

After recording, please return to:  
 Amanda L. Callander  
 Buist, Byars & Taylor, LLC  
 652 Coleman Boulevard, Suite 200  
 Mount Pleasant, South Carolina 29464

Please cross-reference to Declaration recorded at:  
 Book V573, Page 762 and  
 Book U611, Page 848 and  
 Book B619, Page 558 and  
 Book \_\_\_\_, Page \_\_\_\_

STATE OF SOUTH CAROLINA    )  
   )  
   )  
 COUNTY OF CHARLESTON    )    SECOND AMENDMENT TO  
   )    AMENDED AND RESTATED DECLARATION  
   )    OF COVENANTS, RESTRICTIONS AND  
   )    EASEMENTS FOR CAROLINA BAY

THIS SECOND AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR CAROLINA BAY (this "Second Amendment") is made this 20 day of January, 2008, by Centex Homes, a Nevada general partnership (the "Declarant").

WITNESSETH

WHEREAS, the Declarant executed that certain Declaration of Covenants, Restrictions and Easements for Carolina Bay (the "Original Declaration"), dated February 7, 2006, and recorded February 23, 2006 in the RMC Office for Charleston County, South Carolina, in Book V573, Page 762, restricting certain real property located in the County of Charleston, State of South Carolina and being more particularly described in Exhibit "A" to the Declaration (the "Property"); and

WHEREAS, the Declarant subsequently amended and restated the Original Declaration by executing that certain Amended and Restated Declaration of Covenants, Restrictions and Easements for Carolina Bay (the "Restated Declaration"), dated January 2, 2007, and recorded January 11, 2007 in the RMC Office for Charleston County, South Carolina, in Book U611, Page 848; as amended at Book B619, Page 558; and

WHEREAS, the Declarant subsequently supplemented the Restated Declaration by executing that certain First Supplemental Declaration to Amended and Restated Declaration of Covenants, Restrictions and Easements for Carolina Bay (together with the Original Declaration and the Restated Declaration, the "Declaration"), dated March 9, 2007, and recorded March 19, 2007 in the RMC Office for Charleston County, South Carolina, in Book B619, Page 558; and

WHEREAS, the Declarant subsequently supplemented the Restated Declaration by executing that certain Second Supplemental Declaration to Amended and Restated Declaration of Covenants, Restrictions and Easements for Carolina Bay (together with the Original Declaration and the Restated Declaration, the "Declaration"), recorded in the RMC Office for Charleston County, South Carolina, in Book J642, Page 437; and

WHEREAS, the Declarant subsequently supplemented the Restated Declaration by executing that certain Third Supplemental Declaration to Amended and Restated Declaration of Covenants, Restrictions and Easements for Carolina Bay (together with the Original Declaration and the Restated Declaration, the "Declaration"), dated January, 2008 and recorded in the RMC Office for Charleston County, South Carolina, in Book N654, Page 186; and

WHEREAS, pursuant to the terms of Section A of the Article 14 of the Declaration, the Declarant may amend the Declaration at any time, by written instrument duly recorded in the RMC Office for Charleston County, with or without the prior consent or approval of any Owner or mortgagee holding a lien on any Lot or Parcel; and

WHEREAS, the Declarant desires to amend the Declaration as provided below.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, pursuant to the powers reserved to the Declarant under the Declaration, the Declarant hereby amends the Declaration as follows:

1. All capitalized terms used herein but not defined herein shall have the definitions set forth in the Declaration.

2. Article 2 of the Declaration is hereby amended to add the following definitions:

“Apartment Owner” means the owner of fee simple title to property in which a “For Rent” multi-family residential complex is built (but does not include Declarant or any builder exercising Declarant rights with regard to Assessments payable to the Association during the Deficit Funding Period).

“Apartment Unit” means each individual multi-family residential unit in the Project.

“Commercial Lot” means a portion of the Project Land shown on a Final Plat as a delineated parcel of land which is designated for commercial use and upon which a commercially used building may be erected.

“Commercial Owner” means the owner of fee simple title to property designated for commercial use (but does not include Declarant or any builder exercising Declarant rights with regard to Assessments payable to the Association during the Deficit Funding Period).

