

DRYE, JOSE & SANDRA FARIAS, WILLIAM & MARY LOU FORD, ROBERT GAINER, individually and as REPRESENTATIVE OF THE ESTATE OF MARIA GAINER, deceased, CHARLES HENTON, LINDA JONES, OLIVIA & JIM KENTON, ROBERT LAWLER, CHARLES & ROSE LYONS, MICHAEL & DORIS MCGEE, SHARON MCNABB, CYNTHIA MEDINA, PHILLIP MENDOZA, GLORIA MORGAN, LINDA MORRISON, ROSALIND MOUSER, RHONDA PENA, SHIRLEY ROANE, KIM & DONALD RODGERS, JESSICA RUSSELL, BOBBY & LINDA SHAFER, VICKIE SOWELL, KEVIN & TRACY WATERFALLEN, MICHAEL WOOD, CHRISTOPHER & TAMMY YATES, VINCENT ZANCA (collectively referred to as “Plaintiffs”), and file this Petition complaining of **PERRY HOMES, LLC, FIGURE FOUR PARTNERS, LTD., PSWA, INC., LJA ENGINEERING, INC., REBEL CONTRACTORS, INC., DOUBLE OAK CONSTRUCTION, INC., TEXASITE LLC, and CONCOURSE DEVELOPMENT 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. The following Plaintiffs/households are resident of Porter, Montgomery County, Texas:

1. Michael & Mary Allen
2. Jason & Melba Ashy
3. Glenn & Ronald Clifton
4. Daniel & Kathy Coogler
5. Esmeralda Cruz
6. Elizabeth Danise
7. Debra Colwell
8. Tamatha Nigro, individually and as Trustee For Debra Colwell Trust
9. William Dorr
10. Austin & Patricia Drye
11. Jose & Sandra Farias
12. William & Mary Lou Ford
13. Robert Gainer, individually and as Representative of the Estate of Maria Gainer,
deceased
14. Charles Henton
15. Linda Jones

16. Olivia & Jim Kenton
17. Robert Lawler
18. Charles & Rose Lyons
19. Michael & Doris McGee
20. Sharon McNabb
21. Cynthia Medina
22. Phillip Mendoza
23. Gloria Morgan
24. Linda Morrison
25. Rosalind Mouser
26. Rhonda Peña
27. Shirley Roane
28. Kim & Donald Rodgers
29. Jessica Russell
30. Bobby & Linda Shafer
31. Vickie Sowell
32. Kevin & Tracy Waterfallen
33. Michael Wood
34. Christopher & Tammy Yates
35. Vincent Zanca

4. Defendant, **PERRY HOMES, LLC** (“Perry Homes”) is a Texas company that can be served by and through its registered agent, Michael C. Brisch, 9000 Gulf Freeway, Houston, Texas 77017, or wherever he may be found.

5. Defendant **FIGURE FOUR PARTNERS, LTD.** (“Figure Four”), is a Texas company and may be served with process by and through its registered agent, PSWA, Inc. at 9000 Gulf Freeway, Houston, Texas 77017.

6. Defendant, **PSWA, INC.** (“PSWA”), is a Texas Corporation doing business in Harris County, Texas and may be served with process by and through its registered agent, Michael C. Brisch, at 9000 Gulf Freeway, 3rd Floor, Houston, Texas 77017.

7. Defendant, **LJA ENGINEERING, INC.** (“LJA”) is a Texas corporation with its principal office in Houston, Harris County, Texas and can be served with process by and through its registered agent, BlumbergExcelsior Corporate Services, Inc. at 725 Decker Prairie Drive, Austin, Texas 78748.

8. Defendant, **REBEL CONTRACTORS, INC.** (“Rebel”), is a Texas Corporation doing business in Harris County, Texas and may be served with process by and through its registered agent, George Lowry, at 17942 IH 45N, Willis, Texas 77378 or wherever he may be found.

9. Defendant, **DOUBLE OAK CONSTRUCTION, INC.** (“Double Oak”), is a Texas corporation that does business in Texas and can be served by and through its registered agent, Ralph C. Caviness, at 22731 FM 2920, Hockley, Texas 77447 or wherever he may be found.

10. Defendant, **TEXASITE LLC** (“Texasite”), is a Texas corporation that does business in Texas and can be served by and through its registered agent, John Kissane III, at 3486 Country Club Blvd., Montgomery, Texas 77356 or wherever he may be found.

