

23-CV-0209

CAUSE NO. \_\_\_\_\_

CLASSIC GALVESTON TOYOTA	§	IN THE DISTRICT COURT OF
	§	
VS.	§	
	§	GALVESTON COUNTY, TEXAS
TEXAS MATERIALS GROUP GULF	§	Galveston County - 56th District Court
COAST F/K/A OLDCASTLE	§	
MATERIALS TEXAS, INC.	§	_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION FOR DECLARATORY JUDGMENT  
FOR INVALID MECHANIC'S LIEN**

TO THE HONORABLE JUDGE OF THE COURT:

Plaintiff Classic Toyota Galveston ("Classic") allege as their Petition for Declaratory Judgment against Defendant Texas Materials Group Gulf Coast f/k/a Oldcastle Materials Texas, Inc. ("Gulf") as follows:

**I. PARTIES**

1. Plaintiff Classic is a domestic for-profit corporation formed under the laws of Texas with its principal place of business in Galveston County, Texas. Classic is in the business of selling automobiles. Classic is the owner of the property commonly known as 7802 Broadway Street, Galveston, Texas 77554 (the "Property"). The owner or reputed owner of the property and the improvements on the Property or which this claim is made is 8020 PARTNERS LTD. The last known business/residential address for the owner is 8020 Broadway St. Galveston, TX 77554.

2. Defendant Gulf, formerly known as "Oldcastle Materials Texas, Inc.," is a domestic for-profit corporation formed under the laws of Texas with its principal place of business in Chambers County, Texas, located at 3003 Kilgore Parkway, Baytown, TX 77523.

Defendant Gulf may be served through its registered agent, Corporation Service Company d/b/a CSC Lawyers Inco., at 211 E. 7<sup>th</sup> Street Suite 620, Austin, TX 78701. **Citation is requested at this time.**

## **II. BACKGROUND FACTS**

3. This action arises from a dispute taking place in 2019 regarding nonpayment for work in violation of a paving-service contract between Classic and Mullen Asphalt Paving, a domestic for-profit corporation formed under the laws of Texas with its principal place of business in Chambers County, Texas.

4. Classic contracted with Mullen for the asphalt pavement of Classic's Toyota car lots located on the Property ("the Contract"). Mullen employed Gulf as a subcontractor, as represented in the Contract. Classic paid Mullen, as the General Contractor, for the work as agreed to under the Contract. In turn, in accordance with the Contract, Mullen was to pay all of its subcontractors, which it did not do. [\[Exhibit 1—Contract.\]](#) On February 15, 2019, Gulf, Mullen's subcontractor, sent Classic notice of lien in the amount of \$33,451.65. [\[Exhibit 2—Notice of Lien.\]](#) On March 15, 2019, Gulf filed an Affidavit for Mechanic's and Materialman's Lien in the claim amount of \$33,451.65 for "Roadway Materials," the materials and services furnished for the construction of improvements at the Property. [\[Exhibit 3—Affidavit.\]](#)

5. On June 26, 2019, Classic filed suit for breach of contract against Mullen for its failure to pay its subcontractor, Gulf, for work, labor, and materials for the paving of Classic's Toyota lots. [\[Exhibit 4—Plaintiff's Original Petition.\]](#)

### III. INVALID MECHANIC'S LIEN

6. On March 15, 2019, Defendant Gulf filed and recorded an Affidavit for Mechanic's and Materialman's Lien with the Official Public Records of Galveston County, Texas, Instrument No. 2019013264, against the Property in the amount of \$33,451.65 (the "Mechanic's Lien"). [\[Exhibit 3—Affidavit.\]](#)

7. Defendant has not filed a lawsuit to foreclose the Mechanic's Lien.

8. Pursuant to Texas Property Code Section 53.158, a lien claimant must bring suit to "foreclose the lien not later than the first anniversary of the last day a claimant may file the lien affidavit under Section 53.052." Tex. Prop. Code § 53.158(a).

9. Texas Property Code Section 53.052 states that "an original contractor claiming the lien must file an affidavit with the county clerk (1) for projects other than residential construction projects, not later than the 15th day of the fourth month after the month in which the original contractor's work was completed, terminated, or abandoned." Tex. Prop. Code § 53.052(a)(1).

10. Gulf performed the work specified under the contract and furnished the relevant materials from November 15, 2018 through November 18, 2018. [\[Exhibit 3—Affidavit.\]](#) Under Section 53, the last day claimant Gulf was eligible to file an affidavit was March 15, 2019. *See* Tex. Prop. Code § 53.052(a)(1). Thus, Gulf was required to file suit to foreclose the Mechanic's Lien no later than March 15, 2020. *See* Tex. Prop. Code § 53.158(a).

11. By operation of law, Gulf forfeited its right to enforce the Mechanic's Lien when it failed to file a lawsuit to foreclose the Mechanic's Lien prior to the running of the statute of limitations on March 15, 2020.

12. The Mechanic's Lien remains an encumbrance against the Property.

#### **IV. DECLARATORY RELIEF**

13. The owners, Classic, adopt and reallege Paragraphs 1 through 13 as Paragraph 14.

14. Defendant Gulf's failure to institute a foreclosure action prior to March 15, 2020, invalidates the Mechanic's Lien pursuant to Section 53.158 of the Texas Property Code because Defendant has not complied with the limitations period.

15. Plaintiff Classic requests that the court declare the following:


- a. Defendant failed to file a lawsuit to foreclose the Mechanic's Lien prior to the expiration of the statute of limitations.
- b. The Mechanic's Lien filed by Defendant Gulf against the Property on March 15, 2019 as Galveston County Recorder of Deeds Instrument No. 2019013264, is invalid and is forfeited.
- c. Plaintiff Classic is entitled to recover, against Defendant, the costs and reasonable attorney's fees for bringing this action pursuant to Section 53.156 of the Texas Property Code. Tex. Prop. Code § 53.156.

