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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. DESARROLLADORA HOMEX S.A.B. DE C.V., Defendant	)	Case No. **COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS**

Plaintiff Securities and Exchange Commission ("SEC" or "Commission") alleges and states as follows:

SUMMARY

1. This case is about a massive financial fraud perpetrated by Desarrolladora Homex, S.A.B. de C.V. ("Homex" or "the Company"), which is headquartered in Culiacán, Sinaloa, and formerly known as Mexico's largest

homebuilder. Homex's securities have, at all relevant times, been listed or quoted in the United States. From at least 2010 through 2013 (the "Relevant Period"), and acting, with scienter, through certain of its then senior officers and employees, Homex improperly recognized billions of dollars of revenue. In particular, Homex systematically and fraudulently reported revenue from the sale of tens of thousands of homes annually that it had neither built nor sold. Homex personnel perpetrated this fraud by manually entering false information into its internal accounting and financial systems.

2. Homex's resulting overstatements of its revenue and the number of residential units sold, across its annual reports filed with the Commission during the Relevant Period, totaled at least MXN $44 billion (USD $3.3 billion), or 355%, and at least 100,000 units, or 317%, respectively.

3. During the Relevant Period, U.S.-based individuals and entities invested hundreds of millions of dollars in Homex, whose securities were, until April 2014, dually listed on the New York Stock Exchange ("NYSE") and the Mexican Stock Exchange ("BMV"). The U.S.-based investments in Homex during the Relevant Period included a $400 million bond issuance that Homex made directly to U.S. investors in February 2012. In February 2014, the BMV suspended trading in Homex's common shares due to unusual stock price movements and the Company's failure to timely file a required quarterly financial statement. In April 2014, Homex filed for the Mexican counterpart to bankruptcy reorganization. In the aftermath of that filing, Homex's securities were delisted from the NYSE (and were thereafter quoted for U.S. trading on the OTC Link operated by OTC Markets Group, Inc. ("OTC Link")), and the value of U.S.-based investments in Homex was virtually wiped out.

4. By engaging in this fraud, Homex violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b), 78m(a), and 78m(b)(2)(A) and (B)], and Exchange Act Rules 10b-5, 12b-20, 13a-1, and 13a-16 [17 C.F.R. §§ 240.10b-5, 12b-20, 13a-1 and 13a-16]. Unless restrained and enjoined by this Court, Homex is likely to commit such violations in the future.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1), and 22 of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d)(1), and 77v] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

6. Homex, directly or indirectly, made use of the means or instrumentalities of interstate commerce or the mails, or a facility of a national securities exchange in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

7. Venue is proper in this District pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27(a) of the Exchange Act [15 U.S.C. § 78aa(a)]. During the Relevant Period, certain of Homex's acts, practices, and courses of business alleged in this Complaint occurred within this District.

DEFENDANT

8. **Desarrolladora Homex, S.A.B. de C.V.**, a Mexican corporation headquartered in Culiacán, Sinaloa, Mexico, has at all relevant times been engaged in the development, construction, and sale of affordable and middle-income housing in Mexico. From approximately 2004 through 2014, Homex's stock, in the form of American Depositary Shares ("ADSs"), was listed and publicly traded

on the NYSE under the ticker “HXM.” In May 2014, Homex’s stock was suspended from trading on (and, the following month, delisted from) the NYSE. Thereafter, it was quoted on the OTC Link under the ticker “DHOXQ” and later “DHOXY.” On December 9, 2016, the U.S.-based facility for Homex’s ADSs was terminated. Homex’s ADSs are no longer quoted for trading on the U.S. over-the-counter market, and its foreign ordinary shares currently trade on the grey market under the ticker “DHHXF.” Homex’s common stock continues to trade on the BMV.

FACTUAL ALLEGATIONS

I. BACKGROUND

9. Homex was founded in 1989 in Culiacán, Sinaloa, Mexico, and incorporated in 1998 under the Mexican Companies Law. During the Relevant Period, Homex purported to be the largest real estate development company in Mexico.

