

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

Civil Action No. 2002-CP-07-1377

TIMOTHY TREON and his wife, JANE TREON, P.  
JENNINGS SCEARCE, and STEPHEN CHRISTIAN,  
individually and on behalf of others similarly situated  
in the State of South Carolina,

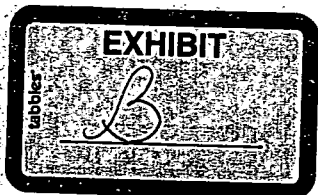
Plaintiffs,

v.

DRYVIT SYSTEMS, INC.

Defendants.

SETTLEMENT AGREEMENT BETWEEN  
PLAINTIFFS AND DRYVIT SYSTEMS, INC.



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THIS SETTLEMENT AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009 (the "Settlement Agreement"), by and among the named plaintiffs Timothy and Jane Treon, P. Jennings Scarce, and Stephen Christian ("Plaintiffs"), in the above captioned matter (the "Action") for themselves and on behalf of 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 South Carolina 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 ("EIFS") in certain residential properties;

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

WHEREAS, Plaintiffs have investigated and identified various factual and legal differences between certain Settlement Class Members, and have consulted with representatives of each sub-category;

WHEREAS, as a result of the investigation, work, negotiations, and consultations Plaintiffs have concluded that this Settlement Agreement is fair and reasonable, and is in the best interests of each Settlement Class Member;

WHEREAS, taking into 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, Class Counsel, in conjunction with Plaintiffs, have concluded that this

Settlement 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 Released 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 Settlement Agreement as a good faith, fair, reasonable, and adequate settlement under Rule 23 of the South Carolina Rules of Civil Procedure.

1. **DEFINITIONS**

As used in this Settlement Agreement and the attached Exhibits, capitalized terms shall have the meanings set forth as follows:

"Actual Damage" means, with respect to the Structure, two or more moisture readings of greater than 22% behind the Dryvit EIFS at two distinct locations, or an area of two (2) square feet of wall with evidence of loss of structural integrity of the sheathing behind the Dryvit EIFS. Actual Damage does not include, and recovery cannot be based on, loss of structural integrity of sheathing directly attributable to harm to the Structure caused by foreign

objects, including, without limitation, falling trees, moving vehicles, flying debris or other physical impact.

**“Bar Order”** means that injunction described in Section 14.1 of this Settlement Agreement below, and set forth in Exhibit 3 hereto.

**“Benefits”** means the rights and remedies available to Settlement Class Members pursuant to Section 6 of the Settlement Agreement. In addition to these Benefits for Settlement Class Members, this Settlement Agreement includes other benefits for the Class including, but not limited to, those services described in Sections 4, 5, and 8 and those amounts described in Sections 7, 13 and 19 below. The term “benefits” is not capitalized herein when referring to benefits to the Settlement Class which go beyond those described in Section 6.

**“Claim”** means a request by a Claimant for a determination of eligibility for Benefits under this Settlement Agreement

**“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 Settlement Agreement.

**“Claim Period”** means the two hundred and ten (210) Days from the Notice Date (as defined below) during which Class Members may file a Claim Form under this Settlement Agreement.

**“Claimant”** means any Person that claims to be a Class Member and who has timely filed a Claim Form with the Settling Defendant and has not filed a Request for Exclusion pursuant to Section 9 of the Settlement Agreement.

**“Class” or “Class Members”** means all Persons that, as of the Notice Date, own or owned a Structure, on which a Dryvit EIFS, was installed during the Class Period.

**"Class Counsel"** means the following counsel:

**Intervening Class Counsel**

Alford & Wilkins, P.C.  
P. O. Drawer 8008  
Hilton Head Island, SC 29938

The Finn Law Firm, P.C.  
P. O. Box 6003  
Hilton Head Island, SC 29938

Cotty & Jonas  
1328 Blanding Street  
Columbia, SC 29202

The Finkel Firm, LLC  
1201 Main Street  
P. O. Box 1799  
Columbia, South Carolina 29202

**Original Class Counsel**  
Mullen Wylie, LLC  
171 Church Street, Suite 370  
Charleston, SC 29401

**"Class Notice"** means the Court-approved notice of this Action including notice of the Settlement Agreement (substantially in the form of Exhibit 2 hereto).

**"Class Period"** means the period from January 1, 1989 through September 3, 2002.

**"Class Representatives"** means the named Plaintiffs.

**"Court"** means the Court of Common Pleas for Beaufort County, South Carolina.

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

**"Day or Days"** means all calendar days, not just business days, provided however, that if in counting such Days a deadline for any items shall fall on a Sunday, or a United States

holiday on which there is no U.S. Postal delivery service, then the deadline shall be deemed to expire on the next Day.

“**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 Structure of a Class Member. Dryvit EIFS shall not include any mechanical or adhesive application over CMU block, cement or fiber cement board, brick or other masonry unit; the application over any substrate with secondary weather barrier or with drainage or water management; Dryvit’s Exsulation® system; or any direct application such as Fastrak® System 4000.

“**Fairness Hearing**” means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of this Settlement Agreement under Rule 23 of the South Carolina 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 Settlement Agreement.

“**Inspection Protocol**” means the protocol for inspectors to perform inspections of Claimants’ Structures substantially in the form of Exhibit 8.

“**Mixed Product**” means an EIFS that was not, in its entirety, sold, marketed or distributed by Settling Defendant (i.e. a non-proprietary EIFS system). Other sidings which are not Dryvit EIFS on other elevations do not indicate a Mixed Product. A proprietary system sold by Settling Defendant as to which Settling Defendant waived in writing, knowingly and expressly, use of one or more of its components as to a specific Structure is not a Mixed Product.

