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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

JOY ANN GARDNER and ROBERT
BLANGERES, individually and on behalf of a
class of persons similarly situated,

Plaintiffs,

v.

STIMSON LUMBER COMPANY, an Oregon
Corporation,

Defendant.

) **CLASS ACTION**
)
) No. 00-2-17633-3SEA
)
) **SETTLEMENT AGREEMENT**
)
) The Honorable Mary I. Yu

WHEREAS the Plaintiffs in this Action represent a class of owners and future owners of buildings into which Stimson Forestex Siding materials were installed and incorporated since January 1, 1985; and

WHEREAS the Plaintiffs in this Action have alleged that Forestex Siding manufactured by Stimson Lumber Company that has been incorporated into the exterior building envelope of buildings will rot, buckle, discolor, deteriorate, and cause damage to other parts of the buildings;

WHEREAS the Plaintiffs in this Action have alleged that members of the Class have suffered and will continue to suffer irreparable harm and therefore seek money damages as a result of the damage described above;

WHEREAS the Plaintiffs in this Action have agreed that an appropriate compromise of these claims is to measure the Plaintiffs' compensable damages by the cost of replacement of

1 damaged Siding and related materials as provided for in the Compensation Formula;

2 WHEREAS Stimson Lumber Company contends that its product was a high quality
3 product of merchantable quality supported by marketing and advertising statements that were fair
4 and accurate, and that the product will perform as represented if installed and maintained in a
5 reasonable fashion, and applied in accordance with reasonable design and construction practices;
6 and

7 WHEREAS Stimson Lumber Company has agreed to enter into this Settlement
8 Agreement in order to put to rest all controversy and to avoid further expense and burdensome,
9 protracted and costly litigation which would be involved in defending this Action, without in any
10 way acknowledging any fault, responsibility or liability.

11 NOW, THEREFORE, THIS AGREEMENT is entered into this 15th day of June, 2004,
12 by and among (1) the Plaintiffs in this Action, for themselves and on behalf of the Class as
13 defined below (the "Class"); and (2) Defendant Stimson Lumber Company (as defined below
14 and referred to as "Defendant" or "Stimson").

15 Subject to Court approval as required by the Washington Civil Rule 23 and as provided
16 below, it is hereby stipulated and agreed by the Parties that, in consideration of the promises and
17 covenants set forth in this Agreement and upon the entry by the Court of a Final Order and
18 Judgment approving the settlement and directing the implementation of the terms and conditions
19 of this Agreement, this Action shall be settled and compromised upon the terms and conditions
20 set forth below.

21 **1. DEFINITIONS**

22 As used in this Agreement and the attached Exhibits, in addition to any definitions
23 elsewhere in this Agreement, the following terms below shall be defined as follows:

24 1.1 "Action" means the above-captioned action, *Gardner, et al. v. Stimson Lumber*
25 *Company, et al.*, King County, Washington Superior Court No. 00-2-17633-3SEA.

26 1.2 "Agreement" or "Settlement Agreement" means this Settlement Agreement,

1 including all Exhibits.

2 1.3 “Building” means any structure including homes, mobile homes, town homes,
3 condominiums, apartments, commercial structures, garages, and other types of buildings or
4 structures into which Stimson Forestex Siding materials are or were installed and incorporated as
5 a part of the exterior building envelope.

6 1.4 “Causation Exception” means one or more of the conditions set forth in Section
7 5.8 of this Agreement.

8 1.5 “Claim” or “Claims” means a claim submitted pursuant to the Claims Program
9 established by this Agreement.

10 1.6 “Claims Administrator” means the firm to be hired to process Claims in
11 accordance with Section 9 of this Agreement.

12 1.7 “Claim Program” means the procedure set forth in Section 5 below.

13 1.8 “Claim for Un-Reimbursed Expenditures” means a Claim referred to in Section
14 5.3 in the form attached as Exhibit “A”.

15 1.9 “Claim Form” means a claim form referred to in Section 5.2 of this Agreement in
16 the form attached as Exhibit “B”.

17 1.10 “Claims Period” or “Term of Agreement” or “Term” means seven (7) years from
18 the date of the Final Order and Judgment in this Action.

19 1.11 “Class” means the class composed of all Persons who have owned, own, or will
20 own Buildings on which Stimson Series 400 and 500 Forestex Siding materials have been
21 incorporated and installed in the states of Washington, Oregon, California, Idaho, Colorado,
22 Utah and Hawaii since January 1, 1985. Excluded from the Class are: (a) Persons who previously
23 properly executed and submitted a timely request for exclusion from the Class; (b) Stimson
24 (including related entities and officers); (c) the judge in the case; (d) Persons who filed lawsuits
25 against Stimson related to Stimson Forestex Siding materials to the extent that the lawsuit was
26 resolved by full payment, full release, or adjudication; and (e) Persons who while represented by

1 counsel (other than Class Counsel) resolved a claim relating to Stimson Forestex Siding
2 materials with a full release covering the entire Building.