**V. PRAYER**

WHEREFORE, Plaintiff Classic requests this court enter judgment in its favor and against the Defendant consistent with the relief requested above, and any other relief this court deems fair and just.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: 

Fred D. Raschke

Texas Bar No. 16551450

fraschke@millsshirley.com

Jesse G. Potts

Texas Bar No. 24126325

jpotts@millsshirley.com

Rachel L. Delgado

Texas Bar No. 24126387

rdelgado@millsshirley.com

2228 Mechanic Street, Suite 400

Galveston, Texas 77550

Ph 409.763.2341 / Fax 866.674.7808

**ATTORNEYS FOR PLAINTIFF**

# MULLEN PAVING COMPANY

3814 East Wallisville Road  
Baytown, TX 77521

Phone: (281) 808-7224

## Bid Proposal No. 18007

Attention: Howie  
Company: Classic Galveston

Job Site Location:  
Chevrolet & Toyota Lots

Phone: (713) 419-4465  
Fax:

Date: September 10, 2018

We hereby propose to furnish all materials and perform the labor necessary for the completion of:

1. Clean and remove all debris from existing pavement.
2. Sawcut and remove existing pavement for all tie-ins to existing pavement.
3. Apply tact coat to existing pavement at a rate of 0.1 gallon per square yard.
4. Install 1 1/2" of hot mix asphalt Type 340D and compact for max densities approx. 75,000 SF.
5. Apply asphalt sealer to new pavement any time after 30 calendar days after the completion of installation of new pavement.

All material is guaranteed to be as specified, and the above work to be performed in accordance and completed in a substantial workmanlike manner with payment due upon completion.

Any alteration or deviation from the above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. No bonds, testing, engineering, permits or taxes included in this contract. Prices quoted are firm for 30 days only.

Chevrolet Lot Lump Sum Price: \$53,250.00

Toyota Lot Lump Sum Price: \$31,750.00

**8020 PARTNERS LTD.**

DATE **11-12-2018**

32-2/1110 TX  
2103

PAY TO THE ORDER OF **MULLEN PAVING**

**\$ 31,750.00**

\*\*\*THIRTY ONE THOUSAND SEVEN HUNDRED FIFTY AND NO/100\*\*\*\*\*

DOLLARS

**Bank of America**

ACH/R/T 111000028

**TOYOTA LOT**

FOR



WO# 6601567 - TX  
Nationwide Notice  
PO Box 542165  
LW, FL 33454



9214 8901 0789 9922 6658 61



EXHIBIT 2

2

CLASSIC TOYOTA GALVESTON  
7802 BROADWAY ST  
GALVESTON, TX 77554

**The Construction Notice printed on the reverse side of this document is only a notice and NOT A LIEN and is not recorded against your property.** This notice is not a reflection of the credit worthiness or financial standing of any contractor nor is it an indication of their ability or desire to pay their bills. It is merely a letter informing the owner of the property and/or general contractor that **Gulf Coast dba Oldcastle Materials Texas, Inc.** has supplied or will supply services, equipment and/or materials. Failure to ensure that their vendor is paid may result in a lien being placed on your property and your paying twice for the materials and/or services provided to you by the vendor listed on the opposite side of this notice. If you have paid or are about to pay your contractor, ask them for a release of lien to ensure their vendor is paid. If you have any questions about this notice, please call Nationwide Notice at (561) 228-1114.

**Notice of Completion, Notice of Cessation :** The undersigned requests a copy of the Notice of Completion and/or Notice of Cessation relating to the improvements of the property described on the reverse side of this document. If none is currently available, this is an ongoing request should one become available in the future. Please send a copy via fax to 561-439-6614, by email to [ento@nationwidenotice.com](mailto:ento@nationwidenotice.com) or by certified mail to Nationwide Notice, Inc. PO Box 542165, Lake Worth, FL 33454.

**Bonded Projects:** The undersigned requests a copy of the payment bond or trust relating to the improvements of the property described on the reverse side of this document. If none is currently available, this is an ongoing request should one become available in the future. Please send a copy via fax to 561-439-6614, by email to [ento@nationwidenotice.com](mailto:ento@nationwidenotice.com) or by certified mail to Nationwide Notice, Inc. PO Box 542165, Lake Worth, FL 33454.

**Notice:** If the work being done on the property described on the reverse side of this document is for improvements to the property which were ordered by a lessee/tenant, please forward a verified copy of the lease provision or a copy of the recorded Notice of Non-Responsibility to the undersigned by fax to 561-439-6614, by email to [ento@nationwidenotice.com](mailto:ento@nationwidenotice.com) or by certified mail to Nationwide Notice, Inc. PO Box 542165, Lake Worth, FL 33454. If you fail to provide this information within 30 days, or serve a false or fraudulent copy, your interest as lessor may be subject to a construction lien in favor of the undersigned. **If you require information regarding contractor payment status, please contact Gulf Coast dba Oldcastle Materials Texas, Inc. at the number located at the bottom of the notice.** When calling to inquire about any aspect of this Notice, please reference work order number: **6601567**.

Respectfully,  
Nationwide Notice, Inc.

## Fund Trapping Notice

This is only a notice and NOT A LIEN and is not recorded against your property.

General Contractor  
9214890107899922594260  
MULLEN ASPHALT PAVING  
PO BOX 339  
BACLIF, TX 77518

Owner  
9214890107899922593966  
8020 PARTNERS LTD  
8020 BROADWAY  
GALVESTON, TX 77550

Project: Classic Toyota Car Dealership/ 7802 Broadway Street / Galveston, Texas / As recorded in the public records of Galveston County, Texas / Property Control # 119866 ABST 121 HALL & JONES SUR LOT 3 INTERSTATE BUSINESS & INDUSTRIAL PARK SUB; , Commercial

Dear Sir/Madam:

