

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

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**IN RE: CERTAINTEED CORPORATION  
ROOFING SHINGLES PRODUCTS  
LIABILITY LITIGATION**

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**MDL DOCKET NO. 1817**

**This Agreement relates to:**

**ALL CASES**

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**AMENDMENTS TO AGREEMENT  
OF COMPROMISE AND SETTLEMENT**

The following provisions amend and supplement the Agreement of Compromise and Settlement (“the Original Settlement Agreement”) entered into on the 15th day of December 2009, by and between Plaintiffs Catherine Barrett, Roger Dunker, and Sherwood Wolfson (hereinafter “Plaintiffs”), in their individual and representative capacities on behalf of themselves and a putative Settlement Class (as defined in the Original Settlement Agreement), and Defendant CertainTeed Corporation (hereinafter “CertainTeed”).

WHEREAS, on December 15, 2009, Plaintiffs and Defendant CertainTeed Corporation (hereinafter “CertainTeed”), by and through their duly authorized counsel, entered into the Original Settlement Agreement to resolve the claims of a Settlement Class (as defined in the Original Settlement Agreement) concerning CertainTeed Organic Shingles (as defined in the Original Settlement Agreement) manufactured by CertainTeed between 1987 and 2005;

WHEREAS, on December 15, 2009, Plaintiffs filed a motion for preliminary approval of the Original Settlement Agreement, and on December 18, 2009, CertainTeed filed a memorandum of law in support of that motion;

WHEREAS, at a hearing on December 22, 2009, before the Honorable Louis Pollak of the United States District Court for the Eastern District of Pennsylvania, Judge Pollak indicated that he was inclined to certify the proposed Settlement Class and preliminarily approve the proposed Original Settlement Agreement, but that he had two concerns. First, he was concerned that the proposed incentive payments to the individuals who have served as named plaintiffs in this litigation as set forth in subsection 7.2 of the Original Settlement Agreement were unduly generous and requested that the Parties agree to lesser amounts. Second, he was concerned that the advertisement to be posted on the Internet as part of the effort to provide notice to the members of the Settlement Class about the pendency of the action, the proposed Settlement, and Settlement Class Members' rights did not adequately advise Settlement Class Members that the proposed settlement involves roofing shingles and requested the Parties to determine whether it could be changed. Judge Pollak then continued the Preliminary Approval Hearing to December 29, 2009, so that the Parties could submit an amended Agreement that responded to his concerns;

WHEREAS, the Plaintiffs and CertainTeed have agreed to modify the Original Settlement Agreement to address Judge Pollak's concerns;

WHEREAS, at the hearing on December 22, 2009, the Court identified a proposed schedule of deadlines culminating in a Final Approval Hearing on June 8, 2010;

NOW, THEREFORE, in consideration of the foregoing, including especially the Court's comments during the December 22, 2009, the parties to the Original Settlement Agreement have agreed to amend and supplement that agreement as follows:

1. Subsection 7.2 of the Original Settlement Agreement is amended to read as follows:

Subject to the approval of the Court, CertainTeed will pay an incentive award to each Named Plaintiff in each of the actions consolidated in this MDL Litigation, in the Pennsylvania Action, and in the Canada Action on whose buildings CertainTeed Organic Shingles are or were installed, over and above any amounts to which they may otherwise be entitled under the Settlement, to compensate them for their services in connection with this litigation. At present, the Parties have agreed that the following Named Plaintiffs have or had CertainTeed Organic Shingles on their buildings, or are assignees of Claims for CertainTeed Organic Shingles pursuant to subsection 4.31(b): Gilbert Anderson, Catherine Barrett, David Butz, Roger Dunker, Jack Helmick, Frederic G. Eldridge, Dawn Lynn Johnson, Roger Luft, Thomas Rybarczyk, William Simpson, Pat Nagy Swartz, Sherwood Wolfson, and Carole Venhaus. Named Plaintiffs John Cassidy, Elizabeth Cumming, and Nancy Hollis will provide CertainTeed with samples of the shingles on their buildings so that CertainTeed may determine whether those shingles are CertainTeed Organic Shingles, and hence whether those Named Plaintiffs are entitled to the incentive awards discussed in this subsection 7.2, as amended. If the Named Plaintiff was deposed, the Named Plaintiff's incentive payment will be US\$5,000; if the Named Plaintiff was not deposed, the Named Plaintiff's incentive payment will be US\$2,500. CertainTeed will not be required to make more than one such incentive payment with respect to any property.


2. The website to be established pursuant to subsection 9.11 of the Original Settlement Agreement shall contain a copy of the Agreement of Compromise and Settlement, except that subsection 7.2 shall be revised as set forth in paragraph 1 of these Amendments. That amended agreement, in the form of Exhibit 1 hereto (including the exhibits revised as set forth in paragraphs 3 and 4 of these Amendments), shall be referred to in all of the exhibits thereto as the "Settlement Agreement."


3. The notice to be published on the internet shall be in the form of Exhibit G attached to Exhibit 1 hereto.

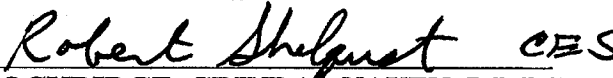
4. Exhibits D through F and H through K to the Original Settlement Agreement are revised both to reflect the changes set forth in these Amendments and to reflect the schedule established by the Court at the hearing on December 22, 2009. Copies of those revised Exhibits are attached to Exhibit 1 hereto.

5. To the extent not inconsistent with these Amendments, the Parties reaffirm the terms of their Agreement of Compromise and Settlement dated December 15, 2009.

WHEREFORE, on the 29th day of December, 2009, the undersigned, on behalf of their respective clients, have executed these Amendments to the Agreement of Compromise and Settlement.


  
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# **Exhibit “1”**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

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<b>IN RE: CERTAINTEED CORPORATION</b>	:	
<b>ROOFING SHINGLES PRODUCTS</b>	:	<b>MDL DOCKET NO. 1817</b>
<b>LIABILITY LITIGATION</b>	:	
<hr/>		
<b>This Agreement relates to:</b>	:	
	:	
<b>ALL CASES</b>	:	
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**AGREEMENT OF COMPROMISE AND SETTLEMENT  
AS AMENDED**

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made with a felt reinforcement base material that is saturated with asphalt, also known as “organic” roofing shingles (hereinafter sometimes referred to as “CertainTeed Organic Shingles”) manufactured by CertainTeed during the period from January 1, 1987 through 2005 (the “Class Period”), all as more fully alleged in the Consolidated Amended Class Action Complaint filed by Plaintiffs Barrett and Dunker, among others (the “Complaint”); and

1.2 WHEREAS, Plaintiff Sherwood Wolfson, together with Kevin Venhaus, filed a Class Action encaptioned *Kevin Venhaus, et al., on behalf of themselves and others similarly situated v. CertainTeed Corporation*, No. 4:06-cv-00503 (S.D. Iowa), seeking to recover damages claimed to have been suffered by themselves and a putative class of Iowa building owners by reason of the application to the putative class members’ buildings of allegedly defective CertainTeed Organic Shingles manufactured by CertainTeed during the Class Period (the *Venhaus* Action); and

1.3 WHEREAS, in addition to the putative class actions filed by Plaintiffs, other building owners have filed actions seeking certification of classes of owners of buildings on which CertainTeed Organic Shingles have been installed, some of which are national in scope and some of which are limited to the owners of buildings in a certain state; and

1.4 WHEREAS, the Judicial Panel on MultiDistrict Litigation has transferred to the Court all the actions complaining about the CertainTeed Organic Shingles filed in a federal district court, including the *Venhaus* Action, for coordinated pretrial treatment under the caption *In Re CertainTeed Corporation Roofing Shingles Products Liability Litigation*, MDL Docket No. 1817 (the “MDL Litigation”); and

1.5 WHEREAS, a putative class action by owners of buildings in Pennsylvania on which CertainTeed Organic Shingles have been installed has been filed in the Court of Common



Pleas of Erie County, Pennsylvania, under the caption *Elizabeth Cumming, on behalf of herself and all others similarly situated v. CertainTeed Corporation and Does 1-50*, No. 12904-06 (Common Pleas Court of Erie County, Pennsylvania) (the "Pennsylvania Action"); and

1.6 WHEREAS, a putative class action by owners of buildings in Canada on which CertainTeed Organic Shingles have been installed has been filed in the Ontario Superior Court of Justice (Chatham) under the caption *William Simpson v. CertainTeed Corporation*, No. 60569CP, (Superior Court of Justice of Ontario, Canada) (the "Canada Action"); and

1.7 WHEREAS, CertainTeed denies all allegations of fault, wrongdoing, or liability made by Plaintiffs or any of the plaintiffs in the other actions consolidated in MDL Docket No. 1817, the Pennsylvania Action, and the Canada Action; and

1.8 WHEREAS, since at least 2006, counsel for Plaintiffs (hereinafter "Class Counsel") have conducted an extensive investigation of facts and circumstances relevant to the allegations made in the Complaint, including consulting experts, interviewing potential witnesses, conducting inspections of the properties of certain named plaintiffs and other Class Members, reviewing the information and evidence they have obtained regarding the facts and circumstances alleged in the Complaints, and researching and studying the legal principles applicable to the issues of liability, damages, and procedure involved in the cases; and

1.9 WHEREAS, the Parties have engaged in extensive, arms-length negotiations regarding the settlement of claims involving CertainTeed Organic Shingles; and

1.10 WHEREAS, Plaintiffs and Class Counsel have evaluated the time and expense that will be necessary to prosecute these cases to final judgment, the delays that are likely before any judgment may be entered, and the uncertainty inherent in predicting the outcome of any complex litigation such as this and, based upon such evaluation, have concluded that further

proceedings in these actions are likely to be protracted, complex, and expensive, and that the outcome is uncertain; and

1.11 WHEREAS, without conceding any lack of merit of any of their claims, Plaintiffs and Class Counsel have concluded that it is in the best interests of the putative class to settle these actions on the terms set forth herein, and that the settlement with CertainTeed embodied in this Agreement is fair, reasonable, and adequate to Plaintiffs and the Class; and

1.12 WHEREAS, while denying any fault, wrongdoing, or liability, and relying on the provisions of this Agreement that the settlement embodied herein shall in no event be construed as or deemed to be evidence of an admission or a concession on the part of CertainTeed (or any of its predecessors, successors, parent or subsidiary companies, affiliates, officers, directors, agents, attorneys, representatives, insurers, suppliers, distributors or vendors) of any fault, wrongdoing, or liability whatsoever, or that any of the allegations in the Complaints are true, and without conceding any infirmity in its defenses, CertainTeed considers it desirable to enter into this Agreement in order to avoid further expense, to dispose of burdensome and protracted litigation, and to avoid the uncertain outcome of proceeding with this litigation;

NOW, THEREFORE, it is hereby agreed by and between CertainTeed and Plaintiffs, acting for themselves and the putative classes, by and through their respective attorneys, that, except as specifically stated to the contrary in this Agreement, all of the allegations, claims, demands, causes of action, and liabilities, which have been or could have been asserted by Plaintiffs or any other member of the putative classes against CertainTeed relating to, arising out of, or in connection with any of the allegations made in the Complaints, shall be settled and compromised, and these actions shall be dismissed with prejudice, according to the terms and conditions set forth below (the "Settlement").

