

IN THE CIRCUIT COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

JOHN BABB, on behalf of)	
himself and all similarly)	Docket No.: CT-001818-04
situated persons and entities,)	Division 4
)	
PLAINTIFFS,)	
)	
v.)	
)	
)	
WILSONART INTERNATIONAL, INC.,)	
a Delaware corporation,)	
)	
DEFENDANT.)	

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (the “Stipulation”) is submitted pursuant to Rule 23.05 of the Tennessee Rules of Civil Procedure. Subject to the approval of the Court, this Stipulation memorializes a settlement (the “Settlement”) of the above-captioned action (the “Action”). The Settlement is by and among Plaintiff John Babb, individually, and in his representative capacity on behalf of the Settlement Class (as defined below) and Wilsonart International, Inc. (hereinafter referred to as “Wilsonart” or "Defendant"). The Plaintiffs and Defendant are hereinafter referred to collectively as the “Parties.”

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the Parties, through their respective counsel, that the Action be settled subject to the following terms and conditions:

1. The Settlement Class shall include all residential end users who had purchased and installed Wilsonart® Solid Surfacing Veneer (“SSV”) and experience

cracking and/or delamination during Wilsonart's ten (10) year warranty period and have not previously executed a release of warranty claims with Wilsonart. Excluded from the Settlement Class are the individuals or entities that have purchased Wilsonart SSV for use in commercial applications or settings (non-residential use) and all residential end-users who have submitted a warranty claim which was honored prior to the Effective Date of this Settlement and within the applicable warranty period; provided however, these residential end-users are included in the Class to the extent they experience a new or additional crack and/or delamination after the Effective Date of this Settlement. Also excluded from the Settlement Class are Wilsonart's agents, employees, owners, and assigns. This class is hereinafter referred to as the "Class," the "Settlement Class," or "Settlement Class Members."

2. Upon execution of the Stipulation of Settlement, the Parties shall jointly and promptly request that the Court certify the proposed Settlement Class, pursuant to Rule 23.02(3) of the Tennessee Rules of Civil Procedure, for purposes of the Settlement only by entering an Order Granting Preliminary Approval of Proposed Settlement (the "Order of Preliminary Approval"), in the form substantially attached hereto as Exhibit "A." In the event that the Settlement does not become final and effective for any reason, the Settlement Class will immediately and automatically be decertified. The Parties reserve all arguments as to the propriety of a class for non-settlement purposes.

3. In exchange for a release by Plaintiff and the Settlement Class in the form specified in the proposed Order and Final Judgment (the "Release"), the Defendant agrees to establish a

settlement warranty claims procedure and pay certain amounts as may be required to the Class members pursuant to the terms and conditions set forth in the Consideration and Settlement Claim Procedure attached hereto as Exhibit "B" and incorporated herein by reference. In addition, Wilsonart has agreed to pay Plaintiff John Babb \$12,000.00 for serving as a named class representative in the Action.

4. As part of the Settlement, Defendant has provided, and shall continue to provide, confirmatory discovery as to the nature of historical SSV claims, the number of total SSV installations, and average cost of historic SSV installations. Plaintiffs' counsel and counsel for Wilsonart shall execute a Stipulation memorializing the confirmatory discovery conducted by Plaintiffs and file that Stipulation with their papers in support of final approval of the settlement.

5. Wilsonart shall advance sufficient cash to pay the costs of notice and administration of the Settlement as and when incurred. Wilsonart shall not be entitled to any refund or reimbursement of the costs of notice and administration in the event that the Settlement does not become final and effective for any reason. Pursuant to the Consideration and Settlement Claims Procedure, the notice and administration shall, at the determination of and with oversight of Plaintiffs' counsel in consultation with Defendant's counsel, be the responsibility of Wilsonart and subject to annual reporting requirements to the Court and Plaintiffs' counsel as outlined therein. Specifically, on or before November 29, 2004, Wilsonart shall mail the Notice of Proposed Settlement of Class Action (the "Notice") in a form substantially similar to Exhibit C, attached hereto, to the last known address of: (i) all former warranty claimants who have not executed a release of warranty claims; (ii) all residential end-users who submitted a warranty registration; (iii) all known Wilsonart certified fabricators and distributors. Wilsonart shall also arrange for the publication the Summary Notice of Proposed Settlement of Class Action (the "Summary Notice") in

a form substantially similar to Exhibit D, attached hereto, three times in the *U.S.A. Today* during a consecutive 10 day period within twenty (20) days of the entry of the Order of Preliminary Approval. Wilsonart will also establish and maintain through 2013 an internet website which shall (i) post the Notice, (ii) provide electronic access to claim forms and instructions, and (iii) provide a toll free number and an address which class members may call or write to inform Wilsonart of the SSV warranty claims.