3 1.12 “Class Counsel” means the following counsel: Sandler Ahern & McConaughy
4 PLLC; Levy, Ram & Olson LLP; Cunningham, Bounds, Yance, Crowder & Brown; and Berding
5 & Weil LLC.

6 1.13 “Class Member” means a member of the Class.

7 1.14 “Compensation Formula” as it relates to the alleged property damage to a
8 Building is the measure of damages applied to a Claim compensable under this Agreement.

9 (a) The Compensation Formula shall be determined by reference to full
10 replacement cost of removal and replacement of damaged board, determined by R.S. Means &
11 Co. (the “Initial Means Price”). The replacement cost shall be the cost to remove and replace
12 hardboard siding, including labor and materials for the removal and replacement of the siding
13 materials including an appropriate adjustment for wrap paper, flashing, waste, overlap, painting
14 (of the entire wall, where necessary to match), disposal and replacement of trim where required
15 by the removal of any exterior materials only. There shall be separate rates for panel siding and
16 lap siding which take into account the cost to remove and replace those products. On multi-story
17 structures or steep sites where scaffolding is required to replace, the cost of scaffolding shall be
18 reimbursed. Calculations shall be performed on a local basis by first three digits of zip code,
19 using prevailing labor rates. The siding materials cost component shall be based on the cost of
20 Hardiplank® siding. Stimson shall receive a credit or offset against a particular claim for
21 amounts previously paid for the Building in question. The maximum amount to be paid for
22 removal and replacement of Damaged Siding materials for a Building shall be the replacement
23 cost under this paragraph times the total square footage of Stimson Forestex Siding materials on
24 the Building, less applicable depreciation and credits for prior payments.

25 (b) The Initial Means Price will be adjusted annually for inflation using
26 appropriate Means’ indices.

1 1.15 "Court" means the Superior Court of King County, Washington, in which the
2 Action is pending.

3 1.16 "Damage," "Damages," and "Damaged" as it relates to Stimson Forestex Siding
4 materials on a Building means any of the following:

5 (a) Thickness swell of greater than 18% of average manufactured thickness of
6 board, measured at the edge of the board. For board with no measurable edge, a hairline fracture
7 along the drip edge that is equal or greater in width than .025", or fractures which are sufficiently
8 numerous that the inspector can conclude that they penetrate the surface of the board.

9 (b) Edge checking, where a feeler gauge of .025" thickness and one-half inch
10 width can be inserted one-half inch into a suspected delaminated edge with moderate hand
11 pressure.

12 (c) Fungal degradation which results in soft board in which moderate thumb
13 pressure deforms or punches a hole in the board.

14 (d) Delamination or deconsolidation of the board.

15 (e) Buckling of board in excess of 1/4" between studs spaced not more than
16 18" on center (or not more than 26" on center for product approved in writing by Stimson to be
17 installed on studs spaced 24" on center. Stimson does not believe it ever provided such written
18 approval).

19 (f) Wax bleed, or raised or popped fibers or fiber bundles where the condition
20 exists on 25% or more of the surface area of the board.

21 (g) Delaminated or cracked primer or primer peel, blistering, or cracking.

22 (h) Surface wetting or swelling around nail heads. Wetting or swelling caused
23 by swelling of the board around the nail head shall be considered Damage; wetting or swelling
24 caused by overdriving of the nail shall not be considered Damage.

25 Damage does not include (i) intentional, reckless or negligent physical damage to Siding
26 materials (unrelated to installation or maintenance or weather); or (ii) damage to Siding materials

1 to the extent resulting from natural disaster including, but not limited to, fire, hurricane, flood,
2 earthquake, earth movement, or other similar force majeure events.

3 1.17 “Date of the Claim” means the date or dates on which a Claim was submitted
4 under this Agreement by an Eligible Claimant with respect to damage to a Building as a result of
5 the installation and incorporation of Stimson Forestex Siding materials into the exterior building
6 envelope.

7 1.18 “Date of Installation” means the date or approximate date that Stimson Forestex
8 Siding materials were installed and incorporated into the Building of a Class Member. In the
9 absence of proof of installation on a different date, the Date of Installation will be presumed to
10 be the date of certificate of occupancy or first purchase of the Building. If the Claimant does not
11 know the Date of Installation, the Independent Inspector shall make a good faith estimate of such
12 date based on based on material available evidence after first having verified that the siding
13 materials are Stimson Forestex Siding materials.

14 1.19 “Defendant” or “Stimson” means Stimson Lumber Company.