11. Defendant, **CONCOURSE DEVELOPMENT LLC** (“Concourse”) is a Texas company that can be served by and through its registered agent, Harris Masterson IV, 9950 Westpark Drive, Suite 285, Houston, Texas 77063 or wherever he may be found.

VENUE AND JURISDICTION

12. 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.

13. Venue is proper in Harris County because Harris County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred and Defendants, Perry Homes, Figure Four, PSWA, and Concourse, have their principal offices in Harris County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) and (3). Venue is proper as to all Defendants pursuant to Tex. Civ. Prac. & Rem. Code § 15.005.

BACKGROUND/FACTUAL ALLEGATIONS

14. 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 east side of Plaintiffs’ properties (hereinafter referred to as the “Development”). The Developers were developing Woodridge Village, which was a land development for single family homes. On information and belief, Figure Four and/or Concourse owned the land that makes up the Development.

15. The Development is intended for a residential community and is neighboring the east side of Plaintiffs’ properties.

16. 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.

17. 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.

18. 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 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

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.

with the plans and specifications for the Storm Water Pollution Prevention Plan. 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.

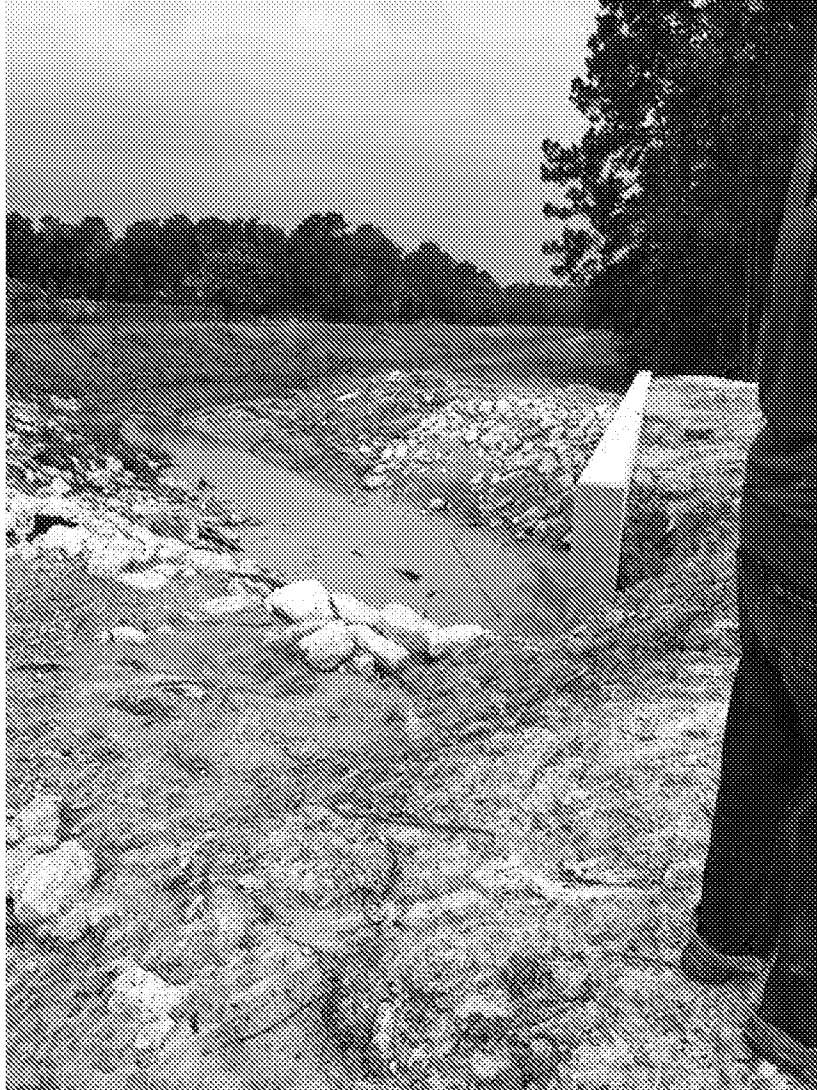
19. As of May 7, 2019, the Development was not completed, but Defendants began the removal of trees, vegetation, and debris from the Development. Defendants trenched out certain areas and added box culverts in an attempt to create drainage for the Development. Defendants also filled in existing creeks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

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

21. 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 Plaintiffs' homes. This water caused extreme damage to the structures and the personal effects of the Plaintiffs.

22. 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.

23. 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.



24. On September 19, 2019, after Defendants knew of the flooding the Development caused, another rainfall hit the Montgomery County area. Again, this rainfall was not a heavy rainfall, but the Development flushed the water into Porter and flooded homes throughout Plaintiffs' neighborhood.

