

CAUSE NO. 2019-33415

ABEL AND NANCY VERA, et al.
Plaintiffs,

vs.

**FIGURE FOUR PARTNERS, LTD., PSWA, INC.,
and REBEL CONTRACTORS, INC.**
Defendants.

§ **IN THE DISTRICT COURT OF**
§
§
§ **HARRIS COUNTY, TEXAS**
§
§
§
§ **234th JUDICIAL DISTRICT**

CONSOLIDATED WITH

CAUSE NO. 2019-34366

JEFFREY ATWOOD, et al.
Plaintiffs,

vs.

**FIGURE FOUR PARTNERS, LTD., PSWA, INC., and
REBEL CONTRACTORS, INC.**
Defendants.

§ **IN THE DISTRICT COURT OF**
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§ **HARRIS COUNTY, TEXAS**
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§
§ **11th JUDICIAL DISTRICT**

CONSOLIDATED WITH

CAUSE NO. 2019-36139

JENNIFER BECKER, et al.
Plaintiffs,

vs.

**FIGURE FOUR PARTNERS, LTD., PSWA, INC.,
and REBEL CONTRACTORS, INC.**
Defendants.

§ **IN THE DISTRICT COURT OF**
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§ **HARRIS COUNTY, TEXAS**
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§ **164th JUDICIAL DISTRICT**

PLAINTIFFS' EIGHTH AMENDED PETITION AND CERTIFICATE OF MERIT

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, **ABEL and NANCY VERA, JEFFREY and KATHY ADAMS,
RONNIE BALDON, KURT BASLER, MARCUS TICER, LEWEY and DONNA**

BECKHAM, PAUL and CHRIS BENNETT, DAVID and NORMA BURCIAGA, JAMES CASEY, CODY and MELISSA CLARK, FRANCISCO COLON, KIMBERLY RAHBANI, WENDY CURTS, SONYA DAVIS, LAWRENCE DEFURIA, PAMELA POTTER, BRIAN and JENNIFER DERBY, SYLVIE DESCOURS, CECILIA DIAZ, STEVEN and RACHEL DUERRINGER, ANTHONY DUNCAN, JOHN and MARILYN EASTON, JOHNATHAN and BLANCA EVANS, THOMAS FLAHERTY, MICHAEL and JAN FRAZIER, ROGELIO GARCIA, YESENIA GONZALEZ, JOHN GIBBS, TRAVIS GRAMS, GREG and KELLY GUY, BRADLEY HALES, JAMES and NATALIE HUMPHREY, NILDA HYNES, DONAVON and TRACI KRAHN, ADAM and JENNIFER LAURIE, RICHARD and KATHLEEN LAURIE, CARLOS LEIJA, TODD and KERRILEE MALMGREN, GARY and KAY MASSON, JOSHUA MCCOLLUM, MARTE MCDOWELL, BILLY MCKEE, PAULA BRIDGES, RICHARD and CINDY MCMAHON, RICHARD MOYER, RYAN MURPHY, KEVIN VAN NGUYEN, MARY BROOKE NICOTRA, DARYL PALMER, MONTE PENCE, JIM and JOSEPHINE PEREZ, SUSAN PETROSKI, DARREN PORTER, DEBBIE WILLIAMSON, JOHN and REBECCA PURSELL, DEAN and PETRA RINGEISEN, AARON RIOS, NATHAN and MERRIE RODRIGUEZ, ANDREW and MINERVA ROMO, TIM SHEEHY, MARTHA GOMEZ, GARY STANIZESKI, STEPHANIE and CHRISTOPHER TINER, WILLIAM and ANNE TRAPANI, WILLIAM and CHERYL TRIMBUR, SUSAN VALDES, DANA VARISCO, LUIS ALEJANDRO CANTU VAZQUEZ, JEFFREY ATWOOD, DIMITRY BEZSMERTNY, JAMES BOLDEN, MICHAEL BURKE, JAMES and DEBORAH BURNETT, PHYLLIS CARVAJAL, DAVID MILSOP, WESLEY and MARY ALICE COX, KARL DUPREE, VICKI DYKES, LARISSA FEHRENBACHER-POWELL,

JENNIFER FERNANDEZ, SHERRI FORSCHLER, JOHN WRIGHT, JIM GATLING, DARIN GILMORE, WILLIAM and CYNTHIA GOEBEL, ELIZABETH GUIDE, KIMBERLY and RICHARD HAGGERTY, JACOB HARGRAVE, BRYAN HENRY, GREGORY HOLLIDAY, RYAN and AMY HORTON, LES HURST, ANDREA LYNN JARDINICO, MICHAEL KLASNO, KEVIN and MICHELLE KINKEAD, KENNETH RAY, MARTHA, and DENISE KORANDA, WILEY and LINDA LANTZ, GARY and PAULA MCMINN, RONALD RAYMAN, JOHN and MARY REIDY, JEFFREY ROMIG, MICHAEL and LORI SCOTT, PATRICK and DEBORAH TERRELL, JOHN-RUSSELL THORNBURG, ALICE THROCKMORTON, DANIEL and MARIA WARING, SUSAN and ROBERT WEBB, SHAREL WEBBER, REGINA WHEATLEY, ABDULA MILES, DAVID WHITE, RHONDA WHITESELL, LEONARD WIGGINS, JR., DAVID and CATHERINE YOUNG, JENNIFER BECKER, WALTER STEWART, WILLIAM BUTLER, HUGO CHAMBON, SCOTT CRAWFORD, THOMAS CURCIO, JESSICA and BEATRIZ DAVENPORT, MABEL FLOYD, MICHAEL and DANNA GENCO, JAMES HEMPEL, NGOC HUONG THI LE, PETER JEDRZYNSKI, AMY and JASON LOWERY, JESSICA MENCHACA, JOSEPH and CHARLOTTE NICKNISH, PETER and MARTA RICHARDSON, JAMES and SANDRA ROACH, JEFFREY ROBINSON, RYAN RODRIGUEZ, BARBARA SMITH, DONALD, ELEANOR, and DANIEL TAYLOR, LINDA and TERRY TRAYLOR, BRIAN and SHARON VOORHES, DEBORAH YOCHAM, RUTH MALINS, CAROLYN CLARK ROBIN, MATTHEW SCARAMUZZI, ALYSON and RANDAL STEVENS, MICHAEL JORDAN, CARL and WENDA MUELLER, JOSEPH NOZEMACK, IAN ROBINSON, TONYA TRISTAN, AARON FULLER, JULIE GREEN, WILLIAM RITTER, PETER PAUL and MERCEDES