## 2. CLASS CERTIFICATION

2.1 The Parties agree that certification of a settlement class (hereinafter the "Settlement Class") defined as follows is appropriate:

All individuals and entities that own, as of the date of this Agreement, homes, residences, buildings, or other structures located in the United States or Canada whose roofs contain or contained roofing shingles made with a felt reinforcement base material that is saturated with asphalt, also known as organic roofing shingles, manufactured by CertainTeed after July 1, 1987; all individuals and entities who previously owned such a building and who, prior to the date of this Agreement, sold or transferred the building and at the time of the sale or transfer retained the right to make a claim for the shingles pursuant to a valid documented assignment; and all individuals and entities who owned such a building and who, between August 1, 2006, and the Effective Date of this Agreement, have settled or settle their warranty claims for such shingles.

The members of the Settlement Class are sometimes hereinafter referred to as "Settlement Class Members."

2.2 Excluded from the Settlement Class are:

- (a) all parties who timely exercise their rights under Federal Rule of Civil Procedure 23 to opt out of the Settlement;
- (b) all persons who filed a claim concerning their CertainTeed Organic Shingles in any court of law, when that claim has been resolved with a final judgment, whether or not favorable to the claimant;
- (c) all persons who are or were builders, developers, contractors, manufacturers, wholesalers, or retailers of real estate or real property (except as to personal residences or commercial property owned by them);
- (d) Defendant, any entity in which Defendant has a controlling interest, any entity which has a controlling interest in Defendant, and Defendant's legal representatives, assigns, and successors; and
- (e) the Judge to whom this case is assigned and any member of the Judge's immediate family.

**3. CLAIMS TO BE COMPENSATED BY THE SETTLEMENT**

3.1 This Settlement will compensate the claims described below made or hereafter made against CertainTeed by Eligible Claimants.

3.2 A Settlement Class Member shall be deemed an Eligible Claimant and entitled to compensation under this Settlement Agreement if

- (a) The Settlement Class Member either (i) owns the building with CertainTeed Organic Shingles when the Settlement Class Member submits a Claims Package or (ii) previously owned such a building and, prior to making the Claim, sold or transferred the building and at the time of the sale or transfer retained the right to make a claim for the shingles pursuant to a valid documented assignment, provided that the Settlement Class Member's Claims Package is postmarked or otherwise received by CertainTeed no later than 90 days after the later of the Effective Date of this Settlement Agreement or the settlement on the sale or transfer of the property;
- (b) Qualifying "Damage to CertainTeed Organic Shingles," as described in subsection 3.6, has occurred or occurs to the CertainTeed Organic Shingles applied to the Claimant's home or other structure prior to the Claimant's filing of a Claim Package in accordance with subsections 4.4 through 4.8 hereof; and
- (c) CertainTeed cannot establish that any of the Causation Defenses listed in subsection 3.7 was the principal cause of any damage to the CertainTeed Organic Shingles applied to the Claimant's home or other structure.

3.3 An owner of property who has made and resolved through settlement or adjudication a claim against CertainTeed relating to CertainTeed Organic Shingles with respect to a portion of a roof on such property, which is different from the portion of the roof which is the subject of the current claim, will be deemed to be an Eligible Claimant with respect to the portion of the roof that was not the subject of the prior claim. Except as provided in this subsection and in subsection 6.8, no person who prior to the Effective Date of the Settlement has asserted a claim against CertainTeed relating to CertainTeed Organic Shingles, which has been

settled (evidenced by a written release of CertainTeed or proof of compensation by CertainTeed in settlement of the claim) or judicially resolved, shall be an Eligible Claimant.

3.4 Any claims for Damage to CertainTeed Organic Shingles, which have arisen or hereafter arise after the expiration of the applicable warranty time periods set forth on Exhibit A hereto, are not eligible for compensation under this Agreement.

3.5 In the event that CertainTeed becomes aware that it has received multiple claims on account of Damage relating to the same CertainTeed Organic Shingles on the same home or structure before it has paid compensation to any one of the multiple claimants, the Special Master shall determine which Claimant, if any, is to be compensated. However, once CertainTeed has made a payment with respect to Organic Shingles on a particular building, CertainTeed shall not be obligated to make any further payments for the same shingles on that building pursuant to the settlement.

3.6 The following conditions of CertainTeed Organic Shingles will be deemed to constitute "Damage to CertainTeed Organic Shingles":

- (a) an open hollow bump, 19 mm or more in diameter, in the coating layer of the shingle resulting in the underlying asphalt being weathered (that is, oxidized and dirty), also known as "blistering";
- (b) corners and edges of shingle tabs that are curled downward toward the deck surface raising the portion of the tab just interior to the edges by more than 1/2", also known as "clawing";
- (c) cracks in the top-coating of the shingle penetrating through the organic felt that present a source for leakage, also known as "cracking";
- (d) tab corners that are raised above the plane of the deck by more than 1/2" on shingles manufactured more than ten years before the submission of the claim, or by at least 3/8" on shingles manufactured less than ten years before the submission of the claim, also known as "curling";
- (e) tab corners that are raised above the plane of the deck by at least 3/4" after being placed in a freezer at 0° for 15 minutes, also known as "cold weather curling";

- (f) puckers of at least 1/4" that appear along the side and bottom edges of the tabs, also known as "fishmouthing"; and
- (g) a loss of top surface of the shingle resulting in an exposure of the substrate equal in size to a dime, also known as "spalling".

3.7 CertainTeed Organic Shingles will not be considered Damaged to the extent CertainTeed can establish that one or more of the following Causation Defenses were the principal cause of the Damage to the shingles:

- (a) Damage to CertainTeed Organic Shingles caused by intentional, reckless, or negligent conduct of a party other than CertainTeed;
- (b) Damage to CertainTeed Organic Shingles caused by roof deck movement, settlement, distortion, or failure;
- (c) Damage to CertainTeed Organic Shingles caused by settlement, distortion, failure, or cracking of the walls or foundation of the building;
- (d) Damage to CertainTeed Organic Shingles caused by and/or resulting from natural disaster, including but not limited to, hail, unusually strong storms or winds of a speed greater than that set forth in the applicable written limited warranties for the shingles at the time they were sold, lightning, fire, hurricane, flood, earthquake, earth movement, explosion, or other similar *force majeure* events;
- (e) Damage to CertainTeed Organic Shingles caused by structural changes or alterations to the property after the shingles were installed, including but not limited to, installation of equipment on the roof (such as solar heating or air conditioning equipment, TV antennas or satellite dishes, fan housing, water towers, and signs) or any other modifications;
- (f) Damage to CertainTeed Organic Shingles caused by improper racking of shingles (installing the shingles straight up the roof so that the end joints of every row of shingles are vertically aligned);
- (g) Damage to CertainTeed Organic Shingles caused by installing CertainTeed Organic Shingles over Non-Approved Roof Decks, which are defined as
  - (i) decks which are not constructed of an APA-rated exterior grade plywood or APA-rated OSB board (all of which must have a minimum thickness of 3/8") or decks which are constructed of wood boards over six inches in width;

- (ii) decks which are constructed of materials such as Homasote Board, NRG Board, Tectum, Gypsum, or nailable concrete; or
  - (iii) decks where CertainTeed Organic Shingles have been applied directly to any type of roof insulation such as wood fiber, foam, organic, or perlite insulation;
- (h) Damage to CertainTeed Organic Shingles caused by improper installation or failure to follow good installation or application processes, including but not limited to, failure to install in strict accordance with CertainTeed's installation instructions applicable to the Claimant's CertainTeed Organic Shingles at the time of their installation, use of CertainTeed Organic Shingles as ridge material, inadequate or improper use of fasteners, use of CertainTeed Organic Shingles for any purpose other than as roof cladding, improper or inadequate installation of eave flashing, rake and eave drip edges, and other flashings;
- (i) Damage to CertainTeed Organic Shingles caused by inadequate attic or roof ventilation, as recommended by NRCA (National Roofing Contractor's Association) and ARMA (Asphalt Roofing Manufacturer's Association);
- (j) Damage to CertainTeed Organic Shingles on homes or buildings with cathedral ceilings caused by installing CertainTeed Organic Shingles directly over decks insulated with rigid insulation board, if there does not exist at least one inch of free-flowing air space between the deck to which the shingles are applied and the rigid insulation board;
- (k) Damage to CertainTeed Organic Shingles caused by excessive or unreasonable traffic on the roof;
- (l) Damage to CertainTeed Organic Shingles caused by storage of shingles that were installed more than two years after they were manufactured;
- (m) Damage to CertainTeed Organic Shingles caused by improper maintenance such as pressure washing, failure to remove vegetation, moss, algae, fungus, lichens, mold or mildew growth from the roof, or failure to remove trees from contact with the roof;
- (n) Damage to CertainTeed Organic Shingles caused by installation on any plane less than 4/12 pitch where ice and water underlayment or two layers of felt were not installed; and
- (o) Damage to CertainTeed Organic Shingles caused by ice backup or ice damming.

If CertainTeed asserts any of the CertainTeed Causation Defenses described in this subsection, CertainTeed shall bear the burden of establishing that such defense more likely than not was the principal cause of the Damage to the CertainTeed Organic Shingles.

