

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Agreement") is entered into by and between the following entities:

1. COUNTY OF EL DORADO, a California Public Entity ("COUNTY");
2. M & H BUILDERS, INC. a California corporation ("M & H");
3. RDCO, INC., a California corporation ("RDCO");
4. CONCRETE WATERPROOFING PRODUCTS, INC., a California corporation, doing business as Creteseal ("CWP");
5. PRO INSTALLATIONS, INC., a California corporation, doing business as Pro Spectra Contract Flooring ("PII"); and
6. MOHAWK CARPET DISTRIBUTION, INC., a Delaware corporation ("MOHAWK").

Individually, each party hereto may be referred to as a "Party." Collectively, COUNTY, M & H, RDCO, CWP, PII, and MOHAWK shall hereinafter be referred to as the "Parties."

RECITALS

A. On or about July 7, 2004, COUNTY and M & H entered into a construction contract agreement (the "Prime Contract") for construction of the El Dorado Hills Branch Library, located in El Dorado Hills, California ("the Project.") M & H subsequently entered into written subcontract agreements with RDCO for the concrete scope of work contained in the Prime Contract ("RDCO Subcontract") and with PII for the flooring scope of work contained in the Prime Contract ("PII Subcontract.") Subsequent to entering into their respective subcontracts with M & H, RDCO entered into a sub-subcontract or purchase agreement with CWP for the concrete sealant system for the Project and PII purchased certain flooring materials from MOHAWK for the Project.

B. Soon after installation of the carpeting work in the Project was complete, visual signs of anomalies in the carpet system appeared ("the Moisture Issue," which later became the subject of the Action) The Project subsequently reached substantial completion on or about February 3, 2006, and COUNTY took sole and exclusive possession and control of the completed Project; however, as a result of the Moisture Issue, COUNTY neither formally accepted the Project nor recorded a notice of completion. Additionally, County withheld the sum of approximately \$306,900.00 in final Prime Contract payments otherwise due M & H ("M & H Retention Funds"), also as a result of the Moisture Issue. The M & H Retention Funds are currently held in an escrow account with American River Bank (the "Retention Escrow Account.") Disputes arose between COUNTY and M & H and between M & H and RDCO due to, *inter alia*, the cause or causes of the Moisture Issue, alleged failures on the part of the work performed by RDCO and/or CWP on the Project, the design and specifications provided M & H by COUNTY, and the COUNTY'S action taken in response to the Moisture Issue.

C. On January 11, 2007, M & H filed its civil action in El Dorado County Superior Court (Case No. PC20070019) against RDCO, sounding in damages, breach of contract, breach of warranty, and negligence. RDCO answered and filed a cross-complaint against M & H for alleged unpaid RDCO Subcontract retention sums ("RDCO Retention Funds.") Subsequently,

RDCO filed a separate action against CWP (El Dorado County Superior Court Case No. PC20070140.) CWP answered RDCO's complaint. Subsequently, M & H caused to have the two actions consolidated into the M & H action ("the Action," which means and refers to the consolidated operative complaints and all responsive pleadings and cross-complaints filed by the various parties in that consolidated case.) On May 29, 2009, M & H filed its First Amended Complaint to add defendants COUNTY and PII. County and PII each answered the amended complaint and on or about September 18, 2009, PII filed a cross-complaint against RDCO, CWP, and MOHAWK, sounding in equitable indemnity, negligence, contribution, strict liability, and declaratory relief. RDCO, CWP, and MOHAWK answered PII's cross-complaint.

D. All of the Parties to this Agreement deny any liability in connection with the various claims alleged by the Parties hereto.

E. The Parties to this Agreement wish to reach full and final settlement of the respective disputes between them and to avoid further litigation concerning the Moisture Issue and the Action.

AGREEMENT

In consideration of the mutual covenants set forth below, the Parties agree and stipulate as follows:

1. Within seven (7) days¹ of full execution of this Agreement, M & H and COUNTY shall execute escrow instructions necessary for the following two disbursements to be made, forthwith, from the Retention Escrow Account: a) disbursement of the sum of \$140,000.00 (One Hundred Forty Thousand Dollars) to COUNTY; and 2) disbursement of the balance of the account (which shall not be less than the sum of \$166,900 (One Hundred Sixty-Six Thousand Nine Hundred Dollars)) to M & H.

