

NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION NEW HANOVER COUNTY 96 CVS 0059

WILLIAM ARTHUR RUFF, and wife
BARBARA ANN RUFF, PETER T.
BROWN, and wife MARLEE MURPHY
BROWN, JOAN BOZEMAN, ROBERT K. PENTZ, ERNEST
L. LIBORIO, and wife LOIS P. LIBORIO, MARY
FRANCES DILLON, DON CLARK, and wife PATRICIA A.
CLARK, and ANDREW J. HUTCHINSON, and wife
CAROL A. HUTCHINSON, and MILLER HOMES, f/k/a
RUSTIC HOMES OF
WILMINGTON, INC., MARSH
HARBOUR GOLF & YACHT CLUB
INTERVAL ASSOCIATION, INC., and
EDWARD A. DOWD and wife,
LEAH DOWD,

Plaintiffs,

v.

**SETTLEMENT
AGREEMENT BETWEEN
PLAINTIFFS AND DRYVIT
SYSTEMS, INC.**

PAREX, INC., STO CORP., W. R.
BONSAL COMPANY, CONTINENTAL
STUCCO PRODUCTS, SENERGY, INC.,
THOMAS WATERPROOF COATINGS CO., DRYVIT
SYSTEMS, INC., UNITED STATES GYPSUM CO., and
SHIELDS INDUSTRIES, INC.,

Defendants.

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THIS AGREEMENT is entered into this 15th day of December, 1999 by and among:

(1) named plaintiffs with Defendant Dryvit Systems, Inc.'s EIFS on their Property in the above litigation ("Plaintiffs"), for themselves and on behalf of the plaintiff settlement class as hereinafter defined (the "Settlement Class"); and (2) Defendant Dryvit Systems, Inc. (the "Settling Defendant"). The Settling Defendant and Plaintiffs, shall hereinafter be referred to as "Party" or "Parties," as appropriate.

WHEREAS, subject to the Court's approval, as required by Rule 23 of the North Carolina Rules of Civil Procedure, and as hereinafter provided, it is hereby stipulated and agreed by the Parties that, in consideration of the promises and covenants set forth in this Settlement Agreement and upon the entry by the Court of a Final Order and Judgment approving the Settlement Agreement and directing the implementation of the terms and conditions of the settlement as set forth in this Settlement Agreement, this Action shall be settled and compromised as to the Parties to this Settlement Agreement upon the terms and conditions contained herein; and

WHEREAS, claims have been filed against Settling Defendant regarding residential structures clad with Settling Defendant's Exterior Insulation and Finish Systems ("EIFS" or "EIF System"); and

WHEREAS, Plaintiffs in this Action contend that EIFS related Damage occurs to the Property upon or shortly after installation and continues until remediation; and

WHEREAS, this Action was filed on January 6, 1996, and certified ex parte as a class action on January 9, 1996, pursuant to North Carolina Rule of Civil Procedure 23 (which is unique and varies from its Federal counterpart), a ruling which was subsequently reaffirmed by order dated September 18, 1996 and, further, the Court having denied Settling Defendant's motion to decertify the class and also having questioned whether the Action would be certified were the issues presented today, the Parties, in considering the legal and factual difficulties of this analysis, desire to resolve all disputes between them as further described herein; and

WHEREAS, the Parties have investigated the facts and law relating to the matters set forth in this Action and have conducted extensive pretrial discovery on the claims and defenses asserted therein; and

WHEREAS, the Parties have engaged in extensive, arms-length negotiations regarding settlement of the claims against Settling Defendant; and

WHEREAS, based upon analysis of the facts and the law applicable to this Settlement Agreement, taking into account the burdens and expense of litigation, including the risks and uncertainties associated with protracted trials and appeals and with Settling Defendant's ability to satisfy EIFS related claims, as well as the fair, cost-effective, and assured method of resolving claims of the Settlement Class provided in this Settlement Agreement, Plaintiffs' Class Counsel have concluded that this Settlement Agreement provides substantial benefits to the Settlement Class and is fair and reasonable, and in the best interests of the Settlement Class; and

WHEREAS, Settling Defendant has denied all allegations of wrongdoing and has asserted affirmative defenses to Plaintiffs' claims, and, while continuing to deny all allegations of liability, including all allegations that this action could have been maintained as a class action through trial, also desires to settle, compromise and terminate the Plaintiffs' claims against it so as to avoid the further substantial expense, inconvenience and distraction of this burdensome and protracted litigation, and put to rest forever all claims that have or could have been asserted against Settling Defendant in this Action, or elsewhere, which arise from or are in any way related to the acts, transactions or occurrences alleged or that could have been alleged in this Action and relating to any Settled Claim against Settling Defendant; and

NOW, THEREFORE, the Parties, by and through their respective counsel, stipulate and agree that all claims of the Settlement Class shall be finally settled and resolved on the terms and conditions set forth below, subject to the Court's approval of this Settlement Agreement as a good faith, fair, reasonable, and adequate settlement under Rule 23 of the North Carolina Rules of Civil Procedure.

1. DEFINITIONS

As used in this Settlement Agreement and in the exhibits annexed hereto, in addition to any definitions elsewhere in this Settlement Agreement, the following terms shall have the meanings set forth below.

Action means Civil Action Number 96-CVS-0059, pending in Superior Court for New Hanover County, North Carolina.

ADR means the procedures to resolve disputes arising under the Settlement Agreement, as further described in Section 9.

Claim Period means the period commencing on the Notice Date and terminating either (A) three (3) years later or (B) the date the Settlement Agreement is terminated pursuant to any provision in the Agreement, whichever is earlier.

Claimant means a Person who is both a Settlement Class Member and who has timely filed a Claim Form with the Claims Administrator.