3.8 This Settlement is intended to cover only claims for Damage to CertainTeed Organic Shingles and the associated roof structure and roofing system. It does not cover claims for damages to any interior part of a Settlement Class Member's structure below the roof deck. Such claims for interior damage below the roof deck are not released by the terms of the Settlement. Nonetheless, the release provided by this Settlement does release all claims, both prior to the Effective Date and thereafter, for penalties, punitive damages, exemplary damages, statutory damages, damages based upon a multiplication of compensatory damages, and attorneys' fees or expenses, which might otherwise have been made in connection with any claim for Damage to CertainTeed Organic Shingles installed during the Class Period. CertainTeed retains all legal and factual defenses heretofore or hereafter available to it with respect to any claims for damages to any interior part of a Settlement Class Member's structure below the roof deck.

3.9 Except as provided in subsection 3.8 above, with respect to claims for damages to any interior part of a Settlement Class Member's structure below the roof deck, the Claims Program provided in the Settlement shall constitute the sole and exclusive remedy for any and all claims of Settlement Class Members for any Damage to CertainTeed Organic Shingles manufactured during the Class Period. Upon the entry of the Final Order and Judgment by the Court, each Settlement Class Member shall be barred from initiating, asserting, or prosecuting any claim for any Damage to CertainTeed Organic Shingles, except in accordance with the terms of this Agreement.



#### **4. CLAIMS PROGRAM PROCEDURES**

4.1 The Parties will use commercially reasonable efforts to implement the Claims Program in accordance with the terms and conditions of this Agreement as soon as practicable after the entry of Final Order and Judgment. Class Counsel and CertainTeed will approve the policies and procedures involved in processing Claims under the terms of this Agreement. Claims shall be resolved in a rational, responsive, cost-effective, and timely manner.

4.2 A Claims Office shall be established by CertainTeed to administer all claims under the Settlement.

4.3 All claims under the Settlement will be commenced by filing with CertainTeed a Claims Package mutually agreed upon between Class Counsel and CertainTeed, which shall include claim forms to be filed by the Claimant for the purpose of asserting his or her claims (the "Claim Form") and the shingle sample, photographs, and other documents required pursuant to subsections 4.4 through 4.8. Any person who believes that he or she may be an Eligible Claimant shall contact the Claims Office to request a Claim Form. The Claims Office shall promptly assign a claim number and provide a Claim Form to every person requesting one.

4.4 In order to recover under this Claims Program, Claimants shall provide information and access to the property necessary to determine the validity of and efficiently process such Claim in accordance with this Agreement. Claimants are required to provide information for each structure including documents sufficient to establish ownership of the property or the Claim, that the structure has CertainTeed Organic Shingles, the date of installation, and evidence of the Claim as described below.

4.5 To recover under this Claims Program, Claimant must properly complete a Standard Claim Form, substantially in the form of Exhibit B hereto, and provide all required

supporting documentation. Except as provided in subsection 4.9, the Claim Form to be completed by all Claimants shall include substantially the following information and documents:

- (a) Name and Social Security or Tax Identification or Social Insurance Number of Claimant and any Co-Owners;
- (b) Claimant's Address (and Co-Owner address, if applicable);
- (c) Home phone number, daytime and evening phone number, or other appropriate contact numbers;
- (d) Email address, if the Claimant has email, and whether the Claimant consents to receive official information about the claim via email;
- (e) Address of property that is the subject of the Claim;
- (f) Type of structure(s) on property and date each structure was built;
- (g) Builder (if original installation) or roofing contractor (if remodel or replacement), if known;
- (h) Development, neighborhood, or subdivision (if known);
- (i) Identification of Claim as first or subsequent Claim under this Agreement;
- (j) Proof that CertainTeed Organic Shingles are the subject of the Claim, in one of the forms specified in subsection 4.6 below;
- (k) Two forms of verification of ownership of the property or the Claim (property deed or dated property tax record showing Claimant as owner and one of the following additional documents: current mortgage statement, evidence of assignment of claim, current property insurance bill, current utility bill, or property deed. For manufactured homes a copy of the registration or title may be provided instead of property deed). Such records must be current;
- (l) Date of installation of the CertainTeed Organic Shingles by month and year (such as certificate of occupancy, final building inspection, or documents sufficient to establish the date of first purchase of the property if new construction with original installation of CertainTeed Organic Shingles if the Claimant is the original owner). (In the event of multiple installation dates on a structure, the date of installation will be presumed to be the earliest date unless the Claimant provides proof of each date and area included thereunder). If the Claimant can establish the year but not the month of installation, the installation date shall default to the earliest month of the year. The Claimant must use reasonable due diligence to provide the date of installation. CertainTeed may consider reliable

evidence such as public records establishing the date of platting of the Claimant's property in determining whether the Claimant has established the date of installation with reasonable due diligence;

- (m) Date of purchase of the property;
- (n) Nearest cross street to the property;
- (o) Whether there are dogs or locked gates on the property;
- (p) Whether the Claimant wishes to be present for an inspection, if one is necessary, and, if so, times convenient to call to schedule and relevant telephones numbers and email addresses for scheduling contact;
- (q) Whether the property was the subject of an insurance claim or claim to a builder or other party relating to any Damage to the CertainTeed Organic Shingles and, if so, when and to whom made and the amount of any compensation received;
- (r) Whether the Claimant or a prior owner previously made a claim to CertainTeed for the Shingles currently on the structure, the approximate date of such claim, and the amount of any compensation received;
- (s) Whether the structure is the subject of an assignment of any claims relating to CertainTeed Organic Shingles and documentation of such assignment; and
- (t) The number of roof squares, or where not available, the square footage of each structure on the property, along with a measurement of the footprint of the home, the number of stories, and the pitch or pitches of the roof.

4.6 When a Claimant submits a Claim Form pursuant to subsection 4.5, the Claimant must also submit any one of the following for product identification:

- (a) A Shingle sample of at least one full Shingle certified by the Claimant to be from the structure and of sufficient size and condition to allow identification of the sample as a CertainTeed Organic Shingle, with photographs indicating the location from which the sample was removed before and after removal. If the sample is of insufficient quality or size to identify the Shingles on the structure as CertainTeed Organic Shingles, the Claimant will be permitted to submit another sample or to fulfill an alternative requirement of this subsection; or
- (b) Photographs of the roof of the structure sufficient to establish that the Shingles installed on the property are CertainTeed Organic Shingles. If the photographs are of insufficient quality or size to identify the Shingles on the structure as CertainTeed Organic Shingles, the Claimant will be

permitted to submit a sample pursuant to the requirements of subsection 4.6(a) or to fulfill an alternative requirement of this subsection; or

- (c) Reliable and contemporaneous documentary proof of purchase and installation of Shingles, such as an invoice from a roofer and evidence of payment. Bids shall not be acceptable. If the materials are of insufficient detail to identify the Shingles on the structure as CertainTeed Organic Shingles, the Claimant will be permitted to submit a sample pursuant to the requirements of subsection 4.6(a) or to fulfill an alternative requirement of this subsection; or
- (d) A prior communication from CertainTeed (e.g., where a prior warranty claim has been made), which confirms that the Shingles on the structure are CertainTeed Organic Shingles.

CertainTeed shall have the right to require a minimum of one sample Shingle per structure for product identification in the event the Claimant does not otherwise fulfill the requirements of this subsection. To facilitate compliance with this requirement of the Claims process, CertainTeed will reimburse the Claimant up to US\$50.00 for the expenses incurred in having a roofing professional remove and replace the shingles necessary to make a claim, provided that the shingles, upon inspection and testing, are determined to have been manufactured by CertainTeed. As set forth below, CertainTeed shall have the right to obtain samples in connection with the evaluation of a Claim.

4.7 Each Claimant who submits a Claim Form pursuant to subsection 4.5 shall submit photographs that establish the condition of the roof and Shingles in sufficient detail and quality such that evaluation of the Claim may be made and the nature and extent of any affected areas can be determined. All photographs should be labeled by the Claimant with the assigned Claim number, Claimant name, and Claimant address on the back, and should identify the plane or area of the roof shown. The Claimant shall provide one or more photographs showing the structure from a distance sufficient to show the entire structure and a minimum of two photographs of each roof plane showing the plane and the condition of the Shingles. Claimants shall cooperate

to provide such other information as reasonably is needed to evaluate the claim and efficiently determine whether the Claim qualifies for compensation for Damaged Shingles, including providing a shingle sample if requested by CertainTeed because the proof submitted by the Claimant is not sufficient to evaluate the Claim.

4.8 Claimants and any Co-Owners shall be required to declare under penalty of perjury that information or material submitted to CertainTeed is true and correct and that the samples or photographs submitted are typical of the damage to the roof or roof plane for which the Claimant seeks compensation. Claimants shall be required to sign any Claim Forms and, in so doing, further agree to cooperate with CertainTeed and authorize inspection of the structure(s). The Independent Claims Administrator (to be appointed pursuant to subsection 4.19) shall have authority to reduce or altogether deny any Claim on which the Claimant or any Person acting on behalf of the Claimant has engaged in fraudulent and/or abusive practices, including but not limited to submitting false claims, samples, or documentation, and to take such other actions as may be appropriate to prevent such practices in the future. Class Counsel and CertainTeed shall cooperate to discourage any abuse of the Claims process.

4.9 Settlement Class Members who have submitted a warranty claim for the CertainTeed Organic Shingles on their buildings for which CertainTeed has offered a warranty claim payment, whether such Claimant accepted the payment and settled the claim or not, will be deemed to have satisfied the requirements of subsections 3.2(b) and 3.2(c). Accordingly, such Class Members need only submit an Abbreviated Claim Form, substantially in the form of Exhibit C hereto, making a claim and providing CertainTeed with such information as the claim number or other identifying information (e.g., the address of the building on which the

CertainTeed Organic Shingles were installed) for the warranty claim that was accepted by CertainTeed and the Claimant's current mailing address.

4.10 Claimants may not utilize third-party claims services or similar services to file Claims in the Claims Program established by this Agreement. Class Members shall not be permitted to assign claims under the Claims Program to persons who have never owned the Structure on which the CertainTeed Organic Shingles were applied.