15 1.20 “Eligible Claimant” or “Claimant” is a Class Member who is:

16 (a) a current owner of the Building on the date of Final Order and Judgment
17 in this Action who has not assigned the claim regarding Stimson Forestex Siding materials; or
18 (b) a subsequent purchaser of the Building; or
19 (c) a former owner of the Building who has retained or been assigned the
20 right to make a claim in a manner determined to be valid pursuant to Section 5.16, or who made
21 a prior Un-Reimbursed Expenditure concerning Stimson Forestex Siding materials as set forth in
22 Section 5.3; or

23 (d) a current owner or former owner of Building who made a Prior Claim
24 against Stimson as defined in Section 5.15.

25 1.21 “Fairness Hearing” means the settlement approval hearing(s) to be conducted by
26 the Court in connection with the determination of the fairness, adequacy and reasonableness of

1 this Agreement in accordance with CR 23.

2 1.22 “Final Order and Judgment” means the Order to be entered by the Court, in a
3 form that is mutually agreeable to the Parties, approving this Agreement as fair, adequate and
4 reasonable and in the best interests of the Class as a whole in accordance with CR 23(e), and
5 making such other findings and determination as the Court deems necessary and appropriate to
6 effectuate the terms of this Agreement.

7 1.23 “Independent Inspector” means the firm(s) to be hired and trained in accordance
8 with Section 6 below to evaluate Claims submitted pursuant to the terms of this Agreement.

9 1.24 “Initial Notice Date” means the first date upon which the Notice of Proposed
10 Class Action Settlement is initially mailed to the Class pursuant to Section 7 of this Agreement.

11 1.25 “Means Price Data” means the data supplied by the R.S. Means Co., Inc. for the
12 appropriate locations and time period as agreed upon by the Parties.

13 1.26 “Notice of Proposed Class Action Settlement” means the Court-approved Notice
14 to Class Member of Proposed Settlement in the form attached as Exhibit “C” to this Agreement.

15 1.27 “Parties” means the representative Plaintiffs, Joy Ann Gardner and Robert
16 Blangeres, the Class, and Stimson.

17 1.28 “Person” means any individual or legal or governmental entity or association,
18 including their successors or assigns.

19 1.29 “Plaintiffs” means the individuals acting as named Class representatives in this
20 Action, Joy Ann Gardner and Robert Blangeres.

21 1.30 “Preliminary Approval” means the Court’s preliminary approval of this
22 Agreement.

23 1.31 “Settled Claim” or “Settled Claims” means any claim, liability, right, demand,
24 suit, matter, obligation, damage, including consequential damages, losses or costs, actions or
25 causes of action, of every kind and description that each Releasing Party (as defined in Section
26 13.1 of this Agreement), had, or may have, against the Defendant, arising out of the subject

1 matter of this lawsuit (property damage associated with Stimson Forestex Siding materials),
2 whether known or unknown, suspected or unsuspected, asserted or unasserted, accrued or which
3 may hereafter accrue, which if known by the Releasing Parties as defined in Section 13.1 would
4 have materially affected his or her Settlement with the Releasees (as defined in Section 13.1),
5 including, and regardless of legal theory and the type of relief or damages claimed, claims of
6 damage to Class Members or for injunctive or declaratory relief as a result of the installation and
7 incorporation of Stimson Forestex Siding materials. “Settled Claims” do not include any claim
8 by class members for personal injury associated with Stimson Forestex Siding materials, and
9 Class Members expressly reserve all such claims.

10 1.32 “Settlement Date” means the date on which the Final Order and Judgment is
11 entered.

12 1.33 “Stimson” means Stimson Lumber Company, its divisions, successors, assigns,
13 and subsidiaries.

14 1.34 “Stimson Forestex Siding materials” or “Siding materials” means any Stimson
15 Forestex Series 400 and 500 exterior lap or panel siding or trim manufactured by Stimson and
16 installed into the exterior building envelope of a Building since January 1, 1985.

17 1.35 “Total Siding Replacement” means that all Stimson Forestex Siding materials on
18 a Building will be deemed Damaged under the following formulae:

19 (a) If 25% or more of the Siding materials on an elevation/side of a Building
20 are Damaged, then all of the Siding materials on the entire elevation/side shall be considered
21 Damaged.

22 (b) If 35% or more of the Siding materials on the entire Building are
23 considered Damaged without regard to the totaling procedure for sides, then all of the Siding
24 materials on the entire Building shall be considered Damaged.

25 (c) If 75% or more of the Siding materials on the entire Building are
26 considered Damaged after application of the totaling procedure for sides/elevations, then all of

1 the Siding materials on the Building shall be considered Damaged.