6. The following are express conditions precedent to the effectiveness of the Settlement: (a) completion of confirmatory discovery as set out in Paragraph 4, above; (b) certification of the Settlement Class on terms mutually acceptable to the Parties; (c) the absence of any objection or demand for material changes to the Settlement that cannot be resolved by agreement among the Parties or by a Court Order in the Action overruling the objection; (d) Court approval of the Settlement in all material respects and entry of an Order and Final Judgment substantially in the form attached hereto as Exhibit "E"; and (e) the Order and Final Judgment becoming final because either (i) the time to appeal or otherwise seek review has expired without any appeal having been taken or review sought, or (ii) if an appeal is taken or review sought, the appeal or review has been finally determined by the highest court before which appeal or review is sought and the Order and Final Judgment has been affirmed in all material respects. The date on which all of these express conditions precedent have been satisfied shall be the "Effective Date" of the Settlement. Upon the Effective Date of the Settlement, the Defendant agrees to pay (by wire transfer of good U.S. funds) the attorneys' fee approved by the Court consistent with the Fee Application discussed herein in Paragraph 8 and the \$12,000.00 payment to Plaintiff John Babb.

7. The Parties shall execute a separate letter agreement providing for certain procedures in the event that the Court certifies the class, including a provision that the Defendant may, at its sole

option, terminate the Settlement if more than an agreed upon number of the Settlement Class Members opt out of the Settlement Class pursuant to the procedures set forth in the Notice of Proposed Settlement of Class Action.

8. The attorneys representing the named Plaintiff, John Babb, and the Settlement Class ("Settlement Class Counsel") shall make application for attorneys' fees in the amount of Three Million Five Hundred Thousand Dollars (\$3,500,000.00). ("the Fee Application"). Wilsonart has agreed to pose no objection to the Fee Application, provided that the application neither seeks nor results in attorney's fees in an amount exceeding Three Million Five Hundred Thousand Dollars (\$3,500,000.00). Wilsonart has agreed to pay fees not exceeding the referenced amount separate, apart and in addition to the Consideration paid to Class Members. The Court's approval of the Settlement shall not be conditioned in any way on the Court's approval of the Fee Application, and rejection of the Fee Application shall not provide a basis to terminate or modify the Settlement.

9. Upon the Effective Date, the Consideration and Settlement Claims Procedure shall become effective and shall be implemented by Wilsonart.

10. Except as expressly provided in paragraph 5 above, with respect to the payment of the costs of notice and administration and the continuing obligations contained in this paragraph, if the Settlement does not become final and effective for any reason: (a) none of its terms shall be effective or enforceable; (b) the Parties shall revert to their litigation positions as of November 8, 2004; and (c) the fact and terms of this Settlement shall not be used for any purpose at the trial of this cause.

11. Nothing contained in this Stipulation, or any other document executed or filed in connection with the Settlement, shall be construed as an admission (a) by the Defendant of any

alleged liability, fault or wrongdoing whatsoever of the Defendant, or (b) by Plaintiffs or any member of the Settlement Class that any of their claims are without merit or lack validity.

12. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate the Settlement, shall be governed by the internal laws of the State of Tennessee without regard to conflicts of laws, except to the extent that federal law requires that federal law governs.

13. This Stipulation may be executed in counterparts, including by signature transmitted by facsimile. Each counterpart when so executed shall be deemed to be an original, and all such counterparts together shall constitute the same instrument.

14. Each of the signatories hereto hereby represents and confirms that he/she has the necessary authority to execute this Stipulation on behalf of each and every one of his/her respective clients.

15. The Parties agree that they will use their best efforts to secure approval of the Settlement and full participation by all members of any Settlement Class certified by the Court and that they will take such other reasonable steps as are necessary to implement the Settlement.

16. The Court shall retain jurisdiction with respect to the implementation and enforcement of the Settlement.

Dated: November ____, 2004.

Respectfully submitted,

**GLASSMAN, EDWARDS, WADE & WYATT,
P.C.**

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OF COUNSEL:

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**BAKER, DONELSON, BEARMAN,
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Counsel for Defendant Wilsonart
International, Inc.

Exhibit "A"

CONSIDERATION AND SETTLEMENT CLAIMS PROCEDURE

Except as otherwise expressly indicated herein, all capitalized terms are as defined in the Stipulation of Settlement.

1. Subject to the claim validation process set forth below, the Settlement Consideration shall consist of cash payments provided by Wilsonart to Settlement Class Members in the amounts and form specified below in Paragraph 4 who submit valid warranty claims in the time and manner as specified in Paragraph 2. While the actual exposure cannot be determined with certainty at this time, based upon Wilsonart's warranty claims history concerning SSV, the parties reasonably believe that the total amount of consideration that will be paid to the Settlement Class Members shall be between \$17,300,000.00 and \$23,500,000.00.