4.11 Data from all Claim forms and all supporting documentation shall be confidential and proprietary. Any Claims information created or obtained by CertainTeed shall be available to Class Counsel. No materials submitted by any Claimant, including shingle samples and photographs, will be returned to the Claimant.

4.12 Claim Forms shall be submitted by Claimants to CertainTeed. CertainTeed shall scan each Claim Form and any supporting documentation into a database established for this Settlement or shall otherwise manage the information in an efficient and accessible manner. The information in the database shall be available to Class Counsel in such form as Class Counsel and CertainTeed shall agree.

4.13 CertainTeed shall review the Claim Form and any supporting documentation to determine the Claimant's eligibility and whether the Claim Form is complete and includes all the required supporting documentation necessary to proceed with the processing of the claim. If the Claimant is not eligible, CertainTeed shall send a letter to the Claimant notifying the Claimant of that fact. If the Claimant may be eligible, but the Claim Form and supporting documentation is deficient, CertainTeed shall send a deficiency letter to the Claimant identifying the deficiency or deficiencies and providing an opportunity to cure. Claimants shall be given three opportunities to remedy deficiencies in their Claims. After three notices and opportunities to cure such

deficiencies, if the Claimant does not resolve the identified deficiencies within 30 days from the date of the third letter, the Claim shall be denied. The third letter shall so advise the Claimant that if the Claimant does not resolve the identified deficiencies within 30 days from the date of the third letter, the Claim shall be denied. Any communications required in the administration of a Claim may be sent by email if the Claimant consents. Class Counsel shall be provided copies of the third notice, and all the letters shall advise the Claimant that the Claimant may contact Class Counsel for assistance.

4.14 Once a properly completed and valid Claim Form has been submitted with all required supporting documentation, CertainTeed shall evaluate the claim and determine whether the Claim qualifies under this Settlement. CertainTeed may contact the Claimant in connection with its processing and evaluation of the Claim.

4.15 The Parties anticipate that Claims may be evaluated based on shingle samples, photographs, and information provided by the Claimant. However, CertainTeed may inspect any structure that is the subject of a Claim if, in CertainTeed's determination, such examination is reasonably necessary. In conducting any inspection, CertainTeed shall be permitted interior access. CertainTeed, at its own expense, shall have the right to remove such shingles, soffits, vents, fascias, rake boards, or other portions of the property as may be reasonably necessary to determine whether there exists a Causation Defense under subsection 3.7, provided, however, that following any such removal CertainTeed shall, at its own expense, restore the Claimant's property to the condition that existed prior to the inspection. In the event an inspection is needed, CertainTeed shall use reasonable best efforts to schedule such inspection within 30 days of the receipt of a complete and valid Claim Form from the Claimant, but shall receive an additional 60 days upon request in the event that weather conditions or volume of Claims affect

CertainTeed's ability to proceed timely. Independent Inspectors shall indemnify and hold harmless Claimants for any injuries to Independent Inspectors or third persons, except where such injuries arise from willful conduct or gross negligence of the Claimants or other persons on the Claimants' property or otherwise under the Claimants' direction or control.

4.16 When an evaluation is based on photographs, CertainTeed will make a good faith estimate of the number of squares on the roof of the structure. Claimants shall cooperate with CertainTeed in order to reach agreement on the number of squares on the roof of the structure. The Claimant may provide CertainTeed with detailed measurements on a plane-by-plane basis at the Claimant's expense and shall provide all relevant information in the Claimant's possession that may assist CertainTeed in its determination of the measurements. Any help Claimant receives from a third party in obtaining detailed measurements shall not violate subsection 4.10 of this Agreement. Claimants who do not provide CertainTeed with the detailed measurements may not proceed to review by the Independent Claims Administrator on the issue of measurement.

4.17 CertainTeed must advise the Claimant in writing whether and to what extent the claim has been approved or denied within 100 days following receipt of the later of (a) a completed Claims Package, (b) any additional information requested pursuant to subsection 4.13, above, or (c) any inspection of the Claimant's property, provided that during the first year of implementation after the Effective Date, CertainTeed shall have 180 days to complete its evaluation of the Claim. When a settlement offer is made by the Claims Office, a check will be included with the notice of acceptance; if the Claimant cashes the check, the Claimant will be deemed to have accepted the offer and released his or her Claim in accordance with the release included in the Claim Form.



4.18 If the Claims Office denies all or part of a claim, the Claimant will have the right to appeal the denial to an Independent Claims Administrator, appointed pursuant to subsection 4.19 below. If the Claims Office denies all or part of a claim, Class Counsel will be provided written notice of the denial contemporaneously with the notice provided to the Claimant. The following procedures will govern any such appeal:

- (a) The Claimant will have 45 days from receipt of notice of the denial to request an independent review by the Independent Claims Administrator.
- (b) If the Claimant requests an independent review and the Independent Claims Administrator agrees with CertainTeed's determination and finds that the Claim is ineligible for the compensation demanded by the Claimant, the Claimant shall be obligated to pay US\$200 for the Independent Review.
- (c) The Independent Claims Administrator shall review the Claim Form, any related documentation of the Claim, and such other related information as the Claimant, Class Counsel, or CertainTeed may submit, and shall make a determination of whether he or she concurs with CertainTeed's evaluation or whether the Claim is eligible for compensation.
- (d) In any such appeal, the Independent Claims Administrator, the Claimant, Class Counsel, or CertainTeed may request that an Independent Inspector, appointed pursuant to subsection 4.20, visit the premises and evaluate the claim pursuant to the terms of this Agreement. Such an inspection by the Independent Inspector must be requested within 30 days of the Claimant's requesting the Independent Review and such inspection must be completed within 45 days of the request, weather permitting. The Independent Inspector will submit his report to the Claimant, Class Counsel, CertainTeed, and the Independent Claims Administrator within 15 days following the inspection.
- (e) Following receipt of the report of the Independent Inspector, the Claimant, Class Counsel, and CertainTeed will have 30 days to submit additional information to the Independent Claims Administrator. Any such additional submission will be limited to submissions permitted by procedures and rules for handling the review of claims by the Independent Claims Administrator, which will be established jointly by the Independent Claims Administrator, CertainTeed, and Class Counsel.
- (f) CertainTeed may, but is not required to, meet with the Independent Claims Administrator in connection with the review of any Claim or to present testimony, declarations, or other evidence in support of CertainTeed's

evaluation of the Claim. In the event CertainTeed invokes this option, the Claimant and Class Counsel may but need not present similar evidence or participate in such meeting.

- (g) The Independent Claims Administrator shall provide a written determination, setting forth the basis for his decision. In conducting his review of Claims, the Independent Claims Administrator shall review the record of the Claim, including any inspection results, and shall determine whether the Claim was correctly evaluated in accordance with the provisions of this Agreement.
- (h) The Independent Claims Administrator will make his final decision on the claim within 15 days after the expiration of the 30-day period for submission of additional information. The Independent Claims Administrator will submit his report to the Claimant, Class Counsel and CertainTeed.
- (i) The final decision of the Independent Claims Administrator will be non-appealable, except that if either Class Counsel or CertainTeed concludes that the Independent Claims Administrator's decision is not consistent with the terms of this Settlement Agreement, the Claim can be presented to the Special Master.
- (j) The Independent Claims Administrator may provide only the compensatory relief provided for by this Agreement, and may not award any other relief with respect to any claim governed by this Agreement.
- (k) CertainTeed will pay any final award of the Independent Claims Administrator within 45 days of receipt of his decision.
- (l) Any dispute whether a Claimant has properly complied with the claims procedure set forth in this Agreement will be resolved by the Independent Claims Administrator.
- (m) Any dispute whether CertainTeed has properly established any of the CertainTeed Causation Defenses described in subsection 3.7 will be resolved by the Independent Claims Administrator.

4.19 The Independent Claims Administrator shall be selected by agreement of Class Counsel and CertainTeed or, in the absence of such agreement, shall be appointed by the Court. Each Independent Claims Administrator shall serve for a six-month term, which may be renewed by Class Counsel and CertainTeed for subsequent six-month terms, or for such other periods as Class Counsel and CertainTeed may agree. The Independent Claims Administrator shall be an

experienced roofing professional. He shall have a continuing obligation to be neutral and unbiased for the duration of his appointment and shall inform Class Counsel and CertainTeed in the event of any conflict of interest. Notwithstanding the time periods specified herein, either Party may invoke the dispute resolution provision of Section 5 in the event a dispute arises with respect to the performance of Claims review by the Independent Claims Administrator. In the event Class Counsel and CertainTeed are unable to agree on the appointment of a subsequent Independent Claims Administrator, Class Counsel and CertainTeed shall petition the Court to make such an appointment.

4.20 The Independent Inspectors shall be selected by each Independent Claims Administrator. The Independent Inspectors shall have a continuing obligation to be neutral and unbiased for the duration of this Agreement and shall inform the Independent Claims Administrator, Class Counsel, and CertainTeed in the event of any conflict of interest. The Independent Inspectors shall be experienced roofing professionals. The Independent Inspectors shall serve for terms commensurate with those of the appointing Independent Claims Administrator. Notwithstanding the time periods specified herein, either Party may invoke the dispute resolution provision of Section 5 in the event a dispute arises with respect to the performance of inspections by the Independent Inspectors.

4.21 The Independent Claims Administrator shall maintain records of his activities in a computerized database electronically accessible to Class Counsel and CertainTeed in a secure, read-only environment and shall provide such periodic and special reports as the Court, Class Counsel, or CertainTeed may request.

4.22 CertainTeed and Class Counsel shall have the right to audit independently the work of the Independent Claims Administrator and any Claim or Claim payments.

4.23 In the event Class Counsel or CertainTeed reasonably believes that the Independent Claims Administrator is not properly applying any of the terms of this Agreement, or if Class Counsel reasonably believes CertainTeed is not properly applying any of the terms of this Agreement, or in the event there is a question concerning the application of the terms of this Agreement generally or with respect to an individual Claim by any of them, then:

- (a) The objecting Party's counsel shall notify counsel for the other party to this Agreement in writing of the concern;
- (b) Class Counsel and outside or in-house counsel for CertainTeed shall meet within 30 days of receipt of the written notification to resolve the concern;
- (c) In the event that Class Counsel and outside or in-house counsel for CertainTeed cannot resolve the matter, then the matter shall be submitted to the Special Master to be appointed pursuant to Section 5.
- (d) CertainTeed's obligation to pay any disputed Claim shall be suspended until 30 days after such dispute is resolved in accordance with the provisions of this Agreement, at which time the amount, if any is appropriate, shall be paid within 30 days thereafter.

