

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF (\*\*\*\*)

Plaintiffs,

vs.

Defendants.

Case No.

CASE MANAGEMENT ORDER #1

The Court HEREBY ORDERS:

1. **Case Management Date**

All case management will be handled by Department \_\_\_\_\_. The next Case Management Hearing is set for [120 Days out] at \_\_\_\_\_. Parties are to submit their conference statements no later than five (5) court days prior to the hearing. Conference statements are not to be submitted on the Judicial

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**Case Management Order #1**

Council form. Instead parties are to provide a brief narrative regarding the status of the case and how they would like it to proceed. The narrative is to include:

- A. Status of service and appearance of all the parties;
- B. Whether or not the parties have complied with the discovery requirements listed in Case Management Order #1;
- C. Whether or not there are any Insurance Issues or declaratory relief actions pending;
- D. Available dates to schedule a non-destructive site inspection;
- E. What Discovery needs to be done for a meaningful mediation to be conducted; and
- F. Selection of a mediator.

2. **Service of this Order.**

A copy of this order shall be served with the complaint and any cross-complaint bringing in a new party.

3. **Service of Complaint and Cross-Complaint.** The complaint and all cross-complaints shall be served no later than \_\_\_\_\_. The Court upon good cause shown may extend the time for service.

4. **Responses to Complaint and Cross-Complaint**

All responses to the complaint and/or the cross-complaint shall be in compliance with the Code of Civil Procedure.

5. **Law and Motion Matters**

All law and motion matters, [OPTION other than discovery motions], shall be heard in Department \_\_\_\_\_. Parties wishing to schedule a matter for hearing must contact the court clerk at \_\_\_\_\_ for a hearing date and time. The briefing schedule will be pursuant to the Code of Civil Procedure.

6. **Appointment of Discovery Referee** [OPTIONS]

The Court declines to appoint a Discovery Referee at this time. However, the court will appoint a Discovery Referee if the court finds that due to the complexity, the ongoing nature of the discovery matters and/or difficulty of the parties in complying with discovery requests it no longer has the time to handle the discovery matters.

OR

[OPTION #2]

The Court hereby appoints [Name, Address, Phone Number, Fax Number and E-mail] to act as discovery referee under C.C.P. Section 639(a)(5) for all pending and any subsequent discovery motions. This reference is made because of the complexity and ongoing nature of the discovery matters. The maximum hourly rate to be charged by the referee is [\_\_\_\_\_]. The maximum number of hours for which the referee may charge is [\_\_\_\_\_]. Additional number of hours may be granted upon the showing of good cause.

The Discovery Referee has the authority to set the date, time and place for all hearings determined by the Discovery Referee to be necessary, to direct the issuance of subpoenas, to preside over hearings, to take evidence, and to rule on objections, motions, and other requests made during the course of the hearing.

The Discovery Referee is authorized to attend depositions, conduct in camera inspections and to undertake such other hearings, as he/she deems appropriate. Pursuant to *Lu v. Superior Court* (4<sup>th</sup> District, 1997) 55 CA 4th 1264 the Discovery Referee is to “*work with the attorneys in developing a discovery plan, scheduling discovery in the most efficient, rational and least oppressive manner.*”

The court has determined that no party has established an economic inability to pay a pro rata share of the Discovery Referee’s fee. Thus the Discovery Referee’s compensation of [\_\_\_\_\_] is being shared as follows: [plaintiffs \_\_\_\_%], [general contractor/developer \_\_\_\_%] and [subcontractors \_\_\_\_%]. The Discovery Referee may make a recommendation to the court regarding the allocation of [his/her] fees in her

report. Each side to submit a \_\_\_\_\_ retainer to the Discovery Referee no later than \_\_\_\_\_ or thirty [30] days after their appearance in this action.

Pursuant to C.C.P. §643 the referee is to submit a written report to the parties and to the court within 20 days after the completion of the hearing, with a proposed order and any recommendation for allocation of payment of the referee's fees and for the imposition of sanctions.

Pursuant to C.C.P. §643 any objections to the report shall be served and filed no later than 10 days after the report is served and filed and any party who objections to the report shall serve and file notice of a request for a hearing and copies of the objections and any responses shall be served upon the referee.