10. Homex was founded by several members of the De Nicolas family, which owned approximately 34% of the Company throughout most of the Relevant Period, until significant sales of the family’s shareholdings in the first half of 2013 reduced its percentage ownership to approximately 17% by June 2013. One member of the De Nicolas family, Gerardo de Nicolas, served as Homex’s Chief Executive Officer (“CEO”) during the Relevant Period. In May 2016, following Homex’s public disclosure of the Commission’s investigation, Gerardo de Nicolas stepped down as CEO and board member and was placed on unpaid administrative leave from the Company. For his part, and also in May 2016, Homex’s Chief Financial Officer (“CFO”) throughout the Relevant Period, Carlos Moctezuma, likewise stepped down from the CFO role and was placed on unpaid administrative leave from the Company.

11. Homex completed its initial public offering on June 29, 2004; thereafter, its equity securities were dually listed on the NYSE and BMV. In subsequent years, Homex also offered and sold hundreds of millions of dollars in debt securities, including two $250 million issuances, in 2005 and 2009 (maturing in 2015 and 2019, respectively), and a $400 million bond issuance in February 2012.

12. In 2013, only one year after its last public debt offering, Homex began defaulting on its debt obligations and repeatedly failed timely to file quarterly and annual reports with the Commission. Homex eventually filed for Mexico's equivalent to bankruptcy reorganization in April 2014. In June 2014, Homex's ADSs were delisted from the NYSE (after being suspended from NYSE trading the previous month) but thereafter continued to be quoted for U.S. trading on the over-the-counter markets. Homex exited from bankruptcy through a Court Judgment issued on July 3, 2015, and its Reorganization Plan became effective on October 23, 2015. Upon request by the Company, on December 9, 2016, the American Depositary Receipt facility for Homex's ADSs was terminated. Homex's ADSs are no longer quoted for U.S. trading on the over-the-counter market. Homex's common stock continues to trade on the BMV.

II. RELEVANT ACCOUNTING POLICIES

13. For its fiscal years 2010 and 2011, Homex prepared its financial statements in accordance with Mexican Financial Reporting Standards ("MFRS"), and, for its fiscal year 2012, Homex prepared its financial statements in accordance with International Financial Reporting Standards ("IFRS"). For purposes of its annual 2010 and 2011 Form 20-F filing with the Commission, Homex reconciled its consolidated reports of net income, including revenues, and its consolidated

stockholder's equity to U.S. Generally Accepted Accounting Principles ("U.S. GAAP").

14. In its annual filings on Form 20-F for the fiscal years 2010, 2011, and 2012, Homex stated that revenues from the Company's home sales were recognized only upon the fulfillment of certain conditions, including "control" of the home having been transferred to the homebuyer and it having become probable that the Company will "receive the economic benefits associated with the transaction."

15. Homex's internal accounting policies and procedures further provided that revenue could be recognized only for homes that attained "Operada" status, which likewise required the fulfillment of various conditions, including certification that the home had become habitable (i.e., that the home had been built) and that transfer of title to the buyer had occurred.

16. Accordingly, throughout the Relevant Period, under U.S. GAAP, IFRS, and Homex's own disclosures and internal policies and procedures, a home had to be substantially constructed before Homex could meet the criteria above and thus potentially recognize revenue for its sale.

III. HOMEX'S INTERNAL SYSTEMS, RECORDKEEPING, FINANCIAL REPORTING PROCESS, AND ACCOUNTING CONTROLS

17. Throughout the Relevant Period, as part of normal operations, Homex employees entered operational and financial data concerning, among other things, the construction and sale of homes, into an internal system called the "Sistema Integral de Administración" (the "SIA" system). The SIA system in turn was composed of several modules – e.g., the Operations, Sales, Construction and Treasury Modules – each dedicated to the specific type of data entered therein. During the course of day-to-day operations, hundreds, if not thousands, of Homex

employees across Mexico entered data into SIA's Construction, Sales and Operations Modules that accurately reflected the true progress of home construction, sales, and revenue collection, respectively. Unlike other modules, which tracked information down to the specific house level, the Treasury Module tracked revenue from home sales only at the project level, i.e., it did not keep data concerning sales of specific homes. Furthermore, unlike other modules, access to SIA's Treasury Module was limited to certain persons in Homex's headquarters, including its then-CEO, CFO, Controller, and a tightly limited number of their subordinates (hereinafter collectively "Headquarters Financial Reporting Personnel").