4.24 In no event shall CertainTeed, or any of its present or former parents, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, representatives, insurers, or assigns, or Plaintiffs or Class Counsel, and their respective agents or employees, have any liability for claims of wrongful or negligent conduct on the part of the Independent Claims Administrator(s), the Independent Inspectors, the Special Master, or their agents.

4.25 CertainTeed shall issue checks on an agreed combined form of check and release to Claimants who are eligible to receive payment. The release set forth in this document shall in no way be construed to limit or alter the terms of the releases provided by this Settlement.

4.26 Offsets for any amount paid to the Claimant as a result of any other claim, lawsuit, or dispute relating to the damage to the Shingles that are the subject of the Claim, including claims to insurers with respect to any compensation paid in whole or in part for roof

replacement, shall be deducted before any compensation is paid under this Agreement to an Eligible Claimant.

4.27 Claimants shall be required to provide CertainTeed with any change of address or updated or revised contact information. CertainTeed shall use reasonable diligence to locate Claimants whose checks are returned as undeliverable. Any such funds arising or remaining from any undeliverable checks from any Claim shall be CertainTeed's property.

4.28 In situations in which a Claimant has listed or advertised his or her home for sale or in which the Claimant is experiencing substantial water intrusion due to allegedly Damaged CertainTeed Organic Shingles, CertainTeed, the Independent Claims Administrator, and the Independent Inspector will use best efforts to expedite the claims procedure.

4.29 Unless the Shingles for which payment has been made have been removed and replaced, each Claimant who has received payment on a Claim shall advise any subsequent purchaser of the structure(s) on which the Claim was made of that fact and that no additional Claim can be made in the Claims Program and shall make such other disclosures as may be required by law.

4.30 Claimant or any eligible successor may submit another Claim once every two years from the date that the Claimant receives notice of the denial of his Claim by CertainTeed or the Independent Claims Administrator, provided the date of such subsequent Claim is within the applicable Claims Period of the Claims Program and the provisions of this Agreement. Should CertainTeed determine, upon consideration of the subsequent Claim that the shingles are damaged, the compensation to be paid to the Claimant shall be calculated based upon the date of the submission of the subsequent Claim.

4.31 Except as provided in this subsection 4.31, Settlement Class Members may not assign their claims.

- (a) Upon the sale of a property covered by this Agreement, the purchaser shall succeed to the rights of the Settlement Class Member by acquiring property covered by this Agreement and may receive and succeed to all rights and obligations created by this Agreement, as limited by the terms and conditions of the Agreement, provided that the subsequent purchaser is qualified to assert a warranty claim in accordance with the transferability provisions of the CertainTeed warranty applicable to such shingles when they were installed.
- (b) Upon the sale of a property covered by this Agreement, a Settlement Class Member who sells the property may retain, pursuant to a written assignment agreement executed contemporaneously with the sale of the property, all rights and obligations created by this Agreement, as limited by the terms and conditions of the Agreement, provided that the Settlement Class Member's Claims Package is postmarked or otherwise received by CertainTeed no later than 90 days after the later of the Effective Date of this Settlement Agreement or the settlement on the sale of the property.

4.32 Except as otherwise provided by this Agreement, CertainTeed shall be solely responsible for and shall pay all reasonable fees and expenses incurred by the Claims Office, the Independent Claims Administrator(s), the Independent Inspectors, and the Special Master in administering this Agreement, as well as all costs of implementing and administering the Claims Program. Any dispute concerning the validity of fees, expenses, and any other costs incurred by the Independent Claims Administrator(s) or the Independent Inspectors shall be resolved by the Special Master.

4.33 On the first anniversary of the Effective Date, and annually thereafter until one year after the expiration of the last of the warranty periods identified on Exhibit A hereto, CertainTeed shall file with the Court and serve on a designee of Class Counsel a report identifying the Claimants whose claims have been resolved in the prior 12 months, the amount distributed to each Eligible Claimant, and the basis for denying any claims.

4.34 Class Counsel shall have the right to audit, on an annual basis, the processing and disposition of Claims submitted by Claimants to CertainTeed under this Agreement. In connection with such an audit, Class Counsel shall have the right to examine all books and records maintained by CertainTeed related to the processing of Claims under this Agreement. However, CertainTeed shall be permitted to dispose of any shingle samples submitted by a Claimant at the expiration of 60 days from the payment of compensation to that Claimant. Should a Claim be denied, CertainTeed shall maintain a 1 foot square exemplar of any shingle samples submitted by the Claimant in support of his or her claim.

4.35 All information relating to the Claims Program, individual Claims, Claims processing, and inspections is confidential and proprietary and shall not be disclosed except to CertainTeed and its agents and employees, Class Counsel, the Independent Claims Administrator, the Special Master, and the Court in accordance with the terms of this Agreement, except that an electronic copy of any inspection report relating to an individual Claim will be made available, upon request, to the Claimant involved. Class Counsel and counsel for CertainTeed will cooperate to obtain entry of Protective Orders governing the disclosure of information relating to the Settlement consistent with the terms of this Agreement.

4.36 Class Counsel and outside or in-house counsel for CertainTeed shall meet in person or by telephone conference regularly to discuss the implementation and execution of this Agreement and to attempt to resolve any concerns of the Parties.

## **5. SPECIAL MASTER**

5.1 The Parties shall jointly propose a Special Master to be appointed by the Court to preside over disputes between the Parties on an as-needed, part-time basis. The Special Master shall have the power to make decisions in all matters brought to him or her by Class Counsel or CertainTeed pertaining to the administration, implementation, and enforcement of the Agreement

and to resolve those issues that are to be resolved by the Special Master in accordance with the terms of this Agreement, subject to review by the Court. The Special Master shall have a continuing obligation to be neutral and unbiased for the duration of the Agreement and shall inform Class Counsel and CertainTeed in the event of any conflict of interest.

**6. AMOUNTS PAYABLE WITH RESPECT TO CLAIMS**

6.1 If the Claims Office or the Independent Claims Administrator determines that the Claimant is an Eligible Claimant and does not find that CertainTeed has met its burden of establishing any Defenses asserted by CertainTeed pursuant to this Agreement, claims will be paid pursuant to subsections 6.2 through 6.10 hereof.

6.2 The number of squares for which CertainTeed shall compensate Eligible Claimants shall be calculated based on the size of the roof and the extent of Damaged CertainTeed Organic Shingles on a roof plane, as follows:

- (a) If the total area of the roof is 50 squares or less and 5% of the shingles on all the roof planes are Damaged CertainTeed Organic Shingles, then the entire roof shall be considered Damaged and the claim payment will be calculated based on the total number of squares on the entire roof.
- (b) If the total area of the roof is more than 50 squares, then each roof plane on which 5% of the shingles are Damaged CertainTeed Organic Shingles shall be considered Damaged and the claim payment will be calculated based on the total number of squares in the Damaged plane or planes.
- (c) If the Claimant does not qualify for a claim payment pursuant to subsection 6.2(a) or subsection 6.2(b), the claim payment will be calculated based on the number of squares of Damaged shingles.
- (d) In the event that CertainTeed compensates an Eligible Claimant for less than the entire roof (pursuant to either subsection 6.2(b) above or subsection 6.2(c) above), and the Claimant suffers additional Damage to other portions of the roof, such Claimant may submit further claims with respect to such other portions of the roof within the warranty period set forth on Exhibit A hereto, provided however that Claimants who receive compensation pursuant to subsection 6.7 must submit any such further claims within 12 months after the Effective Date.



6.3 Whenever a plane of a roof or the entire roof is considered damaged, CertainTeed will pay Eligible Claimants the applicable amount per square set forth in subsections 6.6 or 6.7 hereof for all the shingles on the plane or the entire roof.

6.4 Whenever Claimants do not qualify for claim payments pursuant to subsection 6.2(a) or subsection 6.2(b), CertainTeed will pay Eligible Claimants the applicable amount per square set forth in subsections 6.6 or 6.7 hereof, but only for the number of squares of Damaged Shingles.

6.5 CertainTeed will provide compensation to Eligible Claimants calculated in accordance with subsections 6.6 through 6.9 hereof. A Claimant shall be eligible for compensation pursuant to only one of subsections 6.6 through 6.8.

6.6 Each Claimant who either was the owner of the building at the time that the CertainTeed Organic Shingles were applied or is a subsequent property owner who is qualified to assert a warranty claim in accordance with the transferability provisions of the warranty applicable to the shingles will receive compensation of US\$74/square; if the Claim is postmarked or otherwise received by CertainTeed within 10 years of the installation of the Organic Shingles, US\$34/square of the compensation for replacement shingles will be prorated from date of installation and US\$40/square for labor and other materials will not be prorated; but if the Claim is postmarked or otherwise received by CertainTeed more than 10 years after installation of the Organic Shingles (but prior to the expiration of the applicable warranty period set forth on Exhibit A), the entire US\$74/square (both the US\$34/square for replacement shingles and the US\$40/square for labor and other materials) will be prorated on the regular proration schedules for each warranty.

6.7 Each Claimant who is not qualified to assert a warranty claim because the Claimant did not own the building at the time that the CertainTeed Organic Shingles were applied and the transferability provisions of the warranty applicable to the shingles at the time that they were installed did not provide warranty coverage to the subsequent owner will receive compensation of US\$34/square for replacement shingles, labor, and other materials (\$15.64/square or 46% of the \$34/square for the cost of replacement shingles and \$18.36/square or 54% of the \$34/square to the cost of labor and other materials), prorated from the date of installation, provided that the claim form is postmarked or otherwise received by CertainTeed within 12 months after the Effective Date.