The Court shall retain jurisdiction after dismissal of the action to hear any motion related to apportionment or nonpayment of the fees and costs of the Discovery Referee. Any dispute with respect to allocation shall be *timely* submitted to the Court pursuant to C.C.P. §643. The Court shall retain jurisdiction over the Discovery Referee fees even after the case has been dismissed.

OR

**[Option #3 if the parties do not agree on the Court's selection]**

Having found that there is a need for a Discovery Referee because of the matter having been deemed complex pursuant to California Rules of Court Rule 3.400 et seq and the need for multiple parties to obtain Discovery, pursuant to C.C.P. §640 the Court requests that the each party submit to the court three nominees for Discovery Referee no later than [\_\_\_\_\_]. Any objection to another party's submission must be served no later than [\_\_\_\_\_].

7. **Discovery**

Discovery is stayed until the [Court's Case Management Conference set for \_\_\_\_\_ or Discovery Referee's first Case Management Conference] except for the following discovery:

A. **Judicial Council Form Interrogatories--Construction Litigation**, attached hereto as **Exhibit “A”**, are deemed served on all parties.

1. FIRST STAGE OF DISCOVERY

a. All Parties are to serve verified responses within forty-five (45) days of service of this Order or within forty-five (45) days of appearing in this action, whichever is later, to the following interrogatories:

- 3.01** Identity of PERSONS Answering These Interrogatories
- 3.02.1-302.5** General Background Information–Individual
- 3.03.1-303.7** General Background Information–Business Entity
- 304.1-304.3** Insurance Information
- 314.1-314.7** Contracts

b. Plaintiffs are to serve verified responses within forty-five (45) days of service of this order to the following interrogatories;

- 305.1-305.14** Subject Property Damages
- 320.1-320.3** Individual Homeowner Claims

2. SECOND STAGE OF DISCOVERY

a. All plaintiffs are to serve verified responses within ninety (90) days to the following interrogatories:

- 310.1** **Other Claims and Previous Claims**
- 311.1-311.4** **Investigations—General**
- 312.1** **Statutory or Regulatory Violations**
- 313.1** **Fraud, Misrepresentation, or Breach of Fiduciary Duty**

b. All defendants and cross defendants are to serve verified responses within ninety (90) days of service of this Order or within ninety (90) days of appearing in this action, whichever is later, to the following interrogatories:

- |                     |   |
|---------------------|---|
| <b>311.1-311.4</b>  | <b>Investigations—General</b>                         |
| <b>321.1-321.13</b> | <b>Scope of Work (Contractors and Subcontractors)</b> |
| <b>322.1-322.3</b>  | <b>Design Professionals</b>                           |
| <b>323.1-323.10</b> | <b>Manufacturers</b>                                  |

Service of the verified response is to be in compliance with the C.C.P. §§ 2030.210 – 250 and Paragraph 11 of this order.

**B. Demand for Production of Documents**

1. The document depository shall be a secured, hosted, internet based document depository utilizing [IPRO Web] platform and shall be maintained at the offices of:

Name: [Esquire Deposition Solutions]  
Address: [44 Montgomery Street, Suite 1100  
San Francisco, CA 94114]  
Phone: [ 415-591-3333 ]  
Fax No.: [ 415-591-3335 ]  
Contact Name: [ \_\_\_\_\_ ]  
Contact E-Mail: [ \_\_\_\_\_ ]

a. Each party shall provide its document to [Esquire Deposition Solutions] for Bates labeling, scanning OCR (Optical Character Recognition) processing and coding of fields.

- b. The party(ies) shall use the first three letters of their name followed by the applicable bates stamp number for identifying their documents.
- c. The costs of the depository set up fee, data loan fee, database maintenance, product management fees, and monthly data storage fee shall be paid [plaintiffs\_\_\_\_%], [general contractor/ developer\_\_\_\_%] and [subcontractors\_\_\_\_%]
- d. Within thirty (30) days of this order or within thirty (30) days of appearing in this action, whichever is later, each party is to forward a check in the amount of \$[\_\_\_\_\_] payable to [\_\_\_\_\_] to help defray the cost of setting up and maintaining the depository

2. Demand for Production of Documents, Set #1, attached hereto as **Exhibit B**, is deemed served on all parties.

3. All parties are to produce documents to the depository listed in Paragraph 7B(1) of this order in response to the document demand within forty-five (45) days of service of this Order or within forty-five (45) days of appearing in this action.