“Unit” means collectively, all Living Units, Lots, Apartment Units and Commercial Lots.

3. The following Sections of Article 6 of the Declaration are hereby deleted in their entirety and replaced with the following:

A. Affirmative Covenant to Pay Operating Expenses. In order to: (i) fulfill the terms, provisions, covenants and conditions contained in the Association Documents; and (ii) maintain, operate and preserve the Association Property for the welfare and benefit of the Members and their family members, guests, invitees and lessees, there is hereby imposed upon each Unit the affirmative covenant and obligation to pay to the Association (in the manner herein set forth) all Assessments, including, but not limited to, the Base Assessments, Special Assessments, Individual Expense Assessments, Neighborhood Assessments (if any), and Working Capital Contributions. Each Residential Owner, Apartment Owner and Commercial Owner, by acceptance of a deed or other instrument of conveyance of a Unit from Declarant, whether or not it shall be so expressed in such deed or instrument, shall be obligated and agrees to pay to the

Association all Assessments for Operating Expenses in accordance with the provisions of the Association Documents.

B. Establishment of Liens. Any and all Assessments made by the Association in accordance with the Association Documents with Interest thereon and costs of collection (including, but not limited to, Legal Fees) are declared to be a charge and continuing lien upon each Unit against which each such Assessment is made and shall run with the land. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a satisfaction of the statement of lien in recordable form. Where an Institutional Mortgagee obtains title to a Unit as a result of foreclosure of its first mortgage or deed in lieu of foreclosure, such Institutional Mortgagee shall not be liable for the share of Assessments pertaining to such Unit that became due prior to the acquisition of title by such Mortgagee as a result of the foreclosure or deed in lieu thereof, unless the Assessment is secured by a claim of lien for Assessments recorded prior to the recording of the applicable mortgage.

C. Amount of Base Assessment.

i. Living Units and Lots. The total anticipated Operating Expenses for each calendar year shall be set forth in the budget ("Budget") prepared by the Board as required under the Association Documents. The total anticipated Operating Expenses for Living Units and Lots (other than those Operating Expenses which are properly the subject of a Special Assessment) shall be apportioned equally among the Lots and Living Units by dividing the total anticipated Operating Expenses as reflected by the Budget, by the total number of Lots and Living Units, with the quotient thus arrived at being the "Base Assessment". The Board shall have the right to base the first Budget and all subsequent Budgets prepared during the Deficit Funding Period referred to below upon a projection of the total Operating Expenses at full build-out of the Project and to determine and the Base Assessment by dividing the amount of the total anticipated Operating Expenses at full build-out by a number equal to 75% of the Total Planned Units. On any Budget, the Board shall have the right to make adjustments to the amount of the total Operating Expenses anticipated at full build-out of the Project or any component thereof, from the amounts reflected on the previous Budget. Such adjustments shall be made based on the Board's reasonable determination of actual or potential increases or decreases in the costs associated with the services and materials covered in the Budget. Accordingly, the amount of the Base Assessment may vary from year to year during the Deficit Funding Period, as long as the Base Assessment is calculated according to the formula described in the previous sentence and the applicable Budget is ratified as provided below.

ii. Apartment Units and Commercial Lots. The initial Base Assessment for the year 2008 for Apartment Units shall be \$50.00 per Apartment Unit. The initial Base Assessment for the year 2008 for Commercial Lots shall be \$5,520.00. The Base Assessment for both Apartment Units and Commercial Lots shall increase annually by the same percentage amount that the Base Assessments for Living Units and Lots are increased.

D. Special Assessment. "Special Assessments" include, in addition to other Assessments designated as Special Assessments in the Association Documents, those Assessments which are levied for capital improvements which include the costs of constructing or acquiring Improvements on or for the Association Property or the costs of reconstructing or replacing such Improvements. Special Assessments shall be in addition to, and are not part of, any "Base Assessment". Any such Special Assessments assessed against Lots, Living Units, Apartment Units and Commercial Lots shall be paid by the Residential Owners, Apartment Owners and Commercial Owners in addition to any other Assessments. Special Assessments shall be assessed in the same manner as the Base Assessment. Special Assessments shall be paid in such installments or in a lump sum as the Board shall, from time to time, determine. In any fiscal year of the Association after the Turnover Date, the levying of any Special Assessment shall require the affirmative assent of a majority of the votes held by each class of Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws. Any Special Assessment levied prior to the Turnover Date may be levied by the Board without the approval or consent of the Residential Owners, Apartment Owners, Commercial Owners or any other party.