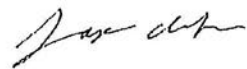
Please be advised that Gulf Coast dba Oldcastle Materials Texas, Inc. , hereby provides notice pursuant to the provisions of Chapter 53 of Texas Property Code or 2253.041 of the Texas Government Code, of its unpaid claim for materials and/or labor furnished to the above referenced project under a contract with MULLEN ASPHALT PAVING. After applying all credits and payments, there is still due and owing a balance of \$33,451.65 for the materials and/or labor furnished during the month(s) of November. The total unpaid balance claimed by Gulf Coast dba Oldcastle Materials Texas, Inc., for ROADWAY MATERIALS is \$33,451.65. The total amount claimed is just and correct and all just and lawful offsets, payments and credits known to Gulf Coast dba Oldcastle Materials Texas, Inc., have been allowed. Current months still due and owing:

November

\$33,451.65

This claim has accrued under Chapter 53 of the Texas Property Code and/or is past-due under the terms of the contract referenced above. Pursuant to Texas Property Code § 53.081(a) & § 53.083, demand is hereby made to withhold the amount set forth above from the Original Contractor to pay Claimant directly. Attached hereto are copies of the unpaid invoices in support of this claim. If this claim is not promptly paid, Gulf Coast dba Oldcastle Materials Texas, Inc., will proceed, if necessary, to place a lien on the property. Pursuant to § 53.252(c): You are hereby notified that if this claim remains unpaid, you may be personally liable and the above-described property subjected to a lien unless you withhold payment from , the original contractor, for payment of the total sum due or unless the claim is otherwise paid or settled. It is our understanding that you are the Owner of the real property on which the improvements are being constructed. If you are not the Owner of the property, please advise us at once. In compliance with § 53.107(a)(2), we also request that you give the undersigned written notice of either termination of or abandonment of performance of the original contract.

**Homesteaded Projects:** Pursuant to § 53.254(g): If a subcontractor or supplier who furnishes materials or performs labor for construction of improvements on your property is not paid, your property may be subject to a lien for the unpaid amount if: (1) after receiving notice of the unpaid claim from the claimant, you fail to withhold payment to your contractor that is sufficient to cover the unpaid claim until the dispute is resolved; or (2) during construction and for 30 days after completion of construction, you fail to retain 10 percent of the contract price or 10 percent of the value of the work performed by your contractor. If you have complied with the law regarding the 10 percent retainage and you have withheld payment to the contractor sufficient to cover any written notice of claim and have paid that amount, if any, to the claimant, any lien claim filed on your property by a subcontractor or supplier, other than a person who contracted directly with you, will not be a valid lien on your property. In addition, except for the required 10 percent retainage, you are not liable to a subcontractor or supplier for any amount paid to your contractor before you received written notice of the claim.



By: Jorge Iriban

Agent For: Gulf Coast dba Oldcastle Materials Texas, Inc.  
PO Box 20779, Beaumont, TX, 77720  
409-866-1444  
Angela.Kvarme@apac.com  
Contact: Angela Kvarme

W/O: 6601567  
Job #: Classic Toyota Car  
Dealership  
Date: 02/15/2019  
Acct #: 260315

<u>Recipient Type</u>	<u>Tracking ##</u>	<u>Name</u>	<u>Address</u>
Owner	9214890107899922593966	8020 PARTNERS LTD	8020 BROADWAY, GALVESTON, TX 77550
General Contractor	9214890107899922594260	MULLEN ASPHALT PAVING	PO BOX 339, BACLIF, TX 77518
Misc	9214890107899922594369	TOYOTA MOTOR NORTH AMER	6565 HEADQUARTERS DRIVE, PLANO, TX 75024
Misc	9214890107899922665861	CLASSIC TOYOTA GALVESTO	7802 BROADWAY ST, GALVESTON, TX 77554



Return To:  
Gulf Coast dba Oldcastle Materials Texas, Inc.  
JESSICA ALDRICH  
PO Box 20779  
Beaumont, TX 77720

**AFFIDAVIT FOR MECHANIC'S AND MATERIALMAN'S LIEN**

State of TEXAS  
County of JEFFERSON

BEFORE ME, a notary public in and for the State of TEXAS, on this day personally appeared the undersigned, who being by me duly sworn, on oath states:

1. My name is JESSICA ALDRICH. I am an authorized agent and Lien Coordinator for Gulf Coast dba Oldcastle Materials Texas, Inc. ("Claimant"). I am authorized to make this affidavit on Claimant's behalf as the sworn statement of its claim. I have personal knowledge of the facts set forth herein. Claimant's physical and mailing business address is PO Box 20779, Beaumont, TX 77720.

2. Pursuant to an agreement by and between Claimant and Mullen Asphalt Paving whose last known address is PO Box 339, Bacliff, TX 77518, Claimant has an unpaid claim in the amount of

\$14,360.89 NOVEMBER 15, 2018  
\$19,090.76 NOVEMBER 18, 2018  
\$33,451.65 TOTAL ("Claim Amount")

for Roadway Materials ("Materials/Services") furnished for the improvement of the following described property: Classic Toyota Car Dealership / 7802 BROADWAY ST, GALVESTON, TEXAS; THE SURFACE ONLY OF LOT THREE (3) OF INTERSTATE BUSINESS AND INDUSTRIAL PARK, A SUBDIVISION IN THE CITY AND COUNTY GALVESTON, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 16, PAGE 35, FURTHER DESCRIBED IN OR INSTRUMENT NUMBER 2012002960, ACCORDING TO THE PUBLIC RECORDS RECORDED IN GALVESTON COUNTY, TEXAS; PARCEL ID NUMBER 119866 / GEOGRAPHIC ID 4148-0000-0003-000; 6658835 (hereinafter referred to as "the Property")

3. The Materials/Services were furnished for the construction of improvements at the Property. The Claim Amount is within Claimant's personal knowledge, is just and true, and the same is due and unpaid; all lawful offsets, payments, and credits have been allowed. The Claim Amount is for Materials furnished and described in the attached Exhibit 'A', on which a systematic record has been kept. The Claim Amount represents the unpaid contract price due Claimant, or, in the alternative, is the reasonable value of the unpaid portion of Claimant's Materials furnished. Said Materials were furnished during the months of 11/15/18 through 11/18/18 as shown in Exhibit 'A'. Claimant claims a lien on said Property and improvements under the provisions of Chapter 53 of the Texas Property Code to secure payment of the above amount, which is now due and owing. The Claim Amount does not include any attorney's fees, interest or costs which may be recovered by law.

