

IN THE CIRCUIT COURT FOR
JEFFERSON COUNTY, TENNESSEE,
AT DANDRIDGE

BOBBY R. POSEY, and wife, SABRINA)
POSEY, and DALE TEAGUE, on behalf of)
themselves and all others similarly situated,)
Plaintiffs,)
v.) Case No. 17,715-IV
DRYVIT SYSTEMS, INC.,)
Defendant.)

SETTLEMENT AGREEMENT BETWEEN
PLAINTIFFS AND DRYVIT SYSTEMS, INC.

THIS AGREEMENT is entered into this 8th day of April, 2002, by and among the named plaintiffs in the above litigation (“Plaintiffs”), for themselves and on behalf of the settlement class defined below (the “Settlement Class”), and Defendant Dryvit Systems, Inc. (the “Settling Defendant”) (collectively referred to as the “Parties”).

WHEREAS, this Action was filed pursuant to the Tennessee Rule of Civil Procedure Rule 23, as a class action against Settling Defendant alleging damages relating to Settling Defendant’s exterior insulation and finish systems in residential structures;

WHEREAS, the Parties have investigated the facts and applicable law and have engaged in extensive, arms-length negotiations;

WHEREAS, taking in account the burdens and expense of litigation (including

the risks and uncertainties associated with protracted trials and appeals), as well as the fair, cost-effective, and assured method of resolving claims of the Settlement Class provided in this Settlement Agreement (the “Agreement”), Plaintiffs’ Class Counsel have concluded that this Agreement provides substantial benefits to the Settlement class, is fair and reasonable, and is in the best interests of the Settlement class; and

WHEREAS, Settling Defendant has denied all allegations of wrongdoing (including the assertion that this action could have been maintained as a class action through trial), has asserted affirmative defenses to Plaintiffs’ claims, and also desires to compromise Plaintiffs’ claims so as to avoid the substantial expense, inconvenience, and distraction of this litigation, and put to rest forever all claims that have or could have been asserted against the Release Parties arising from or in any way related to the acts, transactions, or occurrences alleged in this Action;

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

1. DEFINITIONS

As used in this Agreement and the attached exhibits, the following terms shall have the meanings set forth below.

“Action” means *Posey v. Dryvit Systems, Inc.*, Case Number 17,715-IV, pending in the Circuit Court for Jefferson County, Tennessee, at Dandridge.

“Agreement” and **“Settlement Agreement”** means this agreement by and among the Settling Defendant and Plaintiffs Bobby R. Posey, Sabrina Posey and Dale Teague and the Settlement class, as defined herein.

“Claim Form” means the form (substantially in the form of Exhibit 1 hereto) that Class Members must complete in order to receive benefits under this Agreement.

“Claim Period” means the 18-month period, commencing on the Notice Date, during which Claim Forms must be filed in order to be timely under this Agreement.

“Claimant” means a Class Member who has timely filed a Claim Form with the Claims Administrator.

“Claims Administrator” means the person or persons selected by the Parties and appointed by the Court to oversee the processing of claims in accordance with the terms of this Agreement.

“Class” or **“Class Members”** means all Persons who, as of the Notice Date, in any State other than North Carolina, own Property that is clad in whole or in part with Dryvit EIFS installed after January 1, 1989. Excluded are those who: (1) prior to the Notice Date, have settled with Settling Defendant, providing a release of claims relating to Dryvit EIFS; or (2) have obtained a judgment against Settling Defendant for a Dryvit

EIFS claim, or had a judgment entered against them on such a claim in Settling Defendant's favor.

“Class Counsel” means the following counsel: Gary E. Mason, of Cohen, Milstein, Hausfeld & Toll, P.L.L.C.; Everette L. Doffermyre of Doffermyre, Shields, Canfield, Knowles & Devine; Samuel D. Heins of Heins Mills & Olson, P.L.C.; Gary K. Shipman of Shipman & Associates; William M. Audet of Alexander, Hawes & Audet, L.L.P.; and Gordon Ball of Ball & Scott.

“Co-Lead Counsel” means Gary E. Mason and Everette L. Doffermyre.

“Class Notice of Settlement” of **“Class Nortice”** means the Court-approved notice of this Settlement (substantially in the form of Exhibit 2 hereto).

“Court” means the Circuit court for Jefferson County, Tennessee, at Dandridge.

“Date of the Claim” means the date on which the envelope enclosing the Claim Form is post-marked.

“Dryvit EIFS” means either Dryvit Outsulation® or Dryvit Sprint® non-drainable exterior insulation and finish system installed as a complete system (*i.e.*, not as a Mixed Product) on the Property of a Class Member. Dryvit 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; or (c) Dryvit's Exsulation system or any direct application such as Fastrak.

“Certified Contractors” means persons certified by MWC and selected and trained by MWC to perform Repairs pursuant to this Agreement.

“Estimated Repair Costs” means the sums that MWC estimates are reasonably necessary to complete the Repairs necessary to obtain a MoistureFree Warranty, as specified in the “Estimated Repair Cost Report” (substantially in the form of Exhibit 10 hereto). The actual cost of repairs paid by Claimants may vary from those in the MWC estimates.

“Fairness Hearing” means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of this Agreement under Rule 23 of the Tennessee Rules of Civil Procedure.

“Final” means, as applied to the Order and Judgment, that no timely appeals have been taken or that all appeals have been exhausted from the Order and Judgment approving this Agreement.