E. Individual Expense Assessments. Individual Expense Assessments include any Assessment levied against a Residential Owner, Apartment Owner or Commercial Owner as a result of such owner's use, maintenance, or treatment of the Association Property or such owner's failure to comply with the Association Documents, including, but not limited to, non-compliance of Units and any other Improvements or personal property contained therein with the standards set forth in the Association Documents. The amount of the Individual Expense Assessment(s) shall be equal to the amount of any additional costs and expenses incurred by Declarant or the Association as a result of such owner's failure or refusal to comply with the Association Documents. The Individual Expense Assessment and any late charges relating thereto shall be assessed and collected and enforced in the same manner as any other Assessments hereunder as provided herein. Individual Expense Assessments shall be in addition to and not part of any other Assessment. For the purposes of this Section, the term "Residential Owner," "Apartment Owner," and "Commercial Owner" shall also mean any such owner's family members, guests, or lessees, and such lessee's family members, or guests, employees, or agents.

F. Neighborhood Assessments. If the Association owns or maintains any Association Property or Recreational Facility that benefits the Residential Owners, Apartment Owners or Commercial Owners in a Neighborhood without providing a benefit to the other Neighborhoods, or if the Association otherwise provides any services or incurs any expenses exclusively on the behalf of the owners of Units in a specific Neighborhood, the Board may, at its sole option, levy "Neighborhood Assessments" on the Units within the applicable Neighborhood. Operating Expenses incurred for the exclusive benefit of a Neighborhood in accordance with the foregoing shall be determined in the same manner as the Base Assessments, and shall be addressed by a separate Neighborhood budget or otherwise clearly distinguished from the Operating Expenses allocated to the Residential Owners, Apartment Owners and Commercial Owners as Base Assessments. Any Neighborhood Assessments shall be payable in the same manner as the Base Assessments, in advance in monthly, quarterly, annual or semi-annual installments with the due dates being established by the Board. Notwithstanding the

foregoing, the Board and the Association are under no obligation to levy neighborhood Assessments or to otherwise exclude any Operating Expenses associated with any service or Association Property benefiting a Neighborhood from the total Operating Expenses used to determine the Base Assessment, as provided in Section R of Article 6.

G. Deficit Funding Period. Declarant covenants and agrees with the Association and the Residential Owners that for the period (“Deficit Funding Period”) commencing with the date of recordation of this Declaration and ending upon the sooner to occur of the following: (i) the date upon which six hundred (600) Living Units have become certified for occupancy by the applicable Governmental Authorities, or (ii) the date that is ten (10) years after the date this Declaration is originally recorded in the Public Records, that (a) the Base Assessment will be determined by spreading the total anticipated Operating Expenses projected at full build-out of the Project as set forth in the Budget, by a number equal to 75% of the Total Planned Unit, and (b) Declarant will pay the “Deficit,” being the difference, if any, between the Operating Expenses incurred by the Association during the Deficit Funding Period, and the Assessments paid by other Unit owners. During the Deficit Funding Period, Declarant shall not be obligated to pay any Assessments with respect to any Units owned by Declarant. Declarant hereby reserves the right to extend the Deficit Funding Period to a date ending not later than the Turnover Date at Declarant’s sole election by providing written notice to the Association of such election at least thirty (30) days prior to the expiration of the current Deficit Funding Period. After the Deficit Funding Period terminates, Declarant shall pay Base Assessments for any Units owned by Declarant at a rate equal to ten percent (10%) of the full amount of the applicable Base Assessments charged for Units that are not owned by Declarant.

Declarant’s obligation to fund the Deficit during the Deficit Funding Period as set forth above is hereby declared to be a charge and continuing lien upon each Unit owned by Declarant. Said lien shall be effective only from and after the time of the recordation in the Public Records of a written, acknowledged statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, Declarant shall be entitled to a satisfaction of the statement of lien in recordable form.