4. All parties are to serve verified responses within forty-five (45) days of service of this Order or within forty-five (45) days of appearing in this action. Response to be in compliance with C.C.P. §§2031.210-250. Response also to provide an index of documents being produced including Bates stamp number and a general description . Any document withheld on a claim of privilege shall be listed in a log pursuant to C.C.P. §2031.240 and served upon all parties.

5. The parties were to separate their contract and insurance information from the main production and is to produce it in a 9" x 12" envelope with a legend on the front of the envelope stating (1) the name of the case and case number, (2) the name of the party; and (3) list of the contents.

6. A notice of deposit of documents, verified response with the index of documents being produced and any privilege shall be served on all counsel in compliance with the Code of Civil Procedure and paragraph 11 of this order.

7. See Exhibit C for a specific direction related to the production of electronically stored information.

8. Problems or questions which arise concerning these procedures should be addressed to the [Court or Discovery Referee] for resolution as soon as possible but not later than 45 days after a party has been served this order.

9. The requirements set forth are subject to modification upon a showing of good cause.

C. **Site Inspection**

Pursuant to C.C.P. There will be a non-destructive site inspection at [ \_\_\_\_\_ ] on [ \_\_\_\_\_ ], commencing at \_\_\_\_\_.m. Counsel for plaintiff may have its consultants present. Counsel for each party in the case is expected to attend and may have his or her consultants.

8. **Repairs or Destructive Testing by Plaintiffs**

Plaintiffs shall not perform any repairs or destructive testing at the project without fifteen (15) days prior written notice to all counsel, except that plaintiff may perform emergency repairs, so long as written notice is given to all parties no later than seventy-two (72) hours after commencing such repairs. If such timely notice is not given, all evidence obtained by plaintiff, including any and all findings, analysis, and opinions of plaintiffs and their consultants and experts based on or derived from such repairs may be barred in the court's discretion from use at trial.

9. **Mediation**

The parties select \_\_\_\_\_ as the mediator in this matter. The parties are

aware that mediation is a voluntary process and a party can neither be forced to attend or pay the mediator's fees over their objection. All communications made during these mediation proceedings, are subject to and governed by the terms of California Evidence Code §703.5, and §§ 1115 - 1128 unless all parties stipulate otherwise.

**OR**

The parties have chosen not to select a mediator at this time

**Optional Paragraph**

The parties have stipulated that the Discovery Referee may communicate with the mediator for the sole purpose of seeking a recommendation from the mediator as to how discovery should proceed. The mediator's recommendation is only an advisory opinion and not determinative as to how discovery should proceed.

10. **Electronic Service**

The Court having deemed this case complex within the meaning of California Rules of Court, Rule 3.400(a), and after finding that such an order would not cause undue hardship or significant prejudice to any party (in that LexisNexis has agreed to serve as the e-serve agent in this proceeding, each party, through counsel, has received information on how to electronically serve documents, the costs proposed for electronic service will generally be less than the costs otherwise incurred by the parties for copying and mailing, and the technology required for electronic service should be readily available to all counsel without significant expense) it is ordered that pursuant to Code of civil Procedure §187 and California Rules of Court Rule 2.253(a), within 5 days of service of this order, all parties that have appeared in this case shall serve any and all pleadings, motions, documents (as that term is defined by California Rules of Court 2.250(2)), and any other document required to be served pursuant to the California Code of Civil Procedure, electronically using LexisNexis, except when personal service is required by statute or rule. E-service shall be the only method of service considered as

valid and effective on all designated recipients pursuant to California Rules of Court, Rules 2.250 to 2.261, inclusive. Every pleading (including without limitation, discovery requests and discovery responses served electronically shall bear a facsimile or typographical signature of at least one of the attorneys of record, along with the typed name, address, telephone number and State Bar of California number of said attorney. Topographical signatures shall be treated exactly as personal signatures for purposes of electronically served documents under the California Rules of Court. This Order shall apply only to the electronic service of documents upon other counsel. Counsel or parties filing documents with the Court shall do so electronically with the Clerk of the Court following existing filing procedures.