2 **2. SETTLEMENT PURPOSES ONLY**

3 2.1 This Agreement is for settlement purposes only, and neither the fact of, nor any
4 provision contained in, this Agreement or its exhibits, nor any action taken hereunder shall
5 constitute, be construed as, or be admissible in evidence as, any admission of the validity of any
6 claim or any fact alleged by Plaintiffs in this Action or in any other pending or subsequently filed
7 action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of
8 Stimson or admission by Stimson of any claim or allegation made in this Action or in any action,
9 nor as an admission by any of the Plaintiffs, the Class, or Class Counsel of the validity of any
10 fact or defense asserted against them in the Action or in any action. This Agreement is without
11 prejudice to the rights of Plaintiffs to continue the prosecution of the Action as a class action in
12 the event this Settlement Agreement is disapproved, reversed, or vacated, and is without
13 prejudice to the rights of the Parties to (a) take action in support of or opposition to certification
14 in this Action should the Settlement not be approved or implemented for any reason; (b) only in
15 the event that this Settlement Agreement is disapproved, reversed, vacated or terminated
16 pursuant to this Agreement, preserve any appellate rights until Final Order and Judgment and
17 any appeals therefrom or expiration of the time to appeal with no appeal taken; (c) take action in
18 support of or opposition to certification in any other proposed or certified class action; or (d) use
19 the certification of the class in this Action to support or oppose certification of any other
20 proposed Class arising out of the claims asserted in this Action.

21 **3. SUBMISSION FOR PRELIMINARY APPROVAL**

22 3.1 As soon as possible after execution of this Agreement, the Parties shall jointly
23 submit this Agreement, through their respective attorneys, to the Court for Preliminary Approval.

24 **4. SETTLEMENT ADMINISTRATION**

25 4.1 Subject to the requirements of Section 5, Stimson shall provide sufficient funds to
26 the Claims Administrator for payment of all Claims within thirty days (30) of notice of approval

1 thereof by the Claims Administrator. Stimson shall be responsible for the payment of all Claims
2 under this Agreement.

3 4.2 The Parties and the Claims Administrator shall establish an expedited claims
4 procedure for Class Members who have listed, posted or advertised their Building for sale or
5 who claim they have an emergent need to repair conditions on their Building involving the
6 Siding materials. Stimson may object to the need for the latter category of emergency
7 inspections if it believes that the claimed emergency does not justify an expedited inspection.
8 Any disputes regarding the need for an emergency inspection shall be resolved by the Special
9 Master. If such Claims are filed before the entry of Final Order and Judgment but after a Claims
10 Administration procedure is in place, the Claims Administrator will award the Class Members
11 the same relief to which they would be entitled as if Final Order and Judgment had been entered.
12 Such relief will be conditioned upon the execution and delivery of a release by the Class Member
13 consistent with Section 13 of this Agreement. In the event any Class Members receive an award
14 under the expedited claims procedure, and entry of Final Order and Judgment is not thereafter
15 entered, said Class Member(s) shall have the option of retaining the award and releasing Stimson
16 under Section 13, *infra*, or reimbursing the award and remaining a Class Member.

17 4.3 If timely payments are not made in accordance with Section 4.1 above, Class
18 Members whose Claims have been approved and remain unpaid for a period of 90 days may
19 pursue whatever legal remedies are available to them consistent with Section 15.1.

20 4.4 Stimson shall pay for distribution of the Notice of Proposed Class Action
21 Settlement as ordered by the Court.

22 **5. CLAIM PROGRAM**

23 5.1 Only Eligible Claimants are eligible for participation in the Claim Program.

24 5.2 Eligible Claimants shall be entitled to recover money under the Compensation
25 Formula pursuant to this Agreement if:

26 (a) damage has occurred as a result of the installation and incorporation of

1 Stimson Forestex Siding materials into their Building;

2 (b) there is Damage that falls within the definitions of “Damage” in Section
3 1.15 above;

4 (c) the Damage was not caused by one or more of the Causation Exceptions
5 described in Section 5.7 below; and

6 (d) the Eligible Claimant files a Claim within the term of this Agreement.

7 5.3 An Eligible Claimant who paid to repair or replace Forestex Siding materials is
8 eligible to participate in the Claims Program, if the Claimant provides proof as provided in
9 Section 5.3.1 below, and files a Claim for Un-Reimbursed Expenditures. Claims for Un-
10 Reimbursed Expenditures must be made within 18 months of the Settlement Date.

11 (a) In order for an Eligible Claimant to receive compensation for Un-
12 reimbursed Expenditures described in this Subsection, such Claimant must provide proof
13 satisfactory to the Claims Administrator of the following facts:

14 i. that the siding which is the subject of any such Claim was Stimson
15 Forestex Siding materials installed and incorporated into the Claimant’s Building;

16 ii. that the Stimson Forestex Siding materials which are the subject of
17 such Claim were Damaged;

18 iii. that the Stimson Forestex Siding materials which are the subject of
19 such Claim were repaired or replaced; and

20 iv. the costs of any such repair or replacement work.