BILNOSKI, EDWARD and JAN THERRIEN, SHAH JAHAN, SALVADOR and MICHELLE SANCHEZ, LEAH GYURE, JACK and SHARON DOVER, JAMES and JENNIFER GOODE, THERESA HARPER, NANCY SCARLETT, PETER VERZAL, CHRISTOPHER FREY, CHRISTINA DE VILLAR, MARK and CALI WOOD, VICKI JOHNSON, SUNG CHUL YOON, CALVIN CANUP, BEN THOMAS, MICHAEL and MICHELLE ANTASH, KEITH BYRD, IRA, LEAH, and MELISSA DEAN, GWENDOLYN JEANNINE JONES, DAVID and PAMELA OTT, KEELY PIERCE, BRIAN MCKENDREE, ANDREW and KIMBER POTTER, SHARON and JAMES SCOTT, DANIEL WILLIAMS, WALTER MATTHEWS, JULIE SHEARER, FELIX ESCOTO, SONIA OSBORNE, KATHRYN CHAPMAN, KEN KOETTER, FAIRY EFFECTS II, INC., DAVID KENT, III and JONELL KENT, HEATHER SUGGITT, MANISH and ALISHA PATEL, JAMES DANIEL ATKINSON, BRENDAN and MIRANDA ARNOLD, DALE LONG, TIMOTHY and CYNTHIA MOBLO, FRANCIS CARR, SR., DARRELL GREGORY, REYNALDO ECHAVARRIA, IRMA VILLANEDA, ROGER REYNOLDS, ROBERTA FRANK, MANDY DANLEY, GREGORY ALBRITTON, LISBETH BARBARA, CHRISTOPHER BERRIESFORD, JOHN and LINDA BOGERT, WALTER and ROSA BOLTON, ERICA and CHRISTOPHER BOWMAN, JESSICA BRONCY, STEVEN and ROSALIE BRYANT, CHRIS and REBECCA CARROLL, VICTOR and JOSEFINA CARVAJAL, APRIL COBB, RICKY and EDYTHE COGDILL, ANN CONKLIN, CORNELIUS CONNELLY, JR., JENNIFER COOK, LEE and LAUREN COOK, JEREMY and DENISE COWAN, JAY D'ABBRACCIO, SCOTT and LORA DICKERSON, MARC and DELIA EMMS, JOHN FAULK, BOBBY and SHERYL FORBES, MARK and ROBIN GAINOUS, MARY

GANDY, SUSAN GARRETT, ANGELINA and GARY LYNN GARRISON, RAYMOND and CATRINA GILES, CAROL GOLDEN, PATRICK and ASHLEY GONZALES, GUSTAVO GONZALEZ, PAUL and CAMILLE GRAZDA, JENNIFER GUEST, JOHN HAGAN, BILLY HARRIS, JR., CHARLYE HEBERT, JAMES and CONNIE HELM, DAVID HENDERSON, FRANCES GASSIOTT, THELENA KIMBERLY HERNANDEZ, KATHLEEN HOLLOWAY, BENNY HONORAT, ADA HURTADO, CONRAD JONES, JASON JUBERT, ANTONY JUSTIN, WALTER KANE, ALLAN KELLOGG, JOHNNY and KIMBERLEY KENDRICK, DAVID and TRACI KENEIPP, JASON KNOUSE, RICKY KOSECKI, DEVIN MAESTAS, KENNETH MATTHEWS III, JUNE MCCLURG, DWIGHT and HILDA MEYER, PETER and SUSAN MITCHELL, BOBBY and JOY MOCK, MELANIE NELSON, ANNAREE PANZER, CORY PEEK, ANGEL and WILFREDO PENATE, BLAKE PENNINGTON, KRISTIN BATTIN, RUBEN and THEADORA PRUNEDA, MELANIE RIGGS, BETHANY ROACH, EDWARD ROBERTS, DAVID ROTBERG, MICHAEL and LISA RYAN, KELLY SACHS, ERIN SCHAUGAARD, JEFFREY and BRENDA SHERWOOD, JEFF and CANDI SMITH, PAUL and CHRISTIE SONNIER, SHARON SPEARS, DIANNE STAFFORD, MICHAEL TALIANCHICH, CAROLYN TARLOFF, MYRNA TINNELL, WILLIAM and MARILYN TODD, JASON and WENDY VAN LOO, MISAEL VERA, FRANCISCO VILLANUEVA, GUILLERMINA CASTILLO, DANIEL and KIMBERLY WATKINS, RICHARD WILLETTS, LAURA TREVINO, LEO WILLIAMS, TIMOTHY and MARLA WORTMAN, DONNA WYNNE, DAVID BROUSSARD, GREGORY BROWN, MISAEL ESCOBAR, PAUL GARCIA, BRANDON HOWARD, ROGER and CAROLYN HOWARD, BEVERLY HUGHES, JOHN HULON, ALAN JOST, SCOTT KLEIN and CHERYL

YOUNG-KLEIN, SEAN KREY, PATRICK MCHUGH, DONALD and AMBER NEILSSIEN, TOM PAVLICEK, VICTORIA ROSELLA, PAUL ROUGEAU, PATRICK SCOTT, PATRICK and LEESA SHANAHAN, LESTER WAGUESPACK, JR., ELM GROVE VILLAGE COMMUNITY ASSOCIATION, JOSEPH CATE, PATRICK and BETTY LINDSAY, CARLYN BARBIER, WING “HERMAN” CHAN, SUN CHO, and CHRISTINE CHIANG, WILLIAM and CATHRYN COSCHIGANO, RHONDA ELLIS, ENGELCO HOLDINGS TEXAS LLC, CHRISTIAN JORDAN, HEATHER LOVE, CRAIG MULLENIX, DAVID PEACHER, JAMES PROPP, COLE ROSS TRUITT, JR., JIMMIE WELCH, SUIXING ZHANG, KEITH and KATHERINE DANZ, GREGORY KINCADE, PAMELA PRATS, and PAUL VILLAGOMEZ (collectively referred to as “Plaintiffs”), and file this Petition complaining of **FIGURE FOUR PARTNERS, LTD., PSWA, INC., REBEL CONTRACTORS, INC., DOUBLE OAK CONSTRUCTION, INC., TEXASITE LLC, LJA ENGINEERING, INC., PERRY HOMES, LLC, CONCOURSE DEVELOPMENT LLC, and STORM WATER SOLUTIONS, LLC** (collectively referred to as “Defendants”), and for cause of action would respectfully show the following:

DISCOVERY LEVEL DESIGNATION

1. Plaintiffs intend to conduct discovery in accordance with Rule 190.4 of the Texas Rules of Civil Procedure, also known as "Level 3" Discovery Control Plan, and as such, requests a discovery control plan be entered herein. Plaintiffs affirmatively plead that this suit is not governed by the expedited-actions process in Rule 169 of the Texas Rules of Civil Procedure.
2. In accordance with the Texas Rules of Civil Procedure 47, Plaintiffs allege that this is a claim for only monetary relief in a sum over \$1,000,000.00, and a demand for judgment for all other relief to which Plaintiffs may show themselves to be entitled, including but not limited to

damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees. Plaintiffs would show that The Rules of Civil Procedure require Plaintiffs to set forth such demand or claim but that Plaintiffs represent that the Jury and/or Trier of Fact are charged with such final determination and Plaintiffs do not seek to represent or assert that the Rules of Civil Procedure do not require Plaintiffs to honor in any way take away or impugn the obligations, duties and/or considerations of the Jury or Trier of Fact.

