

# California - g i . Water Quality Control Board

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Winston H. Hicke  
Secretary for  
Environmental  
Protection

Internet Address: <http://www.swrcb.ca.gov/wgcb9/>  
9174 Sky Park Court, Suite 100, San Diego, California 92123  
Phone (858) 467-2952 - FAX (858) 571-6972



January 22, 2002

CERTIFIED-RETURN RECEIPT REQUESTED  
7099 .3400 0017 1547 2731

CENTEX Homes  
1815 Aston Avenue, Suite 101  
Carlsbad, CA 92008  
Attn: Philip D. Kopp Esq.

Mr. Arthur I. Appleton  
1500 Sheridan Road, Unit H  
Wilmette, Illinois 60091

CERTIFIED-RETURN RECEIPT REQUESTED  
7099 3400 00.17 15472'724

Dear Sirs:

RESOLUTION NO. 2001-355  
SETTLEMENT AGREEMENT AND RELEASE  
BROOK HILLS DEVELOPMENT - FALLBROOK CALIFORNIA

Enclosed is a copy of Resolution No. 2001-355, *Settlement Of Potential Liability For Violations Associated With Discharge Of Soil Containing Petroleum Waste To Temporary Waste Piles At Brook Hills Development, Phase 11 By Arthur I. Appleton As An Individual And As General Partner Of Appleton Brook Hills Limited Partnership And Centex Homes*, and the Settlement Agreement and Release (the Agreement) between the Regional Board and Appleton and CENTEX.

The terms of the Agreement require CENTEX and Appleton to make a contribution of \$404,000 (\$202,000 each), of which \$354,000 shall be paid to the California State Water Pollution Cleanup and Abatement Account, and \$50,000 shall be paid to the Fallbrook Land Conservancy. The Regional Board received the contributions as stated above on January 11, 2002. If you have any questions please contact Laurie Walsh of our office at (858) 467-2970.

Respectfglly yours,

A handwritten signature in black ink, appearing to read "PHN H. ROBERTUS".

PHN H. ROBERTUS  
Executive Officer

Enclosure: Final Resolution No. 2001-355  
Settlement Agreement and Release

JHR: jpa: law:\brookhillsTinalresolution\cvltr\_Res2001-355.doc

California Environmental Protection Agency

*The energy challenge facing California is real. Every Californian needs to take inunediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at lulp.11www.swrcb.ca.gov.*

Recycled Paper

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Arthur I. Appleton  
Philip D. Kopp Esq.  
Brook Hills Development

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January 22, 2002

CC:

Mr. Scott Cartel, Appleton Brook Hills LLP, 10 South La Salle Street, #3440, Chicago, IL 60603  
Mr. Michael Prairie, Stephenson Worley Garratt Schwartz Garfield & Prairie, 401 B St., Ste. 2400,  
San Diego, CA 92101-4200  
Mr. Darryl Fowler, San Diego County DEH, PO BOX 129261, San Diego CA 92112-9261  
Mr. Gary Hartnett, San Diego County APCD, 9150 Chesapeake Drive, San Diego, CA 92123-1096  
Mr. Chris Brown, County of SD, Supervisor Horn's Office, 1600 Pacific Highway, San Diego, CA  
92101  
Mr. James A. Sadler, 4044 Alta Vista Drive, Fallbrook CA 92028  
Ms. Alice Rigg, County of San Diego, Fallbrook Branch, 124 South Mission Rd, Fallbrook CA 92028  
Ms. Maxy Rush Otuteye, Esq. Smith & Rendon LLP, 2222 Martin Suite 255, Irvine, CA 92612-1481  
Mr. Steve Marsh, LFHS, 600 West Broadway, Suite 2600 San Diego CA 92101  
Mr. David Liu, Ph.D. ENVIRON International Corp., 2010 Main Street, Suite 900 Irvine, CA 92614  
Mr. Lee Shick, County of San Diego, DPW, Land Development Division, 5201 Ruffin Road, Suite D  
San Diego, CA 92123-1295  
Mr. George Dunfield, Board of Geologist and Geophysicist, 2535 Capitol Oaks Drive, Suite 300A,  
Sacramento CA 95833  
Ret. Judge Robert O'Neill, 5421 castle Hills Drive, San Diego, Ca 92109