21 An Eligible Claimant may, in seeking to satisfy the proof requirements of subsections (i) and (ii)
22 of this Section, submit photographs, videos, inspection reports, invoices, bills, sworn statements
23 or material remnants which establish that the siding in question was Stimson Forestex Siding
24 materials and the fact and extent of its Damage. If the siding has not been totally replaced, the
25 Independent Inspector shall verify the presence of Stimson Forestex Siding materials and the
26 extent of Damaged Siding materials that were replaced, and report the results to the Claims

1 Administrator. If the siding has been totally replaced, the Independent Inspector shall determine
2 to the extent feasible whether the siding was Stimson Forestex Siding materials and the extent of
3 Damage to the Siding materials based upon videos, inspection reports, photographs or other
4 competent evidence. The Claims Administrator shall calculate the award on the Claim for Un-
5 Reimbursed Expenditures under the guidelines set forth in this Agreement for Claims. The
6 Claims Administrator shall forward a copy of its proposed award and a copy of all materials
7 submitted in support of the Claim to Stimson, and not forward to the Claimant any award for Un-
8 Reimbursed Expenditures until thirty days after such notice. Stimson may submit a written
9 objection to the calculated award to the Claims Administrator (with a copy to Class Counsel).
10 Stimson may offer evidence to the Claims Administrator that the requirements of subsections (i)
11 and (ii) have not been satisfied. The Claims Administrator shall consider the entirety of the
12 evidence in the Claim File and as presented by Stimson and then either confirm its earlier
13 determination or issue a revised award, which shall be sent to the Claimant. In the event that the
14 Claims Administrator changes its award, it shall provide copies of the original and revised award
15 to Class Counsel. Any disputes concerning any revisions to the award may be submitted to the
16 Special Master.

17 5.4 Claimants submitting a Claim for Un-Reimbursed Expenditures shall be entitled
18 to the lesser of the amount of such Un-Reimbursed Expenditure or the amount to which they
19 would have been entitled under the Compensation Formula.

20 5.5 As proof of product identification, all Eligible Claimants must submit one of the
21 following:

22 (a) A prior communication from Stimson which confirms that the siding on
23 the Building is or was Stimson Forestex Siding materials;

24 (b) A written Stimson warranty and a sworn statement from the Claimant that
25 the warranty document was obtained with respect to the Claimant's Building, a manufacturer's or
26 builder's specification sheet describing the use of Stimson Forestex Siding materials, or a sworn

1 statement from the builder establishing that the Building is or was sided with Stimson Forestex
2 Siding materials;

3 (c) Photographs showing each side of the Building sufficient to allow the
4 Claims Administrator to verify that the siding is or was Stimson Forestex Siding materials;

5 (d) A 6" x 6" siding sample from the Building sufficient to allow the Claims
6 Administrator to verify that the siding is or was Stimson Forestex Siding materials and a sworn
7 statement from the Claimant that the sample is or was from the Claimant's Building;

8 (e) A photograph showing the Stimson production identification stamp on the
9 back of the siding and a sworn statement from the Claimant that the sample is or was from the
10 Claimant's Building; or

11 (f) A check or money order payable to the Forestex® Claims Administrator in the
12 amount of \$100 or the actual cost of inspection (whichever is less) to pay for the cost of an
13 inspection to determine the identification of the Siding materials.

14 This Section is also satisfied if the Stimson Forestex Siding materials warranty claims database
15 indicates or contains information that the siding on the Building is or was Stimson Forestex
16 Siding materials. Data from all Claim Forms and Claims for Un-Reimbursed Expenditures shall
17 be maintained by the Claims Administrator for processing and its database shall be available to
18 the Independent Inspector and the Parties.

19 5.6 Once a properly completed Claim Form has been received by the Claims
20 Administrator, an inspector will be sent as soon as practicable to inspect the Building. However,
21 after the expiration of one year from the commencement of the Claims Administration program,
22 the Claims Administrator and Independent Inspector will use their best efforts to ensure that such
23 inspections occur within 60 days from the date the Claim Form is received by the Claims
24 Administrator.

25 5.7 The inspection by the Independent Inspector shall include the following findings:

26 (a) Confirmation that the Stimson Forestex Siding materials are incorporated

1 into the exterior building envelope;

2 (b) A determination of the approximate Date of Installation of Stimson
3 Forestex Siding materials on the Building;

4 (c) Whether any Stimson Forestex Siding materials have sustained Damage;
5 and

6 (d) Whether the Damage to the Stimson Forestex Siding materials was caused
7 by one or more Causation Exceptions.

8 5.8 Eligible Claimants with Stimson Forestex Siding materials shall be entitled to
9 payment under the Compensation Formula unless such Damage is caused by one or more of the
10 Causation Exceptions listed below. The Causation Exceptions must be clearly observable to the
11 Independent Inspector without intrusive testing and be determined to be the sole, independent
12 cause of the Damage in question. Any doubt by the Independent Inspector as to the existence or
13 extent of these Causation Exceptions will be resolved in favor of the Claimant. If any part of a
14 board is determined to be Damaged for reasons unrelated to the Causation Exceptions, and, in
15 addition, there is Damage on the board attributable to one of the Causation Exceptions, then the
16 entire board will be treated as compensable. The Causation Exceptions apply to Damage caused
17 by the following:

18 (a) Framing misaligned within or between a story or floor.