I. Collection of Assessments. If any Residential Owner, Apartment Owner, or Commercial Owner shall fail to pay any Assessment (or installment thereof) charged to such owner within fifteen (15) days after the same becomes due, then the Association shall have any and all of the following remedies to the extent permitted by law, which remedies are cumulative and which remedies are not in lieu of, but are in addition to, all other remedies available to the Association:

- i. To accelerate the entire amount of any Assessments levied on the applicable Unit for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments.
- ii. To advance on behalf of the Residential Owner(s), Apartment Owner(s) or Commercial Owner(s) in default funds to accomplish the needs of the Association up to and including the full amount for which such owner is liable to the Association. The amount of any funds so advanced, together with Interest and all

costs of collection thereof (including, but not limited to, Legal Fees), may be collected by the Association and such advance by the Association shall not waive said owner's default.

iii. To file an action in equity to foreclose its lien at any time after the effective date thereof. The lien may be foreclosed by an action in the name of the Association in like manner as a foreclosure of a mortgage on real property.

iv. To file an action at law to collect said Assessment plus Interest and Legal Fees, without waiving any lien rights or rights of foreclosure in the Association.

v. To charge Interest on such Assessment from the date it becomes due, as well as a late charge of Twenty-Five Dollars (\$25.00) per month by the Association to defray additional collection costs.

J. Collection by Declarant. If for any reason the Association shall fail to collect the Assessments, then prior to the Turnover Date, Declarant shall have the right (but not the obligation): (i) to advance such sums as the Association could have advanced as set forth above; and (ii) to collect such Assessments (and if applicable, any such sums advanced by Declarant); using the remedies available to the Association against a Residential Owner, Apartment Owner or Commercial Owner as set forth above, all of which remedies are hereby declared to be available to Declarant.

K. Payments by Declarant and Institutional Mortgagees. Declarant and any Institutional Mortgagees shall have the right, but not the obligation, jointly or singly, and at their sole option, to pay any of the Assessments which are in default and which may or have become a charge against any Units. Declarant and any Institutional Mortgagees shall also have the right, but not the obligation, jointly or singly, and, at their sole option, to pay insurance premiums or fidelity bond premiums or other required items of Operating Expenses on behalf of the Association when overdue and when lapses in policies or services may occur. Declarant and any Institutional Mortgagees paying overdue Operating Expenses on behalf of the Association will be entitled to immediate reimbursement from the Association plus Interest and any costs of collection. The Association shall execute an instrument in recordable form evidencing the Association's obligation to make such immediate reimbursement and deliver the original of such instrument to each party who is so entitled to reimbursement.

N. Certificate of Payment. Within fifteen (15) days after written request by any Owner or any Institutional Mortgagee, the Association shall provide the requesting party a written certificate as to whether or not the Owner of the Unit is in default with respect to the payment of Assessments or with respect to compliance with the terms and provisions of this Declaration. Any person or entity who relies on such certificate in purchasing or in making a mortgage loan encumbering any Unit shall be protected thereby.

O. Application of Payments. Any payments made to the Association by any Residential Owner, Apartment Owner or Commercial Owner shall first be applied towards any sums advanced and paid by the Association for taxes and payment on account of superior mortgages, liens or encumbrances which may have been advanced by the Association in order to preserve and protect its lien, next toward reasonable attorneys' fees incurred by the Association incidental to the collection of Assessments and other moneys owed to the Association by such

owner and/or for the enforcement of its lien; next towards Interest on any Assessments or other moneys due to the Association, as provided herein, and next towards any unpaid Assessments owed to the Association, in the inverse order that such Assessments were due.

R. Operating Expenses. The Assessments for Operating Expenses are payable by each Residential Owner, Apartment Owner and Commercial Owner to the Association notwithstanding the fact that Declarant may not have yet conveyed title to the Association Property to the Association. Operating Expenses shall include the cost of all items or expenses benefiting the Association, the Association Property, the Project, the Units, and the Unit owners, as determined to be an appropriate item of Operating Expense by the Board. Operating Expenses include, but are not limited to, the following expenses, costs, fees and charges:

1. Taxes. Any and all taxes levied or assessed at any and all times by any and all taxing authorities against the Association Property and against any and all personal property and Improvements, which are now or which hereafter may be placed thereon, including any interest, penalties and other charges which may accrue thereon.

