a Request to Rejoin the Subclass Settlement by April 4, 2010. A Request to Rejoin is included within this Notice and may also be obtained from Class Counsel. If you previously opted out of this class action and do not submit the Request to Rejoin by April 4, 2010, you will not be eligible to receive the replumb or any other benefits provided in this Settlement.

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

14. What if I don't want to be part of this Settlement?

If you do not wish to receive the replumb or 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 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?

If you exclude yourself from this Settlement, you **will not** be entitled to pursue an independent claim against Builder concerning Kitec Fittings, although you will still possess your claims against other potential defendants in this class action.

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 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, is entitled to approve the Settlement in spite of objections and all members of 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- RHODES SUBCLASS A SETTLEMENT
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Rhodes 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 April 4, 2010, with copies sent to the following address:**

Kemp, Jones & Coulthard, LLP
Wells Fargo Tower, 17th Floor
3800 Howard Hughes Parkway
Las Vegas, NV 89169

IF YOU DO NOTHING

17. What happens if I do nothing?

If you do nothing, you will **not** receive a replumb or benefit of this Settlement and you will also **give up your right to sue** Builder on these claims later. As a member of Subclass, you will be bound by the decision of the Court even if you do not accept the Settlement. In other words, you will not be able to start a lawsuit later or be part of another lawsuit against Builder regarding the claims in this lawsuit after this Settlement. Therefore, if the Court approves this Settlement and you choose not to accept it, you will have **no** further rights against Builder, although you will still retain all rights against all other parties to this litigation.

THE LAWYERS WHO REPRESENT 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 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, 17th 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?

Although Class Counsel's fee agreement with Class Representatives entitle them to request a contingency fee in an amount equal to forty percent (40%) of any sum recovered in any settlement reached less than ninety (90) days before trial, Class Counsel has agreed to seek a twenty-five percent (25%) contingency fee from the money paid by Builder to fund this Settlement. If Class Counsel were awarded attorneys fees in the amount of 40% of this Settlement, then Class Counsel's attorneys fees would total approximately \$80,000.00. By requesting attorneys fees in the amount of 25% of the Settlement plus a portion of Builder's share of the pending Ipex Settlement, attorneys fees requested by Class Counsel will be approximately \$50,000.00, plus costs awarded by the Court, which will result in a **reduction** of attorneys fees requested by Class Counsel of approximately \$30,000.00. Class Counsel's attorney's fee

request must still be approved by the Court as reasonable during the Fairness Hearing on this matter, in addition to any costs awarded by the Court.

The Court's Fairness Hearing

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

The Court will hold a Fairness Hearing on April 4, 2010, at 11:00 a.m. At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them. 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:

Clark County District Court
Dept. 16, Courtroom 12D
Regional Justice Center
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 necessary.

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, 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, including all Settlement documents, during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3rd 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.**

1. Claims Administrator. A third-party administrator ("Claims Administrator") – Total Class Solutions, LLC – will be ordered by the Court to administer the relief provided by the Settlement Agreement by resolving claims in a rational, responsive, cost effective and timely manner.

2. Replacement Plumbing. As a result of the Settlement, plumbing contractors approved by the Claims Administrator ("Approved Plumbing Contractors") will perform "Replacement Plumbing," as described in Sections A and B below. **THIS SETTLEMENT CONTEMPLATES THAT THE ONLY AVAILABLE REMEDY TO THE SETTLEMENT SUBCLASS MEMBERS IS TO RECEIVE THE REPLACEMENT PLUMBING WITH APPLICABLE WARRANTIES – NOT A MONETARY PAYMENT.**

A. The Replacement Plumbing will consist of the following: (a) the Approved Plumbing Contractor will drain and remove (or abandon in place, in part or in whole, as permitted by each Subclass Member) the existing Kitec Plumbing Systems at the Subclass Residences; (b) the Approved Plumbing Contractor will furnish and install a complete, fully functional, and entirely new domestic water supply system at the Subclass Residence consisting of CPVC, WIRSBO 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 Subclass Residence and other property in or on the Subclass Residence 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.

B. Should any Subclass Member refuse to allow the Approved Plumbing Contractor(s) to complete the Replacement Plumbing, that Subclass 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 (including any and all of its employees,

agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) will be entitled to a full and complete release of the Settled Claims, regardless of whether Replacement Plumbing at all of the Subclass Residences is completed.