**"Notice Date"** means the Court-established date for the initial dissemination of Class Notice.

**"Notice Plan"** means the proposed plan for dissemination of the Class Notice, attached hereto as Exhibit 2.

**"Objection Date"** means the date by which Settlement Class Members must file any objections to the Settlement Agreement as set forth in the Preliminary Approval and specified in the Class Notice.

**"Order and Judgment"** means the Order to be entered by the Court, that is mutually agreeable to the Parties, approving this Settlement Agreement without material alteration, as fair, adequate, and reasonable under Rule 23 of the South 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, substantially in the form of Exhibit 3 hereto.

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

**"Preliminary Approval"** means the Court's order (substantially in the form of Exhibit 4 hereto) granting preliminary approval of this Settlement Agreement and approval of the Class Notice pursuant to Rule 23 of the South Carolina Rules of Civil Procedure.

**"Preliminary Approval Hearing"** means the hearing the Court conducts in connection with the Preliminary Approval of the Settlement Agreement.

**"Preliminary Settlement Approval Date"** means the date on which the Court signs the Preliminary Approval.

**“Released Party”** means the Settling Defendant and its insurers and includes any and all of their predecessors, successors, parents, subsidiaries, divisions, departments, affiliates, distributors, 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 except that Released Party does not include any current party to the actions described in Section 17.4 other than Settling Defendant.

**“Request for Exclusion”** means the form (substantially in the form of Exhibit 5 hereto) that a Class Member must timely send to the Settling Defendant pursuant to Section 9 of this Settlement Agreement, if the Class Member wishes to be excluded from participation in the Settlement Class.

**“Settled Claim(s)”** means any claim, liability, right, demand, suit, matter, obligation, damage, award, payment, penalty, loss, fee or cost, action or cause of action, of every kind, nature, and description that any Settlement Class Member or any Settlement Class Member’s heir, administrator, devisee, predecessor, successor, counsel, 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, damage, fee, loss, penalty, or award claimed, against any Released Party including but not limited to (a) claims arising from or in any way relating to the manufacture, design, marketing, sale or installation or any defects or alleged defects of Dryvit EIFS, including, but not limited to, any compensation for repairs, remedial work, loss in value, punitive or exemplary damages or any other potential damages involving a Settlement Class

Member's Structure; (b) claims arising from or in any way relating to any allegations against Settling Defendant that Settling Defendant or any other Released Party engaged in conspiratorial actions or fraudulent concealment or induced or aided and abetted breaches of fiduciary duties by Persons, or others, whether in this Action or in any other class or individual action; and (c) any and all claims for damages, awards, payments, penalties, losses, costs, fees or expenses of any nature relating to or arising out of Settling Defendant's alleged conduct which is, has been or may be claimed as a basis for sanctions against the Settling Defendant in this Action or any other action. Notwithstanding anything else to the contrary in this Settlement Agreement, the Parties do not intend to and do not release any Person other than the Released Parties. "Settled Claims" does not include any claim that may be asserted against Persons other than the Released Parties, including but not limited to, claims described in Section 17.4.

**"Settlement Class"** means all Class Members except Persons who file a valid Request for Exclusion from the Settlement Class.

**"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.

**"Special Master"** means the person selected by agreement of the Parties and appointed by the Court to preside over the resolution of any dispute relating to the implementation of Sections 4, 5 and 6 of the Settlement Agreement or any Claim.

**"Structure"** means any one- or two-family residential dwelling or townhouse located in South Carolina only, and specifically excludes any and all other structures, including but not limited to, condominiums, co-ops, apartments, time shares, and the like.

“Summary Class Notice” means the Court-approved summary of the Class Notice substantially in the form of Exhibit 2.A hereto.

2. **SETTLEMENT PURPOSES ONLY**

2.1. This Settlement Agreement is for settlement purposes only. 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, including without limitation product identification, alleged by Plaintiffs 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 the Settling Defendant of any claim or allegation made in this Action or in any other action or proceeding, or as an admission by Settling Defendant that class action status of this Action is lawful or appropriate against Settling Defendant, or as an admission by any of the Plaintiffs, Settlement Class Members or Class Counsel of the validity of any fact or defense asserted in this Action.

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

3. **SUBMISSION FOR PRELIMINARY APPROVAL**

3.1. Promptly after execution of this Settlement Agreement, the Parties shall jointly submit this Settlement Agreement to the Court, and shall move to obtain from the Court the Preliminary Approval which contains, *inter alia*, provisions that:

- (a) approve this Settlement Agreement preliminarily, subject to the right of Settlement Class Members to be heard at the Fairness Hearing as to the Settlement Agreement’s terms and reasonableness;

- (b) approve the Notice Plan;
- (c) direct Class Counsel to disseminate the Class Notice to those Class Members who can be identified through reasonable effort and to publish or cause to be published a Summary Class Notice in accordance with the Notice Plan;
- (d) find that the Class Notice and Notice Plan constitute the best notice practicable under the circumstances, provide due and sufficient notice to the Class, and fully satisfy the requirements of due process, Rule 23 of the South 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 the Settlement Agreement 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 Agreement, 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 the Objection Date, the objecting Settlement Class Member files with the Clerk of the Court, notice of their intention to object and copies of such papers they propose to submit at the hearing and serves such papers in accordance with instructions contained in the Class Notice. In addition, any objection must (1) identify the Settlement Class Member's Structure, (2) provide proof of past or current ownership of the Structure, and (3) furnish *prima facie* evidence of product identification (in accordance with Section 5.3 of this Settlement Agreement);
- (g) provide that Class Counsel may ask the Court to approve an award of attorneys' fees and expenses from the amounts provided in Section 13.1 below; 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. **CLAIMS ADMINISTRATION**

4.1. Persons who claim to be Class Members and who wish to claim Benefits pursuant to this Settlement Agreement are required to file a Claim Form. Copies of the Claim Form, along with instructions on completing the Claim Form will be provided to anyone who requests such a Claim Form by contacting Class Counsel via telephone, email, regular mail, or through an internet site established by Class Counsel. Such Persons are required to forward their

completed Claim Forms to the Settling Defendant pursuant to the instructions provided with the Claim Form. The Settling Defendant will provide a copy of the Claim Form, along with any attachments, to Class Counsel within ten (10) Days of its receipt by Settling Defendant. Any Claim Forms, notices, reports and other information to be provided to Class Counsel by the Settling Defendant under any part of this Settlement Agreement, may be provided by email to one person who Class Counsel shall designate in writing on or before the Notice Date.