6.8 Each Claimant who between August 1, 2006, and the Effective Date of this Settlement Agreement settled or settle their claims for the CertainTeed Organic Shingles on their buildings and in connection therewith have executed a release of their claims against CertainTeed will receive compensation (for the cost of labor and the cost of materials other than the replacement shingles) equal to 20% of the difference between the amount received on the warranty claim and any greater amount that would have been received had the Claimant been a claimant in the Settlement Agreement, provided that the Abbreviated Claim Form is postmarked or otherwise received by CertainTeed within 12 months after the Effective Date.

6.9 All compensation to be prorated pursuant to subsections 6.6 and 6.7 will be prorated based on the number of months remaining on CertainTeed's original limited warranty with respect to the Damaged CertainTeed Organic Shingles (as set forth on Exhibit A hereto) as of the date the claim is first received by the Claims Office. Thus, in determining the value of any compensation to be given by CertainTeed with respect to claims under this Settlement, the compensation determined by the Claims Office or the Independent Claims Administrator to be

owed by CertainTeed will be multiplied by the percentage obtained by dividing the total months remaining, as of the date that the Claim is made, on the original limited warranty issued by CertainTeed at the time the Claimant's CertainTeed Organic Shingles were installed by the total number of months provided by that limited warranty, to reflect the number of months that the Claimant has had the use of the CertainTeed Organic Shingles. For example, if a Claimant should submit a Claim concerning shingles warranted for 30 years (360 months) on the twelfth anniversary of the application of the shingles (when the Claimant has had use of the Shingles for 144 months, and 216 months remain on the original warranty), CertainTeed's payment would be calculated by multiplying the compensation amount determined under subsections 6.6 and 6.7 by 60%, representing the percentage of the warranty that remains (216/360).

6.10 For purposes of calculating the amount of compensation under subsections 6.6 and 6.9 to be awarded to Settlement Class Members who submitted to CertainTeed in the ordinary course of business (prior to the Effective Date of this Agreement) a complete warranty claim (including a shingle sample) that has not been rejected or denied by CertainTeed, the Claim date will be the date that CertainTeed received the complete warranty claim in the ordinary course of business.

6.11 Should a Claimant make a Claim during the SureStart or the SureStart Plus period of the applicable warranty with respect to such shingles at the time they were sold (as set forth on Exhibit A hereto), in lieu of the consideration provided by subsections 6.3 through 6.7, CertainTeed will reimburse the Claimant in accordance with the applicable SureStart warranty.

## **7. ATTORNEYS' FEES AND INCENTIVE PAYMENTS TO THE CLASS REPRESENTATIVES**

7.1 Upon the occurrence of the Effective Date defined in Section 12, below, CertainTeed will pay to an account designated by Class Counsel the total sum awarded to

plaintiffs' counsel by the Court, to compensate all firms representing any plaintiffs in the MDL Litigation, the Pennsylvania Action, and the Canada Action for all services rendered to the Plaintiffs and the Class and for reimbursement of counsel's out-of-pocket expenses in connection with the actions consolidated in the MDL Litigation. To the extent the parties can reach agreement on the amount of attorneys' fees, costs, and expenses to be requested by Class Counsel, CertainTeed will take no position with respect to the application for attorneys' fees filed by Class Counsel. However, to the extent the parties cannot reach an agreement on the amount of attorneys' fees, costs, and expenses to be requested by Class Counsel, CertainTeed retains its right to object to the application for attorneys' fees filed by Class Counsel. The parties agree not to appeal or otherwise challenge Judge Pollak's ruling on fees.

7.2 Subject to the approval of the Court, CertainTeed will pay an incentive award to each Named Plaintiff in each of the actions consolidated in this MDL Litigation, in the Pennsylvania Action, and in the Canada Action on whose buildings CertainTeed Organic Shingles are or were installed, over and above any amounts to which they may otherwise be entitled under the Settlement, to compensate them for their services in connection with this litigation. At present, the Parties have agreed that the following Named Plaintiffs have or had CertainTeed Organic Shingles on their buildings, or are assignees of Claims for CertainTeed Organic Shingles pursuant to subsection 4.31(b): Gilbert Anderson, Catherine Barrett, David Butz, Roger Dunker, Jack Helmick, Frederic G. Eldridge, Dawn Lynn Johnson, Roger Luft, Thomas Rybarczyk, William Simpson, Pat Nagy Swartz, Sherwood Wolfson, and Carole Venhaus. Named Plaintiffs John Cassidy, Elizabeth Cumming, and Nancy Hollis will provide CertainTeed with samples of the shingles on their buildings so that CertainTeed may determine whether those shingles are CertainTeed Organic Shingles, and hence whether those Named

Plaintiffs are entitled to the incentive awards discussed in this subsection 7.2, as amended. If the Named Plaintiff was deposed, the Named Plaintiff's incentive payment will be US\$5,000; if the Named Plaintiff was not deposed, the Named Plaintiff's incentive payment will be US\$2,500. CertainTeed will not be required to make more than one such incentive payment with respect to any property.

## **8. THE PRELIMINARY APPROVAL ORDER**

8.1 The Parties shall submit this Agreement to the Court within seven (7) days of execution of this Agreement and request that it enter an Order of Preliminary Approval of Settlement and Hearing Order (the "Preliminary Approval Order") in substantially the form of Exhibit D hereto.

8.2 The Preliminary Approval Order shall:

- (a) Provide for the certification of the Settlement Class, for settlement purposes only, pursuant to Federal Rule of Civil Procedure 23, and of Plaintiffs as the representatives of the Class;
- (b) Provide for notice to be given to Settlement Class Members in the manner described in Section 9, below, or in such different manner as may be required by the Court;
- (c) Prescribe periods of time during which Settlement Class Members may timely opt out of the Class or serve written objections to the Settlement or to the request of Class Counsel for counsel fees, costs, and expenses or the incentive payments proposed to be paid to certain plaintiffs; and
- (d) Schedule a hearing (the "Final Approval Hearing") to (i) consider the fairness, reasonableness, and adequacy to the Settlement Class Members of the proposed Settlement; (ii) consider the granting of final approval of the proposed Settlement and the dismissal with prejudice of the actions that compose this MDL Litigation, (iii) provide the members of the Settlement Class the opportunity to object to the proposed Settlement; (iv) consider Class Counsel's application for an award of attorneys' fees and reimbursement of costs and expenses; (v) consider the payment of an incentive payment to certain plaintiffs; and (vi) consider such other matters as the Court may deem to be necessary or proper under the circumstances in accordance with Federal Rule of Civil Procedure 23.

**9. NOTICE OF PROPOSED SETTLEMENT**

9.1 Notice to class members shall be the responsibility of CertainTeed pursuant to orders of the Court. The cost of such notice shall be paid by CertainTeed pursuant to subsection 9.7. Further, Class Counsel and CertainTeed agree that reasonable notice of this Settlement Agreement consistent with the Due Process requirements of the United States Constitution shall be given to any and all members of the Settlement Class pursuant to orders of the Court that so provide. To effectuate such notice, Class Counsel and CertainTeed have agreed to engage CAC Services Group LLC to advise them with respect to the providing of notice. Such notice shall include, but not be limited to, publication of summary notices as set forth in subsection 9.2 and mailing of long-form notices as set forth in subsections 9.3 and 9.4. The text of the notices and the mechanisms for distributing the notices shall be subject to the approval of the Court.

9.2 Summary notices, substantially in the forms attached hereto as Exhibits E (print media), F (television), and G (internet) shall be published in accordance with the directions of the Court. The publication notices shall be targeted to emphasize those areas where CertainTeed Organic Shingles were sold or where claims have been submitted, in proportion to the amount of such claims or sales.

9.3 A long-form notice, substantially in the form of attached Exhibit H or in such other form as directed by the Court, shall be mailed, first class postage prepaid, to each member of the Settlement Class identified by the Parties through reasonable efforts (other than Settlement Class Members who have submitted a warranty claim for the CertainTeed Organic Shingles on their buildings for which CertainTeed has offered a warranty claim payment, whether such claimant accepted the payment and settled the claim or not), including each member of the Settlement Class whose identity becomes known as a result of the notice published pursuant to

subsection 9.2 above. The long-form notice shall also be mailed to reasonably identifiable distributors of CertainTeed's Organic Shingles at the addresses last known to CertainTeed.

9.4 A long-form notice, substantially in the form of attached Exhibit I or in such other form as directed by the Court, shall be mailed, first class postage prepaid, to each Settlement Class Member who may submit an Abbreviated Claim Form pursuant to the requirements of subsection 4.9 at the address on the Settlement Class Member's warranty claim.

9.5 Press releases, substantially in the form of attached Exhibit J, shall be released through PR Newswire.

9.6 The long-form and summary notices, (other than the Summary Notice for the internet), as well as the press releases, shall (i) state that the Settlement is contingent upon the Court's final approval; (ii) advise Settlement Class Members that they may elect to opt out of the Class in accordance with Federal Rule of Civil Procedure 23; (iii) advise Settlement Class Members that they may object to the proposed Settlement by filing with the Court and serving upon Class Counsel and CertainTeed a written statement of objections clearly specifying the grounds for objection and providing the information required by subsection 10.8 and that all such objections must be filed and served no later than 45 days before the Final Approval Hearing; (iv) advise that any Settlement Class Member may enter an appearance at the Final Approval Hearing through counsel of his or her choice, at his or her own expense; (v) state that any Settlement Class Member who does not properly and timely give notice of his or her intention to opt out of the Settlement Class will be bound by any judgment entered in this case, even if he or she has objected to the Settlement and even if he or she has other claims, lawsuits, or proceedings pending against CertainTeed involving allegedly defective CertainTeed Organic Shingles applied to his or her buildings during the Class Period.

9.7 All of the costs of the notice (such as the costs of printing, mailing, and postage) shall be paid by CertainTeed. CertainTeed shall have the right to monitor, inspect, and audit such costs.

9.8 On or before the date of the Final Approval Hearing, CAC Services Group LLC shall file proof, by affidavit, of the aforesaid publications and mailings.

9.9 No later than the publication of the first notice to be published pursuant to subsection 9.2, CertainTeed shall cause a toll-free telephone facility to be established for the United States and Canada. The toll-free telephone number of such facility shall be included in the published notice. The telephone facility shall be capable of (1) receiving requests for Claim Forms or the long-form notice of this Settlement described in subsection 9.3 or any other materials described in this Section, (2) providing general information concerning deadlines for opting out of the Settlement, Claim Forms, and the dates of relevant Court proceedings, including the Final Approval Hearing, and (c) mailing materials to Class Members as provided in this Section. The toll free number shall be maintained for thirteen months after the Effective Date. The costs associated with establishing and maintaining the toll-free telephone facility shall be paid by CertainTeed.