18. Homex's Headquarters Financial Reporting Personnel used another internal accounting and financial reporting system called "Contpaq," a commercial software system used to process accounting information and consolidate financial statements.

19. Homex's CEO strictly limited Homex employees' access to information in Homex's internal systems, including SIA and Contpaq. Although employees in the field could, for example, input and view data in SIA's Sales, Construction and Operations Modules, they could not input or view data concerning projects or regions outside their own. Nor could employees in the field access Contpaq or, as noted above, the SIA system's Treasury Module. Only Homex's Headquarters Financial Reporting Personnel had access to all relevant types of information across Homex's various systems.

20. At the end of a financial reporting period, Homex's financial reporting procedures provided that Homex's Headquarters Financial Reporting Personnel were to upload from the SIA system into Contpaq financial and operational information accurately captured within SIA's various modules during the relevant

reporting period, including home sale revenue information entered into the SIA Sales and Operations Modules. Once uploaded to Contpaq, that information was then to be consolidated into financial statements used for financial reporting purposes, including Homex's annual filings with the Commission on Form 20-F.

IV. HOMEX'S FRAUDULENT ACCOUNTING SCHEME

A. Homex Materially Misstated Revenues Associated With Home Sales

21. Homex and certain of its Headquarters Financial Reporting Personnel knowingly and intentionally engaged in a scheme to materially overstate Homex's revenues, homes sold, and other related financial items during the Relevant Period. In just its 2010 through 2012 fiscal years, Homex overstated revenue by at least MXN $44 billion (USD $3.3 billion), or 355% of revenues from actual home sales, and overstated its number of units sold by over 100,000 units, or 317% of actual units sold.

22. Specifically, the scheme resulted in Homex materially overstating at least the following revenues and number of units sold:

OVERSTATED REVENUES AND UNITS SOLD
FISCAL YEARS 2010-2012
(Revenue Figures in Millions of MXN $)

	FY 2010		FY 2011		FY 2012		TOTAL 2010-2012	
	Revenue	Unit Sales	Revenue	Unit Sales	Revenue	Unit Sales	Revenue	Unit Sales
As Reported on Form 20-F	$18,465	44,347	$20,210	52,486	$18,809	42,945	$57,484	139,778
Actual Results	$6,456	16,977	$3,981	11,006	$2,200	5,536	$12,637	33,519
Revenue / Units Overstated	**$12,009**	**27,370**	**$16,229**	**41,480**	**$16,609**	**37,409**	**$44,847**	**106,259**
% Overstatement	***186%***	***161%***	***408%***	***377%***	***755%***	***676%***	***355%***	***317%***

23. Homex made the aforementioned material misstatements publicly in (i) numerous filings with the Commission, including its annual reports on Form 20-

F for its 2010 through 2012 fiscal years as well as all of the financial reports it furnished on Form 6-K during the Relevant Period; and (ii) in its public offering documents concerning its February 2012 issuance of $400 million in corporate bonds.

24. In connection with each of the aforementioned annual reports on Form 20-F that Homex filed with the Commission throughout the Relevant Period, Homex's then CEO and CFO each signed certifications indicating that each had reviewed the Form 20-F, and that, among other things, the financial statements and other financial information included therein fairly presented in all material aspects the financial condition, results of operations and cash flows of Homex.

B. Homex Materially Misstated Revenues Associated with Home Sales By Manually Entering Fraudulent Top-Line Revenue and Cost Entries Concerning Fictitious Home Sales

25. Homex's Headquarters Financial Reporting Personnel intentionally and knowingly uploaded false information into the Company's internal reporting and accounting systems in order to perpetrate the fictitious revenue scheme. Specifically, contrary to the Company's internal controls, policies and procedures, the Headquarters Financial Reporting Personnel did not upload into Contpaq and, for financial reporting purposes, did not use information accurately captured within SIA's Construction, Sales and Operations Modules. Rather, the Headquarters Financial Reporting Personnel manually entered false revenue – including tens of thousands of fictitious home sales – into SIA's Treasury Module. Subsequently, only the false data was uploaded into Contpaq for financial reporting purposes.