“Independent Inspector” means such firm(s) or person(s) selected by MWC and the Parties to conduct inspections of Property pursuant to the Inspection Protocol.

“Inspection Protocol” means the protocol (substantially in the form of Exhibit 3 hereto) that the Independent Inspector shall follow in gathering and recording factual information concerning a Property’s condition.

“Inspection Report” means the Independent Inspector’s written report of inspection (substantially in the form of Exhibit 4 hereto).

“Limited Guaranty” means the Limited Guaranty (substantially in the form of Exhibit 14 hereto) to be entered into on or prior to the date the Court grants Preliminary Approval by RWC for the benefit of the Claims Administrator and for the benefit of Class Counsel as agent for Claimants who have been issued MoistureFree Warranties.

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

“MoistureFree Warranty” means the three-year limited warranty (substantially in the form of Exhibit 5 hereto) provided to eligible Class Members under this Agreement.

“MWC” means Moisture Warranty Corporation, which shall enter into a contract with the Claims Administrator and RWCSWC (substantially in the form of Exhibit 6 hereto) (the “Service Contract”) to provide MoistureFree Warranties and certain services in connection with this Agreement.

“Notice Date” means the Court established date for the initial dissemination of Class Notice of Settlement.

“Notice Plan” means the proposal plan for dissemination of the Class Notice of Settlement.

“Objection Date” means the date by which Class Members must file objection to the Settlement.

“Order and Judgment” means the Order to be entered by the Court, in a form that is mutually agreeable to the Parties, approving this Agreement without material alteration, as fair, adequate, and reasonable under Rule 23 of the Tennessee rules of civil Procedure, and making such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Agreement.

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

“Personal Injury Damages” means compensation for the physical hurt or physical damage (including wrongful death) done to a Settlement Class Member’s person, and specifically excludes (a) any compensation for repairs, remedial work, loss in value, or any other potential damages involving a Settlement class Member’s property, as well as (b) any emotional injury that does not arise from physical injury.

“Preliminary Approval” means the Court’s order (substantially in the form of Exhibit 8 hereto) granting Preliminary Approval of this Agreement and approval of the Class Notice of Settlement pursuant to Rule 23 of the Tennessee Rules of Civil Procedure.

“Preliminary Approval Hearing” means the hearing the Court conducts in connection with the Preliminary Approval of the Agreement.

“Property” means any one- or two-family residential dwelling or townhouse located in any State in the United States, other than North Carolina.

“RWC” means Residential Warranty Corporation, which shall enter into the Limited Guaranty to provide a limited guaranty of the payment obligations of RWCSWC under the MoistureFree Warranties issued to Claimants hereunder.

“RWCSWC” means RWC Stucco Warranty Company, LLC, which shall enter into the Service Contract with the Claims Administrator and MWC to provide MoistureFree Warranties and certain services in connection with this Agreement.

“Released Party” means the Settling Defendant and its insurers, including any and all of their predecessors, successors, parents, subsidiaries, divisions, departments, affiliates, and counsel, as well as any and all of their past, present, and future officers, directors, stockholders, partners, agents, servants, employees, successors, subrogees, and assigns.

“Repairs” means the work to be performed as set forth in the Inspection Report, in accordance with the “Repair Standards and Options” substantially in the form of Exhibit 9 hereto, to prevent excessive moisture from entering into or behind the exterior cladding of the Property to the extent reasonably necessary to obtain a MoistureFree Warranty.

“Request for Exclusion” means the pre-inspection notice (substantially in the form of Exhibit 11 hereto) that a Class Member must timely send to the Claims Administrator if the Class Member wishes to exclude himself or herself from participation in the Settlement Class.

“Request for Post-Inspection Exclusion” means the notice (substantially in the form of Exhibit 12 hereto) that a Claimant must send to the Claims Administrator if the Claimant is eligible for Post-Inspection Exclusion and in fact wishes to request withdrawal from continued participation in the Settlement.

“Second Inspection Report” means the written report (substantially in the form attached as Exhibit 13 hereto) that the Independent Inspector completes after the second inspection.

“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 or any other Released Party arising from or in any way relating to any defects or alleged defects of Dryvit EIFS, including, but not limited to, any compensation for repairs, remedial work, loss in value or any other potential damages involving a Settlement Class Member’s property; provided, however, that Settled Claim does not include and specifically excludes Personal Injury Damages (as defined above).

“Settlement Account” means the account to be established by the Claims Administrator and funded by the Settling Defendant, which at the Settling Defendant’s option shall be established as a Qualified Settlement Fund within the meaning of Section 468B of the Internal Revenue code of 1986, as amended, and all rules and regulations thereunder.

“Settlement Class” means all Class Members except Persons who file either a valid Request for Exclusion from the Settlement Class or a valid Request for Post-Inspection Exclusion from the Settlement Class.

“Settlement Class Member(s)” means a Person (or Persons) who falls 9or 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.

“Special Master” means the person selected by agreement of the Parties and appointed by the court to preside over the implementation of the Settlement Agreement.

“Summary Notice of Settlement” means the Court-approved summary of the Class Notice.

2. SETTLEMENT PURPOSES ONLY

2.1. This Agreement is for settlement purposes only. Neither the fact of, nor any provision contained in this 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, including without limitation product identification, alleged by Plaintiffs or Settling Defendant in this Action or in any other action or proceeding, 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 other action or proceeding, 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, or 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.