9.10 CertainTeed shall mail long-form notices or Claims Forms or Request for Exclusion Forms to anyone requesting them. CertainTeed shall maintain records of its activities, including logs of all telephone calls and mailings, and shall keep a running tally of the number of and types of materials mailed by it in computerized database form.

9.11 No later than the publication of the first notice to be published pursuant to subsection 9.2, CertainTeed shall cause an internet website concerning the Settlement to be established. The website shall be maintained while CertainTeed is processing claims under this



Settlement Agreement; or, if as a result of the evolution of the electronic communication media, the maintenance of the website is no longer practicable, CertainTeed shall utilize a suitable alternative communications medium to make available information concerning the Settlement and the procedures for the submission of claims. The internet address of the website shall be included in the published notice. The website shall provide (a) generalized information concerning deadlines for opting out of the Settlement, Claim Forms, and the dates of relevant Court proceedings, including the Final Approval Hearing, (b) a listing of the toll-free phone number to be established pursuant to subsection 9.9; and (c) copies of this Agreement, the long-form notices, the Claim Forms, and information concerning the submission of Claims Packages. CertainTeed shall maintain records of their activities, including logs of inquiries to the internet website and downloads and/or mailings, and shall keep a running tally of the number and types of materials mailed by it or downloaded from the internet website in a computerized database form. The costs associated with the establishing and maintaining the internet website shall be paid by CertainTeed.

9.12 CertainTeed shall include in the section of its corporate website concerning warranty claims for roofing shingles a link to the website to be established pursuant to section 9.11 hereof and such link shall be maintained while CertainTeed is processing warranty claims under this Settlement Agreement; or, if as a result of the evolution of the electronic communication media, CertainTeed is not maintaining a corporate website, CertainTeed shall utilize a suitable alternative communications medium to make available information concerning the Settlement and the procedures for the submission of claims.

## **10. SETTLEMENT CLASS MEMBERS' RIGHT OF EXCLUSION AND TO OBJECT**

10.1 A Settlement Class Member may opt out of the Settlement Class. To exercise this exclusion right, the Class Member must send written notification of the decision to request

exclusion via first class mail to Class Counsel. The notice of exclusion must bear the signature of the Settlement Class Member (even if represented by counsel), state the address of the property(ies) that may contain CertainTeed Organic Shingles, and specify the number of units of residential property or other structures at each address containing CertainTeed Organic Shingles. If the class member has entered into a written or oral agreement to be represented by counsel, the objection shall also be signed by the attorney who represents the Class Member. Such request must be postmarked or personally delivered on such schedule as the Court may direct. In seeking Preliminary Approval of this Settlement, the Parties will request that the deadline for submission of requests for exclusion shall be set on a date no less than 60 days after the publication of the final notice to be published pursuant to subsection 9.2. Exclusions sent by any Class Member to incorrect locations shall not be valid. Any Class Member who submits a timely request for exclusion shall not be permitted to object to the Settlement.

10.2 Except for those Settlement Class Members who have properly and timely opted out of the Class, all Settlement Class Members will be deemed Settlement Class Members for all purposes under this Settlement.

10.3 Any Settlement Class Member who has not timely and properly filed a written request for exclusion from the Settlement Class shall be bound by this Settlement and by all subsequent proceedings, orders, and judgment in the MDL Litigation. Any Class Member who elects to opt out of the Class pursuant to this Agreement shall not be entitled to relief under or be affected by this Agreement.

10.4 Settlement Class Members who have elected to opt out of the Settlement Class may withdraw their opt out requests prior to the Effective Date, but only if they accept the benefits and terms of this Settlement and dismiss with prejudice any other pending action against

CertainTeed arising from damage to their homes or other structures because of any alleged defects in CertainTeed Organic Shingles.

10.5 Class Counsel shall have the right to contact persons who file exclusion requests and to challenge the timeliness and validity of any exclusion request, as well as the right to effect the withdrawal of any exclusion filed in error and any exclusion which a Settlement Class Member wishes to withdraw for purposes of participating in the Settlement as set forth in this Agreement. The Court shall determine whether any of the contested opt outs is valid.

10.6 Within seven (7) days of the closing of the opt out period, Class Counsel shall provide counsel for CertainTeed, by electronic mail, facsimile, and/or hand delivery, with a list identifying each person who has requested exclusion from the Settlement Class and attaching copies of all such requests for exclusion.

10.7 In the sole discretion of CertainTeed, this Settlement Agreement may be unilaterally voided if the number of Settlement Class Members opting out reaches a level that, in CertainTeed's judgment, threatens to frustrate the essential purpose of this Agreement. CertainTeed shall advise Class Counsel and the Court, in writing, of this election within seven (7) days of receiving the list of opt outs pursuant to subsection 10.6. In such event, this Settlement Agreement may not be offered or received into evidence or utilized for any other purpose in the Lawsuit or in any other action, suit, or proceeding.

10.8 A Settlement Class Member may object to the Settlement. To exercise this objection right, the Class Member must provide written notice of the objection via first class mail to the Court, Class Counsel, and CertainTeed's counsel. The objection must bear the signature of the Settlement Class Member (even if represented by counsel), the class member's current address and telephone number, state the address of the property(ies) that may contain

CertainTeed Organic Shingles, specify the number of units of residential property or other structures at each address containing CertainTeed Organic Shingles, and state the exact nature of the objection and whether or not the class member intends to appear at the final approval hearing. If the class member is represented by counsel, the exclusion request shall also be signed by the attorney who represents the Class Member. Such request must be postmarked or personally delivered on such schedule as the Court may direct. In seeking Preliminary Approval of this Settlement, the Parties will request that the deadline for submission of notice of objection shall be sent on a date no less than 45 days before the Final Approval Hearing. Objections sent by any Class Member to incorrect locations shall not be valid.

#### **11. FINAL JUDGMENT OF DISMISSAL**

11.1 At least fourteen (14) days before the Final Approval Hearing, the parties shall file a joint motion requesting that the Court grant final approval of the Settlement embodied in this Agreement and that the Court enter an Order of Final Approval of Settlement and Final Judgment of Dismissal consistent with the terms of this Agreement, substantially in the form of attached Exhibit K (the "Judgment").

11.2 If the Court grants final approval of the Settlement, the Judgment shall:

- (a) Provide that the Settlement is fair, reasonable, and adequate to the members of the Settlement Class and direct that the Agreement be implemented in accordance with its terms;
- (b) Make findings of fact concerning the allocation of the Settlement payments to Eligible Class Members among the costs of the replacement of the CertainTeed Organic Shingles, other materials, and labor;
- (c) Dismiss all the actions in MDL Docket No. 1817 against CertainTeed, with prejudice, as to any claims asserted in the Complaints by or on behalf of any Settlement Class Member (except for claims for damages to any interior part of the structure below the roof deck), and dismiss without prejudice the claims of any Named Plaintiff in any action in MDL Docket No. 1817 on whose building CertainTeed Organic Shingles have not been installed;

- (d) Adjudge that each and every Settlement Class Member is deemed to have fully, finally, and forever released and discharged CertainTeed from any and all claims, demands, rights, liabilities, or causes of action, whether known or unknown, related to, in connection with, or arising out of the facts asserted in the Complaints with respect to CertainTeed Organic Shingles, which any member of the Settlement Class had, has, or may have in the future, except for claims for damages to any interior part of the structure below the roof deck, and further shall permanently bar and enjoin the Settlement Class Members from asserting such claims directly or indirectly against CertainTeed;
- (e) Approve such award of attorneys' fees and expenses for Class Counsel and/or incentive payments to certain Plaintiffs as the Court may award or reserve jurisdiction to make such an award;
- (f) Provide that the form and manner of notice given to the Settlement Class Members fairly and adequately informed them of all material elements of this litigation and the proposed Settlement and constituted sufficient notice to the Settlement Class Members in accordance with Federal Rule of Civil Procedure 23 and due process requirements; and
- (g) Reserve jurisdiction over consummation and performance of the Agreement and administration of the Settlement.

11.3 Class Counsel agrees to take all steps reasonably required to obtain a dismissal without prejudice of the Pennsylvania Action and the Canada Action.

## 12. EFFECTIVE DATE

12.1 The Settlement and the obligations of the parties under this Agreement shall not become effective until, and are expressly conditioned upon, the occurrence of the Effective Date.

12.2 The Effective Date shall occur when all of the following conditions have been satisfied:

- (a) The Court has granted final approval of the Settlement following notice to the Settlement Class Members and has entered Judgment in substantially the form of Exhibit K annexed hereto; and
- (b) The Judgment has become final. The Judgment shall become final when (i) all periods within which to file an appeal from the Judgment have expired without the filing of any appeals, or (ii) in the event that an appeal from the Judgment is filed, a final order has been entered disposing of the

appeal, and any time for further appeal, including any petition for writ of certiorari, has expired.

