

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

**IN RE MI WINDOWS AND DOORS,
INC., PRODUCTS LIABILITY
LITIGATION**

MDL No. 2333

STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE

THIS STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE

("Settlement," "Stipulation," "Agreement," or "Settlement and Release") is made by and among the Named Homeowner Plaintiffs in this case, for themselves and on behalf of the Homeowner Settlement Class as hereinafter defined, the Named Contractor/Construction Plaintiff in this case, for itself and on behalf of the Contractor/Construction Settlement Class as hereinafter defined, and Defendant MI Windows and Doors as hereinafter defined. The Named Homeowner Plaintiffs, Named Contractor/Construction Plaintiff, and Defendant MI Windows and Doors, collectively, are referred to hereinafter as the "Parties."

Subject to Court approval as required by the Federal Rules of Civil Procedure, it is hereby stipulated and agreed by the Parties that, in consideration of the promises and covenants set forth in this Agreement and upon the entry by the Court of a Final Order and Judgment approving the Settlement and directing the implementation of the terms and conditions of the Settlement as set forth in this Agreement, this Action, as hereinafter defined, shall be settled and compromised upon the terms and conditions contained herein.

RECITALS

WHEREAS, Named Plaintiffs have alleged that certain windows manufactured and/or sold by Defendant contain defects that they claim have caused or will cause damage to Class Members' windows, window finishes, homes and/or personal property allegedly resulting from water-related intrusions; and

WHEREAS, Named Homeowner Plaintiffs have asserted various claims in this Action against Defendant including claims for negligence, negligent misrepresentation, breach of contract, breach of express warranty, products liability, and breach of implied warranty of merchantability, but do not assert claims for personal injury; and

WHEREAS, Named Contractor/Construction Plaintiff has asserted various claims in this Action against Defendant including claims for breach of express warranty, breach of implied warranties of merchantability and fitness for a particular purpose, and unjust enrichment, but has not asserted claims for personal injury; and

WHEREAS, Defendant denies the allegations in this Action and asserts numerous defenses to the claims alleged by the Named Plaintiffs in this Action; and

WHEREAS, the Parties to this Agreement, after having engaged in significant discovery in this Action, including written discovery, depositions of certain representative plaintiffs, depositions of Defendant's personnel, and the production of documents, and having engaged in extensive arms-length settlement negotiations with the assistance of independent mediators, have now reached an agreement providing for a nationwide resolution of all claims that have been or

could have been brought by any Plaintiff or Settlement Class member on behalf of the Settlement Class against the Defendant or any of the Released Parties arising from or relating to MIWD's Product, with the exception of personal injury claims; and

WHEREAS, the Named Plaintiffs, while believing that the claims asserted in the Action have merit, have examined the benefits to be obtained under the terms of the proposed Settlement and Release, and have considered the risks associated with the continued prosecution and possible appeal of this litigation, and the likelihood of success on the merits of the Action, and believe that, in consideration of all the circumstances, the Settlement and Release embodied in this Agreement are fair, reasonable, adequate and in the best interests of the Settlement Class; and

WHEREAS, Defendant, while denying wrongdoing of any kind whatsoever, and without admitting liability, nevertheless has agreed to enter into this Stipulation and the Settlement and Release contained herein to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation, and to be completely free of any further controversy with respect to the claims which were asserted or could have been asserted by the Named Plaintiffs in this Action; and

WHEREAS, all Parties wish now to compromise their differences and achieve peace with finality on the issues in dispute;

NOW, THEREFORE, in consideration of all of the terms, conditions, covenants, and promises set forth herein, and subject to preliminary court approval, final court approval, entry of judgment and dismissal with prejudice, in the manner required by the U.S. District Court for the District of South Carolina, Charleston Division, under the Federal Rules of Civil Procedure, such that this Action is completely and finally concluded, it is hereby agreed by and between the

Parties as follows:

A. DEFINITIONS

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

1. **“Action”** means all actions filed against MIWD that were or will in the future be transferred by the Judicial Panel on Multidistrict Litigation to the District of South Carolina for coordinated or consolidated pretrial proceedings in the multidistrict litigation styled In re MI Windows and Doors, Inc., Products Liability Litigation, MDL No. 2333, including but not limited to all actions listed in Exhibit A.

2. **“Affected Property”** or **“Affected Properties”** means any real property, residential or commercial, with MIWD’s Product installed and includes Multiple Unit Property(ies).

3. **“Agreement”** or **“Settlement”** or **“Settlement Agreement”** or **“Stipulation”** means this Settlement Agreement, including and incorporating herein by reference all Exhibits.

4. **“Appeal Adjudicator”** means Epiq Class Action & Claims Solutions, Inc. (“Epiq”), a third-party administrator paid by the Defendant to receive and determine the validity of any appeal of any Claim made hereunder.

5. **“Applicable Warranty Period”** means that period of time set forth in the Original Express Written Warranty applicable to the Original Owner’s/Original Homeowner’s MIWD Product.

6. **“Attorneys’ Fees and Costs”** means the **“Homeowner Attorneys’ Fees and Costs”** and the **“Contractor/Construction Attorneys’ Fees and Costs.”**

(a) The **“Homeowner Attorneys’ Fees and Costs”** means the amount awarded by the Court as compensation for the services provided by Homeowner Plaintiffs’ counsel (which includes all counsel representing Homeowner Plaintiffs in this Action, including Class Counsel and all other counsel who signed the pleadings in this Action) to date and into the future as required to effectuate this Settlement, to include reimbursement for costs, expenses, and interest (including expert witness fees and expenses). The compensation for services by Homeowner Class Counsel is not to exceed the amount set forth in Section P for Homeowner Class Counsel. The Attorneys’ Fees and Costs shall be paid in addition to, and shall not be a reduction of, the compensation payable to Eligible Claimants pursuant to this Agreement.

(b) The **“Contractor/Construction Attorneys’ Fees and Costs”** means the amount awarded by the Court as compensation for the services provided by the Contractor/Construction Plaintiffs’ counsel (which includes all counsel representing Contractor/Construction Plaintiffs in this Action, including Class Counsel and all other counsel who signed the pleadings in this Action) to date and into the future as required to effectuate this Settlement, to include reimbursement for costs, expenses, and interest (including expert witness fees and expenses). The compensation for services by Contractor/Construction Class Counsel is not to exceed the amount set forth in Section Q for Contractor/Construction Class Counsel. The Attorneys’ Fees and Costs shall be paid in addition to, and shall not be a reduction of, the compensation payable to Eligible Claimants pursuant to this Agreement.

7. **“CAFA Notice”** means notification of this proposed Settlement to certain federal and state officials, in accordance with 28 U.S.C. §1715.

8. **“Cap Seal,” or “Cap Sealing,” or “Cap Sealed”** means a beveled seal applied pursuant to the repair protocol attached hereto as Exhibit B.

9. **“Claim”** or **“Claims”** means a Claim arising from or related in any way to MIWD’s Product submitted to the Claims Administrator pursuant to the Claims Program established by this Agreement.

10. **“Claims Administrator”** means Epiq, a third-party administrator paid by the Defendant to receive and determine the validity of any Claim made hereunder.

11. **“Claimant”** means anyone who submits a Claim in the Claims Program.

12. **“Claim Form”** means the Court-approved document made available pursuant to the provisions of the Notice Plan that a Class Member must submit, subject to the provisions of this Stipulation, in order to obtain benefits under the Agreement. The Claim Form shall be in the form set forth in Exhibit C to this Agreement and shall require the Claimant to certify the accuracy of the information contained therein under penalty of perjury.

13. **“Claims Office”** means the office or department established by the Claims Administrator for the purpose of implementing and managing the Claims Program established by this Agreement.

14. **“Claim Period”** or **“Claims Period”** means the period of time within which a Claim must be filed as set forth in sub-paragraphs (a), (b), or (c) below:

(a) **“Claim Period or Claims Period for Class A or Class B Homeowner Claimants”** means that period of time that expires 240 days from the Notice Start Date. All Class A or Class B Homeowner Claimants who do not submit a Claim Form within the Claim Period shall be barred from recovering under the Claims Program.

(b) **“Claim Period or Claims Period for Class C Homeowner Claimants”** means that period of time that expires 180 days from the Notice Start Date. All Class C Homeowner Claimants who do not submit a Claim Form within the Claim Period shall be barred from

recovering under the Claims Program.

(c) **“Claim Period or Claims Period for Eligible Contractor/Construction Settlement Class Members”** means that period of time that expires 180 days from the Notice Start Date. All Contractor/Construction Settlement Class Members who do not submit a Claim Form within the Claim Period shall be barred from recovering under the Claims Program.

15. **“Claims Program”** means the procedure set forth in Section G for submitting and processing Claims.

16. **“Class Counsel”** means and includes “Homeowner Class Counsel” and “Contractor/Construction Class Counsel.” **Homeowner Class Counsel** means Daniel K. Bryson and Justin O. Lucey. **Contractor/Construction Class Counsel** means H. Blair Hahn and Walter H. Bundy, Jr.

17. **“Class Member”** or **“Class Members”** means any Person who is included within the definition of the Homeowner Settlement Class or the Contractor/Construction Settlement Class (or that Person’s heirs, executors, administrators, successors, transferees, and assigns with respect to ownership of the Affected Property), and who does not validly and timely request exclusion from the Settlement Class, in accordance with the provisions of the Notice Plan.

18. **“Class Period”** means the period of time between July 1, 2000 and March 31, 2010.

19. **“Consequential Damage Compensation”** means the value of Consequential Damage Payment(s) under this Settlement Agreement for Eligible Consequential Window Damage under the terms herein.

20. **“Consequential Damage Payment”** means an amount paid under this Settlement Agreement as Consequential Damage Compensation under the terms herein.

21. **“Consequential Water Damage”** means degradation or other loss of integrity of the Substrate around the sill of a Window, including swelling, warping, softness or crumbling, that is beyond the Window frame itself and that is Reasonably Attributable to an Identifiable Condition.

22. **“Consequential Water Staining”** means discoloration of finish surface(s) of the sill, stool, trim, wall, jamb reveal, or other component of the Affected Property, emanating from and commencing within an eight (8) inch radius of the bottom of a Window (except for water staining caused by horizontal mullion leaks) yet beyond the Window frame itself that can be repaired without replacement of the Substrate and that is Reasonably Attributable to an Identifiable Condition. **“Consequential Water Staining”** does not include any mildew or discoloration that can be removed with a damp cloth and non-abrasive household cleaner.

23. **“Consequential Window Damage”** means Consequential Water Staining, Consequential Water Damage, or Extensive Consequential Water Damage.

24. **“Court”** means the United States District Court, District of South Carolina, Charleston Division.

25. **“Degradation of Building Materials”** means deterioration of a Substrate that exceeds Consequential Water Staining and that is Reasonably Attributable to an Identifiable Condition.

26. **“Effective Date”** means that date described in Section T, Paragraph 2, herein.

27. **“Eligible Claimant”** means each Class Member who: (1) timely signs and submits, a properly completed Claim Form; (2) timely complies with the requirements to supply all information, documents, and photographs as required by this Agreement, and the Claim Form; and (3) meets all the relevant criteria set forth in the Agreement.

28. **“Eligible Consequential Window Damage”** means one or more instances of Consequential Water Staining, Consequential Water Damage, or Extensive Consequential Water Damage that is Reasonably Attributable to an Identifiable Condition.

29. **“Extensive Consequential Water Damage”** means Degradation of Building Materials commencing within and extending more than eight (8) inches beyond the Window sill at a single Opening, or Degradation of Building Materials within eight (8) inches of the Window sill in seven (7) or more Openings.

30. **“Final Approval Hearing”** means the final settlement approval hearing(s) to be conducted by the Court in connection with the determination of the fairness, adequacy, and reasonableness of this Agreement, and the award of Attorneys’ Fees and Costs in accordance with the Federal Rules of Civil Procedure and Due Process.

31. **“Final Order and Judgment”** means the Order to be entered by the Court, in a form that is mutually agreeable to the Parties, approving this Agreement as fair, adequate, and reasonable and in the best interests of the Settlement Class as a whole in accordance with Fed. R. Civ. P. 23(e), confirming the Settlement Class certification, and making such other findings and determinations as are necessary and appropriate to effectuate the terms of this Agreement.

32. **“First Published”** means the date on which MIWD’s short form notice is published in the magazines identified in the Notice Plan.

33. **“Glazing Tape”** means a preformed plastic tape material applied between the face of the glass panel and the sash or window unit framing.

34. **“Identifiable Condition(s)”** means any of the following physical manifestations that are observable by normal human senses, without the use or aid of any detection equipment and observable through Photographs or Video submitted with the Claim Form.

(a) Visible Residue Line: Visually apparent sediment, crud, or discoloration (not dust) immediately above or below the lift rail portion of the operable sash that appears at one or more locations with a total length of 4 inches or more.

(b) Staining at upstand leg joint, leaking at upstand leg joint, or unsealed upstand leg joint (sill joints).

(c) Water penetration through Window glazing of picture, fixed, or other non-operable Windows (this does not include or apply to the upper fixed-lite of operable Windows).

(d) Interior water penetration through a horizontal or vertical mullion between Windows.