11. **Other Issues**

The Code of Civil Procedure, the California Rules of Court and the local rules of the County of \_\_\_\_\_ shall be controlling on any issues that is not addressed by this Case Management Order or subsequent court orders.

12. **Objection to Order**

Any party appearing subsequent to the date of this Order may object within a reasonable time and in writing to the court pursuant to C.C.P. §§641, 641.2, 642 and CRC 3.905.

SO ORDERED

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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**JUDICIAL COUNCIL FORM  
INTERROGATORIES  
CONSTRUCTION LITIGATION**

**EXHIBIT A**

**REQUEST FOR PRODUCTION  
OF DOCUMENTS, SET #1**

**EXHIBIT B**

# REQUEST FOR PRODUCTION OF DOCUMENTS

**Demanding Party:** Case Management Order #1/Pre-trial Order #1 paragraph 7

**Responding Party:** All parties as indicated

**Set #1:** One

## **DEFINITIONS:**

Words in **boldface** in these Requests for Production of Documents are defined as follows:

- (a) **Address** means a full street address, including any unit number, and the city, state, and zip code.
- (b) **Association** means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development, as more fully set forth in Civil Code section 1350 and following.
- (c) **Builder** means any **person** --including without limitation an **owner**, developer, or subdivider --who is or was involved in the construction, development, design, marketing, or sale of the **subject property**.
- (d) **Construction claim** means any allegation (other than a **construction defect claim**) relating to residential, industrial, or commercial construction, including without limitation any allegations of fraud or deceit, that all or a part of the construction has been delayed, that more or less money is due, or that some legal or contractual obligation has been breached relating to the construction or sale of the **subject property**.

OR

**Construction claim** means *(insert definition here of Construction Claim)*.

- (e) **Construction defect claim** means an allegation that all or a part of some construction or design, including without limitation residential, industrial, or commercial construction, does not comply with the requirements of an applicable contract, design, plan, installation instruction, specification, statute, code, or standard or is otherwise defective or deficient, including any allegations of related property damage.

OR

**Construction defect claim** means *(insert definition here definition of Construction Defect Claim)*.

- (f) **Construction manager** means a licensed or unlicensed **person** who manages the construction as to the **subject property** on behalf of the **builder** or **owner** and who did not enter into a contract with a general **contractor**, **subcontractor**, or **design professional**.

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- (g) **Contract** means an oral, written, or implied agreement to provide equipment, supplies, materials, work, or services for construction as to the **subject property**, including without limitation change orders, work orders and purchase orders.
- (h) **Contractor** as used herein means any licensed or unlicensed **person** who contracts with a **builder** or **owner** to perform construction as to the **subject property** or to enter into a **contract** with a **subcontractor** or **design professional** as to such construction.
- (i) **Design professional** means any licensed or unlicensed **person**, including without limitation any soils engineers, geotechnical engineers, civil engineers, structural engineers, landscape or environmental engineers, HVAC engineers, and architects and landscape architects who has provided any design or design services, including plans, specifications, or calculations for construction, to the **subject property**.
- (j) **Document** means a writing as defined in Evidence Code section 250 and includes the original or a copy of handwriting, typewriting, printing, photostats, photographs, magnetically and electronically stored information, and every other means of recording on any tangible medium and in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.
- (m) **Insurance policy** means any contract of insurance, whether primary, pro rata, fronting, umbrella, excess, or otherwise, issued by any admitted or nonadmitted insurer, including without limitation any policy or covering agreement issued by any insurance company, risk retention group, captive group, or joint powers authority.
- (n) **Owner** means any **person** who owns or owned legal or equitable title to the **subject property**.
- (o) **Person** includes a natural person, firm, association, organization, general or limited or professional joint venture, partnership, business, trust, limited **liability** company, corporation, or public entity.
- (p) **Pleading** means the original or most recent amended version of any complaint, cross-complaint, or complaint in intervention, and answer to same.
- (q) **Product** means any goods produced or manufactured by natural means or by hand or with tools, machinery, chemicals, or the like, and which is the subject of a **construction defect claim** in this action.
- (r) **Subcontractor** means any licensed or unlicensed **person** who entered into a **contract** with a **contractor** for any of the construction on the **subject property**.
- (s) **Subject property** means any real property that is the subject of the **construction claim** or **construction defect claim** made in this action.
- (t) **Supervising employee** is an employee responsible for the supervision and direction of one or more employees involved in construction on the **subject property**. **Supervising employee** also includes the Responsible Managing Officer and Responsible Managing Employee (as those terms are used in Business and Professions Code sections 7065, 7068, and 7068.1) for each **builder**, general **contractor**, and **subcontractor** involved in the **subject property**.