Claims Administrator means Poorman-Douglas, or such other person or persons designated by Settling Defendant upon consultation with Plaintiffs' Class Counsel to process claims in accordance with this Settlement Agreement.

Claim Form means the form completed by Settlement Class Members pursuant to the terms of this Settlement Agreement substantially in the form attached as Exhibit "A", hereto.

Class Notice of Settlement means the form of Court-approved notice substantially in the form attached as Exhibit "1", to the Notice Plan.

Court means the Honorable Ben F. Tennille, Special Superior Court Judge for Complex Business Cases, or his successor, Superior Court for New Hanover County, North Carolina.

Damage means with respect to the Property, two or more moisture readings of greater than 25% from separate Water Sources or two (2) square feet of wall with evidence of loss of structural integrity of the sheathing. Damage does not include, and recovery cannot be based upon, moisture readings greater than 25% or loss of structural integrity of sheathing caused by an extreme natural event, including, without limitation, flood, tornado, hurricane or earthquake, or directly attributable to harm to the Property caused by foreign objects, including, without limitation, falling trees, moving vehicles, flying debris and other physical impact.

Date of the Claim means the date on which a Claim Form is post-marked under this Settlement Agreement by a Settlement Class Member.

EIF System or **EIFS** means either Dryvit Outsulation® or Sprint® non-drainable Exterior Insulation and Finish System of Settling Defendant, installed on the Property of a Settlement Class Member, provided the EIFS is not a Mixed Product, and the insulation board was installed directly over plywood, oriented strand board, exterior grade gypsum or other water sensitive substrate without a secondary weather barrier and drainage trim accessories. EIF System or EIFS shall not include (a) mechanical or adhesive application over CMU block, cement or fiber cement board, brick or other masonry unit; (b) application over any substrate with a secondary weather barrier with drainage or water management; and (c) Dryvit's Exsulation system or any direct applied application such as Fastrak.

Fairness Hearing means the hearing to be conducted by the Court in connection with the determination of the fairness, adequacy and reasonableness of this Settlement Agreement under Rule 23 of the North Carolina Rules of Civil Procedure.

Final Order and Judgment means the Order to be entered by the Court, in a form that is mutually agreeable to the Parties, approving this Settlement Agreement without material alterations, as fair, adequate and reasonable under Rule 23 of the North Carolina Rules of Civil Procedure and making such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Settlement Agreement.

Former Owner means a Settlement Class Member who owned a Property clad, in whole or in part, with Settling Defendant's EIFS, prior to September 18, 1996, but who no longer owns the Property.

Identification Protocol means the product identification protocol used to identify whether Settling Defendant's EIFS was installed on the Claimant's Property.

Independent Inspector means Crawford & Company or such other firm(s) or person(s) selected by the Parties to conduct an inspection of a Claimant's Property pursuant to the Inspection Protocol.

Inspection Protocol means the protocol established by the Parties to be followed by the Independent Inspector for the purpose of gathering and recording factual information relating to a Property, substantially in the form attached as Exhibit "B".

Inspection Report means the written report completed by the Independent Inspector, substantially in the form attached as Exhibit "C".

Mixed Product means an EIFS that is not, in its entirety, an EIFS, sold, marketed and/or distributed by Settling Defendant.

Notice Date means the date set by the Court by which Class Notice of Settlement must be initially disseminated.

Notice Plan means the proposal for dissemination of the Class Notice of Settlement, the Notice Plan, is substantially in the form attached as Exhibit "D", hereto.

Person means both an individual and an entity, and their respective successors or assigns.

Plaintiffs' Class Counsel means the following counsel: (A) Gary K. Shipman and Carl W. Thurman III of Shipman & Associates, L.L.P.; (B) Marvin K. Blount, Jr., of The Blount Law Firm, P.L.L.C.; (C) Everette L. Doffermyre of Doffermyre, Shields, Canfield, Knowles & Devine; (D) William M. Audet of Alexander, Hawes & Audet, L.L.P.; (E) Gary E. Mason of Cohen, Milstein, Hausfeld & Toll, P.L.L.C.; (F) Samuel D. Heins and Kent Williams of Heins Mills & Olson, P.L.C.; (G) Joseph McLeod of the McLeod Law Firm, P.A.; (H) Michael A. Worel and Richard T. Dorman of Cunningham, Bounds, Yance, Crowder & Brown; (I) A. Hoyt Rowell and H. Blair Hahn of Ness, Motley, Loadholt, Richardson & Poole; (J) Laurence S. Berman of Levin, Fishbein, Sedran & Berman; (K) Laura Shamp of Brown & Shamp; (L) Joel Rhine of Lea, Clyburn & Rhine; (M) Auley M. Crouch III of Block, Crouch, Keeter & Huffman.

Preliminary Approval means the Court's order granting Preliminary Approval of this Settlement Agreement and approval of the Class Notice of Settlement pursuant to Rule 23 of the North Carolina Rules of Civil Procedure and entry of an order substantially in the form attached as Exhibit "E," hereto.

Preliminary Approval Hearing means the hearing to be conducted by the Court in connection with the Preliminary Approval of the Settlement Agreement.

Property means any one or two family residential dwelling and townhouse located in North Carolina.

Recovery Program means the procedures for the entitlement determination to be made pursuant to Sections 5 and 6 of the Settlement Agreement.

Recovery Protocol means the criteria by which the Claims Administrator will determine the recovery to which a Claimant may be entitled.

