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SACRAMENTO COURTS
DEPT. #54

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8 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SACRAMENTO

10 DEBORAH DOTY and ROBERT DOTY,
11 Plaintiffs,

12 v.

13 MARK J. BIXBY, et al.,
14 Defendants.

NO. 01AS07640

**Stipulation for Entry of Final
Judgment, Consent Decree, and
Permanent Injunction and Mutual
Release**

15
16 1. This Stipulation for Entry of Final Judgment, Consent Decree, and Permanent
17 Injunction and Mutual Release is entered into as of September 23, 2003, by and
18 between **Deborah Doty** and **Robert Doty** (collectively "**Doty**") and **Mark J. Bixby**,
19 **individually and doing business as Bixby Construction, Heidi Bixby, and**
20 **MJB/Bixby Construction, Inc., a California corporation** (collectively "**Bixby**").

21 2. This stipulation consists of a compromise and settlement among **Doty** and
22 **Bixby**, and a release given by each party to the other relinquishing all claims against
23 the other, except as set forth below. By executing this stipulation, each of the parties
24 intends to and does hereby extinguish the obligations heretofore existing between
25 them, except as set forth below. This stipulation is not, and shall not be treated as, an
26 admission of liability by any party for any purpose.

27 3. The parties to this Stipulation wish to resolve all differences and disputes
28 between them except as set forth below, with the understanding that nothing contained

1 herein shall constitute an admission of liability on the part of any of the parties hereto.

2 **Bixby** shall pay to **Doty** the sum of One Hundred Eighty-five Thousand Dollars
3 (\$185,000.00), payable to Deborah and Robert Doty. The first payment of One
4 Hundred Fifty-five Thousand Dollars (\$155,000.00) shall be paid within thirty (30) days
5 of the entry of this Stipulation, with the balance due within ninety (90) days from the
6 entry of this Stipulation (September 23, 2003). The balance shall bear interest at the
7 rate of ten percent (10%) simple interest per annum.

8 4. **Bixby** neither admits nor denies the allegations of the Plaintiffs in this
9 proceeding.

10 5. Except as set forth below and in Exhibit A attached hereto, the parties, in
11 consideration of the promises and concessions made by the others, hereby release,
12 compromise and settle any and all past, present, or future claims, demands,
13 obligations, or causes of action, arising from the facts alleged in this lawsuit and the
14 conduct of this lawsuit, whether based in tort, contract, or other theories of recovery,
15 which that party has or which may later accrue to or be acquired by that party against
16 the other party and the other party's respective directors, officers, employees, agents,
17 contractors, shareholders, partners, joint venturers, guarantors, sureties, subsidiaries,
18 and affiliates, as well as past, present, and future subsequent individuals or entities, on
19 the terms and conditions set forth below. In addition, all parties release any and all
20 persons who provided information, gave deposition testimony, and made and/or gave
21 declarations or written or oral statements or other information or documents to any of
22 the parties in aid of a party's prosecution or defense of this action from any and all past,
23 present, or future claims, demands, obligations, or causes of action, arising from
24 providing information, giving deposition testimony, making and/or giving declarations or
25 written or oral statements or other information to any of the parties in aid of a party's
26 prosecution or defense of this action except as set forth herein.

27 Plaintiffs are not releasing defendants Flynn and CanAm Roofing from any claims.

28 6. All parties shall bear their own attorneys' fees and costs in this action except

1 as set forth herein.

2 7. Except for the performance of the terms of this Stipulation and the attached
3 Stipulated Judgment, Consent Decree, and Permanent Injunction, upon execution
4 hereof, all the parties, forever release and discharge each other and their respective
5 directors, officers, employees, agents, contractors, shareholders, partners, joint
6 venturers, guarantors, sureties, subsidiaries and affiliates as may now or hereafter be
7 constituted from any and all claims, demands, debts, liabilities, obligations, expenses,
8 suits, actions, causes of action and legal or equitable proceedings of whatsoever kind
9 or nature, whether known or unknown arising from the transactions which are the
10 subject of this action or from the prosecution of this action, and the witnesses as
11 described above.

12 8. All notices, requests, demands, and other communications under this
13 Agreement shall be in writing, and shall be deemed to have been duly given on the
14 date of delivery if personally delivered to the person to whom notice is to be given, or
15 on the third business day after mailing if mailed to the person to whom notice is to be
16 given by certified mail, postage prepaid, return receipt requested, and properly
17 addressed to that person's last known address or such other address as may be shown
18 on a written notice of change of address received by the other party. Mail which is
19 refused or not collected shall be deemed received.

