

SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM

**SUBJECT:** Authorize the Release of Performance Bond #929323269 for Hawthorne Glen Townhomes

**DEPARTMENT:** Planning & Development **DIVISION:** Development Review

**AUTHORIZED BY:** Dori L. DeBord **CONTACT:** Alan Willis **EXT.** 7332

<b>Agenda Date</b> <u>12/12/06</u> <b>Regular</b> <input type="checkbox"/> <b>Consent</b> <input checked="" type="checkbox"/> <b>Work Session</b> <input type="checkbox"/> <b>Briefing</b> <input type="checkbox"/>
<b>Public Hearing – 1:30</b> <input type="checkbox"/> <b>Public Hearing – 7:00</b> <input type="checkbox"/>

**MOTION/RECOMMENDATION:**

Authorize the release of Performance Bond # 929323269 for Hawthorne Glen Townhomes, as requested by Centex Homes, Inc., applicant.

District 1 – Dallari (Alan Willis, Planner)

**BACKGROUND:**

This subdivision is located on the northwest corner of Old Lockwood Road and east McCulloch Road, just north of the Seminole County/Orange County line, in Section 35, Township 21 south, Range 31 East.

Performance Bond # 929323269 for roads, grading, streets, curbs, drainage, lift station, water and sewer, and other improvements in the amount of \$2,220,767.00 (The Continental Insurance Company) was required by Seminole County Land Development Code Section 33.44 (e) Additional Required Legal Submittals, (1) Bonds. The bond is to secure the construction and completion of the subdivision improvements for Hawthorne Glen Townhomes.

The Performance Bond was replaced with two-year maintenance bond to ensure the maintenance of the subdivision improvements. Prior to accepting the maintenance bond, staff conducted the final construction inspection and found that all construction requirements were completed per the approved final engineering plan for the Hawthorne Glen Townhomes subdivision.

A recent audit by the applicant's surety provider identified this Performance Bond as outstanding prompting their request for release of the bond at this time.

<b>Reviewed by:</b> <u>KFT</u> <b>Co Atty:</b> _____ <b>DFS:</b> _____ <b>Other:</b> <u>230</u> <b>DCM:</b> _____ <b>CM:</b> <u>CC</u> <b>File No.</b> <u>cppd01</u>
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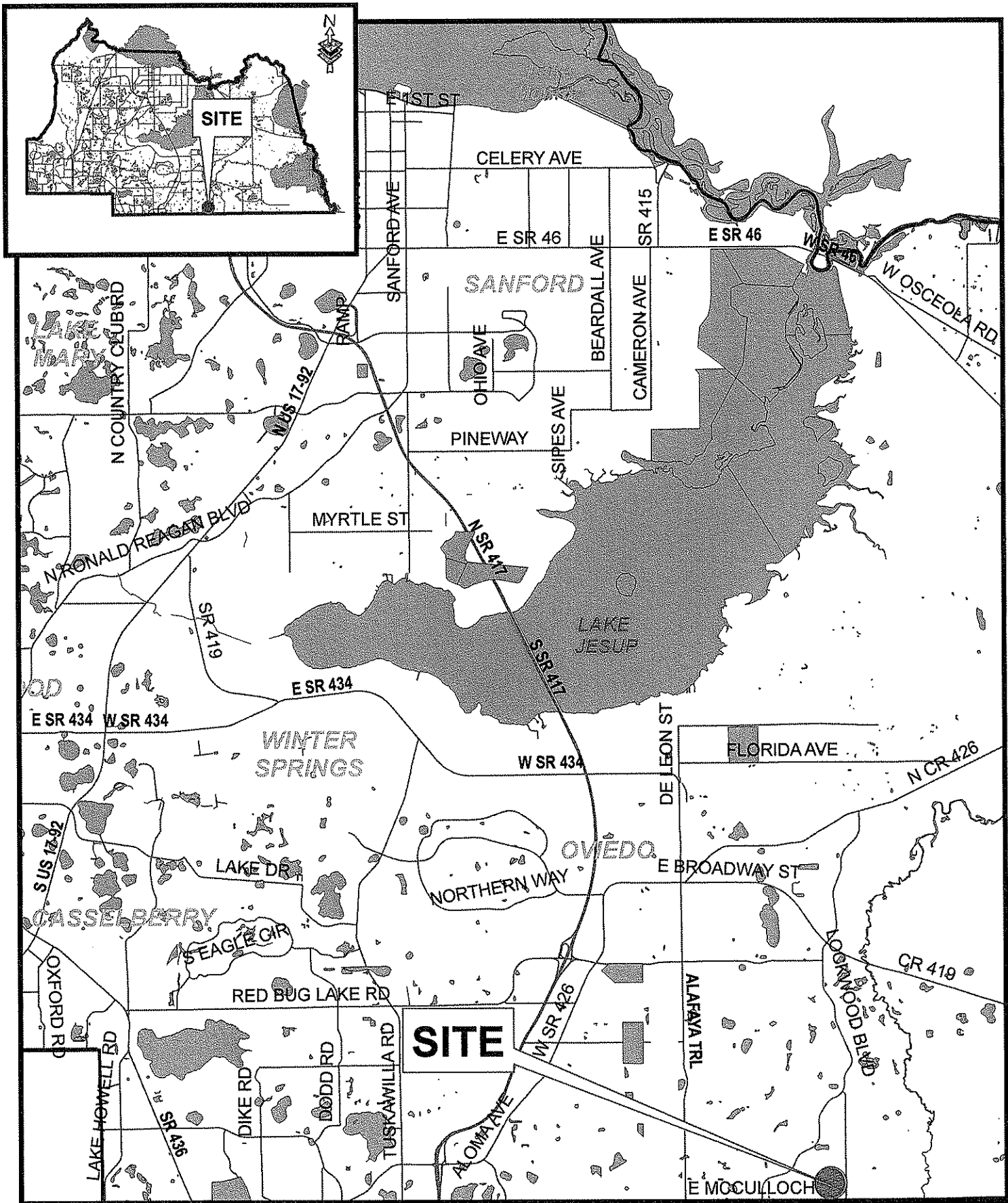
**STAFF RECOMMENDATION:**

Staff recommends the Board authorize the release of Performance Bond # 929323269 for subdivision improvements for Hawthorne Glen Townhomes, as requested by the applicant.

District 1 – Dallari

Attachments: Location Map - Exhibit A

Copy of Performance Bond-Exhibit B



**Hawthorn Glen Townhomes  
Release of Performance Bonds**

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, **CENTEX HOMES, a Nevada General Partnership**, hereinafter called the "Principal", and **THE CONTINENTAL INSURANCE COMPANY, A Surety Company** called "Surety" are held and firmly bound to Seminole County, a Political subdivision of the State of Florida, in the full sum of **Two Million Two Hundred Twenty Thousand Seven Hundred Sixty Seven and no/100-----(\$2,220,767.00)**, lawful money of the United States of America, to be paid to the Board of County Commissioners of Seminole County, to which payment will be truly made. We bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bound Principal has, as condition, precedent to the approval by Seminole County, a Plat of certain subdivision known as **McCULLOUGH ROAD / POLASEK PROPERTY, HAWTHORNE GLEN** has covenanted and agreed with Seminole County to construct roads, grading, curbs, drainage, lift station, water and sewer systems, and other improvements, based upon development plans and plans and specifications being dated this 17<sup>th</sup> day of September, 2007 and being on file with the county Engineer of Seminole County, Florida.

WHEREAS, it is a condition precedent to the recording of said subdivision that this bond be executed.