Settled Claim means any claim, liability, right, demand, suit, matter, obligation, damage, loss or cost, action or cause of action, of every kind, nature and description that any class member, on behalf of himself or herself, and any Person claiming by or through his or her heir, administrator, devisee, predecessor, successor, representative of any kind, shareholder, partner, director, owner of any kind, affiliate, subrogee, assignee, or insurer, has or may have, whether known or unknown, asserted or unasserted, latent or patent, that is, has been, could have been or in the future might be asserted either in this Action or in any other action or proceeding in this Court or any other court or forum, regardless of legal theory, and regardless of the type or amount of relief or damages claimed, against Settling Defendant, arising from or in any way relating to any defects or alleged defects of EIFS relating to damage and/or potential damage to the Property. Without limiting the generality of the foregoing, Settled Claim shall include:

(A) any claim for breach or violation of any federal, state, common or other law;

(B) any claim for breach of any duty imposed by law, by contract or otherwise;

(C) any claim based on product liability, agency, respondeat superior, third party beneficiary, negligence, breach of express or implied warranty, racketeering, fraud, conspiracy, consumer fraud, negligent misrepresentation, or intentional misrepresentation;

(D) any claim arising from or in any way related to the design, promotion, manufacture, production, sale, warnings, distribution, assembly or installation of any EIF Systems;

(E) any claim for emotional distress or mental anguish associated with any of the above; and

(F) any claim for penalties, punitive damages, exemplary damages, or any claim for damages based upon multiplication of compensatory damages associated with the above.

Settled Claim does *not* include and specifically excludes: (A) any claim for bodily injury (including wrongful death) and associated or resulting emotional distress and mental anguish, (B) any claims arising from the purchase of Settling Defendant's EIFS distributed, marketed and/or sold by the Settling Defendant after the Notice Date, (C) any claim related to a Mixed Product; and (D) any claim asserted by or on behalf of any Person with respect to a residential structure that does not meet the definition of Property.

Settlement Agreement means this Settlement Agreement, including all exhibits hereto.

Settlement Class means a class composed of all Persons who, as of September 18, 1996, owned or formerly owned Property in the State of North Carolina clad, in whole or in part, with Settling Defendant's EIFS.

Excluded from the Settlement Class are:

(A) All Persons who are builders, developers or contractors, except as to the Property in which they personally reside;

(B) All Persons who previously opted out of the Action pursuant to the notice of class action disseminated on or about July 25, 1997, or pursuant to the Court Order dated June 16, 1999, and have

not otherwise Opted In to the proposed Settlement;

(C) Settling Defendant, the parent and any subsidiary, affiliate and controlled entity of Settling Defendant, and the officers and directors of Settling Defendant;

(D) Persons who, prior to the Notice Date, have previously released Settling Defendant;

(E) Any assignee who acquired a right or interest in a Settled Claim, except for assignees who received the assignment prior to the Notice Date while purchasing or selling a Property, or while providing relocation services in connection with the purchase or sale of Property.

Settlement Class Member(s) means a Person (or Persons) who falls (or fall) within the definition of the Settlement Class.

Settlement Date means the date of entry of the Final Order and Judgment.

Settling Defendant means Dryvit Systems, Inc. unless otherwise stated.

Summary Notice of Settlement means the Court-approved Notice substantially in the form attached as Exhibit "3", to the Notice Plan.

Square Foot of EIFS means each square foot of EIFS installed on a Property, exclusive of doors, windows, fenestrations and other penetrations.

Term of the Agreement means the period commencing upon entry by the Court of the Final Order and Judgment and ending the earlier of: (A) three (3) years from the Notice Date; or (B) termination of this Settlement Agreement.

Water Source means an element, feature or component in the exterior of the Property with a path or paths for water to penetrate behind the EIFS. Perimeter joints and sealants shall be considered a part of that element.

2. SETTLEMENT PURPOSES ONLY

. This Settlement Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in this Settlement Agreement or its attachments, nor any action taken hereunder shall constitute, be construed as, or be admissible in evidence as, any admission of the validity of any claim or any fact alleged by Plaintiffs in this Action or in any other action or proceeding of any nature or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Settling Defendant or any admission by them of any claim or allegation made in this Action or in any action or proceeding of any nature, or as an admission that class action litigation is lawful or appropriate against Settling Defendant or against any other party to the Action in any other Court or forum, nor as an admission by any of the Plaintiffs, Settlement Class Members or Plaintiffs' Class Counsel of the validity of any fact or defense asserted by them or against them in this Action.

. Notwithstanding Section 2.1, the provision of this Settlement Agreement may be admissible in any proceeding to enforce the rights, obligations or effect of the terms herein. .

3. SUBMISSION FOR PRELIMINARY APPROVAL

. Promptly after execution of this Settlement Agreement, the Parties shall jointly submit this Settlement Agreement, through their respective counsel of record, to the Court for Preliminary Approval.

. The Parties hereto shall obtain from the Court an order (the "Preliminary Approval Order"), specifically including, inter alia, provisions that:

(A) Approve this Settlement Agreement preliminarily, subject to the right of Settlement Class Members to be heard on the terms and on the reasonableness of the Settlement at the Fairness Hearing scheduled as described below;

(B) Approve the Notice Plan;

(C) Direct the Parties to disseminate the Class Notice of Settlement to those Settlement Class Members who can be identified through reasonable effort, and to publish or cause to be published a Summary Notice of Settlement in accordance with the Notice Plan;

(D) Find that the Notice of Class Settlement constitutes the best notice practicable under the circumstances, and is due and sufficient notice to the Settlement Class, and that the Notice Plan fully satisfies the requirements of due process, Rule 23 of the North Carolina Rules of Civil Procedure and other applicable law;

(E) Set a date for a Fairness Hearing, to be held by the Court to determine whether there exists any reasonable basis why the Settlement should not be approved as being fair, reasonable and adequate to the Settlement Class and why judgment should not be entered thereon;