4.2. Settling Defendant agrees to provide an inspector or inspectors of its choosing ("Inspector") who meet the criteria set forth in Exhibit 9 hereto to inspect the Structures of Claimants for purposes of Section 5 of this Settlement Agreement. Settling Defendant also agrees to provide clerical personnel for purposes of handling, aggregating, tracking and reporting on Claims to Class Counsel and others.

4.3. Settling Defendant shall bear the following costs associated with administering the Claims: travel costs, expenses, and payment for time spent by an Inspector to inspect the Structures of Claimants for purposes of Section 5 of this Settlement Agreement; costs associated with clerical personnel either hired or selected by Settling Defendant for purposes of handling, aggregating, tracking and reporting on Claims to Class Counsel and others; and costs for Settling Defendant's mailings and telephone usage associated with the administration of the Settlement Agreement and communication with Claimants. Except as specifically provided herein, Settling Defendant is not responsible for any costs and expenses incurred by a Class Member or Class Counsel in connection with the filing and pursuit of any Claim or any appeal to the Special Master, or for the Special Master, except as provided in Section 18 of this Settlement Agreement.

4.4. Settling Defendant shall, as set forth in this Settlement Agreement, resolve Claims in a cost-effective and timely manner.

4.5. Settling Defendant 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.

4.6. Settling Defendant shall provide Class Counsel with a copy of a report substantially in the form of Exhibit 6 ("Report"), when requested by Class Counsel, but not more often than every thirty (30) Days. In addition a Report shall be provided to the Court within thirty (30) Days after the final Claim is processed.

4.7. Nothing in this Settlement Agreement shall be interpreted to make any documents collected as part of the Claims process public documents. Any such documents shall be considered part of the Settlement Agreement and shall be non-discoverable and non-admissible against the Settling Defendant. Settling Defendant shall use reasonable efforts to protect Claimants' personal, non-public information contained therein in a manner equivalent to the precautions the Settling Defendant takes to ensure the confidentiality of its own employees' personal, non-public information.

4.8. Any dispute as to the Settling Defendant's administration of Claims shall be resolved by agreement between the Parties or, if no agreement can be reached, by submission to the Special Master selected by the Parties or by submission to the Court, except for those non-appealable issues expressly identified in Sections 5.6 and 5.8 of this Settlement Agreement.

4.9. Upon termination of this Settlement Agreement for any reason or upon the conclusion of the claims payment program, all records maintained by the Settling Defendant

shall be maintained for three (3) years for the limited purpose of determining compliance with the Settlement Agreement's terms.

5. **ELIGIBILITY FOR BENEFITS**

5.1. To be eligible to recover under this Settlement Agreement, a Claimant must, among other things, timely request a Claim Form from Class Counsel, and submit timely a completed Claim Form to Settling Defendant. Claim Forms may be submitted by Claimants only during the Claim Period. The Claim Form shall contain an individual release of Settled Claims signed by the Claimant, which shall be effective even if this Settlement Agreement does not become final so long as the Claimant receives Benefits.

5.2. After the Order and Judgment becomes Final, Settling Defendant shall make the initial determination, based on information submitted with the Claim Form as to whether the Person submitting the Claim Form may be eligible to receive Benefits under this Settlement Agreement. This initial determination shall be based on a review of the Claim Form and any supporting documentation submitted therewith to establish whether the Claimant (a) has submitted documentation to establish initial product identification pursuant to section 5.3; (b) has provided proof of current or former ownership of a Structure on or before the Notice Date; (c) has provided proof of installation of the Dryvit EIFS on a Structure during the Class Period; and (d) is not otherwise properly excluded from Benefits under Section 6 of this Settlement Agreement. Settling Defendant shall notify the Claimant in writing as to its initial determination. If the Claimant does not agree to the initial determination by Settling Defendant, the Claimant may submit, as provided in Section 5.6 below, additional information and documentation to Settling Defendant to attempt to cure any defects in the Claim Form and documentation submitted, including report by an inspector hired and paid for by the Claimant. In the event that

the dispute cannot be resolved by the Parties by agreement, either Party may submit the dispute to the Special Master as provided in Section 18. Settling Defendant shall provide Class Counsel copies of notifications described in this Section to Claimants on a regular basis but no less often than within ten (10) Days of any notification.

5.3. The initial determination of product identification requires the Claimant to submit documentation with the Claim Form showing that the Structure is more likely than not clad with Dryvit EIFS. A 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 Structure; (b) a report issued by Settling Defendant indicating that the Structure is clad with Dryvit EIFS; (c) bill of sale/purchase documents reflecting that Dryvit EIFS was purchased for the Structure; (d) correspondence from Settling Defendant indicating that the Structure is clad with Dryvit EIFS; (e) an affidavit by the builder, contractor, or applicator for the particular Structure stating, based upon personal knowledge, that the Structure is clad with Dryvit EIFS; (f) a report from a licensed engineer or architect stating that the Structure is clad with Dryvit EIFS, where this determination is based upon first-hand personal knowledge of the engineer or architect obtained through his or her inspection of the Structure and the report provides specific facts supporting that determination; or (g) a report from an inspector stating that the Structure 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 Structure and, (ii) the report provides specific facts supporting that determination

5.4. Notwithstanding paragraph 5.3 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. When other evidence of product identification as described in paragraphs 5.3(a) through 5.3(g) above is corroborated by blue mesh, a prima facie case is established.