35. **“MIWD” or “Defendant”** means Defendant MI Windows and Doors, LLC, f/k/a MI Windows and Doors, Inc. (“MIWD”), and any of its present, and future parent companies, subsidiaries, affiliates, divisions, predecessors, successors, heirs, assigns, together with present, and future officers, directors, board members, stockholders, shareholders, agents, servants, employees, attorneys, consultants, or legal representatives of the foregoing entities or persons, or any vendor, distributor, dealer, or other person or entity who markets or sells MIWD’s Product, or repairs MIWD’s Product on MIWD’s behalf. MIWD or Defendant does not include contractors or subcontractors to the extent they installed the MIWD Product.

36. **“MIWD Product” or “MIWD’s Product”** means any and all MIWD windows that are glazed with Glazing Tape and were manufactured or sold between July 1, 2000 and March 31, 2010. This includes those MIWD Products identified on Exhibit D.

37. **“MIWD Product Component”** means that item or portion of an MIWD Product covered by the Original Express Written Warranty and not otherwise excluded by its terms or by operation of this Agreement.

38. **“Multiple Unit Property”** or **“Multiple Unit Properties”** means an Affected Property that contains more than one living unit.

39. **“Multiple Unit Property Governing Body”** means the person(s) or entity(ies) having the legal authority or control to bind a Multiple Unit Property, including but not limited to, a condominium association or a townhome association.

40. **“Named Plaintiffs”** means and includes Named Homeowner Plaintiffs (as defined below) and Named Contractor/Construction Plaintiff (as defined below).

41. **“Named Homeowner Plaintiffs”** means the individuals acting as named representative Homeowner Plaintiffs in this Action (Nadine Johnson, David R. Van Such, Craig Hildebrand, Joseph DeBlaker, Mike and Janeen Meifert, Manzoor and Sosi Wani, Gregory and Kristy Kathman, David Deem, John W. and Elizabeth D. McCubbrey, Daniel Kennedy, Charles Bradley, Jennifer and Scott McGaffin, Stevenson T. Womack, Alex Krueger, Noreen and Thomas Boettinger, Kerry Dewitt, Jamie Reed, John Oriolt, Jessica Zepeda, Larry Taylor, James Lovingood, Gail Loder, Jacqueline Ward, Jackie Vargas Borkouski, Arthur and Susan Ferguson; Patricia Lane, and Charles Bradley).

42. **“Named Contractor/Construction Plaintiff”** means the individual entity acting as named representative Contractor/Construction Plaintiff in this Action (Lakes of Summerville, LLC).

43. **“New Sash”** means the replacement window component that will have functionally equivalent features to the sash being replaced, e.g. Low E, and that does not have or utilize Glazing Tape.

44. **“Notice Administrator”** or **“Notice Provider”** means Epiq, a third-party administrator paid by the Defendant to implement the Notice Plan as set forth in this Agreement.

45. **“Notice of Approved Claim”** means the notice to be provided to a Claimant by the Claims Administrator after evaluation of a Claim Form.

46. **“Notice of Denied Claim”** means the notice to be provided to a Claimant by the Claims Administrator after evaluation of a Claim Form.

47. **“Notice of Proposed Class Action Settlement”** means the Court-approved written notices.

48. **“Notice Plan”** or **“Notice”** means the notice, plan, and schedule for providing class-wide mailed and published notice of the Settlement and certification of the Settlement Class, including the Notice of Proposed Class Action Settlement, all as more particularly described in forms to be mutually agreed upon by the Parties and attached hereto as Exhibit E.

49. **“Notice Start Date”** means date that Notice of the Settlement is First Published, direct U.S. mail notice is sent as set forth in the Notice Plan (Section H of this Agreement), and the Claims Administrator is fully operational (as set forth in an affidavit signed by the Claims Administrator). Class Counsel will have 21 days to object to the Claims Administrator’s affidavit concerning its fully operational status. If no objection is filed with the Court within 21 days, all objections to the Claims Administrator’s affidavit concerning its fully operational status are waived.

50. **“Opening”** or **“Openings”** means an opening in the exterior wall of a structure containing one or more Windows. If there is more than one Window, and the Windows are mulled together to be a single combined product, the opening will be considered a single opening; on the other hand, if the Windows are separated by a structural member, e.g., a two by four wood stud, the opening shall be considered two openings (or more if there are three or more Windows each separated by a stud.)

51. **“Opt-Out List”** means the complete and accurate list compiled by the Claims Administrator of all Settlement Class members who have timely requested exclusion from the Settlement Class and meet the requirements for exclusion, as set forth in this Agreement.

52. **“Opt-Out Period”** means the 30-day period from the Notice Start Date.

53. **“Original Express Written Warranty”** means the express written warranty applicable to the Original Owner’s/Original Homeowner’s MIWD Product, as measured from the date of the original sale, or original transfer of title of the Affected Property, or original purchase of the Window(s).

54. **“Original Homeowner”** means the first-in-time purchaser of Affected Property.

55. **“Original Owner”** means the first-in-time owner of Affected Property.

56. **“Parties”** means the Named Homeowner Plaintiffs, the Named Contractor/Construction Plaintiff, the Settlement Class, and the Defendant.

57. **“Person”** or **“Persons”** means any individual, legal entity, association, Multiple Unit Property Governing Body, or its successors or assigns.

58. **“Photograph(s)”** or **“Photographic Proof”** means the photographs that a Class Member submits in the Claims Program as set forth in the Claim Form. Photographs or Photographic Proof requires photographs taken during the day, using a film camera or digital device of sufficient resolution to depict the conditions required.

59. **“Preliminary Approval”** means the Court’s provisional certification of the Settlement Class, preliminary approval of this Agreement, and approval of the Notice of Proposed Class Action Settlement pursuant to Fed. R. Civ. P. 23(c)(2) and (e).

60. **“Proof”** means evidence which, by itself or in combination with other evidence, tends to establish a fact as more likely than not.

61. **“Qualified Contractor”** means a person or entity that operates a home repair business and is qualified to operate in their local jurisdiction.

62. **“Reasonably Attributable”** means that an Identifiable Condition is more likely than not a substantial contributing cause of the claimed Consequential Water Staining, Consequential Water Damage, or Extensive Consequential Water Damage (collectively referred to for purposes of this definition as “Damages”). The Identifiable Conditions’ proximity to the claimed Damages, e.g., commencing within eight inches of the Identifiable Condition, indicates that the claimed Damages are more likely than not attributable to the Identifiable Condition.

The following Challenge Factors indicate that the claimed Damages are more likely not attributable to an Identifiable Condition:

- a. Evidence of water infiltration commencing more than 8 inches above the Identifiable Condition.
- b. Observable Window product damage caused by, e.g., abuse or violent acts of nature, etc., that more likely than not caused the claimed Damages.
- c. Substantial evidence that the claimed Damages are more likely than not due to water infiltration from another source, not related to the Window.
- d. Patent installation errors that appear more likely than not to have caused the claimed Damages, or the use of non-MIWD mull products (mull covers or H bars) or methods to mull windows
- e. An observable water staining or water damage pattern appearing in the Substrate at the top of an Opening which more likely than not caused the claimed Damages. Observable water staining or water damage does not need to extend to or be continuous with the Window sill in order for this Challenge Factor to apply. With respect to claimed

Damages that are immediately adjacent to and touching the Identifiable Condition, this Challenge Factor shall apply only if there is substantial evidence that this Challenge Factor more likely than not caused such claimed Damages.

- f. With respect to aluminum Windows only, claimed Damages that more likely than not are caused by condensation, as evidenced by uniform water staining or uniform water damage across the stool or sill immediately adjacent to the Window sill.

The existence of a Challenge Factor precludes compensation for claimed Damages that are more likely than not attributable to the Challenge Factor than to the Identifiable Condition. However, where a Claimant has both claimed Damages that are more likely than not attributable to an Identifiable Condition and claimed Damages that are more likely than not attributable to a Challenge Factor at the same Opening, the Claimant is still entitled to compensation for the claimed Damages that are more likely than not attributable to the Identifiable Condition.

63. **“Release”** means the release set forth in Sections K and L of this Agreement.

64. **“Released Claims”** means and includes, in addition to all claims set forth in the operable Complaint(s) by Named Homeowner Plaintiffs and Named Contractor/Construction Plaintiff, any and all past, present, future, or potential claims, including, without limitation, any causes of action, claims, liabilities, rights, matters, suits, proceedings, damages, equitable relief, legal relief, administrative relief, interest, attorneys’ fees, expenses and costs, disbursements, losses, penalties, punitive damages, exemplary damages, damages based on a multiplication of compensatory damages, damages based on emotional distress or mental anguish, demands, obligations, rights, liens, entitlements, indemnities, subrogations, and contributions of any kind or nature whatsoever related to MIWD’s Product, whether known, unknown or presently unknowable, suspected or unsuspected, latent or patent, accrued or unaccrued, asserted or

unasserted, fixed or contingent, liquidated or unliquidated, matured or unmatured, and whether based on federal or state statute, regulation, ordinance, contract, common law, or any other source that has been, could have been, may be, or could be directly or indirectly alleged, asserted, described, set forth or referred to now, in the past, or in the future by Named Homeowner Plaintiffs, Named Contractor/Construction Plaintiff, or the Settlement Class arising from or relating in any way to MIWD's Product against the Released Parties either in this Action, or in any other court action or proceeding, or before any administrative or regulatory body, tribunal, or arbitration panel. The Released Claims include, without limitation, all causes of action arising from or related in any way to MIWD's Product, including, without limitation, causes of action connected with, arising out of, or in any way related to, in whole or in part, Defendant's design, specification, manufacture, production, performance, labeling, promotion, advertising, sale, representation, distribution, installation recommendations, installation, or repair (including warranty repair) of MIWD's Product, without regard to whether such cause of action is or could be brought pursuant to common law, or any federal or state statute, building code, regulation, or ordinance, including but not limited to federal or state statutes or regulations concerning unfair competition; unfair or deceptive methods of competition; unfair, deceptive, fraudulent, unconscionable, false or misleading conduct, acts, advertising or trade practices; consumer protection (including violations of the Song-Beverly Consumer Warranty Act and the Magnuson-Moss Warranty Act); or under the common law of any state as a claim for breach of contract, breach of express and implied warranties, reformation of warranty, breach of fiduciary duty, fraud, intentional misconduct, unjust enrichment, misrepresentation (negligent or otherwise), tort, negligence, breach of constructive trust, breach of the implied covenant of good faith and fair dealing, or any other common law or statutory basis. In addition, the Class

Members shall be deemed to, and do hereby, release and forever discharge, any other persons or entities from claims arising from or related in any way to MIWD's Product for which the Defendant could be liable to any Class Member including, without limitation, claims arising out of or related to the design, specification, manufacture, production, labeling, promotion, advertising, sale, representation, distribution, installation recommendations, installation, or repair (including warranty repair) of MIWD's Product. Released Claims includes any claim which might be asserted by any Class Member against any of MIWD's insurers arising out of or related to MIWD's Product. The term "Released Claims" is mutual and full as between all Parties to this Agreement, with the express exception of the following: Notwithstanding any other term or provision in this Agreement, (1) Homeowner and Contractor/Construction Class Members do not release and expressly retain any claims for bodily injury, (2) Homeowner Class Members do not release and expressly retain all claims against builders, contractors, and subcontractors for allegedly defective installation of MIWD's Product, and (3) MIWD does not release and expressly retains all claims against component part manufacturers.

65. **"Released Parties" or "Released Party"** means Defendant, and any of its past, present, and future parent companies, subsidiaries, affiliates, divisions, predecessors, successors, heirs, assigns, together with past, present, and future officers, directors, board members, stockholders, shareholders, agents, servants, employees, attorneys, consultants, insurers on policies in favor of MIWD as well as their reinsurers in their capacity as insurers or reinsurers of MIWD, or legal representatives of the foregoing entities or persons, or any vendor, component part supplier, distributor, dealer, developer, builder, contractor, subcontractor, person or entity that was involved in the design, manufacture, marketing, distribution, sale, labeling, installation, repair (including warranty repair), purchase, or use of MIWD's Product. In addition, the Class

Members shall be deemed to, and do hereby, release and forever discharge any other persons or entities from claims for which the Defendant could be liable to any Class Members arising out of or related to MIWD's Product and whether based on the design, specification, manufacture, marketing, production, performance, labeling, promotion, advertising, sale, representation, distribution, installation recommendations, installation, or repair (including warranty repair) of MIWD's Product. Notwithstanding any other term or provision in this Agreement, (1) Homeowner and Contractor/Construction Class Members do not release and expressly retain any claims for bodily injury, (2) Homeowner Class Members do not release and expressly retain all claims against builders, contractors, and subcontractors for allegedly defective installation of MIWD's Product, and (3) MIWD does not release and expressly retains all claims against component part manufacturers.

66. **"Repair With Sealant"** means a mending of the window product pursuant to the repair protocol attached hereto as Exhibit B.

67. **"Settlement and Release"** means the terms agreed to in this Stipulation.

68. **"Settlement Class"** means all Persons in the United States or its Territories who own, owned, or have a legal obligation to maintain or repair a MIWD Product. The Settlement Class contains a "Homeowner Settlement Class" and a "Contractor/Construction Settlement Class."

(a) The Homeowner Settlement Class includes all Persons that purchased or came into ownership of (through assignment, transfer, or otherwise) Affected Property containing MIWD's Product as well as all Persons who have a legal obligation to maintain or repair a MIWD Product. The Homeowner Settlement Class does not include members of the Contractor/Construction Settlement Class. Nor does the Homeowner Settlement Class include

any Persons who have previously settled and released their claims against MIWD involving or related to all their MIWD Product, or had their claims dismissed with prejudice in court, or accepted a final remedy from MIWD involving or related to all their MIWD Product as evidenced by a written document (such Persons shall be barred from any further recovery).