(F) Provide that any objection to the proposed Settlement, and any papers submitted in support of said objection, shall be received by the Court at the Fairness Hearing (unless, in its discretion, the Court shall direct otherwise), only if, on or before a date to be specified in the Class Notice of Settlement, the Person making objection shall file notice of his or her intentions and copies of such papers he or she proposes to submit at the hearing with the Clerk of the Court on or before the date specified in the Class Notice of Settlement and, on or before such date, such papers are served in accordance with the instruction contained in the Class Notice of Settlement. In addition, any objection to the Settlement Agreement must include: (1) the identity of the Property clad with Settling Defendant's EIFS; and (2) proof of past or present ownership of the Property; and (3) *prima facie* evidence of product identification as demonstrated by submitting with the objection papers one of the following: (a) a Settling Defendant's warranty with respect to the Property; or (b) an Inspection Report issued by Settling Defendant indicating that it is Settling Defendant's EIFS; or (c) Bill of Sale/purchase documents indicating the purchase of Settling Defendant's EIFS with respect to the Property; or (d) correspondence from Settling Defendant indicating that it is the Settling Defendant's EIFS;

(G) Provide that Plaintiffs' Class Counsel will apply for approval by the Court to pay attorneys' fees and reimbursement of costs with the hearing thereon at the same date and time of the Fairness Hearing; and

(H) Provide that the Fairness Hearing may, from time to time, and without further notice to the Settlement Class, be continued or adjourned by order of the Court.

4. PRIMA FACIE PRODUCT IDENTIFICATION

. The Claims Administrator shall determine whether the Property is or was clad, in whole or in part, with Settling Defendant's EIFS. In determining product identification, the Claims Administrator may rely on the information provided on the Claim Form.

. The Claim Form shall contain certain information relating to the Property and EIFS cladding. The information provided in connection with submission of the Claim Form will be used by the Claims Administrator

to make an initial product identification determination.

. In determining EIFS product identification, a Claimant establishes a *prima facie* showing of Settling Defendant's EIFS by submitting with the Claim Form any one of the following: (A) Settling Defendant's warranty with respect to the Property, provided the Settling Defendant has a corresponding warranty; or (B) an inspection report issued by Settling Defendant indicating it is the Settling Defendant's EIFS; or (C) Bill of Sale/purchase documents indicating the purchase of Settling Defendant's EIFS with respect to the Property; or (D) correspondence from Settling Defendant indicating that it is Settling Defendant's EIFS; or (E) an affidavit by a builder, contractor or applicator stating that, based on personal knowledge, the Property is clad with Settling Defendant's EIFS; (F) a report under seal from a licensed engineer or architect stating that the Property is clad with Settling Defendant's EIFS, provided that this determination is based on first-hand personal knowledge of the engineer or architect, obtained through his or her inspection of the Property and, if the report is created subsequent to the Notice Date, the report identifies the facts that support the determination.

. Where a *prima facie* showing is not or cannot be established, the Claimant may submit to the Claims Administrator for consideration other evidence of product identification of Settling Defendant's EIFS including, but not limited to, one or more of the following: (A) a report from an inspector stating that the Property is clad with Settling Defendant's EIFS provided that this determination is based on first-hand personal knowledge of the inspector obtained by his or her inspection of the Property and, if the report is created subsequent to the Notice Date, the report identifies the facts that support the determination, or (B) identifying or presenting the physical characteristics of the EIFS such as texture and color of the finish coat, the mesh weave and color, type and color of the base coat. The mesh color may be established by either submission of a color photograph that shows the color of the mesh, or submission of a sample of EIFS of sufficient size to determine the mesh color.

. Whether product identification is *prima facie* or determined upon alternative evidence, following receipt of the Inspection Report, the Claims Administrator shall have no more than thirty (30) days in which to accept or reject product identification or such shorter time as agreed by the Parties. Any product identification procedures used in connection with this Settlement Agreement shall be limited to determining whether the product is Settling Defendant's EIFS.

5. RECOVERY PROGRAM FOR CLAIMANTS, EXCLUDING FORMER OWNERS WHO DID NOT RECLAD

. This Section applies to Claimants, excluding Former Owners who did not reclad.

. To be eligible for a recovery under this Settlement Agreement, a Settlement Class Member must timely file a completed Claim Form with the Claims Administrator. Claim Forms may be submitted by Settlement Class Members for up to three (3) years after the Notice Date.

. After the Claims Administrator or ADR determines that a Claimant has identified the EIFS that had been installed on the Property as the Settling Defendant's EIFS, the Claimant will be eligible for an entitlement determination as provided in this Section and the Claims Administrator will direct an Independent Inspector to promptly inspect the Property (the "Inspection") and issue an Inspection Report, at no cost to the Claimant. No inspection under this Settlement Agreement is required until after the Settlement Date.

. The Independent Inspector shall forward the completed Inspection Report to the Claims Administrator no later than ten (10) days following the Inspection.

. If a Claimant has not reclad the Property, the Claimant shall be entitled to six dollars (\$6.00) per square foot

of EIFS installed on the Property provided: (A) that Claimant is able to establish product identification through the product identification protocol in Section 4; and (B) if the Inspection Report reveals Damage.

. If, for reasons other than a product identification determination, the Property does not qualify for a recovery based on information contained in the Inspection Report, the Claimant may elect to have a subsequent inspection conducted by the Independent Inspector. The subsequent inspection must be requested, if at all, no later than six months prior to the expiration of the Claim Period. The cost of the subsequent inspection shall be borne by the Claimant and will not be reimbursed even if the subsequent inspection results in a recovery, but in no event shall the cost to Claimant exceed five hundred dollars (\$500).

. If a Claimant has reclad the Property prior to the Notice Date or within thirty (30) days after the Notice Date, and submits an affidavit that Claimant has not been compensated for the reclad, in whole or in part, by Settling Defendant, the Claimant shall be entitled to six dollars (\$6.00) per square foot of EIFS installed on the Property, provided the Claimant: (A) establishes product identification through the product identification protocol in Section 4; and (B) establishes that an inspection was performed on the Property prior to the reclad which revealed Damage.