PARTIES

3. Plaintiffs are residents in Kingwood, Harris County, Texas.
4. Defendant **FIGURE FOUR PARTNERS, LTD.** (“Figure Four”), has been duly served and made an appearance in this matter, subject to a motion to transfer venue.
5. Defendant, **PSWA, INC.** (“PSWA”), has been duly served and made an appearance in this matter, subject to a motion to transfer venue.
6. Defendant, **REBEL CONTRACTORS, INC.** (“Rebel”), has been duly served and made an appearance in this matter.
7. Defendant, **DOUBLE OAK CONSTRUCTION, INC.** (“Double Oak”), has been duly served and made an appearance in this matter.
8. Defendant, **TEXASITE LLC** (“Texasite”), has been duly served and made an appearance in this matter.
9. Defendant, **LJA ENGINEERING, INC.** (“LJA”) has been duly served and made an appearance in this matter.
10. Defendant, **PERRY HOMES, LLC** (“Perry Homes”) has been duly served and made an appearance in this matter.
11. Defendant, **CONCOURSE DEVELOPMENT LLC** (“Concourse”) has been duly

served and made an appearance in this matter.

12. Defendant, **STORM WATER SOLUTIONS, LLC** (“Storm Water Solutions”), is a Texas company that does business in Harris County, Texas and may be served by and through its registered agent, Steven E. Krejci, at 16110 Hollister Street, Houston, Texas 77066 or wherever he may be found.

VENUE AND JURISDICTION

13. The present Court has personal jurisdiction over the parties as they are citizens of Texas or otherwise have minimum contacts with the State of Texas. The Court has subject matter jurisdiction as the amount in controversy is within the limits of the Court, and no other court has exclusive jurisdiction.

14. Venue is proper in the present forum as this cause of action because the Defendant, Figure Four, has its principal office in Harris County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(3). Venue is also mandatory in Harris County, Texas under Tex. Civ. Prac. & Rem. Code § 15.0011 because Plaintiffs’ causes of action stem from damages to real property.

BACKGROUND/FACTUAL ALLEGATIONS

15. Figure Four, PSWA, Perry Homes, and Concourse (collectively referred to as the “Developer Defendants”) are land developers. Figure Four is a subsidiary of PSWA and both are subsidiaries of Perry Homes. In 2018, the Developer Defendants, purchased and began developing a plot of land near Kingwood, Texas they referred to as the Woodridge Village Development bordering the north side of Elm Grove (hereinafter referred to as the “Development”). On information and belief, Figure Four and/or Concourse owned the land that makes up the Development.

16. The Development is intended for a residential community and is neighboring the north side

of Elm Grove. Plaintiffs are residents of the Elm Grove neighborhood and prior to May 7, 2019, Plaintiffs' homes have never flooded.

17. In March 2018, Figure Four hired LJA to design and engineer plans for the Development. As part of LJA's tasks, it was required to provide specifications for the drainage on the Development.¹ The Development was located in Montgomery County and LJA was required to comply with the Drainage Criteria Manual ("DCM") for Montgomery County. At the time, the most recent update to Montgomery County DCM was in December 2014. However, LJA followed the November 1989 DCM for the Development, even though there was a more recent DCM available.

18. Regardless, LJA submitted its plans to the Developer Defendants for approval. The Developer Defendants reviewed and accepted the proposed engineering plans and started the construction phase of the Development. Figure Four retained LJA without properly reviewing the specifications and plans for the Development but allowed construction of the Development to move forward. As part of Figure Four's responsibility under their contract with LJA, Figure Four was to oversee LJA's work at the Development and make decisions as to how the Development was constructed.

19. The Developer Defendants hired LJA to prepare bid documents and plans and specifications, all of which required a storm water pollution prevention plan, as required by law, for all potential contractors. Each contractor submitted bids for their respective work, which included the cost for the work and materials for the compliance with the storm water pollution prevention plan. Together, the Developer Defendants and LJA, through the municipal utility district, hired Rebel, Double Oak, and Texasite (collectively referred to as the "Contractor

¹ Exhibit A - Certificate of Merit by L. David Givler, MSCE, PE, which provides the basis for the facts and claims made against LJA Engineering, Inc. This is incorporated by reference for all allegations against LJA.

Defendants”) as the contractors to prepare the Development for construction. Double Oak and Rebel obtained the necessary permits for the storm water pollution prevention plan. Sometime thereafter, the Developer Defendants hired Storm Water Solutions to implement the Storm Water Pollution Prevention Plan and instructed Double Oak and Rebel that they did not have to comply with the plans and specifications for the Storm Water Pollution Prevention Plan. Storm Water Solutions did not obtain any permits. The duties of Double Oak and Rebel to comply with the Storm Water Pollution Prevention Plan were non-delegable duties, which the Developer Defendants and LJA violated.



20. As of May 7, 2019, the Development was not completed, but Defendants began the removal of trees, vegetation, and debris from the Development. Defendants trenched out certain areas and added box culverts in an attempt to create drainage for the Development. Defendants also filled in existing creeks and drainage channels while developing the land and failed to properly construct

retention ponds on the Development. The Developer Defendants also directed the Contractor Defendants to remove the levee and/or berm located on the Development on the southside of Taylor Gully. The Developer Defendants ordered this levee and/or berm be removed even though it was not included in LJA's engineering plans.

21. Additionally, as Defendants cleared the land, they allowed the Development to slope toward Plaintiffs' neighborhood such that water would flow directly towards Plaintiffs' homes.



22. On May 7, 2019, a rainfall no worse than any other rainfall Plaintiffs have experienced in the last 25 years hit the Kingwood area. The water drained from the Development directly into

Elm Grove's streets and into Plaintiffs' homes. This water caused extreme damage to the structures and the personal effects of the Plaintiffs.

23. On May 8, 2019, the Developer Defendants hired Concourse to inspect the Development and the existing detention on the Development. On information and belief, Concourse did not advise the Developer Defendants to make any changes to the detention.

24. All Defendants failed to comply with the Storm Water Pollution Prevention Plan. Both Double Oak and Rebel were cited by the TCEQ for violations of their permits after the May 7, 2019 occurrence.

25. On September 19, 2019, after Defendants knew of the flooding the Development caused, another rainfall hit the Elm Grove neighborhood. Again, this rainfall was not a heavy rainfall, but the Development flushed the water into Elm Grove and flooded homes throughout the neighborhood.

26. There is nothing that Plaintiffs did to contribute to this flooding.

COUNT 1

SEC. 11.086 OF THE TEXAS WATER CODE. OVERFLOW CAUSED BY DIVERSION OF WATER – STRICT LIABILITY AGAINST FIGURE FOUR PARTNERS, LTD.

27. Figure Four's conduct created a diversion and/or impoundment of surface water during the storm by blocking drainage channels and filling in existing creeks prior to May 7, 2019. This diversion and impoundment of the surface water by the defective construction proximately caused the flooding of Plaintiffs' home. This flooding was the cause of the damages to Plaintiffs' homes pursuant to the Tex. Water Code Ann. § 11.086 (West).

28. Section 11.086 of the Texas Water Code states that "No person may divert or impound the natural flow of surface waters in this state, or permit a diversion or impounding by him to continue, in a manner that damages the property of another by the overflow of the water diverted

or impounded.” Tex. Water Code Ann. § 11.086 (West). Figure Four’s conduct as described herein created a diversion and/or impoundment of the natural flow of surface water. This diversion and/or impoundment proximately caused the flooding of Plaintiff’s property. Defendant is subject to strict liability pursuant to the Texas Water Code and common law.