NOW THEREFORE, the conditions of these obligations are such that if the bound Principal shall construct the aforesaid improvements in accordance with the development plans and plans and specifications dated the 17<sup>th</sup> day of September, 2007 within the time therein specified and shall in every respect fulfill its, his, their obligations under the development plans and plans and specifications, and shall indemnify and save harmless the county of Seminole against or from all claims, cost expenses, damages injury, or loss, including engineering, legal and contingent costs which Seminole county may sustain on account of the failure of the Principal to perform in accordance with the development plans and plans and specifications within the time therein specified, then this obligation is to be void; otherwise, same is to be and remain in full force and virtue.

THE SURETY unconditionally covenants and agrees that if the Principal fails to perform all or part of the construction work required by the development plans or plans and specifications above referred to, within the time specified, the Surety, upon forty five (45) days written notice from Seminole County, or its authorized agent or officer, of the default, will forthwith perform and complete the aforesaid construction work and pay the cost thereof, including, but not limited to engineering, legal and contingent costs. Should the Surety fail or refuse to perform and complete the said improvements, the county of Seminole, in view of the public interest, health safety and welfare factors involved, and the inducement in approving and filing the said plat, shall have the right to resort to any and all legal remedies against the Principal and Surety, or

either, both at law and equity, including specific performance, to which the Principal and Surety unconditionally agree.

THE PRINCIPAL and the Surety further jointly and severally agree, that the County of Seminole, at its option, shall have the right to construct or cause to be constructed, the aforesaid improvements in case the Principal shall fail to do so. In the event the County of Seminole should exercise and give effect to such right, the Principal and the Surety shall be jointly and severally liable hereunder, to reimburse the County of Seminole the total cost thereof, including, but not limited to engineering, legal and contingent costs, together with any damages, either direct or consequential, which may be sustained on account of the failure of the Principal to carry out and execute all the provisions of said agreement.

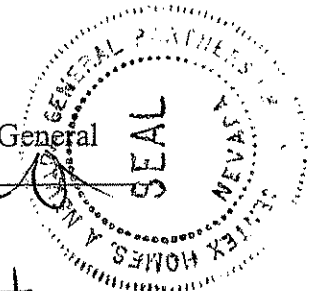
IN WITNESS WHEREOF, the Principal and Surety have executed these presents this 23rd day of July, 2004.

**Address:**  
385 Douglas Ave  
Altamonte Springs, FL 32714

**Principal:**  
CENTEX HOMES, A Nevada General  
Partnership Black & W

(Seal)

By: Patrick J. Knight

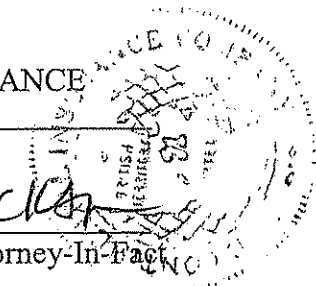


**Address:**  
CNA Plaza  
333 S. Wabash Avenue  
Chicago, IL 60685

**Surety:**  
THE CONTINENTAL INSURANCE  
COMPANY

(Seal)

By: Bridgette S. Jackson  
Bridgette S. Jackson, Attorney-In-Fact



Countersigned by:

Juli A. Russell  
Juli A. Russell

Witness: Steven Binion

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That The Continental Insurance Company, a South Carolina corporation, and Firemen's Insurance Company of Newark, New Jersey, a New Jersey corporation (herein called "the CIC Companies"), are duly organized and existing corporations having their principal offices in the City of Chicago, and State of Illinois, and that they do by virtue of the signatures and seals herein affixed hereby make, constitute and appoint

Brian M Lebow, Deborah L Griffith, Allyson Dean, Carmen Mims, Bridgette S Jackson, Individually

of Dallas, TX, their true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on their behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of their corporations and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Boards of Directors of the corporations.

In Witness Whereof, the CIC Companies have caused these presents to be signed by their Senior Vice President and their corporate seals to be hereto affixed on this 29th day of June, 2004.



The Continental Insurance Company  
Firemen's Insurance Company of Newark, New Jersey

*Michael Gengler*  
Michael Gengler Senior Vice President

State of Illinois, County of Cook, ss:

On this 29th day of June, 2004, before me personally came Michael Gengler to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Chicago, State of Illinois; that he is a Senior Vice President of The Continental Insurance Company, a South Carolina corporation, and Firemen's Insurance Company of Newark, New Jersey, a New Jersey corporation described in and which executed the above instrument; that he knows the seals of said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed pursuant to authority given by the Boards of Directors of said corporations and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporations.



My Commission Expires September 17, 2006

*Eliza Price*  
Eliza Price Notary Public

CERTIFICATE

I, Mary A. Ribikawskis, Assistant Secretary of The Continental Insurance Company, a South Carolina corporation, and Firemen's Insurance Company of Newark, New Jersey, a New Jersey corporation do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolution of the Board of Directors of the corporations printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporations this 23rd day of July 2004.



The Continental Insurance Company  
Firemen's Insurance Company of Newark, New Jersey

*Mary A. Ribikawskis*  
Mary A. Ribikawskis Assistant Secretary

## Authorizing By-Laws and Resolutions

ADOPTED BY THE BOARD OF DIRECTORS OF THE CONTINENTAL INSURANCE COMPANY:

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolution adopted by the Executive Committee of the Board of Directors of The Continental Insurance Company by unanimous written consent dated the 13<sup>th</sup> day of January, 1989:

"RESOLVED, that the Chairman of the Board, the Vice Chairman of the Board, the President, an Executive Vice President, a Senior Vice President or a Vice President of the Company be, and each or any of them hereby is, authorized to execute Powers of Attorney qualifying the attorney named in the given Power of Attorney to execute in behalf of the Company bonds, undertakings and all contracts of suretyship; and that an Assistant Vice President, a Secretary or an Assistant Secretary be, and each or any of them hereby is, authorized to attest the execution of any such Power of Attorney, and to attach thereto the seal of the Company.

RESOLVED, that the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached."

ADOPTED BY THE BOARD OF DIRECTORS OF FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY:

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolution adopted by the Executive Committee of the Board of Directors of the FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY by unanimous written consent dated the 13<sup>th</sup> day of January, 1989:

"RESOLVED, that the Chairman of the Board, the Vice Chairman of the Board, the President, an Executive Vice President, a Senior Vice President or a Vice President of the Company be, and each or any of them hereby is, authorized to execute Powers of Attorney qualifying the attorney named in the given Power of Attorney to execute in behalf of the Company bonds, undertakings and all contracts of suretyship; and that an Assistant Vice President, a Secretary or an Assistant Secretary be, and each of any of them hereby is, authorized to attest the execution of any such Power of Attorney, and to attach thereto the seal of the Company.

RESOLVED, that the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached."

## **NOTICE**

In accordance with the Terrorism Risk Insurance Act of 2002, we are providing this disclosure notice for bonds and certain insurance policies on which one or more of the Writing Companies identified below is the surety or insurer.

To principals on bonds and insureds on certain insurance policies written by any one or more of the following companies (collectively the "Writing Companies") as surety or insurer: Western Surety Company, Universal Surety of America, Surety Bonding Company of America, Continental Casualty Company, National Fire Insurance Company of Hartford, American Casualty Company of Reading, PA, The Firemen's Insurance Company of Newark, NJ, and The Continental Insurance Company.

### **DISCLOSURE OF PREMIUM**

The premium attributable to coverage for terrorist acts certified under the Act was Zero Dollars (\$0.00).

