

## **OPEN ENERGY CLASS ACTION SETTLEMENT PLAN OF ALLOCATION**

The purpose of this Plan of Allocation (the “Plan”)<sup>1</sup> is to set forth the method for the distribution of Settlement Benefits to Settlement Class Members, as provided in the Settlement Agreement and the Court’s Final Order and Judgment, following the Effective Date.

Class Counsel and the Claims Administrator shall have the power to make benefit decisions (including resolve disputes over entitlement to benefits) consistent with the Plan and Settlement Agreement and subject to the oversight of the Special Circumstances Committee and the Special Master.

The Plan itself may only be modified by a written agreement of Defendants and Class Counsel approved by the Court, or by order of the Court following a noticed motion.

### **I. SETTLEMENT FUNDS**

The Plan provides for the distribution of all settlement proceeds, following deductions for court approved attorneys’ fees and litigation expenses, the costs of class notice and administration, and Incentive Awards, if any, to the Class Representatives.

### **II. CLAIMS ADMINISTRATOR**

Any disputes regarding payment of invoices for the Claims Administrator’s services shall be resolved between the Claims Administrator and Class Counsel, or if not so resolved, shall be submitted for final determination by the Special Master.

### **III. CATEGORY OF CLAIMS**

The Claims Administrator shall review all Claim Forms to ensure that the claimants establish by their Claim Forms and supporting documentation, or other available information, their entitlement to Settlement Benefits. There are several categories of potential claimants, some of whom will receive differential benefits. The basic outline of options, per category, are as follows. Further detail is provided in the Settlement Agreement:

#### **A. Category 1 (Eligible Claimants whose Solar Tiles remain installed, other than Centex Individual Plaintiffs)**

1. Replacement option: replacement of Solar Tiles with concrete roofing tiles and rack mounted solar panels, in accordance with Settlement Agreement. (Settlement Class Member will have to pay cost of building permits and replacement inverter, if required by local building code, subject to possible reimbursement pursuant to the terms of the Settlement Agreement.)
2. De-install option: removal of Solar Tiles and replacement with concrete roofing tiles, plus a check for \$54.25 per Solar Tile removed.

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<sup>1</sup> Initial capitalized terms have the same definitions as set forth in the Settlement Agreement or as otherwise set forth herein.

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3. Cash option: cash payment of \$60 per Solar Tile removed, with acknowledgement of fire risk and waiver of subrogation.

**B. Category 2 (Eligible Claimants whose Solar Tiles were removed by Claimant)**

Eligible Claimants in this category shall receive a cash payment of \$132.98 per Solar Tile replaced.

**C. Category 3 (Centex Energy Claimants)**

Centex Energy Claimants shall receive a payment of \$500. If more than one Person meets the definition of a Centex Energy Claimant for the same Property, then the \$500 payment shall be allocated as appropriate in the discretion of the Claims Administrator.

**D. Category 4 (Eligible Claimants whose Solar Tiles were removed or replaced by someone one else at no cost, other than Centex Energy Claimants)**

Class Members in this category are not entitled to the primary financial benefits offered under the Settlement, as the assignee or subrogee of such Claimant shall receive the Settlement Benefit. Falling within Category 4 does not preclude consideration under Category 7 if otherwise applicable.

**E. Category 5 (Assignees/Subrogees, including Defendants to that extent of an assignment or actual replacement of the Solar Tiles)**

Assignees or subrogees, who can prove replacement of one or more Solar Tile systems at Settlement Class Member's Property(ies) shall receive \$132.98 per Solar Tile removed, if the Solar Tiles at such location were removed and replaced with non-OE 34 solar tiles, or \$54.25 per Solar Tile removed, if the Solar Tiles were removed and replaced with concrete roofing material (i.e., de-installed).

**F. Category 6 (Other)**

Settlement Class Members (other than express signatories to the Settlement Agreement and their respective insurers) who are not eligible for a payment pursuant to Categories 1-6 above as to any particular location on which Solar Tiles are or were installed may be eligible for a payment of up to \$250 for each such location for costs or damage sustained by such Person relating to the Solar Tiles at such location which is not encompassed by the foregoing categories, subject to adequate documentation of a loss not compensated above. Eligibility to be determined in the discretion of the Claims Administrator, subject to the oversight of the Special Circumstances Committee and the Special Master.