2. Within fourteen (14) days of full execution of this Agreement, the Parties agree to pay the following sums identified hereunder ("Settlement Funds.") The Settlement Funds shall be provided to M & H's counsel, Law Office of Patrick McNamara (which funds shall be held in trust until the conditions precedent to payment have been satisfied.) Settlement checks shall be made payable to "M & H Builders, Inc." with tax identification number _____, in the following amounts:

(a) Landmark Insurance (on behalf of RDCO):	\$25,000.00 (Twenty-Five Thousand Dollars)
(b) Western Heritage (on behalf of CWP):	\$65,000.00 (Sixty-Five Thousand Dollars)
(c) PII:	\$18,000.00 (Eighteen Thousand Dollars)
(d) MOHAWK:	\$ 2,000.00 (Two Thousand Dollars)
TOTAL SETTLEMENT FUNDS	<u>\$110,000.00</u>

3. As a condition precedent to the payment and disbursal of the Settlement Funds and the filing of dismissals of the entire Action with prejudice, the Parties shall sign this

¹ The term "days" shall refer to calendar days, unless otherwise stated.

Agreement, without alteration or modification, and counsel for all Parties shall forthwith forward to counsel for M & H (to hold in trust) the fully executed documents identified below.

(a) As to RDCO, it shall provide to counsel for M & H:

(i) a fully-executed Request for Dismissal on behalf of RDCO dismissing RDCO's cross-complaint against M & H, with prejudice, each party to bear their own costs;

(ii) a fully-executed Request for Dismissal on behalf of RDCO dismissing RDCO's complaint against CWP, as to all parties and all causes of action, with prejudice, each party to bear their own costs.

(b) As to PII, it shall provide to counsel for M & H:

(i) a fully-executed Request for Dismissal on behalf of PII dismissing PII's cross-complaint in the Action, as to all parties and all causes of action, with prejudice, each party to bear their own costs.

(c) As to M & H, it shall hold, in trust, a fully-executed Request for Dismissal dismissing M & H's first amended complaint, as to all parties and all causes of action, with prejudice, each party to bear their own costs.

Each counsel providing a Request for Dismissal to counsel for M & H under this Agreement shall also forward a copy of this fact to all other counsel. Counsel for M & H shall hold these executed Requests for Dismissal, in trust, until such time as the Settlement Funds are received by counsel for M & H and the Escrow Retention Account funds distributed pursuant to this Agreement. After such time, counsel for M & H shall forthwith file the executed Requests for Dismissal with the El Dorado County Superior Court and provide counsel to all Parties with evidence of such filing.

4. Except as set forth in paragraphs 6 and 7, the Parties acknowledge that all claims, demands, damages, and causes of action relating to the Parties' respective affirmative claims relating to the Project are fully compromised and settled. In consideration for the full and timely performance of all terms and conditions of this Agreement in the manner prescribed herein, each and every Party to this Agreement, on behalf of itself and its respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, members, managers, managing agents, partners, partnerships, parent, subsidiary, affiliated and related entities, officers, directors, principals, agents, employees, servants, representatives, shareholders, former shareholders, and all persons, firms, associations, and/or corporations connected with them, including without limitation their contractors, insurers, sureties, attorneys, consultants and experts, does hereby release and forever discharge each and every other Party, and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, members, managers, managing agents, partners, partnerships, parent, subsidiary, affiliated and related entities, officers, directors, principals, agents, employees, servants, representatives, shareholders, former shareholders, and all persons, firms, associations, and/or corporations connected with them, including their sureties and insurers, and including without limitation their contractors, sureties, attorneys, consultants and experts who are or may ever be liable to them, of and from any and all claims, demands, arbitrations, actions, or causes of action, known or unknown, asserted or unasserted, suspected or unsuspected, arising out of, in any way connected with or resulting from the Project and/or that were or could have been the subject of this Action. Pursuant to this release and discharge, and in consideration for the performance under this Agreement by CWP, PII, and MOHAWK, any and all warranties issued by CWP, PII, or MOHAWK to the COUNTY for the Project shall be considered null and void

and all claims arising thereunder or in any way associated with the workmanship or product of CWP, PII, or MOHAWK installed at the Project, regardless of whether such claim is known or unknown, currently exists or should arise in the future, shall be forever waived, released and discharged. Furthermore, M & H and its related and affiliated entities, officers, shareholders, employees, and all persons, firms, associations, and/or corporations connected with them release any and all claims, demands, damages, and causes of action relating to any actual or alleged additional insured status under any policies of insurance issued to RDCO or PII for the Project.