### **DISCLOSURE OF FEDERAL PARTICIPATION IN PAYMENT OF TERRORISM LOSSES**

The United States will pay ninety percent (90%) of covered terrorism losses exceeding the applicable surety/insurer deductible.



CONTRACT NO.

**CENTEX HOMES  
LAND DEVELOPMENT  
CONSTRUCTION AGREEMENT**

P.O. Box 2489 WINTER PARK  
FL 32790

This Land Development Construction Agreement ("Agreement") is made this 19th day of July, 2004 by and between J. E. M. Equipment Corporation (Contractor's License No. CC57219) ("Contractor") whose address is ~~at 1801 Lee Road, Suite 301, Winter Park, FL 32789~~ and CENTEX HOMES a Nevada general partnership ("Owner") whose address is 385 Douglas Ave., Suite 2000, Altamonte Springs, FL 32714.

Whereas, Contractor wishes to perform work and/or furnish materials in the land development construction of Hawthorne Glen townhouse subdivision, Seminole County, Florida (the "Project") on the real property described on Exhibit A hereto (the "Site"), and Owner desires to pay Contractor for such work and materials, subject to and in accordance with the terms and conditions contained in this Agreement.

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

**1. WORK.** Contractor will perform and finish in a good and workmanlike manner, and will furnish all materials, labor, equipment, supplies and tools for, the following described work (describe Contractor's work): See Madden Engineering Construction plans and bid on Exhibit B (the "Work"). The Work will be performed in accordance with plans, specifications, drawings and schedules for the Work, and any supplemental terms and conditions to this Agreement, all of which are, or will be, on file at the office of Owner (collectively called the "Contract Documents") and are incorporated into the Agreement by this reference as if fully set forth. The Contract Documents may be amended and/or supplemented by Owner from time to time by giving Contractor written notice thereof.

**2. CONTRACT PRICE.** Owner will pay to Contractor for the Work the sum of Two Million, eighteen thousand eight hundred seventy-nine dollars (\$2,018,879.00) (the "Contract Price"), subject to the terms and conditions contained herein.

**3. PAYMENT SCHEDULE.** Payments will be made as set forth in the rider(s) (the "Rider") attached hereto and made a part of this Agreement. Final payment to Contractor will be made following completion of the Work but not before the expiration of the period allowed by Law (as defined in Section 10) for the filing of mechanics' lien claims with respect to the Work. The making of final payment to Contractor will not be construed as acceptance of the Work or waiver of any rights of Owner under this Agreement and will not relieve Contractor of any of its obligations hereunder. Notwithstanding any other provisions of this Agreement, Owner will not be obligated to make any payment to Contractor if and as long as any one or more of the following conditions exist:

- (a) Contractor has failed to perform any of its obligations hereunder or otherwise is in default under this Agreement.
- (b) Contractor has failed to furnish to Owner invoices and signed receipts and vouchers and lien releases or waivers in the form and manner satisfactory to Owner.
- (c) Any part of a payment requested is attributable to Work which is defective or not performed in accordance with this Agreement and the Contract Documents; however, if severable, payment will be made as to the that portion of the Work which appears to be properly performed after due allowance for the costs of correcting the defective part of the Work and/or completing the portion of the Work not performed, as estimated by Owner.
- (d) Contractor has failed to make payment promptly to any lien claimants.
- (e) If Owner, in its good faith judgment, determines that the portion of the Contract Price then remaining unpaid will not be sufficient to complete the Work and/or correct deficiencies in the Work. In such case no additional payments will be due Contractor hereunder unless and until Contractor, at its sole cost, performs a sufficient portion of the Work so that such portion of the Contract Price then remaining unpaid is determined by Owner to be sufficient to complete and correct the Work.
- (f) Contractor has failed to procure, maintain or pay for Required Insurance (as defined in Section 8).

**4. PAYMENTS BY CONTRACTOR.** Contractor will promptly pay in cash all costs of labor employed and materials and services furnished and used in the performance of the Work. Owner will have the right, whenever it will deem such procedure advisable, to make payments due to Contractor directly to or, at Owner's option, by joint check to, any subcontractor, material or equipment supplier, utility or transportation company, insurance company, governmental agency or union trust fund for any work, labor, materials, equipment, utilities, transportation, insurance premiums, taxes or the like, performed, furnished, rendered or payable in connection with the performance of the Work, unless Contractor has first delivered written notice to Owner of a dispute with any such person and has furnished security satisfactory to Owner insuring against claims therefrom. Any payment so made will be credited against sums due Contractor in the same manner as if such payment had been made directly to Contractor. The provisions of this Section 4 are intended solely for the benefit of Owner and will not inure to the benefits of any third persons, or obligate Owner or its sureties in any way to any third party.

**5. PERFORMANCE OF WORK.** Contractor will commence performance of the Work within 5 working days of receiving notice to begin (excluding Saturdays, Sundays, and federal holidays) and will perform the Work as quickly and thoroughly as possible. If Contractor does not begin the Work within 5 days, or stops Work without cause or permission, or if the Work is unreasonably delayed in the opinion of the Owner, Owner will have the right to terminate this Agreement and replace the contractor.

Further, if Contractor fails to perform any of its duties described in this Agreement or in any attached Rider, within the limits established, or if no limits are established, within 48 hours after notice from Owner, Owner will have the right to retain others to perform such duties, and the cost of such performance will be charged against the amount due Contractor. If the charges exceed the amount due, all payments will be withheld and Contractor will pay Owner the excess within 30 days of receipt of notice. Without limitation, charges against Contractor will be assessed if Owner, at Owner's option and without prejudice to any other remedies it may have, pays to complete Work not finished on time by Contractor, corrects defects in the Work, pays fines or penalties arising from the Work, cleans up after the Work, provides tools, material or equipment that are Contractor's obligation, repairs damage to the Site, obtains insurance on behalf of Contractor, pays claims indemnified by Contractor, pays taxes or legal orders that are Contractor's obligation, or pays any other amounts on behalf of Contractor.

Contractor will not substitute materials specified in the Contract Documents without Owner's written consent. Should any persons performing the Work engage in a strike or work stoppage, or cease to work due to picketing or a labor dispute of any kind, Owner may, at its option and without prejudice to any other remedies it may have, after notice to Contractor, provide any such Work and deduct the cost thereof from any monies then due or thereafter to become due Contractor.

6. **FAMILIARITY WITH THE SITE.** Contractor will be responsible for inspecting the Site, reading all of the Contract Documents and comparing the Site with the Contract Documents. It is understood by the parties that Contractor is best able to evaluate the cost of the Work and that in arriving at the Contract Price it has considered and assumed the risk that unforeseen conditions or events may be encountered causing additional difficulty and expense not anticipated at the time of execution of this Agreement. Contractor further represents that it is fully familiar with the requirements of any governmental authority having jurisdiction over the Work and is prepared to comply with all such requirements without additional compensation.

7. **PROTECTION OF WORK.** Contractor will supervise, administer and protect the Work against loss or damage from any cause and will be responsible for all parts of the Work, temporary or permanent, finished or not, until final completion. Contractor will take reasonable precautions and maintain reasonable safeguards to protect against loss or damage to persons or property owing to weather conditions and arising out of its activities at or about the Site including, without limitation, bracing and reinforcing where necessary and providing for guards, locks, fences, signs, barricades, lights and such other warning and security devices where appropriate. Contractor will bear and be liable for and Owner will not be responsible for any loss or damage to the Work and any material, equipment or other thing used in the Work or placed at the Site including, but not limited to, loss or damage due to theft, trespass or vandalism before final completion of the Work.