(u) **Supplier** means any **person** who enters into a **contract** to provide equipment, supplies, or materials for the construction as to the **subject property**.

(v) **You** (including the possessive **your**) and **anyone acting on your behalf** refers to you, your agents, your employees, your insurance carriers, your attorneys, your accountants, your investigators and their agents and employees, and anyone else acting on your behalf other than your nondisclosed expert consultants.

**To be Produced by PLAINTIFFS**

1. All DOCUMENTS evidencing, referring to, or relating in any way to the inspection, maintenance, and/or repair of the SUBJECT PROPERTY including any individual unit including all correspondence, emails, memos, reports, photos, work requests, work orders, maintenance logs, and invoices.
2. All DOCUMENTS evidencing, referring to, or relating in any way to the creation of any and all reserve budgets prepared for YOU, whether or not the budgets were formally adopted or utilized, from turn over of the SUBJECT PROPERTY to the present.
3. All DOCUMENTS evidencing, referring to, or relating in any way to the retention of property management companies by YOU, including the name, address, phone number, years retained, and last known contact person for each property management company.
4. All DOCUMENTS evidencing, referring to, or relating in any way to the existence of alleged design and/or construction deficiencies at the SUBJECT PROPERTY and/or evidencing, referring to, or relating to any other allegations in YOUR Complaint including any homeowner questionnaires and responses thereto.
5. All DOCUMENTS reflecting when YOU first became aware of any alleged design and/or construction deficiencies that are the subject of this action.
6. All DOCUMENTS evidencing, referring to, or relating in any way to the existence of physical damage to real or personal property that is the subject of this action including.
7. All DOCUMENTS supporting YOUR claim regarding the scope and magnitude of the cost to repair the SUBJECT PROPERTY.
8. All DOCUMENTS supporting your claim for reimbursement of out-of-pocket expenditures.
9. All DOCUMENTS evidencing the nature, scope, and amount of YOUR claim for costs to investigate the nature, extent and cause of damage that you claim in this action is recoverable pursuant to the case of *Stearman v. Centex* or California Civil Code Section 944.
10. All DOCUMENTS supporting your claim that you are entitled to recover YOUR attorneys' fees incurred for prosecuting this action, and the amount of those fees.

11. All DOCUMENTS reflecting communications between YOU and any named party to this action relating in any way to any of the alleged defects and/or or damages that are the subject of the action.
12. All DOCUMENTS that reflect any alleged warranties express or implied, made to YOU by any person or entity associated with the design, construction, marketing, and/or sale of the units at the SUBJECT PROPERTY.
13. All DOCUMENTS evidencing, referring to, or relating to any requests for warranty repairs and/or warranty repairs performed to the SUBJECT PROPERTY.
14. All DOCUMENTS evidencing, referring to, or relating to any notice or opportunity given to the developer, general contractor, or any subcontractor to correct alleged defective design or construction work at the SUBJECT PROPERTY.
15. All correspondence and other DOCUMENTS generated or exchanged between YOU and the SUBJECT PROPERTY developer, general contractor, design professionals, and/or any subcontractor or supplier involved in the design, construction, or repair of the SUBJECT PROPERTY relating to the SUBJECT PROPERTY.