20 9. This Agreement shall be governed by and construed in accordance with the
21 laws of the State of California.

22 10. All parties, respectively, acknowledge, warrant, and represent to each other
23 and agree that neither they nor their directors, officers, employees, agents, contractors,
24 shareholders, partners, joint venturers, guarantors, sureties, subsidiaries and affiliates
25 have heretofore sold, assigned or transferred or purported to sell, assign or transfer any
26 released claim, action, suit or demand or any interest therein that is or may be had
27 against the released party or any of its respective directors, officers, employees,
28 agents, contractors, shareholders, partners, joint venturers, guarantors, sureties,

1 subsidiaries and affiliates as may now or hereafter be constituted.

2 11. Except as set forth herein, this Agreement shall be binding upon and shall
3 inure to the benefit of each of the parties and their respective successors, heirs,
4 representatives, assigns, and past or present directors, officers, employees, agents,
5 contractors, shareholders, partners, joint venturers, guarantors, sureties, subsidiaries
6 and affiliates as may now or hereafter be constituted.

7 12. All of the parties certify that they have read Section 1542 of the Civil Code,
8 set out below, and indicate that fact by signing their initials here: MM . dd.

9 MM .
10 "A general release does not extend to claims which the creditor does not know or
11 suspect to exist in his favor at the time of executing the release, which if known by him
12 must have materially affected his settlement with the debtor."

13 13. All of the parties hereby waive application of Section 1542 of the Civil Code.

14 14. All of the parties understand and acknowledge that the significance and
15 consequence of this waiver of Section 1542 of the Civil Code are that even if any of the
16 parties should eventually suffer additional damages arising out of the above-described
17 transaction, causes of action, or prosecution of this action, that party will not be
18 permitted to make any claim for those damages, except those claims which derive from
19 the performance of this stipulation or which are excepted from this release.

20 15. Furthermore, all of the parties acknowledge that they intend these
21 consequences even as to claims for damages that may exist as of the date of this
22 release but which any of the parties do not know exist, and which, if known, would
23 materially affect the party's decision to execute this release, regardless of whether the
24 party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any
25 other cause.

26 16. All the parties, respectively, acknowledge, warrant and represent to the
27 others and agree that the facts and perceived circumstances to which the foregoing
28 releases are given may hereafter turn out to be other than or different from the facts

1 and perceived circumstances in that connection now known or believed to be known by
2 them and their respective directors, officers, employees, agents, contractors,
3 shareholders, partners, joint venturers, guarantors, sureties, subsidiaries and affiliates
4 to be true, and that all of the parties therefore expressly assume the risk of the facts
5 and perceived circumstances turning out to be so different and agree that the foregoing
6 releases shall be in all respects effective and not subject to termination or rescission by
7 reason of such difference in facts and perceived circumstances.

8 17. Each of the parties, respectively, acknowledges, warrants and represents to
9 the other parties and agrees that neither it nor any agent, or attorney of it, has made
10 any promise, representation or warranty whatsoever, express, implied or statutory, not
11 contained herein concerning the subject matter hereof to induce another party to
12 execute this Agreement , and that it has not executed this Agreement in reliance on any
13 such promises, representation or warranty not contained herein.

14 18. In the event of a dispute, including enforcement, between any of the parties
15 arising under or in connection with this stipulation, the prevailing party shall be entitled
16 to recover from the other all reasonable costs and expenses, including reasonable
17 attorneys' fees, which may be sustained or incurred in the enforcement or declaration of
18 any of their respective rights, obligations or remedies of the parties, whether arising
19 under this Agreement or granted, permitted or imposed by law.

20 19. This stipulation is intended by the parties hereto as a final expression of
21 their agreement and understanding with respect to the subject matter hereof and as a
22 complete and exclusive statement of the terms hereof and supersedes any and all prior
23 and contemporaneous agreements and understandings relating thereto. Should there
24 be a conflict between any provision of this Agreement and any law, contrary to which
25 the parties have no legal right to contract, the latter shall prevail, but in such event the
26 provision(s) of this Agreement affected shall be curtailed and restricted only to the
27 extent necessary to bring them within such legal requirements, and only as long as
28 such conflict exists. A failure to enforce any term of this Agreement by any party hereto

1 shall not be deemed a waiver of any breach nor a modification of this Agreement. This
2 Agreement may not be changed or modified, or any covenant or provision hereof
3 waived, except by an agreement in writing, signed by the party against whom
4 enforcement of the change, modification or waiver is sought, and not otherwise.