(b) The Contractor/Construction Settlement Class includes all Persons who, while engaged in the business of residential construction, were involved in any respect in causing MIWD's Product to be acquired or installed into Affected Property, and also includes all Persons who continue to own such Affected Property at the time of Notice (including developers, builders, contractors, subcontractors, and all other persons or entities involved in the purchase, installation, or supervision of the installation of MIWD's Product). The Contractor/Construction Settlement Class does not include members of the Homeowner Settlement Class. Nor does the Contractor/Construction Settlement Class include any Persons who have previously settled and released their claims against MIWD involving or related to all their MIWD Product, or had their claims dismissed with prejudice in court, or accepted a final remedy from MIWD involving or related to all their MIWD Product as evidenced by a written document (such Persons shall be barred from any further recovery).

(c) Included within the Settlement Class are the legal representatives, heirs, successors in interest, transferees, and assignees of all such foregoing holders and/or owners of Affected Property.

(d) Excluded from the Settlement Class are: Defendant and its subsidiaries and affiliates; all Persons who, in accordance with the terms of this Agreement, properly execute and timely file during the Opt-Out Period a request for exclusion (as described in Section I) from the Settlement Class; all governmental entities; and the judge(s) to whom this case is assigned and

any immediate family members thereof.

69. **“Subsequent Homeowner(s)”** means any owner of Affected Property as of the date of Preliminary Approval of this Agreement but who is not an Original Homeowner.

70. **“Substrate(s)”** means the plaster, drywall, stool, wood trim, framing, or other component used in the construction of the Affected Property, and directly in contact with, near, or adjacent to the Window.

71. **“Video”** or **“Video Proof”** means the video that a Class Member submits in the Claims Program as set forth in the Claim Form. Video Proof requires video taken during the day, using a video device with sufficient resolution and image stability to depict the conditions required.

72. **“Visible Residue Line”** means visually apparent sediment, crud, or discoloration (not dust) immediately above or below the lift rail that appears at one or more locations with a total length of 4 inches or more.

73. **“Window”** means any MIWD Product.

B. CERTIFICATION OF SETTLEMENT CLASS

1. The Parties to this Agreement agree that this Action shall be certified and proceed as a class action solely for purposes of settlement under Fed. R. Civ. P. 23(b)(2) and Fed. R. Civ. P. 23(b)(3), consisting of all Settlement Class members, with the Named Homeowner Plaintiffs as the Homeowner Settlement Class representatives and Homeowner Class Counsel as counsel for the Homeowner Settlement Class and with the Named Contractor/Construction Plaintiff as the Contractor/Construction Settlement Class representative and Contractor/Construction Class Counsel as counsel for the Contractor/Construction Settlement Class. This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in, this Agreement

or its Exhibits, nor any action taken hereunder, shall constitute, be construed as, or be admissible in evidence as, any admission of the validity of any claim or any fact alleged by Named Plaintiffs in this Action or in any other pending or subsequently filed action or proceeding of any wrongdoing, fault, violation of law, or liability of any kind on the part of Defendant or admission by Defendant of any claim or allegation made in this Action or in any other action or proceeding. This Agreement shall, however, be admissible in any other action or proceeding to enforce the terms of the Agreement.

2. Any certification of a conditional, preliminary, or final Settlement Class pursuant to the terms of this Agreement shall not constitute, and shall not be construed as, an admission on the part of Defendant that this Action, or any other proposed or certified class action, is appropriate for trial class treatment pursuant to Fed. R. Civ. P. 23 or any similar state or federal class action statute or rule. This Agreement is without prejudice to the rights of Defendant to: (1) oppose final certification in this Action should this Settlement not be approved or implemented for any reason; (2) oppose certification in any other proposed or certified class action; or (3) use the certification of this Settlement Class to oppose certification of any other proposed class action arising out of the issues and claims that are asserted herein.

3. In the event this Stipulation is terminated pursuant to its own terms, or a final approval of the Settlement for any reason does not occur, the Settlement Class defined herein shall cease to exist and the Action shall proceed as if no Settlement Class or Agreement had ever existed, and Defendant shall not have waived any and all rights it might have to oppose class certification, and to defend itself against the allegations of Named Plaintiffs in this Action.

C. SUBMISSION FOR PRELIMINARY APPROVAL

As soon as practicable after the execution of this Agreement, but at the latest within 20

days, the Parties shall jointly move the Court to enter a mutually agreeable Preliminary Approval Order.

D. SUBMISSION FOR FINAL APPROVAL

At the Final Approval Hearing, the Parties will jointly request the Court to enter a Final Order and Judgment. The Parties agree to cooperate in drafting a proposed Final Order and Judgment at the appropriate time. The Final Order and Judgment shall specifically include provisions that:

1. Grant final approval of the certification of the Homeowner Settlement Class, designation of the Named Homeowner Plaintiffs as the representatives of the Homeowner Settlement Class, and designation of Homeowner Class Counsel as counsel for the Homeowner Settlement Class;
2. Grant final approval of the certification of the Contractor/Construction Settlement Class, designation of the Named Contractor/Construction Plaintiff as the representative of the Contractor/Construction Settlement Class, and designation of Contractor/Construction Class Counsel as counsel for the Contractor/Construction Settlement Class;
3. Grant final approval of the Settlement and this Agreement as fair, reasonable, and adequate to the Settlement Class;
4. Adjudge that the Notice and Notice Plan implemented for the Settlement Class members were performed in a reasonable manner, constituted the best notice practicable under the circumstances, constituted due and sufficient notice of the Action and the Settlement, and fully satisfied the requirements of due process and Fed. R. Civ. P. 23;
5. Order the dismissal with prejudice of this Action, and incorporate by reference the

releases and covenant not to sue stated in this Agreement, with each of the Parties to bear its or his/her own costs and attorneys' fees, except as provided in this Agreement;

6. Provide for the release of all Released Claims and permanently enjoin the Settlement Class members from asserting, filing, maintaining, or prosecuting any of the Released Claims in the future;

7. Having heard and considered any and all claims for Attorneys' Fees and Costs by Class Counsel in this Action, authorize and direct payment by Defendant as determined by the Court and set forth in this Agreement; and provide that Defendant has no obligation for any attorneys' fees and/or costs to any counsel or law firm related to this Action, beyond that awarded in the Final Order and Judgment, in accordance with the terms of this Agreement;

8. Authorize and direct the payment by Defendant through Epiq of complete and valid Claims as approved by the Claims Administrator, in accordance with the terms of this Agreement;

9. Preserve the Court's continuing jurisdiction over the administration of the Settlement and enforcement of this Agreement;

10. Determine that the Agreement and Settlement provided for herein, and any proceedings taken pursuant thereto, are not, and should not in any event be offered, received, or construed as evidence of, a presumption of, concession of, or an admission by any Party of liability or non-liability or of the certifiability or non-certifiability of a litigation class, or of any alleged misrepresentation or omission in any statement or written document approved or made by any Party; provided, however, that reference may be made to this Agreement and the Settlement provided for herein in such proceedings as may be necessary to effectuate the provisions of this Agreement, as further set forth in this Agreement;

11. Approve the Opt-Out List and determine that the Opt-Out List is a complete list of all Settlement Class members who have timely and properly requested exclusion from the Settlement Class and, accordingly, shall neither share in nor be bound by the Final Order and Judgment;

12. Establish a date certain for all Parties to meet their obligations(s) for the return of discovery and/or documents, in compliance with Case Management Order(s) or Confidentiality Order(s) currently in effect in the Action; and

13. Authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of this Agreement and all Exhibits hereto as (1) shall be consistent in all material respects with the Final Order and Judgment and (2) do not limit the rights of the Settlement Class members.

E. AGREEMENT TO COOPERATE

1. Named Homeowner Plaintiffs, Named Contractor/Construction Plaintiff, Class Counsel, and Defendant will cooperate and take all reasonable actions to effectuate the Settlement and the terms and conditions of this Agreement. If the Court declines to enter either the Preliminary Approval Order or the Final Order and Judgment, Named Homeowner Plaintiffs, Named Contractor/Construction Plaintiff, Class Counsel, and Defendant will use all reasonable efforts that are consistent with this Agreement to cure any defect identified by the Court. If, despite such efforts, the Court does not enter the Preliminary Approval Order and Final Order and Judgment, litigation of the Action shall resume.

F. CLAIMS PROGRAM: PREREQUISITES AND AVAILABLE RELIEF

General. Any relief set forth in this Agreement shall be made available to eligible and qualifying Class Members only after the Effective Date of this Agreement. All Class Members

will be eligible, subject to the following conditions, to submit a Claim Form to the Claims Administrator. The Claims Administrator shall promptly provide Claim Forms to potential Class Members upon request. The Notice Plan will set forth the method by which a potential Class Member may request a Claim Form, including both a toll-free number and web address for downloading Claim Forms. Completed Claim Forms and supporting documentation, can be completed and submitted electronically or by U.S. mail or express mail.

1. REPAIR AND COMPENSATORY RELIEF FOR HOMEOWNER SETTLEMENT CLASS MEMBERS:

In exchange for the Release provided herein, Defendant shall provide the following repair and compensatory relief to Homeowner Settlement Class Members who qualify under the terms of this Settlement Agreement:

a. CLASS A ELIGIBILITY AND RELIEF (HOMEOWNER SETTLEMENT CLASS MEMBERS ONLY)

Class A Eligibility: Class A Eligible Members are current Homeowners with Windows who have one or more instances of Eligible Consequential Window Damage.

To be eligible for Class A Relief (as described in detail below), Homeowner Settlement Class Members must submit to the Claims Administrator a Claim Form and related information as set forth herein within the Claims Period for Class A Claimants. Any Homeowner Settlement Class Member who fails to submit to the Claims Administrator a Claim Form and related information within the Claims Period for Class A Claimants waives his/her/its right to obtain Class A Relief. The waiver of such right to obtain Class A Relief shall in no way diminish the complete and binding nature of this release. This waiver shall not affect Claimants' remaining warranty rights as set forth in this Agreement, if any. The determination of whether a particular Claim Form is valid and complete shall be made by the Claims Administrator in accordance with

the terms of this Agreement. Proof of timeliness will be established by postmark, or the date stamp on electronic mail. To be deemed valid, a Claim Form must:

- (1) State that the Homeowner Settlement Class Member currently owns Affected Property containing MIWD Product; and
- (2) Include proof of ownership of Affected Property in which the MIWD Product is installed (e.g., a copy of a deed, tax bill or mortgage bill); and
- (3) Include proof that the MIWD Products in the Affected Property were manufactured by MIWD during the Class Period (e.g., Photographic or Video Proof of the MIWD label(s) and proof of when the Affected Property was originally constructed or proof of payment for MIWD Products or work installing the MIWD Products); and
- (4) Include Photographic or Video Proof demonstrating the existence of an Identifiable Condition and Eligible Consequential Window Damage.

Class A Repair Relief:

Upon the submission of the foregoing proof, the Homeowner Settlement Class Member will qualify for and be entitled to the following relief for each Window evidencing the Identifiable Conditions(s):

- a. Visible Residue Line: Except as provided directly below (1 and 2), MIWD shall Cap Seal or supply a New Sash (at MIWD's option) for each Window evidencing a Visible Residue Line:

1. Each MIWD Product demonstrating Consequential Water Staining or Consequential Water Damage, shall be provided sash replacement.

2. Class A Eligible Members who have at least one Window with a Visible Residue Line and resulting Consequential Water Staining or Consequential Water Damage, can choose to buy additional New Sashes at \$35 per sash (inclusive of shipping) for each additional Window that demonstrate a Visible Residue Line without Consequential Water Damage.
 - b. Staining at upstand leg joint, leaking at upstand leg joint, or unsealed upstand leg joint (sill joints): MIWD shall Repair With Sealant each Window evidencing this Identifiable Condition pursuant to the repair protocol attached hereto as Exhibit B.
 - c. Water penetration through Window glazing of picture, fixed, or other non-operable Windows (this does not include or apply to the upper fixed-lite of operable Windows): MIWD shall Cap Seal each such Window evidencing water penetration through Window glazing pursuant to the repair protocol attached hereto as Exhibit B.
 - d. Interior water penetration through a horizontal or vertical mullion between Windows: MIWD shall Repair With Sealant each mullion evidencing interior water penetration, pursuant to the repair protocol attached hereto as Exhibit B.

During the process of making repairs to any Window with an Identifiable Condition, MIWD shall replace any failed IGU through sash replacement or reglazing, i.e., remove existing glass lite or insulated glass unit and replace same with a functionally equivalent IGU.