29. Following the May 7th occurrence, Figure Four did not take any correction to correct the diversion of water from Woodridge Village to Elm Grove. Again, on September 19, 2019, a second occurrence took place, whereby surface water was diverted from Woodridge Village into Elm Grove, flooding Plaintiffs’ homes again. Figure Four’s inactions following the May 7th occurrence provides punitive damages to Plaintiffs.

COUNT 2

SEC. 11.086 OF THE TEXAS WATER CODE. OVERFLOW CAUSED BY DIVERSION OF WATER – STRICT LIABILITY AGAINST PSWA, INC.

30. PSWA’s conduct created a diversion and/or impoundment of surface water during the storm by blocking drainage channels and filling in existing creeks prior to May 7, 2019. This diversion and impoundment of the surface water by the defective construction proximately caused the flooding of Plaintiffs’ home. This flooding was the cause of the damages to Plaintiffs’ homes pursuant to the Tex. Water Code Ann. § 11.086 (West).

31. Section 11.086 of the Texas Water Code states that “No person may divert or impound the natural flow of surface waters in this state, or permit a diversion or impounding by him to continue, in a manner that damages the property of another by the overflow of the water diverted or impounded.” Tex. Water Code Ann. § 11.086 (West). PSWA’s conduct as described herein created a diversion and/or impoundment of the natural flow of surface water. This diversion and/or impoundment proximately caused the flooding of Plaintiff’s property. Defendant is subject to strict liability pursuant to the Texas Water Code and common law.

32. Following the May 7th occurrence, PSWA did not take any correction to correct the diversion of water from Woodridge Village to Elm Grove. Again, on September 19, 2019, a second occurrence took place, whereby surface water was diverted from Woodridge Village into Elm Grove, flooding Plaintiffs' homes again. PSWA's inactions following the May 7th occurrence provides punitive damages to Plaintiffs.

COUNT 3

SEC. 11.086 OF THE TEXAS WATER CODE. OVERFLOW CAUSED BY DIVERSION OF WATER – STRICT LIABILITY AGAINST PERRY HOMES, LLC

33. Perry Homes' conduct created a diversion and/or impoundment of surface water during the storm by blocking drainage channels and filling in existing creeks prior to May 7, 2019. This diversion and impoundment of the surface water by the defective construction proximately caused the flooding of Plaintiffs' home. This flooding was the cause of the damages to Plaintiffs' homes pursuant to the Tex. Water Code Ann. § 11.086 (West).

34. Section 11.086 of the Texas Water Code states that "No person may divert or impound the natural flow of surface waters in this state, or permit a diversion or impounding by him to continue, in a manner that damages the property of another by the overflow of the water diverted or impounded." Tex. Water Code Ann. § 11.086 (West). Perry Homes' conduct as described herein created a diversion and/or impoundment of the natural flow of surface water. This diversion and/or impoundment proximately caused the flooding of Plaintiff's property. Defendant is subject to strict liability pursuant to the Texas Water Code and common law.

35. Following the May 7th occurrence, Perry Homes did not take any correction to correct the diversion of water from Woodridge Village to Elm Grove. Again, on September 19, 2019, a second occurrence took place, whereby surface water was diverted from Woodridge Village into Elm Grove, flooding Plaintiffs' homes again. Perry Homes inactions following the May 7th

occurrence provides punitive damages to Plaintiffs.

COUNT 4

SEC. 11.086 OF THE TEXAS WATER CODE. OVERFLOW CAUSED BY DIVERSION OF WATER – STRICT LIABILITY AGAINST CONCOURSE DEVELOPMENT LLC

36. Concourse’s conduct created a diversion and/or impoundment of surface water during the storm by blocking drainage channels and filling in existing creeks prior to May 7, 2019. This diversion and impoundment of the surface water by the defective construction proximately caused the flooding of Plaintiffs’ home. This flooding was the cause of the damages to Plaintiffs’ homes pursuant to the Tex. Water Code Ann. § 11.086 (West).

37. Section 11.086 of the Texas Water Code states that “No person may divert or impound the natural flow of surface waters in this state, or permit a diversion or impounding by him to continue, in a manner that damages the property of another by the overflow of the water diverted or impounded.” Tex. Water Code Ann. § 11.086 (West). Concourse’s conduct as described herein created a diversion and/or impoundment of the natural flow of surface water. This diversion and/or impoundment proximately caused the flooding of Plaintiff’s property. Defendant is subject to strict liability pursuant to the Texas Water Code and common law.

38. Following the May 7th occurrence, Concourse did not take any correction to correct the diversion of water from Woodridge Village to Elm Grove. Again, on September 19, 2019, a second occurrence took place, whereby surface water was diverted from Woodridge Village into Elm Grove, flooding Plaintiffs’ homes again. Concourse’s inactions following the May 7th occurrence provides punitive damages to Plaintiffs.

COUNT 5

NEGLIGENCE, NEGLIGENT RETENTION, NEGLIGENT SUPERVISION, AND NEGLIGENCE PER SE AND GROSS NEGLIGENCE FOR MAY 7, 2019 AGAINST DEVELOPER DEFENDANTS

39. Plaintiffs would show that the incident and injuries and damages giving rise to the May 7, 2019 flooding were proximately caused by the negligence of the Developer Defendants acting by or through their agents or employees, jointly, severally, singularly and together in any combination. The actions and omissions of the Developer Defendants, acting by or through their agents or employees, jointly, severally, singularly and together in any combination constitute negligence and/or gross negligence which proximately resulted in injuries and damages being suffered by Plaintiffs.

40. The Developer Defendants entered into an agreement whereby they agreed to perform the following with respect to the Development:

- a. Make exhaustive or continuous on-site inspections to check the quality or quantity of the work;
- b. Be responsible for the techniques and sequences of construction or the safety precautions incident thereto; and,
- c. Be responsible or liable for the contractors' failure to perform the construction work in accordance with the contract documents.

41. The negligent actions and/or omissions of the Developer Defendants, acting by or through its agents or employees, jointly, severally, singularly, and together in any combination, include but are not limited to:

- a. Failing to make exhaustive or continuous on-site inspections to check the quality or quantity of the work;
- b. Failing to properly monitor the techniques and sequences of construction or the safety precautions to ensure Elm Grove would not flood during construction;
- c. Failing to ensure the contractors performed the construction work in accordance with the contract documents;
- d. Failing to incorporate drainage studies prior to initiating construction on the Development;
- e. Failing to properly direct and supervise the means, methods, and techniques of the sequence in which the Contractor Defendants performed the work on the

Development;

- f. Removing drainage from the Development;
- g. Removing a levee and/or berm from the Development;
- h. Failing to implement a proper construction schedule;
- i. Failing to follow the construction schedule;
- j. Blocking the drainage channels;
- k. Filling in existing drainage channels;
- l. Failing to properly install box culverts;
- m. Failing to create temporary drainage channels;
- n. Failing to allow adequate drainage after construction;
- o. Failing to install silt barriers;
- p. Allowing the Development to force rainfall toward Plaintiffs' homes;
- q. Diverting surface water towards Plaintiffs' homes;
- r. Failing to pay proper attention;
- s. Failing to provide notice or warning;
- t. Failing to have a proper rain event action plan;
- u. Failing to have a proper storm water pollution prevention plan;
- v. Failing to comply with the storm water pollution prevention plan;
- w. Failing to ensure Storm Water Solutions complied with the Storm Water Pollution Prevention Plan;
- x. Failing to properly direct and supervise the means, methods, and techniques of the sequence in which Storm Water Solutions performed the work on the Development;
- y. Failing to coordinate activities and/or conduct;
- z. Failing to supervise the activities of the Development and engineering;
- aa. Failing to instruct in proper construction and/or drainage requirements;

- bb. Failing to train in proper construction and/or drainage requirements,
- cc. Failure to review engineering plans;
- dd. Failing to comply with the Terracon Consultants, Inc. report;
- ee. Failing to construct the emergency release channel;
- ff. Failing to timely implement the detention ponds;
- gg. Allowing inadequate construction to take place; and,
- hh. Failing to hire an adequate engineer to implement the project plan.