**TO BE PRODUCED BY DEVELOPER AND/OR GENERAL CONTRACTOR**

16. All DOCUMENTS evidencing, referring to, or relating in any way to the planning, development or design of the SUBJECT PROPERTY, including, but not limited to, all applications, permits, plans, soils reports, sketches, calculations, specifications, approval records, memos, and notes.
17. All DOCUMENTS evidencing, referring to, or relating in any way to the construction, inspection, condition, repair, and/or proposed repairs of SUBJECT PROPERTY prior to the original first sale of the SUBJECT PROPERTY, including, but not limited to, all applications, permits, inspection cards, plans, soils reports, sketches, calculations, specifications, submittals, inspection records, photos, notices of completion, correspondence, construction meeting minutes, daily log books, approval records, memos, and notes.
18. All DOCUMENTS evidencing, referring to, or relating in any way to any communications of any kind between \_\_\_\_\_ and any design professional, engineer, planner, developer, contractor, subcontractor or supplier relating to the planning, development, design, construction, inspection, consideration, approval, condition, repair, and/or proposed repairs to the SUBJECT PROPERTY prior to the first sale of the SUBJECT PROPERTY by Developer.
19. All DOCUMENTS reflecting communications between YOU and any other person or entity relating to design, construction, inspection, maintenance, correction of incomplete or defective work, or repair of the SUBJECT PROPERTY, including plaintiffs, any named party to this action, and/or anyone associated with the original SUBJECT PROPERTY construction.

20. All work schedules, progress schedules, time logs, bar charts, flow charts, SUBJECT PROPERTY, time tables, revisions, amendments or updates of any similar DOCUMENTS including summaries thereof, developed or utilized in connection with the SUBJECT PROPERTY.
21. All memoranda, reports, minutes, or other DOCUMENTS pertaining to any pre-job meetings, progress meetings, or other meetings between any party performing work relating to the SUBJECT PROPERTY.
22. All reports, surveys, test data, and “as-built” data and drawings and all correspondence, memoranda, and other DOCUMENTS which refer or relate to such reports, surveys, test data, and “as-built” data and drawings.
23. All memoranda, reports, charts, notes, or other DOCUMENTS pertaining to any and all delays in the SUBJECT PROPERTY.
24. All daily reports, field reports, logs, records, photos, diaries or other such DOCUMENTS reflecting the progress, conditions, and activities of the SUBJECT PROPERTY.
25. All reports, memoranda, and other DOCUMENTS concerning inspections of the SUBJECT PROPERTY by YOU or anyone else.
26. All DOCUMENTS purporting to be certificates of substantial or final completion, job inspection cards, or notices of completion pertaining to the SUBJECT PROPERTY.
27. All laboratory and testing reports pertaining to any portion of work performed at the SUBJECT PROPERTY.
28. All requests for information, interpretation, and clarification of any SUBJECT PROPERTY documents, plans, and specifications and all logs, files, and responses thereto.
29. All internal memoranda, telephone call records, diaries, reports, files or records pertaining to the SUBJECT PROPERTY.
30. All DOCUMENTS concerning quality control procedures, supervision, coordination, and related orders by the County, construction manager, architects, engineers, contractors, subcontractors, consultants, YOU, or other persons or entities pertaining to the SUBJECT PROPERTY.
31. All notices, warnings, or other similar DOCUMENTS that evidence, refer to or relate to any criticisms or complaints of the work performed by any contractor or design professional pertaining to the SUBJECT PROPERTY.
32. To the extent not produced in response to any of the foregoing, YOUR entire job files relating in any way to YOUR involvement in the SUBJECT PROPERTY.

**To be produced by GENERAL CONTRACTOR, SUBCONTRACTORS, DESIGN PROFESSIONALS, or named material SUPPLIERS.**

33. All DOCUMENTS reflecting YOUR work performed on, or materials supplied to, the SUBJECT PROPERTY including all contracts and contract related documents such as bid documents, proposals, contracts, subcontracts, sub-subcontracts, purchase orders, addendums, change orders, invoices, lien releases, cost cards, requests for information to the construction manager and/or financial records relating to whether YOU were paid for work at the SUBJECT PROPERTY.

34. All plans, diagrams, sketches, designs, architectural drawings, structural drawings, civil drawings, electrical drawings, landscape drawings, mechanical drawings, plumbing drawings, and shop drawings pertaining to the SUBJECT PROPERTY.

35. All DOCUMENTS evidencing, referring to, or relating to any potential or actual changes and/or deviations from the original approved SUBJECT PROPERTY plans, specifications, calculations, and/or contract documents, whether approved or not approved, including, but not limited to, all change orders, field orders, work orders, and proposals for changes in the work on the SUBJECT PROPERTY.

36. All DOCUMENTS relating to any requests for inspection and/or repairs to work performed at the SUBJECT PROPERTY including all warranty repair requests.