2.2. Notwithstanding Section 2.1, this Agreement may be admissible in any proceeding to enforce the rights obligations, or effect of the Agreement's terms.

3. SUBMISSION FOR PRELIMINARY APPROVAL

3.1. Promptly after execution of this Agreement, the Parties shall jointly submit the Agreement to the Court for Preliminary Approval.

3.2. The Parties hereto shall obtain from the Court an order (the "Preliminary Approval Order") substantially in the form of Exhibit 8 hereto, specifically including, *inter alia*, provisions that:

(a) approve this Agreement preliminarily, subject to the right of Settlement class members to be heard at the Fairness Hearing as to the Agreement's terms and reasonableness;

- (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 and Notice Plan constitute the best notice practicable under the circumstances, provide due and sufficient notice to the Settlement Class, and fully satisfy the requirements of due process, Rule 23 of the Tennessee 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 the Settlement should be approved as being a good faith, fair, reasonable, and adequate settlement for the Settlement Class, and judgment should be entered thereon;
- (f) provide that any objection to the proposed Settlement, and any papers submitted in support of an 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 objecting Class Member files with the Clerk of the Court notice of his or her intention to object and copies of such papers he or she proposes to submit at the hearing and serves such papers in

accordance with instructions contained in the Class Notice of Settlement.

In addition, any objection must (1) identify the Settlement Class Member's Property, (2) provide proof of past or current ownership of the Property, and (3) furnish *prima facie* evidence of product identification (in accordance with Section 5.3 of this Agreement);

- (g) provide that Plaintiffs' class Counsel may ask the court to approve an award of attorneys' fees and expenses (with the hearing thereon at the same date and time of the Fairness Hearing); and
- (h) provide that the Fairness Hearing may be continued or adjourned by order of the Court, from time to time, without further notice to the Settlement Class.

4. SELECTION, DUTIES, AND COMPENSATION OF CLAIMS ADMINISTRATOR

4.1. The Claims Administrator shall be selected by the Parties, subject to approval and appointment by the Court. In the event the Parties cannot agree on a Claims Administrator, the Court shall select a Claims Administrator after consulting with the Parties.

4.2. The Claims Administrator, under the Court's supervision, shall administer the processing of claims as set forth in this Agreement, by resolving claims submitted by Claimants in a cost-effective and timely manner. To this end, after consultation with Parties, the Claims Administrator shall establish, oversee, and manage the "Claims

Office,” and shall have the authority to appoint “Claims Officers” necessary to assist in carrying out the Claims Administrator’s duties, as described elsewhere in this Agreement, in as economic and effective a manner as possible. The identity of the claims Office, the approximate number of claims Officers, and the Claims Office budget shall be subject to the consent of the Parties and approval of the Court.

4.3. The Claims Administrator shall have the power to implement reasonable procedures designed to detect and prevent payment of fraudulent claims, and otherwise to assure an acceptable level of reliability and quality control in claims processing.

4.4. The Claims Administrator shall provide to the Court and the Parties detailed budgets for six (6) months in advance of the performance of its activities, and other information requested by Settling Defendant to assist in projecting the level of future benefit payments and administrative costs. Such budgets shall reflect the payment schedule described in Section 7 with respect to the items set forth therein.

4.5. Provided the budget of the Claims Administrator has been approved in accordance with this Section 4, all budgeted fees and expenses incurred in performing the duties and obligations of the Claims Administrator, including salary, benefits, and insurance shall be paid by Settling Defendant (*i.e.*, shall be borne by the Settlement Account).

4.6 The Claims Administrator shall enter into the Service Contract with MWC and RWCSWC on or prior to the date the Court grants Preliminary Approval. The Service Contract shall provide, among other things, that in the event that MWC and/or

RWCSWC suffers an event of default under the Service Contract, the Claims Administrator may, in addition to any other rights it may have under the Service Contract, terminate the Service Contract. In such an event, MWC's and/or RWCSWC's replacement shall be selected upon agreement between the Settling Defendant and Class Counsel.

4.7. The Claims Administrator shall submit periodic reports to Class Counsel, Settling Defendant, the Special Master, and the Court during the term of this Agreement. Nothing in this Agreement shall be interpreted to make any documents in the possession or control of the Claims Administrator public documents.

4.8. In the event that either Settling Defendant or Class Counsel reasonably believe that the Claims Administrator is not properly applying or performing any of the terms of this Agreement or the Service Contract, that the budgeted fees and expenses are unreasonable, or that there is a question about the application or performance of the terms of this Agreement or the Service Contract by the Claims Administrator, then:

- (a) the Claims Administrator or objecting Party's counsel shall so notify in writing counsel for the other Parties to this Agreement;
- (b) Class counsel and counsel for the Settling Defendant shall confer within thirty (30) days of receipt of the written notification to try to resolve the concern; and
- (c) in the event Class Counsel and counsel for Settling Defendant cannot resolve the concern, the dispute shall be submitted to the Special Master.

4.9. Before implementing policies or procedures not specifically provided for in this Agreement or the Service Contract, 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 Special Master.

4.10 Neither Settling Defendant, its counsel, nor class Counsel shall be responsible for or otherwise have any liability for any of the acts or omissions of the Claims Administrator, claims Officers, Independent Inspectors, Certified contractors, MWC, RWC, RWCSWC or other persons (including persons inspecting property, performing repairs or providing warranties or other benefits or services) involved in the administration and/or the provision of settlement benefits.