5.5. In the event that it appears to Settling Defendant 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 as to potential eligibility for Benefits shall be made by Settling Defendant within thirty (30) Days of receipt of the Claim Form or within thirty (30) Days of the date on which the Order and Judgment becomes Final, whichever is later. In the event that Settling Defendant notifies Claimant of an adverse initial determination, Claimant shall have thirty (30) Days to either provide Settling Defendant with further information or proof to cure any deficiencies, or of their intention to submit the dispute to the Special Master. If the Claimant provides Settling Defendant with additional information or proof to cure deficiencies, then Settling Defendant will review any additional information or documentation submitted by the Claimant and will notify Claimant as to whether the additional information or documentation has remedied any deficiencies. If the documentation still is not sufficient in Settling Defendant's opinion, then Claimant shall have one more additional thirty (30) day period to either submit further information or documentation or to submit the dispute to the Special Master. If there is a third denial by Settling Defendant after this submission, then Claimant's sole remedy shall be to submit the dispute to the Special Master within thirty (30) Days after receiving written notice from the Settling Defendant. In every Claim submitted to the Special Master, the Special Master will make a determination based solely on information contained in the Claim Form and in the documentation that the Claimant provided to Settling Defendant prior to their appeal to the

Special Master. The Special Master's decision on Claims submitted as described above shall be final and non-appealable. In the event that the Claimant does not either attempt to remedy the deficiencies in the Claim Form, or appeal to the Special Master within the time periods set forth above, the Claimant's Claim will be closed and the Claimant will be entitled to no additional Benefits pursuant to this Settlement Agreement, and will be bound by this Settlement Agreement, including without limitation, the release contained in Section 12 herein and in the Claim Form. Settling Defendant shall provide Class Counsel copies of notifications described in this Section to Claimants on a regular basis but no less often than within ten (10) Days of any notification.

5.7. If the Settling Defendant has made a favorable initial determination based on the Claim Form and supporting documentation as to the potential eligibility for Benefits, it shall notify the Claimant, then arrange for an Inspector to inspect the Structure pursuant to the Inspection Protocol to verify the presence of Dryvit EIFS, to conduct moisture inspections to determine if there are Actual Damages to the Structure, to verify such other information as is necessary to qualify for Benefits, and to measure, if necessary, the actual square footage of Dryvit EIFS. Settling Defendant will use its best efforts to schedule such inspection at a mutually agreeable time. By submitting a Claim Form, Claimant consents to the Inspector entering upon the property exterior to the Structure for purposes of this inspection. Settling Defendant shall provide Class Counsel copies of notifications described in this Section to Claimants on a regular basis but no less often than within ten (10) Days of any notification.

5.8. The Inspector shall prepare an inspection report ("Inspection Report") pursuant to the Inspection Protocol. Settling Defendant shall provide a copy of the Inspection Report to the Claimant. If the Inspection Report confirms Claimant's eligibility for Benefits,

Settling Defendant shall include with the copy of the Inspection Report, a calculation of the amount, if any, of the Benefit.. If the Inspection Report demonstrates that the Claimant is not entitled to receive any Benefits, reveals that the property is not a Structure, that the cladding is not a Dryvit EIFS, or that the Claimants are not otherwise Class Members, Settling Defendant shall provide a copy of the Inspection Report to Claimant along with a statement, in writing, as to the basis for the determination. If the Claimant does not agree with the findings in the Inspection Report, the Claimant must notify the Settling Defendant in writing of the basis for the Claimant's dispute, within thirty (30) Days of receipt of the Inspection Report. In the event of such a dispute, the Parties shall endeavor to resolve the dispute among themselves within fifteen (15) Days of the Claimant's written notice of the dispute. If the dispute cannot be resolved by agreement within such fifteen (15) Days, then the Claimant must file a written appeal to the Special Master, with a copy to Settling Defendant, within an additional thirty (30) Days. Thereafter, Settling Defendant shall have (30) Days to respond in writing, with a copy to the Claimant. The Special Master's decision on the dispute shall be rendered within forty-five (45) Days after receipt of the Settling Defendant's response. The Special Master's decision shall be final and non-appealable. If the Claimant does not appeal timely to the Special Master such dispute, then the determination made by the Settling Defendant as to the eligibility for Benefits and the amount of monetary Benefits, if any, shall become final and binding on the Claimant. Settling Defendant shall provide Class Counsel copies of notifications described in this Section to Claimants on a regular basis but no less often than within ten (10) Days of any notification.

5.9. Benefits shall commence when the Order and Judgment becomes Final. Once a Benefits determination has become final and binding on both Claimant and Settling Defendant, the Settling Defendant shall request in writing and Claimant shall provide in writing

appropriate tax identification information. Settling Defendant need not provide Class Counsel with a copy of this tax identification information. Any payments that Settling Defendant must make to Claimants pursuant to this Settlement Agreement shall be paid by check made payable to the Claimant(s) and mailed to the address provided on the Claim Form after Settling Defendant has received tax identification information from the Claimant. Settling Defendant's obligation to make said payment to Claimant is completed upon the posting of the check to the United States Mail. Settling Defendant shall promptly provide Class Counsel with notice of such mailing, the amount of each check made payable to a Claimant, and the name and address to which the check was mailed.