. If a Claimant has reclad the Property more than thirty (30) days after the Notice Date, and submits an affidavit that Claimant has not been advised through the Notice Plan or otherwise not to reclad and has not been compensated for remediation of the Property, in whole or in part, by Settling Defendant, the Claimant shall be entitled to six dollars (\$6.00) per square foot of EIFS installed on the Property, provided the Claimant: (A) establishes product identification through subsections (A) through (D) of the product identification protocol in Section 4.3; and (B) establishes that an inspection was performed on the Property prior to the reclad by a licensed engineer, architect or home inspector who issued a report under seal revealing Damage.

. The Claims Administrator, in his discretion, can request the Independent Inspector to conduct a follow-up inspection to take additional moisture readings of a Claimant's Property prior to making a determination under the Recovery Program.

. Pertinent data from all Claim Forms shall be maintained in a computerized database by the Claims Administrator. Information from the database shall be made available to the Independent Inspector (as to a specific Property as deemed necessary by the Claims Administrator), Settling Defendant, and Plaintiffs' Class Counsel, upon reasonable notice and with notice to Settling Defendant.

6. RECOVERY PROGRAM FOR FORMER OWNERS WHO DID NOT RECLAD

. Claimants who are Former Owners and who did not reclad the Property shall be entitled to payment of actual damages up to \$1,000, upon the timely submission of a Claim Form and demonstration to the Claims Administrator:

(A) of ownership prior to September 18, 1996 and sale of the Property prior to the Notice Date, as evidenced through a title or other appropriate documentation;

(B) that the Property was clad with Settling Defendant's EIFS, as established through the product identification protocol set forth in Section 4; and

(C) that the Former Owner has suffered actual damages relating to the Settling Defendant's EIFS, as established by submission to the Claims Administrator of a sworn affidavit attesting to same.

7. SETTLEMENT OBLIGATION

. Settling Defendant will be obligated to pay all recovery determinations made by the Claims Administrator

subject to resolution of any dispute submitted to ADR.

8. SELECTION, DUTIES AND COMPENSATION OF CLAIMS ADMINISTRATOR

- . Appointment of the Claims Administrator shall be subject to approval by the Court.
- . The Claims Administrator shall, under supervision of the Court, administer the claims process as set forth in this Settlement Agreement, by resolving claims submitted by Claimants in a rational, responsive, cost-effective, and timely manner.
- . All fees and expenses incurred in relation to the performance of the duties and obligations of the Claims Administrator, including without limitation salary, benefits, and insurance shall be paid by Settling Defendant.
- . The Claims Administrator shall have the right to hire and, for good cause shown, fire Independent Inspectors, who will be selected upon agreement between the Settling Defendant and Plaintiffs' Class Counsel. The Settling Defendant shall train the Independent Inspector(s) to perform duties and gather information required under the Inspection Protocol and Identification Protocol.
- . The Claims Administrator will submit periodic reports to Class Counsel, Settling Defendant and the Court during the Term of the Agreement. Nothing in this Settlement Agreement shall be interpreted to make any documents in the possession or control of the Claims Administrator public documents.
- . In the event Settling Defendant or Plaintiffs' Class Counsel reasonably believe that the Claims Administrator is not properly applying any of the terms of this Settlement Agreement or in the event there is a question about the application of the terms of this Settlement Agreement by the Claims Administrator, then:
 - (A) The objecting Party's counsel shall notify counsel for the other Parties to this Settlement Agreement in writing of their concern;
 - (B) Plaintiffs' Class Counsel and counsel for the Settling Defendant will meet within thirty (30) days of receipt of the written notification to try to resolve the concern;
 - (C) In the event Plaintiffs' Class Counsel and counsel for Settling Defendant cannot resolve the concern, then the dispute shall be submitted to the Court.
- . Prior to implementation of policies or procedures not provided for in this Settlement Agreement, the Claims Administrator shall notify Settling Defendant and Class Counsel of the proposed policy or procedure. Any dispute as to the implementation of any proposed policy or procedure shall be resolved by agreement between the Parties or, if no agreement can be reached, by submission to the Court.
- . The Claims Administrator shall supervise an ADR mechanism for resolving all disputes under this Settlement Agreement, although the Claims Administrator may not initiate ADR.
- . Upon termination of this Settlement Agreement for any reason, all records maintained by the Claims Administrator shall be provided to the Settling Defendant. The Settling Defendant shall maintain these records for two (2) years for the limited purpose of determining compliance with the terms of this Settlement Agreement.

9. ALTERNATIVE DISPUTE RESOLUTION

- . Unless otherwise provided in this Settlement Agreement, any and all disputes arising under this

Settlement Agreement of any nature whatsoever including, without limitation, product identification and recovery determinations, shall be submitted to Alternative Dispute Resolution ("ADR").

. In lieu of ADR, Claimants and Settling Defendant, either directly or through the Claims Administrator, may compromise any dispute arising under this Settlement Agreement in writing, and such writing shall supersede the provisions of this Settlement Agreement only as expressly agreed to between the Claimant and Settling Defendant. A copy of any such compromise shall be provided to and maintained by the Claims Administrator.

. Once approved by the Court, the ADR procedures, attached hereto as Exhibit "F", shall govern all ADR proceedings under this Settlement Agreement.

. The decision reached pursuant to an ADR proceeding is binding and non-appealable to any forum, venue or court, on all parties to the ADR proceeding as well as the Claims Administrator with respect to that ADR proceeding.

10. NOTICE TO THE CLASS

. Upon Preliminary Approval, and as the Court may direct, the Parties or their designees shall cause notice of the pendency of the Action, the settlement embodied herein, and the Fairness Hearing to be disseminated to Settlement Class Members as provided in this Section.