4.11. Upon termination of this Agreement for any reason or upon the conclusion of the claims payment program, 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 Agreement's terms.

5. INITIAL PRODUCT IDENTIFICATION

5.1. To be eligible to recover under this Agreement, a Class Member must, among other things, timely file with the Claims Administrator a completed Claim Form. Claim Forms may be submitted by Class Members only during the Claim Period. The

Claim Form shall contain an individual release signed by the Claimant, which shall be effective even if this Settlement Agreement does not become final so long as the Claimant receives benefits under Section 6 of this Settlement Agreement.

5.2. The Claims Administrator shall make the initial determination whether the Claimant's Property is clad in whole or in part with Dryvit EIFS by reviewing the submitted Claim forms and determining that the Property is more likely than not clad with Dryvit EIFS. Any initial product identification procedure used in connection with this Agreement shall be limited to determining whether the product is Dryvit EIFS. The initial determination shall be subject to the Parties' rights to appeal the Claims Administrator's conclusion to the Special Master as provided for in Section 5.6 of this Agreement.

5.3. The initial determination of product identification requires the Claimant to submit documentation with the Claim Form showing that the Property is clad with Dryvit EIFS. A *prima facie* showing of Dryvit EIFS may be made by a Claimant by submitting any *one* of the following: (a) Settling Defendant's warranty with respect to the Property; (b) a report issued by Settling Defendant indicating that the Property is clad with Dryvit EIFS; (c) bill of sale/purchase documents reflecting that Dryvit EIFS was purchased for the Property; (d) correspondence from Settling Defendant indicating that the Property is clad with Dryvit EIFS; (e) an affidavit by the builder, contractor, or applicator for the particular Property stating, based upon personal knowledge, that the Property is clad with Dryvit EIFS; (f) a report under seal from a licensed engineer or architect stating that the Property is clad with Dryvit EIFS, where (i) this determination is based upon 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, (ii) the report provides specific facts supporting that determination; or (g) a report from an inspector stating that the Property is clad with Dryvit EIFS, where (i) this determination is based upon first-hand personal knowledge of the inspector obtained through his or her inspection of the Property and, if the report is created subsequent to the Notice Date, (ii) the report provides specific facts supporting that determination.

5.4. Notwithstanding the above, the following shall constitute unacceptable proof of product identification: (a) statements that a contractor or builder generally used Dryvit EIFS during a particular period of time or in a particular geographic area; or (b) proof of blue mesh color, standing alone.

5.5. In the event that it appears to the Claims Administrator at any time that the product involved does not qualify as Dryvit EIFS, Settling Defendant nonetheless, at its option, may agree to accept the proof submitted as adequate proof of Dryvit EIFS.

5.6. The initial determination of product identification shall be made by the Claims Administrator, who will issue its conclusion to the Parties' counsel within thirty (30) days of receipt of the Claim Form. In the event that the Parties' counsel are unable to agree between themselves within fifteen (15) days thereafter as to whether the submission establishes Dryvit EIFS, the submission shall be forwarded to the Special Master, whose decision on the subject shall be final and nonappealable.

6. BENEFIT PROGRAM FOR CLAIMANTS

6.1. As part of the damages paid by the Settlement Defendant hereunder, the benefits set forth in this Section 6 are offered to Class Members.

6.2. After the Claims Administrator has made an initial product identification that is not the subject of an appeal under Section 5.6 of this Agreement, the Claims Administrator shall direct MWC to cause an Independent Inspector promptly to inspect the Property in accordance with the Inspection Protocol and to issue an Inspection Report within sixty (60) days. Among other things, the Inspection Report shall confirm or reject the initial product identification. If the inspection Report confirms the initial product identification, the cost of the Inspection Report shall be borne by the Settlement Account. If the Inspection Report rejects the initial product identification, assuming such determination is not reversed on appeal as described in Section 6.3 below, the cost of the Inspection Report shall be borne by MWC.

6.3. If the Inspection Report rejects the initial product identification, the Claimant shall have thirty (30) days to appeal that determination to the Special Master. In the event of such rejection (assuming it is not reversed on appeal), the Claimant shall not receive the completed Inspection Report unless the Claimant reimburses MWC for the full cost of the initial inspection and shall not be entitled to any benefits of this Settlement Agreement.

6.4. If the Inspection Report confirms the initial product identification and indicates that Repairs are necessary, then the Inspection Report shall include an Estimated Repair Cost Report prepared by MWC, specifying the Estimated Repair Costs.

The Parties and the Claims Administrator shall have the right, within thirty (30) days of receipt of the Estimated Repair Cost Report, to dispute whether certain Repairs or Estimated Repair Costs are necessary and reasonable. In the event that the Parties, the Claims Administrator, and MWC are unable to agree among themselves within thirty (30) days thereafter on the resolution of any disputes, the issues shall be submitted to the Special Master, whose decision on the subject shall be final and nonappealable.