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

RESOLUTION NO. 2001-355

SETTLEMENT OF POTENTIAL LIABILITY FOR VIOLATIONS  
ASSOCIATED WITH DISCHARGE OF SOIL CONTAINING PETROLEUM  
WASTE TO TEMPORARY WASTE PILES AT BROOK HILLS  
DEVELOPMENT, PHASE II BY ARTHUR I. APPLETON AS AN INDIVIDUAL  
AND AS GENERAL PARTNER OF APPLETON BROOK HILLS LIMITED  
PARTNERSHIP AND CENTEX HOMES

*Whereas*, Arthur I. Appleton and Appleton Brook Hills Limited Partnership (of which Arthur I. Appleton is general partner), hereinafter referred to as "Appleton" owned or own that parcel of real property in Fallbrook, San Diego County known as the Brook Hills Development (Brook Hills); and

*Whereas*, CENTEX Homes (CENTEX) agreed to purchase lots from Appleton at Brook Hills for residential development by CENTEX; and

*Whereas*, CENTEX Homes (CENTEX) was involved with Appleton in preliminary grading and site preparation at Brook Hills in anticipation of residential development at Brook Hills by CENTEX; and

*Whereas*, between April, 1999 and November, 2000, Appleton and CENTEX discharged approximately 20,000 cubic yards of soil containing petroleum hydrocarbon waste from excavations at the Phase I portion of Brook Hills to waste piles at the Phase II portion of Brook Hills; and

*Whereas*, in April 2001, Appleton and CENTEX established additional waste piles for treatment of soil containing petroleum hydrocarbon waste at Brook Hills Phase II; and

*Whereas*, Appleton and CENTEX did not remove the soil containing petroleum hydrocarbons from the waste piles at Brook Hills Phase II until October, 2001; and

*Whereas*, the Regional Board has waived the issuance of waste discharge requirements for temporary storage of soil containing petroleum hydrocarbons on condition that the soil be placed on an appropriate liner, covered and protected from run-on and run-off by berms, and removed within 120 days, and that the person proposing such discharge submit to the Regional Board a Report of Waste Discharge documenting plans for compliance with the conditions; and

*Whereas*, the Regional Board issued Cleanup and Abatement Order No. 2000-280, as amended, requiring Appleton and CENTEX to abate conditions and threatened conditions of pollution or nuisance associated with the discharge of soil containing petroleum hydrocarbons to waste piles at Brook Hills Phase II; and

*Whereas*, Appleton and CENTEX may have violated provisions of the Water Code requiring Reports of Waste Discharge for any discharge of waste that could affect the quality of the waters of the state, conditions of the waiver of waste discharge requirements applicable to temporary storage of soil containing petroleum hydrocarbons involving adequate cover, adequate run-on and run-off controls, duration, and reporting, and provisions of Order No. 2000-280; and

*Whereas*, at the present time there is no proceeding pending before the Regional Board for imposition of civil liability against Appleton and CENTEX for any possible violations associated with the discharge of soil containing petroleum hydrocarbon waste at Brook Hills Phase II; and

*Whereas*, the Regional Board has incurred actual costs in the amount of approximately \$85,000 to investigate, and oversee cleanup and abatement of, discharges of soil containing petroleum hydrocarbon waste at Brook Hills Phase II between February 5, 2001 and October 15, 2001, and to pursue enforcement actions associated with such discharges, including, but not limited to, costs associated with mediation for which the Regional Board will seek reimbursement from the State Water Pollution Cleanup and Abatement Account; and

*Whereas*, the Fallbrook Land Conservancy is a non-profit organization dedicated to preserving and enhancing rural open space in Fallbrook; and

*Whereas*, as of October 15, 2001, Appleton and CENTEX have removed all soil containing petroleum hydrocarbons from the waste piles at Brook Hills Phase II and, subsequently, have offered to pay \$50,000 to the Fallbrook Land Conservancy and \$354,000 to the State Water Pollution Cleanup and Abatement Account in settlement of any violation or liability, including actual costs incurred by the Regional Board to investigate, and oversee cleanup and abatement of, discharges of soil containing petroleum hydrocarbon waste at Brook Hills Phase II between February 5, 2001 and October 15, 2001, and to pursue enforcement actions associated with such discharges, including, but not limited to, costs associated with mediation, that Appleton and CENTEX may have incurred as a result of the discharges of soil containing petroleum hydrocarbons to waste piles at Brook Hills Phase II;

*THEREFORE BE IT RESOLVED*, that the California Regional Water Quality Control Board, San Diego Region, hereby authorizes the Executive Officer to execute a Settlement Agreement with Appleton and CENTFX involving payment of \$50,000 to the Fallbrook Land Conservancy and \$354,000 to the State Water Pollution Cleanup and Abatement Account by January 11, 2002 in lieu of any formal enforcement proceeding to . impose civil liability on Appleton or CENTEX for possible violations associated with discharge of soil containing petroleum hydrocarbon waste to waste piles at Brook Hills Phase R between April, 1999 and October 15, 2001.