5. Except as set forth in paragraphs 6 and 7, the releases described above are full and final releases applying to all losses, including but not limited to damages, costs, expenses, and attorneys' fees, incurred by said Parties, arising out of or in any way connected with its their claims against each other relating to the Project. It is the intention of the Parties, in executing this Agreement, that the same shall be effective as a bar to each and every claim, demand, damage and cause of action, and said Parties knowingly, voluntarily, and expressly waive any and all rights and benefits otherwise conferred by the provisions of section 1542 of the California Civil Code which states as follows:

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 or must have materially affected his or her settlement with the debtor.

The Parties to this Agreement expressly consent that, notwithstanding section 1542 of the California Civil Code, this Agreement shall be given full and final effect according to each and all of its express terms and conditions, including those related to unknown and unsuspected claims, demands, and causes of action. The Parties acknowledge and agree that this waiver is an essential and material term of this Agreement and, without such waiver, this Agreement would not have been entered into.

6. Notwithstanding anything in this Agreement to the contrary, the rights and obligations of the Parties released herein with respect to one another for future and present claims from third parties for personal injury and/or property damage unrelated to the Moisture Issue and/or the Action are excepted and reserved from the mutual release provisions of this Agreement, and those rights and obligations shall survive as they would have existed in the absence of this Agreement. No such claims are known by any Party or Parties to currently exist.

7. Notwithstanding the mutual releases set forth above, the Parties agree to expressly except from this mutual release any and all claims unrelated to the Action, the Moisture Issue, the concrete sealant system, and/or the carpeting system which may be asserted concerning responsibility for claims arising from latent defects in the work performed and/or services provided for the Project. No such claims are known by any Party or Parties to currently exist.

8. The Parties to this Agreement have been advised or have had the opportunity to be advised by their legal counsel with respect to the terms of this Agreement and understand and acknowledge the significance and consequences of it. Each signer of this Agreement hereby represents and covenants that he or she is authorized to execute this Agreement on behalf of the party for which he or she is signing.

9. This Agreement is binding upon all of the Parties, as well as their past and present subsidiaries, parents, divisions, affiliates, partners, successors, assigns, officers, directors, agents, servants, employees, attorneys, representatives, insurers, sureties, and beneficiaries.

10. Each party to this Agreement is to bear its own costs and attorneys' fees.

11. This Agreement contains the entire agreement between the Parties hereto. The terms of this Agreement are contractual in nature and not a mere recital. This Agreement is executed without reliance upon any representation by any person concerning the nature or extent of damages or legal liability therefor, and the signer of this Agreement has carefully read and understood the contents of this Agreement and signs the same as his or her own free act.

12. Should any dispute arise hereunder, this Agreement shall be governed by and interpreted pursuant to California law.

13. This Agreement may be executed in counterpart originals, and a facsimile signature shall have the same force and effect as an original signature.

14. In accordance with Code of Civil Procedure section 664.6, the Court, shall retain jurisdiction over this matter for the purpose of enforcing the Agreement, including the right to assess fees, interest, and costs against any non-complying party in favor of a party compelled to take enforcement action, and to enforce the requirement for all Parties to file the appropriate dismissals.

15. If any provision or any part of any provision of this Agreement shall for any reason be held to be invalid, unenforceable, or contrary to public policy or any law, then the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

16. This Agreement is the result of lengthy settlement negotiations and is a compromise of multiple disputed claims. No Party to this Agreement has admitted liability and each Party to this Agreement denies any liability arising out of the design or construction of the Project. This Agreement is not an admission of liability.

DATED: September __, 2011

COUNTY OF EL DORADO

BY _____

Its _____

DATED: September __, 2011

M & H BUILDERS, INC.

BY _____
Its _____

DATED: September __, 2011

RDCO, INC.