25. 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.

26. 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).

27. 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.

28. Following the May 7th occurrence, Figure Four did not take any correction to correct the diversion of water from Woodridge Village to Porter. Again, on September 19, 2019, a second occurrence took place, whereby surface water was diverted from Woodridge Village into Porter, 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.

29. 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).

30. 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.

31. Following the May 7th occurrence, PSWA did not take any correction to correct the diversion of water from Woodridge Village to Porter. Again, on September 19, 2019, a second occurrence took place, whereby surface water was diverted from Woodridge Village into Porter, 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

32. 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).

33. 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.

34. Following the May 7th occurrence, Perry Homes did not take any correction to correct the diversion of water from Woodridge Village to Porter. Again, on September 19, 2019, a second occurrence took place, whereby surface water was diverted from Woodridge Village into Porter, 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

35. 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).

36. 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.

37. Following the May 7th occurrence, Concourse did not take any correction to correct the diversion of water from Woodridge Village to Porter. Again, on September 19, 2019, a second occurrence took place, whereby surface water was diverted from Woodridge Village into Porter, 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

38. 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.

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

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

40. 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:

1. Failing to make exhaustive or continuous on-site inspections to check the quality or quantity of the work;
2. Failing to properly monitor the techniques and sequences of construction or the safety precautions to ensure Plaintiffs' homes would not flood during construction;
3. Failing to ensure the contractors performed the construction work in accordance with the contract documents;
4. Failing to incorporate drainage studies prior to initiating construction on the Development;
5. 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;
6. Removing drainage from the Development;
7. Removing a levee and/or berm from the Development;
8. Failing to implement a proper construction schedule;
9. Failing to follow the construction schedule;
10. Blocking the drainage channels;
11. Filling in existing drainage channels;
12. Failing to properly install box culverts;
13. Failing to create temporary drainage channels;
14. Failing to allow adequate drainage after construction;
15. Failing to install silt barriers;
16. Allowing the Development to force rainfall toward Plaintiffs' homes;
17. Diverting surface water towards Plaintiffs' homes;
18. Failing to pay proper attention;

19. Failing to provide notice or warning;
 20. Failing to have a proper rain event action plan;
 21. Failing to have a proper storm water pollution prevention plan;
 22. Failing to comply with the storm water pollution prevention plan;
 23. Failing to ensure Storm Water Solutions complied with the Storm Water Pollution Prevention Plan;
 24. 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;
 25. Failing to coordinate activities and/or conduct;
 26. Failing to supervise the activities of the Development and engineering;
 27. Failing to instruct in proper construction and/or drainage requirements;
 28. Failing to train in proper construction and/or drainage requirements,
 29. Failure to review engineering plans;
 30. Failing to comply with the Terracon Consultants, Inc. report;
 31. Failing to construct the emergency release channel;
 32. Failing to timely implement the detention ponds;
 33. Allowing inadequate construction to take place; and,
 34. Failing to hire an adequate engineer to implement the project plan.
41. Plaintiffs allege that the Developer Defendants failed to protect the water runoff from flooding Plaintiffs' homes and did not protect Plaintiffs from flooding during construction.
42. 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.

43. 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.

44. 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.

45. 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 loquitur*. 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

46. 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.

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

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

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

49. 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:

1. Failing to make exhaustive or continuous on-site inspections to check the quality or quantity of the work;
2. Failing to properly monitor the techniques and sequences of construction or the safety precautions to ensure Plaintiffs would not flood during construction;
3. Failing to ensure the contractors performed the construction work in accordance with the contract documents;
4. Failing to incorporate drainage studies prior to initiating construction on the Development;
5. Failing to properly direct and supervise the means, methods, and techniques of the sequence in which the contractors performed the work on the Development;
6. Knowingly allowing the Development to remain with inadequate drainage;
7. Failing to timely construct detention/retention ponds;
8. Failing to take any corrective action to fix the draining on the Development;
9. Removing drainage from the Development;
10. Blocking the drainage channels;
11. Filling in existing drainage channels;
12. Failing to properly install box culverts;
13. Failing to create temporary drainage channels;
14. Failing to allow adequate drainage after construction;
15. Allowing the Development to force rainfall toward Plaintiffs' homes;
16. Failing to pay proper attention;
17. Failing to provide notice or warning;
18. Failing to have a proper rain event action plan;
19. Failing to have a proper storm water pollution prevention plan;
20. Failing to follow a proper storm water pollution prevention plan;

21. Failing to coordinate activities and/or conduct;
22. Failing to supervise the activities of the Development;
23. Failing to instruct in proper construction and/or drainage requirements;
24. Failing to train in proper construction and/or drainage requirements,
25. Failure to review engineering plans;
26. Failing to comply with the Terracon Consultants, Inc. report;
27. Failing to construct the emergency release channel;
28. Failing to timely implement the detention ponds; and,
29. Allowing inadequate construction to take place.