37. All DOCUMENTS reflecting communications between YOU and any other person or entity relating to design, construction, inspection, maintenance, correction of incomplete or defective work, or repair of the SUBJECT PROPERTY, including plaintiffs, any named party to this action, and/or anyone associated with the original SUBJECT PROPERTY construction.

38. All General Liability and Professional Liability insurance policies, including but not limited to: 1) all policy forms, endorsements and the declarations page of each, and 2) all additional insured endorsements and certificates of insurance issued to or naming any party to this litigation and/or the SUBJECT PROPERTY, for the time period from the date original construction of the SUBJECT PROPERTY began to the present.

39. All property, installation floater or Builders Risk insurance policies covering damage to the SUBJECT PROPERTY, that were in effect from the date construction began on the SUBJECT PROPERTY to the present.

**PROTOCOL FOR PRODUCTION OF  
ELECTRONICALLY STORED  
INFORMATION**

**EXHIBIT C**

# PROTOCOL FOR PRODUCTION OF ELECTRONICALLY STORED INFORMATION

The Parties shall review and comply with the processes and requirements set forth below regarding Electronically Stored Information (ESI) and/or database creation, and/or submit questions/issue regarding the same to the \_\_\_\_\_ for a decision regarding the following issues within 15 days of this Order:

1. The format for ESI production. ESI is to be copied to removable media in a manner that allows for the tracing and appreciation of the original file location and /or path. Multiple sources of ESI may be combined onto one or more removable media platforms/devices for storage convenience (e.g., hard drive, flash drive, CD, or DVD) as long as each original storage location is noted as a separate filepath thereon. ESI shall be produced to the Depository in PDF (printed) format, with standard metadata, including but not limited to the following: Emails: To, From, CC, BCC, Subject, Date Sent, Date received, Date Read, INTMSGID (and/or MD5Hash Code); Non-Email: Application, Filename, File Path, Date Created, Date Modified, Date Accessed. The Depository shall be available to assist with the harvesting, organizing and consolidating of ESI, and the conversion of ESI from Native form to PDF form, as are other third-party vendors; the cost of such processing shall be borne by the depositing party alone.

2. Image format for other document production shall be PDF or Tiff.

3. Use of the repository for pre-production review. If any party needs this function, other parties shall reasonably accommodate such in the designation/selection of the Depository and/or Depository database selection. In such case, the producing party shall not be deemed to have Deposited the documents until after their review is concluded and/or until they issue a Notice of Deposit. The Depository will ensure that the pre-deposit receipt of documents is secure and not accessible to other parties until such time and to the extent directed by the producing party. Any party opting to use the Depository for such purpose shall be solely responsible for all charges from the Depository regarding its document processing prior to Deposit into the joint database.

4. E-discovery Bates Numbering. ESI shall be numbered differently from the paper documents using a document-level numbering scheme (XXX-ESI-1234567.pag) for electronic documents (for ease of reference, XXX1234567.pag may be used for non-SI documents) or similar numbering scheme that allows for post-Deposit repagination without creating database irregularities and provides for logical/specific identification of pagination within documents.

5. Original document retention. All original ESI (i.e., the Native files) shall be maintained, duplicated for redundancy, and secured by the producing party for the duration of the matter, plus six months. Paper documents scanned for Deposit shall also be maintained and secured for the same period. Should it become necessary to provide access to specific files or file formats (i.e., spreadsheets, databases, and proprietary formats such as Primavera schedules, CAD files, etc., which are not readily "printable" or "reviewable" in PDF format), Any party can request such from any other party by specifying the Bates ID of the image(s) of the document(s) in question. The producing party shall thereafter either produce the requested Native files to the Depository or seek a protective order within 10 days.

6. Forensic considerations. Barring a showing a good cause, parties are not required to submit to or perform forensic evaluation of media (hard drives, computers, etc.). Requests related to such should be made as soon as possible to the \_\_\_\_\_, and will be granted upon a showing of good cause and after a hearing. Absent evidence, allegations, or indications of (potential) fraud or other compelling circumstance, the default preservation method will be back-up of material to removable digital media with no preservation of original hard drives; should a party require more of an opponent, costs may be shifted to the demanding party upon request.