BY _____
Its _____

DATED: August __, 2011

CONCRETE WATERPROOFING
PRODUCTS, INC.

BY _____
Its _____

DATED: September __, 2011

PRO INSTALLATIONS, INC.

BY _____
Its _____

DATED: September __, 2011

MOHAWK CARPET DISTRIBUTION, INC.

BY _____
Its _____

[SIGNATURES MAY BE IN COUNTERPART.]

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DATED: September 21, 2011

COUNTY OF EL DORADO

BY

its


John R. Knight

First Vice Chair

Board date
8-16-11

ATTEST: SUZANNE ALLEN de SANCHEZ,
Clerk of the Board of Supervisors

By


DEPUTY

DATED: September 21, 2011

M & H BUILDERS, INC.

BY Tom Hansen
Its Pres

DATED: September __, 2011

RDCO, INC.

BY _____
Its _____

DATED: August __, 2011

CONCRETE WATERPROOFING
PRODUCTS, INC.

BY _____
Its _____

DATED: September __, 2011

PRO INSTALLATIONS, INC.

BY _____
Its _____

DATED: September __, 2011

MOHAWK CARPET DISTRIBUTION, INC.

BY _____
Its _____

[SIGNATURES MAY BE IN COUNTERPART.]

DATED: September __, 2011

M & H BUILDERS, INC.

BY _____
Its _____

DATED: September 22, 2011

RDCO, INC.

BY *Man Deu*
Its ROCO Inc CFO

DATED: August __, 2011

CONCRETE WATERPROOFING
PRODUCTS, INC.

BY _____
Its _____

DATED: September __, 2011

PRO INSTALLATIONS, INC.

BY _____
Its _____

DATED: September __, 2011

MOHAWK CARPET DISTRIBUTION, INC.

BY _____
Its _____

[SIGNATURES MAY BE IN COUNTERPART.]

DATED: September __, 2011

M & H BUILDERS, INC.

BY _____
Its _____

DATED: September __, 2011

RDCO, INC.

BY _____
Its _____

DATED: ~~August __, 2011~~
9/21/2011
A.H.B.

CONCRETE WATERPROOFING
PRODUCTS, INC.

BY 
Its PAAS

DATED: September __, 2011

PRO INSTALLATIONS, INC.

BY _____
Its _____

DATED: September __, 2011

MOHAWK CARPET DISTRIBUTION, INC.

BY _____
Its _____

[SIGNATURES MAY BE IN COUNTERPART.]

SEP 19 2011

BY:

DATED: September __, 2011

M & H BUILDERS, INC.

BY _____
Its _____

DATED: September __, 2011

RDCO, INC.

BY _____
Its _____


DATED: August __, 2011

CONCRETE WATERPROOFING
PRODUCTS, INC.

BY _____
Its _____

DATED: September __, 2011

PRO INSTALLATIONS, INC.

BY  _____
Its _____

DATED: September __, 2011

MOHAWK CARPET DISTRIBUTION, INC.

BY _____
Its _____

[SIGNATURES MAY BE IN COUNTERPART.]

DATED: September __, 2011

M & H BUILDERS, INC.

BY _____
Its _____

DATED: September __, 2011

RDCO, INC.

BY _____
Its _____

DATED: September __, 2011

CONCRETE WATERPROOFING
PRODUCTS, INC.

BY _____
Its _____

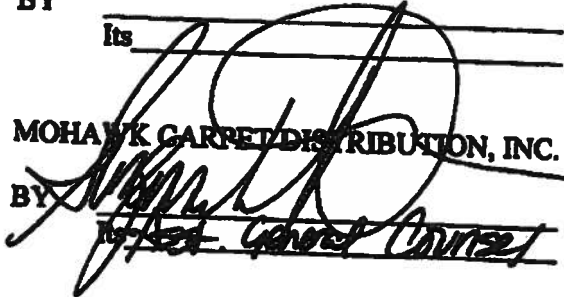
DATED: September __, 2011

PRO INSTALLATIONS, INC.

BY _____
Its _____

DATED: September 8, 2011

MOHAWK CARPET DISTRIBUTION, INC.

BY  _____
Its Robert Vincent

[SIGNATURES MAY BE IN COUNTERPART.]