

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

MARTIN D. SCHUSSEL, individually and on)
behalf of others similarly situated,)
)
Plaintiff,)
)
vs.)
)
LINCOLN WOOD PRODUCTS, INC.,)
)
Defendant.)
)
_____)

Case No.: 2:14-cv-01788-RMG

**STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE**

THIS STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE
("Settlement Agreement") is made by and among Martin D. Schussel (the "Named Plaintiff"),
for himself and on behalf of the Settlement Class, and Defendant Lincoln Wood Products, Inc.
("Lincoln"). The Named Plaintiff and Lincoln are referred to 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 Settlement Agreement and upon the entry by the Court of a Final Approval
Order¹ approving this Settlement Agreement, this Action shall be settled and compromised upon
the terms and conditions contained herein.

RECITALS

WHEREAS, the Named Plaintiff has alleged that certain windows manufactured and/or
sold by Lincoln contain manufacturing and/or design defects that he claims have caused or will
cause damage to his and Settlement Class Members' windows, window finishes, homes, and/or

_____)
¹ Capitalized terms are defined in Section A of this Settlement Agreement.

personal property allegedly resulting from water intrusion; and

WHEREAS, the Named Plaintiff has asserted various claims in this Action against Lincoln, including claims for negligence, negligent misrepresentation, breach of express warranty, breach of implied warranty of merchantability, and strict liability, but does not assert claims for personal injury; and

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

WHEREAS, the Parties to this Settlement Agreement, after having engaged in significant discovery in this Action, including written discovery, depositions of the Named Plaintiff and potential class members, depositions of Lincoln personnel, depositions of experts, and the production of documents, and having fully briefed support and opposition to cross-motions for partial summary judgment, Plaintiff's Motion for Class Certification and related *Daubert* motions, and having engaged in extensive arms-length settlement negotiations with the assistance of an independent mediator over four (4) days, have now reached an agreement providing for a statewide resolution of all claims that have been or could have been brought by Named Plaintiff, individually or on behalf of the Settlement Class, against Lincoln arising from or relating to Lincoln's Exterior Glazed Windows, with the exceptions specifically defined below in this Settlement Agreement; and

WHEREAS, the Named Plaintiff, while believing that the claims asserted in the Action have merit, has examined the benefits to be obtained under this Settlement Agreement, and has considered the risks associated with the continued prosecution and possible appeal of this Action, and the likelihood of his success on the merits, and believes that, in consideration of all the circumstances, this Settlement Agreement is fair, reasonable, adequate, and in the best interest of

the Settlement Class; and

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

WHEREAS, the 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, and dismissal of the Action with prejudice, 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 Settlement Agreement, the following terms shall have the meanings set forth below:

1. **“Action”** means the above-captioned lawsuit entitled *Martin D. Schussel, individually and on behalf of others similarly situated, v. Lincoln Wood Products, Inc.*, case number 2:14-cv-01788-RMG in the United States District Court for the District of South Carolina.

2. **“Additional Damage”** means water damage, including discoloration or staining, to the finish surface(s) of any trim or drywall located in the area below a Lincoln Exterior Glazed Window defined as follows: a rectangle, the top of which is the top of the window sill, the bottom of which is six (6) inches below the sill, and the sides of which are six (6) inches outside

the ends of the sill.

- a. Trim which was provided by Lincoln as part of the Lincoln Exterior Glazed Window itself is not considered trim for these purposes, and water damage to such trim does not qualify as Additional Damage.
- b. Lincoln will pay seventy-five dollars (\$75) for the first Lincoln Exterior Glazed Window owned by a Settlement Class Member with Additional Damage and fifty dollars (\$50) for each additional Lincoln Exterior Glazed Window owned by that Settlement Class Member with Additional Damage.
- c. Each Lincoln Exterior Glazed Window is eligible for only one Additional Damage Payment and must first qualify for a Deteriorated Sash Payment or a Deteriorated Frame Corner Payment in order to be eligible for an Additional Damage Payment.

3. **“Additional Damage Payment”** means an amount paid under this Settlement Agreement for Additional Damage.

4. **“Affected Property”** means any residential or commercial structure, including Multiple Unit Properties, which is located in the State of South Carolina and contains Lincoln’s Exterior Glazed Windows. For the purpose of determining inclusion in the Settlement Class and any relief under this Settlement Agreement, the owner of any Affected Property is (1) the current title holder of record if the Affected Property is a single family home or commercial structure, and (2) if the Affected Property is a Multiple Unit Property, then the current person or entity responsible for the upkeep of the windows as designated by the operative agreement governing the property.

5. **“Appeal Adjudicators”** means three (3) independent, third-party construction

professionals who shall be responsible for deciding appeals of Settlement Claim Determinations. The Appeal Adjudicators shall be selected by mutual agreement of the Parties. The Appeal Adjudicators shall be paid by Lincoln, in an amount not to exceed \$600 per appeal. The Appeal Adjudicators shall receive and decide any appeals of Settlement Claim Determinations. The Appeal Adjudicators shall decide each appeal by applying the terms of this Settlement Agreement, including the definitions of Lincoln Exterior Glazed Windows, Deteriorated Sash, Deteriorated Frame Corner, Additional Damage and Paid Replacement Kit Refund, and deciding whether the Settlement Claimant is or is not entitled to payment pursuant to the terms of this Settlement Agreement. The Appeal Adjudicators may not provide any relief other than as provided in this Settlement Agreement.

6. **“Attorneys’ Fees and Costs”** means an amount, not to exceed one million, two-hundred thousand dollars (\$1,200,000), to be awarded by the Court and paid to Class Counsel by Lincoln as compensation for the services provided by Class Counsel, both to-date and into the future as required to effectuate this Settlement Agreement, including reimbursement for out-of-pocket costs and expenses (*e.g.* expert witness fees and expenses) advanced by Class Counsel in the prosecution of this Action.

7. **“CAFA Notice”** means notification of this proposed Settlement Agreement to certain federal and state officials, in accordance with 28 U.S.C. §1715, which shall be provided, as required, by Lincoln.

8. **“Claim Deadline”** means the deadline for Settlement Claimants to submit Settlement Claims, which shall be one hundred and eighty (180) days after the Effective Date.