All repairs and replacements (as defined in (a) through (d) above) are warranted for two years from the date of repair or shipment of replacement parts(s), or, in the case of Original Homeowners who have not received a Consequential Damage Payment, the balance of the Original Express Written Warranty, whichever is longer. If the repair or replacement (as defined in (a) through (d) above) fails during the foregoing identified warranty periods, Claimants may

only submit a warranty claim to MIWD, supported by at least three photographs or thirty seconds of video footage demonstrating the existence of a failed repair, and may not file any common law or statutory claim, regardless of legal theory, in any court of law or any other forum. Class Members expressly acknowledge and understand that they are waiving their right to trial by jury or a trial in a court of law or any other forum. There will be no jury or judge deciding the Class Members' warranty claim. All such warranty claims must be submitted within ninety (90) days of the expiration of the warranty period. If MIWD accepts a warranty claim, then MIWD's sole obligation shall be to repair the MIWD Product or MIWD Product Component or provide replacement parts, using reasonably available functionally equivalent parts and materials, at its sole option. The Homeowner Settlement Class Member will have no other remedy of any sort. If the Homeowner Settlement Class Member disagrees with MIWD's determination in any respect, the Homeowner Settlement Class Member may appeal to the Appeal Adjudicator. The Appeal Adjudicator's decision shall be final and binding and the Appeal Adjudicator may not provide any relief other than repair of the MIWD Product or MIWD Product Component, or provision of replacement parts.

Notwithstanding the foregoing, if a Cap Seal Failure occurs during the two year warranty period identified in this paragraph (as evidenced by three photographs or thirty seconds of video footage demonstrating the existence of a failed repair), MIWD will provide a reasonably equivalent New Sash for Cap Sealed Windows that fail.

Class A Compensation:

Class A Consequential Damage Compensation, per Affected Property, one of:

- i. \$250 for Consequential Water Staining at up to two separate Openings; or

- ii. \$500 for (a) Consequential Water Staining at three or more separate Openings or (b) Consequential Water Damage resulting in Degradation of Building Materials that are within eight (8) inches of the Window sill at a single Window; or
- iii. Up to \$2,500 for Extensive Consequential Water Damage resulting in Degradation of Building Materials commencing within and extending more than eight (8) inches beyond the Window sill at a single Opening, or Degradation of Building Materials within eight (8) inches of the Window sill in seven (7) or more Openings. Eligibility for this relief requires submission of Photographic Proof or Video Proof demonstrating Extensive Consequential Water Damage, an estimate from a Qualified Contractor, and a Qualified Contractor causation statement establishing that the Extensive Consequential Water Damage is Reasonably Attributable to an Identifiable Condition.

b. CLASS B ELIGIBILITY AND REPAIR RELIEF (HOMEOWNER SETTLEMENT CLASS MEMBERS ONLY)

Class B Eligibility: Class B Eligible Members are current Homeowners with a Window that exhibits a Visible Residue Line but who have not experienced Eligible Consequential Window Damage.

To be eligible for Class B Relief (as described in detail below), Homeowner Settlement Class Members must submit to the Claims Administrator a Claim Form and related information as set forth herein, within the Claims Period for Class B Claimants. Any Homeowner Settlement Class Member who fails to submit to the Claims Administrator a Claim Form and related information within the Claims Period for Class B Claimants waives his/her/its right to obtain Class B Relief. The waiver of such right to obtain Class B Relief shall in no way diminish the

complete and binding nature of this release. This waiver shall not affect Claimants' remaining warranty rights as set forth in this Agreement, if any. The determination of whether a particular Claim Form is valid and complete shall be made by the Claims Administrator in accordance with the terms of this Agreement. Proof of timeliness will be established by postmark, or the date stamp on electronic mail. To be deemed valid, a Claim Form must:

- (1) State that the Homeowner Settlement Class Member currently owns Affected Property containing MIWD Product.
- (2) Include proof of ownership of the Affected Property in which the MIWD Product is installed (e.g., a copy of a deed, tax bill, or mortgage bill).
- (3) Include proof that the MIWD Products in the Affected Property were manufactured by MIWD during the Class Period (e.g., Photographic or Video Proof of the MIWD label(s) and proof of when the Affected Property was originally constructed or proof of payment for MIWD Products or work installing the MIWD Products).
- (4) Include Photographic or Video Proof demonstrating that a Window exhibits a Visible Residue Line.

Class B Repair Relief:

Upon the submission of the foregoing information, the Homeowner Settlement Class Member will qualify for and be entitled to the following relief for each Window evidencing a Visible Residue Line: a repair by Cap Seal, re-glazing or a New Sash, at MIWD's option, with a two year warranty on the repair measured from the date of repair or shipment of the New Sash, or, in the case of Original Homeowners, the balance of the Original Express Written Warranty, whichever is longer.

If the repair or replacement (as described in the preceding sentence) fails during the foregoing identified warranty periods, Claimants may only submit a warranty claim to MIWD, and may not file any common law or statutory claim, regardless of legal theory, in any court of law or any other forum. Class Members expressly acknowledge and understand that they are waiving their right to trial by jury or a trial in a court of law or any other forum. There will be no jury or judge deciding the Class Members' warranty claim. All such warranty claims must be submitted within ninety (90) days of the expiration of the warranty period. If MIWD accepts a warranty claim, then MIWD's sole obligation shall be to repair the MIWD Product or MIWD Product Component or provide replacement parts, using reasonably available functionally equivalent parts and materials, at its sole option. The Homeowner Settlement Class Member will have no other remedy of any sort. If the Homeowner Settlement Class Member disagrees with MIWD's determination in any respect, the Homeowner Settlement Class Member may appeal to the Appeal Adjudicator. The Appeal Adjudicator's decision shall be final and binding and the Appeal Adjudicator may not provide any relief other than repair of the MIWD Product or MIWD Product Component, or provision of replacement parts.

Notwithstanding the foregoing, if a Cap Seal Failure occurs during the two year warranty period identified in this paragraph (as evidenced by three photographs or thirty seconds of video footage), MIWD will provide a reasonably equivalent New Sash for Cap Sealed Windows that fail.

c. CLASS C ELIGIBILITY AND COMPENSATORY RELIEF (HOMEOWNER SETTLEMENT CLASS MEMBERS ONLY)

Class C Eligibility: Class C Eligible Members are current or former Homeowners that paid for repairs or replacement of Windows as a result of Consequential Water Damage prior to Notice.

To be eligible for Class C Relief (as described in detail below), Homeowner Settlement Class Members must submit to the Claims Administrator a Claim Form and related information as set forth herein within the Claims Period for Class C Claimants. Any Homeowner Settlement Class Member who fails to submit to the Claims Administrator a Claim Form and related information within the Claims Period for Class C Claimants waives his/her/its right to obtain Class C Relief. The waiver of such right to obtain Class C Relief shall in no way diminish the complete and binding nature of this release. This waiver shall not affect Claimants' remaining warranty rights as set forth in this Agreement, if any. The determination of whether a particular Claim Form is valid and complete shall be made by the Claims Administrator in accordance with the terms of this Agreement. Proof of timeliness will be established by postmark, or the date stamp on electronic mail. To be deemed valid, a Claim Form must:

- (1) State that the Homeowner Settlement Class Member currently owns or previously owned Affected Property containing MIWD Product.
- (2) Include proof of current or prior ownership of the Affected Property in which the MIWD Product is/was installed (e.g., a copy of a deed, tax bill, or mortgage bill).
- (3) Include proof that the MIWD Products in the Affected Property were manufactured by MIWD during the Class Period (e.g., Photographic or Video Proof of the MIWD label(s), proof of when the Affected Property was originally constructed or proof of payment for MIWD Products or work installing the MIWD Products).
- (4) Include a causation statement from a Qualified Contractor demonstrating that the repair or replacement at issue was the result of Consequential Water

Damage that was Reasonably Attributable to an Identifiable Condition pertaining to the MIWD Product.

(5) Include Photographic Proof or Video Proof demonstrating that Consequential Water Damage existed prior to repair or replacement.

(6) Include proof that the Homeowner Settlement Class Member paid for repairs or replacement of MIWD Product as a result of Consequential Water Damage prior to Notice. Proof can consist of a paid invoice.

Class C Compensatory Relief:

Upon the submission of the foregoing information, the Homeowner Settlement Class Member will qualify for and be entitled to the following relief: reimbursement for repair of Consequential Water Damage up to \$1,250 per Affected Property. Homeowner Settlement Class Members may participate in Class C recovery in addition to Class A or Class B recovery provided they do not receive Class C relief for a Window for which they received Class A or Class B relief. Total Consequential Damage Compensation, per Affected Property, under the terms of this Agreement, shall not exceed \$3,750 (\$1,250 + \$2,500).

d. Relief for Defects in MIWD Product or MIWD Product Components Covered by MIWD's Original Express Written Warranty and Not Repaired or Compensated as Part of a Class A, Class B, or Class C Claim During the Relevant Claim Period (Homeowner Settlement Class Members only).

Original and Subsequent Homeowner Settlement Class Members may submit certain warranty claims as set forth below:

(i) Original Homeowners who did not receive a Consequential Damage Payment as set forth in Section F, Paragraph 1 (a): Such Claimant(s) may, individually, submit a warranty

claim to MIWD (but may not pursue any other type of common law or statutory claim, regardless of legal theory) for any MIWD Product or MIWD Product Component that was not covered as part of Class A, Class B, or Class C relief and is warranted under the Original Express Written Warranty applicable to their MIWD Products, and shall not be required to provide proof of reliance.

Each such warranty claim must be submitted during the Applicable Warranty Period as set forth in the Original Express Written Warranty applicable to their MIWD Product. If MIWD accepts a warranty claim, then MIWD's sole obligation shall be to repair the MIWD Product or MIWD Product Component or provide replacement parts, using reasonably available functionally equivalent parts and materials, at its sole option. The Homeowner Settlement Class Member will have no other remedy of any sort. Any and all warranty claims must be submitted to MIWD and cannot be filed in any court of law or any other forum. Class Members expressly acknowledge and understand that they are waiving their right to trial by jury or a trial in a court of law or any other forum. There will be no jury or judge deciding the Class Members' warranty claim. If the Homeowner Settlement Class Member disagrees with MIWD's determination in any respect, the Homeowner Settlement Class Member may appeal to the Appeal Adjudicator. The Appeal Adjudicator's decision shall be final and binding and the Appeal Adjudicator may not provide any relief other than repair of the MIWD Product or MIWD Product Component or provision of replacement parts.

(ii) Original Homeowners who received a Consequential Damage Payment as set forth in Section F₁ Paragraph 1 (a): Such Claimant(s) may, individually, submit a warranty claim to MIWD (but may not pursue any other type of common law or statutory claim, regardless of legal theory) for any MIWD Product or MIWD Product Component that was not covered as part

of Class A, Class B, or Class C relief and is warranted under the Original Express Written Warranty applicable to their MIWD Product. Each such warranty claim must be submitted within two (2) years of the date that Notice of the Settlement is First Published or be forever barred. If MIWD accepts a warranty claim, then MIWD's sole obligation shall be to repair the MIWD Product or MIWD Product Component or provide replacement parts, using reasonably available functionally equivalent parts and materials, at its sole option. The Homeowner Settlement Class Member will have no other remedy of any sort. Any and all warranty claims must be submitted to MIWD and may not be filed in any court of law or any other forum. Class Members expressly acknowledge and understand that they are waiving their right to trial by jury or a trial in a court of law or any other forum. There will be no jury or judge deciding the Class Members' warranty claim. If the Homeowner Settlement Class Member disagrees with MIWD's determination in any respect, the Homeowner Settlement Class Member may appeal to the Appeal Adjudicator. The Appeal Adjudicator's decision shall be final and binding and the Appeal Adjudicator may not provide any relief other than repair of the MIWD Product or MIWD Product Component or provision of replacement parts.

(iii) Subsequent Homeowners: Such Claimant(s) may, individually, submit a warranty claim with MIWD (but may not pursue any other type of common law or statutory claim, regardless of legal theory) for any MIWD Product or MIWD Product Component that was not covered as part of Class A, Class B, or Class C relief and is warranted under the Original Express Written Warranty applicable to their MIWD Product (as though they were an Original Homeowner). Each such warranty claim must be submitted within sixteen (16) months of the date that Notice of the Settlement is First Published or be forever barred. If MIWD accepts a warranty claim, then MIWD's sole obligation shall be to repair the MIWD Product or MIWD

Product Component or provide replacement parts, using reasonably available functionally equivalent parts and materials, at its sole option. The Homeowner Settlement Class Member will have no other remedy of any sort. Any and all warranty claims must be submitted to MIWD and may not be filed in any court of law or any other forum. Class Members expressly acknowledge and understand that they are waiving their right to trial by jury or a trial in a court of law or any other forum. There will be no jury or judge deciding the Class Members' warranty claim. If the Homeowner Settlement Class Member disagrees with MIWD's determination in any respect, the Homeowner Settlement Class Member may appeal to the Appeal Adjudicator. The Appeal Adjudicator's decision shall be final and binding and the Appeal Adjudicator may not provide any relief other than repair of the MIWD Product or MIWD Product Component or provision of replacement parts.

2. REPAIR AND COMPENSATORY RELIEF FOR CONTRACTOR/CONSTRUCTION SETTLEMENT CLASS MEMBERS:

In exchange for the Release provided herein, Defendant shall provide the following repair and compensatory relief to Contractor/Construction Settlement Class Members who qualify under the terms of this Settlement Agreement:

a. CONTRACTOR/CONSTRUCTION SETTLEMENT CLASS MEMBER ELIGIBILITY AND RELIEF (CONTRACTOR/ CONSTRUCTION SETTLEMENT CLASS MEMBERS ONLY)

Eligibility: Eligible Contractor/Construction Class Members are Persons who currently own Affected Property with MIWD Product and have Eligible Consequential Window Damage that is Reasonably Attributable to an Identifiable Condition.