42. Plaintiffs allege that the Developer Defendants failed to protect the water runoff from flooding Plaintiffs' homes and did not protect Elm Grove from flooding during construction.

43. Further, all employees, contractors, subcontractors, independent contractors, agents, representatives, and/or individuals under the control of the Developer Defendants were, at all material times, acting within the course, scope, and direction of the Developer Defendants. Accordingly, the Developer Defendants are also liable for Plaintiffs' injuries under the doctrine of *respondeat superior*, vicarious liability, and applicable theories of agent/servant liability.

44. The acts or omissions of the Developer Defendants, when viewed objectively from its standpoint at the time of their occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. These acts and omissions were more than momentary thoughtlessness, inadvertence, or error of judgment. Rather, the Developer Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others. Such acts and/or omissions were a proximate cause of the flooding and the resulting injuries and damages sustained by Plaintiffs. Accordingly, Plaintiffs hereby seek an award of exemplary damages.

45. Furthermore, the aforementioned conduct of the Developer Defendants was willful and/or

motivated by the conscious disregard to the rights and welfare of others. Therefore, Plaintiffs are entitled to recover both actual and exemplary damages from Defendants as set forth above, together with prejudgment and post-judgment interest at the highest rate allowed by law, and all costs of court.

46. Pleading further and/or in the alternative, Plaintiffs would show that they cannot more specifically allege the acts of negligence on the part of the Developer Defendants, acting by or through their agents or employees, jointly, severally, singularly and together in any combination for the reason that the facts in that regard are peculiarly within the knowledge of each Defendant and, in the alternative, in the event Plaintiffs are unable to prove specific acts of negligence, Plaintiffs rely on the doctrine of *res ipsa loquitor*. In this connection, Plaintiffs will show that the Developer Defendants have exclusive control of the construction and or matters or things that caused damage about which this complaint is made. Plaintiffs have no means of ascertaining the method or manner in which the incident was caused to occur other than through the Developer Defendants. The occurrence causing harm to the Plaintiffs as described above, was one which, in the ordinary course of events, would not have occurred without negligence on the part of the Defendants. Thus, Defendants acting by or through their agents or employees are/were negligent in their use and/or operation of its respective equipment and materials involved and such negligence was a proximate cause of the injuries and damages of Plaintiffs.

COUNT 6

NEGLIGENCE, NEGLIGENCE *PER SE* AND GROSS NEGLIGENCE FOR SEPTEMBER 19, 2019 AGAINST THE DEVELOPER DEFENDANTS

47. Plaintiffs would show that the incident and injuries and damages giving rise to the September 19, 2019 flooding were proximately caused by the negligence of the Developer Defendants and Concourse acting by or through their agents or employees, jointly, severally,

singularly, and together in any combination. The actions and omissions of the Developer Defendants and Concourse, acting by or through their agents or employees, jointly, severally, singularly, and together in any combination constitute negligence and/or gross negligence which proximately resulted in injuries and damages being suffered by Plaintiffs.

48. The Developer Defendants entered into an agreement whereby they agreed to perform the following with respect to the Development:

- a. Make exhaustive or continuous on-site inspections to check the quality or quantity of the work;
- b. Be responsible for the techniques and sequences of construction or the safety precautions incident thereto; and,
- c. Be responsible or liable for the contractors' failure to perform the construction work in accordance with the contract documents.

49. By September 19, 2019, the Developer Defendants had actual knowledge that the Development caused flooding to the residents of Elm Grove yet failed to provide any corrective measures.

50. The negligent actions and/or omissions of the Developer Defendants, acting by or through its agents or employees, jointly, severally, singularly, and together in any combination, include but are not limited to:

- a. Failing to make exhaustive or continuous on-site inspections to check the quality or quantity of the work;
- b. Failing to properly monitor the techniques and sequences of construction or the safety precautions to ensure Elm Grove would not flood during construction;
- c. Failing to ensure the contractors performed the construction work in accordance with the contract documents;
- d. Failing to incorporate drainage studies prior to initiating construction on the Development;
- e. Failing to properly direct and supervise the means, methods, and techniques of the sequence in which the contractors performed the work on the Development;

- f. Knowingly allowing the Development to remain with inadequate drainage;
- g. Failing to timely construct detention/retention ponds;
- h. Failing to take any corrective action to fix the draining on the Development;
- i. Removing drainage from the Development;
- j. Blocking the drainage channels;
- k. Filling in existing drainage channels;
- l. Failing to properly install box culverts;
- m. Failing to create temporary drainage channels;
- n. Failing to allow adequate drainage after construction;
- o. Allowing the Development to force rainfall toward Plaintiffs' homes;
- p. Failing to pay proper attention;
- q. Failing to provide notice or warning;
- r. Failing to have a proper rain event action plan;
- s. Failing to have a proper storm water pollution prevention plan;
- t. Failing to follow a proper storm water pollution prevention plan;
- u. Failing to coordinate activities and/or conduct;
- v. Failing to supervise the activities of the Development;
- w. Failing to instruct in proper construction and/or drainage requirements;
- x. Failing to train in proper construction and/or drainage requirements,
- y. Failure to review engineering plans;
- z. Failing to comply with the Terracon Consultants, Inc. report;
- aa. Failing to construct the emergency release channel;
- bb. Failing to timely implement the detention ponds; and,
- cc. Allowing inadequate construction to take place.

51. Plaintiffs allege that the Developer Defendants and Concourse failed to protect the water runoff from flooding Plaintiffs' homes and did not protect Elm Grove from flooding during construction even though they knew of the dangers.

52. Further, all employees, contractors, subcontractors, independent contractors, agents, representatives, and/or individuals under the control of the Developer Defendants and Concourse were, at all material times, acting within the course, scope, and direction of the Developer Defendants. Accordingly, the Developer Defendants and Concourse are also liable for Plaintiffs' injuries under the doctrine of *respondeat superior*, vicarious liability, and applicable theories of agent/servant liability.

53. The acts or omissions of the Developer Defendants and Concourse, when viewed objectively from its standpoint at the time of their occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. These acts and omissions were more than momentary thoughtlessness, inadvertence, or error of judgment. Rather, the Developer Defendants and Concourse had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others. Such acts and/or omissions were a proximate cause of the flooding and the resulting injuries and damages sustained by Plaintiffs. Accordingly, Plaintiffs hereby seek an award of exemplary damages.