19 (b) Substantial variance from Stimson's nailing instructions. (However, the
20 Claimant may nail the subject boards before or during the inspection as part of the determination
21 as to whether this Exception applies).

22 (c) Permanently installed sprinkler systems, which due to their layout and/or
23 design, consistently caused a direct spray against the siding. Mere over spray or occasional,
24 incidental spray does not qualify as a causation exception, and, if practicable, there should be a
25 test of the sprinkler system demonstrating a clear pattern of sprinklers spraying the siding.

26 (d) Installation of Siding materials 3" or less from finish grade or hardscape.

1 Contact of shrubbery with siding shall not be within the scope of this exception. Damage where
2 Siding materials are installed more than 3” from finish grade or hardscape but less than 6” will
3 be compensable unless the Independent Inspector determines that the Damage is caused by the
4 bottom edge of the Siding materials never having been field painted.

5 (e) Absence of or improper roof/wall flashing, such that there was not a 1”
6 cutback of Siding materials from the roof, or improper installation of flashing creating a readily
7 observable avenue for free running water to enter the wall system. Flashing deficiencies must be
8 readily observable without intrusive inspection. If the cutback is more than 1” but less than 2”,
9 the Damage will be compensable unless the inspector determines that the cut edge of the Siding
10 materials was never painted. To be excluded under this exception the Damage must commence
11 and be visible within 12” of the readily observable avenue for free running water to enter the
12 wall system. Visible horizontal or downward Damage that is continuous from and originates
13 exclusively from the water entry point will not be compensable. For this exclusion to apply the
14 Damage need not be uninterrupted on the face of the Siding materials but must be present on the
15 face and/or drip edge of each contiguous board.

16 (f) Failure to comply substantially with Uniform Building Code requirements
17 in effect at the time of construction for flashing or counter-flashing, including flashing, counter-
18 flashing, z-flashing, escutcheons, coping and use of sealant on penetrations of the Siding (but not
19 any caulking called for by Stimson’s installation instructions) where there is visible horizontal or
20 downward Damage that is continuous from and originates exclusively from the area of non-
21 compliance. For this exclusion to apply the Damage need not be uninterrupted on the face of the
22 board but must be visible and continuous on the outside face or drip edge of each contiguous
23 board in a pattern the inspector believes is caused solely by water entry in the area of non-
24 compliance as opposed to an episodic or sporadic occurrence.

25 (g) Lack of ground crawlspace vapor barriers where there is evidence of
26 systemic, ongoing, and continuing presence of standing water or swampy conditions in the

1 crawlspace. Evidence of intermittent or episodic presence of water in the crawlspace is not
2 sufficient for purposes of this exception.

3 In making the determinations called for under this Section, there will be no intrusive testing, and
4 if there is other compensable Damage to the same board, the entire board will be treated as
5 compensable.

6 5.9 After completion of the inspection, the Independent Inspector will forward a
7 completed Field Inspection and Evaluation Form in a form to be agreed upon by the Parties, or
8 the Special Master if no agreement can be reached, for each Claim inspected to the Claims
9 Administrator. The Claims Administrator will determine the amount the Eligible Claimant shall
10 be paid based on the information contained in the Field Inspection and Evaluation Form under
11 the Compensation Formula as applied to the affected Siding materials and the factors listed
12 below:

13 (a) The maximum amount that may be paid for a single Building under this
14 Agreement shall be measured by the Compensation Formula as applied to the surface area of all
15 Siding materials incorporated into the exterior envelope of the Building.

16 (b) If any part of a board or panel is considered Damaged, the entire board
17 shall be considered Damaged.

18 (c) If 25% or more of the Siding materials on an elevation/side of a Building
19 are Damage, then all of the siding on the entire elevation/side shall be considered Damaged.

20 (d) If 35% or more of the Siding materials on the entire Building are
21 Damaged without regard to the totaling procedure for sides, then all of the Siding materials on
22 the entire Building shall be considered Damaged.

23 (e) If 75% or more of the Siding materials on the entire Building are
24 considered Damaged after application of the totaling procedure for sides/elevations, then all of
25 the Siding materials on the Building shall be considered Damaged.

26 5.10 The Claims Administrator shall deduct from the amount due an Eligible Claimant

1 to the extent of the Claimant's use, in years, as follows:

2 (a) for the first five (5) years following the Date of Installation there shall be
3 no offset; and

4 (b) for each year thereafter, there will be a reduction of 3% up to the Date of
5 the Claim; however, this deduction shall not exceed 27% of the amount due.

6 5.11 Based upon review of the Field Inspection and Evaluation Form and in
7 accordance with the requirements of this Agreement, the Claims Administrator will determine
8 the amount, if any, of the payment to be made and will notify the Claimant of this amount
9 (subject to Section 5.3 regarding Un-Reimbursed Expenditures).