. Defendant agrees to utilize the services of Kinsella Communications, Ltd., a professional claims administrator, for the purposes of mailing the Notice and arranging for publication of the Summary Notice and Supplemental Notice. Settling Defendant may choose to share a notice plan and resulting costs with other Settling Defendants, but in no event shall Settling Defendant be responsible to pay an amount in excess of \$250,000 to pay for expenses incurred in connection with implementation of the Notice Plan. If, for any reason, the Settlement is terminated pursuant to the provisions of this Settlement Agreement, neither Plaintiffs nor Class Counsel shall have any responsibility or obligation to reimburse the Settling Defendant for any funds used or committed for costs incurred in connection with providing Notice to the Class and/or administration of the Settlement.

. A Summary Notice of Settlement shall be published in newspapers, trade journals, and magazines, and/or broadcast by radio and/or television in a manner reasonably calculated to reach Settlement Class Members, as more particularly described in the Notice Plan to be submitted by the Parties and approved by the Court. The Class Notice of Settlement shall inform the reader, listener or viewer of a toll-free telephone number through which he or she may arrange for a mailing of the Class Notice of Settlement and Claim Form.

. The Class Notice, to be approved by the Court, shall be mailed, first class postage prepaid, together with a Claim Form, to each Settlement Class Member identified by the Parties through reasonable efforts, and to each Person who would be a Settlement Class Member, but who previously opted out of the Action, a Claim Form and Request for Revocation of Prior Election. In addition, such mailing shall be sent to each Settlement Class Member whose identity becomes known as a result of the Class Notice of Settlement or who contacts the Claims Administrator during the Term of the Agreement.

. Prior to the dissemination of the Class Notice of Settlement, the Parties or their designees shall cause a toll-free telephone facility to be established under the direction of the Claims Administrator. This facility shall be capable of: (A) receiving requests for the Class Notice of Settlement and other related materials; (B) providing a generalized telephone recording concerning submission of Claim Forms and presentations to the Court at the Fairness Hearing; and (C) mailing the appropriate Notice and other materials to Settlement Class Members as provided in this Settlement Agreement. The facility may, as appropriate under instructions from Plaintiffs' Class Counsel, subject to prior approval of Settling Defendant, provide additional information or refer

individual inquiries to Plaintiffs' Class Counsel for response. The facility shall maintain records of all mailings and such other information as Settling Defendant and Plaintiffs' Class Counsel may agree. The records maintained by the facility will be made available to the Parties upon request and reasonable notice.

. The Class Notice of Settlement, either substantially in its original form or as modified by the Court, shall begin on the Notice Date and be disseminated throughout the Claim Period as additional Settlement Class Members are identified.

11. SETTLEMENT CLASS MEMBERS' REQUEST FOR INCLUSION

. Persons who would be Settlement Class Members, but previously opted out of the Action pursuant to the notice of class action disseminated on or about July 25, 1997, or pursuant to the Court order dated June 16, 1999, may request to participate in this Settlement Agreement ("Opt In") by timely completing and mailing to the Claims Administrator the Claim Form and the Request for Revocation of Prior Election, attached hereto as Exhibit "G." Opt In requests will be allowed, if at all, at the absolute discretion of the Settling Defendant and shall not be effective until, and if, allowed by Settling Defendant. The decision of the Settling Defendant to allow a Person to Opt In or not is not subject to ADR or other review.

. Upon approval of Settling Defendant to permit a Person to Opt In, that Person shall be deemed a Settlement Class Member and be bound by this Settlement Agreement for all purposes and have no standing to object to or otherwise be heard by the Court and/or on appeal with respect to any aspect of this Settlement Agreement.

12. IMMEDIATE IMPLEMENTATION OF CLASS MEMBER BENEFITS

. This Settlement Agreement becomes effective upon entry of the Final Order and Judgment. Implementation of the terms of this Settlement Agreement, unless otherwise provided herein, shall not be affected or delayed by any appeal from the Final Order and Judgment. Any Party may petition the Court for relief from the obligation of immediate implementation of this Settlement Agreement.

13. STATUTES OF LIMITATIONS OR REPOSE AND REACTIVATION OF CLAIMS

. A Claimant shall not be barred from obtaining relief for any Settled Claim under this Settlement Agreement because of application of any statute of limitations or repose.

. Nothing in this Settlement Agreement is intended nor shall it be construed to toll any statute of limitations or repose period or to revive any claim of any Person including, but not limited to, those Persons who elected to Opt Out or otherwise be excluded from the Action pursuant to the notice of class action disseminated on or July 25, 1997, or thereafter pursuant to the Court's order dated June 16, 1999, except as to any Person who, as of September 18, 1996, owned or formerly owned a

residential dwelling designed to accommodate more than two families and which is less than three stories (the "Structure"), provided the owner of such Structure can establish reliance on the Action and product identification pursuant to Section 4 above. For Persons entitled to tolling under this Section, both the statute of limitations and repose shall be presumed tolled as of July 25, 1997, or such earlier or later date as may be established by competent evidence, but in no event shall tolling begin prior to January 6, 1996 or extend later than: A) thirty (30) days after the date of entry of the Final Order and Judgment; or B) thirty (30) days after completion of the claim process, including ADR, provided such claim is submitted within thirty (30) days of entry of the Final Order and Judgment.

14. EXCLUSIVE REMEDY; DISMISSAL OF ACTION; JURISDICTION OF COURT

. Except as otherwise provided in this Settlement Agreement, this Settlement Agreement shall be the sole and exclusive remedy for any and all Settled Claims of Settlement Class Members against Settling Defendant arising from its EIFS and, upon entry of the Final Order and Judgment by the Court, each Settlement Class Member shall be barred from initiating, asserting or prosecuting any Settled Claim against Settling Defendant.