4. The owner or reputed owner of the Property and the improvements on the Property on which this claim is made is 8020 PARTNERS LTD. The last known business/residential address of the owner is 8020 BROADWAY, GALVESTON, TX 77550.

5. The original contractor on the above referenced project is MULLEN ASPHALT PAVING. The last known business/residential address of the original contractor is PO BOX 339, BACLIFF, TX 77518.

6. Claimant's notices of its claim, as required by law, were sent to the following owner and original contractor by United States certified mail, return receipt requested, on the date set forth herein:

FEBRUARY 14, 2019

7. One (1) copy of this Affidavit for Mechanic's Lien and Materialman's Lien ('Affidavit') is being sent by certified mail, return receipt requested to the owner described herein at the address set forth herein and one (1) copy of the Affidavit is being sent by certified mail, return receipt requested to the original contractor described herein at the address set forth herein.

8. Claimant claims a mechanic's and materialman's lien against all the above described Property, leasehold interests, and improvements thereon in the amount shown above pursuant to Chapter 53 of the Property Code of the State of Texas, and makes this sworn statement of claim in support thereof.

Gulf Coast dba Oldcastle Materials Texas, Inc.

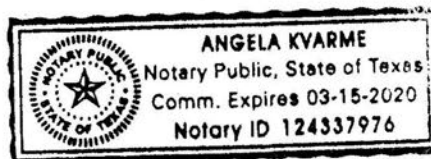
By: Jessica Aldrich  
JESSICA ALDRICH, Authorized Agent

State of TEXAS  
County of JEFFERSON

BEFORE ME, the undersigned authority, on this day personally appeared JESSICA ALDRICH, a duly authorized AGENT of Gulf Coast dba Oldcastle Materials Texas, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, who after being by me duly sworn acknowledged that the statements contained above are true and correct, that she executed same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said Gulf Coast dba Oldcastle Materials Texas, Inc..

Given under my hand and seal of office, this 15<sup>th</sup> day March, 2019.

Angela Kvarme  
Notary Public





A CRH COMPANY  
PO Box 20779  
Beaumont, TX 77720-0779

# EXHIBIT A

Customer No: 260315  
Invoice No: 200719219  
Inv Date: 11/15/18  
Page: Page 1 of 1

Customer Job: Q397038

Mullen Asphalt Paving  
PO Box 339  
Beaumont, TX 77518

Gulf Coast  
PO Box 20779  
Beaumont, TX 77720-0779  
409-866-1444

davidmullen@comcast.net

Delivered To: Classic Toyota Car Dealership 7802 Broadway Street

Date	Ticket#	Truck#	Product#	Description	QTY	UM	Unit Price	Matl Total	Tax	Total
Plant: 04291 Asphalt - Greens Port										
MATERIAL: TYPE F 64-22										
11/15/18	49114447	RG511	221730	TYPE F 64-22	15.97	TON	70.00	1,117.90	92.23	1,210.13
11/15/18	49114449	RG763	221730	TYPE F 64-22	18.06	TON	70.00	1,264.20	104.30	1,368.50
11/15/18	49114450	RG909	221730	TYPE F 64-22	24.97	TON	70.00	1,747.90	144.20	1,892.10
11/15/18	49114451	RG903	221730	TYPE F 64-22	24.17	TON	70.00	1,691.90	139.56	1,831.46
11/15/18	49114458	RG511	221730	TYPE F 64-22	16.05	TON	70.00	1,123.50	92.69	1,216.19
11/15/18	49114459	RG763	221730	TYPE F 64-22	17.97	TON	70.00	1,257.90	103.78	1,361.68
11/15/18	49114468	RG765	221730	TYPE F 64-22	21.93	TON	70.00	1,535.10	126.65	1,661.75
11/15/18	49114469	JAT171	221730	TYPE F 64-22	25.13	TON	70.00	1,759.10	145.13	1,904.23
11/15/18	49114470	RG909	221730	TYPE F 64-22	25.27	TON	70.00	1,768.90	145.93	1,914.83
Total: TYPE F 64-22					189.52	TON		13,266.40	1,094.49	14,360.89
Total: Material TYPE F 64-22					189.52			13,266.40	1,094.49	14,360.89
Total Invoice:					189.52			13,266.40	1,094.49	14,360.89

You can now access your invoices and make payments through our customer portal. Register now by clicking on <https://mytexasmaterialsgroup.com/#/login>

Terms: Net 30.

Invoice Amount: 14,360.89

Amount Paid: \_\_\_\_\_

Customer Name: Mullen Asphalt Paving  
Customer No: 260315  
Invoice #: 200719219  
Date: 11/15/18  
Customer Job: Q397038  
Due Date: 12/15/18

If you have any questions about your invoice please call 409-866-1444

Remit Payment To: Gulf Coast  
1320 Arrow Point Dr 600  
Cedar Park, TX 78613

Please provide your email address below if you would like to start receiving your invoices via email



A CRH COMPANY  
PO Box 20779  
Beaumont, TX 77720-0779

Customer No: 260315  
Invoice No: 200719598  
Inv Date: 11/18/18  
Page: Page 1 of 1