5 20. **Bixby** covenant not to sue **Doty**, or any of them, on any of the released
6 claims and further agree not to cooperate with anyone who does sue any of them on
7 the released claims. **Doty** covenant not to sue **Bixby**, or any of them, on any of the
8 released claims and further agree not to cooperate with anyone who does sue any of
9 them on any of the released claims.

10 21. All parties agree to cooperate with the other parties, and shall sign all
11 documents reasonably necessary, in order to effectuate the terms and the spirit of this
12 stipulation.

13 22. This stipulation may be signed in counterparts. The parties may rely on
14 telecopies of signatures.

15 23. **Doty** agree not to actively solicit or encourage **Bixby's** future customers to
16 pursue legal action against **Bixby** or deliver to them a copy of the Stipulated Final
17 Judgment, Consent Decree, and Permanent Injunction. **Bixby** acknowledge that the
18 injunction is a public document and will be available to the general public. **Bixby** agree
19 that **Doty** are not responsible for future or present customers who learn about the
20 injunction through public sources. In addition, **Doty** may discuss the injunction with the
21 persons and companies whose projects and transactions have been the subject of this
22 action or who are involved in the circumstances that are the subject of this litigation.
23 Except for returning original documents to their owners, **Doty** agree that they will not
24 release the evidence they have acquired in this litigation to third parties unless under
25 subpoena or court order to do so.

26 24. The parties hereby stipulate to entry of judgment in the form attached as
27 Exhibit A without the taking of evidence, and without trial or adjudication of any facts
28 herein, and without the said judgment constituting any evidence or admission by the

1 Defendants regarding any issue of fact alleged in the complaints on file in this action.

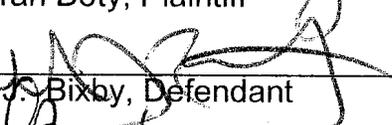
2 Dated: April 21, 2004


Robert Doty, Plaintiff

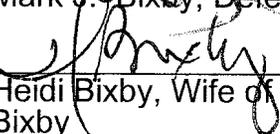
4 Dated: April 21, 2004


Deborah Doty, Plaintiff

5 Dated: April 28, 2004


Mark J. Bixby, Defendant

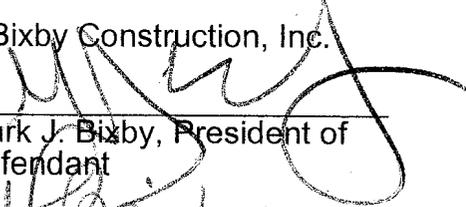
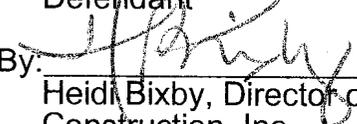
7 Dated: April 28, 2004


Heidi Bixby, Wife of Mark J. Bixby

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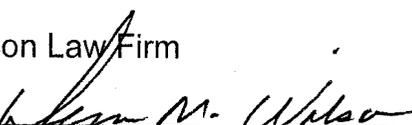
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2 Dated: May 24, 2004

MJB/Bixby Construction, Inc.
By: 
Mark J. Bixby, President of
Defendant
By: 
Heidi Bixby, Director of MJB/Bixby
Construction, Inc.

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6 Approved as to Form:

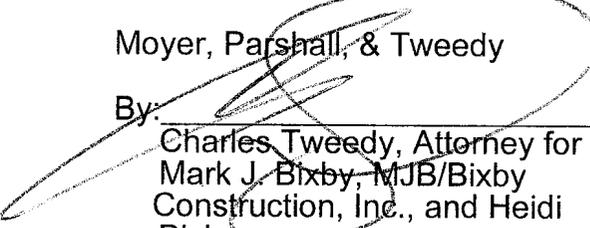
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8 Dated June 8, 2004

Wilson Law Firm
By: 
Dennis M. Wilson, Attorney for
Plaintiffs

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11 Dated: June 4, 2004

Vogel & Meridith
By: 
David Firestone, Attorney for
Mark J. Bixby, and
MJB/Bixby Construction, Inc.

12
13
14 Dated: May 24, 2004

Moyer, Parshall, & Tweedy
By: 
Charles Tweedy, Attorney for
Mark J. Bixby, MJB/Bixby
Construction, Inc., and Heidi
Bixby