This Resolution was issued by the California Regional Water Quality Control Board, San Diego Region, on December 12, 2001.



OHN H. ROBERTUS  
Executive Officer

Date Signed:

BILL LOCKYER  
Attorney General

John A.

File copy (final)  
State of California



DEPARTMENT OF JUSTICE

110 WEST A STREET, SUITE 1100  
SAN DIEGO, CA 92101

P.O. BOX 85266  
SAN DIEGO, CA 92186-5266

Public: (619) 645-3063  
Telephone: (619) 645-2609  
Facsimile: (619) 645-2581

E-Mail: [David.Robinson@doj.cagov](mailto:David.Robinson@doj.cagov)

January 14, 2002

John H. Robertus, Executive Officer  
Regional Water Quality Control Board  
9771 Clairemont Mesa Blvd., Suite A  
San Diego, CA 92124-1324

2002 JAN 1

REGIONAL  
WATER QUALITY  
CONTROL BOARD

RE: *Arthur Appleton v. RWQCB/Centex Homes v. RWOCB*  
San Diego County Superior Court Nos. GIC 767338 and 767470

Dear Mr. Robertus:

Enclosed please find a duplicate copy of the fully executed Settlement Agreement in the *Arthur Appleton v. RWQCB/Centex Homes v. RTWQCB* matter. On Monday, January 14, 2002, I gave you the four checks totaling \$404,000.00 as the agreed upon sum to resolve this case.

Once I have received duplicate copies of the dismissals *with prejudice* I will forward the same to your office for your records.

Thank you for your dedication, professionalism, and assistance throughout this case.

Sincerely,

DAVID H. ROBINSON  
Deputy Attorney General

For BILL LOCKYER  
Attorney General

DHR: slc  
Enclosure

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release of All Claims (the "Settlement Agreement"), is made and entered into by ARTHUR I. APPLETON, APPLETON BROOK HILLS LIMITED PARTNERSHIP (hereinafter individually and collectively referred to as "APPLETON"), CENTEX HOMES (hereafter "CENTEX"), and the State of California, operating as the REGIONAL WATER QUALITY CONTROL BOARD-SAN DIEGO REGION (hereafter "REGIONAL BOARD"), and JOHN H. ROBERTUS, Executive Officer of the REGIONAL BOARD, in his official and individual capacity (hereafter "ROBERTUS"). Appleton, Centex, and the Regional Board and Robertus are sometimes hereafter collectively referred to as the "Parties" or separately as a "Party." The Parties are entering into this Agreement based on their collective desire to resolve those claims between Centex and Appleton, on the one hand, and the Regional Board and Robertus, on the other hand, described and identified in Paragraph E and Paragraph 1 below. This Agreement is not intended to resolve any disputes between Centex and Appleton, or between Centex or Appleton and any other third party other than the Regional Board and John H. Robertus, Executive Officer of the Regional Board.

### RECITALS

The undersigned Parties execute this Agreement with reference to and in contemplation of the following facts:

A. APPLETON and CENTEX are alleged to have discharged approximately 20,000 cubic yards of soil containing petroleum hydrocarbon waste from excavations at the Phase I portion of Brook Hills, a residential development project site owned by APPLETON at which CENTEX Was building homes, to waste piles at the Phase H portion of Brook Hills (Brook Hills Phase II). These acts occurred between April 1999 and November 2000. Additionally, in April 2001, APPLETON and CENTEX allegedly established an additional waste pile for treatment of soil containing petroleum hydrocarbon' waste at Brook Hills Phase II. APPLETON and CENTEX did not remove the soil containing petroleum hydrocarbons from the waste piles at Brook Hills Phase E until October 2001.