3. 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 and/or its insurers in settlement of the Subclass Claims (the "Qualified Settlement Fund"). Subject to the terms of the Settlement Agreement, Builder and/or its insurers will pay a total sum of **\$200,000** to the Qualified Settlement Fund for the benefit of the Settlement Subclass within thirty (30) days of notice of entry of a Final Order and Judgment by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Settlement Subclass in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure. After the final size of the Class is determined following trial and any appeals, this Fund will be combined with any additional monies recovered through settlement or trial from other defendants on behalf of the Subclass and divided into a Repair Fund, Contingency Fund, and Claim Administration Fund. The combined settlement funds will then be used on behalf of the Subclass to fund the Replacement Plumbing pursuant to Paragraph 2, above.

A.1 Reimbursements. In the limited circumstance where a Subclass Member, or his agent or representative, has, prior to the Formal Fairness Hearing, replaced their 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 Subclass Member will be entitled to either: a) Replacement Plumbing; or b) reimbursement of the amount equal to their pro rata share of Settlement. **IN NO EVENT WILL A SUBCLASS MEMBER BE ENTITLED TO RECEIVE REPLACEMENT PLUMBING AND A REIMBURSEMENT FOR A PRIOR REPLUMB OF THEIR ORIGINAL KITEC PLUMBING SYSTEM.** If funds remain after all Subclass repairs are performed and all contingency costs are paid, then the Claims Administrator may further reimburse Subclass Members who have monetary damages that exceed the amount of the initial pro-rata distribution from the Settlement. To qualify for a reimbursement, the Subclass Member 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 to the Subclass Member within 60 days of receipt of the Claim Form. The Claim Form will be mailed to each Subclass Member following the Final Fairness Hearing.

A.2 Contingency Fund. After the final size of the Class is determined following trial and any appeals and all available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Contingency Fund," which will be equal to ten (10) percent of the Replumb Fund and will serve to cover: (a) the Parties' best estimate of the unforeseen costs arising from or in any way related to the Replacement Plumbing or any other Work by the Approved Plumbing Contractor(s), which include, by way of illustration and example only, costs of faux paint, wallpaper, ceramic tile, or other custom finishes not covered by the Replacement Plumbing; (b) any other design, engineering, construction, repairs, replacement, or inspection performed at the Subclass Residences under and/or pursuant to the Settlement Agreement ("Work") by the Approved Plumbing Contractor(s); (c) the Parties' best estimate of the costs incurred by Subclass Members for 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 of the Replacement Plumbing; and (d) the cost of any reimbursements to Subclass Members approved by the Claim Administrator.

A.4 Claims Administration Fund. After the final size of the Class is determined following trial and any appeals and all available settlement monies are combined, a portion of the Qualified Settlement Fund will be designated the "Claims Administration Fund" to pay for the cost of services provided by the Claims Administrator under the Settlement Agreement. The Claim Administration Fund shall be equal to \$200 dollars multiplied by the total number of homes eligible for Replacement Plumbing. Additionally, the Claim Administrator shall be entitled to \$200 for any other Subclass Member that is not eligible for Replacement Plumbing if that Subclass Member requests reimbursement from the Claim Administrator in order to compensate the Claim Administrator for his resolution of the claim. These services include, but are not limited to, the following: Payment from the designated Replumb Fund to Approved Plumbing Contractors; construction control; auditing of the Qualified Settlement Fund; dispute resolution between Approved Plumbing Contractors and Subclass Members; repair/Replacement Plumbing scheduling; quality control; and review and approval of requests for additional reimbursement.

A.5 Class Counsel's Fees and Costs. Upon funding of the Qualified Settlement Fund, a portion of the Qualified Settlement Fund equal to 25% of the total Qualified Settlement Fund plus any costs approved by the Court shall be immediately designated "Class Counsel's Fees and Costs" and released to the Claim Administrator for payment to Class Counsel. Further, upon release of the Ipex Settlement Funds and after the final size of the Class is determined following trial and any appeals, any additional attorney's fee awarded by the Court based upon Builder's

pro rata share of the Ipex Settlement shall be placed within the “Class Counsel’s Fees and Costs” portion of the Qualified Settlement Fund and immediately released to the Claim Administrator for payment to Class Counsel.

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

5. Settled Claims. Settled Claims mean any and all claims, liabilities, rights, demands, suits, matters, obligations, losses, damages, injuries or costs, actions or causes of action, of every kind, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that have been, are now, could have been, or could be in the future asserted by the Subclass Representative and any and/or Subclass Members and their respective successors, assigns, agents, invitees, guests, attorneys and representatives and any person who has or may have in the future any interest in any of the Subclass Residences (including by way of transfer or assignment) either in the Class Action or in any other action or proceeding in the Court or any other court or forum, regardless of legal theory, against Builder for relief, damages, costs, expenses, attorneys' fees, or compensation of any kind arising from or in any way related to the Amended Complaint and/or the Class Action and/or any and all claims to receive damages, costs, or remedies associated with the failure of the Kitec Plumbing Systems at any of the Subclass Residences and any claim for relief or compensation by the Representative Plaintiff and/or any members of the Settlement Subclass, including but not limited to, claims to receive damages, monies, payments, fees, costs, repair or replacement of the Kitec Plumbing Systems at the Subclass Residences and/or the Replacement Plumbing.