54. Furthermore, the aforementioned conduct of the Developer Defendants and Concourse was willful and/or motivated by the conscious disregard to the rights and welfare of others. Therefore, Plaintiffs are entitled to recover both actual and exemplary damages from Defendants as set forth above, together with prejudgment and post-judgment interest at the highest rate allowed by law, and all costs of court.

55. Pleading further and/or in the alternative, Plaintiffs would show that they cannot more specifically allege the acts of negligence on the part of the Developer Defendants and Concourse, acting by or through their agents or employees, jointly, severally, singularly and together in any combination for the reason that the facts in that regard are peculiarly within the knowledge of each Defendant and, in the alternative, in the event Plaintiffs are unable to prove specific acts of negligence, Plaintiffs rely on the doctrine of *res ipsa loquitur*. In this connection, Plaintiffs will show that the Developer Defendants and Concourse have exclusive control of the construction and or matters or things that caused damage about which this complaint is made. Plaintiffs have no means of ascertaining the method or manner in which the incident was caused to occur other than through the Developer Defendants and Concourse. The occurrence causing harm to the Plaintiffs as described above, was one which, in the ordinary course of events, would not have occurred without negligence on the part of the Defendants. Thus, Defendants acting by or through their agents or employees are/were negligent in their use and/or operation of its respective equipment and materials involved and such negligence was a proximate cause of the injuries and damages of Plaintiffs.

COUNT 7
TRESPASS AGAINST DEVELOPER DEFENDANTS FOR MAY 7, 2019 AND
SEPTEMBER 19, 2019

56. A defendant commits trespass to real property where there is an “unauthorized entry upon the land of another, and may occur when one enters—or causes something to enter—another’s property.” *Barnes v. Mathis*, 353 S.W.3d 760, 764 (Tex. 2011).

57. On May 7, 2019, Figure Four’s, PSWA, Inc.’s, Perry Homes’, and Concourse’s conduct as described herein allowed the unauthorized entry of water onto Plaintiffs’ properties. The Developer Defendants’ actions and/or inactions to divert water from the Development into the

Elm Grove neighborhood and into Plaintiffs' homes constituted a trespass. This trespass proximately caused the flooding of Plaintiffs' properties and their ensuing damages.

58. Following the May 7th occurrence, the Developer Defendants did not take any action to correct the unauthorized entry of water from Woodridge Village into Elm Grove, where Plaintiffs resided. Again, on September 19, 2019, a second occurrence took place, whereby the water from Woodridge Village was diverted into Elm Grove, flooding Plaintiffs' homes again. The Developer Defendants' actions and/or inactions constitute trespass onto Plaintiffs' properties, which caused severe damages.

COUNT 8

NEGLIGENCE, NEGLIGENCE *PER SE* AND GROSS NEGLIGENCE FOR MAY 7, 2019 AND SEPTEMBER 19, 2019 AGAINST THE CONTRACTOR DEFENDANTS

59. Plaintiffs would show that the incident and injuries and damages giving rise to the May 7, 2019 and September 19, 2019 flooding were proximately caused by the negligence of the Contractor Defendants acting by or through their agents or employees, jointly, severally, singularly and together in any combination. The actions and omissions of the Contractor Defendants, acting by or through their agents or employees, jointly, severally, singularly and together in any combination constitute negligence and/or gross negligence which proximately resulted in injuries and damages being suffered by Plaintiffs.

60. The negligent actions and/or omissions of the Contractor Defendants, acting by or through its agents or employees, jointly, severally, singularly and together in any combination, include but are not limited to:

- a. Failing to timely construct detention/retention ponds;
- b. Removing the levee and/or berm from the Development;
- c. Failing to properly remove the vegetation on the Development;

- d. Failing to follow the construction schedule;
- e. Failing to follow the engineering plans;
- f. Failing to coordinate with the contractors on the construction sequence for the Development;
- g. Removing drainage from the Development;
- h. Blocking the drainage channels;
- i. Filling in existing drainage channels;
- j. Failing to properly install box culverts;
- k. Failing to create temporary drainage channels;
- l. Failing to allow adequate drainage after construction;
- m. Allowing the Development to force rainfall toward Plaintiffs' homes;
- n. Failing to pay proper attention;
- o. Failing to provide notice or warning;
- p. Failing to have a proper rain event action plan;
- q. Failing to have a proper storm water pollution prevention plan;
- r. Failing to follow a proper storm water pollution prevention plan;
- s. Failing to coordinate activities and/or conduct;
- t. Failing to instruct in proper construction and/or drainage requirements;
- u. Failing to train in proper construction and/or drainage requirements,
- v. Failure to review engineering plans;
- w. Failing to comply with the Terracon Consultants, Inc. report;
- x. Failing to construct the emergency release channel;
- y. Failing to timely implement the detention ponds;
- z. Allowing inadequate construction to take place; and,

- aa. Any or all of the above acts or inactions constitute violations of **Section 5.03 CONTRACTOR'S DUTY AND STANDARD OF CARE** of the General Conditions of the Agreement entered into by the Contractor Defendants.

61. Plaintiffs allege that the Contractor Defendants failed to protect the water runoff from flooding Plaintiffs' homes and did not protect Elm Grove from flooding during construction even though they knew of the dangers.

62. Further, all employees, contractors, subcontractors, independent contractors, agents, representatives, and/or individuals under the control of the Contractor Defendants were, at all material times, acting within the course, scope, and direction of the Contractor Defendants. Accordingly, the Contractor Defendants are also liable for Plaintiffs' injuries under the doctrine of *respondeat superior*, vicarious liability, and applicable theories of agent/servant liability.

63. The acts or omissions of the Contractor Defendants, when viewed objectively from its standpoint at the time of their occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. These acts and omissions were more than momentary thoughtlessness, inadvertence, or error of judgment. Rather, the Contractor Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others. Such acts and/or omissions were a proximate cause of the flooding and the resulting injuries and damages sustained by Plaintiffs. Accordingly, Plaintiffs hereby seek an award of exemplary damages.

64. Furthermore, the aforementioned conduct of the Contractor Defendants was willful and/or motivated by the conscious disregard to the rights and welfare of others. Therefore, Plaintiffs are entitled to recover both actual and exemplary damages from the Contractor Defendants as set forth above, together with prejudgment and post-judgment interest at the highest rate allowed by law, and all costs of court.

65. Pleading further and/or in the alternative, Plaintiffs would show that they cannot more specifically allege the acts of negligence on the part of the Contractor Defendants, acting by or through their agents or employees, jointly, severally, singularly and together in any combination for the reason that the facts in that regard are peculiarly within the knowledge of each Defendant and, in the alternative, in the event Plaintiffs are unable to prove specific acts of negligence, Plaintiffs rely on the doctrine of *res ipsa loquitur*. In this connection, Plaintiffs will show that the Contractor Defendants have exclusive control of the construction and or matters or things that caused damage about which this complaint is made. Plaintiffs have no means of ascertaining the method or manner in which the incident was caused to occur other than through the Contractor Defendants. The occurrence causing harm to the Plaintiffs as described above, was one which, in the ordinary course of events, would not have occurred without negligence on the part of the Contractor Defendants. Thus, the Contractor Defendants acting by or through their agents or employees are/were negligent in their use and/or operation of its respective equipment and materials involved and such negligence was a proximate cause of the injuries and damages of Plaintiffs.