B. The REGIONAL BOARD is -a public entity established within the California Environmental Protection Agency. The REGIONAL BOARD has jurisdiction over discharges of waste that could affect the quality of the waters of the state within the San Diego Region, which includes the vicinity of Brook Hills, including discharges of solid waste to waste management units for treatment, storage, or disposal, pursuant to California's Porter-Cologne Water Quality Control Act (Cal. Water Code, § 13000, et seq.).

C. The REGIONAL BOARD has waived the issuance of waste discharge requirements for temporary storage of soil containing petroleum hydrocarbons on conditions that the soil be placed on an appropriate liner, properly covered, and protected from run-on and run-off by berms, and removed within 120 days, and that the person proposing such discharge submit to the REGIONAL BOARD a Report of Waste Discharge documenting plans for compliance with the conditions.

D. APPLETON and CENTEX are alleged to have violated provisions of the Water Code requiring Reports of Waste Discharge for any discharge of waste that could affect the quality of the waters of the state, conditions of the waiver of waste discharge requirements applicable to temporary storage of soil containing petroleum hydrocarbons involving adequate cover, adequate run-on and run-off controls, duration, and reporting, and provisions of Order No. 2000-280. Exhibit "1," which is attached hereto and incorporated by reference herein as though fully set forth presents a list of potential violations for which the REGIONAL BOARD could seek to impose civil liability.

E. The Parties desire to fully and finally settle and resolve potential civil liability for violations arising out of the discharge of soil containing petroleum hydrocarbons at Brook Hills Phase II of waste piles between April 1, 1999 and October 15, 2001. The recitals, terms and conditions of this Agreement are not to be construed as an admission -of liability on the part of any Party and this settlement is a resolution of disputed claims.

F. Each Party is willing to enter into this Agreement only upon the assurance that the other Party is willing to comply with its obligations, but the Regional Board's willingness to enter into the Agreement is conditioned upon approval of the Agreement at a public hearing.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the Parties hereto agree as follows:

## AGREEMENT

1. **Settlement of Claims.** This Agreement is intended to be a full and complete settlement of the disputes enumerated in this Agreement between the Parties and only for the time between April 1, 1999 and October 15, 2001.

2. **Contribution in Lieu of Potential Liability.** Within thirty (30) days from the REGIONAL BOARD'S approval of this Settlement Agreement and Release, CENTEX and APPLETON will each make a contribution in lieu of determination of their potential liability in the amount of \$202,000.00 (together, \$404,000.00 total), of which \$354,000.00 shall be

paid to the California State Water Pollution Cleanup and Abatement Account, and \$50,000.00 shall be paid to the Fallbrook Land Conservancy.

3. Letter of Apology APPLETON and CENTEX will provide to the REGIONAL BOARD a letter of apology which will be read to the REGIONAL BOARD in the hearing scheduled for December 12, 2001, by a non-attorney representative of APPLETON. APPLETON intends to be attentive to future requirements and directives of the Regional Board.

4. Dismissal of Superior Court Action by APPLETON. APPLETON will dismiss, with prejudice, its action filed in the Superior Court of the State of California, County of San Diego, Case No. GIC 76733 8. APPLETON will file a request for dismissal within fifteen (15) days of approval of this Agreement by all Parties.

5. Dismissal of Superior Court Action by CENTEX. CENTEX will dismiss, with prejudice, its action filed in the Superior Court of the State of California, County of San Diego, Case No. GIC 767470. CENTEX will file a request for dismissal within fifteen (15) days of approval of this Agreement by all Parties.

6. Dismissal of State Water Resources Control Board Appeals by APPLETON. APPLETON will dismiss the Petitions for Review it filed with the State Water Resources Control Board ("S WRCB ") on April 5, 2001, in which APPLETON requested review of the REGIONAL BOARD's adoption of Addendum No. 1 to CAO 2000-280, and on August 17, 2001, in which APPLETON appealed the REGIONAL BOARD's action on Addendum No. 2 to CAO No. 2000-280.

7. Dismissal of State Water Resources Control Board Appeals by CENTEX. CENTEX will dismiss the Petitions for Review it filed with the SVJRCB on May 4, 2001, in which Centex appealed the REGIONAL BOARD's adoption of Addendum No. 1 to CAO 2000-280, and on August 17, 2001, in which CENTEX appealed the REGIONAL BOARD's action on Addendum No. 2 to CAO No. 2000-280.

8. Mutual and General Releases. The following releases shall become effective upon the approval of the REGIONAL BOARD of this Settlement Agreement and Release.