. Plaintiffs' Class Counsel agree to dismiss any other action of any Settlement Class Member for Settled Claims pending in any Court against the Settling Defendant and for which a Plaintiffs' Class Counsel is counsel of record or otherwise on the pleadings.

. The Final Order and Judgment shall dismiss the Settling Defendant from the Action, with prejudice, on the condition that the Court shall retain exclusive and continuing jurisdiction of the Action, all Parties, and Settlement Class Members, to interpret and enforce the terms, conditions and obligations of this Settlement Agreement.

15. RELEASES AND ASSIGNMENTS

. Upon entry of the Final Order and Judgment, each class member on behalf of himself or herself, and any Person claiming by or through his or her heir, administrator, devisee, predecessor, successor, representative of any kind, shareholder, partner, director, owner of any kind, affiliate, subrogee, assignee, or insurer (the "Releasing Party") shall be deemed to and does hereby release and forever discharge Settling Defendant and its insurers, including any and all of their predecessors, successors, parents, subsidiaries, divisions, departments, affiliates, counsel and any and all of their past, present and future officers, directors, stockholders, partners, agents, servants, successors, subrogees and assigns of and from any and all Settled Claims and related subrogation claims of the Releasing Party's subrogees or insurance carriers. Each Releasing Party, upon entry of the Final Order and Judgment shall be deemed to and does hereby release and discharge Settling Defendant of and from any and all Settled Claims. Any person who claims and receives a recovery under the Settlement Agreement shall be deemed a Settlement Class Member and a Releasing Party and shall be bound by the terms of this Settlement Agreement.

. Nothing in this Settlement Agreement shall prejudice or in any way interfere with the rights of the Plaintiffs, Settlement Class Members and Settling Defendant to pursue all of their rights and remedies against non-settling Persons, third-parties or their respective insurers, including, without limitation, claims for contribution and/or indemnity.

. Notwithstanding the provisions of the preceding paragraph, upon entry of the Final Order and Judgment, the Settling Defendant shall release and have no right to seek or otherwise obtain any payment a Settlement Class Member may receive or recover from any third party and/or insurance company as a result of a Settled Claim. Nothing in this Settlement Agreement shall be interpreted to create any subrogation claim or right on the part of Settling Defendant or any of its agents as against any monies or recovery by the Settlement Class Member for claims against third parties and/or under any insurance policy relating to a Settled Claim.

. Upon entry of Final Order and Judgment and subject to the warranties made and obligations imposed under the terms of this Settlement Agreement, Settling Defendant, and its agents (including Settling Defendant's counsel in this Action), assigns and insurers, shall release Settlement Class Members, and Plaintiffs' Class Counsel from all claims arising out of, relating to, or in connection with the filing, assertion or resolution of the Action.

16. ATTORNEYS' FEES, EXPENSES AND COSTS

. Plaintiffs' Class Counsel and Settling Defendant were unable to reach an Agreement as to an award of Attorneys' fees, costs and expenses to be paid to Plaintiffs' Class Counsel; therefore, the Parties have agreed that the issue of Plaintiffs' Class Counsel's attorneys' fees, costs and expenses shall be presented to the Court

upon application by Plaintiffs' Class Counsel for such fees, costs and expenses incurred and expended in connection with this Action and, further, the Parties agree that in no event shall either the application or award exceed six million dollars (\$6,000,000) with the amount of any such award to be subject to the Court's discretion. Settling Defendant shall remain silent as to Plaintiffs' Class Counsel's fee application and shall pay the amount awarded by the Court within ten (10) days of the Court's order awarding fees and expenses, notwithstanding any objection or appeal, or at such other time or upon such other conditions as determined by the Court. The Parties agree that payment of the amount awarded by the Court shall be paid to Doffermyre, Shields, Canfield, Knowles & Devine (ATTN: Everette Doffermyre), 1355 Peachtree Street, Atlanta, Georgia 30309. Plaintiffs' Class Counsel agree not to seek any additional fees, costs and expenses.

17. ENFORCEMENT OF THE COURT'S SETTLEMENT APPROVAL ORDER

. This Settlement Agreement is subject to and conditioned upon the issuance by the Court following the Fairness Hearing of a Final Order and Judgment granting final approval of the Settlement Agreement. After issuance of a Final Order and Judgment, the Parties shall be obligated to comply with the terms of the Settlement Agreement, notwithstanding (A) objections to the Settlement, (B) the possibility of an appeal, or (C) the filing of an appeal or notice of appeal, unless the Court relieves the Parties from any such obligations.

. In the event any Party fails to comply with its obligations under the terms of this Settlement Agreement, or is in default of this Settlement Agreement in any other respect, the non-defaulting Party shall so notify the Court. The defaulting Party shall then be given up to twenty (20) calendar days to meet its obligations under the Settlement Agreement. If the defaulting Party does not meet its obligations within twenty (20) calendar days, the non-defaulting Party may apply to the Court for relief.

18. REPRESENTATIONS AND WARRANTIES

. Settling Defendant represents and warrants that: (A) it has all requisite corporate power and authority to execute this Settlement Agreement and to consummate and perform the transactions contemplated herein; and (B) this Settlement Agreement has been duly and validly executed and delivered by Settling Defendant and constitutes a legal, valid and binding obligation.

. Plaintiffs' Class Counsel represent and warrant that they have the authority to enter into and execute this Settlement Agreement and to consummate and perform the transactions contemplated herein as of the date of execution of this Settlement Agreement. Plaintiffs' Class Counsel hereby represent and warrant that this Settlement Agreement has been duly and validly executed and delivered by them and constitutes a legal, valid and binding obligation.