8. **INSURANCE.** The following coverage, terms and limits are minimum requirements (the "Required Insurance") to be provided by Contractor:

(a) Commercial General Liability:

i. For any Work performed by Contractor that is classified under Category #1 of Owner's then-current classification of risk factors for work performed by contractors (the "Risk Factor Standards"), the following limits will apply:

\$250,000 each occurrence limit, \$250,000 personal and advertising injury limit, \$500,000 general aggregate limit, \$500,000 products-completed operations aggregate limit or equivalent approved by Owner, or current limit carried, whichever is greater;

For any Work performed by Contractor that is classified under Category #2 of the Risk Factor Standards, the following limits will apply:

\$500,000 each occurrence limit, \$500,000 personal and advertising injury limit, \$1,000,000 general aggregate limit, \$1,000,000 products-completed operations aggregate limit or equivalent approved by Owner, or current limit carried, whichever is greater;

For any Work performed by Contractor that is classified under Category #3 of the Risk Factor Standards, the following limits will apply:

\$1,000,000 each occurrence limit, \$1,000,000 personal and advertising injury limit, \$2,000,000 general aggregate limit, \$2,000,000 products-completed operations aggregate limit or equivalent approved by Owner, or current limit carried, whichever is greater;

- ii. ISO or comparable Occurrence Form (Occurrence Form #CG0001-1093 or equivalent) (Modified Occurrence and Claims Made forms are not acceptable);
- iii. Bodily injury and property damage coverage including products liability/completed operations coverage (including any product manufactured or assembled), premises operations, blanket contractual liability (for this Agreement), broad form property damage, personal and advertising injury, independent contractor's liability, mobile equipment, elevators, owners and contractors protective liability, damage from explosion, collapse and underground hazards (No "XCU" exclusions are acceptable), and cross-liability and severability of interest clauses;
- iv. Additional Insured Endorsement CG2026-1185, or CG2010-1185 or CG2010-1093 (but only if modified to delete the word "ongoing" and insert the sentence "Operations include ongoing and completed operations") or equivalent approved by Owner at no expense to Owner naming Centex Homes, a Nevada general partnership, Centex Real Estate Corporation, a Nevada corporation, and the owner of the Site if other than Owner, their respective officers, directors, partners, members and employees, as additional insureds. General liability coverage will continue to apply to "bodily injury" and to "property damage" occurring after all Work on the Site of the covered operations to be performed by or on behalf of the additional insureds has been completed and will continue after that portion of "your Work" out of which the injury or damage arises has been put to its intended use;
- v. A provision that such insurance afforded by the policy for the benefit of the additional insureds will be primary and non-contributory to any insurance or self insurance maintained by the additional insureds;
- vi. An endorsement affording thirty (30) days prior notice to Owner by certified mail in the event of cancellation, non-renewal, modification or reduction in coverage. The reference to "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company, its agents or representatives" in the cancellation notification portion of the certificate and/or endorsement must be deleted. To the full extent permitted by law, any provision on the face of any Certificate of Insurance provided by Contractor that states anything to the effect that the Certificate of Insurance does not confer rights to insurance upon Owner is hereby deemed deleted from such Certificate of Insurance;
- vii. A deductible or self-insured retention of not more than \$25,000 as to Contractor (unless approved in writing by Owner) and no deductible or self-insured retention as to any additional insured;
- viii. Coverage will not be limited to vicarious liability and will extend to (and there will be no endorsement limiting coverage for) the negligent acts, errors or omissions of Owner in connection with or relating to the Work;
- ix. No exclusionary language or limitations relating to soils subsidence or earth movement of any kind regardless of cause;
- x. If insurable by law, no exclusionary language or limitations relating to punitive or exemplary damages, fines or penalties;
- xi. No exclusionary language or limitations relating to condominiums, multi-family or multi-unit dwellings;

- xii. No exclusionary language or limitations that are applicable to any additional insured that are not applicable to the named insured;
  - xiii. No exclusionary language or limitations relating to the scope of coverage for liability arising from pollution, mold or fungus, or arising from the use of EIFS, DEIFS or similar products; and
  - xiv. A provision that defense costs are paid in addition to and do not deplete any policy limits.
- (b) Automobile Liability:
- i. Either \$350,000 combined single limit for bodily injury or property damage or \$100,000 bodily injury per person/\$300,000 bodily injury per accident/\$50,000 property damage;
  - ii. Owned, non-owned and hired vehicles (commercial policies only); and
  - iii. Thirty (30) days notice of cancellation by certified mail (commercial policies only).
- (c) Workers' Compensation/ Employer's Liability:
- i. Bodily injury limits as required by statute;
  - ii. Employer's Liability:
    - Bodily injury by accident – \$100,000 each accident
    - Bodily injury by disease – \$100,000 each employee
    - Bodily injury by disease – \$500,000 policy limit
  - iii. Waiver of subrogation for Owner and the owner of the Site if other than Owner (in each case to the full extent permitted by law);
  - iv. If leased employees are used, issuance of an Alternate Employer's Endorsement; and
  - v. Thirty (30) days notice of cancellation by certified mail.
- (d) Insurance carriers must have a "Best's Rating" and a "Financial Size Category" as set forth in the most current edition of Best's Key Rating Guide acceptable to Owner. Insurance carriers must be admitted in the state in which the Work is being performed.
- (e) The Required Insurance will cover Contractor, its authorized representatives, employees, agents and any other person (including its authorized representatives, employees and agents) performing any work under any contract or agreement with Contractor.
- (f) Contractor will cause each subcontractor retained by Contractor to purchase, obtain and maintain the Required Insurance prior to commencing any portion of the Work. Upon request of Owner, Contractor will provide Owner with copies of certificates of insurance evidencing the Required Insurance for each subcontractor. Contractor will also obtain from each such subcontractor a written indemnification in form and substance identical to the indemnity set forth in Section 9 except that such indemnity will be from such subcontractor for the benefit of Owner (and the owner of the Site if other than Owner) and all of the other parties that are indemnified in Section 9.
- (g) Contractor for itself and on behalf of its insurers, to the full extent permitted by law without voiding the insurance required under this Agreement, hereby waives and releases the additional insureds from liability for loss, damage or loss of property at the Site, which loss or damage is covered by such insurance, irrespective of the additional insureds' negligence which may have contributed to or caused such loss, to the extent such damages are covered by Contractor's policies of insurance or are required to be covered by the Required Insurance. This provision is intended to waive fully for the benefit of Owner and the other additional insureds any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier issuing the Required Insurance or any other insurance (including any first party coverage) maintained by Contractor. Contractor will obtain a waiver of any subrogation right that its insurers may acquire against the additional insureds by virtue of payment of any such loss covered by such insurance.
- (h) The project/job description and/or description of operations on all certificates, endorsements and other insurance documentation will read "All Work Performed for the Additional Insureds."
- (i) Concurrently with the execution of the Agreement, Contractor will file with Owner original certificates of insurance and endorsements showing the Required Insurance to be in force. Certificates of insurance such as "ACORD 25S" alone, without the requisite endorsements, are not acceptable to satisfy the provisions of the Required Insurance. Upon the request of Owner, Contractor will provide Owner with certified copies of all policies as well as any subsequent policies and endorsements which Contractor is required to procure and maintain. Upon the request of Owner, renewal certificates and endorsements for commercial general liability will be provided to Owner, at no expense to Owner, prior to expiration of such insurance, for a period of one (1) years after January 15, 2003 [Insert applicable term based upon the applicable statute of limitations]. Such continuing insurance will comply with the requirements set forth in this Section 8. CONTRACTOR WILL NOT COMMENCE OR BE PAID FOR ANY WORK UNLESS AND UNTIL INSURANCE DOCUMENTATION PROPERLY COMPLETED AND EXECUTED HAS BEEN DELIVERED TO AND APPROVED BY OWNER.