9. **“Claim Period”** means the one hundred and eighty (180) day period during which Settlement Claimants shall be permitted to submit Settlement Claims, which shall

commence on the Effective Date and end on the one hundred eightieth day after the Effective Date.

10. **“Class Counsel”** means lead counsel, Justin O’Toole Lucey, and co-class counsel, Phillip W. Segui and John T. Chakeris.

11. **“Class Period”** means the period of time between April 1, 1999 and January 1, 2007.

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

13. **“Deteriorated Frame Corner”** means a Lincoln Exterior Glazed Window where there is no Deteriorated Sash but where either of the lower window frame jamb-to-sill corners have suffered water-related deterioration such that an awl penetrates the wood behind the jamb liner more than one-eighth inch (1/8th inch) with moderate hand pressure. Lincoln will pay seventy five dollars (\$75) for the first Lincoln Exterior Glazed Window with one or more Deteriorated Frame Corners owned by a Settlement Class Member, and fifty dollars (\$50) for each additional Lincoln Exterior Glazed Window with one or more Deteriorated Frame Corners owned by that Settlement Class Member.

14. **“Deteriorated Frame Corner Payment”** means an amount paid under this Settlement Agreement for Deteriorated Frame Corners.

15. **“Deteriorated Sash”** means an exterior glazed sash in a Lincoln Exterior Glazed Window that has suffered water-related deterioration such that an awl penetrates the wood more than one-eighth inch (1/8th inch) with moderate hand pressure. Lincoln will pay five-hundred and twenty-five dollars (\$525) for each Lincoln Exterior Glazed Window that has one or more Deteriorated Sash.

16. **“Deteriorated Sash Payment”** means a payment of five hundred twenty five dollars (\$525) for each Lincoln Exterior Glazed Window that has one or more Deteriorated Sash. Under no circumstances shall a single Lincoln Exterior Glazed Window qualify for more than one Deteriorated Sash Payment.

17. **“Effective Date”** means the later of (1) the date on which any and all appeals of the Final Approval Order are finally resolved in a manner that upholds the Final Approval Order, or (2) thirty (30) days after entry of the Final Approval Order if no appeal is filed.

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

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

20. **“Final Approval Order”** means the Order to be entered by the Court granting final approval of this Settlement Agreement, in a form that is mutually agreeable to the Parties, and specifically including provisions:

- a. Approving this Settlement Agreement as fair, adequate, and reasonable and in the best interest of the Settlement Class, as a whole, in accordance with Fed. R. Civ. P. 23(e).
- b. Ordering certification of the Settlement Class for settlement purposes only, designating the Named Plaintiff as the representative of the Settlement Class and making such other findings and determinations as are necessary and appropriate to effectuate the terms of this Settlement Agreement.

- c. Adjudging that the Notice of Class Action Settlement is and was reasonable, constitutes the best notice practicable under the circumstances, constitutes due and sufficient notice of the Action and the Settlement Agreement, and fully satisfies the requirements of Due Process and Fed. R. Civ. P. 23.
- d. Dismissing the Action with prejudice, and retaining jurisdiction solely to administer and enforce the terms of this Settlement Agreement.
- e. Authorizing and directing the payment of Class Counsel's Attorney's Fees and Costs.
- f. Authorizing and directing the payment by Lincoln of complete and valid Settlement Claims that are approved pursuant to the terms of this Settlement Agreement.
- g. Providing for the release of all Released Claims, requiring the dismissal of any pending claim, action or proceeding seeking recovery for any Released Claim, and permanently enjoining all Settlement Class Members from asserting, filing, maintaining, or prosecuting any of the Released Claims in the future.
- h. Approving the Opt Out List and determining that the Opt Out List is a complete list of all Persons who have timely and properly requested exclusion from the Settlement Class and who, accordingly, shall neither share in nor be bound by the Final Approval Order.
- i. Authorizing the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of this Settlement Agreement as (1) are consistent in all material respects with the

Final Approval Order, and (2) do not limit the rights of the Settlement Class Members.

21. **“Lincoln”** means Defendant Lincoln Wood Products, Inc., and all of its past, present and future parent companies, subsidiaries, affiliates, divisions, predecessors, successors, heirs or assigns, and all past, present and future officers, directors, board members, stockholders, shareholders, agents, servants, employees, attorneys, consultants, insurers, reinsurers, and legal representatives of the foregoing entities or persons, and all vendors, distributors, dealers, or other persons or entities who marketed, sold or repaired Lincoln’s Exterior Glazed Windows. “Lincoln” does not include contractors or subcontractors that installed Lincoln’s Exterior Glazed Windows.

22. **“Lincoln Exterior Glazed Window(s)”** means any and all of the approximately 15,500 double-hung, glider, and Quantum double-hung windows, including both those consisting of all wood and those consisting of wood with aluminum cladding, that were manufactured by Lincoln with exterior glazing² between April 1, 1999 and January 1, 2007 and installed in the State of South Carolina. Lincoln Exterior Glazed Windows also includes all exterior glazed replacement sash and exterior glazed replacement sash kits installed in the foregoing windows, regardless of when the replacement sash or kit was manufactured. Information concerning how to identify Lincoln Exterior Glazed Windows and how to determine the manufacturing date will be provided to Settlement Class Members via the website to be established as part of the Notice of Class Action Settlement. If the actual manufacturing date of any Lincoln Exterior Glazed Window or exterior glazed replacement sash cannot be determined by Lincoln, then:

²“Exterior” glazing means that the insulated glass unit is set into the sash from the exterior of the window with the removable glazing bead holding the insulated glass unit in place located on the exterior of the window.

- a. Where the Lincoln Exterior Glazed Window was installed at the time of the original construction of the Affected Property, the Settlement Claimant shall be required to submit evidence of when the certificate of occupancy was issued for the Affected Property and the manufacturing date will be presumed to be four (4) months before the date that certificate of occupancy was issued.
- b. Where the Lincoln Exterior Glazed Window was installed after the original construction of the Affected Property, the Settlement Claimant shall be required to submit evidence of the date of purchase or installation of the Lincoln Exterior Glazed Window(s), and the manufacture date will be presumed to be one (1) month before the purchase or installation date established by the Settlement Claimant's evidence.