COUNT 9
NEGLIGENCE, NEGLIGENCE PER SE AND GROSS NEGLIGENCE FOR MAY 7, 2019 AND SEPTEMBER 19, 2019 AGAINST LJA

66. LJA prides itself on being a leader in flood control and flood risk management and keeping the surrounding communities safe. Based on LJA's website, LJA believes that reducing the risk of flooding is paramount to its analysis, design, and construction phase services. LJA works with governmental agencies in designing the infrastructure of storm water systems and other flood mitigation techniques.

67. LJA has a dedicated hydrology and hydraulics team that works to provide drainage

analyses and design for its land development clients. LJA focuses on these aspects for developers because it knows that proper planning is a critical component to reducing the risk of future flooding.

68. Plaintiffs would show that the incident and injuries and damages giving rise to the May 7, 2019 and September 19, 2019 flooding were proximately caused by the negligence of the LJA acting by or through their agents or employees, jointly, severally, singularly, and together in any combination. The actions and omissions of the LJA, acting by or through their agents or employees, jointly, severally, singularly and together in any combination constitute negligence and/or gross negligence which proximately resulted in injuries and damages being suffered by Plaintiffs.

69. By virtue of the express and implied terms of LJA's contract with the Developer Defendants, LJA owed the general public a duty to perform their work on the Development in a manner which would result in safety for the surrounding communities and neighborhoods. Instead, LJA's work did not comply with the standard of care and breached its duty as a professional engineering company. *See Exhibit A Certificate of Merit by L. David Givler, MSCE, PE and incorporated by reference herein.*

70. Although the specific acts of negligence, negligence per se, and gross negligence are identified in the Certificate of Merit and fully incorporated herein, for the convenience of the Court and jury, Plaintiffs alleges the following acts of negligence against LJA:

- a. Failing to follow the correct drainage guidelines in Montgomery County;
- b. Failing to enforce the construction schedule for the Development;
- c. Failing to provide adequate drainage in the Development;
- d. Failing to adequately model the Development;

- e. Failing to adequately report the modeling;
- f. Removing drainage channels;
- g. Causing post-development discharges and water surface elevation to increase downstream of the Development;
- h. Failing to design detention ponds with adequate capabilities for rain events;
- i. Failing to use the correct hydrology method;
- j. Failing to design emergency overflows for the detention ponds;
- k. Failing to comply with the Terracon Consultants, Inc. report;
- l. Failing to notify the Developer Defendants and Contractor Defendants of the importance of the existing levee or berm; and,
- m. Other ways described in the Certificate of Merit by L. David Givler, MSCE, PE.

71. Plaintiffs allege that LJA failed to protect the water runoff from flooding Plaintiffs' homes and did not protect Elm Grove from flooding during construction even though they knew of the dangers.

72. Further, all employees, contractors, subcontractors, independent contractors, agents, representatives, and/or individuals under the control of LJA, including David Overstreet, PE, Phyllis Mbewe, PE, CFM, and Alyssa Campbell, PE were, at all material times, acting within the course, scope, and direction of LJA. Accordingly, LJA is also liable for Plaintiffs' injuries under the doctrine of *respondeat superior*, vicarious liability, and applicable theories of agent/servant liability.

73. The acts or omissions of the LJA, when viewed objectively from its standpoint at the time of their occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. These acts and omissions were more than momentary thoughtlessness, inadvertence, or error of judgment. Rather, LJA had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety,

or welfare of others. Such acts and/or omissions were a proximate cause of the flooding and the resulting injuries and damages sustained by Plaintiffs. Accordingly, Plaintiffs hereby seek an award of exemplary damages.

74. Furthermore, the aforementioned conduct of LJA was willful and/or motivated by the conscious disregard to the rights and welfare of others. Therefore, Plaintiffs are entitled to recover both actual and exemplary damages from LJA as set forth above, together with prejudgment and post-judgment interest at the highest rate allowed by law, and all costs of court.

75. Pleading further and/or in the alternative, Plaintiffs would show that they cannot more specifically allege the acts of negligence on the part of LJA, acting by or through their agents or employees, jointly, severally, singularly and together in any combination for the reason that the facts in that regard are peculiarly within the knowledge of each Defendant and, in the alternative, in the event Plaintiffs are unable to prove specific acts of negligence, Plaintiffs rely on the doctrine of *res ipsa loquitur*. In this connection, Plaintiffs will show that LJA has exclusive control of the design and/or matters or things that caused damage about which this complaint is made. Plaintiffs have no means of ascertaining the method or manner in which the incident was caused to occur other than through LJA. The occurrence causing harm to the Plaintiffs as described above, was one which, in the ordinary course of events, would not have occurred without negligence on the part of LJA. Thus, Defendants acting by or through their agents or employees are/were negligent in their use and/or operation of its respective equipment and materials involved and such negligence was a proximate cause of the injuries and damages of Plaintiffs.

COUNT 10
**NEGLIGENCE, NEGLIGENCE *PER SE* AND GROSS NEGLIGENCE FOR MAY 7,
2019 AND SEPTEMBER 19, 2019 AGAINST STORM WATER SOLUTIONS**

76. Plaintiffs would show that the incident and injuries and damages giving rise to the May 7,

2019 and September 19, 2019 flooding were proximately caused by the negligence of Storm Water Solutions acting by or through its agents or employees, jointly, severally, singularly and together in any combination. The actions and omissions of Storm Water Solutions, acting by or through its agents or employees, jointly, severally, singularly and together in any combination constitute negligence and/or gross negligence which proximately resulted in injuries and damages being suffered by Plaintiffs.

77. The negligent actions and/or omissions of Storm Water Solutions, acting by or through its agents or employees, jointly, severally, singularly and together in any combination, include but are not limited to:

- a. Failing to create an adequate storm water pollution prevention plan;
- b. Failing to implement a storm water pollution prevention plan;
- c. Failing to comply or follow the Storm Water Pollution Prevention Plan;
- d. Failing to install reinforced filter fabric fences around the Development;
- e. Failing to install adequate reinforced filter fabric fences around the Development;
- f. Allowing storm water runoff into Plaintiffs' properties;
- g. Allowing discharge of storm water from the Development;
- h. Failing to comply with Texas Pollutant Discharge Elimination System Construction General Permit No. TXR150000;
- i. Failing to supervise the Contractor Defendants' compliance with the Storm Water Pollution Prevention Plan;
- j. Failing to enforce the provisions of the Storm Water Pollution Prevention Plan;
- k. Failing to enforce and/or implement the best management practices under the Storm Water Pollution Prevention Plan for the Development;
- l. Failing to implement the proper control measures on the Development;
- m. Failing to ensure a sedimentation basin was constructed at the Development;

- n. Failing to inspect the Development for failure to comply with the Storm Water Pollution Prevention Plan;
- o. Failing to modify the best management practices after the May 7, 2019 occurrence;
- p. Failure to comply with the plans and specifications for the Development;
- q. Failing to pay proper attention;
- r. Failing to provide notice or warning; and,
- s. Failing to coordinate activities and/or conduct.