10 5.12 If a Claimant is dissatisfied with the inspector's payment calculation, he or she
11 may appeal to the Special Master. The Special Master may award fees and costs in the event of
12 an unreasonable or vexatious appeal by individual class members (or defense of such an appeal).

13 5.13 Each Class Member shall advise any subsequent direct purchaser of the Building
14 of the Settlement and make such other appropriate disclosure as may be required by local or state
15 laws regarding the purchase and sale of real property.

16 5.14 In the event an Eligible Claimant suffers additional Damage as a result of the
17 Stimson Forestex Siding materials that was not compensated by way of a prior Claim or Claim
18 for Un-Reimbursed Expenditures, the Claimant may submit another Claim within the Claim
19 Periods. A Claimant may make a Claim when he or she believes that there is additional Damage
20 to their Siding materials. After a Claimant has filed three Claims during the Term of this
21 Agreement, the Claimant must pay in advance the cost of any additional inspections not to
22 exceed \$100 per inspection.

23 5.15 Persons who filed lawsuits against Stimson relating to Stimson Forestex Siding
24 materials before the Settlement Date to the extent that the lawsuit was resolved by full payment,
25 full release, or adjudication and Persons who while represented by counsel (other than Class
26 Counsel) resolved a claim relating to Stimson Forestex Siding materials with a full release

1 covering the entire structure are not Class Members and are not Eligible Claimants. Purchasers
2 of Buildings owned by such Persons will have no additional or greater rights than their
3 predecessors. Class Members who are not subject to this exclusion but who previously
4 submitted or resolved a claim to Stimson or others (the "Prior Claim") may participate under the
5 terms of this Agreement to the extent that the Claimant:

6 (a) would receive an amount in accordance with this Agreement which is
7 greater than any amount received by way of a Prior Claim for Damaged siding; and

8 (b) files a properly completed Claim Form or Claim for Un-Reimbursed
9 Expenditures.

10 Claimants must meet the above two requirements to the satisfaction of the Claims Administrator.

11 Any amount due to such Claimant under this Agreement shall be reduced by the amount of any
12 payment previously made by Stimson, unless the Claimant can establish that the Siding materials
13 on the Building that were reimbursed under the Prior Claim was replaced by new Stimson
14 Forestex Siding materials.

15 5.16 Class Members may retain or assign their settlement benefits to the extent allowed
16 by law, but assignments may be made only to subsequent purchasers of the affected Building.

17 Any Claimant who is a subsequent purchaser of the Building may file a Claim under the
18 Compensation Formula unless a prior owner has retained or been assigned the right to make such
19 claim. Such subsequent purchasers shall be bound by the terms and conditions of this

20 Agreement, and may make claim only for Damaged Siding materials not previously
21 compensated under this Agreement. However, for any Damage not compensated under a prior
22 Claim filed by the predecessor, the subsequent purchaser may make Claims under this

23 Agreement without regard to the Prior Claim or its resolution and may aggregate Claims with
24 claims filed by predecessors to meet the thresholds set forth in Section 5.9. A retention or
25 assignment agreement must be in a form valid under the law of the jurisdiction where the

26 Building is located. Any dispute concerning the validity of any such retention or assignment or

1 payment made to such subsequent purchasers will be resolved by the Special Master.

2 5.17 The Claims Administrator shall process payment of Claims in the order of the
3 Date of Claims received, except for emergency or expedited claims of the type described in
4 Section 4.1.

5 5.18 This Agreement shall terminate all liability under Stimson's warranty. Except for
6 the rights and entitlements set forth in this Agreement, all Class Members' rights under
7 Stimson's express or implied warranties the warranty shall be released.

8 5.19 In no event shall Stimson, any attorneys representing Stimson, Plaintiffs or Class
9 Counsel have any liability for claims of wrongful or negligent conduct by the Claims
10 Administrator, Independent Inspectors, R.S. Means Company, the Special Master, or their
11 respective agents or employees.

12 5.20 Class Counsel and Stimson's counsel shall meet in person or by telephone
13 conference as is reasonably necessary to resolve any disputes surrounding the implementation
14 and execution of this Agreement and to attempt to resolve any concerns of the Parties.

15 **6. SELECTION AND TRAINING OF INDEPENDENT INSPECTORS**

16 6.1 The Independent Inspector will be selected following a competitive bidding
17 process, although the lowest bidder need not be selected. The Parties shall make such selection,
18 subject to approval by the Court. If the Parties are unable to agree, the Court shall appoint the
19 Independent Inspector after considering submissions by the Parties. Class Counsel and Stimson
20 will jointly assist in developing the training program for the inspectors, and may attend as they
21 desire. The individual inspectors shall be required to use an Inspection Manual in a form to be
22 agreed to by the Parties; in the event that the Parties are unable to agree, the Special Master shall
23 set the form of the Inspection Manual. Each individual inspector will be required to attend a
24 training course presented and developed by Class Counsel and Stimson and/or their
25 representatives. The content of the course will be agreed to by the Class Counsel and Stimson
26 and updated as required by experience. Any disputes as to the content of the training program

1 will be resolved by the Special Master. The Independent Inspector shall have the right to hire
2 and fire inspectors subject to the provisions of Section 6.3.