23. **“Multiple Unit Property”** means an Affected Property that contains more than one (1) living unit.

24. **“Multiple Unit Property Governing Body”** means the person(s) or entity having the legal authority or control to bind a Multiple Unit Property, such as a condominium association or a townhome association.

25. **“Named Plaintiff”** means Martin D. Schussel.

26. **“Notice Date”** means the date on which the initial publication notice of this Settlement Agreement is first published in any South Carolina newspaper pursuant to the Notice Plan attached as Exhibit A, which shall occur no more than thirty days after Preliminary Approval.

27. **“Notice of Class Action Settlement”** means the Court-approved notices to the Settlement Class. The Notice of Class Action Settlement shall include the following components:

- a. Initial publication notice, which shall be in the form attached as Exhibit B and shall provide notice of the Preliminary Approval of this Settlement Agreement and of the rights of Persons to object to this Settlement Agreement or request exclusion from the Settlement Class, and shall be published once in South Carolina print newspaper publications as described in the Notice Plan;
- b. Initial direct notice, which shall be sent via U.S. Mail (to Settlement Class Members for whom a physical address is available) or email (to Settlement Class Members for whom no physical address is available, but an email address is available) to Settlement Class Members whose physical or email addresses can be determined by Class Counsel or the Settlement Administrator from records which have already been produced by Lincoln in this Action or from other sources. Because Lincoln has already produced its relevant records, Lincoln shall not be required to produce any additional documentation or assist in searching for information identifying Settlement Class Members. This initial direct notice shall be sent by the Settlement Administrator on or within three (3) days after the Notice Date, shall be in the form attached as Exhibit C, and shall provide notice of the Preliminary Approval of this Settlement Agreement and of the rights of Persons to object to this Settlement Agreement or request exclusion from the Settlement Class.

- c. Lincoln will provide the initial direct notice attached as Exhibit C directly to former South Carolina distributors (including any known branches of such distributors) of Lincoln Exterior Glazed Windows, via U.S. mail to the distributor's last known physical address, or alternatively via e-mail to distributors for whom an e-mail address is available, and will confirm to the Settlement Administrator and Class Counsel that this has been done. Lincoln will include a cover letter or cover email in the form attached as Exhibit D. Lincoln will provide this notice on or within three (3) days after the Notice Date;
- d. Web notice will be provided via an independent settlement website, which will be established and administered by the Settlement Administrator. The website will have this Settlement Agreement, the initial publication notice described in subparagraph a of this paragraph 27, and the initial direct notice described in subparagraph b of this paragraph 27. Commencing on (and not before) the Effective Date, the website will also have the Settlement Claim Form, the second publication notice described in subparagraph g of this paragraph 27, and the second direct notice described in subparagraph h of this paragraph 27. The website will also have instructions, FAQs, information (including photographs) regarding how to identify Lincoln Exterior Glazed Windows and manufacturing dates, and descriptions (including photographs) of the conditions constituting Deteriorated Sash, Deteriorated Frame Corner and Additional Damage. All such instructions, FAQs, information and descriptions shall be written in plain English and

drafted by Class Counsel subject to approval by Lincoln, and all photographs shall be subject to approval by Lincoln. The web site will additionally contain a registration feature, so that class members can register for any future notices.

- e. Additional web notice will be provided in the manner described in the Notice Plan attached as Exhibit A.
- f. Settlement Class Members will not be permitted to submit Settlement Claims until the commencement of the Claim Period. Settlement Claim Forms will not be provided or made available to Settlement Class Members, on the settlement website or otherwise, until the commencement of the Claim Period.
- g. On or within three (3) days after the Effective Date, the Settlement Administrator shall cause a second publication notice to be published once in South Carolina print newspaper publications as described in the Notice Plan. This second publication notice shall provide notice of the Final Approval of this Settlement Agreement and of the Claim Period, and shall be in the form attached as Exhibit E;
- h. On or within three (3) days after the Effective Date, the Settlement Administrator will provide a second direct notice to Settlement Class Members for whom physical or email addresses are available. This second direct notice shall provide notice of the Final Approval of this Settlement Agreement and of the Claim Period, shall include the Settlement Claim Form, and shall be in the form attached as Exhibit F;

- i. On the Effective Date, the Settlement Administrator shall make the Settlement Claim Form available on the settlement website;
- j. The Settlement Administrator shall not provide any notice to Settlement Class Members in addition to or other than that which is described in this Settlement Agreement and the Notice plan. Class Counsel may, at their own expense, provide information about this Settlement Agreement. Class Counsel shall not be restricted in their communications with Settlement Class Members except that Class Counsel shall not publish any class-wide notice in any manner other than making information available on their law firm web sites.

28. **“Notice Plan”** means the notice program set forth in the proposal from Total Class Solutions that is attached as Exhibit A.

29. **“Opt-Out List”** means the list compiled by the Settlement Administrator of all Persons who submit timely and valid requests for exclusion from the Settlement Class.

30. **“Opt-Out Period”** means a period of 45 days commencing on the Notice Date.

31. **“Original Warranty”** means the written Limited Warranty provided by Lincoln at the time of the original sale of each of the Lincoln Exterior Glazed Windows.

32. **“Paid Replacement Kit Refund”** means a refund for Settlement Claimants who previously, and within the 10-year period of Lincoln’s Limited Warranty, replaced exterior glazed sash in a Lincoln Exterior Glazed Window with a Lincoln interior-glazed sash replacement kit pursuant to a warranty claim for a water-related problem, and were charged for a portion of the purchase price for the replacement kit. The amount of the Paid Replacement Kit Refund shall be two hundred and fifty Dollars (\$250). For each window qualifying for a Paid

Replacement Kit Refund, the Settlement Claimant may elect to either (1) receive the Paid Replacement Kit Refund, in which case all warranties (including Lincoln's written Limited Warranty) on that replacement kit shall be deemed forfeited and cancelled, or (2) receive no Paid Replacement Kit Refund and keep any Lincoln written Limited Warranty that applies to that replacement kit.

33. **"Parties"** means the Named Plaintiff and Lincoln.

34. **"Person"** or **"Persons"** means any individual, legal entity, association or Multiple Unit Property Governing Body.