26. Certain of Homex's Headquarters Financial Reporting Personnel also maintained a spreadsheet that tracked the fictitious home sales that had been manually entered into SIA's Treasury Module. They used this spreadsheet, which

was maintained outside of Homex's internal systems, to ensure that fictitious revenue from manually entered home sales was not double-booked.

27. In order to conceal the enormous level of manually-entered fictitious revenue associated with tens-of-thousands of unbuilt homes, certain of Homex's Headquarters Financial Reporting Personnel also manually entered corresponding false cost-of-sales and inventory information into Contpaq. These manual entries were necessary because, when fictitious revenue was uploaded, the expected cost-of-sales and inventory entries corresponding to the revenue were not reflected in the Contpaq system as they were not entered into the other SIA modules in the normal course of Homex's operations. As a result of the manual entries, the information used for financial reporting radically inflated the data captured within SIA's Construction, Sales and Operations modules.

C. Homex Recognized Revenue for Unbuilt Homes

28. By means of the scheme detailed above, Homex claimed to investors that it had built and sold thousands of homes that, in fact, it had not built. Homex's Real Estate Project 877 (named "Benevento" and located in the Mexican state of Guanajuato) is illustrative. During the investigation leading to the filing of this action, Homex's Relevant Period senior management identified Benevento to the SEC as one of the Company's top ten real estate development projects by revenue. Homex's Relevant Period senior management also provided Benevento's project plan (identifying the location, block and lot number of each planned housing unit), and details (by block, lot number, sale price and sale date) of the Benevento sales the Company had included in the financial statements it had filed with the SEC on Form 20-F. These documents reflected that, by December 31, 2011, all of Benevento's planned units had been built and sold, and that Homex had recognized and reported revenue for the same. Satellite images taken in March 2012,

however, reveal that hundreds of those very same Benevento units remained unbuilt. (*See* Exhibit 1 attached hereto.)

D. Homex "Factored" Fictitious Accounts Receivable to Maintain Its Accounting Fraud Scheme

29. When Homex actually did build and sell a home, the purchase price it received was typically financed by a mortgage loan from one of two large Mexican Government-backed lending institutions. In such cases, Homex typically received the loan proceeds from the Government-backed lender within a period of weeks—usually less than a month—following the issuance of title to the home. During the period it awaited those funds, Homex carried the expected payment from the lender on its books as an account receivable.

30. The vast majority of Homex's accounts receivable during the Relevant Period were fictitious because they arose from fictitious home sales.

31. In order to immediately monetize both its actual and its fictitious accounts receivable, Homex, throughout the Relevant Period, entered into financial arrangements with various Mexican banks whereby the parties agreed to "factor" specified Homex accounts receivable. In particular, Homex and these banks entered into written agreements providing that the banks would make a discounted up-front payment to Homex, in exchange for the right to receive the funds purportedly comprising the specified accounts receivable in the future. Homex's then senior-most executives – specifically its then CEO and CFO – signed these agreements on Homex's behalf.

32. During the Relevant Period, Homex entered into such factoring agreements with at least thirteen (13) Mexican banks, concerning at least MXN $97 billion (approximately USD $7.5 billion) in Homex's purported accounts receivable. A substantial portion of those factoring agreements, concerning a

significant portion (at least MXN $78 billion, or USD $6 billion) of the “factored” accounts receivable, by their terms, effectively made Homex the guarantor of payment. That is, Homex remained responsible, under these particular factoring agreements, to refund to the bank any accounts receivable that the bank was unable to collect. Because Homex guaranteed payment of the factored accounts receivable and thus remained liable to the banks for the amount of the factored accounts receivable, the relevant accounting principles required Homex to enter a corresponding liability to any cash it received under these factoring agreements. Homex’s books and records indicate that, instead, it failed to do so, thereby materially distorting internal books and records and, ultimately, its financial statements.

33. Homex consistently entered into new factoring agreements to perpetuate its fraudulent scheme. As discussed above, Homex was often required to repay banks for any uncollectable accounts receivable. Because Homex’s revenues were largely fictitious, it lacked cash from legitimate operations to meet these repayment obligations. Homex could therefore meet its repayment obligations only by entering into new agreements to factor additional accounts receivable, the vast majority of which Homex knew were also fictitious. Homex repeated this cycle of fraud continually, in “check-kiting” fashion, throughout the Relevant Period.