2. Utility Charges. All charges levied for utilities providing services for the Association Property whether supplied by a private or public firm, including (but not limited to) all charges for water, gas, electricity, telephone, sewer and any other type of utility or any other type of service charge.

3. Insurance. The premiums on any policy or policies of insurance required to be maintained by the Association under this Declaration and the premiums on any policy or policies the Association determines to maintain even if not required to be maintained by the specific terms of this Declaration.

4. Destruction of Buildings or Improvements on the Association Property. Any sums necessary to repair or replace, construct or reconstruct damages caused by the destruction of any building upon the Association Property by fire, windstorm, flood or other casualty regardless of whether or not the same is covered in whole or in part by insurance shall be Operating Expenses. The sums necessary to pay for the damage or destruction as herein contemplated shall be considered Operating Expenses but shall be raised by the Association under the provisions for Special Assessments and subject to the limitations therein set forth with respect to Special Assessments.

5. Neighborhood Expenses. The costs and expenses related to the Association's provision of services and/or Recreational Facilities for the benefit of a particular Neighborhood (and not for the benefit of the Project as a whole or to all Residential Owners, Apartment Owners and Commercial Owners) may be an Operating Expense that is the subject of a Neighborhood Assessment payable only by the owners of Units of the applicable Neighborhood. Provided however, the levying of a Neighborhood Assessment by the Board is an optional right, and the Board, at its sole option, may allocate the expenses incurred by the Association for the benefit of a specific Neighborhood (if any) among all of the Residential Owners, Apartment Owners or Commercial Owners, by combining such expenses with the rest of the Operating Expense used to determine the Base Assessments payable by all such owners.

6. Maintenance, Repair and Replacements. All expenses necessary to keep and maintain, repair and replace any and all buildings, other Improvements, personal property

and furniture, fixtures and equipment upon the Association Property, including landscaping, lawn and sprinkler service, in a manner consistent with the standards and requirements in the Association Documents and in compliance with the requirements and regulations of all applicable Governmental Authorities having jurisdiction over the Project.

7. Additional or Offsite Maintenance. The expenses of any additional maintenance that the Board elects to provide in order to enhance the overall appearance of the Project for or on any property or Improvements located within or outside of the Project, if permitted by the owner of such property or the Governmental Authority responsible for maintaining same.

8. Indemnification. The costs of fulfilling the covenant of indemnification in Section G of Article 15.

9. Administrative and Operational Expenses. The costs of administration of the Association including, but not limited to, any secretaries, bookkeepers and other employees, and the costs of retaining a management company, as necessary to carry out the obligations and covenants of the Association.

10. Compliance with Laws. The cost and expense of the Association's compliance with all applicable laws, statutes, ordinances and regulations of any Governmental Authority, including, without limitation, any regulations regarding zoning requirements, setback requirements, drainage requirements, sanitary conditions, environmental conditions, and fire hazards.

11. Non-Payment of Base Assessments. Funds needed for Operating Expenses due to the failure or refusal of Residential Owners, Apartment Owners or Commercial Owners to pay the Assessments levied. Provided, however, that any Assessment for any such sums so needed to make up a deficiency due to the failure of such owners to pay a Special Assessment shall, itself, be deemed to be a Special Assessment.

12. Costs of Reserves. The funds necessary to establish an adequate reserve fund ("Reserve") for periodic maintenance, repair, and replacement of the Association Property and the facilities and Improvements thereupon in amounts determined sufficient and appropriate by the Board from time to time. Reserves shall be deposited in a separate account to provide such funds and reserves. The monies collected by the Association on account of Reserves shall be and shall remain the exclusive property of the Association and no Owner shall have any interest, claim or right to such Reserves.

13. Miscellaneous Expenses. The cost of all items or costs or expenses pertaining to or for the benefit of the Association, the Association Property, the Lots, the Living Units, the Project, or any part thereof, not herein specifically enumerated and which is determined to be an appropriate item of Operating Expense by the Board shall be an Operating Expense.