To be eligible for Contractor/Construction Relief (as described in detail below), Contractor/Construction Settlement Class Members must submit to the Claims Administrator a Claim Form and related information as set forth herein within the Claims Period for Eligible

Contractor/Construction Settlement Class Members. The determination of whether a particular Claim Form is valid and complete shall be made by the Claims Administrator in accordance with the terms of this Agreement. Proof of timeliness will be established by postmark, or the date stamp on electronic mail. To be deemed valid, a Claim Form must:

(1) State that the Contractor/Construction Settlement Class Member currently owns Affected Property containing MIWD Product.

(2) Include proof of ownership of Affected Property in which the MIWD Product is installed (e.g., a copy of a deed, tax bill, or mortgage bill).

(3) Include proof that the MIWD Products in the Affected Property were manufactured by MIWD during the Class Period (e.g., Photographic or Video Proof of the MIWD label(s) and proof of when the Affected Property was originally constructed or proof of payment for MIWD Products or work installing the MIWD Products).

(4) Include Photographic Proof or Video Proof demonstrating the existence of Eligible Consequential Window Damage and an Identifiable Condition.

(5) Include Photographic Proof or Video Proof demonstrating that the Eligible Consequential Window Damage is Reasonably Attributable to an Identifiable Condition.

Upon the submission of the foregoing information, the Contractor/Construction Settlement Class Member will qualify for and be entitled to elect either a repair or a Consequential Damage Payment.

Repair Relief:

With respect to the selection of repairs, Eligible Contractor/Construction Settlement Class Members will be entitled to the following relief for each MIWD Window evidencing the Identifiable Condition(s):

- a. Visible Residue Line: MIWD shall Cap Seal or supply a New Sash (at MIWD's option) for each Window evidencing a Visible Residue Line.
- b. Staining at upstand leg joint, leaking at upstand leg joint, or unsealed upstand leg joint (sill joints): MIWD shall Repair With Sealant each Window evidencing this Identifiable Condition pursuant to the repair protocol attached hereto as Exhibit B.
- c. Water penetration through Window glazing of picture, fixed, or other non-operable Windows (this does not include or apply to the upper fixed-lite of operable Windows): MIWD shall Cap Seal each such Window evidencing water penetration through Window glazing pursuant to the repair protocol attached hereto as Exhibit B.
- d. Interior water penetration through a horizontal or vertical mullion between Windows: MIWD shall Repair With Sealant each mullion evidencing interior water penetration, pursuant to the repair protocol attached hereto as Exhibit B.

During the process of making repairs to any Window with an Identifiable Condition, MIWD shall replace any failed IGU through sash replacement or reglazing, i.e., remove existing glass lite or insulated glass unit and replace same with a functionally equivalent IGU.

All repairs and replacements (as defined in (a) through (d) above) are warranted for two years from the date of repair or shipment of replacement part(s). If the repair or replacement (as defined in (a) through (d) above) fails during this two year warranty period, Claimants may only submit a warranty claim to MIWD, supported by at least three photographs or one minute of video footage demonstrating the existence of a failed repair, and may not file any common law or statutory claim, regardless of legal theory, in any court of law or any other forum. Class Members expressly acknowledge and understand that they are waiving their right to trial by jury or a trial in a court of law or any other forum. There will be no jury or judge deciding the Class

Members' warranty claim. All such warranty claims must be submitted within ninety (90) days of the warranty period. If MIWD accepts a warranty claim, then MIWD's sole obligation shall be to repair the MIWD Product or MIWD Product Component or provide replacement parts, using reasonably available functionally equivalent parts and materials, at its sole option. The Contractor/Construction Settlement Class Member will have no other remedy of any sort. If the Contractor/Construction Settlement Class Member disagrees with MIWD's determination in any respect, the Contractor/Construction Settlement Class Member may appeal to the Appeal Adjudicator. The Appeal Adjudicator's decision shall be final and binding and the Appeal Adjudicator may not provide any relief other than repair of the MIWD Product or MIWD Product Component, or provision of replacement parts.

Notwithstanding the foregoing, if a Cap Seal Failure occurs during the two year warranty period identified in this paragraph (as evidenced by three photographs or thirty seconds of video footage demonstrating the existence of a failed repair), MIWD will provide a reasonably equivalent New Sash for Cap Sealed Windows that fail.

Consequential Damage Compensation:

With respect to the selection of a Consequential Damage Payment, Eligible Contractor/Construction Settlement Class Members will be entitled to Consequential Damage Compensation, per Affected Property, one of:

- i. \$250 for Consequential Water Staining at up to two separate Openings; or
- ii. \$500 for (a) Consequential Water Staining at three or more separate Openings or (b) Consequential Water Damage resulting in Degradation of Building Materials that are within 8 inches of the Window sill at a single Window; or
- iii. Up to \$2,000 for Extensive Consequential Water Damage resulting in

Degradation of Building Materials commencing within and extending more than eight (8) inches beyond the Window sill at a single Opening, or Degradation of Building Materials within eight (8) inches of the Window sill in seven (7) or more Openings. Eligibility for this relief requires submission of Photographic Proof or Video Proof demonstrating Extensive Consequential Water Damage, an estimate from a Qualified Contractor, and a Qualified Contractor causation statement establishing that the Extensive Consequential Water Damage is Reasonably Attributable to an Identifiable Condition.

b. CONTRACTOR/CONSTRUCTION SETTLEMENT CLASS MEMBERS WHO CURRENTLY OWN AFFECTED PROPERTY WITH MIWD PRODUCT AND DID NOT EXPERIENCE ANY ELIGIBLE CONSEQUENTIAL DAMAGE AS DESCRIBED ABOVE PRIOR TO THE END OF THE CLAIMS PERIOD FOR ELIGIBLE CONTRACTOR/CONSTRUCTION SETTLEMENT CLASS MEMBERS

Such Claimant(s) may, individually, submit a warranty claim to MIWD, if applicable, (but may not pursue any other type of common law or statutory claim, regardless of legal theory) for any MIWD Product or MIWD Product Component as warranted under the Original Express Written Warranty applicable to their MIWD Product or MIWD Product Component, and shall not be required to provide proof of reliance. Each such warranty claim must be submitted during the Applicable Warranty Period as set forth in the Original Express Written Warranty applicable to their MIWD Product or MIWD Product Component. If MIWD accepts a warranty claim, then MIWD's sole obligation shall be to repair the MIWD Product or MIWD Product Component or provide replacement parts (at its sole option). The Contractor/Construction Settlement Class Member will have no other remedy of any sort. Any and all warranty claims must be filed with MIWD and cannot be filed in any court of law or any other forum. Class Members expressly acknowledge and understand that they are waiving their right to trial by jury or a trial in a court of law or any other forum. There will be no jury or judge deciding the Class Members' warranty claim. If the Contractor/Construction Settlement Class Member disagrees with MIWD's

determination in any respect, the Contractor/Construction Settlement Class Member can appeal to the Claims Administrator. The Claims Administrator's decision shall be final and binding and the Claims Administrator cannot provide any relief other than repair of the MIWD Product or MIWD Product Component, or provision of replacement parts.

G. CLAIMS PROGRAM PREREQUISITES AND AVAILABLE RELIEF

1. Submitted Claim Forms to be reviewed by Epiq beginning at Notice Start Date.
2. Epiq shall review all Claim Forms for adequacy of the submittal, inclusive of the required supporting forms, submissions, and Claimant affirmation.
 - a. Where Epiq believes there are insufficiencies in any part of a submittal, such shall be noted by Epiq to Claimant within 45 days of initial Claim receipt during the first month following the Effective Date and within 30 days thereafter (although after the first month, the goal shall be a twenty-one day (three week) time period);
 - b. A one-time cure period of 30 days will be provided, as measured from the date on which notice of insufficiencies was sent by Epiq to Claimant.
 - i. Where Epiq believes there are insufficiencies remaining after any follow-up submission by Claimant during the 30 day cure period, such shall be noted by Epiq to Claimant within 5 days of receipt of such follow-up submission.
 1. Epiq shall only be obligated to give two follow up notices (a total of three deficiency notices).
 2. Class counsel shall be copied on deficiency notices.

3. Notwithstanding the 30 day cure period, Claimant will have a minimum of 10 days to respond to any insufficiency noted by Epiq during the cure period.

ii. Failure to cure any material insufficiency relating to the entire Claim within the cure period will result in denial of the entire Claim, absent good cause. Failure to cure a deficiency as to a particular Window will simply affect the adjudication of that Window and not the remainder of the Claim.

c. Email shall be the preferred method of communication with Claimants (if an email address is provided by Claimant) on this and other issues, unless the Claimant indicates a preference otherwise, and Epiq shall endeavor to maintain a single email chain with Claimants on all Claims communications.

3. Epiq shall make determination of entitlement or denial within 45 days of receipt of a completed Claim Form during the first month and within 30 days during following months, with a goal of a 21 day (three week) determination period. Absent timely claimant appeal, MIWD objection, or inspection demand, as set out below, the determination by Epiq will be deemed final.

4. Notice of determination(s) will be provided/posted by Epiq to Claimant, MIWD, and Class Counsel. Notice shall include a reasonably clear explanation of what portions of the Claim were approved, what portions were denied, and why they were denied, sufficient for the Claimant and MIWD to make an informed decision as to whether to accept the determination, demand inspection, or to appeal. Claim determinations, with accompanying original underlying Claim Form and supporting materials, to be available electronically for review by MIWD, its insurers, and Class Counsel.

5. Claimant has 30 days following notice of determination to appeal to the Appeal Adjudicator. Appealing Claimant may submit a written explanation (with additional supporting photos/evidence, if so inclined) for appeal that describes the basis for belief for different or additional recovery, within 15 days of the filing of the appeal. In the event there is an inspection or objection by MIWD or its insurers, Claimant's explanation/response will be due fifteen days from Claimant's receipt of MIWD's materials. The Appeal Adjudicator shall review the determination with available/supplemental documentation and evidence. All appeal adjudications shall be de novo, and proceed in accordance with paragraph 7 of this Section. Inspection demands by MIWD must be made within 20 days of notice of determination or receipt of a Claimant's appeal of the determination. Inspections must occur within 20 days of the notice of demand for inspection.

6. Inspections will be arranged via Epiq. Inspections will be limited to one inspection per Claimant and last no more than 2 hours total per claim. MIWD, its insurers, and any other attendees, shall each bear their own costs associated with the inspection. No destructive testing will occur, unless Claimant supported its Claim with evidence that came from destructive testing. MIWD and Claimant, along with their respective agents, may attend, but no more than 3 participants from each side are permitted at any one inspection. Absent good cause, failure to permit inspection or any otherwise unreasonable limitation of access—shall result in Claim denial. MIWD has 10 days following inspection to object to the determination or the Appeal on any Claim. MIWD may submit a written explanation (with additional supporting photos/evidence, if so inclined) for appeal that describes the basis for the position that different or reduced recovery is warranted, a copy of which will be provided to Claimant by Epiq within five days of receipt. If objection is presented, Claimant may submit a written rebuttal (with

additional supporting photos/evidence, if so inclined) within 15 days of receipt of objection. Any delay caused by inspection will toll any deadline applicable to Claimant. If Claimant is a condominium owners' association, homeowner association or similar entity responsible for a Multiple Unit Property, including Multiple Unit Property Governing Body as defined herein, inspections shall be limited to one, one hour inspection per residential unit.

7. Review and decision by the Appeal Adjudicator following request by Appealing Claimant or objection by MIWD must be made and provided/posted electronically for review by claimant, MIWD, its insurers and Class Counsel within 20 days of the receipt of the materials relating to the appeal and objection. Determinations of the Appeal Adjudicator are final and not appealable.

8. After the Effective Date of this Agreement, Claim payments will be issued through Epiq within 20 days of final determination. After the Effective Date of this Agreement, repairs shall be performed as follows: (1) with respect to all Claims filed and finally adjudicated by Epiq during the first 150 days of the Claim Period (including all appeals), MIWD will have 60 days from the first 150 days of the Claim Period to review the approved Claims and organize its repair schedule and will thereafter have an additional 270 days to complete repairs or provide New Sash; and (2) with respect to the Claims finally adjudicated after the first 150 days of the Claim Period, MIWD will have 60 days to review the approved Claims and organize its repair schedule and will then have an additional 270 days to complete repairs or provide New Sash. If the Effective Date occurs during months five or six of the Claims Period, the first organizational and repair period will run from the Effective Date. If the Effective Date occurs after month six of the Claim Period, there will be a single repair period and the organizational and repair period will run from the later of the Effective Date or the end of the Claim Period. In other words,

MIWD will always have a minimum period of 60 days to review the approved Claims and organize its repair schedule and an additional 270 days to complete repairs or provide New Sash from the later of the Effective Date of this Agreement or from final adjudication of any given Claim. Nothing shall prohibit MIWD from, at its option, making repairs or providing New Sash in advance of the timing requirements stated herein.

9. “Day” time limits in the Claims process refers to calendar days.

10. Claimants will be able to complete and submit Claims and Claims information (including attachments) electronically through an online module. Online applications which have commenced but have not been submitted will be noticed to the potential Claimant as unsubmitted sixty days before the end of the Claims Period. Claim and Claim Form instructions/FAQs shall also be available on line, as will product identification information (including instructions, pictures, labels, and information regarding the distinguishing characteristics of the products that will help Claimants identify their products, the Identifiable Conditions, and the compensable Consequential Window Damage).

11. An expedited initial Claim review for special circumstances (e.g., repairs in process or property subject to a contract of sale) will be available upon Claimant request and subject to the availability of Epiq.