Customer Job: Q397038

Mullen Asphalt Paving  
PO Box 339  
Bacliff TX 77518

Gulf Coast  
PO Box 20779  
Beaumont, TX 77720-0779  
409-866-1444

davidmullen@comcast.net

Delivered To: Classic Toyota Car Dealership 7802 Broadway Street

Date	Ticket#	Truck#	Product#	Description	QTY	UM	Unit Price	Matl Total	Tax	Total
Plant: 04291 Asphalt - Greens Port										
MATERIAL: TYPE F 64-22										
11/16/18	49114482	RG511	221730	TYPE F 64-22	15.38	TON	70.00	1,076.60	88.82	1,165.42
11/16/18	49114484	RG903	221730	TYPE F 64-22	24.00	TON	70.00	1,680.00	138.60	1,818.60
11/16/18	49114486	RG909	221730	TYPE F 64-22	25.32	TON	70.00	1,772.40	146.22	1,918.62
11/16/18	49114501	JAT927	221730	TYPE F 64-22	18.96	TON	70.00	1,187.20	97.94	1,285.14
11/16/18	49114504	RG909	221730	TYPE F 64-22	25.03	TON	70.00	1,752.10	144.55	1,896.65
11/16/18	49114505	JAT789	221730	TYPE F 64-22	18.11	TON	70.00	1,267.70	104.59	1,372.29
11/16/18	49114510	JAT27	221730	TYPE F 64-22	25.44	TON	70.00	1,780.80	146.92	1,927.72
11/16/18	49114515	JAT927	221730	TYPE F 64-22	17.67	TON	70.00	1,236.90	102.04	1,338.94
11/16/18	49114521	JAT789	221730	TYPE F 64-22	18.24	TON	70.00	1,276.80	105.34	1,382.14
11/17/18	49114538	JAT22	221730	TYPE F 64-22	22.32	TON	70.00	1,562.40	128.90	1,691.30
11/17/18	49114539	JAT78	221730	TYPE F 64-22	21.46	TON	70.00	1,502.20	123.93	1,626.13
11/17/18	49114540	JAT07	221730	TYPE F 64-22	22.01	TON	70.00	1,540.70	127.11	1,667.81
Total: TYPE F 64-22					251.94	TON		17,635.80	1,454.96	19,090.76
Total: Material TYPE F 64-22					251.94			17,635.80	1,454.96	19,090.76
Total Invoice:					251.94			17,635.80	1,454.96	19,090.76

You can now access your invoices and make payments through our customer portal. Register now by clicking on <https://mytexasmaterialsgroup.com/#/login>

Terms: Net 30.

Invoice Amount: 19,090.76

Amount Paid: \_\_\_\_\_

Customer Name: Mullen Asphalt Paving  
Customer No: 260315  
Invoice #: 200719598  
Date: 11/18/18  
Customer Job: Q397038  
Due Date: 12/18/18

If you have any questions about your invoice please call 409-866-1444

Remit Payment To: Gulf Coast  
1320 Arrow Point Dr 600  
Cedar Park, TX 78613

Please provide your email address below if you would like to start receiving your invoices via email

## FILED AND RECORDED

Instrument Number: 2019013264

Recording Fee: 38.00

Number Of Pages:5

Filing and Recording Date: 03/15/2019 12:42PM

I hereby certify that this instrument was FILED on the date and time stamped hereon and RECORDED in the OFFICIAL PUBLIC RECORDS of Galveston County, Texas.



A handwritten signature in cursive script, reading "Dwight D. Sullivan".

Dwight D. Sullivan, County Clerk  
Galveston County, Texas

**DO NOT DESTROY** - *Warning, this document is part of the Official Public Record.*



**19-CV-1166****4**

Cause No. \_\_\_\_\_

Classic Galveston Chevrolet and Toyota

§

In the District Court of

vs.

§

§

**Galveston County - 122nd District Court**

Mullen Asphalt Paving

§

§

\_\_\_\_\_, Judicial District

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF THE COURT:

Plaintiff Classic Galveston Chevrolet and Toyota ("Classic") files this Original Petition against defendant Mullen Asphalt Paving ("Mullen") and would respectfully show:

**I. Discovery Control Plan**

Discovery will be conducted under Level 2 pursuant to Rule 190.3 of the Texas Rules of Civil Procedure. Classic seeks monetary relief of less than \$100,000.

**II. Brief Statement of the Case**

This suit arises from a breach of contract of Mullen for its failure to pay its subcontractor, Gulf Coast dba Oldcastle Materials Texas, Inc., for work, labor and materials for the paving of Classic's Chevrolet and Toyota lots. Classic paid Mullen, as the General Contractor, for the work as agreed to under the contract between Mullen and Classic. In turn, Mullen was to pay all of its subcontractors, under the contract, which it did not do. Gulf Coast dba Oldcastle Materials Texas, Inc., Mullen's subcontractor, sent notice of lien in the amount of \$33,451.65. Classic seeks damages for breach of contract.

**Status Conference - 09/19/2019**

### **III. Parties**

Plaintiff Classic is a domestic for-profit corporation formed under the laws of Texas with its principal place of business in Galveston County, Texas.

Defendant Mullen is a domestic for-profit corporation formed under the laws of Texas with its principal place of business in Harris County, Texas. Mullen can be served by serving its Registered Agent, Michael Vossler, 323 24<sup>th</sup> Street, San Leon, Texas 77539, or wherever else he may be found.

### **IV. Jurisdiction and Venue**

This Court has subject matter jurisdiction because Classic has standing to bring this suit, there is a live controversy between the parties, and the suit is justiciable. The damages sought are within the jurisdictional limits of the Court.

This Court has jurisdiction over Mullen because it is a Texas corporation that has purposefully availed itself of the privilege of conducting business in Texas. Mullen entered into an agreement with Classic for the construction of improvements and/or repairs to the Classic property, located in Galveston County, Texas.

Venue is permissive in this Court because all or a substantial part of the acts or omissions giving rise to this suit occurred in Galveston County, Texas. Tex. Civ. Prac. & Rem. Code § 15.002(a)(1).

### **V. Background Facts**

#### **A. Introduction of the Parties.**

Based out of Galveston, Texas, Plaintiff Classic is in the business of selling automobiles.

Defendant Mullen is a corporate entity owned by David Mullen. Mullen owns an asphalt paving company located at 3814 East Wallisville Road, Baytown, Texas 77521.