6. **BENEFITS FOR SETTLEMENT CLASS MEMBERS**

6.1. As part of the alleged damages paid by the Settling Defendant hereunder, the Benefits set forth in this Section 6 are offered to Settlement Class Members. Only one Benefit shall be available per Structure to the extent that criteria for receipt of that Benefit are otherwise established. In the event of conflict between Class Members as to who should receive the Benefit for a particular Structure, the dispute shall be submitted to the Special Master designated pursuant to Section 18 for resolution.

6.2. The following Benefits shall be available to Settlement Class Members who timely submit a Claim Form to the Settling Defendant and otherwise meet the requirements set forth below and elsewhere in this Settlement Agreement:

(a) Settlement Class Members who purchased their Structure before January 1, 2003, who have not replaced the Dryvit EIFS on their Structure, who have Actual Damage to their Structure, and who can establish product identification pursuant to the requirements set forth in Section 5 of this Settlement Agreement shall receive \$8.00 per square foot of the actual square footage of Dryvit EIFS on the Structure.

(b) Settlement Class Members who purchased their Structure before January 1, 2003, who have replaced the Dryvit EIFS on their structure on or after September 3, 2002, but who nonetheless can establish product identification pursuant to the requirements set forth in Section 5 of this Settlement Agreement, provide documentary evidence from the time of re-clad establishing Actual Damage, and provide documentary evidence of previous square footage of Dryvit EIFS on their Structure, as more specifically required in the Claim Form, shall receive \$4.00 per square foot of actual Dryvit EIFS that was previously on their Structure.

(c) Settlement Class Members who purchased their Structure on or after January 1, 2003, who can establish product identification pursuant to the requirements set forth in Section 5 of this Settlement Agreement, and who do not opt out and who file (or have already filed) individual actions before expiration of the Claims Period as provided in this Settlement Agreement, shall receive from Settling Defendant a tolling of statute of limitation and statute of repose defenses in those individual actions for the period from the date of their purchase until the Notice Date, as well as waiver of any *res judicata*, settlement, release and collateral estoppel defenses based upon the Settlement Agreement in *Posey, et al. v. Dryvit Systems, Inc.*, Case Number 17,715-IV, in the Circuit Court for Jefferson County, Tennessee at Dandridge (hereinafter "*Posey*") (including any approval orders and other orders entered in conjunction with that settlement). Notwithstanding anything to the contrary herein, Dryvit expressly reserves and preserves any and all other defenses including any defense based upon actual notice from any source.

6.3. Notwithstanding the above, no monetary Benefits shall be available in the following instances:

(a) Claims by Settlement Class Members who are current or former owners of Dryvit EIFS Structures as to which Structures, Settling Defendant, previous to the Order and Judgment becoming Final, settled, obtained dismissal (voluntarily or involuntarily), or obtained release of claims against Settling Defendant relating to the Structures, by the current owner, former owner, or a third party who provided compensation to the current or a former owner for alleged damage to the Structures. These Claims include, but are not limited to, timely Claims by owners of Dryvit EIFS Structures who submitted a claim form pursuant to the settlement agreement in *Posey* or who purchased from owners who filed any such claims in *Posey*. Untimely claims in *Posey* and claims by Persons in *Posey* who purchased after June 5, 2002 are not included in this category of Claims unless otherwise settled, released or dismissed by a current or former owner as provided in this Section. Settling Defendant agrees to fund an "Equitable Claims Adjustment Fund" in the amount of \$50,000 to be used by Class Counsel subject to the Court's supervision to provide some compensation to Persons who filed claims in *Posey* to the extent that individualized circumstances suggest that some compensation is appropriate under concepts of fairness and equity but no more than such Person would have received under Section 6.2 had they been eligible for such Benefits. Class Counsel shall provide periodic accountings to Settling Defendant and the Court as to the disbursement of the Equitable Claims Adjustment Fund and make a recommendation to the Court regarding any excess funds in the Equitable Claims Adjustment Fund;

- (b) Claims by owners of EIFS Structures which do not satisfy the product identification criteria set forth in Section 5 of this Settlement Agreement or otherwise fail to meet the criteria set forth in paragraphs 6.2(a) and 6.2(b) above;
- (c) Claims by any Person for a Structure, if such Structure was included in a claim in *Posey* that was denied based upon lack of product identification as determined in the *Posey* Settlement;
- (d) Claims of Settlement Class Members who no longer own the Structure as of the Notice Date and who do not have a valid assignment of claims from the Settlement Class Member that owned the Structure as of the Notice Date;
- (e) Claims of Settlement Class Members who assigned their Claim to others;  
or
- (f) Claims of Settlement Class Members who fail to submit a Claim within the Claim Period.

6.4 Any Class Member may Opt Out of this Settlement Agreement as to any Structure they owned on or before the Notice Date pursuant to Section 9 of this Settlement Agreement. The effect of such Opt Out shall be to Opt Out all Class Members as to that Structure. Any Claim filed by a different Class Member as to that Structure shall not be a valid Claim under this Settlement Agreement.

## 7. FUNDING OF THE SETTLEMENT

7.1. Settling Defendant will wire to an escrow account specified by Class Counsel, upon receipt of suitable wiring instructions, the following payments:

- (a) Within ten (10) Days of the date of the Preliminary Approval, Settling Defendant shall pay to Class Counsel, Eighty Two Thousand Dollars (\$82,000.00) out of the amount to be paid for fees and expenses as provided for in Section 13.1. Such initial payment is to be used by Class Counsel to offset their expenses in providing Class Notice.
- (b) Within thirty (30) Days of the Order and Judgment becoming Final, Settling Defendant shall pay (i) Fifty Thousand Dollars (\$50,000) to be paid pursuant

to Section 6.3 (a); (ii) the remaining Nine Hundred Thirteen Thousand Dollars (\$913,000) to be paid pursuant to Section 13.1; and (iii) Twenty Thousand Dollars (\$20,000) to be paid pursuant to Section 19.