12. All Parties reserve their rights to bring any nonperformance by Epiq to the Court’s attention. Neither Claimants nor MIWD shall be prejudiced by the failure of Epiq to meet the deadlines set forth herein.

13. In addition to paragraph number 4 above, on the first day of each month during the Claims Period, Epiq will process completed Claim Forms into categories of relief sought

(“Claim Summaries”). Claim Summaries will be provided/posted to MIWD, its insurers, and Class Counsel.

14. Nothing herein shall require Defendant to make any payments or provide any relief to any Claimant prior to the Effective Date of this Agreement.

H. NOTICE PLAN AND COSTS OF NOTICE

1. The Parties shall cause the Notice of Proposed Class Action Settlement describing this Agreement and the Final Approval Hearing to be provided to the members of the Settlement Class as provided in this Section and the attached Exhibit E. The Parties agree that notice should be reasonably calculated under all the circumstances to apprise interested parties of the Settlement in compliance with due process requirements. MIWD agrees to promptly provide to Epiq all available requested information needed to implement this Notice Plan.

2. Notice will consist in general of the following, as more fully set forth in the detailed Notice Plan prepared by Epiq, attached hereto as Exhibit E:

- (i) as directed by Epiq, publication notice placed in *National Geographic*, *People Magazine*, *Sports Illustrated*, and *Southern Living*;
- (ii) direct U.S. mail notice (where physical address is available) or email notice (where no physical address is available but an email address is available) to all of those Class Members who have complained of problems arising from or related to leaks involving MIWD Product to MIWD or counsel for any Named Plaintiffs in this matter, to all those Homeowner Settlement Class Members and Contractor/Construction Settlement Class Members whose identities and addresses are otherwise known to MIWD as a result of being contained within MIWD’s Field Service Database, MIWD’s Customer Care Database, or MIWD’s

Dataworks Database, and to all those Class Members who have contacted counsel for Named Plaintiffs in this Action for any reason pertaining to MIWD's Product and for whom counsel have U.S. mail or email addresses ("Class Notice by Regular Mail or E-Mail") (regular mail notice and email notice shall be sent out within 35 days of the date on which the Court grants Preliminary Approval); and MIWD will provide direct U.S. mail long form notice (where physical address is available) or e-mail long form notice (where no physical address is available, but an e-mail address is available) to all known distributors (including branches of such known distributors) of MIWD's Product;

- (iii) web notice via an independent settlement website administered by Epiq (which will be established at MIWD's expense within __ days of the date on which the Court grants Preliminary Approval). In addition, the website will have Claim Forms with pictorial and narrative instructions on how to identify the Window Manufacturer and the other information required elsewhere in the Settlement Agreement;
- (iv) web notice via banner ads on *Yahoo*, *Facebook*, *MSN*, *Batanga*, and the *Conversant* ad network. Banners will be purchased in appropriate sizes (i.e. leaderboard or big box) with prominent "above the fold" placement. The Parties agree that, if appropriate, Epiq will "Geo-target," "Regionalize," or form "Tiers" by state with the online media in accordance with the geographic distribution of the Windows;
- (v) web notice via sponsored links for searches covering the keywords "MI Windows" paired with any of the following keywords: "defect," "leak," "residue"

line,” or “damage” and other key words to be provided by Epiq on Google, Yahoo, and Bing, as recommended by Epiq which sponsored links will be devised by, purchased by, and spread among the sites for maximum reach by the Notice Provider; and

- (vi) a press release regarding the Settlement through PR Newswire and other available free media as recommended by Epiq.

3. All costs associated with providing Notice (including but not limited to the costs of printing, reproducing, and publishing notice to the potential Settlement Class members) shall be paid by Defendant. The Notice Provider shall be solely authorized and responsible to make all arrangements necessary to effectuate the dissemination of Notice in accordance with the terms of the Preliminary Approval Order. The Notice Provider shall, prior to the Final Approval Hearing, file an affidavit with the Court confirming that Notice has been provided as set forth herein.

- 4. The Epiq Notice Plan shall be subject to the final approval of the Parties.

I. REQUESTS FOR EXCLUSION AND RIGHTS OF INCLUSION

1. A Settlement Class member may opt-out of the Settlement Class during the Opt-Out Period. To exercise the opt-out right set forth in this Section, the Settlement Class member must complete, sign, and return a request for exclusion. The request for exclusion must be sent by mail, addressed to the Claims Administrator, and postmarked on or before the end of the Opt-Out Period. Any Settlement Class member who elects to opt-out of the Settlement Class pursuant to this Section shall not be entitled to relief under this Agreement. The opt-out request must:

- a. Contain the Settlement Class member’s full name and current address;

- b. Identify the name and address of the Settlement Class member's counsel, if any;
- c. Declare that the Settlement Class member owns or owned Affected Property in which MIWD's Product has or had been installed and provide the address for that property;
- d. Declare that the Settlement Class member wants to be excluded from the Settlement Class;
- e. Be signed by the Settlement Class member; and
- f. If Claimant is a condominium association, homeowner association, or similar entity responsible for a Multiple Unit Property, then Claimant shall assert and submit proof that it is responsible for the Windows as opposed to the individual owners. In the event of a dispute between a Multiple Unit Property Governing Body and an individual owner, the Court shall determine the scope and validity of the opt-out.

2. Class Members who do not file a timely request for exclusion and who wish to object to the Settlement may file a Notice of Intent to Object to the Settlement. The written Notice of Intent to Object must be: (a) filed with the Clerk of the Court not later than 30 days before the date set for the Final Approval Hearing; and (b) sent by first-class mail, postmarked not later than 30 days before the date set for the Final Approval Hearing, to Defendant's counsel and Class Counsel. Any Class Member who does not file a Notice of Intent to Object waives the right to do so in the future, and shall be forever barred from making any objection to the Settlement. Any Notice of Intent to Object must contain: (a) a heading which refers to the Action; (b) a statement as to whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identify counsel by name, address and phone number; (c) a detailed statement of the specific legal and factual bases for each and every objection; (d) a list of any witnesses and photocopies of exhibits which the

objector intends to introduce at the Final Approval Hearing, if any; and (e) the objector's signature, verifying under penalty of perjury, that they are a member of the Settlement Class and the address of the Affected Property.

3. Except for those Settlement Class members who have properly opted-out, all Settlement Class members will be deemed Settlement Class members for all purposes under this Agreement.

4. Any Class Member who does not file a timely written request for exclusion shall be bound by this Settlement and by all subsequent proceedings, orders and judgments in the Action.

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

1. Each and every member of the Settlement Class who has not requested exclusion pursuant to Section I submits to the jurisdiction of the Court and will be bound by the terms of this Agreement (including, without limitation, any and all releases), conditioned upon the occurrence of the Effective Date of this Agreement, as well as any other Court orders including, without limitation, the Final Order and Judgment barring further litigation against the Released Parties with respect to any of the Released Claims.

2. This Agreement and the relief provided herein shall be the sole and exclusive remedy for any and all claims of Settlement Class members against the Released Parties arising from or related to their MIWD Product. The Claims Administrator and Appeal Adjudicator may provide only the compensatory relief provided for by this Agreement, and may not award punitive or multiple damages with respect to any claim governed by this Agreement. Upon the entry of the Final Order and Judgment by the Court, each Settlement Class member who has not opted-out of the Settlement Class, shall be barred from initiating, asserting, or prosecuting any

Released Claims against the Released Parties, except in accordance with the terms of this Agreement.

3. Settlement Class members agree to the dismissal of any claim, action or proceeding pending against the Released Parties to the extent any such claim, action or proceeding, in whole or in part, seeks recovery for any Released Claims.

4. Upon the entry of the Final Order and Judgment, this Action and all claims and pending allegations by Named Plaintiffs will be dismissed with prejudice.

5. The Court shall retain exclusive and continuing jurisdiction over the Action, the Parties, and Settlement Class members, to interpret and enforce the terms, conditions, and obligations of this Agreement.

K. HOMEOWNER SETTLEMENT CLASS RELEASE

1. Upon entry of the Final Order and Judgment, Named Homeowner Plaintiffs and each and every Homeowner Settlement Class Member who has not timely opted-out of the Settlement Class, on behalf of such Persons and any Person claiming by or through such Persons (the “Releasing Party” or “Releasing Parties”), regardless of whether any Homeowner Settlement Class Member executes and delivers a written release, shall be deemed to and does hereby fully and finally release and forever discharge the Released Parties, of and from any and all Released Claims and related subrogation claims of the Releasing Party’s subrogees or insurance carriers. The Releasing Parties shall be deemed to and do hereby release and forever discharge any other persons or entities from claims for which Defendant could be liable to the Releasing Parties, arising, in whole or in part, out of or related to MIWD’s Product, including, without limitation, claims based on the design, specification, manufacture, production, performance, labeling,

promotion, advertising, sale, representation, distribution, installation recommendations, installation, or repair (including warranty repair) of the MIWD Product. Notwithstanding any other term or provision in this Agreement, (1) Homeowner and Contractor/Construction Class Members do not release and expressly retain any claims for bodily injury and (2) Homeowner Class Members do not release and expressly retain all claims against builders, contractors, and subcontractors for allegedly defective installation of MIWD's Product.

2. **Express Waiver of California Civil Code 1542 (and Any Similar Provisions under federal, state, or local laws).** The Named Homeowner Plaintiffs and the Homeowner Settlement Class Members hereby acknowledge that **the release herein given expressly waives all the rights and benefits** of Section 1542 of the California Civil Code, or conferred by any comparable or similar statute or common law rule, regulation, or principle of law or equity established in any state or other jurisdiction. Section 1542 of the California Civil Code reads as follows:

“Section 1542. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

3. Named Homeowner Plaintiffs and the Homeowner Settlement Class Members expressly acknowledge that this release extinguishes all claims alleging the MIWD Products are defective in design or manufacture, whether such claim arises under contract, warranty, tort, product liability, or any other applicable statutory or common law (collectively “design and manufacturing defect claims”) against MIWD and all persons and entities, including all sellers, retailers, contractors, subcontractors, wholesalers, and distributors, and expressly including all members of the Contractor/Construction Settlement Class.

4. Named Homeowner Plaintiffs and the Homeowner Settlement Class Members acknowledge that they are aware that they or their attorneys may hereafter discover claims presently unknown or unsuspected, or facts or law in addition to or different from those that they now know or believe to be true with respect to the matters released herein or with respect to MIWD's Product. Nevertheless, it is the intention of Named Homeowner Plaintiffs and the Homeowner Settlement Class Members in executing this Agreement to fully, finally, and forever settle and release all Released Claims which exist, might have existed, or which hereafter may exist whether or not previously or currently asserted in any action or proceeding, and to expressly waive any common law or statutory rule which would circumscribe the extent of this full Release, including any statute or rule giving the releasing party the right to complain of facts or claims relating to MIWD's Product that are unknown as of the date of any releases.

5. If any Homeowner Settlement Class Member brings an action or asserts a claim against a Released Party contrary to the terms of this Agreement, the counsel of record for such Homeowner Settlement Class Member shall be provided with a copy of this Agreement and notice that his or her action is barred by this Agreement. If the Homeowner Settlement Class Member does not within 30 days thereafter dismiss his or her action or claim against a Released Party, then MIWD will be entitled to injunctive relief and any other available relief.

6. Except as otherwise provided, nothing in this Agreement shall be construed in any way to prejudice or impair the right of Defendant to pursue such rights and remedies as it may have against third parties under or in connection with any insurance policies.

7. Notwithstanding the above, the Court shall retain jurisdiction over the Parties and the Agreement to ensure that all payments and other actions required of any of the Parties by the Settlement and this Agreement are properly made or taken.

L. CONTRACTOR/CONSTRUCTION SETTLEMENT CLASS RELEASE

1. Upon entry of the Final Order and Judgment, Named Contractor/Construction Plaintiff and all Contractor/Construction Settlement Class Members who have not timely opted-out of the Contractor/Construction Settlement Class, on behalf of such Persons and any Person claiming by or through such Persons (the “Releasing Party” or “Releasing Parties”), regardless of whether any Contractor/Construction Settlement Class Member executes and delivers a written release, shall be deemed to and does hereby fully and finally release and forever discharge the Released Parties, of and from any and all Released Claims and related subrogation claims of the Releasing Party’s subrogees or insurance carriers. The Releasing Parties shall be deemed to and do hereby release and forever discharge any other persons or entities from claims for which Defendant could be liable to the Releasing Parties, arising, in whole or in part, out of or related to MIWD’s Product, including, without limitation, claims based on the design, specification, manufacture, production, performance, labeling, promotion, advertising, sale, representation, distribution, installation recommendations, installation, or repair (including warranty repair) of the MIWD Product. Notwithstanding any other term or provision in this Agreement, (1) Homeowner and Contractor/Construction Class Members do not release and expressly retain any claims for bodily injury and (2) Homeowner Class Members do not release and expressly retain all claims against builders, contractors, and subcontractors for allegedly defective installation of MIWD’s Product.