(a) Release of APPLETON. Except for those obligations expressly set forth in Section 8(e) below, the REGIONAL BOARD, for itself and its past and present agents, related entities, employees, fiduciaries, attorneys, successors, assigns, affiliates, directors, officers, members, representatives, successors and assigns, hereby forever releases, waives, and discharges, APPLETON and its past and present agents, related entities (including but not

limited to the APPLETON BROOK HILLS LIMITED PARTNERSHIP), employees, subsidiaries, shareholders, partners, fiduciaries, attorneys, successors, assigns, affiliates, directors, officers, members and representatives ("APPLETON RELEASED PARTIES ") and each of them from all liability, including but not limited to, all oversight costs, staff costs, permit fees, expenses, and potential civil liability for violations arising out of the discharge of soil containing petroleum hydrocarbons at Brook Hills Phase II of waste piles between April 1, 1999 and October 15, 2001, including but not limited to those items identified in Exhibit I attached hereto.

(b) Release of CENTEX. Except for those obligations expressly set forth in **Section 8(e)** below, the REGIONAL BOARD, for itself and its past and present agents, related entities, employees, fiduciaries, attorneys, successors, assigns, affiliates, directors, officers, members, representatives, successors and assigns, hereby forever releases, waives, and discharges, CENTEX and its past and present agents, related entities, employees, subsidiaries, shareholders, partners, fiduciaries, attorneys, successors, assigns, affiliates, directors, officers, members and representatives ("CENTEX RELEASED PARTIES") and each of them from all liability, including but not limited to, all oversight costs, staff costs, permit fees, expenses, and potential civil liability for violations arising out of the discharge of soil containing petroleum hydrocarbons at Brook Hills Phase II between April 1, 1999 and October 15, 2001, including but not limited to those items identified in Exhibit I attached hereto.

(c) APPLETON's Release of the REGIONAL BOARD. Except for those obligations expressly set forth in Section 8(e) below, APPLETON, for itself and its past and present agents, related entities (including the APPLETON BROOK HILLS LmmD PARTNERSHIP), employees, fiduciaries, attorneys, successors, assigns, affiliates, directors, officers, members, representatives, successors and assigns, hereby forever releases, waives, discharges, and holds harmless the REGIONAL BOARD and its-past and present agents, related entities, employees, subsidiaries, shareholders, partners, fiduciaries, attorneys, successors, assigns, affiliates, directors, officers, members and representatives ("REGIONAL BOARD RELEASED PARTIES ") and each of them from any and all causes of action, actions, liabilities, demands, obligations, costs, expenses, damages, rights, debts, judgments, contracts, attorneys' fees, losses or claims, of any nature whatsoever, whether known, unknown, suspected, unsuspected, fixed, contingent, liquidated, unliquidated, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, arising under federal, state, local, or common law which relate in any way to the Regional Board's actions related to discharges of soil containing petroleum hydrocarbons at Brook Hills Phase II of waste piles between April 1, 1999 and October 15, 2001.

(d) CENTEX's Release of the REGIONAL BOARD. Except for those obligations expressly set forth in Section 8(e) below, CENTEX, for itself and its past and present agents, related entities, employees, fiduciaries, attorneys, successors, assigns, affiliates, directors, officers, members, representatives, successors and assigns, hereby forever releases, waives, and discharges, the REGIONAL BOARD and its past and present agents, related entities, employees, subsidiaries, shareholders, partners, fiduciaries, attorneys, successors, assigns, affiliates, directors, officers, members and representatives ("REGIONAL BOARD RELEASED PARTIES") and each of them from any and all causes of action, actions, liabilities, demands, obligations, costs, expenses, damages, rights, debts, judgments, contracts, attorneys' fees, losses or claims, of any nature whatsoever, whether known, unknown, suspected, unsuspected, fixed, contingent, liquidated, unliquidated, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, arising under federal, state, local, or common law which relate in any way to the REGIONAL BOARD'S actions related to discharges of soil containing petroleum hydrocarbons at Brook Hills Phase II of waste piles between April 1, 1999 and October 15, 2001.

(e) Reserved Claims. Notwithstanding any other provision of this Agreement, nothing in this Agreement is intended to release the Parties from their obligations under this Agreement nor as to the REGIONAL BOARD'S continued obligations to regulate and monitor the Brook Hills Project in its entirety.

9. No Third Party Benefits. This Agreement is made for the sole benefit of the Parties and no other person or entity shall have any rights or remedies under or by reason of this Agreement unless otherwise expressly provided for herein.