B. Classic Paid Mullen for the Asphalt Pavement of its Chevrolet and Toyota Lots.

Mullen and Classic entered into an agreement whereby Mullen was to furnish all materials and perform the labor necessary for the completion of:

1. Clean and remove all debris from existing pavement.
2. Sawcut and remove existing pavement for all tie-ins to existing pavement.
3. Apply tack coat to existing pavement at a rate of 0.1 gallon per square yard.
4. Install 1½" of hot mix asphalt Type 340D and compact for max densities approx. 75,000 SF.
5. Apply asphalt sealer to new pavement any time after 30 calendar days after the completion of installation of new pavement.

All material was to be guaranteed as specified. See attached contract.

Classic paid for the work as called for under the contract in the total amount of \$53,250. See attached copies of payments. Mullen in turn executed Contractor's Final Release and Waiver of Lien. See attached.

It was not until Classic received Gulf Coast dba Old Castle Materials Texas, Inc's notice of lien that it first learned Mullen had not paid its subcontractor for the asphalt paving job. Though demand has been made, Mullen has not paid what it owes to its subcontractor leaving Classic potentially on the hook for the amount of the lien, even though it has already paid Mullen in full for the work.

## **VI. Causes of Action**

In asserting each cause of action and request for relief below, Classic incorporates by reference the facts set forth above.

### **A. Breach of Contract.**

Classic and Mullen entered into a valid and enforceable contract. Classic tendered complete payment for the work performed by general contractor Mullen and its subcontractor Gulf Coast dba Oldcastle Materials Texas, Inc. Mullen breached the contract by failing to pay its subcontractor Gulf Coast dba Oldcastle Materials Texas, Inc.'s invoices when due. Mullen's breach has caused Classic injury.

All conditions precedent (if any) to Classic's right to recovery have been performed or have occurred.

### **B. Unjust Enrichment.**

Classic would show that Mullen has been unjustly enriched, as that term is known at law, for Classic having paid for the project in full, then having a notice of lien filed against it by Mullen's subcontractor, Gulf Coast dba Oldcastle Materials, Texas, Inc., possibly causing Classic to pay Mullen's subcontractor's invoice for work that Mullen should have paid for.

### **C. Attorney's Fees.**

Classic has been forced to obtain the services of the undersigned attorneys to obtain payment to satisfy the lien filed by Mullen's subcontractor to satisfy its lien, and as such, is entitled to the recovery of reasonable and necessary attorney fees pursuant to Chapter 38.001 of the Texas Civil Practice & Remedies Code.

## **VII. Prayer for Relief**

Wherefore, Plaintiff Classic prays that Defendant Mullen be cited to appear and answer, and that on final hearing, Classic have:

- a. Actual damages;
- b. Costs and reasonable and necessary attorney's fees;
- c. Pre-judgment interest;
- d. Post-judgment interest; and
- e. Any other relief to which Classic is entitled.

Respectfully submitted,

**Mills Shirley LLP**

By: /s/ Fred D. Raschke  
Fred D. Raschke

Bar No. 16551450

fraschke@millsshirley.com

Elizabeth McDonnell

Bar No. 24097418

emcdonnell@millsshirley.com

2228 Mechanic Street, Suite 400

Galveston, Texas 77550

(409) 763-2341

Fax (866) 674-7808

**Attorneys for Plaintiff,  
Classic Galveston Chevrolet and Toyota**



WO# 6601567 - TX  
Nationwide Notice  
PO Box 542165  
LW, FL 33454



9214 8901 0789 9922 6658 61



CLASSIC TOYOTA GALVESTON  
7802 BROADWAY ST  
GALVESTON, TX 77554

**The Construction Notice printed on the reverse side of this document is only a notice and NOT A LIEN and is not recorded against your property.** This notice is not a reflection of the credit worthiness or financial standing of any contractor nor is it an indication of their ability or desire to pay their bills. It is merely a letter informing the owner of the property and/or general contractor that **Gulf Coast dba Oldcastle Materials Texas, Inc.** has supplied or will supply services, equipment and/or materials. Failure to ensure that their vendor is paid may result in a lien being placed on your property and your paying twice for the materials and/or services provided to you by the vendor listed on the opposite side of this notice. If you have paid or are about to pay your contractor, ask them for a release of lien to ensure their vendor is paid. If you have any questions about this notice, please call Nationwide Notice at (561) 228-1114.

**Notice of Completion, Notice of Cessation :** The undersigned requests a copy of the Notice of Completion and/or Notice of Cessation relating to the improvements of the property described on the reverse side of this document. If none is currently available, this is an ongoing request should one become available in the future. Please send a copy via fax to 561-439-6614, by email to [ento@nationwidenotice.com](mailto:ento@nationwidenotice.com) or by certified mail to Nationwide Notice, Inc. PO Box 542165, Lake Worth, FL 33454.

**Bonded Projects:** The undersigned requests a copy of the payment bond or trust relating to the improvements of the property described on the reverse side of this document. If none is currently available, this is an ongoing request should one become available in the future. Please send a copy via fax to 561-439-6614, by email to [ento@nationwidenotice.com](mailto:ento@nationwidenotice.com) or by certified mail to Nationwide Notice, Inc. PO Box 542165, Lake Worth, FL 33454.

**Notice:** If the work being done on the property described on the reverse side of this document is for improvements to the property which were ordered by a lessee/tenant, please forward a verified copy of the lease provision or a copy of the recorded Notice of Non-Responsibility to the undersigned by fax to 561-439-6614, by email to [ento@nationwidenotice.com](mailto:ento@nationwidenotice.com) or by certified mail to Nationwide Notice, Inc. PO Box 542165, Lake Worth, FL 33454. If you fail to provide this information within 30 days, or serve a false or fraudulent copy, your interest as lessor may be subject to a construction lien in favor of the undersigned. **If you require information regarding contractor payment status, please contact Gulf Coast dba Oldcastle Materials Texas, Inc. at the number located at the bottom of the notice.** When calling to inquire about any aspect of this Notice, please reference work order number: **6601567**.

Respectfully,  
Nationwide Notice, Inc.

## Fund Trapping Notice

This is only a notice and NOT A LIEN and is not recorded against your property.