2. **Express Waiver of California Civil Code 1542 (and Any Similar Provisions under federal, state, or local laws).** The Named Contractor/Construction Plaintiff and the Contractor/Construction Settlement Class Members hereby acknowledge that **the release herein given expressly waives all the rights and benefits** of Section 1542 of the California Civil Code,

or conferred by any comparable or similar statute or common law rule, regulation, or principle of law or equity established in any state or other jurisdiction. Section 1542 of the California Civil Code reads as follows:

“Section 1542. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

3. Except for claims/suits brought by Class Members who properly and timely opt-out of this Settlement, Named Contractor/Construction Plaintiffs and the Contractor/Construction Settlement Class Members expressly acknowledge that the terms of this release fully and finally extinguish any and all statutory or common law claims for indemnity against MIWD. Except for claims/suits brought by Class Members who properly and timely opt-out of this Settlement, the scope of this Release shall include a waiver of any and all rights potentially arising in connection with the distribution of MIWD Products in the stream of commerce, including but not limited to a waiver of any claims or rights allegedly arising under Arizona Revised Statute § 12-684, Arkansas Code § 16-116-107, California Civil Code 1792, Idaho Code § 6-1407, Louisiana Civil Code Article § 253I, Mississippi Code §11-1-63, North Dakota Century Code § 28-01.3-04, 12 Oklahoma Statutes § 832.1, Texas Civil Practices and Remedies Code § 82.002, and any comparable or similar statute or common law rule, regulation, or principle of law or equity established in any state or other jurisdiction.

4. Named Contractor/Construction Plaintiffs and the Contractor/Construction Settlement Class Members acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected, or facts or law in addition to or different from those that they now know or believe to be true with respect to the matters released herein or with

respect to the MIWD Product. Nevertheless, it is the intention of Named Contractor/Construction Plaintiffs and the Contractor/Construction Settlement Class Members in executing this Agreement to fully, finally, and forever settle and release all Released Claims which exist, might have existed, or which hereafter may exist whether or not previously or currently asserted in any action or proceeding, and to expressly waive any common law or statutory rule which would circumscribe the extent of this full Release, including any statute or rule giving the releasing party the right to complain of facts or claims relating to MIWD's Product that are unknown as of the date of any releases.

5. If any Contractor/Construction Settlement Class Member brings an action or asserts a claim against a Released Party contrary to the terms of this Agreement, the counsel of record for such Contractor/Construction Settlement Class Member shall be provided with a copy of this Agreement. If the Contractor/Construction Settlement Class Member does not within 20 days thereafter dismiss his or her action and the action or claim is subsequently dismissed or decided in favor of the Released Party, the Released Party shall have the right to seek costs and expenses, including reasonable attorneys' fees, incurred by the Released Party in the defense of such action or claim.

6. Except as otherwise provided, nothing in this Agreement shall be construed in any way to prejudice or impair the right of Defendant to pursue such rights and remedies as it may have against third parties under or in connection with any insurance policies.

7. Notwithstanding the above, the Court shall retain jurisdiction over the Parties and the Agreement to ensure that all payments and other actions required of any of the Parties by the Settlement and this Agreement are properly made or taken.

M. COVENANT NOT TO SUE

1. The Named Homeowner Plaintiffs, on behalf of themselves and the Homeowner Settlement Class Members, (a) covenant and agree that neither the Named Homeowner Plaintiffs nor any of the Homeowner Settlement Class Members, nor any person authorized to act on behalf of any of them, will commence, authorize, or accept any benefit from any judicial or administrative action or proceeding, other than as expressly provided for in this Agreement, against the Released Parties in either their personal or corporate capacity, with respect to any claim, matter, or issue that in any way arises from, is based on, or relates to any alleged loss, harm, or damages allegedly caused by the Released Parties in connection with the Released Claims, (b) waive and disclaim any right to any form of recovery, compensation, or other remedy in any such action or proceeding brought by or on behalf of any of them, and (c) agree that this Agreement shall be a complete bar to any such action.

2. The Named Contractor/Construction Plaintiff, on behalf of itself and the Contractor/Construction Settlement Class Members, (a) covenant and agree that neither the Named Contractor/Construction Plaintiff nor any of the Contractor/Construction Settlement Class Members, nor any person authorized to act on behalf of any of them, will commence, authorize, or accept any benefit from any judicial or administrative action or proceeding, other than as expressly provided for in this Agreement, against the Released Parties in either their personal or corporate capacity, with respect to any claim, matter, or issue that in any way arises from, is based on, or relates to any alleged loss, harm, or damages allegedly caused by the Released Parties in connection with the Released Claims, (b) waive and disclaim any right to any form of recovery, compensation, or other remedy in any such action or proceeding brought by or on behalf of any of them, and (c) agree that this Agreement shall be a complete bar to any such action.

3. Notwithstanding any other term or provision in this Agreement, (1) Homeowner and Contractor/Construction Class Members do not release and expressly retain any claims for bodily injury and (2) Homeowner Class Members do not release and expressly retain all claims against builders, contractors, and subcontractors for allegedly defective installation of MIWD's Product.

N. NON-DISPARAGEMENT

1. The Parties and counsel hereto agree not to disparage each other, MIWD's Product, or the compromised claims at issue in the Action or the Settlement.

O. ENFORCEMENT OF AGREEMENT

1. In the event of a breach by the Defendant, Class Counsel, the Claims Administrator, the Appeal Adjudicator or a Settlement Class member under this Agreement, the Court may exercise all equitable powers over the Defendant, Class Counsel, the Claims Administrator, the Appeal Adjudicator or the Settlement Class member to enforce this Agreement and the Final Order and Judgment irrespective of the availability or adequacy of any remedy at law. Such powers include, among others, the power of specific performance, contempt, and injunctive relief.

P. ATTORNEYS' FEES AND COSTS FOR HOMEOWNER CLASS COUNSEL AND INCENTIVE PAYMENTS TO CLASS REPRESENTATIVES

1. Attorneys' Fees and Costs for Homeowner Class Counsel (which includes all counsel representing Named Homeowner Plaintiffs in this Action) will be determined by the Court and will be paid by Defendant in addition to any relief granted to Named Homeowner Plaintiffs and Homeowner Settlement Class Members for valid Claims. No portion of the compensation made available to Named Homeowner Plaintiffs or Homeowner Settlement Class Members pursuant to this Settlement shall be reduced in any way to pay fees, costs, interest, or

expenses to Homeowner Class Counsel.

2. Homeowner Class Counsel will not seek Attorneys' Fees and Costs in excess of \$8,000,000 (eight million dollars), inclusive of all fees, costs, interest, and expenses of any kind, and Defendant agrees not to object to an award of up to \$8,000,000 (eight million dollars). In the event that the Court grants Attorneys' Fees and Costs to Homeowner Class Counsel in excess of \$8,000,000 (eight million dollars), Defendant shall only be obligated to pay \$8,000,000 (eight million dollars) to Homeowner Class Counsel. In the event that the Court grants Attorneys' Fees and Costs to Homeowner Class Counsel in an amount less than \$8,000,000 (eight million dollars), Defendant's obligation shall be limited to the amount awarded.

3. Other than as set forth in this Section, Homeowner Class Counsel waives, discharges and releases the Released Parties from any and all claims for Attorneys' Fees and Costs, by lien, statute, equity or otherwise, in connection with this Action.

4. The Attorneys' Fees and Costs referred to herein will be escrowed at K&L Gates in Charleston, South Carolina, within fifteen days of final approval of the Settlement Agreement and paid immediately on the Effective Date of this Agreement.

5. Subject to Court approval, Defendant agrees to pay Named Homeowner Plaintiffs a service fee of \$5,000 (Five Thousand Dollars) per current Named Homeowner Plaintiff (one fee per house for Named Homeowner Plaintiffs). This amount shall be in addition to the relief to which the Named Homeowner Plaintiffs are entitled under this Agreement.

Q. ATTORNEYS' FEES AND COSTS FOR CONTRACTOR/CONSTRUCTION CLASS COUNSEL AND INCENTIVE PAYMENT TO CLASS REPRESENTATIVE

1. Attorneys' Fees and Costs for Contractor/Construction Class Counsel (which includes all counsel representing the Named Contractor/Construction Plaintiff in this Action)

will be determined by the Court and will be paid by Defendant in addition to any relief granted to Named Contractor/Construction Plaintiff and Contractor/Construction Settlement Class Members for valid Claims. No portion of the compensation made available to Named Contractor/Construction Plaintiff or Contractor/Construction Settlement Class Members pursuant to this Settlement shall be reduced in any way to pay fees, costs, interest, or expenses to Contractor/Construction Plaintiff's Class Counsel.

2. Contractor/Construction Plaintiff's Class Counsel agree that they will not accept an Attorneys' Fees and Costs award that would require Defendant to pay Contractor/Construction Plaintiff's Class Counsel and Homeowner Plaintiffs' Class Counsel a total aggregate award greater than \$9,045,000 (nine million forty-five thousand dollars), inclusive of all fees, costs, interest, and expenses of any kind. In the event that the Court awards a total aggregate amount of Attorneys' Fees and Costs to Contractor/Construction Plaintiff's Class Counsel and Homeowner Plaintiffs' Class Counsel in excess of \$9,045,000 (nine million forty-five thousand dollars), Defendant shall only be obligated to pay a total aggregate amount of \$9,045,000 (nine million forty-five thousand dollars). In the event that the Court awards a total aggregate amount of Attorneys' Fees and Costs to Contractor/Construction Plaintiff's Class Counsel and Homeowner Plaintiffs' Class Counsel that is less than \$9,045,000 (nine million forty-five thousand dollars), Defendant's obligation shall be limited to the amount awarded.

3. Other than as set forth in this Section, Contractor/Construction Class Counsel waives, discharges and releases the Released Parties from any and all claims for Attorneys' Fees and Costs, by lien, statute, equity or otherwise, in connection with this Action.

4. The Attorneys' Fees and Costs referred to herein will be paid on the Effective Date of this Agreement.

5. Subject to Court approval, Defendant agrees to pay Named Contractor/Construction Plaintiff a service fee of \$5,000 (Five Thousand Dollars) in the pending Action (one fee only). This amount shall be in addition to the relief to which the Named Contractor/Construction Plaintiff is entitled under this Agreement.

R. MAXIMUM NUMBER OF OPT-OUTS FOR HOMEOWNER SETTLEMENT CLASS MEMBERS AND RIGHT TO TERMINATE

1. If the number of opt-outs from the Settlement that are received from Homeowner Settlement Class Members during the Opt-Out Period exceeds the number agreed to in writing by the Parties (“the opt-out number”), then MIWD will have the right, at its option, to terminate the Settlement. Each structure in a Multiple Unit Property shall count as one opt-out. The opt-out number shall be submitted to the Court under seal and the number is hereby incorporated into this Agreement by reference. Homeowner Class Counsel will have the right and opportunity to examine any opt-out request to determine if the requester is a Homeowner Settlement Class Member, and if the request is a duplicate or otherwise irregular, before it is counted against the opt-out number. Following any such examination(s) by Homeowner Class Counsel, and in the event that legitimate opt-outs exceed the opt-out number, MIWD will advise Homeowner Class Counsel of its intention to terminate the Settlement or to continue under it. MIWD must advise Homeowner Class Counsel of its intention to terminate the Settlement pursuant to the terms of this Agreement promptly, and in any event no later than fourteen (14) days following the end of the Opt-Out Period together with any time necessary for Homeowner Class Counsel to examine opt-out requests, or it shall be deemed to have decided to continue under the Settlement with no changes to its terms.

2. In the event that this Agreement is terminated pursuant to its own terms, or a Final Order and Judgment approving the Settlement for any reason does not occur, the Homeowner

Settlement Class defined herein shall cease to exist and the Action shall proceed as if no Homeowner Settlement Class or Agreement had ever existed and Defendant shall not have waived any and all rights it might have to oppose class certification, and to defend the allegations of the Action.

S. MAXIMUM NUMBER OF OPT-OUTS FOR CONTRACTOR/CONSTRUCTION SETTLEMENT CLASS MEMBERS AND RIGHT TO TERMINATE

1. If the number of opt-outs from the Settlement that are received from Contractor/Construction Settlement Class Members during the Opt-Out Period exceeds the number agreed to in writing by the Parties (“the opt-out number”), then MIWD will have the right, at its option, to terminate the Settlement. The opt-out number shall be submitted to the Court under seal and the number is hereby incorporated into this Agreement by reference. Contractor/Construction Class Counsel will have the right and opportunity to examine any opt-out request to determine if the requester is a Contractor/Construction Settlement Class Member, and if the request is a duplicate or otherwise irregular, before it is counted against the opt-out number. Following any such examination(s) by Contractor/Construction Class Counsel, and in the event that legitimate opt-outs exceed the opt-out number, MIWD will advise Contractor/Construction Class Counsel of its intention to terminate the Settlement or to continue under it. MIWD must advise Contractor/Construction Class Counsel of its intention to terminate the Settlement pursuant to the terms of this Agreement promptly, and in any event no later than fourteen (14) days following the end of the Opt-Out Period together with any time necessary for Contractor/Construction Class Counsel to examine opt-out requests, or it shall be deemed to have decided to continue under the Settlement with no changes to its terms.

2. In the event that this Agreement is terminated pursuant to its own terms, or a Final Order and Judgment approving the Settlement for any reason does not occur, the

Contractor/Construction Settlement Class defined herein shall cease to exist and the Action shall proceed as if no Contractor/Construction Settlement Class or Agreement had ever existed and Defendant shall not have waived any and all rights it might have to oppose class certification, and to defend the allegations of the Action.

**T. CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL,
CANCELLATION OR TERMINATION OF AGREEMENT**

1. Upon execution of this Agreement, all proceedings in the Action shall be stayed until further order of the Court, except such proceedings as may be necessary either to implement the Settlement and Release or to comply with or effectuate the terms of this Agreement.