**13. RELEASE**

13.1 Upon the Court's entry of the Judgment, all Settlement Class Members who have not properly and timely opted out of the Settlement Class pursuant to the terms of this Agreement shall be conclusively deemed to have released and forever discharged (as by an instrument under seal without further act by any person, and upon good and sufficient consideration), on behalf of themselves and their agents, heirs, executors and administrators, successors, attorneys, representatives, and assigns, each of CertainTeed, and its present or former parents, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, insurers, representatives, and assigns, from each and every claim of liability, including relief under federal law or the law of any state, which arises out of Damage to CertainTeed Organic Shingles applied during the Class Period, including without limitation all claims or liability on account of or related to Damage to CertainTeed Organic Shingles, including but not limited to claims for damage to the roof deck and associated roofing system and/or structure, which were alleged or could have been alleged in the Complaints in the actions consolidated in MDL Docket No. 1817; provided, however, that such Release will not release CertainTeed from (1) any obligations it has assumed under this Agreement; (2) any claims for damages to any interior part of the structure below the roof deck suffered on account of Damaged CertainTeed Organic Shingles; (3) any claims which do not arise from Damage to the CertainTeed Organic Shingles; (4) any claim for bodily injury, including claims for pain and suffering, emotional distress, mental anguish, or similar damages suffered as the result of such bodily injury; and (5) obligations incurred by CertainTeed in settlements it has made with Settlement Class Members prior to the Effective Date. Notwithstanding the foregoing, all claims (whether arising prior to the Effective Date or

thereafter) for penalties, punitive damages, exemplary damages, statutory damages, damages based upon a multiplication of compensatory damages, court costs, or attorneys' fees or expenses, which might otherwise have been made in connection with any claim relating to Damaged CertainTeed Organic Shingles, shall be released. The Releasing Parties specifically reserve any and all other claims and causes of action against any and all other persons or entities not parties to this Agreement. The Releasing Parties acknowledge and agree that such reservation creates no basis for a claim of indemnification or contribution, however denominated, by the non-party against the Released Parties, as Releasing Parties have released all claims on which liability could be found against the Released Parties, and is solely intended to preserve a Releasing Party's ability to seek relief against the non-party. This Release shall apply to all related subrogation claims of the Settlement Class Members' subrogees or insurance carriers.

13.2 It is the intent of the Parties that no Releasing Party shall recover, directly or indirectly, any sums for claims released by operation of this Agreement, including but not limited to Settled Claims, from Releasees, other than sums received under this Agreement and that Releasees shall have no obligation to make any payments to any non-parties for liability arising out of claims released by operation of this Agreement.

- (a) Releasing Parties agree that in any action brought by a Releasing Party against any non-party arising out of or related to CertainTeed Organic Shingles, should any such non-party sued by a Releasing Party file a claim or cause of action against any Releasee for contribution or indemnification, however denominated, arising out of or related to CertainTeed Organic Shingles, Releasing Parties agree that the Releasing Party shall agree to reduce or remit any judgment against the non-party by the percentage, amount, or share necessary under applicable law to fully discharge and relieve Releasees of liability to the non-party for claims for contribution and indemnification, however denominated.
- (b) Plaintiffs and Releasing Parties agree that the provisions of this Agreement and any Claim thereunder constitute a good faith settlement

under California Civil Code §§ 877 and 877.6 and comparable laws in other states, that Plaintiffs, Class Counsel, and Releasing Parties shall cooperate fully in any effort of Releasees to establish such good faith settlement before any court (including, without limitation, by joining in any motion or other procedure and providing declarations and other evidence to establish such good faith settlement where requested by any Releasee) and that all payments made under this Agreement relate to claims arising out of or related to CertainTeed Organic Shingles.

- (c) If any non-party sued by a Releasing Party obtains a judgment against any Releasee for contribution or indemnification, however denominated, Releasing Parties agree that the Releasing Party shall reduce or remit its judgment against the non-party by the amount of the non-party's judgment against the Releasee not to exceed the amount of that portion of the judgment for which the non-party obtains contribution or indemnification, however denominated, so as to fully satisfy the non-party's judgment against the Releasee.
- (d) If notwithstanding the intention of the Parties expressed therein, any release given by the Releasing Parties is not given its full effect by operation of law, then the Releasing Parties shall be deemed to have and do hereby transfer and assign to Releasees all claims, if any, that were deemed not released, to the extent necessary to effectuate the intent of the release.
- (e) Class Counsel shall cooperate with Releasees to ensure that the releases set forth in this Section are given their full force and effect and that Releasing Parties comply with their obligations set forth in this Agreement.

13.3 In the event that any Releasing Party seeks to invoke California Civil Code § 1542 which provides that "a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known to him must have materially affected his settlement with the debtor" (or any other like provision of law) in connection with CertainTeed Organic Shingles, the Releasing Parties and each of them now expressly waive the provision of California Civil Code § 1542 (and all other like provisions of law) to the full extent that these provisions may be applicable to this release. Each of the Releasing Parties hereby does, and shall be deemed to, assume the risk that facts additional, different, or contrary to the facts, which each believes or understands to exist, may now exist or



may be discovered after this Agreement becomes effective. Each of the Releasing Parties agrees that any such additional, different, or contrary facts shall in no way limit, waive, or reduce the foregoing release, which shall remain in full force and effect.

**14. EXCLUSIVE REMEDY; DISMISSAL OF ACTION; JURISDICTION OF COURT**

14.1 Each and every member of the Settlement Class who has not requested exclusion pursuant to this Agreement submits to the jurisdiction of the Court and will be bound by the terms of this Settlement (including, without limitation, any and all releases).

14.2 This Agreement shall be the sole and exclusive remedy for any and all pending or future claims of Settlement Class Members against CertainTeed arising from the installation and incorporation of allegedly Damaged CertainTeed Organic Shingles, and upon entry of the Final Judgment by the Court, each Settlement Class Member who has not opted out of the Class shall be barred from initiating, asserting, or prosecuting any such claims against CertainTeed, except for claims for interior damage below the roof deck.

14.3 Upon the entry of the Final Order and Judgment, each of the actions consolidated in this MDL Litigation and all claims and allegations concerning CertainTeed Organic Shingles therein (except for claims for damages to any interior part of the structure below the roof deck) of Settlement Class Members (other than opt outs) will be dismissed with prejudice.

14.4 The Court shall retain exclusive and continuing jurisdiction to interpret and enforce the terms, conditions, and obligations of this Agreement and the Court's orders and judgments. In the event of a breach by CertainTeed or a Settlement Class Member under this Agreement, the Court may exercise all equitable powers over CertainTeed or such Class Member to enforce this Agreement and the Final Order and Judgment irrespective of the availability or adequacy of any remedy at law. Such powers include, among others, the power of specific performance, contempt, and injunctive relief.

**15. OTHER TERMS AND CONDITIONS**

15.1 In the event that this Settlement does not become effective for any reason, this Agreement shall become null and void and of no further force and effect. In such instance, this Agreement and any negotiations, statements, communications, or proceedings relating thereto, and the fact that the parties agreed to the Settlement, shall be without prejudice to the rights of the Plaintiffs or CertainTeed or any Settlement Class Member, shall not be used for any purpose whatsoever in any subsequent proceeding in this action or in any other action in any court or tribunal, and shall not be construed as an admission or concession by any party of any fact, matter, or allegation. In the event that this Settlement does not become effective, the Plaintiffs, CertainTeed, and the Settlement Class Members shall be restored without prejudice to their respective positions as if the Settlement and any application for its approval by the Court had not been made or submitted. Notwithstanding the foregoing, in the event that the Court should refuse to approve any material part of this Agreement or the Exhibits thereto or if, on appeal, an appellate court fails to affirm the Judgment entered pursuant to this Agreement, then the parties may (but are not obligated to) agree in writing to amend this Settlement Agreement and proceed with the Settlement as so amended. Neither any award of an incentive payment to a Named Plaintiff in an amount less than that set forth in subsection 7.2, nor an award of attorneys' fees, costs, and disbursements to Class Counsel in an amount less than that requested by Class Counsel, nor a reversal on appeal of any such award shall be deemed to be a modification of a material part of this Agreement which shall cause the Agreement to become null and void pursuant to this subsection.

15.2 CertainTeed represents and warrants that: (i) it has all requisite corporate power and authority to execute, deliver, and perform this Agreement and to consummate the transactions contemplated hereby, (ii) the execution, delivery, and performance of this

Agreement have been duly authorized by all necessary corporate action on the part of CertainTeed; (iii) its signatories to the Agreement have full authority to sign on behalf of and to bind CertainTeed to its terms; and (iv) this Agreement has been duly and validly executed and delivered by CertainTeed and constitutes its legal, valid, and binding obligation.

15.3 Plaintiffs, CertainTeed, and their attorneys agree to cooperate fully in seeking Court approval of this Agreement and to use their best efforts to effect the consummation of the Settlement provided for herein. They further agree to execute all such additional documents as shall be reasonably necessary to carry out the provisions of this Agreement.

15.4 The undersigned counsel represent that they have been fully authorized to execute this Agreement on behalf of their respective clients.

15.5 This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and to all members of the Settlement Class and their respective agents, heirs, executors, administrators, successors, or assigns.

15.6 This Agreement and its Exhibits constitute the entire agreement of the parties with respect to the subject matter thereof. The Settlement contemplated by this Agreement is not subject to any condition not expressly provided for herein, and there exist no collateral or oral agreements relating to the subject matter of the Agreement. In entering this Agreement, no party is relying on any promise, inducement, or representation other than those set forth herein and in the Exhibits hereto. Any agreement purporting to change or modify the terms of this Agreement or the Exhibits hereto must be in writing, signed by counsel for each of the parties to this Agreement.

15.7 All of the Exhibits attached hereto or referred to herein are incorporated as if fully set forth in the body of this Agreement.

15.8 The waiver by any party to this Agreement of any breach of its terms shall not be deemed or construed to be a waiver of any other breach of this Agreement, whether prior, subsequent, or contemporaneous.

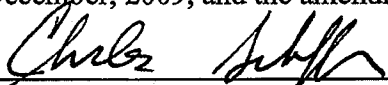
15.9 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original. All counterparts shall constitute one Agreement, binding on all parties hereto, regardless of whether all parties are signatories to the same counterpart, but the Agreement will be without effect until and unless all parties to this Agreement have executed a counterpart.

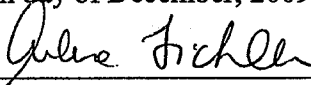
15.10 This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania without regard to its conflict of laws principles whether set forth in rules, precedent, or case law.

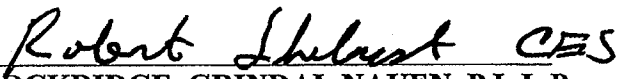
15.11 Any action or proceeding to construe or enforce this Agreement or to secure damages for its breach shall be brought in the Court.


15.12 Any headings, subheadings, or titles herein are used for purposes of convenience only and have no other legal force, meaning, or effect.

WHEREFORE, the undersigned have executed this Agreement on the 15th day of December, 2009, and the amendments thereto on the 29<sup>th</sup> day of December, 2009.

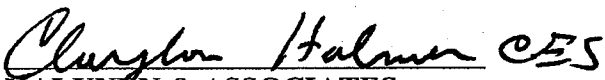
  
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