35. **"Photographic Evidence"** means the photographs to be submitted by Settlement Claimants as part of their Settlement Claims. Photographic Evidence requires photographs taken with enough lighting to show the necessary information, using a film camera or digital device of sufficient resolution to depict the conditions required. Photographic Evidence of the following must be submitted for each Lincoln Exterior Glazed Window included in any Settlement Claim, labeled to identify the window depicted in each photograph :

- a. An interior view of the entire window.
- b. An exterior view of the entire window (if it is not possible to capture exterior views of individual second or third story windows, exterior views capturing multiple windows may be submitted, with the windows that are the subject of the Settlement Claim marked).
- c. Close up views of any codes on the insulated glass spacer bar or etched on the glass.
- d. Close up views of the damage constituting Deteriorated Sash or Deteriorated Frame Corner.

e. Close up views of any Additional Damage to trim or drywall.

36. **“Preliminary Approval Order”** means the order to be entered by the Court, in a form that is mutually agreeable to the Parties, provisionally certifying the Settlement Class, preliminarily approving this Settlement Agreement, and approving the Notice of Class Action Settlement pursuant to Fed. R. Civ. P. 23(c)(2) and (e).

37. **“Released Claims”** means any and all claims, causes of action and demands against Lincoln of any kind whatsoever, known and unknown, past, present and future, relating in any way to Lincoln Exterior Glazed Windows or to any exterior glazed or interior glazed replacement sash for Lincoln Exterior Glazed Windows. This includes all claims, causes of action and demands seeking any form of monetary or non-monetary relief, based on any legal or equitable theory of recovery, including all claims, causes of action and demands that were asserted or could have been asserted by the Named Plaintiff or any Settlement Class Member, against Lincoln or any other person or entity, in the Action.

a. However, notwithstanding any other term or provision in this Settlement Agreement, Settlement Class Members do not release and expressly retain any and all claims (a) for bodily injury; (b) against builders, contractors, and subcontractors for allegedly defective installation of Lincoln Exterior Glazed Windows; and (c) pursuant to the terms of any written Limited Warranty issued by Lincoln that has not expired; provided, however, that any such written Limited Warranty claims shall be strictly limited to the remedies expressly allowed by the written Limited Warranty and shall not seek any remedy or relief beyond the remedies expressly allowed by the written Limited Warranty, and that Settlement Claimants who elect to receive a Paid

Replacement Kit Refund will be deemed to have forfeited all warranties (including Lincoln's written Limited Warranty) on that replacement kit.

38. **"Settlement Administrator"** shall be Total Class Solutions of Plano, Texas. The Settlement Administrator shall provide the Notice of Class Action Settlement as set forth in this Settlement Agreement and the Notice Plan; receive and record opt-outs; receive, digitize, and perform initial review of each Settlement Claim for completeness and request missing information as provided in this Settlement Agreement; pay to Settlement Claimants the amounts they are entitled to receive pursuant to this Settlement Agreement for Settlement Claims that are allowed; and track all Settlement Claims for the Parties.

39. **"Settlement Agreement"** means this Stipulation of Class Action Settlement and Release, including all Exhibits.

40. **"Settlement Claim"** means a claim submitted by a Settlement Claimant pursuant to this Settlement Agreement.

41. **"Settlement Claim Determination"** means the notice to be provided to a Settlement Claimant by Lincoln, with an electronic copy to Class Counsel, approving or denying that Settlement Claimant's Settlement Claim and explaining the basis for any denial, whether in whole or in part, such that the Settlement Claimant can make an informed decision as to whether to accept the determination or appeal it.

42. **"Settlement Claim Form"** means the Court-approved document that a Settlement Class Member must submit in order to seek benefits under this Settlement Agreement. The Settlement Claim Form shall be in the form set forth in the attached Exhibit G, subject to the Court's approval in the Preliminary Approval Order.

43. **"Settlement Claimant"** means any Settlement Class Member who submits a

Settlement Claim.

44. **“Settlement Class”** means all Persons in the State of South Carolina who currently own an Affected Property in which any Lincoln Exterior Glazed Window is installed and who do not submit a valid and timely request for exclusion from the Settlement Class. The Settlement Class does not include any Persons who (1) previously settled and/or released any Released Claims, (2) had Released Claims dismissed with prejudice in court, or (3) are current owners of Lincoln Exterior Glazed Windows but have assigned, transferred or conveyed their Released Claims to others.

- a. The Settlement Class includes any personal representatives of the estates of deceased current owners of Affected Property.
- b. The Settlement Class excludes 1) Lincoln and its subsidiaries and affiliates; (2) all governmental entities; and 3) the judge(s) to whom this case is assigned and any of their immediate family members.

45. **“Settlement Class Member”** means any member of the Settlement Class.

B. CERTIFICATION OF SETTLEMENT CLASS

1. The Parties agree that the Settlement Class should be certified solely for purposes of settlement, with the Named Plaintiff as the Settlement Class representative and Class Counsel as counsel for the Settlement Class. This Settlement Agreement is for settlement purposes only, and nothing herein, nor any action taken hereunder, shall constitute, be construed as, or be admissible in evidence as, an admission by Lincoln of any wrongdoing, fault, violation of law, or liability of any kind, or of the validity of any claim alleged against Lincoln in this Action, or in any other action or proceeding. This Settlement Agreement shall, however, be admissible in an action or proceeding to enforce its terms.

2. Any conditional, preliminary, or final certification of a Settlement Class pursuant to the terms of this Settlement Agreement shall not constitute, and shall not be construed as, an admission by Lincoln that this Action, or any other action or proceeding, is otherwise appropriate for treatment as a class action, and Lincoln reserves the right to: (1) oppose class certification in this Action should this Settlement Agreement not be approved or implemented for any reason; (2) oppose class certification in any other action or proceeding; and (3) use the certification of the Settlement Class in this Action to oppose class certification in any other action or proceeding.

3. If this Settlement Agreement is not approved by the Court, is terminated pursuant to its own terms or does not become effective for any reason, then the Settlement Class shall cease to exist and the Action shall proceed as if no Settlement Class or Settlement Agreement had ever existed, and Lincoln shall not have waived any rights it might have had to oppose class certification, and to defend itself against the allegations of Named Plaintiff in this Action.