7.2. With the exception of the payment to be made pursuant to Section 7.1(a) above, the benefits offered to Settlement Class Members under of this Settlement Agreement shall commence upon the Order and Judgment becoming Final, and no other payments shall become due and owing by the Settling Defendant under this Settlement Agreement until such time.

8. **NOTICE TO THE CLASS**

8.1. Upon Preliminary Approval, Class Counsel shall disseminate Class Notice as provided in the Notice Plan attached hereto as Exhibit 2.

8.2. In order to offset some of Class Counsel's costs in connection with implementation of the Notice Plan, Settling Defendant shall make the payment set out in Section 7.1(a), of which Thirty Two Thousand (\$32,000) Dollars shall be reimbursed to Settling Defendant by Class Counsel in the event the Settlement Agreement is terminated for any reason. Such reimbursement is to be paid within thirty (30) Days of the termination of the Settlement Agreement. Class Counsel shall be jointly and severally liable for the reimbursement amount. Otherwise, neither Settling Defendant nor Plaintiffs and Class Counsel shall have any responsibility or obligation to each other for any funds used or committed for costs incurred in connection with providing Class Notice and/or administration of this Settlement Agreement..

8.3. A Summary Notice shall be publicly disseminated, as provided in the Notice Plan.

8.4. Prior to the dissemination of the Class Notice, Class Counsel shall designate a toll-free telephone number to be used by Class Members to contact Class Counsel to obtain copies of the Class Notice or a Claim Form. Class Counsel shall maintain and provide to Settling Defendant a list of each Person to whom Class Notice or the Claim Form are provided indicating which documents were provided, the address to which it was directed and the date.

8.5. Prior to the dissemination of the Class Notice, Settling Defendant shall designate a toll-free number to be used by Claimants to contact Settling Defendant. This toll-free number shall be included on the Claim Form. The person(s) designated by Settling Defendant to receive such calls shall be capable of receiving such calls, instructing the caller on where to mail Claim Forms, and responding to questions about the Claims process based upon a written, generalized description of the process and a list of frequently asked question agreed to by the Parties. If a Claimant requires additional information, the Claimant will be referred to Class Counsel.

8.6. The Class Notice, in substantially the form included in Exhibit 2 and as approved 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 Action may elect to be excluded from the Class ("Opt Out") by completing the Request for Exclusion Form, attached as Exhibit 5, and mailing same to the Settling Defendant within ninety (90) Days of the Notice Date (the "Opt-Out Date"). Class Members (including Persons who have initiated lawsuits against Settling Defendant) who do not individually 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 Settlement Agreement. If one joint owner of a Structure Opts-Out of this Action then all other owners of that Structure shall also be Opted-Out, regardless of whether they individually submitted a Request for Exclusion. If one Class Member Opts-Out with respect to a particular Structure then all other Class Members as to that particular Structure shall also be Opted-Out, regardless of whether they individually submitted a Request for Exclusion.

9.2. A Class Member that Opted-Out, shall be returned to the position they occupied before the Notice Date, shall be ineligible for any Benefits of this Settlement 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 Settlement Agreement.

9.3. Settling Defendant shall maintain all Requests for Exclusion received, and any correspondence or records of communications relating thereto. These records will be made available to Class Counsel upon request and reasonable notice.

9.4. Except as set forth in Section 10 of this Settlement Agreement regarding a limited tolling of the statute of limitations, Settling Defendant retains all available defenses, including statute of limitations, statute of repose, *res judicata*, collateral estoppel, release and settlement, spoliation, and any other applicable defense against Class Members that Opted-Out, and against Class Members who purchased after January 1, 2003, except as expressly provided to the contrary above in paragraph 6.2(c).

9.5 Any Class Member who has timely and properly elected to be excluded from the Action may request to revoke such election by mailing a letter to the Settling Defendant requesting to revoke a Request for Exclusion. At the sole discretion of the Settling Defendant,

the former Class Member may become a Settlement Class Member for all purposes. Any person who has elected to be excluded from the Action and as to whom Settling Defendant has not consented to such revocation, as provided in this Section, has no rights under the Settlement Agreement.

**10. STATUTES OF LIMITATION AND REPOSE**

10.1. A Settlement Class Member that has timely submitted a Claim Form, shall not be barred from obtaining Benefits under this Settlement Agreement because of application of any statute of limitation or repose.

10.2. Regardless of any tolling that may or may not accrue to the benefit of a Class Member by operation of applicable law, the defenses of statute of limitations and statute of repose shall be tolled from the Notice Date through the end of the Claim Period for a Class Member that is Opted-Out pursuant to Section 9 of this Settlement Agreement. No other tolling of any kind shall occur by operation of this Settlement Agreement except as set forth in this paragraph or paragraph 6.2(c).

**11. EXCLUSIVE REMEDY, DISMISSAL OF ACTION; JURISDICTION OF COURT**

11.1. This Settlement Agreement shall be the sole and exclusive remedy for any and all Settled Claims of Settlement Class Members against the Released Parties. Upon entry of the 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 and from receiving any additional benefit from any Released Party, except for actions filed or continued pursuant to Section 6.2(c) above.

11.2. No less than fifteen (15) Days after the Opt-Out Date, Class Counsel shall move to dismiss Settling Defendant from any other action of any Settlement Class Member for

Settled Claims pending in any court against any Released Party and for which any Class Counsel is counsel for the Settlement Class Member except for actions filed or continued pursuant to Section 6.2(c) above.

11.3. The 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 Class Members, to interpret and enforce the Settlement Agreement's terms, conditions, and obligations.

12. **RELEASES AND ASSIGNMENTS**

12.1. Upon the Order and Judgment becoming Final, Settlement Class Members on behalf of themselves, and any Persons claiming by or through them, as 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 do 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 except for claims preserved by Section 6.2(c) of this Settlement Agreement.