6.5. When the Estimated Repair Costs have been established to be \$15,000 or less, the Claimant may elect to contract with a Certified Contractor to complete the Repairs. After the Repairs have been complete, the Claimant shall notify the Claims Administrator, who shall promptly cause MWC to order a second inspection of the Property by an Independent Inspector at no cost to Claimant. No later than thirty (30) days following the second inspection, the Independent Inspector shall forward the Second Inspection Report to the Claims Administrator and the Claimant. The Second Inspection Report shall state whether the Repairs have been adequately completed. In the event that the Repairs have not been adequately completed, the Claimant shall have a Certified Contractor complete the Repairs to the reasonable satisfaction of MWC, which MWC shall confirm in writing to the Claimant and the Claims Administrator. The costs of such further Repairs and inspections shall be borne by the Claimant or the Certified Contractor pursuant to the Claimant's agreement with the Certified Contractor, if any. The Parties and the Claims Administrator shall have the right to dispute the determination set forth in a Second Inspection Report or a subsequent determination by MWC, within thirty (30) days of receipt of such Second Inspection Report or such subsequent determination by MWC, that Repairs have not been adequately completed for purposes of issuing a

MoistureFree Warranty. In the event that the Parties, the Claims Administrator, and MWC are unable to agree among themselves within thirty (30) days thereafter on the resolution of any disputes, the issues shall be submitted to the Special Master, whose decision on the subject shall be final and nonappealable.

6.6. After the Independent Inspector or MWC, as the case may be, has confirmed that the Repairs have been adequately completed, the Claims Administrator shall promptly reimburse the Claimant for 40% of the Estimated Repair Costs up to a maximum of \$6,000, provided that the Claimant does not exercise the Post-Inspection Exclusion option. After all timely claims have been filed, if less than 7,000 timely, qualified claims have been filed, the Claims Administrator shall reimburse each qualified Claimant up to an additional 10% of the Estimated Repair Costs (not to exceed an additional \$1,500). Except as provided in Section 6.7 of this Agreement, the maximum reimbursement percentage shall be 50% for any qualifying Claimant. If more than 7,000 but less than 10,000 timely, qualified claims have been filed, however, qualifying Claimants shall receive the following additional percentage of Estimated Repair Costs (not to exceed an additional \$1,500) depending upon the total number of claims filed:

<u>Number of Claims</u>	<u>Additional Class Member Compensation</u>
7,000 to 7,999	8%
8,000 to 8,999	6%
9,000 to 9,999	4%

If 10,000 or more timely, qualified claims have been filed, there shall be no additional reimbursement of Estimated Repair Costs.

6.7. When Estimated Repair costs for a particular property are in excess of \$15,000, the Claimant may elect either to accept a \$7,500 reimbursement or to file a request for Post-Inspection Exclusion pursuant to Section 10.1 of this Agreement. In the event that the Settling Defendant rejects the request for Post-Inspection Exclusion pursuant to Section 10.2 of this Agreement, the Claimant may elect to (a) receive a payment equal to 50% of the Claimant's Estimated Repair Costs, or (b) have a Certified Contractor adequately complete the Repairs and obtain reimbursement from the Claims Administrator for 100% of the Estimated Repair Costs in excess of \$7,500 and a MoistureFree Warranty as provided for in Section 6.8 of this Agreement; provided, however, that any payments by the Settlement Account, pursuant to options (a) and (b) above, shall not exceed an amount equal to \$6 per square foot of Dryvit EIFS on the Claimant's Property.

6.8. If no Repairs are needed as to a Claimant's Property, the Claims Administrator shall promptly cause a MoistureFree Warranty covering the Property to be issued to Claimant at no cost to claimant. If Repairs are needed, upon the Independent Inspector's or MWC's report, as the case may be, that the Repairs have been adequately completed, the Claims Administrator shall promptly cause a MoistureFree Warranty covering the Property to be issued to Claimant at no cost to Claimant.

6.9. The claims Administrator shall maintain pertinent data from all Claim Forms. Information from the database shall be made available to the Independent Inspectors (as to a specific Property as deemed necessary by the Claims Administrator),

Settling Defendant, and Class counsel, upon reasonable notice and with notice to Settling Defendant.

6.10. All determinations made by the Claims Administrator and/or the Special Master under this Section 6 shall be binding upon the Parties, subject to the Parties' right to apply to the Court for relief for violation of terms of this Agreement.

7. FUNDING OF THE SETTLEMENT

7.1. In order to fund the Settling Defendant's obligations under this Agreement, the Claims Administrator shall establish the Settlement Account. At the Settling Defendant's option, the Settlement Account shall be established as a Qualified Settlement Fund within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended, and the rules and regulations thereunder.

7.2. Five (5) days following the date that Preliminary Approval is granted, Settling Defendant shall make an initial deposit of \$2,025,000 into the Settlement Account. The Claims Administrator shall use such funds as follows: (a) \$1,500,000 shall be used to fund the Notice requirements set forth in Section 8; (b) \$500,000 shall be promptly paid to MWC as required pursuant to the Service Contract; and (c) \$25,000 shall be used by the Claims Administrator for costs and expenses consistent with Section 4 herein.

7.3. After the initial payment set forth in Section 7.2, the Settling Defendant shall deposit amounts on a quarterly basis (such payment dates to be determined in accordance with Exhibit 15 hereto) as to Claims Administrator determines will be needed

to fund the Settling Defendant's projected obligations under this Agreement for the coming quarter. The claims Administrator's funding determination shall be consistent with the budget requirements set forth in Section 4 and shall be consistent with and subject to the schedule to the payment of fixed costs described on Exhibit 15 hereto.