C. PRELIMINARY APPROVAL

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

within twenty (20) days, the Named Plaintiff shall move the Court to enter a Preliminary Approval Order, in a form mutually agreeable to the Parties.

D. FINAL APPROVAL

As soon as practicable after the Opt-Out Deadline and as permitted by the CAFA Notice, Named Plaintiff will move the Court to conduct a Final Approval Hearing and to enter a Final Approval Order, as defined in this Settlement Agreement and in a form mutually agreeable to the Parties.

E. AGREEMENT TO COOPERATE

The Parties will cooperate, undertake their best efforts and take all reasonable actions to effectuate the terms and conditions of this Settlement Agreement. Lincoln, Lincoln's counsel, Class Counsel and the Named Plaintiff shall not encourage any Person to request exclusion from the Settlement Class, encourage any Person to object to the Settlement Agreement, or discourage any Person from submitting a Settlement Claim and participating in the distribution of the proceeds of this Settlement Agreement.

If the Court declines to enter either the Preliminary Approval Order or the Final Approval Order, Named Plaintiff, Class Counsel, Lincoln and Lincoln's counsel will make all reasonable efforts consistent with the terms of this Settlement Agreement to cure any defect identified by the Court. If such efforts are unsuccessful or if, despite such efforts, the Court does not enter both the Preliminary Approval Order and Final Approval Order, this Settlement Agreement shall be deemed terminated and litigation of the Action shall resume.

F. SETTLEMENT CLAIMS: PREREQUISITES AND AVAILABLE RELIEF

General: To be eligible for relief under this Settlement Agreement, Settlement Class Members must submit a Settlement Claim Form. Settlement Claim Forms must be submitted

during the Claim Period. Settlement Claim Forms and supporting documentation can be submitted online at the settlement website, or by U.S. mail or another reliable carrier, such as FedEx or UPS.

Lincoln shall provide the following relief to qualifying Settlement Class Members pursuant to the following terms and procedures:

1. Relief for Class Members:

- a. Deteriorated Sash Payment: Settlement Class Members who qualify for a Deteriorated Sash Payment shall be paid five-hundred and twenty-five dollars (\$525) for each Lincoln Exterior Glazed Window that has one or more Deteriorated Sash.
- b. Deteriorated Frame Corner Payment: Settlement Class Members who qualify for a Deteriorated Frame Corner payment shall be paid seventy five dollars (\$75) for the first Lincoln Exterior Glazed Window with one or more Deteriorated Frame Corners owned by that Settlement Class Member, and fifty dollars (\$50) for each additional Lincoln Exterior Glazed Window with one or more Deteriorated Frame Corners owned by that Settlement Class Member.
- c. Additional Damage Payment: Settlement Class Members who qualify for a Deteriorated Sash Payment or a Deteriorated Frame Payment shall be paid an additional seventy-five dollars (\$75) for the first Lincoln Exterior Glazed Window owned by that Settlement Class Member that has Deteriorated Sash or Deteriorated Frame Corner and Additional Damage, and fifty dollars (\$50) for each additional Lincoln Exterior Glazed

Window owned by that Settlement Class Member that has Deteriorated Sash or Deteriorated Frame Corner and Additional Damage.

- d. Paid Replacement Kit Refund: Settlement Class Members who qualify for a Paid Replacement Kit Refund may elect, for each Lincoln Exterior Glazed Window that qualifies for the Paid Replacement Kit Refund, to either (1) receive the two hundred and fifty dollars (\$250) Paid Replacement Kit Refund, in which case all warranties (including any Lincoln written Limited Warranty) on that replacement kit shall be deemed forfeited and cancelled, or (2) receive no Paid Replacement Kit Refund and keep any unexpired Lincoln written Limited Warranty that applies to that replacement kit. Any Settlement Class Member who would be eligible for a Paid Replacement Kit Refund but who does not submit a Settlement Claim will, by default, not receive the Paid Replacement Kit Refund and keep any unexpired written Limited Warranty on the replacement kit.
- e. Limitations of Payments: Under no circumstances shall Lincoln be required to pay more than one (1) Person for the same condition relating to the same Lincoln Exterior Glazed Window. In the event of multiple Settlement Claims relating to the same window, Lincoln will pay, if payment is due under this Settlement Agreement, the first of the competing Settlement Claimants to file a complete and valid Settlement Claim as to the Affected Property, and Lincoln will have no obligation to make any payment to any other Settlement Claimants for that window.

2. Required Settlement Claim Information:

To be eligible for relief under this Settlement Agreement, Settlement Class Members must submit a timely and fully complete Settlement Claim Form. To be timely, the Settlement Claim Form and required photographs and documents must be submitted online at the settlement website on or before the Claim Deadline, or must be deposited in the U.S. mail or with a reliable carrier such as FedEx or UPS on or before the Claim Deadline. A Settlement Claim Form must:

- a. State that the Settlement Class Member currently owns an Affected Property.
- b. Include evidence of current ownership of the Affected Property (*e.g.*, copy of deed, tax bill, mortgage bill, or agreement addressing ownership of windows in the case of Multiple Unit Properties).
- c. Identify the windows that are the subject of the Settlement Claim, and include evidence that those windows are Lincoln Exterior Glazed Windows that qualify for Deteriorated Sash Payment, Deteriorated Frame Corner Payment, Additional Damage Payment and/or Paid Replacement Kit Refund. This evidence shall include the Photographic Evidence required by this Settlement Agreement, and shall also include the following:
 - i. For Lincoln Exterior Glazed Windows that were installed at the time of the original construction of the Affected Property, evidence of that installation, and any available evidence of the manufacturing date, or if evidence of the manufacturing date is not available then either a copy of the certificate of occupancy for the Affected Property or evidence of

- when the certificate of occupancy was issued;
- ii. For Lincoln Exterior Glazed Windows that were installed after the original construction of the Affected Property, evidence of the date of purchase or installation, and any available evidence of the manufacturing date.
 - iii. For Settlement Claims seeking a Paid Replacement Kit Refund, (a) evidence that, within the 10-year period of Lincoln's Limited Warranty, the Settlement Claimant replaced exterior glazed sash in a Lincoln Exterior Glazed Window with a Lincoln interior glazed sash replacement kit pursuant to a warranty claim for a water-related problem, and was charged for a portion of the purchase price for the replacement kit, and (b) a statement that the Settlement Class Member elects the Paid Replacement Kit Refund instead of keeping the Limited Warranty, acknowledging that any unexpired portion of the Limited Warranty shall then be deemed forfeited and cancelled upon Lincoln's approval of the Settlement Claim.
 - iv. Optionally, any other evidence demonstrating the facts entitling the Settlement Claimant to relief, for example statements or records from contractors.
- d. If the deterioration in Deteriorated Sash or Deteriorated Frame Corners cannot be captured by a photograph, the Settlement Claimant is encouraged to puncture the deteriorated area with an awl and leave the awl in while taking the photograph.

