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5 Attorneys for Plaintiffs ASSURANCE COMPANY
 6 OF AMERICA and MARYLAND CASUALTY COMPANY

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 8 **UNITED STATES DISTRICT COURT**
 9 **EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**

11 ASSURANCE COMPANY OF AMERICA and)	CASE NO.: 2:09-CV-01732-WBS-GGH
12 MARYLAND CASUALTY COMPANY)	
13 Plaintiffs,)	STIPULATION AND [PROPOSED]
14 vs.)	ORDER REGARDING
15 LEXINGTON INSURANCE COMPANY,)	CONTINUATION OF HEARING ON
16 Defendant.)	MOTION FOR PARTIAL SUMMARY
17)	JUDGMENT AS TO THE DUTY TO
18)	DEFEND
19)	Complaint Filed: June 23, 2009
20)	Discovery Cut-Off: Not Yet Set
21)	Motion Cut-Off: Not Yet Set
22)	Trial Date: Not Yet Set

23 **STIPULATION AND [PROPOSED] ORDER REGARDING CONTINUATION OF**
 24 **HEARING ON MOTION FOR PARTIAL SUMMARY JUDGMENT**
 25 **AS TO THE DUTY TO DEFEND**

26 The Parties to this litigation, ASSURANCE COMPANY OF AMERICA and MARYLAND
 27 CASUALTY COMPANY (collectively "Zurich"), by and through its counsel of record Morales
 28 Fierro & Reeves, on the one hand, and LEXINGTON INSURANCE COMPANY ("Lexington"),
 by and through its counsel of record Herold & Sager, on the other hand, hereby stipulate as follows:

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1 This action for declaratory relief and contribution involves the parties’ respective rights and
2 obligations under policies of commercial liability insurance with respect claims made against Dry
3 Creek Lath & Plaster in connection with an underlying lawsuit captioned *Syers Properties III v.*
4 *I.C.E. Builders, Inc., et al.*, El Dorado County Superior Court Case No. PC20040180 (“the *Syers*
5 *Properties Action*”). Initially, Lexington denied it owed any obligation to Dry Creek Lath & Plaster
6 with respect to the *Syers Properties Action*. Lexington now agrees that it has, and had since the time
7 of the initial tender of the *Syers Properties Action* to it, a duty to defend Dry Creek Lath & Plaster
8 in the *Syers Properties Action*.

9 The Parties, therefore, stipulate that Lexington owes, and since the date of tender owed, a
10 duty to defend Dry Creek Lath & Plaster in the *Syers Properties Action*. Furthermore, the Parties
11 stipulate that Lexington owes to Zurich its equitable share of the fees and costs Zurich incurred since
12 the date of tender in defense of Dry Creek Lath & Plaster in the *Syers Properties Action* and, as the
13 litigation of the *Syers Properties Action* continues, that Lexington owes a duty to contribute its
14 equitable share of the fees and costs of Dry Creek Lath & Plaster’s defense in the *Syers Properties*
15 *Action*.

16 It is Zurich’s position that it is only appropriate to withdraw the pending Motion if there is
17 a stipulation concerning both the duty to defend and the date on which the duty commenced. While
18 Lexington disagrees with Zurich’s position, the Parties are in the process of working on a stipulation
19 to resolve the date of the initial tender after which Zurich will withdraw the pending Motion.
20 Specifically, Zurich believes that the letter provided by Dry Creek’s attorney and supporting
21 declaration establishes that the tender date is January 19, 2005. Counsel for Lexington currently
22 does not have adequate information to confirm that the January 19, 2005 letter was actually received
23 by Lexington and the earliest document in the possession of counsel for Lexington demonstrating a
24 tender is March 14, 2005. Therefore, the Parties hereby agree and stipulate that this Motion be
25 continued for 30 days to allow the completion of a stipulation concerning the date on which the duty
26 to defend commenced.

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IT IS SO STIPULATED.

Dated: August 28, 2009

MORALES FIERRO & REEVES

By: /s/
Ramiro Morales, Esq., #167947
Elizabeth Celniker, Esq., #211652
Attorneys for Plaintiffs
ASSURANCE COMPANY OF
AMERICA and MARYLAND
CASUALTY COMPANY

Dated: August 28, 2009

HEROLD & SAGER

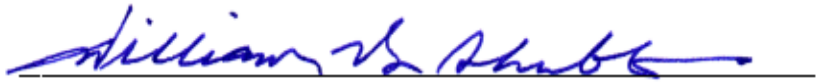
By: /s/
Andrew D. Herold, Esq., #178640
Joshua A. Zlotlow, Esq., #211399
Attorneys for Defendant
LEXINGTON INSURANCE
COMPANY

1 **[PROPOSED] ORDER**

2 Good cause appearing, the pending Motion for Partial Summary Judgment as to the Duty to
3 Defend filed by Assurance Company of America and Maryland Casualty Company is continued to
4 **September 28, 2009 at 2:00 p.m.**

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6 IT IS SO ORDERED.

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8 Dated: August 28, 2009

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10 WILLIAM B. SHUBB
11 UNITED STATES DISTRICT JUDGE
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