10. Entire Agreement. This Agreement constitutes the entire understanding between the Parties as to the subject matter hereof and may not be modified, amended or terminated except by written agreement signed by the Parties.

11. Limitations. This Agreement is not intended to affect any rights or obligations arising from any contracts between CENTEX and APPLETON and/or any other third person.

12. Approvals, Consents, Waivers. No approval, acceptance or consent of a Party required by any provision of this Agreement, nor any waiver of any required approval, acceptance, consent or condition, shall be deemed to have occurred until set forth in writing, signed by the Party, and delivered to the other Party. Any consent or approval by a Party in any single instance shall not be deemed to be or construed to be consent or approval in any like matter arising at a subsequent date.

13. Cooperation/Documentation. The Parties will, at their own cost and expense, execute such other instruments, documents, information and data as may be reasonably necessary for the purposes of and to effectuate the terms of this Agreement.

14. Assignment. Subject only to the express restrictions contained in this Agreement, all of the rights, duties and obligations contained in this Agreement shall inure to the benefit of and be binding upon the Parties, and their successors and assigns.

15. Attorneys' Fees. Each Party shall bear its own costs and attorneys' fees, and any other expenses, related to all matters subject to resolution by this Agreement, including such costs, fees, and expenses incurred for administrative proceedings, litigation, and mediation. If any Party brings an action to enforce the terms of this Agreement or to declare rights hereunder, the prevailing Party in such action shall be entitled to its reasonable attorneys' fees and costs to be paid by the losing Party as awarded by the court or arbitrator.

16. Headings. Headings herein are used for convenience of reference only and do not define or limit the scope of provisions of this Agreement.

17. Agreement as Defense. This Agreement may be pleaded as a full and complete defense and may be used as the basis for an injunction against any action, suit or proceeding which may be prosecuted, instituted or attempted by any Party in breach thereof.

18. Severability. If any provision of this Agreement, or part thereof, is held invalid, void or voidable as against public policy or otherwise, the invalidity shall not affect other provisions, or parts thereof, which may be given effect without the invalid provision or part. To this extent, the provisions, and parts thereof, of this Agreement are declared to be severable.

19. No Admission of Liability. This Agreement embodies a compromise of claims and shall not be used or construed as an admission of liability or fault for any purpose.

20. Reliance. Each Party declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other Party, or of any agent or attorney of any other Party. Each Party represents to each other Party that it has reviewed each term of this Agreement with its counsel and that it shall never dispute the validity of this Agreement on the ground that it did not have advice of its counsel.

21. Controlling Law; Venue. This Agreement is being made and delivered and is intended to be performed in the State of California and the execution, validity, construction, and performance of this Agreement shall be construed and enforced in accordance with the laws of California. This Agreement shall be deemed made and entered into in San Diego County, which shall be the exclusive venue for any action relating to this Agreement.

22. Warranties of Authority and Against Prior Assignment. Each person who signs this Agreement on behalf of a Party warrants and represents to every other Party that he or she has the authority to make this Agreement on behalf of the Party for which he or she signs. Each of the Parties to this Agreement represents and warrants that it is the sole and exclusive owner of the rights, claims and causes of action herein released and that it has not heretofore assigned or transferred or purported to assign or transfer to any other person or entity any obligations, rights, claims, or causes of action herein released.

23. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, but which together shall constitute the agreement of the Parties when each Party has signed a counterpart.

24. Integration. This is an integrated agreement. The terms of this Agreement are contractual, and not merely a recital. This Agreement supersedes all prior representations and agreements, if any, between the Parties or their legal counsel regarding its subject matter.

25. Knowing, Free and Voluntary Making. The parties have read the Agreement, and acknowledge that they know and fully understand its contents. The Parties acknowledge that they have fully discussed this Agreement with their respective attorneys and fully understand the consequences of this Agreement. The Parties have relied and are relying solely upon their own judgment, belief and knowledge of the nature, extent, effect and consequences relating to this Agreement and/or upon the advice of their own legal counsel concerning the legal and income tax consequences of this Agreement. The Parties will execute the Agreement freely and voluntarily.