3. Transfer and Assignment of Claims: Settlement Class Members can only submit Settlement Claims as to their own Affected Property, and cannot assign, transfer, or aggregate their Settlement Claims, with the sole exception that Settlement Class Members who are transferring ownership of their Affected Property during the Claim Period may assign their Settlement Claims to the new owner.

G. CLAIMS PROCESSING

1. The Settlement Administrator shall receive all Settlement Claim Forms and conduct an initial review of each Settlement Claim Form for adequacy and completeness.
 - a. Where the Settlement Administrator believes there are insufficiencies in any part of a Settlement Claim submitted on or before the Claim Deadline, the Settlement Administrator shall, within ten (10) days after receipt of the Settlement Claim, notify the Settlement Claimant of those insufficiencies and what the Settlement Claimant must do to correct them.
 - b. A one-time cure period of thirty (30) days will be provided, measured from the date on which notice of insufficiency was first sent by the Settlement Administrator to the Settlement Claimant.
 - i. If, after receiving any additional submission from the Settlement Claimant during the thirty (30) day cure period, the Settlement Administrator believes there are still insufficiencies in the Settlement Claim, the Administrator shall give a follow-up notice to the Settlement Claimant within five (5) days after receipt of the additional submission, and the Settlement Claimant shall have until the end of the thirty (30) day cure period to correct the remaining insufficiencies.

- ii. The Settlement Administrator shall give only one (1) follow-up notice (for a total of two (2) insufficiency notices). In no event shall the Settlement Administrator provide any notices of insufficiency with respect to Settlement Claims received after the Claim Deadline, and in no event shall the Settlement Administrator provide any follow-up notices with respect to additional submissions received after the expiration of the thirty (30) day cure period.
 - iii. Both Lincoln and Class Counsel shall be copied on all notices of insufficiency and all follow-up notices.
 - iv. Failure to cure an insufficiency in the Settlement Claim within the cure period will result in denial of the portion of the Settlement Claim affected by the insufficiency. If the insufficiency affects the entire Settlement Claim, the Settlement Claim will be denied in its entirety. If the insufficiency affects only a portion of the Settlement Claim (*e.g.*, only a portion of the Lincoln Exterior Glazed Windows included in the Settlement Claim), only that portion will be denied.
- c. Email shall be the preferred method of communication with Settlement Claimants (if an email address is provided), unless the Settlement Claimant indicates a preference otherwise, and the Settlement Administrator shall endeavor to maintain a single email chain with each Settlement Claimant.
 - d. Upon receipt of a complete Settlement Claim Form, either initially or within the cure period, the Settlement Administrator shall, in a timely

fashion, forward the Settlement Claim Form and all supporting documentation to Lincoln (with a copy to Class Counsel) for claim determination. The Settlement Administrator shall transmit the original claim documentation to Lincoln only if and as necessary, and will otherwise preserve the original submissions for use by the Appeal Adjudicator.

2. Lincoln shall make a Settlement Claim Determination within 45 days after its receipt of a completed Settlement Claim Form. Lincoln shall provide copies of the Settlement Claim Determination to the Settlement Claimant, the Settlement Administrator and Class Counsel. Lincoln shall make the Settlement Claim Determination based on its choice of either (1) the Settlement Claim Form and supporting evidence alone, or (2) the Settlement Claim Form and supporting evidence plus an inspection of the Lincoln Exterior Glazed Windows that are the subject of the Settlement Claim if Lincoln elects to conduct such an inspection.

a. Lincoln shall provide at least one designated, knowledgeable contact for communication relating to the administration of this Settlement for the duration of the administration of this Settlement Agreement. Lincoln shall also provide an adequate number of staff for the prompt and competent review and determination of Settlement Claims and shall endeavor to avoid turnover in such staff (and contact) during the performance of this Settlement Agreement.

b. Lincoln shall provide to Class Counsel contemporaneous electronic copies of all communications with Settlement Claimants.

c. When Lincoln elects to conduct an inspection, it may schedule the inspection directly with the Settlement Claimant with copy to Class Counsel. Class Counsel or

its designee shall be entitled to attend. No more than two (2) persons from Lincoln and no more than two (2) persons from Class Counsel shall attend any inspection. The Settlement Claimant may also have a representative at the inspection. At the inspection, Lincoln shall only be required to inspect those Lincoln Exterior Glazed Windows which were included in the Settlement Claim Form.

3. Absent timely appeal of the Settlement Claim Determination by the Settlement Claimant or his counsel, the Settlement Claim Determination will be deemed final.

4. A Settlement Claimant shall have thirty (30) days following the mailing of the Settlement Claim Determination to appeal the Settlement Claim Determination. The appealing Settlement Claimant shall submit his, her or its appeal to the Settlement Administrator in writing, with a written explanation of the reasons why he, she or it believes the Settlement Claim Determination is incorrect. The Settlement Administrator shall immediately provide a copy of each appeal to the appropriate Appeal Adjudicator, Lincoln and Class Counsel. The Appeal Adjudicator shall review the appeal, the Settlement Claim Determination, and the Settlement Claim including any supporting evidence. The Appeal Adjudicator shall also conduct an inspection of the windows that are the subject of the Settlement Claim unless the Appeal Adjudicator determines that an inspection is not necessary because it is clear from the written and photographic materials alone that the Settlement Claim should or should not be allowed. The Appeal Adjudicator shall then decide the appeal. All appeal adjudications shall be *de novo*.