34. Homex also made material misstatements and omissions in its annual filings with the Commission on Form 20-F concerning both the nature and the extent of its factoring arrangements. Specifically, Homex’s Form 20-Fs during the Relevant Period disclosed only a *single* accounts-receivable factoring arrangement, which *lacked* any guarantor-like obligation on Homex’s part. As discussed above, and as Homex (including its then senior-most executives) knew at the time,

however, Homex in fact had accounts-receivable factoring arrangements with at least thirteen (13) banks concerning at least MXN $97 billion (USD $7.5 billion) in supposed accounts receivable, and Homex was contractually obligated to pay those banks at least 80% of the accounts receivable encompassed by these agreements in the event the banks were unable to collect them.

E. Homex Continued to Engage in Fraudulent Accounting During the Mexican Bankruptcy Proceedings and the Commission's Investigation

<u>Mexican Bankruptcy Proceedings</u>

35. By no later than June 2012, Homex was aware of the SEC's investigation that led to the filing of this action. During the latter half of 2013, as Homex prepared to file for the bankruptcy process in Mexico and prior to signing any restructuring agreement with its creditors, Homex recorded a MXN $7 billion allowance for "doubtful" accounts, *i.e.*, Homex estimated that approximately MXN $7 billion in its outstanding accounts receivable *may* not be collected in the future. Through its then senior-most executives, however, Homex well knew at the time that collection of most, if not all, of the accounts receivable encompassed by the allowance it recorded were not merely "doubtful," but, in fact, could *never* be collected, because they were from fictitious home sales.

36. Also in 2013, Homex recorded an approximately MXN $30 billion reserve for inventory, *i.e.*, it reserved for an estimated MXN $30 billion *potential* loss associated with inventory it might not sell. Through its then senior-most executives, however, Homex knew at the time that most if not all of the inventory encompassed by the reserve it recorded was actually fictitious inventory booked in connection with fictitious home construction. Accordingly, Homex knew this inventory would not merely *potentially* go unsold, but, in fact, could *never* be sold.

37. Through its senior management and executives, Homex recorded the aforementioned doubtful-accounts and inventory reserves in lieu of immediately disclosing its non-existent accounts receivable and inventory, and restating its financials. By recording these reserves, Homex sought to create a false appearance of conscientiousness to investors, to the SEC, and to Homex's creditors, the latter of whom ultimately agreed to convert their claims against Homex to equity in the Company.

<u>The SEC's Investigation</u>

38. During the Commission's investigation leading to the filing of this action, and continuing until Homex's then-CEO and CFO were placed on unpaid administrative leave in May 2016, Homex failed to correct, restate, or even disclose any concerns as to the reliability of the Company's financial statements included in its SEC filings.

<u>CLAIMS FOR RELIEF</u>

FIRST CLAIM FOR RELIEF
(<u>Violations of Section 17(a) of the Securities Act</u>)

39. Paragraphs 1 through 38 are realleged and incorporated herein by reference.

40. By engaging in the conduct alleged above, Homex, directly or indirectly, knowingly, recklessly or negligently, by use of the means or instruments of transportation or communication in interstate commerce or of the mails, in the offer or sale of Homex securities: (a) employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of untrue statements of material facts or omissions of material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

or (c) engaged in transactions, practices, or courses of business which operated or would have operated as a fraud or deceit upon the purchasers of Homex securities.

41. By reason of the foregoing, Homex violated, and unless restrained will violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM FOR RELIEF
(Violations of Section 10(b) of the
Exchange Act and Exchange Act Rule 10b-5 Thereunder)

42. Paragraphs 1 through 41 are realleged and incorporated herein by reference.

43. By engaging in the conduct alleged above, Homex, directly or indirectly, by use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of a national exchange, in connection with the purchase or sale of Homex securities, knowingly or recklessly: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operated or would have operated as a fraud or deceit upon any person.

44. By reason of the foregoing, Homex violated, and unless restrained will violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

THIRD CLAIM FOR RELIEF
(Violation of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the
Exchange Act and Rules 12b-20, 13a-1, and 13a-16 Thereunder)

45. Paragraphs 1 through 44 are realleged and incorporated herein by reference.

46. Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-16 thereunder require a foreign private issuer to file with or furnish to the Commission information, documents, and annual and other reports as the Commission may require. Rule 12b-20 requires that these reports contain such further material information as is necessary to make the required statements in the reports not misleading.