2. Any Settlement Class Member desiring to make a warranty claim with respect to the cracking and/or delamination of SSV shall be required to submit a warranty claim form to Wilsonart. Wilsonart shall establish a worldwide internet website notifying Class Members of this Class Settlement which it will maintain through the year 2013. This website shall (i) post the Notice of Proposed Settlement of Class Action and Wilsonart's Care and Maintenance Instructions for SSV, (ii) provide electronic access to claim forms and instructions and (iii) provide a toll free phone number and an address which Settlement Class Members may call or write to inform Wilsonart of the SSV warranty claims. Upon Wilsonart's receipt of a notice of claim, the Settlement Class Member will receive claim forms either electronically or by regular mail. This claim form will require the class member to provide Wilsonart with the following information:

- a. Name, address, and telephone number;
- b. Photos of the cracking/delamination;

- c. Proof of ownership of the residence containing Wilsonart SSV. In order to prove ownership, a Settlement Class Member may submit a property tax bill, a declaration page or bill from homeowner's insurance, a warranty deed or deed of trust, or a mortgage payment bill;
- d. Schematic drawing of the SSV installation (the form of which will be provided by Wilsonart);
- e. Copy of the original SSV invoice, if available; and
- f. Date of original installation.

3. If a Settlement Class Member is unable to submit a copy of the original SSV invoice, then the Settlement Class Member shall be entitled to establish the installation date and/or installation price by submitting a letter or other document from an SSV fabricator, a home builder or distributor. If the Settlement Class Member is unable to do so, the method for establishing price based on installation size shall be as follows: \$65 per lineal foot of the total installation square footage. The year of installation for these Settlement Class Members without copies of original invoices or other evidence of the installation date will be assumed to be 1999.

- 4. The settlement amount paid by Wilsonart will be based on the year of installation as follows:

Year 1 of Customer's Warranty Period: 100% of the purchase and installation price

Year 2 of Customer's Warranty Period: 90% of the purchase and installation price

Year 3 of Customer's Warranty Period: 80% of the purchase and installation price

Year 4 of Customer's Warranty Period: 70% of the purchase and installation price

Year 5 of Customer's Warranty Period: 60% of the purchase and installation price

Year 6 of Customer's Warranty Period: 50% of the purchase and installation price

Year 7 of Customer's Warranty Period: 40% of the purchase and installation price

Year 8 of Customer's Warranty Period: 30% of the purchase and installation price

Year 9 of Customer's Warranty Period: 20% of the purchase and installation price

Year 10 of Customer's Warranty Period: 10% of the purchase and installation price

5. Wilsonart reserves the right to conduct inspections of any SSV warranty claim. Wilsonart also reserves the right to deny warranty claims resulting from obvious customer abuse; provided, however, that Wilsonart or an agent of Wilsonart has first physically inspected the crack and/or delamination. In the event Wilsonart denies any SSV warranty claim, Wilsonart shall inform the Settlement Class Member in writing of the reason(s) for the denial and shall inform each such Settlement Class Member that he/she may petition the Court for a review of Wilsonart's decision by submitting an affidavit to this Court. Wilsonart agrees not to reject any warranty claim caused by a fabrication error or by the ordinary and customary use of countertop appliances, such as crock pots, toaster ovens and coffee pots, provided that the appliances are used in accordance with Wilsonart's care and maintenance instructions. If a Settlement Class Member believes that Wilsonart's denial of his or her claim was incorrect, the Settlement Class Member may petition this Court for review of that decision. All submissions to the Court will be by affidavit, and neither Wilsonart nor the class member will be required to appear in person. The Court's decision on the validity of the warranty claim will be final and nonappealable.
6. Wilsonart shall administer the warranty claims process described herein; provided, however, that Wilsonart shall submit annual reports each year to the Court and to Plaintiffs' counsel which shall:

- (a) Identify by name, address and telephone number, all Settlement Class Members who have submitted warranty claims;

- (b) Identify all Settlement Class Members who were denied any warranty claim and succinctly state the reason for same; and
- (c) Identify the amount of each payment made to each Settlement Class Member whose warranty claims were honored.

Settlement Class Counsel retains the right to challenge the accuracy of any of the above reports and to otherwise move the Court to enforce the Stipulation of Settlement to the extent Plaintiffs' counsel, in good faith, believes Wilsonart is improperly denying claims and/or inadequately compensating Settlement Class Members. Settlement Class Counsel agrees that they will notify Wilsonart, through counsel, in writing, of any objections or challenges to Wilsonart's administration of the warranty claims process and that they will afford Wilsonart thirty (30) days from receipt of such written notice to respond to Class Counsel's objection or challenge in writing and to attempt to resolve same prior to filing a formal objection or challenge with the Court.

7. Within 30 days of receipt of complete information from a Settlement Class Member (which includes receipt of the results of an inspection when warranted), Wilsonart shall notify the class member of the settlement amount, if any, and will forward a check to the Settlement Class Member for any amount owed; said check shall contain on its back a release to be signed by the Settlement Class Member.