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**G. Centex Individual Plaintiffs, Centex Payment and Cameron Park Compensation**

The payments and claims process for Centex and for Cameron Park shall be processed in accordance with the terms of the Settlement Agreement.

Centex Individual Plaintiffs will receive replacement of their Solar Tiles with concrete roofing tiles and rack mounted solar panels (including the cost of any required building permits and replacement inverters), in accordance with Settlement Agreement, plus a payment in the amount of \$500 (per home).

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Claimants who elect to have their Solar Tiles replaced shall be assigned a Remediation Contractor who is approved by the Claims Administrator. The primary Remediation Contractor will be Petersen-Dean. The Claim Administrator will work as a liaison between the Claimant and the Remediation Contractor.

\* \* \*

Claimants other than Centex Individual Plaintiffs and Cameron Park shall pay for the cost of the necessary permit if required by the Authority Having Jurisdiction (as used herein "AHJ" or "Authority Having Jurisdiction" shall mean the local municipal governmental authority having jurisdiction over a particular work site, such as the local city or county building department). The Remediation Contractor will pull the necessary permit on behalf of the Claimant. The Remediation Contractor will be reimbursed by the Claim Administrator for the cost of the permit. Before commencement of work, the Claimant will reimburse the Settlement Fund Trust Account for the cost of the permit. A copy of the permit shall be forwarded to the Claims Administrator prior to commencement of the work.

The Claimant (other than Centex Individual Plaintiffs) shall also be responsible for the cost of a new inverter if one is required by the Authority Having Jurisdiction at the time of the permit, or is otherwise required for the proper installation of the new system. The inverter will be procured and installed by the Remediation Contractor within its scope of work, subject to the same payment process as noted above for the permit.

Permit and inverter costs will be reimbursed, out of Available Funds, if any, at the conclusion of the claims/replacement period, subject to the waterfall and pro rata provisions set forth in the Settlement Agreement.

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Any complaints associated with the replacement system or installation practices will be addressed to the Claims Administrator. If necessary, the Claims Administrator will convene the Special Circumstances Committee to assess and resolve the complaint.

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**IV. CLAIMS SUBMISSION DEADLINE**

Settlement Class Members will be required to submit claim forms no later than one year from the Effective Date, although the Settlement does provide that late claims may be paid if extra funds exist at the conclusion of the one year claims period. Settlement Class Members will be requested to return their claims forms earlier (i.e., within 90 days of the Effective Date) to facilitate speedy implementation of the Settlement. For Settlement Class Members with an existing system who do not respond within 90 days of the Effective Date, the Claims Administrator will contact such persons by phone and/or mail and/or email, or any other reasonable means available, to encourage them to submit a claim form.

**V. CLAIMS REVIEW PROTOCOL**

All information provided in the Claim Forms and supporting documentation submitted by the participating Claimant shall be entered into a database. The Claims Administrator shall review claims to ensure that all necessary information is provided.

The Claims Administrator shall exercise, in its discretion, reasonable steps to prevent fraud and abuse in the Claim Process.

**A. Claim Form Deficiencies**

The Claims Administrator shall advise the Claimant in writing of any deficiencies in submission of the Claim Form. The Claimant shall have thirty (30) days from the date of notice of the deficiencies to respond to the Claims Administrator and remedy such deficiencies. If the Claims Administrator receives no response from Claimant within thirty (30) days, the Claims Administrator shall send a second notice. If the Claims Administrator receives no response within thirty (30) days from the date of the second notice, the claim shall be considered closed. The claim may be reopened at any time within the Claims Period. The Claims Administrator shall attempt to contact such claimants again at least 45 days before the end of the Claims Period, to offer such claimants a further opportunity to participate before the end of the Claims Period.