## **Brook Hills Development Violations**

1. **Stockpile A - failure to submit ROWD**  
October 26, 2000 to September 21, 2001 = 331 days
2. **Stockpile B - failure to submit ROWD**  
October 26, 2000 to September 21, 2001 = 331 days
3. **Stockpile C - failure to submit ROWD**  
April 13, 1999 to September 21, 2001 = 892 days
4. **Ten Windrows - failure to submit ROWD**  
April 2, 2001 to October 12, 2001 = 194 days
5. **Stockpile A - failure to provide adequate cover**  
October 26, 2000 to September 21, 2001 = 331 days
6. **Stockpile A - failure to provide adequate runoff/run-on protection**  
October 26, 2000 to September 17, 2001 = 326 days
7. **Stockpile B - failure to provide adequate runoff/run-on protection**  
October 26, 2000 to September 17, 2001 = 326 days
8. **Stockpile C - failure to provide adequate runoff/run-on protection**  
April 13, 1999 to September 17, 2001 = 887 days
9. **Windrows - failure to provide adequate runoff/run-on protection**  
April 2, 2001 to September 17, 2001 = 169 days
10. **Stockpile A - failure to remove in 120 days**  
Feb 23, 2001 to Sept. 21, 2001 = 211 days
11. **Stockpile B - failure to remove in 120 days**  
Feb 23, 2001 to Sept. 21, 2001 = 211 days
12. **Stockpile C - failure to remove in 120 days**  
August 11, 1999 to September 21, 2001 = 772 days
13. **Windrows - failure to remove in 120 days**  
July 31, 2001 to October 12, 2001 = 74 days
14. **Failure to provide adequate financial assurances**  
August 17, 2001 to October 12, 2001 = 57 days
15. **Sustained Nuisance Condition in violation of Directive's 9 & 11 of CAO 2000-280**  
**December** 13, 2000 to October 12, 2001 = 304 days
16. **Discharge of stormwater runoff violation of SWRCB Order 99-08**  
April 7, 2001 = 1 day

26. Notices. Notices concerning this Agreement shall be sent by certified mail to the following addresses. Any party may notify the other parties of a change of notice address by letter sent by certified mail.

For the Regional Board and John H. Robertus:

With a copy to:

Mr. John H. Robertus, Executive Officer  
Regional Water Quality Control  
Board, San Diego Region  
9771 Clairemont Mesa Boulevard, Suite A  
Sacramento, California 95812

John W. Richards, Esq.  
Office of Chief Counsel  
State Water Resources Control Board  
Post Office Box 100  
Sacramento, California 95812

For Appleton:

With a copy to:

Mr. Scott Canel  
Appleton Brook Hills L.P.  
10 South La Salle Street, Suite 3 340  
Chicago, Illinois 60603

Michael W. Prairie, Esq.  
Stephenson, Worley, Garratt,  
Schwartz, Garfield & Prairie  
401 B Street, Suite 2400  
San Diego, CA 92101

For Centex:

With a copy to:

Philip D. Kopp, Esq.  
Centex Homes  
1815 Aston Ave, Suite 101  
Carlsbad, CA 92008

Stephen L. Marsh, Esq.  
Luce, Forward, Hamilton &  
Scripps, LLP  
600 West Broadway, Suite 2600  
San Diego, CA 92101

27. Board Approval. Entry into this Settlement Agreement and Release is subject to the approval of the REGIONAL BOARD.

WHEREFORE, the undersigned, on the dates and at the place set forth below, subscribe their hands to and acknowledge their assent to the terms and conditions set forth herein, and agree to the foregoing.

Dated: January 14, 2001

"Regional Board"

CALIFORNIA REGIONAL WATER QUALITY  
CONTROL BOARD, SAN DIEGO REGION

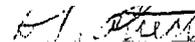
By: —  
Name~  
Its



Dated: ~~any~~ 14, 2001

"John H. Robertus"

J H. Robertus



Dated: , 2001

"Arthur I. Appleton, and Appleton Brook Hills  
Limited Partnership"

Linda Appleton Potter

Dated: , 2001

"Centex"

CENTEX HOMES, a Nevada general partnership  
By: Centex Real Estate Corporation, a Nevada  
corporation, its Managing General Partner

By:  
Name:  
Its:

**VaEREFOR**, the undersigned, on the dates and at the place set forth below, subscribe their hands to and acknowledge their assent to the terms and conditions set forth herein, and agree to the foregoing.