7.4. The benefit program offered to Claimants under Section 6 of this Agreement shall commence upon entry of the Order and Judgment without regard to the pendency of any appeal from the final Order and Judgment, except that any Claimant who accepts such benefits while such appeal is pending will not have any rights subsequently to Post-Inspection Exclusion pursuant to Section 10 of this Agreement.

7.5. Upon satisfaction of all of Settling Defendant's obligations under this Agreement, any amounts remaining in the Settlement Account shall be returned to Settling Defendant.

8. NOTICE TO THE CLASS

8.1. Upon Preliminary Approval, and as the Court may direct, Class Counsel 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.

8.2. Settling Defendant shall pay for the expenses incurred in connection with implementation of the Notice Plan. Settling Defendant shall fund the payment of such expenses by depositing funds into the Settlement Account in accordance with Section 7 herein. If, for any reason, the Settlement is terminated pursuant to the provisions of this

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.

8.3. A Summary Notice of Settlement shall be publicly disseminated in a manner reasonably calculated to reach 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 Class Members of a toll-free telephone number through which they may arrange for a mailing of the Class Notice of Settlement and Claim Form.

8.4. The Class Notice, to be approved by the Court, shall be mailed, first-class postage prepaid, together with a Claim Form, to each Class Member identified by the Parties through reasonable efforts. In addition, such mailing shall be sent to each 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.

8.5. 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 (or causing to be mailed) the appropriate Notice and other materials to Class Members as provided in this Agreement. As appropriate under instructions from Plaintiffs' Class Counsel and, subject

to prior approval of Settling Defendant, the facility may 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.

8.6. 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 Class Members are identified.

9. REQUESTS FOR EXCLUSION

9.1. A Class Member who does not desire to participate in this Agreement as a Settlement Class Member may elect to exclude himself or herself from the Settlement Class ("opt-out") by completing and mailing to the Claims Administrator within ninety (90) days from the Notice Date the Request for Exclusion, attached hereto as Exhibit 11. Members of the Class (including Persons who have initiated lawsuits against Settling Defendant) who do not exclude themselves by the timely completion and mailing of the Request for Exclusion (measured by the date of postmark) shall be Settlement Class Members, and shall be bound by the terms and conditions of this Agreement (subject only to the right of Post-Inspection Exclusion as described in Section 10 of this Agreement). If one joint owner of a Property opts out of this Agreement, then all other co-owners of that Property shall also be deemed to have opted out.

9.2. Upon timely electing exclusion from the Settlement Class, a Class Member shall be returned to the position he or she occupied before the Notice Date, shall be ineligible for any benefits of this Agreement or membership in the Settlement Class, and shall have no standing to object to or otherwise be heard by the Court and/or on appeal with respect to any aspect of this Agreement.

10. REQUEST FOR POST-INSPECTION EXCLUSION

10.1. A Claimant whose estimate reasonable and necessary Estimated Repair Costs exceed \$15,000 may request to withdraw from the Settlement Class and this Agreement by the timely filing of a Request for Post-Inspection Exclusion. Such Request for Post-Inspection Exclusion shall only be effective if it is mailed to the Claims Administrator within thirty (30) days (measured by the date of postmark) of the issuance to the Claimant of the Estimated Repair Cost Report or any decision by the Special Master with respect to the Estimated Repair Cost Report. A form of the Request for Post-Inspection Exclusion shall be attached to the Estimated Repair Cost Report.

10.2. The Claims Administrator shall promptly forward a copy of any and all Requests for Post-Inspection Exclusion to the Settling Defendant. The Settling Defendant shall have ten (10) calendar days upon which it may reject a Claimant's Request for Post-Inspection Exclusion by notice to the Claims Administrator. Upon receipt of such notice from the Settling Defendant, the Claims Administrator shall promptly inform the Claimant of his rights to elect benefits pursuant to Section 6.8 of this Agreement.

10.3. If a Claimant elects Post-Inspection Exclusion from the Settlement Class and that withdrawal is not timely rejected by the Settling Defendants (as provided in Section 10.2 of this Agreement), the Claimant shall be returned to the position he or she occupied as of the Notice Date, with all statutes of limitation having been tolled from the Notice Date to the date on which the Post-Inspection Exclusion is post-marked and all arguments for enforcement of any statute of repose having been waived if (a) the statutory period ended after the Notice Date and before the Post-Inspection Exclusion postmark date and (b) the Class Member brings suit within three (3) months from the date on which the Post-Inspection Exclusion was post-marked. The former Settlement Class Members shall be ineligible for any benefits of this Agreement or membership in the Settlement Class. If one-joint owner of a Property so elects to withdraw, that election shall also bind other co-owners of that Property. Such claimants shall have no standing to object to or otherwise be heard by the Court and/or on appeal with respect to any aspect of this Agreement.

11. STATUTES OF LIMITATION AND REPOSE

11.1. A Claimant shall not be barred from obtaining benefits for any Settled Claim under this Agreement because of application of any statute of limitation or repose.

11.2. Except as provided in Section 10.3 of this Agreement, nothing in this Agreement is intended nor shall it be construed to toll any statute of limitation or repose period or to revive any claim of any Person.