- (j) All insurance documentation evidencing the Required Insurance will be sent to:  
Centex Homes - Orlando\_Division  
Attn: Derek Henry, Land Development Manager  
James Makransky, Controller
- (k) If Contractor fails to procure, maintain or pay for the Required Insurance, Owner will have the right (but not the obligation) to secure same in the name of and for the account of Contractor, in which event Contractor will pay the cost thereof and will furnish upon demand, all information that may be required to procure such insurance. Owner will have the right to backcharge Contractor for the cost of procuring such insurance. The failure of Owner to demand certificates of insurance and endorsements evidencing the Required Insurance or to identify any deficiency in Contractor's coverage based upon the evidence of insurance provided by Contractor will not be construed as a waiver by Owner of Contractor's obligation to procure, maintain and pay for the Required Insurance. Notwithstanding any provision to the contrary contained herein, any waiver of the Required Insurance, including, without limitation, the amount or extent of coverage, may only be obtained by the prior written consent of Owner.
- (l) The insurance requirements set forth herein will in no way limit Contractor's liability arising out of the Work performed under this Agreement or related activities (including liability under the indemnification provisions set forth in Section 9 or under any other provisions of the Contract Documents or at law). The inclusions, coverage and limits set forth herein are minimum inclusions, coverage and limits. The required minimum policy limits set forth in this Section 8 will not be construed as a limitation of Owner's rights under any policy with higher limits, and no policy maintained by Contractor will be endorsed to include such a limitation. Nothing contained herein will be construed as limiting the type, quality or quantity of insurance coverage that Contractor should maintain. Contractor will be responsible for determining appropriate inclusions, coverage and limits which may be in excess of the minimum requirements set forth herein.
- (m) The failure of Contractor to fully and strictly comply at all times with the insurance requirements set forth herein will be deemed a breach of this Agreement.
- (n) Contractor will immediately notify (or cause its insurers or insurance broker to notify) Owner of receipt by Contractor of any notice of cancellation or rescission received from an insurance carrier referring to or relating to a policy which names Contractor, its parent, subsidiary or affiliated companies or their officers, directors or employees as additional insureds or which may otherwise impact the ability of Contractor to fully perform its obligations hereunder (including, without limitation, the indemnity obligations of Contractor set forth in Section 9).
- (o) To the full extent permitted by law, if Contractor is out of business or otherwise unavailable at the time a claim is presented to Owner, Contractor hereby assigns to Owner all of its right, title and interest (but not any liabilities or obligations) under any applicable policies of insurance. The foregoing provision will not apply to those policies where there is an express prohibition against assignment.
- (p) The Required Insurance set forth in this Section 8 is independent from all other obligations of Contractor under this Agreement, including, without limitation, all indemnification provisions, and will apply whether or not required by any other provision of this Agreement.

**9. INDEMNITY AND RELEASE.** Contractor recognizes that accidents and other problems may occur while its Work is performed on the Site. Contractor also recognizes that because of such problems, Claims may be made against Owner or others. Because Contractor and Owner intend that Contractor will be solely responsible for the supervision of its Work and all consequences of the Work, Contractor agrees to the fullest extent permitted by law to indemnify, defend, protect and hold the Indemnified Parties (as hereinafter defined) harmless from any and all Claims. The Indemnified Parties are Owner, the owner of the Site if other than Owner, all subsidiaries, divisions, partners, parent and affiliated companies of Owner, and all such parties' representatives, partners, designees, officers, directors, shareholders, employees, agents, successors and assigns, and any lender of Owner with a security or collateral interest in the Project (hereafter referred to individually as an "Indemnified Party"; and collectively as the "Indemnified Parties"). This means that Contractor will pay any attorneys' fees and expenses that the Indemnified Parties pay to defend themselves from any Claims, and that Contractor will also pay, on the Indemnified Parties' behalf, any judgment rendered against the Indemnified Parties or any sum that the Indemnified Parties agree to pay in settlement of any Claims. This is so even if Contractor has provided workers' compensation or other benefits to an injured worker, and even if an Indemnified Party was strictly liable for the Claim or was negligent itself. CONTRACTOR UNDERSTANDS AND ACKNOWLEDGES THAT THE INDEMNIFICATION AND DEFENSE OBLIGATIONS UNDER THIS AGREEMENT EXTEND TO AND INCLUDE CLAIMS ARISING FROM THE ACTIVE OR PASSIVE NEGLIGENCE OR STRICT LIABILITY OF THE INDEMNIFIED PARTIES BUT DO NOT INCLUDE CLAIMS THAT ARE FINALLY DETERMINED TO RESULT FROM THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTY.

As used in this Agreement, a "Claim" or "Claims," as the case may be, means any and all claims (including without limitation, claims for bodily injury, financial loss, death, or damage to property), demands, causes of action, lawsuits, liabilities, losses, obligations, damages, actions, fines, penalties, costs and expenses (including but not limited to attorneys' fees, court costs and all other professional, expert or consultants' fees and costs), arising from or directly or indirectly related to the Work.

A Claim that results in any manner from the Work (including but not limited to defects in workmanship, materials and/or design defects, if the design was that of Contractor or its agents), or from the presence of an employee, subcontractor, supplier or other worker or representative of Contractor on the Site, or from activities conducted by or on behalf of Contractor on the Project (including but not limited to the negligent and/or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors or anyone employed directly or indirectly by any of them or for whose acts they may be liable), arises from Contractor's work.

The duty to defend under this Section 9 is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Contractor or any Indemnified Party. The duty to defend arises immediately upon presentation of a Claim by any party and written notice of such Claim being provided to Contractor. Contractor's obligation to indemnify and defend under this Section 9 will survive the expiration or earlier termination of this Agreement until it is determined by final judgement that an action against the Indemnified Party or Indemnified Parties for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations. Contractor's liability for indemnification under this Section 9 is in addition to any liability Contractor may have to any Indemnified Party for breach by Contractor of any of the provisions of this Agreement. Under no circumstances will the insurance requirements and limits set forth in this Agreement be construed to limit Contractor's indemnification obligation or other liability hereunder.

CONTRACTOR ALSO HEREBY RELEASES OWNER AND ALL OTHER INDEMNIFIED PARTIES FROM ANY LIABILITY TO CONTRACTOR BECAUSE OF A CLAIM OTHER THAN A CLAIM OR CLAIMS THAT ARE FINALLY DETERMINED TO RESULT FROM THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTY. THIS MEANS THAT CONTRACTOR NEVER WILL ASK OR SUE OWNER OR ANY OTHER INDEMNIFIED PARTY FOR COMPENSATION, REIMBURSEMENT OR CONTRIBUTION BECAUSE OF A CLAIM RELEASED HERE. CONTRACTOR ALSO HEREBY AGREES THAT IT WILL NOT ASSIGN ITS RIGHT TO SUE OWNER OR ANY OTHER INDEMNIFIED PARTY TO ANY OTHER PARTY.