47. Section 13(b)(2)(A) of the Exchange Act requires an issuer to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of its assets.

48. Section 13(b)(2)(B) of the Exchange Act requires an issuer to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that its financial statements are prepared in conformity with GAAP or any other criteria applicable to such statements.

49. By engaging in the conduct alleged above, Homex violated Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-16 thereunder.

50. By reason of the foregoing, Homex violated, and unless restrained will violate, violated Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-16 thereunder [15 U.S.C. §§ 78m(a); 78m(b)(2)(A); and 78m(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1, and 13a-16 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-16].

PRAYER FOR RELIEF

The Commission respectfully requests that the Court enter an Order:

(i) Permanently restraining and enjoining Homex from violating, directly or indirectly, Section 17(a) of the Securities Act and Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) the Exchange Act, and Exchange Act Rules 10b-5, 12b-20, 13a-1, and 13a-16; and

(ii) Granting such other relief as the Court deems just and appropriate.

Dated: March 3, 2017

Respectfully submitted,

/s/ *Richard Hong*

RICHARD HONG
Attorney for Plaintiff
Securities and Exchange Commission

EXHIBIT 1

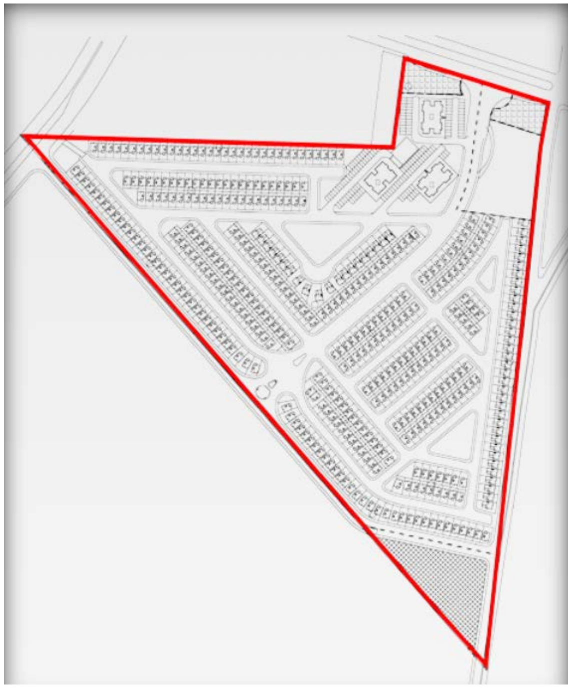

Fig. 1: Benevento Project Plan

Fig. 2: March 12, 2012, Benevento satellite image

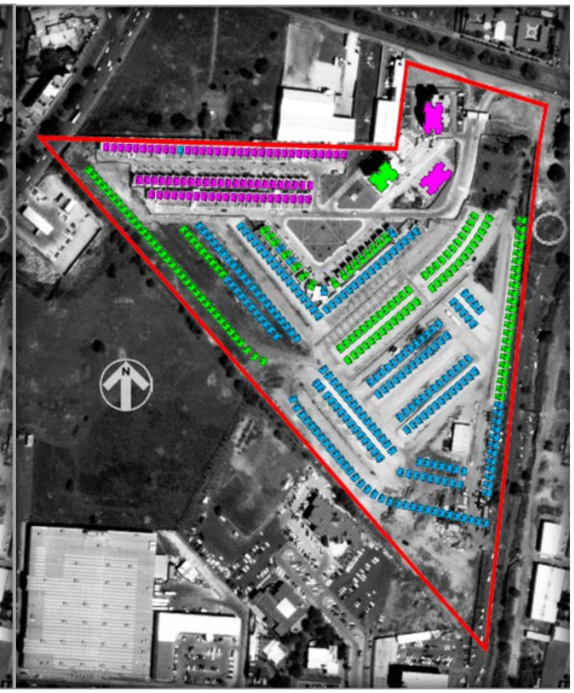

Fig. 3: Colored highlighting reflects Benevento housing units which Homex claimed to have built and sold, and for which it had recorded sales and reported revenue in 2009 (pink), 2010 (green), and 2011 (blue).