12. EXCLUSIVE REMEDY, DISMISSAL OF ACTION; JURISDICTION OF COURT

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

12.2. No less than five (5) days after the period to timely complete the Request for Exclusion from the Settlement Class expires, Class Counsel shall dismiss any other action of any Settlement Class member for Settled Claims pending in any Court against the Settling Defendant or any other Released Party and for which a Plaintiffs' Class Counsel is counsel of record or otherwise on the pleadings.

12.3. The Final Order and Judgment shall dismiss all claims in the Action against the Settling Defendant, 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 Agreement's terms, conditions, and obligations.

13. RELEASES AND ASSIGNMENTS

13.1. Upon entry of the Final Order and Judgment, each Settlement 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 all Released Parties as to any and all Settled Claims and related subrogation claims of the Releasing Party’s subrogees or insurance carriers.

13.2. With respect to any and all claims, and upon entry of the Final Order and Judgment without further action, for good and valuable consideration, Plaintiffs, on behalf of themselves and the Settlement Class and as representatives of the Settlement Class, shall expressly, and all Settlement Class Members shall be deemed to have, and by operation of the final judgment contemplated by this Agreement shall have, fully, finally, and forever expressly waived and relinquished, to the fullest extent permitted by law, any and all provisions, rights, and benefits of section 1542 of the California Civil Code and any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or principle of common law that is similar, comparable, or equivalent to section 1542 of the California Civil Code, which provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

13.3. Nothing in this Agreement shall prejudice or interfere in any way 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 (including without limitation builders, applicators and distributors) or their respective insurers, including without limitation claims for contribution and/or indemnity (subject to the provisions of Section 18 of this Agreement).

13.4. Notwithstanding the provisions of the preceding Section 13.3 of this Agreement, 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 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.

13.5. As provided for in the Service Contract, each MoistureFree Warranty shall be issued by RWCSWC and administered by MWC. As set forth in the Limited Guaranty, RWC shall provide a limited guaranty of the payment obligations of RWCSWC under the MoistureFree Warranties. Without limiting Section 4.10 or Section 20.3 herein, neither Settling Defendant, its counsel nor its insurers shall have any liability or obligation to any person or entity, including without limitation Class Members and Class Counsel, arising under or in any way relating to the performance or non-performance by the Claims Administrator, MWC and/or RWCSWC of their respective obligations under the Service Contract, by MWC and/or RWCSWC of their respective obligations under the MoistureFree Warranties or by RWC of its obligations under the Limited Guaranty.

13.6. Upon entry of Final Order and Judgment and subject to the warranties made and obligations imposed under the terms of this Agreement, Settling Defendant, and its agents (including Settling Defendant's counsel in this Action), assigns, and

insurers, shall release Settlement Class Members, and Class Counsel from all claims arising out of, relating to, or in connection with the filing, assertion, or resolution of the Action.

14. ATTORNEYS' FEES AND EXPENSES

14.1. As part of the damages paid by the Settling Defendant hereunder and subject to Court approval and the payment schedule described in Section 7, Settling Defendant shall pay attorneys' fees and expenses of Class Counsel in the amount of \$11,600,000, of which \$600,000 constitutes interest charged by Class Counsel on the portion of the attorneys' fees and expenses to be paid after the Settlement Date in accordance with Exhibit 15 (the "Fee and Expense Award"). Settling Defendant shall have the right to prepay any portion of the Fee and Expense Award in advance of the dates set forth in Exhibit 15 and thereby avoid incurring interest on the amount prepaid at a rate of 6% per annum.

14.2. The "Fee and Expense Award" shall be paid in accordance with the schedule contained in Exhibit 15. Each portion of the "Fee and Expense Award" so paid shall be placed in a separate sub-account of the Settlement Account, to be known as the "Attorneys' Escrow Account."

- (a) Co-Lead Counsel, acting unanimously, and with such additional conditions as to security for repayment and/or collateral requirements as they shall unanimously determine, may authorize distributions from the Attorneys' Escrow Account to Class Counsel, provided, however, that in

the event that the Order and Judgment does not become Final or the Settlement Agreement is terminated in accordance with its terms, or the Fee and Expense Award is reversed or modified on appeal, then within twenty (20) business days after Class Counsel receive notice of such event all recipients of disbursements from the attorneys' escrow account shall repay such disbursements in full with accrued interest at the rate of 6% per annum, except that in the event of the reversal or modification of the Fee and Expense Award, such repayment need be made only to the extent consistent with such reversal or modification.

- (b) Each of Co-Lead Class Counsel, including their respective law firms, shall be jointly and severally liable for repayment of any funds disbursed from the Attorneys' Escrow Account, and agree to and shall be subject to the jurisdiction of the Court for enforcement of the above obligations. The Settling Defendant shall be entitled to enforce by motion or order to show cause any payment obligations against any and all persons liable under this Section.

14.3. The Settling Defendant's total maximum obligation for Class Counsel's fees and expenses over the duration of this Agreement shall not exceed the limitation stated in Section 14.1 of this Agreement.

14.4. Co-Lead Class Counsel shall be solely responsible for allocating the fees and expenses paid by Settling Defendant pursuant to Section 14.1 of this Agreement, among and between other Class Counsel in the Class Action. The Settling Defendant

shall have no liability or other responsibility for payment or allocation of such attorneys' fees.

15. ENFORCEMENT OF THE COURT'S SETTLEMENT APPROVAL ORDER

15.1. This Agreement is subject to and conditional upon the issuance by the Court following the Fairness hearing of a Final Order and Judgment granting final approval of the Agreement.