If the provisions of this Section 9 violate the statutory or common law of the applicable state or governing authority, this Section 9 will not be stricken or found to be void in its entirety. Rather, Contractor's indemnification obligations will apply to the fullest extent permitted by applicable law. Therefore, for example only, should applicable state law only permit indemnification for comparative negligence, then this Section 9 will mandate that Contractor defend, hold harmless and indemnify the Indemnified Parties for all damages arising from Contractor's negligence.

**10. COMPLIANCE WITH LAWS.** Contractor will carefully check the Contract Documents for conformity with all local, state and federal laws, codes, rules and regulations bearing on the Work (hereinafter collectively called "Law") before commencing the Work. Contractor will give all notices and comply with all Law bearing on the Work including, by way of enumeration and not limitation, safety and health rules and regulations established by or pursuant to the federal Occupational Safety and Health Act of 1970, and Contractor at all times will furnish to its agents and employees a safe place of employment. If Contractor observes any violation of Law, it will immediately report such violation to Owner in writing. Contractor will be responsible for any fines, charges or penalties related to the Work, including, without limitation, fines, charges and/or penalties related to the operation of equipment, the Contractor's performance of the Work, the handling of materials or any other function that is in violation of the Law. All workmanship and materials will conform to Law and, if the Contractor performs or permits the performance of any Work not in compliance with Law, it will immediately cause such Work to be redone and will bear all costs in connection therewith. The Work, as performed, will meet with the approval of, and pass any inspection of, any governmental authority having jurisdiction thereof. If the Work is being constructed under specifications of the Federal Housing Administration or the Veterans Administration, the Work will meet the requirements of these governmental agencies. No Work will be deemed complete until final inspection is made and approval is received from every governmental authority whose approval is required.

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

- (a) Contractor will fully comply with the Regulations and will cooperate with Owner and all subcontractors of Owner in order to assure compliance with the Regulations.
- (b) Contractor hereby accepts full responsibility and liability for the training of its employees as to all precautionary measures necessary to protect such employees during both routine and emergency situations on the Site.
- (c) Contractor will indemnify, defend and hold Owner harmless from all claims, damages, liabilities and causes and actions which arise from the failure of Contractor to comply with the Regulations.
- (d) Contractor will assist Owner in complying with the Regulations.
- (e) Contractor will not use any chemicals in its performance of the Work or incorporate any chemicals into materials or products supplied to Owner or to the Site unless Contractor has given Owner prior written notice of the existence and the possible exposure to such chemicals, has delivered an MSDS to Owner and has received a written consent of Owner to use such chemicals.

**11. TERMINATION OF AGREEMENT BY OWNER.** If conditions arise which in the opinion of Owner make it inadvisable for Contractor to continue the Work, Owner may terminate all or a portion of Contractor's right to perform the Work under this Agreement by 48 hours prior written notice to Contractor. Upon receipt of such notice, unless directed otherwise, Contractor will immediately discontinue prosecution of the Work and the placing of orders for materials, equipment, machinery and supplies in connection therewith and will, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Owner. Then, unless otherwise instructed by Owner, Contractor will do only such Work as may be necessary to preserve and protect that portion of the Work which has been incorporated into the Project and to protect materials, supplies and equipment at or about the Site or in transit thereto. On the date set for termination, the obligations of the parties to continue performance under this Agreement will cease and Contractor will be entitled to receive: (a) compensation for the portion of the Work already performed with the Contract Price being prorated accordingly; (b) payment for materials for which it has made firm contracts, provided that materials are delivered to Owner; and (c) payment for any other bona fide obligations assumed by Contractor in writing prior to the notice of termination which obligations cannot with all reasonable effort be canceled, provided any benefits accruing from such obligations are assigned to Owner. Payment to Contractor will be made in accordance with Section 3 hereof, with final payment being made only after expiration of the period allowed by Law for the filing of any claims to enforce mechanics' liens arising out of the Work. Notwithstanding any other provision to the contrary, neither the termination of this Agreement nor the termination of any of Contractor's rights hereunder will prejudice any Claim of either party arising prior to termination, or relieve either party from any liability arising prior to termination, nor will it affect Contractor's guarantee of the portion of the Work performed or relieve Contractor of its duty to correct any defective Work performed or to indemnify, defend and hold Owner harmless in those instances required by this Agreement.

**12. ASSIGNMENT.** Contractor shall not assign or subcontract this Agreement or any portion thereof or any money due or which may become due hereunder without the prior written consent of Owner. In addition to constituting a default under this Agreement, any assignment or attempted assignment made in violation of this Section 12 will be null and void and the assignee will acquire no rights thereunder. If Owner does consent in writing to an assignment of or subcontract under this Agreement, the assignee or subcontractor will be bound to the terms of this Agreement, including specifically and without limitation the insurance provisions contained herein. If any assignment or subcontract is made in breach of this Agreement, Contractor will be liable to Owner for all damages resulting therefrom. Notwithstanding anything to the contrary contained herein, Owner may assign this Agreement without the consent of Contractor.

**13. DEFAULT.** In addition to any other remedies available under Law: (a) If Contractor should fail or refuse, except in cases where extension of time is provided, to supply enough properly skilled workmen or proper materials for the Work; or (b) if Contractor should fail to make payment to subcontractors or suppliers for material or labor; or (c) if Contractor should fail to keep and comply with any of the terms and provisions of this Agreement or the Contract Documents; or (d) if Contractor should be adjudged bankrupt, file or suffer to be filed a petition for relief under the Bankruptcy Act, or make a general assignment for the benefit of creditors; or (e) if a receiver should be appointed on account of Contractor's insolvency; then, in any such event, Owner may, without prejudice to any other right or remedy and after giving Contractor and its surety, if any, 3 days' written notice, terminate its obligation to Contractor under this Agreement and take possession of the Site and all materials, tools and equipment thereon and complete (or cause to be completed) the Work by whatever method Owner may deem expedient. Upon receipt of such termination notice, unless otherwise instructed by Owner, Contractor will immediately discontinue prosecution of the Work and the placing of orders for materials, equipment, machinery and supplies in connection with this Agreement and will, if requested, make every reasonable effort to cancel all existing orders upon terms reasonably satisfactory to Owner. Then, unless otherwise instructed by Owner, Contractor will only do such Work as may be necessary to preserve and protect that portion of the Work that has been incorporated into the Site and to protect such materials, supplies and equipment at or around the Site on in transit thereto. If Owner provides Contractor with such termination notice, Contractor will not be entitled to receive any further payment until the Work is completed. Upon completion of the Work, Owner will pay to Contractor an amount equal to (x) the unpaid portion of the Contract Price attributable to the Work performed up to the termination less (y) the amount by which (i) the costs incurred by Owner to complete the Work, including, without limitation, costs for engineering, managerial and administrative services and reasonable attorneys' fees, if legal counsel is employed, exceed (ii) the portion of the Contract Price attributable to the balance of the Work yet to be performed at the time of termination. If the amount calculated under part (y) in the preceding sentence exceeds the amount owing under part (x), the Contractor will pay the difference to Owner. If the amount in part (x) exceeds the amount in part

(y), Owner will pay the difference to Contractor; however, Owner will have the right at its option to withhold such amount from Contractor until the expiration of one year from the date of the termination of this Agreement.

14. **CLEAN UP.** Contractor will remove from the Site all scrap, trash, debris, excess materials, tools and equipment upon completion of the Work and each portion thereof. If Contractor fails to clean up, Owner may do so after written notice to Contractor, and the cost thereof will be charged to Contractor.