12.2. With respect to any and all Settled Claims, upon the Order and Judgment becoming Final and without further action, for good and valuable consideration, all Settlement Class Members shall be deemed to have, and by operation of the Order and Judgment contemplated by this Settlement 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 conferred by the laws of South Carolina except as provided to Class Members pursuant to paragraph 6.2(c) of this Settlement Agreement.

12.3. Nothing in this Settlement Agreement shall prejudice or interfere in any way with the rights of the Parties to pursue all of their rights and remedies against Persons other than Released Parties (including without limitation builders, architects, subcontractors and other material suppliers) or their respective insurers, including without limitation claims for contribution and/or indemnity (subject to the provisions of Section 17 of this Settlement Agreement).

12.4. Nothing in this Settlement Agreement shall be interpreted to create any claim or right on the part of Settling Defendant or any of its agents as against any monies or recovery by a Settlement Class Member for claims against third parties or under any insurance policy.

12.5. Upon the Order and Judgment becoming Final and expressly conditioned upon the warranties made and obligations imposed upon Settlement Class Members, Class Representatives and Class Counsel under the terms of this Agreement, Settling Defendant, and its agents, attorneys, assigns, and insurers release Settlement Class Members who never were named parties to this Action, Class Representatives and Intervening Class Counsel from all claims arising out of the filing, assertion, prosecution or resolution of the Action.

13. **ATTORNEYS' FEES AND EXPENSES**

13.1. As part of the alleged 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 \$995,000.00.

13.2. The Settling Defendant's total maximum obligation for Class Counsel's fees, costs and expenses in this Action shall not exceed the amount stated in Section 13.1 of this Settlement Agreement.

13.3. The Settling Defendant shall have no liability or other responsibility for payment or allocation of attorneys' fees, costs and expenses among Class Counsel.

14. **ENFORCEMENT OF THE ORDER AND JUDGMENT.**

14.1. This Settlement Agreement is subject to and conditioned upon the issuance by the Court following the Fairness Hearing of an Order and Judgment, in substantially the form of Exhibit 3 hereto, granting final approval of the Settlement Agreement and expressly including a Bar Order that enjoins Settlement Class Members from pursuing further litigation in any court, or from pursuing any other form of recovery against the Released Parties for any Settled Claim, except as specifically provided in Section 6.2(c).

14.2. 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 first provide written notice of the default to the other side, allowing the defaulting Party twenty (20) Days to cure.

15. **REPRESENTATIONS AND WARRANTIES**

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

15.2. Class Counsel and Class Representatives 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; that this Settlement Agreement has been duly executed and delivered by them in good faith; and that it constitutes a legal, valid, and binding obligation which shall be the sole and exclusive remedy against the Released Parties for Settled Claims as provided in Section 11.1.

16. **TERMINATION OF THE SETTLEMENT AGREEMENT**

16.1. The performance of this Settlement Agreement is expressly contingent upon the Court's issuance of the Order and Judgment by the Court and it becoming Final, except as specifically noted.

16.2. This Settlement Agreement shall be automatically terminated, without notice, if the Order and Judgment entered by the Court does not become Final.

16.3. The number of owners of certain known properties listed on Exhibit 7 to this Settlement Agreement who Opt-Out shall not exceed seventeen (17). If more than seventeen (17) of the owners listed on Exhibit 7 have opted out of the Class, Settling Defendant shall have the right to terminate this Settlement Agreement within fifteen (15) Days after the Opt-Out Date.

16.4. In the event of termination of this Settlement Agreement, this Settlement Agreement, other than Section 8.2, and all Orders and Judgments issued to implement it shall have no further force and effect as to the Released Parties, and shall not be admissible as evidence for any purpose in any pending or future litigation (in any jurisdiction) involving the Parties.

17. **CONTRIBUTION FROM JOINT TORTFEASORS**

17.1. Settlement Class Members' release of Settled Claims is a good faith Release, and if Settlement Class Members received Benefits, the amount of Benefits will reduce the amount of Settlement Class Members' judgment, if any, against third parties, pursuant to the South Carolina Contribution Among Joint Tortfeasors Act, S.C. Stat. Ann. § 15-38-50 so that Settling Defendant is discharged from other tortfeasors' claims.

17.2. Settlement Class Members, having fully released all Settled Claims, agree that they will not assert claims against other Persons for any alleged defects with Dryvit EIFS or due to any alleged conduct by Settling Defendant. To the extent Settlement Class Members have an existing claim against other Persons or subsequently assert claims against other Persons alleging defects with Dryvit EIFS or seeking relief due to alleged conduct by Settling Defendant, and subject to the provisions of Section 17.4, those Settlement Class Members agree that they will amend their existing claims as necessary to strike such claims. By and through this Settlement Agreement, the Settlement Class Members consent to any motion to strike any such allegations. The provisions of this Section shall not apply to claims properly asserted under Section 6.2(c) above.

17.3. Settlement Class Members specifically consent to an injunction against inclusion of product defect claims related to Dryvit EIFS, or allegations related to alleged misconduct or tortious conduct by Settling Defendant, in any suits or claims by Settlement Class Members against third parties.

17.4. Notwithstanding anything to the contrary in this Settlement Agreement, nothing in this Settlement Agreement shall be construed to operate to release or compromise in any way (a) claims asserted against Persons other than Released Parties in that certain action known as *Steven and Jeaneen Tucker, et al., v. Leath, Bouch & Crawford, LLP, et al.*, Beaufort

County Case Number 2008-CP-07-03145, (b) the claims which remain against Persons other than Released Parties in *Timothy J. Treon, et al., v. Dryvit Systems, Inc., et al.*, Beaufort County Case Number 2008-CP-07-00774, (c) any request that Persons other than Released Parties account for or tender funds to this Court or (d) any and all claims by any of the Parties against any other Persons who are not Released Parties, Class Representatives, or Intervening Class Counsel including, but not limited to, other Persons such as builders, architects, subcontractors and other material suppliers. All claims described in this Section 17.4 expressly are not released and are reserved and preserved.