5. The Appeal Adjudicator shall have thirty (30) days from receipt of the appeal to issue a decision. The Appeal Adjudicator shall provide copies of the decision to the Settlement Claimant, the Settlement Administrator, Lincoln and Class Counsel. The decision of the Appeal Adjudicator is final.

6. Payments of allowed Settlement Claims shall be issued by the Settlement Administrator with funds provided by Lincoln. On the first business day of each month during which Settlement Claims are being decided, the Settlement Administrator shall provide to Lincoln and Class Counsel an itemization of claims allowed during the preceding month. Within five (5) business days after receiving that report, Lincoln will transfer to the Settlement Administrator funds sufficient to cover those allowed claims, and the Settlement Administrator will then promptly disburse the Settlement Claim payments to the Settlement Claimants.

7. “Day” time limits in this Settlement Agreement refer to calendar days, not business days, unless otherwise indicated.

8. Settlement Claimants will be able to complete and submit Settlement Claim Forms (including attachments) electronically through an online module to be established by the Settlement Administrator.

9. The Settlement Administrator and Lincoln will each use their reasonable best efforts to conduct expedited reviews of Settlement Claims where the Settlement Claimant establishes a legitimate need for expedited review because of (1) a need to complete substantial repairs to the Affected Property on an expedited basis, or (2) the impending sale of the Affected Property, or (3) other special circumstances.

10. All Parties reserve their rights to bring any non-performance by the Settlement Administrator, Lincoln, or the Appeal Adjudicators to the Court’s attention.

11. On the first (1st) day of each month during which Settlement Claims are being decided, the Settlement Administrator will transmit a summary of the prior month’s Settlement Claim activity to Class Counsel and to Lincoln.

12. Nothing herein shall require Lincoln to make any payments or provide any relief

to any Settlement Claimant prior to the Effective Date.

13. If circumstances come to light in which the Parties desire to coordinate a simplified procedure to process unusually large or complex Settlement Claims or a reoccurring issue, then, solely by voluntary mutual agreement, and without prejudicing the rights of any Settlement Class Members, the Parties may do so.

H. NOTICE PLAN AND COSTS OF NOTICE

1. The costs for the Settlement Administrator's services, which shall include all costs associated with providing the Notice of Class Action Settlement in accordance with the terms of this Settlement Agreement, shall be paid by Lincoln. The total costs for the Settlement Administrator's services and the Notice of Class Action Settlement shall not exceed the amounts set forth in the Notice Plan attached as Exhibit A. The Settlement Administrator shall, prior to the Final Approval Hearing, file an affidavit with the Court confirming that notice has been provided as set forth herein and in a constitutionally sufficient manner.

I. REQUESTS FOR EXCLUSION AND OBJECTIONS

1. A Person may opt-out of the Settlement Class by completing, signing and returning a request for exclusion during the Opt-Out Period. The request for exclusion must be sent by mail, addressed to the Settlement Administrator, and postmarked on or before the end of the Opt-Out Period. Any Person who elects to opt-out of the Settlement Class shall not be entitled to relief under this Settlement Agreement. The request for exclusion must:

- a. Contain the Person's full name and current address;
- b. Identify the name and address of the Person's counsel, if any;
- c. Declare that the Person owns an Affected Property, provide the address for that property and state whether it is a single family home, a commercial

structure or a Multiple Unit Property;

- d. Declare that the Person wants to be excluded from the Settlement Class;
- e. Be signed by the Person requesting exclusion; and
- f. If the Person's Affected Property is a Multiple Unit Property, then the Person requesting exclusion shall submit a copy of the operative agreement governing the property and establishing that the Person owns or is responsible for the upkeep of the Lincoln Exterior Glazed Windows installed therein. In the event of a dispute between a Multiple Unit Property Governing Body and an individual owner as to any request for exclusion, the Court shall determine both ownership and the scope and validity of the request for exclusion.

2. Settlement Class Members who do not file a timely request for exclusion and who wish to object to this Settlement Agreement may do so by filing a written notice of their intent to object with the Clerk of the Court containing: (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, identifying counsel by name, address and phone number; (c) a detailed statement of the specific legal and factual bases for each objection; (d) a list of any witnesses and photocopies of any exhibits which the objector intends to introduce at the Final Approval Hearing; and (e) the objector's signature. Any such notice of intent to object must be (a) filed with the Clerk of Court no later than thirty (30) days before the date set for the Final Approval Hearing, and (b) sent via first-class mail, postmarked no later than thirty (30) days before the Final Approval Hearing, to both Lincoln's counsel and Class Counsel. Any Settlement Class Member who does not file a written notice of their intent to object within

this timeframe waives the right to do so in the future, and shall be forever barred from objecting to the Settlement Agreement.

J. EXCLUSIVE REMEDY AND JURISDICTION OF COURT

1. Upon the Effective Date of this Settlement Agreement, each and every Settlement Class Member who has not submitted a valid and timely request for exclusion from the Settlement Class pursuant to Section I submits to the jurisdiction of the Court and will be bound by the terms of this Settlement Agreement and any other Court orders entered in this Action going forward including, without limitation, the Final Approval Order barring further litigation with respect to any of the Released Claims.

2. This Settlement Agreement and the relief provided herein shall be Settlement Class Members' sole and exclusive remedy for any and all Released Claims.

K. ENFORCEMENT OF AGREEMENT

In the event of a breach of this Settlement Agreement, the Court may exercise all equitable powers over Lincoln, Named Plaintiff, Class Counsel, the Settlement Administrator, the Appeal Adjudicator or any Settlement Class Member to enforce this Settlement Agreement and the Final Approval Order, 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, and an award of attorney fees to the prevailing party; provided, however, that attorney fees may not be awarded against a Settlement Class Member unless provided for by federal rule or statute.

L. ATTORNEYS' FEES AND COSTS FOR CLASS COUNSEL AND INCENTIVE PAYMENT TO CLASS REPRESENTATIVE

1. Attorneys' Fees and Costs for Class Counsel will be exclusive of and in addition to any relief granted to Named Plaintiff and Settlement Class Members for valid Settlement

Claims. No portion of the relief to Named Plaintiff or Settlement Class Members pursuant to this Settlement Agreement shall be reduced in any way to pay fees, costs, interest, or expenses to Class Counsel.