General Contractor  
9214890107899922594260  
MULLEN ASPHALT PAVING  
PO BOX 339  
BACLIF, TX 77518

Owner  
9214890107899922593966  
8020 PARTNERS LTD  
8020 BROADWAY  
GALVESTON, TX 77550

Project: Classic Toyota Car Dealership/ 7802 Broadway Street / Galveston, Texas / As recorded in the public records of Galveston County, Texas / Property Control # 119866 ABST 121 HALL & JONES SUR LOT 3 INTERSTATE BUSINESS & INDUSTRIAL PARK SUB; , Commercial

Dear Sir/Madam:

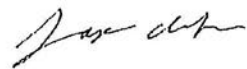
Please be advised that Gulf Coast dba Oldcastle Materials Texas, Inc. , hereby provides notice pursuant to the provisions of Chapter 53 of Texas Property Code or 2253.041 of the Texas Government Code, of its unpaid claim for materials and/or labor furnished to the above referenced project under a contract with MULLEN ASPHALT PAVING. After applying all credits and payments, there is still due and owing a balance of \$33,451.65 for the materials and/or labor furnished during the month(s) of November. The total unpaid balance claimed by Gulf Coast dba Oldcastle Materials Texas, Inc., for ROADWAY MATERIALS is \$33,451.65. The total amount claimed is just and correct and all just and lawful offsets, payments and credits known to Gulf Coast dba Oldcastle Materials Texas, Inc., have been allowed. Current months still due and owing:

November

\$33,451.65

This claim has accrued under Chapter 53 of the Texas Property Code and/or is past-due under the terms of the contract referenced above. Pursuant to Texas Property Code § 53.081(a) & § 53.083, demand is hereby made to withhold the amount set forth above from the Original Contractor to pay Claimant directly. Attached hereto are copies of the unpaid invoices in support of this claim. If this claim is not promptly paid, Gulf Coast dba Oldcastle Materials Texas, Inc., will proceed, if necessary, to place a lien on the property. Pursuant to § 53.252(c): You are hereby notified that if this claim remains unpaid, you may be personally liable and the above-described property subjected to a lien unless you withhold payment from , the original contractor, for payment of the total sum due or unless the claim is otherwise paid or settled. It is our understanding that you are the Owner of the real property on which the improvements are being constructed. If you are not the Owner of the property, please advise us at once. In compliance with § 53.107(a)(2), we also request that you give the undersigned written notice of either termination of or abandonment of performance of the original contract.

**Homesteaded Projects:** Pursuant to § 53.254(g): If a subcontractor or supplier who furnishes materials or performs labor for construction of improvements on your property is not paid, your property may be subject to a lien for the unpaid amount if: (1) after receiving notice of the unpaid claim from the claimant, you fail to withhold payment to your contractor that is sufficient to cover the unpaid claim until the dispute is resolved; or (2) during construction and for 30 days after completion of construction, you fail to retain 10 percent of the contract price or 10 percent of the value of the work performed by your contractor. If you have complied with the law regarding the 10 percent retainage and you have withheld payment to the contractor sufficient to cover any written notice of claim and have paid that amount, if any, to the claimant, any lien claim filed on your property by a subcontractor or supplier, other than a person who contracted directly with you, will not be a valid lien on your property. In addition, except for the required 10 percent retainage, you are not liable to a subcontractor or supplier for any amount paid to your contractor before you received written notice of the claim.



By: Jorge Iriban

Agent For: Gulf Coast dba Oldcastle Materials Texas, Inc.  
PO Box 20779, Beaumont, TX, 77720  
409-866-1444  
Angela.Kvarme@apac.com  
Contact: Angela Kvarme

W/O: 6601567  
Job #: Classic Toyota Car  
Dealership  
Date: 02/15/2019  
Acct #: 260315

<u>Recipient Type</u>	<u>Tracking ##</u>	<u>Name</u>	<u>Address</u>
Owner	9214890107899922593966	8020 PARTNERS LTD	8020 BROADWAY, GALVESTON, TX 77550
General Contractor	9214890107899922594260	MULLEN ASPHALT PAVING	PO BOX 339, BACLIF, TX 77518
Misc	9214890107899922594369	TOYOTA MOTOR NORTH AMER	6565 HEADQUARTERS DRIVE, PLANO, TX 75024
Misc	9214890107899922665861	CLASSIC TOYOTA GALVESTO	7802 BROADWAY ST, GALVESTON, TX 77554

# MULLEN PAVING COMPANY

3814 East Wallisville Road  
Baytown, TX 77521

Phone: (281) 808-7224

## Bid Proposal No. 18007

Attention: Howie  
Company: Classic Galveston

Job Site Location:  
Chevrolet & Toyota Lots

Phone: (713) 419-4465  
Fax:

Date: September 10, 2018

We hereby propose to furnish all materials and perform the labor necessary for the completion of:

1. Clean and remove all debris from existing pavement.
2. Sawcut and remove existing pavement for all tie-ins to existing pavement.
3. Apply tack coat to existing pavement at a rate of 0.1 gallon per square yard.
4. Install 1 ½" of hot mix asphalt Type 340D and compact for max densities approx. 75,000 SF.
5. Apply asphalt sealer to new pavement any time after 30 calendar days after the completion of installation of new pavement.

All material is guaranteed to be as specified, and the above work to be performed in accordance and completed in a substantial workmanlike manner with payment due upon completion.

Any alteration or deviation from the above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. No bonds, testing, engineering, permits or taxes included in this contract. Prices quoted are firm for 30 days only.

Chevrolet Lot Lump Sum Price: \$53,250.00

Toyota Lot Lump Sum Price: \$31,750.00

Seal Coating Lump Sum Price: \$13,700.00

*We are not responsible for damage to underground utilities not marked prior to commencement of work.*

Respectfully Submitted By: David Mullen

Approved By: \_\_\_\_\_

Thank you for your business!