15. **CALL BACK RESPONSIBILITY.** In connection with the performance of the Work by the Contractor, Contractor hereby agrees that:

- (a) It will within 48 hours from written notice thereof (Saturdays and Sundays excluded) correct any and all deficiencies in the Work;
- (b) The determination as to what constitutes a deficiency will be within the sole discretion of the Owner, whose judgment will be reasonably exercised;
- (c) Failure of the Contractor to make timely performance hereunder will constitute sufficient cause for the Owner to cause the correction of such deficiencies to be performed by others. Further, the cost of such work will be charged to the Contractor and such cost plus a sum equal to 15% thereof (which additional sum will represent an allowance for the administration by the Owner of such work) will be charged against the account of the Contractor. If the amount owing the Contractor under this Agreement at the time such work is performed by others is less than the sum charged against its account, the Contractor will remit the difference to the Owner within 5 days following Owner's request therefor.

16. **AUTHORIZED PERSONS.** The President, any Vice President, any Division President, any Division Vice President, any Division Manager and any Division Land Development Manager of Centex Real Estate Corporation, the managing general partner of Owner, or their designated assignees, are persons with the authority under this Agreement to: (i) execute change orders; (ii) allow Contractor additional time for performance of the Work; (iii) amend, modify, supplement or terminate this Agreement; and (iv) do any other act which waives any right or privilege of Owner under this Agreement or the Contract Documents. Any of the foregoing acts not properly authorized will not be binding upon Owner.

17. **ENTIRE AGREEMENT.** This Agreement, together with the Contract Documents, constitute the entire Agreement between the parties. Neither this Agreement nor the Contract Documents may be amended or supplemented except by written instrument duly executed by both parties hereto. No estimates or bids of Contractor preceding this Agreement, and no verbal agreement or conversation with any representative of Owner, either before or after execution of this Agreement, will affect or modify any of the terms or provisions contained in this Agreement or the Contract Documents.

18. **SUCCESSORS AND ASSIGNS.** Subject to the provisions of Section 12 relating to assignment, this Agreement will be binding upon and inure to the benefit of the parties and their heirs, successors and assigns.

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

20. **NOTICE.** Unless otherwise provided herein, any notice provided for herein will be in writing and delivered to the parties (a) in person, (b) by facsimile transmission (with the original and a copy of the facsimile confirmation following in the United States mail), (c) by overnight delivery service, or (d) by certified mail, return receipt requested. If such notice is given in person or by facsimile transmission, notice will be deemed to have been given when delivered or transmitted. If such notice is given by overnight delivery service, notice will be deemed received the day after delivery to the overnight delivery service. If such notice is given by certified mail, notice will be deemed received three days after a certified letter containing such notice, properly addressed with postage prepaid, is deposited in the United States mail. Notice will go to the address first shown herein for the respective party to whom notice is given or to such other address as may be designated by either party by written notice given pursuant hereto.

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

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

23. **BONDS.** Owner will have the right to require Contractor to provide a performance bond or completion bond as a condition precedent to payment.

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

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

26. **LIENS.** Contractor will at all times keep the Project, the Site and each part thereof free from any attachment, lien, claim of lien or other encumbrance arising out of the Work and Contractor will indemnify, defend and hold Owner harmless from and against all Claims, losses, demands, causes of action or expenses (including attorneys' fees and other costs of defense incurred by Owner in defending against the foregoing or in enforcing this indemnity and defense obligation) of whatever nature, arising by reason of any such lien, claim of lien, attachment or encumbrance. If any claim is filed to enforce any laborers, materialmen, mechanics, or other similar lien arising out of or relating to the Work, Contractor will immediately cause such lien to be released and discharged and if Contractor fails to do so, then Owner will have the right to pay all sums, including attorney fees and any other costs and expenses incurred, necessary to obtain such release and discharge and will hold Contractor liable for the amount thereof, with the right to deduct all or a portion of such sum from amounts that may be due Contractor.

27. **WARRANTY.** In addition to any other warranty expressly made by Contractor or implied by Law, Contractor unconditionally guarantees and warrants that the Work complies with all Law and warrants the Work against defects in workmanship and materials for the benefit of Owner and its successors and assigns, usually a municipal corporation, jurisdiction, agency or homeowners' association that will ultimately own and/or govern the Site (the "Subsequent Owner"), and Contractor will indemnify, defend and hold Owner harmless from and against all Claims, including attorneys fees and other costs of defense incurred by Owner defending against any Claim or enforcing this indemnity and defense obligation, arising out of any defective condition. This warranty will specifically inure to the benefit of and be enforceable by Owner and the Subsequent Owner. This warranty is broad enough to include any Claim made against Owner concerning the Work. If a Claim is made against the Owner concerning the Work, Owner may tender defense of such Claim to Contractor and Contractor agrees to defend same. This warranty will commence upon completion of the Work and will continue for a period of one year from the date of formal acceptance by the Subsequent Owner. If demand is made upon Contractor to perform under this warranty, Contractor, at its sole cost and expense, will expeditiously repair or replace any defective Work, whether existing because of faulty workmanship, defective equipment or materials, or from any other cause, and repair or replace any damage to the work of others caused by such defective Work. If Contractor fails to perform under this warranty, the party entitled to perform under the Work will have the right to hire other persons to correct the

defective Work and hold Contractor liable for the costs thereof, including costs, disbursements and reasonable attorneys fees incurred in the enforcement of this provision. The warranty in this Section 27 is independent from all other obligations of Contractor under this Agreement, including, without limitation, all indemnification provisions, and will apply whether or not required by any other provision of this Agreement.

28. **ARBITRATION.** All claims disputed and other matters in questions arising out of or relating to this Agreement or the breach thereof may be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then pertaining, unless the parties mutually agree otherwise. This Agreement to arbitrate will be specifically enforceable under the prevailing arbitration law. Notice of the demand for arbitration will be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand will be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event will the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations

The award rendered by the arbitrators will be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

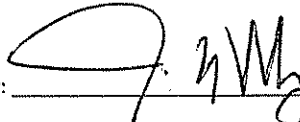
29. **OTHER AGREEMENTS.** Should there now or hereafter exist one or more other agreements between the parties or with any affiliated corporation or company of either concerning this or any other construction project, then a breach by Contractor under the terms of any such agreement, at the option of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

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

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

**CONTRACTOR:**


J. E. M. Equipment Corporation

By:   
Name: JAMES E. MEYER  
Title: PRESIDENT  
Date: 2/19/04

Witness: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**OWNER:**

**CENTEX HOMES,**  
a Nevada general partnership

By: Centex Real Estate Corporation,  
a Nevada corporation,  
its managing general partner  
By:   
Name: Derek Henry  
Title: Development Manager  
Date: \_\_\_\_\_