Dated: \_\_\_\_\_, 2001 "Regional Board"

CALIFORNIA REGIONAL WATER QUALITY  
CONTROL BOARD, SAN DIEGO REGION

By: —  
Name:  
Its:

Dated: \_\_\_\_\_, 2001 "John H. Robertus"

John H. Robertus

Dated: \_\_\_\_\_, 200X "Arthur I. Appleton, and Appleton Brook Hills  
Limited Partnership"

By:  
Linda Appleton Pott

Dated: \_\_\_\_\_, 2001 "Centex"  
S Co Y z. Gras CZ

CENTEX HOMES, a Nevada. general partnership  
By: Centex Real Estate Corporation, a Nevada  
corporation, its Managing General Partner

By: \_-.  
Name:  
Its:

WHEREFORE, the undersigned, on the dates and at the place set forth below, subscribe their hands to and acknowledge their assent to the terms and conditions set forth herein, and agree to the foregoing.

Dated: \_\_\_\_\_, 2001 "Regional Board"

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION

By:  
Name:  
Its:

Dated: \_\_\_\_\_ 2001 "John H.-Roberius"

John H. Roberius

Dated: \_\_\_\_\_ 2001, "Arthur 1. Appleton, and Appleton Brook Hills Limited Partnership"

By: LINDA APPLETON POTTER.  
Linda Appleton Potter  
By: Scott I. Canell  
SCOTT I. CANELL

Dated: \_\_\_\_\_ i0 , 2001.  
G1~.

"Centex"

CENTEX HOIvIES, a Nevada general partnership  
By: Centex Real Estate Corporation, a Nevada corporation, its Managing General Partner

By: \_  
Name;  
Its:

**WMREFORE**, the undersigned, on the dates and at the place set forth below, subscribe their hands to and acknowledge their assent to the terms and conditions set forth herein, and agree to the foregoing.

Dated: \_\_\_\_\_, 2001 "Regional Board"

CALIFORNIA REGIONAL WATER QUALITY  
CONTROL BOARD, SAN DIEGO REGION

By: \_  
Name:  
Its:

Dated: \_\_\_\_\_, 2001 "John H. Robertus"

John H. Robertus

Dated: \_\_\_\_\_, 2001 "Arthur I. Appleton, and Appleton Brook Hills  
Limited Partnership"

By:  
Linda Appleton Potter

Dated: ~~january2-~~ \_\_\_\_\_, 20012 "Centex"

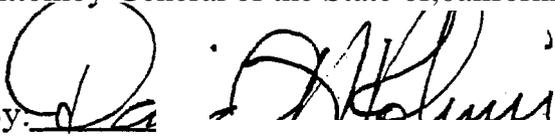
CENTEX HOMES, a Nevada general partnership  
By: Centex Real Estate Corporation. a Nevada  
corporation, its Managing General Partner

By:  
Name: ~ C  
Its: w)&Vr Co \*0.-, - ~crco\*~ - C~Fc)

Approved as to form:

**BILL LOCKYER**

Attorney General of the State of California

By: 

**DAVID H. ROBINSON**

Deputy Attorney General

Attorneys for California Regional Water

Quality Control Board, San Diego Region

**STEPHENSON, WORLEY, GARRATT,  
SCHWARTZ, GARFIELD & PRAIRIE LLP**

By:

**MICHAEL W. PRAIRIE, Esq.**

Attorneys for Arthur I. Appleton, and

Appleton Brook Hills Limited Partnership

**LUCE, FORWARD, HAMILTON & SCRIPPS LLP**

By:

**STEPHEN L. MARSH, Esq.**

Attorneys for Centex Homes

Approved as to form:

**BILL LOCKYER**

Attorney General of the State of California

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**DAVID H. ROBINSON**

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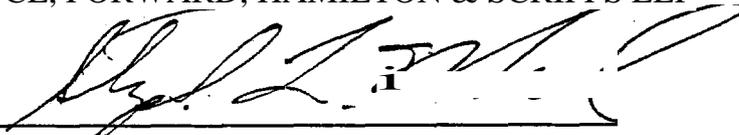
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SCHWARTZ, GARFIELD & PRAIRIE LLP

By:

MICHAEL W. PRAIRIE, Esq.  
Attorneys for Arthur I. Appleton, and  
Appleton Brook Hills Limited Partnership

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

By:

A handwritten signature in black ink, appearing to read "Stephen L. Marsh", is written over a horizontal line. The signature is cursive and somewhat stylized.

STEPHEN L. MARSH, Esq.  
Attorneys for Centex Homes

