

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the United States Environmental Protection Agency (“EPA”) (collectively the “United States”) and SMC Systems, Inc., doing business as “SkyeTec” (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. At all relevant times, SkyeTec was a Florida corporation with its principal place of business in Jacksonville, Florida. SkyeTec provides inspection, testing, and quality assurance services, including home energy ratings for the purpose of Energy Star® certification of newly constructed homes. On July 15, 2021, SkyeTec was acquired by Quality Built, LLC, and re-organized as SMC Systems, LLC, which assumed all the operations, assets, and liabilities of SMC Systems, Inc.

B. Energy Star® is a voluntary public-private partnership to identify and promote energy-efficient products and buildings, to reduce energy consumption, to improve energy security, and to reduce pollution through labeling of or other communication about products and buildings that meet the highest energy conservation standards. EPA owns the Energy Star® trademark and is required by statute to promote and protect the Energy Star® label. To that end, EPA oversees the Energy Star® Home Certification Program. An essential feature of this program is third-party verification that the home meets energy efficiency standards set by EPA. EPA relies on rating providers, who operate under a Home Certification

Organization that accredits and audits rating providers, e.g. RESNET, to ensure that all homes certified as Energy Star® meet all Energy Star® requirements. The rating provider must sign a partnership agreement with EPA and must report all homes certified as Energy Star® to RESNET and to the EPA.

C. An essential component of the Energy Star® Home Certification Program is a pre-drywall inspection to verify the presence and installation quality of a home's insulation, alignment of air barriers, presence of prescribed framing, and proper overall seal of a home. This is known as a "thermal bypass inspection."

D. The United States contends that it has certain civil claims against SkyeTec specified in Paragraph 2 of the Terms and Conditions section below, including those under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C. § 1833a, arising from SkyeTec's thermal bypass inspection of Energy Star® homes. The United States contends that these civil claims are predicated on SkyeTec's violations of 18 U.S.C. § 1001 (false statements). These civil claims are based on the alleged "Covered Conduct" described in Paragraph E below.

E. "Covered Conduct" as used in this Agreement means the following allegations by the United States, which the United States contends occurred between January 1, 2014, and July 15, 2021:

- i. The United States alleges that SkyeTec knowingly and intentionally made a materially false, fictitious, or fraudulent statement or representation in a matter within the jurisdiction of the EPA,

specifically, the certification of newly constructed homes as satisfying Energy Star® requirements.

- ii. Specifically, the United States alleges that, if a builder failed to schedule a thermal bypass inspection or a home was partially or fully drywalled before a thermal bypass inspection occurred, SkyeTec assigned the inspection to the calendar of SkyeTec's president or the calendars designated as "Office" or "Office Review." SkyeTec then falsely reported that the home passed the inspection, even though no pre-drywall inspection occurred, and used a pre-filled thermal bypass inspection checklist as support for certifying the home. At various points, these homes were identified using SkyeTec's president's first name or the terms "Office Reviewed" or "Sampled." As of August 2019, SkyeTec was not engaged in a sampling program through RESNET and had not submitted any "sampled" homes. SkyeTec reported these homes through internet platforms to both EPA and RESNET as having satisfied Energy Star® requirements when in fact they had not verified this through a thermal bypass inspection.

F. This Settlement Agreement is neither an admission of liability by SkyeTec nor a concession by the United States that its claims are not well-founded.

G. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises

and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. SkyeTec shall pay to the United States \$2,350,000.00 (the “Settlement Amount”), plus interest on any unpaid portion of the Settlement Amount at a rate of 5.42% per annum from July 15, 2023, through the date of payment, by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice. SkyeTec shall pay \$1,700,000.00 of the Settlement Amount no later than 60 days after the Effective Date of this Agreement. SkyeTec shall pay the balance of the Settlement Amount, plus accrued interest on the Settlement Amount, no later than nine (9) months after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and conditioned upon the United States’ receipt of the Settlement Amount, plus interest, the United States releases SkyeTec, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them, from any civil monetary claim that the United States has for the Covered Conduct under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”), 12 U.S.C. § 1833a, or the common law theory of fraud.

3. Notwithstanding the release given in Paragraph 2 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

4. SkyeTec waives and shall not assert any defenses SkyeTec may have to any criminal prosecution or administrative action relating to the Covered Conduct

that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

5. SkyeTec fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that SkyeTec has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. SkyeTec agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, SkyeTec shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. SkyeTec further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

7. This Agreement is intended to be for the benefit of the Parties only.

8. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

9. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

10. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the Middle District of Florida. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

11. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

12. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

13. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

14. This Agreement is binding on SkyeTec's successors, transferees, heirs, and assigns.

15. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

16. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 09.28.2023

BY: Don Williamson
Don Williamson
Senior Trial Counsel
Commercial Litigation Branch
Civil Division

DATED: 9/28/23

BY: John S. Griffin for
Charles T. Harden
Assistant United States Attorney
Middle District of Florida

DATED: 9/28/23

BY: John S. Griffin
Lindsay S. Griffin
Assistant United States Attorney
Middle District of Florida

DEFENDANT

DATED: Sept 27, 2023 BY:  _____

On behalf of SMC Systems, LLC,
as successor to SMC Systems, Inc.

DATED: September 27, 2023 BY:  _____

Jesse Panuccio
Boies Schiller Flexner LLP
Counsel for SMC Systems, LLC

DATED: September 27, 2023 BY:  _____

Alison L. Anderson
Boies Schiller Flexner LLP
Counsel for SMC Systems, LLC

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