19. TERMINATION OF THE SETTLEMENT AGREEMENT

. The performance of this Settlement Agreement is expressly contingent upon the Court's issuance of the Final Order and Judgment. If the Court fails to issue such Order within ninety (90) days following the conclusion of the Fairness Hearing, either Party may elect to terminate this Settlement Agreement, rendering it as having no force or effect whatsoever, null and void *ab initio*, and not admissible as evidence for any purpose in any pending or future litigation (in any jurisdiction) involving any of the Parties.

. Settling Defendant agrees to use its best efforts to preserve all documents produced (or withheld upon attorney-client privilege or work product doctrine) by it in this Action through January 1, 2003. Settling Defendants may preserve such documents in any manner including, without limitation, as paper copies, including by way of example, documents maintained in the In Re Stucco repository, or in electronic form in lieu of paper copies.

20. JUDGMENT REDUCTION PROVISION

. The purpose of this Section is to eliminate the possibility of any liability of Settling Defendant based on claims against Settling Defendant (regardless of the legal theory on which such claims may be based) for contribution (under any theory of law or equity including pro rata or otherwise) toward, or indemnity for, all or any part of (A) the amount of any judgment or settlement in favor of Settlement Class Members (individually or otherwise) against any third party in any other action, including attorneys' fees and costs, or (B) the amount paid by any third party in settlement of any action proceeding and/or claim, so that the payment obligations of Settling Defendant pursuant to this Settlement Agreement, if any, shall be all that Settling Defendant shall ever be required to pay in connection with any of the matters alleged, or that could have been alleged, in this or any subsequent action.

. Each Settlement Class Member agrees to reduce the amount of any total judgment against any third party to which it may be entitled in any action by the amount, if any, of such total judgment for which the fact finder determines the Settling Defendant is liable and which the third party would be entitled to recover from the Settling Defendant by way of contribution (under any theory of law or equity including pro rata or otherwise), indemnification or otherwise, but for the release or any other term of this Settlement Agreement. Each Settlement Class Member also consents to determination of any claim of contribution or indemnity against Settling Defendant in the same action or proceeding in which such Settlement Class Member asserts claims against any other party without the necessity of joinder of Settling Defendant.

. Some Class Members may pursue separate actions against builders or other third parties who may be responsible for damages to their homes, including damages for which those third parties may contend that the Settling Defendant is liable in whole or in part. It is the intent of the Parties that, because of the terms of the Settlement Agreement, the participation of the Settling Defendant shall not be required in such separate actions. If claims for indemnity or contribution are brought against a Settling Defendant despite the provisions of this Section, the Settling Defendant shall:

A. notify the counsel for the Class Member of the assertion of the claims. Such notice shall be given before the expiration of time for the Settling Defendant to answer or otherwise respond to any such contribution or indemnity claim, including any extension thereof, or as soon as practicable after an answer or other response, if any, is filed by the Settling Defendant.

B. expressly authorize and acknowledge the right of the Settlement Class Member to intervene in his or her own name or in the name of the Settling Defendant in any proceeding asserting a contribution or indemnity claim against a Settling Defendant as described above in order to plead any matter in defense of such contribution and indemnity claim or in avoidance of any determination of liability which would cause a reduction to such Settlement Class Member's judgment as provided in Paragraph 20.2 of the Settlement Agreement.

21. MISCELLANEOUS PROVISIONS

. Subject to Court approval, the Settling Defendant shall pay to named plaintiffs in this Action who are Settlement Class Members \$15,000 for the Property with respect to which they individually or jointly assert claims, within forty-five (45) days of the Settlement Date, separate and apart from any determination to which such Persons are entitled under the Settlement Agreement, in recognition of their efforts on behalf of the Settlement Class.

. The Court shall retain continuing jurisdiction over the Parties and this Settlement for any and all purposes related to this Settlement including all rights, duties and obligations arising herein.

. In no event shall Settling Defendant, their insurers, any attorneys representing Settling Defendant, Plaintiffs or Plaintiffs' Class Counsel have any liability for claims of wrongful or negligent conduct by the

Claims Administrator, Independent Inspectors, or their respective agents or employees.

. This Settlement Agreement, including all exhibits attached hereto, shall constitute the entire Settlement Agreement among the Parties with regard to the subject of this Settlement Agreement and shall supersede any previous agreements and understandings between the Parties with respect to the subject matter of this Settlement Agreement. This Settlement Agreement may not be changed, modified, or amended except in writing signed by all Parties, subject to Court approval.

. Notwithstanding any provision to the contrary, in the event the Court does not enter Final Order and Judgment or this Settlement is reversed or vacated on appeal, or rejected upon remand, or terminated pursuant to this Settlement Agreement, any expense or costs incurred by any Party in connection with this Settlement Agreement may be deemed a litigation cost to the extent permitted by law and may be awarded, if at all, as provided by the Court.

. This Settlement Agreement shall be construed under and governed by the laws of the State of North Carolina, applied without regard to its laws applicable to choice of law.

. This Settlement Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

. This Settlement Agreement shall be binding upon and inure to the benefit of the Settlement Class, the Parties, and their representatives, heirs, successors, and assigns.

. The headings of the sections of this Settlement Agreement are included for convenience only and shall not be deemed to constitute part of this Settlement Agreement or to affect its construction. The decimal numbering of provisions herein is intended to designate sub-sections where applicable.

. Any notice, request, instruction, application for Court approval or application for Court orders sought in connection with this Settlement Agreement, or other document to be given by any Party to any other Party, shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, if to the Settling Defendant, to the attention of Settling Defendant's respective representative, and to Plaintiffs' Counsel on behalf of Settlement Class Members or to other recipients as the Court may specify.

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed by their duly authorized attorneys, as of the dates indicated, with the most recent date constituting the date of this Settlement Agreement.

By: Date:

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