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

51. 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.

52. 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.

53. 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.

54. 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

55. 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).

56. 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 Plaintiffs’ neighborhood and into Plaintiffs’ homes constituted a trespass. This trespass proximately caused the flooding of Plaintiffs’ properties and their ensuing damages.

57. Following the May 7th occurrence, the Developer Defendants did not take any action to correct the unauthorized entry of water from Woodridge Village into Porter, where Plaintiffs resided. Again, on September 19, 2019, a second occurrence took place, whereby the water from Woodridge Village was diverted into Porter, 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 LJA

58. 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.

59. 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.

60. 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.

61. 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.*

62. 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:

1. Failing to follow the correct drainage guidelines in Montgomery County;
2. Failing to enforce the construction schedule for the Development;
3. Failing to provide adequate drainage in the Development;

4. Failing to adequately model the Development;
5. Failing to adequately report the modeling;
6. Removing drainage channels;
7. Causing post-development discharges and water surface elevation to increase downstream of the Development;
8. Failing to design detention ponds with adequate capabilities for rain events;
9. Failing to use the correct hydrology method;
10. Failing to design emergency overflows for the detention ponds;
11. Failing to comply with the Terracon Consultants, Inc. report;
12. Failing to notify the Developer Defendants and Contractor Defendants of the importance of the existing levee or berm; and,
13. Other ways described in the Certificate of Merit by L. David Givler, MSCE, PE.

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

64. 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.

65. 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.

66. 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.

67. 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 9
NEGLIGENCE, NEGLIGENCE *PER SE* AND GROSS NEGLIGENCE FOR MAY 7, 2019 AND SEPTEMBER 19, 2019 AGAINST THE CONTRACTOR DEFENDANTS

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 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.

69. 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:

1. Failing to timely construct detention/retention ponds;
2. Removing the levee and/or berm from the Development;
3. Failing to properly remove the vegetation on the Development;
4. Failing to follow the construction schedule;
5. Failing to follow the engineering plans;
6. Failing to coordinate with the contractors on the construction sequence for the Development;
7. Removing drainage from the Development;
8. Blocking the drainage channels;
9. Filling in existing drainage channels;
10. Failing to properly install box culverts;
11. Failing to create temporary drainage channels;

12. Failing to allow adequate drainage after construction;
13. Allowing the Development to force rainfall toward Plaintiffs' homes;
14. Failing to pay proper attention;
15. Failing to provide notice or warning;
16. Failing to have a proper rain event action plan;
17. Failing to have a proper storm water pollution prevention plan;
18. Failing to follow a proper storm water pollution prevention plan;
19. Failing to coordinate activities and/or conduct;
20. Failing to instruct in proper construction and/or drainage requirements;
21. Failing to train in proper construction and/or drainage requirements,
22. Failure to review engineering plans;
23. Failing to comply with the Terracon Consultants, Inc. report;
24. Failing to construct the emergency release channel;
25. Failing to timely implement the detention ponds;
26. Allowing inadequate construction to take place; and,
27. 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.

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

71. 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.

72. 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.

73. 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.

74. 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 10
NUISANCE AGAINST DEFENDANTS

75. 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.

76. 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

77. 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.

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

1. Cost of repairs;
2. Cost of replacement or fair market value of personal property lost, damaged, or destroyed during such event;
3. Loss of use of personal property;
4. Loss of income and business income;
5. Consequential costs incurred, inclusive of but not limited to alternative living conditions or accommodations and replacement costs;
6. Mental anguish and/or emotional distress;
7. Prejudgment interest;
8. Post judgment interest;
9. Attorneys' fees; and,
10. Costs of Court.

79. 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

80. 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:

1. The nature of wrong;
2. The character of the conduct involved;
3. The degree of culpability of the wrongdoer;
4. The situation and sensibility of the parties involved;
5. The extent to which such conduct offends a public sense of justice and propriety; and,
6. The net worth of Defendants.

PRE AND POST-JUDGMENT INTEREST

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

CONDITIONS PRECEDENT

82. 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

83. 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

84. 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:

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

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Respectfully submitted,

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