2. Named Plaintiff and Class Counsel agree not to seek Attorneys' Fees and Costs in excess of one million, two-hundred thousand dollars (\$1,200,000.00), and Lincoln agrees not to object to an award of up to that amount.

3. This Settlement Agreement is not contingent on the Court approving Class Counsel's request for Attorneys' Fees and Costs. Failure of the Court to approve all or part of Class Counsel's request for Attorneys' Fees and Costs will not invalidate any other terms of this Settlement Agreement.

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

5. The Attorneys' Fees and Costs will be paid by Lincoln into escrow at Lyles & Lyles, or such other location agreed upon by the parties in Charleston, South Carolina, within ten (10) days after entry of the Final Approval Order, and paid to Class Counsel within five (5) days after the Effective Date.

6. Subject to Court approval, Lincoln agrees to pay the Named Plaintiff an incentive award of nine-thousand five-hundred dollars (\$9,500.00). This amount shall be in addition to any relief to which the Named Plaintiff may be entitled by virtue of his submission of any Settlement Claim. This amount shall be paid within five (5) days after the Effective Date.

M. MAXIMUM NUMBER OF OPT-OUTS

1. If the number of Persons requesting exclusion from the Settlement Class within

the Opt Out Period exceeds the number previously agreed to by the Parties by separate instrument, then Lincoln will have the right, at its option, to terminate this Settlement Agreement. Each living unit in a Multiple Unit Property shall count as one (1) Person for the purpose of calculating the number of opt-outs.

2. The number of opt-outs shall be submitted to the Court under seal. The Parties will have the right and opportunity to examine any opt-out request to determine if the requestor is a 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), and in the event that legitimate opt-outs exceed the opt-out number, Lincoln must promptly advise Class Counsel if it intends to terminate this Settlement Agreement. If Lincoln does not advise Class Counsel of its intention to terminate this Settlement Agreement within fourteen (14) days after its examination of all opt-out requests, then it shall be deemed to have decided to continue under the Settlement Agreement.

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

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

2. The performance of this Settlement Agreement is expressly contingent upon the Court's entry of the Final Approval Order. If the Court issues an Order disapproving this Settlement Agreement or requests changes unacceptable to Lincoln, Lincoln may elect to terminate this Settlement Agreement within thirty (30) business days of such Order or request, rendering this Settlement Agreement null and void, *ab initio*, and not admissible as evidence for any purpose in any pending or future litigation or proceeding. In the event that this Settlement

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

3. In the event that any of the conditions or events described above in this Section N are not met or do not occur, such that this entire Agreement shall become null and void, the Parties shall have the option, alternatively, to agree in writing to waive the event or condition and proceed with this Settlement Agreement.

O. DENIAL OF LIABILITY

1. Lincoln denies all of the material allegations in the Action and enters into this Settlement Agreement without acknowledging any fault, liability, or wrongdoing of any kind. Neither this Settlement Agreement nor any of the negotiations or proceedings connected with it shall be construed as an admission or concession by Lincoln to the contrary.

P. REPRESENTATIONS AND WARRANTIES

1. Each of the Parties represents and warrants that it has full power and authority to enter into this Settlement Agreement and to perform its obligations hereunder.

2. Each of the Parties has had an opportunity to receive, and has received, independent legal advice from his or its attorneys regarding this Settlement Agreement and has carefully read, knows, understands and voluntarily accepts and agrees to the terms herein.

3. 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 making or executing this Settlement Agreement, except as expressly stated herein.

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

Q. JUDGMENT

After the Final Approval Hearing, and subject to the Court's final approval of the Settlement Agreement, the Parties shall request that the Court enter a Final Approval Order as defined herein.

R. MISCELLANEOUS PROVISIONS

1. This Settlement 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.

2. This Settlement Agreement shall constitute the entire agreement among the Parties with regard to the subject matter of this Settlement Agreement and shall supersede any previous agreements and understandings between the Parties. This Settlement Agreement may not be changed, modified, or amended except in writing, signed by the Parties or their 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 Lincoln's counsel prior to dissemination to the Settlement Class.

3. Subject to the limitations and conditions expressly provided herein, this Settlement Agreement shall be binding upon and inure to the benefit of the Settlement Class, the Parties and their representatives.

4. References to a "Section" include references to all paragraphs within the referenced Section.

5. Each term of this Settlement Agreement, excluding the titles of the various

paragraphs, is contractual and not merely a recital.

6. Any notice, request, instruction or other document given by a Party to any other Party in connection with this Settlement Agreement, shall be in writing and delivered by facsimile, electronic mail, U.S. Mail, or as otherwise agreed in writing, to:

FOR LINCOLN:

Gordon Davenport, III
Foley & Lardner LLP
Suite 5000
150 East Gilman Street
Madison, WI 53703
Phone: (608) 258-4208

FOR THE SETTLEMENT CLASS:

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

7. Except as otherwise provided in this Settlement Agreement, any request, objection, submission, form, notice or other written communication regarding any Settlement Claim shall be deemed 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, whichever occurs first.

8. In no event shall the Parties or their 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 Settlement Agreement.

9. This Settlement Agreement shall be deemed to have been executed upon the last date of execution by all Parties, 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.

10. The Parties and their counsel agree not to disparage each other, Lincoln's Exterior

Glazed Windows, or the compromised claims at issue in the Action or this Settlement Agreement. The Parties and their counsel shall not issue any press release, and shall not make any public disclosure (other than public filings with the Court) regarding this Settlement Agreement until after the Court enters a Preliminary Approval Order. However, in the event that either Class Counsel or Lincoln receives inquiries from Settlement Class Members regarding the terms of the Settlement Agreement, they may advise the Settlement Class Member(s) of the status and terms of the Settlement Agreement at any time.

11. All Confidentiality Orders entered in this Action shall remain in effect.

LINCOLN WOOD PRODUCTS, INC.

By: Dean Krueger

Title: Vice President

Date: 3/22/16

MARTIN D. SCHUSSEL

By: _____

Date: _____

CLASS COUNSEL

By: _____

Date: _____

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LINCOLN WOOD PRODUCTS, INC.

By: _____

Title: _____

Date: _____

MARTIN D. SCHUSSEL

By: 

Date: March 22, 2016

CLASS COUNSEL

By: 

Date: Justin Lucca

3-22-16