2. The “Effective Date” of this Agreement shall be that date upon which all of the following conditions and events have been met or have occurred:

- a. All Parties have executed this Agreement;
- b. The Court has entered an order preliminarily approving this Agreement (the “Preliminary Approval Order”), without any material alterations;
- c. The Court has entered a final order approving this Agreement and releasing the Released Parties from the Released Claims and dismissing with prejudice, and without leave to amend, the Action and all claims asserted therein, except as to those potential Class Members who timely request exclusion (the “Final Order and Judgment”); and
- d. Unless the Parties otherwise agree in writing to waive all or any portion of the following provisions: (i) the expiration (without the filing or noticing of an appeal) of the time to appeal from the Final Order and Judgment; (ii) if an appeal is filed, the entry of a final dismissal order of any and all appeals from the Final Order and Judgment; (iii) affirmance on appeal of the Final Order and Judgment without material alteration; (iv) if a ruling or decision is entered by an appellate court with respect to affirmance of the Final Order and Judgment, the time to petition

for a writ of certiorari with respect to such ruling or decision has expired; or (v) if a petition for a writ of certiorari with respect to the Final Order and Judgment is filed, the petition has been denied or dismissed or, if granted, has resulted in affirmance of the Final Order and Judgment without material alteration.

3. In the event that any of the conditions or events described above in this Section T are not met or do not occur, this entire Agreement shall become null and void, except that the Parties shall have the option to agree in writing to waive the event or condition and proceed with this Agreement, in which event the Effective Date shall be deemed to have occurred on the date of said written agreement.

U. DENIAL OF LIABILITY

1. Defendant maintains that it has consistently acted in accordance with governing laws at all times and continues to deny all of the material allegations in the Action. Defendant enters into this Agreement without in any way acknowledging any fault, liability, or wrongdoing of any kind. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendant of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind on the part of Defendant.

2. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceeding, to establish any liability or admission by Defendant, except in any proceedings brought to enforce the Agreement.

V. REPRESENTATIONS AND WARRANTIES

1. The Defendant represents and warrants that: (i) it has all requisite corporate power and authority to execute, deliver, and perform this Agreement and to consummate the transactions contemplated hereby; (ii) the execution, delivery, and performance of this Agreement have been duly authorized by all necessary corporate action on the part of Defendant; (iii) its signatories to the Agreement have full authority to sign on behalf of and to bind Defendant to the terms of the Agreement; and (iv) this Agreement has been duly and validly executed and delivered by Defendant and constitutes its legal, valid, and binding obligation.

2. Homeowner Class Counsel represents and warrants that they are authorized to execute this Agreement and to bind the Named Homeowner Plaintiffs and Homeowner Settlement Class Members on whose behalf they have executed this Agreement to all the terms and conditions of this Agreement.

3. Contractor/Construction Class Counsel represents and warrants that they are authorized to execute this Agreement and to bind the Named Contractor/Construction Plaintiffs and Contractor/Construction Settlement Class Members on whose behalf they have executed this Agreement to all the terms and conditions of this Agreement.

4. Each of the Parties has had an opportunity to receive, and has received, independent legal advice from his, her or its attorneys regarding the advisability of making the Settlement, executing this Agreement, and fully understands and accepts the terms of this Agreement.

5. Homeowner Settlement Class Members represent and warrant that no portion of any Claims that the Named Homeowner Plaintiffs, the Homeowner Settlement Class, and/or any of the Homeowner Settlement Class Members ever had, now have, or may later claim to have at any time in the future against the Released Parties, whether known or unknown, arising out of or

in any way relating to MIWD's Product, and no portion of any recovery or settlement to which they may be entitled, has been assigned, transferred, or conveyed by or for Homeowner Settlement Class Members in any manner; and no person other than Homeowner Settlement Class Members shall have any legal or equitable interest in the Claims or Released Claims referred to in this Agreement.

6. Contractor/Construction Settlement Class Members represent and warrant that no portion of any Claims that the Named Contractor/Construction Plaintiffs, the Contractor/Construction Settlement Class, and/or any of the Contractor/Construction Settlement Class Members ever had, now have, or may later claim to have at any time in the future against the Released Parties, whether known or unknown, arising out of or in any way relating to MIWD's Product, and no portion of any recovery or settlement to which they may be entitled, has been assigned, transferred, or conveyed by or for Contractor/Construction Settlement Class Members in any manner; and no person other than Contractor/Construction Settlement Class Members shall have any legal or equitable interest in the Claims or Released Claims referred to in this Agreement.

7. None of the Parties is relying or has relied on any statement, representation, omission, inducement, or promise of any other Party (or any officer, agent, employee, representative, or attorney for any other Party) in executing this Agreement, or in making the Settlement provided for herein, except as expressly stated in this Agreement.

8. Each of the Parties has investigated the facts pertaining to the Settlement and this Agreement, and all matters pertaining thereto, to the full extent deemed necessary by that Party and his, her, or its attorneys.

9. Each of the Parties has carefully read, and knows and understands the full

contents of this Agreement and is voluntarily entering into this Agreement after having had the opportunity to consult with, and having in fact consulted with, his, her, or its attorneys.

10. Each term of this Agreement, under the titles of the various paragraphs, is contractual and not merely a recital.

W. JUDGMENT

1. After the Fairness Hearing, and subject to the Court's approval of the Agreement, a Final Order and Judgment shall be entered:

a. Approving the Agreement as fair, reasonable and adequate and as having been entered into in good faith; directing the Parties to comply with and implement the terms of the Agreement; and declaring the Agreement binding on all Settlement Class members;

b. Confirming that the Notice constitutes the most effective and practicable notice to Settlement Class members under the circumstances;

c. Dismissing the Action on the merits and with prejudice, without costs to any Party except as provided in this Agreement; and

d. Retaining jurisdiction over the matters provided for in the Agreement.

X. TERMINATION OF THE AGREEMENT

1. The performance of this Agreement is expressly contingent upon the Court's issuance of the Final Order and Judgment. If the Court issues an Order disapproving the Agreement or requests changes unacceptable to Defendant, Defendant may elect to terminate this Agreement within ninety (90) business days of such Order or request, rendering it as having no force or effect whatsoever, null and void, *ab initio*, and not admissible as evidence for any purpose in any pending or future litigation or other proceeding (in any jurisdiction) involving any of the Parties.

Y. MISCELLANEOUS PROVISIONS

1. Limitations__of Payments: Anything in this Agreement to the contrary notwithstanding, under no circumstances shall Defendant be required to compensate more than one Person for the same condition relating to the same MIWD Product. In the event of multiple Claims, Defendant will compensate - if compensation is due under this Agreement - the first Eligible Claimant to file a Claim.

2. Transfer and Assignment of Claims: Except for the transfer of ownership of Affected Property containing MIWD's Product, Homeowner Settlement Class Members and Contractor/Construction Settlement Class Members cannot assign, transfer, or aggregate their claims and can only file claims for the affected MIWD Product in their own Affected Property.

3. Other:

(a) Should any provision of this Agreement, or any of the Exhibits hereto, require judicial interpretation, the Parties agree that the Court or other adjudicating body shall not apply a presumption that the terms shall be more strictly construed against the Party who prepared this Agreement, it being agreed that all Parties collectively participated in the negotiation and preparation of this Agreement and its Exhibits.

(b) This Agreement shall be construed under and governed by the laws of the State of South Carolina, applied without regard to its choice of law provisions.

(c) This Agreement, including all Exhibits attached hereto, shall constitute the entire Agreement among the Parties with regard to the subject matter of this Agreement and shall supersede any previous agreements and understandings between the Parties. This Agreement may not be changed, modified, or amended except in writing signed by Class Counsel and Defendant's counsel and subject to Court approval. Amendments and

modifications may be made without additional notice to Settlement Class members unless such notice is required by the Court. The Parties contemplate that the Exhibits may be modified by subsequent agreement of Class Counsel and Defendant's counsel prior to dissemination to the Settlement Class members.

(d) Subject to the limitations and conditions expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the Settlement Class, the Parties, and their representatives, heirs, successors, and assigns.

(e) References to a "Section" includes reference to all paragraphs within the referenced Section.

(f) Any notice, request, instruction, application for Court approval, application for Court order sought in connection with this Agreement, or other document to be given by any Party to any other Party shall be in writing and delivered by facsimile, electronic mail, U.S. Mail, or as otherwise agreed in writing, to:

FOR DEFENDANT:

Carol C. Lumpkin
K&L Gates, LLP
Southeast Financial Center
200 S. Biscayne Boulevard, #3900
Miami, FL. 33131
Phone: (305) 539-3300

Paul R. Gary
The Gary Law Group
3 Centerpointe Drive
Suite 190
Lake Oswego, OR 97035
Phone: (503) 227-8424
Email: paul@prgarylaw.com

FOR THE HOMEOWNER SETTLEMENT CLASS:

Daniel K. Bryson
Whitfield, Bryson & Mason, LLP
900 W. Morgan Street
Raleigh, NC 27603
Phone: (919) 600-5000

Justin O'Toole Lucey
Lucey Law Firm
415 Mill Street
Mt. Pleasant, SC 29464
Phone: (843) 849-8400

FOR THE
CONTRACTOR/CONSTRUCTION
SETTLEMENT CLASS:

H. Blair Hahn

Richardson, Patrick, Westbrook &
Brickman
1037 Chuck Dawley Boulevard
Mt. Pleasant, SC 29464
Phone: (843) 727-6500

Walter H. Bundy, Jr.
Smith, Bundy, Bybee & Barnett
1037 Chuck Dawley Boulevard,
Suite 100, Bldg. F
Mt. Pleasant, SC 29464
Phone: (843)881-4406

(g) Except as otherwise provided in this Agreement, any filing, submission, Claim, notice or written communication shall be deemed filed, delivered, submitted, or effective as of the date of its postmark when mailed first-class, registered, or certified mail, postage prepaid, properly addressed to the recipient, or when delivered to any commercial one-or-two-day delivery service properly addressed to the recipient, or when actually received by the recipient, whichever occurs first.

(h) In no event shall Defendant, Defendant's counsel, Named Plaintiffs, any Settlement Class member, or Class Counsel have any liability for claims of wrongful or negligent conduct by any third party with respect to the implementation of any term of this Agreement.

(i) The Parties hereto and their undersigned counsel agree to undertake their best efforts and mutually cooperate to effectuate this Agreement and the terms of the Agreement set forth herein, including taking all steps and efforts contemplated by this Agreement, and any other steps and efforts which may become necessary by order of the Court or otherwise.

(j) Neither Defendant, nor Class Counsel, nor the Named Homeowner Plaintiffs, nor the Named Contractor/Construction Plaintiff will encourage any Person to request exclusion from membership in the Settlement Class, encourage any Person to object to the

Agreement and/or discourage any Person from participating in the distribution of the proceeds of the Agreement.

(k) This Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this Agreement.

(l) The Parties are entering into this Agreement for the purpose of compromising and settling disputed claims. Nothing in this Agreement or in the documents relating to this Agreement shall be construed, deemed or offered as an admission by any of the Parties, or by any Settlement Class member, for any purpose in any judicial or administrative action or proceeding, whether in law or in equity, regardless of whether this Agreement ultimately becomes effective.

(m) This Agreement shall be deemed to have been executed upon the last date of execution by all the undersigned counsel, which may be done in counterparts, each of which shall constitute an original but all of which together shall constitute one and the same instrument.

(n) Class Counsel agrees that it will not issue any press release or make any public disclosure (other than public filings with the Court) regarding this Settlement until after the Court grants preliminary approval of the Settlement. However, in the event that Class Counsel receives inquiries from Settlement Class members regarding the terms of the Settlement Agreement before the Court grants preliminary approval of the Settlement, Class Counsel can advise the Settlement Class members of the status and terms of the Settlement. Class Counsel shall not make any statements to the media until after the Court grants preliminary approval of the Settlement.

(o) All Confidentiality Orders entered in this Action shall remain in effect.

DATED this ____ day of _____, 2014.

FOR THE DEFENDANT:

By:

FOR THE HOMEOWNER SETTLEMENT CLASS:

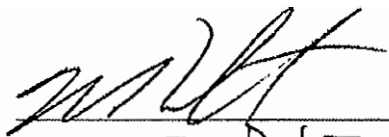
By:

FOR THE CONTRACTOR/CONSTRUCTION SETTLEMENT CLASS:

By:

FOR THE DEFENDANT:

By:


MATT DeJOTA
CEO
MWH, LLC

FOR THE HOMEOWNER SETTLEMENT CLASS:

By:

FOR THE CONTRACTOR/CONSTRUCTION SETTLEMENT CLASS:

By:

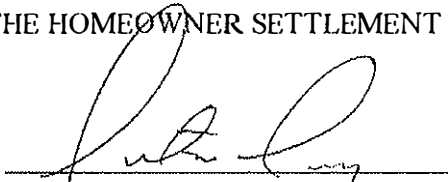
DATED this 24 day of December 2014.

FOR THE DEFENDANT:

By:

FOR THE HOMEOWNER SETTLEMENT CLASS:

By:


Dan Bryan w/permission (14)

FOR THE CONTRACTOR/CONSTRUCTION SETTLEMENT CLASS:

By:

By: _____

FOR THE CONTRACTOR/CONSTRUCTION SETTLEMENT CLASS:

By:

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A. Klaus Hahn 12/24/14