18. **SPECIAL MASTER**

18.1 The Parties shall jointly propose a Special Master to be appointed by the Court, to preside over disputes between the Parties that they cannot resolve through agreement relating to implementation of Sections 4, 5 and 6 of the Settlement Agreement. The Special Master shall have power to make decisions in all matters pertaining to administration of Sections 4, 5 and 6 of the Settlement Agreement. 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.

18.2 The fees and expenses of the Special Master relating to determinations under Sections 4, 5 and 6 of the Settlement Agreement shall be paid for by the non-prevailing Party. In the event that the dispute involves a determination of the square footage of Dryvit EIFS and the amount determined to be the correct amount by the Special Master does not match or better the amount claimed by either of the Parties, i.e., is in between that claimed by the Settlement Class Member and that claimed by the Settling Defendant, then the Special Master

shall apportion such fees and expenses between the Parties in accordance with the proportionate amounts their estimates were incorrect.

19. **MISCELLANEOUS PROVISIONS**

19.1. Subject to Court approval, the Settling Defendant shall pay to Class Representatives in this Action \$20,000.00 total, separate and apart from any Benefits to which the Class Representatives may be entitled under the Settlement Agreement, in recognition of their efforts on behalf of the Class.

19.2. Subject to the terms hereof, 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.

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

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19.4. Except to the extent provided otherwise herein, all Parties shall bear their own costs, fees and expenses of this Action, including any appeals, and this Settlement Agreement.

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

19.6. 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.

19.7. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, heirs, administrators, devisees, predecessors, successors, representatives of any kind, shareholders, partners, directors, owners of any kind, affiliates, subrogees, assignees, or insurers.

19.8. 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 subsections where applicable. The definition of any capitalized term in this Settlement Agreement, shall also apply as appropriate to any form of that term in the singular, the plural, the masculine, the feminine, and/or the past, present or future tense of that term, when such form is also capitalized.

19.9. Any notice, request, instruction, correspondence, application for Court approval, application for Court Orders, or other information sought in connection with this Settlement Agreement shall be in writing and delivered personally or sent by facsimile, e-mail,

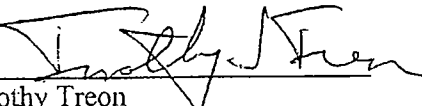
U.S. Mail, or if required by registered or certified mail, postage prepaid, if to the Settling Defendant, to the attention of Settling Defendant's respective representative, Kenneth J. Nota, Vice President and General Counsel, Dryvit Systems, Inc., One Energy Way, West Warwick, Rhode Island 02893, and if to the Class, to Robert B. Phillips, Finkel Law Firm, 1201 Main Street, P. O. Box 1799, Columbia, South Carolina 29202 on behalf of Class Counsel and Settlement Class Members, and to any other recipients as the Court may specify.

19.10. The Parties agree that information obtained from Claim Forms shall be maintained as confidential information, shall be used solely for purposes of this Settlement Agreement, and shall not be used for any other purposes, including any solicitation for sale of products or services. Further, the Parties agree that they shall not sell or furnish personal identifying information obtained from Claim Forms, or copies of Claim Forms, to any other Person for any reason other than compliance with or implementation of this Settlement Agreement or compliance with applicable law.

19.11. 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.

**CLASS REPRESENTATIVES:**

DATE:

BY:   
Timothy Treon

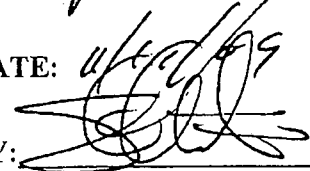
DATE:

BY:   
Jane Treon

DATE: 11/11/09


BY:   
P. Jennings Searce

DATE: 11/11/09


BY:   
Stephen Christian

CLASS COUNSEL:

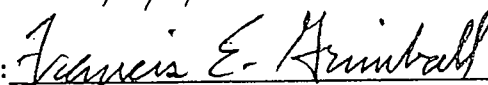
DATE: 11/11/09

BY:   
Gregory M. Alford, Esq.  
Alford & Wilkins, P.C.  
P. O. Drawer 8008  
Hilton Head Island, SC 29938

DATE: 11/15/09

BY:   
Thomas J. Finn, Esq.  
Thomas Williams, Esq.  
The Finn Law Firm  
P. O. Box 6003  
Hilton Head Island, SC 29938

DATE: 11/12/09

BY:   
Francis E. Grimball, Esq.  
Mullen Wylie, LLC  
171 Church Street, Suite 370  
Charleston, SC 29401

DATE:

BY: 

Donald Jonas, Esq.  
Cotty & Jonas  
1328 Blanding Street  
Columbia, SC 29202

DATE: *12 Nov. 2009*

BY: 

Robert B. Phillips, Esq.  
~~The Finkel Firm, PA~~  
1201 Main Street  
P. O. Box 1799  
Columbia, South Carolina 29202

*for The Finkel Law Firm, LLC*

SETTLING DEFENDANT

DATE: *10/11/09*

BY: 

Dennis M. Dallman  
Executive Vice President – Finance and Administration  
Dryvit Systems, Inc.

SETTLING DEFENDANT'S COUNSEL

DATE:

BY: 

Samuel W. Outten, Esq.  
Robert E. Fields, Esq.  
Stephanie U. Roberts, Esq.  
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC  
Post Office Box 10208  
Greenville, SC 29603-0208