A. Without limiting the generality of the foregoing, Settled Claims include, with regard to the foregoing subject matter: (a) any claim for breach or violation of any federal, state, common or other law; (b) any claim for breach of any duty imposed by law, by contract or otherwise; (c) any claim based on strict product liability, negligence, breach of express or implied warranty, fraud, negligent misrepresentation, and/or intentional misrepresentation relating to the Kitec plumbing system; (d) any claim for construction deficiencies relating to the Kitec plumbing system based on Nevada Revised Statutes Section 40.600, et seq; and (e) any claim for consequential damages relating to or caused by the KITEC PLUMBING SYSTEMS including, but not limited to, claims relating to mold caused by the KITEC PLUMBING SYSTEMS.

B. This Settlement does not address or contemplate any claims for personal injury.

6. Dismissal of the Amended Complaint. Within five (5) days after notice of entry of an Order by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Subclass Members in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, and full payment by Builder of the Qualified Settlement Fund, the Amended Complaint against Released Party will be dismissed with prejudice.

7. Releases. As a result of the Settlement, the Subclass Representative and the Subclass Members, by and through the Subclass Representative, on their own behalves, on behalf of their related individuals and entities, successors, assigns, agents, attorneys and representatives, and for each of them, and for any person or entity that could possibly assert any claims for relief or compensation through or under them, including, but not limited to, claims to receive damages, monies, payments, fees, costs, repair or replacement of the Kitec Plumbing Systems at the Subclass Residences and or the Replacement Plumbing, and any and all claims to receive damages, costs, or remedies associated with the failure of the Kitec Plumbing Systems at any of the Subclass Residences, will be deemed to have – following approval of the Settlement by the Court under Nevada Rule of Civil Procedure 23(e) and payment by Builder of the Qualified Settlement Fund – fully, finally and generally released, acquitted, forever discharged, and absolved, except as specifically provided for herein, Builder (including any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) from any and all conceivable losses, damages or injuries arising from or in any way related to the Settled Claims, including, without limitation, manner of action or actions, cause or 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 the Subclass Members and the Subclass Representative has or may have against the Builder (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys), arising from or in any way related to the use and/or installation of the Kitec Plumbing Systems at the Subclass Residences, including the claims alleged in the Amended Complaint (7th) filed on or about April 1, 2009, in the Class Action.

- A.** Pursuant to the Settlement Agreement, the Subclass Members reserve any claims, rights, or remedies against any Approved Plumbing Contractor, material supplier, or any other third-party arising from or in any way related to the Work for the Replacement Plumblings.
- B.** Subclass Representative and Subclass Members, by and through their Subclass Representative, recognize that they may have some claim, demand, or cause of action against the Builder (including any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) of which they are totally unaware and unsuspecting, which they are giving up by execution of the Settlement Agreement. It is the intention of the Subclass Representative in executing the Settlement Agreement that it will deprive Subclass Representative and the Subclass Members and their related individuals and entities of each such claim, demand or cause of action and prevent them from asserting it against the Builder (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys).
- C.** 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 Settlement Subclass to be true, and the Subclass Members and Subclass Representative therefore expressly assume the risk of the facts turning out to be different than they believed them to be. Subclass Representative and Subclass also agree that the Settlement Agreement will in all respects be effective and not subject to termination or rescission because of any such mistaken belief by the Subclass Members.
- D.** The Released Party (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys) will not be subject to liability or expense of any kind to Subclass Representative or any Subclass Members arising from or in any way related to any Settled Claim, except as provided in this Section D. Upon entry of a Final Order and Judgment by the Court approving the Settlement as fair, adequate, reasonable, and in the best interests of the Settlement Subclass in accordance with Rule 23(e) of the Nevada Rules of Civil Procedure, Subclass Representative and each and all of the Subclass Members will be barred from initiating, asserting, or prosecuting any Settled Claims against the Released Party (and any and all of its employees, agents, principals, representatives, stockholders, heirs, partners, joint venturers, assigns, administrators, trusts, trustees, beneficiaries, parents, related entities, owners, officers, directors, insurers, predecessors, successors in interest, subsidiaries, and/or attorneys).

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