78. Plaintiffs allege that Storm Water Solutions failed to protect the water runoff from flooding Plaintiffs' homes and did not protect Elm Grove from flooding during construction even though they knew of the dangers.

79. Further, all employees, contractors, subcontractors, independent contractors, agents, representatives, and/or individuals under the control of Storm Water Solutions were, at all material times, acting within the course, scope, and direction of Storm Water Solutions. Accordingly, Storm Water Solutions is also liable for Plaintiffs' injuries under the doctrine of *respondeat superior*, vicarious liability, and applicable theories of agent/servant liability.

80. The acts or omissions of Storm Water Solutions, when viewed objectively from its standpoint at the time of their occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. These acts and omissions were more than momentary thoughtlessness, inadvertence, or error of judgment. Rather, Storm Water Solutions had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others. Such acts and/or omissions were a proximate cause of the flooding and the resulting injuries and damages sustained by Plaintiffs. Accordingly, Plaintiffs hereby seek an award of exemplary damages.

81. Furthermore, the aforementioned conduct of Storm Water Solutions was willful and/or

motivated by the conscious disregard to the rights and welfare of others. Therefore, Plaintiffs are entitled to recover both actual and exemplary damages from Storm Water Solutions as set forth above, together with prejudgment and post-judgment interest at the highest rate allowed by law, and all costs of court.

82. Pleading further and/or in the alternative, Plaintiffs would show that they cannot more specifically allege the acts of negligence on the part of Storm Water Solutions, acting by or through their agents or employees, jointly, severally, singularly and together in any combination for the reason that the facts in that regard are peculiarly within the knowledge of each Defendant and, in the alternative, in the event Plaintiffs are unable to prove specific acts of negligence, Plaintiffs rely on the doctrine of *res ipsa loquitor*. In this connection, Plaintiffs will show that Storm Water Solution has exclusive control of the Storm Water Pollution Prevention Plan and or matters or things that caused damage about which this complaint is made. Plaintiffs have no means of ascertaining the method or manner in which the incident was caused to occur other than through Storm Water Solutions. The occurrences causing harm to the Plaintiffs as described above, was one which, in the ordinary course of events, would not have occurred without negligence on the part of Storm Water Solutions. Thus, Storm Water Solutions acting by or through its agents or employees are/were negligent in their implementation and compliance of the Storm Water Pollution Prevention Plan and such negligence was a proximate cause of the injuries and damages of Plaintiffs.

COUNT 11
NUISANCE AGAINST DEFENDANTS

83. When Defendants unlawfully diverted or impounded water (or allowed such diversion or impounding by them to continue) by not properly creating drainage channels and/or impounding water onto Plaintiffs' homes it also resulted in private nuisances to Plaintiffs' home. The four

elements of a private nuisance claim are: (1) Plaintiffs had an interest in the land; (2) Defendant interfered with or invaded Plaintiffs' interest by conduct that was negligent, intentional, or abnormal and out of place in its surroundings; (3) Defendant's conduct resulted in a condition that substantially interfered with Plaintiffs' use and enjoyment of their land; and (4) the nuisance caused injury to Plaintiffs. *Cerny v. Marathon Oil Corp.*, 480 S.W.3d 612, 622 (Tex. App. 2015), review denied (Dec. 2, 2016). The facts asserted in this case proximately caused the nuisance in question.

84. Plaintiffs properly and clearly held an interest in their individual property as the owners and residents of the homes at the time of the incident. Defendants' conduct was negligent, intentional and unreasonable, and/or abnormal and out of place in its surroundings, and nevertheless, also subject to state statute Tex. Water Code Ann. § 11.086 (West). This conduct substantially interfered with Plaintiffs' use and enjoyment of their land, and caused injury to Plaintiffs when their homes, contents, automobiles, and personal effects were damaged, destroyed, and or interfered with by the diverted and/or impounded surface water which flooded the surrounding neighborhoods.

DAMAGES

85. As a direct and proximate result of negligence of Defendants, acting by or through their agents or employees, jointly, severally, singularly, and/or together in any combination, Plaintiffs suffered or experienced damages in the past and, in all reasonable probability, is expected to experience such damages for a long time into the future.

86. The damages of Plaintiffs consist of one or more of the following:

- a. Cost of repairs to real property;
- b. Cost of replacement or fair market value of personal property lost, damaged, or destroyed during such event;

- c. Loss of use of real and personal property;
- d. Diminution of market value of Plaintiffs' properties;
- e. Loss of income and business income;
- f. Consequential costs incurred, inclusive of but not limited to alternative living conditions or accommodations and replacement costs;
- g. Mental anguish and/or emotional distress;
- h. Prejudgment interest;
- i. Post judgment interest;
- j. Attorneys' fees; and,
- k. Costs of Court.

87. By reason of the above and foregoing, Plaintiffs would show that they have been damaged in a sum within the jurisdictional limits of the Court.

EXEMPLARY/PUNITIVE DAMAGES

88. As a result of the gross negligence of Defendants, a sum of money should be assessed against Defendants as allowed by law and awarded to Plaintiffs as exemplary damages for the injuries Plaintiffs sustained in connection with the grossly negligent acts and/or omissions of Defendants. Exemplary damages should be awarded as a penalty or by way of punishment, taking into consideration the following:

- a. The nature of wrong;
- b. The character of the conduct involved;
- c. The degree of culpability of the wrongdoer;
- d. The situation and sensibility of the parties involved;
- e. The extent to which such conduct offends a public sense of justice and propriety; and,

- f. The net worth of Defendants.

PRE AND POST-JUDGMENT INTEREST

89. Plaintiffs assert a claim for pre-judgment and post-judgment interest on all applicable elements of damages.

CONDITIONS PRECEDENT

90. All conditions precedent to Plaintiffs' right to recover herein and to Defendants' liability have been performed or have occurred.

NOTICE OF INTENT TO USE AUTHENTICATED DOCUMENTS

91. Pursuant to Rule 193. 7 of the Texas Rules of Civil Procedure, Plaintiffs hereby give notice of intent to offer into evidence all documents and items produced by Defendants in response to Plaintiffs' discovery requests as authenticated for use against Defendants by virtue of Defendants' production of the same.

JURY DEMAND

92. Plaintiffs demand a trial by jury to resolve all fact issues in this case.

WHEREFORE PREMISES CONSIDERED Plaintiffs respectfully request that on final trial, Plaintiffs have and recover from Defendants, jointly and severally, the following:

- a. judgment against Defendants for actual damages in an amount within the jurisdictional limits of the Court;
- b. judgment against Defendants for exemplary damages in an amount within the jurisdictional limits of the Court;
- c. pre-judgment and post-judgment interest as provided by law;
- d. costs of suit; and,
- e. such other and further relief to which Plaintiffs may show themselves to be justly entitled.

Respectfully submitted,

THE WEBSTER LAW FIRM

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served on the 21st day of December, 2020 in accordance with the Texas Rules of Civil Procedure.

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