# Invoice 101854

## Mullen Paving

c/o David Mullen  
3814 East Wallisville Road  
Baytown, Texas 77521  
(281) 808-7224

Date November 19, 2018 To 8020 Partners

Instructions  
See Below

Quantity	Description	Unit Price	Total
1	Final payment Chevrolet lot	\$39,937.50	\$39,937.50

Job Site: Classic Chevrolet  
Galveston, Texas 77554

Total Due/Invoiced: \$39,937.50

**MAKE CHECK PAYABLE TO:**

**DAVID MULLEN**

**MULLEN PAVING**

Thank you for your business!



## CONTRACTOR'S FINAL RELEASE AND WAIVER OF LIEN

Project/ Owner

Contractor

Project: Classic Chevrolet Galveston/8020 Partners

Name: David Mullen c/o Mullen Paving Company

Address: 8020 Broadway St  
Galveston, TX 77554

Address: 3814 East Wallisville Road  
Baytown, TX 77521

Owner: Howie Bentley/8020 Partners

Contractor Licence: N/A

Contract Date: 11 / 19 / 2018

### TO ALL WHOM IT MAY CONCERN:

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Contractor hereby waives, discharges, and releases any and all liens, claims, and rights to liens against the above-mentioned project, and any and all other property owned by or the title to which is in the name of the above-referenced Owner and against any and all funds of the Owner appropriated or available for the construction of said project, and any and all warrants drawn upon or issued against any such funds or monies, which the undersigned Contractor may have or may hereafter acquire or possess as a result of the furnishing of labor, materials, and/or equipment, and the performance of Work by the Contractor on or in connection with said project, whether under and pursuant to the above-mentioned contract between the Contractor and the Owner pertaining to said project or otherwise, and which said liens, claims or rights of lien may arise and exist.

The undersigned further hereby acknowledges that the sum of  
Fifty-three Thousand Two Hundred Fifty

Dollars (\$ 53,250.00) constitutes the entire **unpaid** balance due the undersigned in connection with said project whether under said contract or otherwise and that the payment of said sum to the Contractor will constitute payment in full and will fully satisfy any and all liens, claims, and demands which the Contractor may have or assert against the Owner in connection with said contract or project.

Dated this 19 day of November, 2018

David Mullen c/o Mullen Paving Company

Contractor

Witness to Signature:

Karl Korfinek

David Mullen



By: David Mullen

Title: Owner

# MULLEN PAVING COMPANY

3814 East Wallisville Road  
Baytown, TX 77521

Phone: (281) 808-7224

## Bid Proposal No. 18007

Attention: Howie  
Company: Classic Galveston

Job Site Location:  
Chevrolet & Toyota Lots

Phone: (713) 419-4465  
Fax:

Date: September 10, 2018

We hereby propose to furnish all materials and perform the labor necessary for the completion of:

1. Clean and remove all debris from existing pavement.
2. Sawcut and remove existing pavement for all tie-ins to existing pavement.
3. Apply tack coat to existing pavement at a rate of 0.1 gallon per square yard.
4. Install 1 1/2" of hot mix asphalt Type 340D and compact for max densities approx. 75,000 SF.
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All material is guaranteed to be as specified, and the above work to be performed in accordance and completed in a substantial workmanlike manner with payment due upon completion.

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Chevrolet Lot Lump Sum Price: \$53,250.00

Tovota Lot Lump Sum Price: \$31,750.00

<b>8020 PARTNERS LTD.</b>		1129
DATE <b>11-12-2018</b>		32-2/1110 TX 2103
PAY TO THE ORDER OF <b>MULLEN PAVING</b>	\$ <b>13,312.00</b>	
*****THIRTEEN THOUSAND THREE HUNDRED TWELVE AND NO/100*****		DOLLARS
<b>Bank of America</b>		
ACH R/T 111000025		
FOR <b>25% DOWN ON GM ASPHALT</b>		

<b>8020 PARTNERS LTD.</b>		1130
DATE <b>11-12-2018</b>		32-2/1110 TX 2103
PAY TO THE ORDER OF <b>MULLEN PAVING</b>	\$ <b>39,938.00</b>	
*****THIRTY NINE THOUSAND NINE HUNDRED THIRTY-EIGHT AND NO/100*****		DOLLARS
<b>Bank of America</b>		
ACH R/T 111000025		
FOR <b>BAL OF GM ASPHALT JOB</b>		

# MULLEN PAVING COMPANY

3814 East Wallisville Road  
Baytown, TX 77521

Phone: (281) 808-7224

## Bid Proposal No. 18007

Attention: Howie  
Company: Classic Galveston

Job Site Location:  
Chevrolet & Toyota Lots

Phone: (713) 419-4465  
Fax:

Date: September 10, 2018

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3. Apply tact coat to existing pavement at a rate of 0.1 gallon per square yard.
4. Install 1 1/2" of hot mix asphalt Type 340D and compact for max densities approx. 75,000 SF.
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Chevrolet Lot Lump Sum Price: **\$53,250.00**

Toyota Lot Lump Sum Price: **\$31,750.00**

**8020 PARTNERS LTD.**

DATE **11-12-2018**

32-2/1110 TX  
2103

PAY TO THE ORDER OF **MULLEN PAVING**

**\$ 31,750.00**

\*\*\*THIRTY ONE THOUSAND SEVEN HUNDRED FIFTY AND NO/100\*\*\*\*\*

DOLLARS

**Bank of America**

ACH/R/T 111000025

**TOYOTA LOT**

FOR



# Mullen Paving

c/o David Mullen

3814 East Wallisville Road

Bartown, Texas 77521

(281) 808-7224

Date

January 2, 2019

To

8020 Partners

Galveston, TX

Instructions

See Below

Quantity	Description	Unit Price	Total
1	Seal coat Chevrolet lot down payment	\$3,500.00	\$3,500.00

Job Site: Classic Chevrolet

Galveston, Texas 77554

Total Due/Invoiced:

**\$3,500.00**

**MAKE CHECK PAYABLE TO:**

**DAVID MULLEN**

**MULLEN PAVING**

Thank you for your business!

[illegible]