Description	Quantity	Unit	Unit Price	Total
<b>EARTHWORK:</b>				
CLEAR & GRUB	1	LS	\$84,000.00	\$84,000.00
STRIPPINGS	21,569	CY	\$0.75	\$16,176.75
IMPORT FILL	44,013	TCY	\$6.15	\$270,679.95
CONSTRUCT POND 1A	14,252	CY	\$1.45	\$20,665.40
CONSTRUCT POND 1B	3,115	CY	\$1.45	\$4,516.75
CONSTRUCT POND 2A	4,090	CY	\$1.45	\$5,930.50
CONSTRUCT POND 2B	16,999	CY	\$1.45	\$24,648.55
FINAL GRADE BUILDING PADS	1	LS	\$5,800.00	\$5,800.00
DEWATERING	1	LS	\$12,000.00	\$12,000.00
SILT FENCE	6,300	LF	\$1.10	\$6,930.00
AS-BUILTS	1	LS	\$1,500.00	\$1,500.00
MOBILIZATION	1	LS	\$15,000.00	\$15,000.00
<b>TOTAL EARTHWORK</b>				<b>\$467,847.90</b>
<b>IMPROVEMENTS ON-SITE:</b>				
FINE GRADE ROADWAYS	1	LS	\$2,850.00	\$2,850.00
10" STABILIZED SUB-GRADE	33,655	SY	\$1.70	\$57,213.50
6" SOIL CEMENT	29,910	SY	\$7.25	\$216,847.50
1 1/2" S-III ASPHALT	29,910	SY	\$5.00	\$149,550.00
TYPE "F" CURB	605	LF	\$8.50	\$5,142.50
RIBBON CURB	8,410	LF	\$5.80	\$48,778.00
MEDIAN CURB	290	LF	\$11.50	\$3,335.00
6" x 16" VERTICAL CURB	4,025	LF	\$6.00	\$24,150.00
<b>TOTAL IMPROVEMENTS ON-SITE</b>				<b>\$507,866.50</b>
<b>IMPROVEMENTS OFF-SITE:</b>				
FINE GRADE TURN LANES	1	LS	\$1,200.00	\$1,200.00
DEMO OLD CURB	1	LS	\$3,100.00	\$3,100.00
STRIPING	1	LS	\$9,900.00	\$9,900.00
TYPE "A" STANDARD CURB	825	LF	\$6.25	\$5,156.25
10" STABILIZED SUB-GRADE	1,770	SY	\$4.00	\$7,080.00
8" LIMEROCK	1,345	SY	\$11.50	\$15,467.50
2" S-I ASPHALT	1,345	SY	\$7.95	\$10,692.75
1" FC-3 FRICTION COURSE	5,255	SY	\$4.75	\$24,961.25
TRAFFIC CONTROL	1	LS	\$4,500.00	\$4,500.00
5' SIDEWALK	2,220	LF	\$11.00	\$24,420.00
<b>TOTAL IMPROVEMENTS OFF-SITE</b>				<b>\$106,477.75</b>
<b>WATER DISTRIBUTION:</b>				
16" x 8" TAPPING SLEEVE & VALVE	1	EA	\$2,450.00	\$2,450.00
4" PVC WM	627	LF	\$7.60	\$4,765.20
6" PVC WM	2,161	LF	\$10.00	\$21,610.00
8" PVC WM	2,582	LF	\$13.75	\$35,502.50
2" BLOW OFFS	5	EA	\$350.00	\$1,750.00
4" GATE VALVE	4	EA	\$585.00	\$2,340.00
6" GATE VALVE	9	EA	\$750.00	\$6,750.00
8" GATE VALVE	10	EA	\$1,050.00	\$10,500.00
F.H. ASSEMBLY	4	EA	\$2,450.00	\$9,800.00
SINGLE SERVICES	64	EA	\$345.00	\$22,080.00
DOUBLE SERVICES	80	EA	\$365.00	\$29,200.00
CHLORINATION & TESTING	1	LS	\$2,100.00	\$2,100.00
MISC. FITTINGS	1	EA	\$11,500.00	\$11,500.00
<b>TOTAL WATER DISTRIBUTION</b>				<b>\$160,347.70</b>
<b>STORM WATER:</b>				
12" HDPE	111	LF	\$13.50	\$1,498.50
15" HDPE	2,054	LF	\$17.30	\$35,534.20
18" HDPE	1,409	LF	\$19.35	\$27,264.15



Description	Quantity	Unit	Unit Price	Total
24" HDPE	1,527	LF	\$27.25	\$41,610.75
30" HDPE	777	LF	\$34.45	\$26,767.65
36" HDPE	290	LF	\$39.50	\$11,455.00
42" HDPE	697	LF	\$53.50	\$37,289.50
6" UNDERDRAIN	3,625	LF	\$14.65	\$53,106.25
UNDERDRAIN C/O	45	EA	\$75.00	\$3,375.00
TYPE "P" INLET	1	EA	\$2,475.00	\$2,475.00
TYPE "C" INLET	19	EA	\$1,250.00	\$23,750.00
TYPE "E" INLET	6	EA	\$2,085.00	\$12,510.00
TYPE "J" MANHOLE	4	EA	\$1,750.00	\$7,000.00
INSERT-A-TEE	4	EA	\$990.00	\$3,960.00
CONTROL STRUCTURES	2	EA	\$3,050.00	\$6,100.00
TYPE "C" INLET W/ "J" BOTTOMS	4	EA	\$2,505.00	\$10,020.00
YARD DRAINS	17	EA	\$975.00	\$16,575.00
15" MES	2	EA	\$375.00	\$750.00
24" MES	3	EA	\$775.00	\$2,325.00
30" MES	3	EA	\$995.00	\$2,985.00
36" MES	1	EA	\$1,125.00	\$1,125.00
42" MES	4	EA	\$1,350.00	\$5,400.00
<b>TOTAL STORM WATER:</b>				<b>\$332,876.00</b>

SANITARY SEWER:				
LIFT STATION COMPLETE	1	LS	\$117,350.00	\$117,350.00
6" FORCEMAIN	2,900	LF	\$16.25	\$47,125.00
6" HDPE DIRECTIONAL BORES	302	LF	\$65.00	\$19,630.00
TRAFFIC CONTROL	1	LS	\$950.00	\$950.00
MISC. FITTINGS	1	LS	\$2,500.00	\$2,500.00
8" PVC 0-6'	1,517	LF	\$12.75	\$19,341.75
8" PVC 6-8'	842	LF	\$18.25	\$15,366.50
8" PVC 8-10'	874	LF	\$21.75	\$19,009.50
8" PVC 10-12'	1,071	LF	\$24.75	\$26,507.25
8" PVC 12-14'	186	LF	\$29.00	\$5,394.00
8" PVC 14-16'	80	LF	\$33.50	\$2,680.00
MANHOLE 0-6'	14	EA	\$1,448.00	\$20,272.00
MANHOLE 6-8'	3	EA	\$2,020.00	\$6,060.00
MANHOLE 8-10'	4	EA	\$2,400.00	\$9,600.00
MANHOLE 10-12'	2	EA	\$2,850.00	\$5,700.00
MANHOLE 12-14'	3	EA	\$3,345.00	\$10,035.00
DROP MANHOLE 8-10'	1	EA	\$2,750.00	\$2,750.00
DROP MANHOLE 10-12'	2	EA	\$3,200.00	\$6,400.00
DROP MANHOLE 12-14'	1	EA	\$3,715.00	\$3,715.00
SINGLE SERVICES	144	EA	\$350.00	\$50,400.00
DOUBLE SERVICES	40	EA	\$385.00	\$15,400.00
T.V. TESTING	4,570	LF	\$1.10	\$5,027.00
<b>TOTAL SANITARY SEWER</b>				<b>\$411,213.00</b>

CONTINGENCY				
SEED & MULCH	53,000	SY	\$0.25	\$13,250.00
				<b>\$13,250.00</b>

TOTAL BID *ADD LN* **\$1,999,878.85**

LAY OUT	1	LS	\$19,000.00	\$19,000.00
SODDING - BAHIA - \$1.45 PER S.Y.				

*Exhibit B* BK0317 PG1445

*TOTAL LN CONTRACT* → **2,018,878.85**  
*OK OK*