15.2. In the event any Party fails to comply with its obligations under the terms of this Agreement, or is in default of this 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 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.

16. REPRESENTATIONS AND WARRANTIES

16.1. Settling Defendant represents and warrants that it has all requisite corporate power and authority to execute this Agreement and to consummate and perform the transactions contemplated herein; that this Agreement has been duly executed and delivered by Settling Defendant in good faith; and that it constitutes a legal, valid, and binding obligation.

16.2. Class Counsel represent and warrant that they have the authority to enter into and execute this Agreement and to consummate and perform the transactions

contemplated herein; that this Agreement has been duly executed and delivered by them in good faith; and that it constitutes a legal, valid, and binding obligation.

17. TERMINATION OF THE AGREEMENT

17.1. The performance of this Agreement is expressly contingent upon the Court's issuance of the Order and Judgment.

17.2. This Agreement shall be automatically terminated, without notice, if (a) the Claims Administrator, MWC and RWCSWC do not execute and deliver the Service Contract on or prior to the date the Court grants Preliminary Approval, (b) RWC does not execute and deliver the Limited Guaranty on or prior to the date the Court grants Preliminary Approval or (c) the Order and Judgment entered by the Court does not become Final.

17.3. If in Settling Defendant's view, an excessive number of Class Members have opted out of the Settlement Class, Settling Defendant shall have the right to terminate this Agreement within fifteen (15) business days of the date when Settling Defendant is informed by the Claims Administrator of the names and addresses of all Class Members who have opted out of the Settlement Class. Whether the number of Class Member who have opted out is excessive shall be determined by Settling Defendant in its sole discretion. The Claims Administrator shall not commence inspections of Claimants' property before such fifteen (15) day period has expired or the Settling Defendant has made a determination not to terminate this Agreement.

17.4. In the event of termination of this Agreement, this Agreement and all orders and judgments issued to implement it shall have no further force and effect as to Settling Defendant and all Released Parties, and shall not be admissible as evidence for any purpose in any pending or future litigation (in any jurisdiction) involving the Parties. In addition, Settling Defendant shall be entitled to a return of all monies in the Settlement Account that have not already been disbursed for Notice and claims administration.

18. JUDGMENT REDUCTION PROVISION

18.1. The purpose of this Section is to eliminate the possibility of any liability of the Released Parties based upon claims against Settling Defendant or any other Released Party (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 (including attorneys' fees and costs) in favor of Settlement Class Members (individually or otherwise) against any third party in any other action, 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 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.

18.2. 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 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.

18.3. Some Settlement 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 Parties' intent that the Settling Defendant shall not be required to participate in such separate actions. If claims for indemnity or contribution are brought against a Settling Defendant despite the provisions of this Section and the Class Member's counsel is unaware thereof, the Settling Defendant shall notify the Class Member's counsel 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.) In addition, the Settling Defendant shall, as necessary, 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 Section 18.2 of this Agreement.

19. SPECIAL MASTER

The Parties shall jointly propose a Special Master to be appointed by the Court, to preside over implementation of the Settlement Agreement. The Special Master shall have power to make decisions in all matters pertaining to administration and enforcement of the Settlement Agreement, subject to review by the Court upon request of any Party. The Parties will use their best efforts to agree on the Special Master to be proposed to the Court. In the event that the Parties are unable to agree upon the proposed Special Master, the Court shall appoint the Special Master from the list of recommended Special Masters. The fees and expenses of the Special Master relating to the Settlement Agreement shall be paid from the Settlement Account.

20. MISCELLANEOUS PROVISIONS

20.1. Subject to Court approval, the Settling Defendant shall pay to named plaintiffs in this Action who are Settlement Class members \$10,000 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 Agreement, in recognition of their efforts on behalf of the Settlement Class.

20.2. 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.

20.3. In no event shall Settling Defendant, their insurers, any attorneys representing Settling Defendant, Plaintiffs, or Class Counsel have any liability for claims of wrongful or negligent conduct by the Claims Administrator, claims Officers, Independent Inspectors, Certified Contractors, MWC, RWC, RWCSWC or their respective agents or employees.

20.4. This Agreement, including all exhibits attached hereto, shall constitute the entire Agreement among the Parties with regard to the subject matters covered and shall supersede any previous agreements and understandings among the Parties with respect thereto. This Agreement may not be changed, modified, or amended except in writing signed by all Parties as approved by the Court.

20.5. 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 Agreement, any expense or costs incurred by any Party in connection with this 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.

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

20.7. This 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.

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

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

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

20.11. All funds, if any, remaining in the Settlement Account when the settlement program contemplated by this Agreement has been completed shall be returned to Dryvit upon Dryvit's written request to the Claims Administrator.

Gary K. Shipman
SHIPMAN & ASSOCIATES
11 South Fifth Avenue
Wilmington, North Carolina 28401
(910) 762-1990 Phone
(910) 762-6752 Fax

William M. Audet
ALEXANDER, HAWES & AUDET, LLP
152 North Third Street, Suite 600
San Jose, California 95112
(408) 289-1776 Phone
(408) 287-1776 Fax

Samuel D. Heins
HEINS MILL & OLSON, P.L.C.
680 Second Avenue South, Suite 700
Minneapolis, Minnesota 55402
(612) 338-4605 Phone
(612) 338-4692 Fax