**B. Timing of Payment**

Settlement Benefit payments shall be made in a timely manner consistent with this Plan following the Effective Date. If there is more than one Claimant with respect to a Property, any apportionment will be determined by the Claims Administrator, which decision may be appealed to the Special Master pursuant to the procedures set forth herein.

**VI. REMEDATION CONTRACTOR**

The Remediation Contractor shall be currently licensed in the subject State, and the Claims Administrator shall assure the Remediation Contractor agrees to terms equivalent to the scope and conditions set forth in the Settlement Agreement regarding Petersen Dean, as a condition to performing the work associated with the replacement of the Solar Tiles. (The Claims Administrator may accept lesser terms as to the Remediation Contractors selected by a

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Category 1 Claimant, provided the Claimant approves the deviations and confirms in writing that no additional payments from the Settlement will be made on account of such deviations.)

**VII. SPECIAL CIRCUMSTANCES COMMITTEE**

Subject to and consistent with the terms of this Plan, a Special Circumstances Committee consisting of the Claims Administrator, Tony Diaz of Century Roof and Solar, and Phil Ribbs, a retired building inspector, shall be established to address any disputes or unusual claims.

**VIII. SPECIAL MASTER**

Class Counsel has selected Michael J. Ney, Esq. as the Special Master who shall, consistent with the Plan, oversee implementation of the Plan and resolve any disputes relating to any claim for Settlement Benefits, any remediation work undertaken hereunder, or any other aspect of this Plan:

Michael J. Ney, Esq.  
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The Special Master shall submit any invoices to the Claims Administrator for fees and expenses.

**IX. CLAIMS PERIOD/WRAP-UP PROCESS**

The Claims Period will start on the Effective Date and end one year therefrom, which is the anticipated completion date of the Replacement Program.

If there are remaining funds after the distribution of all monies required under the Settlement Agreement and related orders, then the Claims Administrator shall calculate the amount of Available Funds, and distribute the same subject to the waterfall and pro rata provisions set forth in the Settlement Agreement. If there are still funds remaining following such distribution, then the remainder shall be handled as provided in Section VIII.C. of the Settlement Agreement.

**X. MAINTENANCE OF RECORDS**

The Claims Administrator shall maintain complete and accurate records regarding the administration of this Plan, including any claim submitted and any evidence submitted in connection with the claim, all Statements, Notices of Claims Decision, Objections and other documents specified in the Plan or the Exhibits thereto, the resolution of any Objections and the dates and amounts of all payments. The Claims Administrator shall make such records available to Claimants, Class Counsel, Defense Counsel or their designees upon reasonable request and at

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reasonable times. The Claims Administrator shall maintain all records for a period of not less than three (3) years following the date of the last disbursement from the Claims Administration Trust Account. Thereafter, all records shall be destroyed unless Class Counsel and/or the Court otherwise directs.

Class Counsel, in conjunction with the Claims Administrator, shall submit periodic Reports to the Court and Defendants summarizing the work performed for the Settlement Class, including a report of all amounts disbursed.

**XI. ADEQUACY OF FUNDS**

Class Counsel have determined that they will advise the Court that they are willing to postpone payment of up to \$280,000 of their fee award (if the full amount sought is awarded). This is due to the fact that the Settlement Benefits may otherwise not be sufficient to pay all claims if it is assumed that 100% of the class participates and that each Class Member chooses the most costly option for benefits available to such claimant.

If for any reason the projected available funds prove insufficient (including when taking into account the \$280,000 potential deferral noted above), then priority shall be given to the completion of all removal/replacement work, with other cash payments due under the Settlement being ratably reduced to ensure adequate funds for the replacement work. The Claims Administrator may defer cash payments to Settlement Class Members under Section IV, Paragraphs A.1 (to the extent of cash payments directly to Settlement Class Members), A.2, A.6, and A.7 of the Settlement Agreement, until such time as the Claims Administrator may reasonably determine whether a ratable reduction may be required.

**XII. JURISDICTION**

The Court has, and shall continue to have, jurisdiction to make any orders necessary or appropriate to effectuate, consummate and enforce the terms of this Plan and to supervise the administration of the Settlement Agreement and Final Order and Judgment.