14. Legal Action against Declarant. Legal expenses incurred by the Association to begin legal proceedings against Declarant shall be deemed an Operating Expense, which is properly the subject of a Special Assessment and not the subject of a regular Base Assessment.

4. Article 11, Section A of the Declaration is hereby amended to allow up to two hundred seventy-six (276) "For Rent" Apartment Units to be constructed on the property described on



the attached Exhibit "A" (hereinafter referred to as "Focus Property"). "For Sale" Apartment Units are not a permitted use, unless otherwise allowed herein.


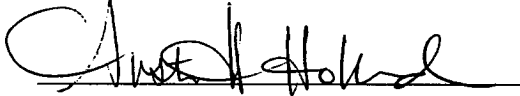
5. Article 11, Section B of the Declaration is hereby amended to allow fifty thousand (50,000) square feet of the Focus Property to be used for commercial purposes.

6. Except as set forth in this First Amendment, the Declaration shall remain in full force and effect, and any ambiguity between this document and the Declaration must be resolved in favor of this First Amendment.

[SIGNATURES ON FOLLOWING PAGE]

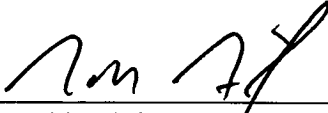
IN WITNESS WHEREOF, Declarant has signed this Second Amendment on the date set forth below.

WITNESSES AS TO DECLARANT:

  
\_\_\_\_\_  
  
\_\_\_\_\_


**DECLARANT:**

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

  
\_\_\_\_\_  
By: Todd Fairfax  
Its: Division President

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF Charleston )

The foregoing instrument was acknowledged before me, this 30 day of January, 2008, by Todd Fairfax, Division President of Centex Real Estate Corporation, a Nevada corporation, the Managing General Partner of Centex Homes, a Nevada general partnership.

  
\_\_\_\_\_  
(SEAL)  
Notary Public for South Carolina  
My Commission Expires: 10/16/08

**EXHIBIT "A"**  
"Focus Property"

ALL that certain piece, parcel or tract of land, together with any improvements, situate, lying and being in the City of Charleston, Charleston County, South Carolina and being shown and designated as "AREA 4-1 989,363.22 S.F. 22.713 ac." on a plat by Trico Engineering Consultants, Inc., entitled "PLAT SHOWING A PROPERTY LINE ADJUSTMENT IN BETWEEN AREAS 5-1 & 4-1, PROPERTY OF CENTEX HOMES, A NEVADA GENERAL PARTNESHIP, LOCATED IN ST. ANDREWS PARISH, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA." dated March 3, 2008 and recorded March 13, 2008, in Plat Book EL at Page 402 in the RMC Office for Charleston County, South Carolina. Said tract having such size, shape, buttings and boundings as are more particularly shown on said plat which is incorporated herein by reference.

This is the same property conveyed to Centex Homes by deed of conveyance from Julia Elizabeth Bradham, John M. Bradham a/k/a John McLeod Bradham and Margaret B. Thornton, formerly known as Margaret C. Bradham, Margaret Claire Bradham and Margaret Claire Bradham Thornton dated April 5, 2005, and recorded April 6, 2005 in Book X531, Page 279, in the RMC Office for Charleston County, South Carolina and by deed of conveyance from Kiawah Raccoon Run dated March \_\_\_\_, 2008 and recorded simultaneously herewith in the RMC Office for Charleston County, South Carolina.

TMS Number:           307-00-00-004 (portion)  
                              307-00-00-005 (portion)

**RECORDER'S PAGE**

**NOTE: This page MUST remain with the original document**



**FILED**

March 20, 2008  
8:49:16 AM

BK N 654PG174

Charlie Lybrand, Register  
Charleston County, SC

Filed By: *JTW*

**Buist, Byars, & Taylor, LLC**  
 652 Coleman Blvd.  
 Suite 200  
 Mt. Pleasant SC 29464-4018

**Number of Pages:**  
 12

DESCRIPTION	AMOUNT
AMEND/COV/REST	\$ 17.00
Postage	

<b>TOTAL</b>	<b>\$ 17.00</b>
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**DRAWER:**

	<b>B - ECP</b>
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DO NOT STAMP BELOW THIS LINE