3 6.2 Class Counsel and Stimson, upon agreement, shall have the right to supplement
4 the list of individual inspectors and substitute or add others with the consent of opposing counsel,
5 which consent shall not be unreasonably withheld.

6 6.3 In the event either Class Counsel or Stimson reasonably believes that any of the
7 individual inspectors are not properly applying any of the terms of this Agreement, or in the
8 event there is a question concerning the application of the terms of this Agreement by the
9 individual inspectors, then:

10 (a) The objecting or concerned Party's counsel shall notify counsel for the
11 other Parties to this Agreement in writing of the concern;

12 (b) Class Counsel and counsel for Stimson shall meet within 10 days of
13 receipt of the written notification to resolve the concern;

14 (c) In the event that Class Counsel and Stimson' counsel cannot resolve the
15 matter within 20 days of the notification under sub-section 6.3(a) above, then the matter may be
16 submitted to the Special Master.

17 **7. NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

18 7.1 As the Court may direct, the Parties shall cause the Notice of Proposed Class
19 Action Settlement describing this proposed Settlement Agreement and the Fairness Hearing to be
20 provided to the members of the Class as provided in this Section.

21 7.2 The Notice, in a form similar to attached Exhibit "C," and approved by the Court,
22 shall be mailed, first class postage prepaid, to each member of the Class identified through
23 reasonable efforts. Notice shall be sent to each member of the Class whose identity becomes
24 known as a result of the Notice of Proposed Class Action Settlement being published, and other
25 subsequent mailings will be made as the identities or addresses of additional Class Members
26 become known. The Notice shall be made available for distribution and publication in Spanish

1 as well as English where appropriate or upon request.

2 7.3 The Notice of Proposed Class Action Settlement shall be distributed to all known
3 Class Members, including, without limitation, those having made Prior Claims or requested
4 copies of the Initial Notice of Class Action in this case. The notice program to be submitted for
5 Court approval shall include a short form of Notice of Proposed Class Action Settlement to be
6 published initially in newspapers, and magazines, and broadcast on television in a manner
7 reasonably calculated to reach Class Members, as more particularly described in the Notice plan
8 to be approved by the Court. The short form of notice shall be provided to home inspection
9 services and apartment owner associations/organizations. The notice program shall be scheduled
10 and conducted so as to permit a final approval hearing on November 12, 2004. Notice shall also
11 be provided to lumber distributors, lumberyards and suppliers. The short form of the Notice of
12 Proposed Class Action Settlement shall inform the reader, and/or listener or viewer, as the case
13 may be, of a toll-free telephone number of the Claims Administrator and how to obtain the long
14 form of the Notice of Proposed Class Action Settlement, Claim Form, or Claim for Un-
15 Reimbursed Expenditures (Exhibits C, B, and A, respectively).

16 7.4 No later than the Initial Notice Date, the Claims Administrator shall establish a
17 toll-free telephone facility capable of providing fair and reasonable access to Class Members.
18 This facility shall be capable of (a) receiving requests for the long form of the Notice of
19 Proposed Class Action Settlement and other materials described in this Section; (b) providing
20 generalized information concerning deadlines for receipts of requests for opt-ins, objections, and
21 presentations to the Court at the Fairness Hearing; and (c) mailing the materials to Class
22 Members as provided in this Section. The facility may, as appropriate under instructions from
23 Class Counsel, refer individual inquiries to Class Counsel for response. Stimson shall be
24 promptly provided with notice of such reference. The facility shall maintain records of all
25 mailings and such other information in such form and in such manner as Class Counsel and
26 Stimson jointly direct.

1 7.5 The Notice of Proposed Class Action Settlement, in a form agreed by the Parties,
2 or in the event of no agreement, as decided by the Court, shall be disseminated by first class mail
3 throughout the term of this Agreement as Class Counsel and/or the Claims Administrator
4 identify additional Class Members.

5 **8. FORMER CLASS MEMBERS' OPPORTUNITY FOR INCLUSION**

6 8.1 At the discretion of Stimson, a Class Member who or which opted out of the Class
7 by properly executing and filing a timely request for exclusion from the Class may opt back into
8 the Class to take advantage of the Settlement. The Person must complete, sign, and return to the
9 Claims Administrator (or the Parties if no Claims Administrator has been chosen) a request for
10 inclusion which states that the Class Member has reviewed the Settlement, does not and will not
11 object to it, and wishes to take advantage of the benefits of the Settlement. The request must be
12 signed by the Class Member and notarized and must state the address of the Class Member's
13 Buildings which contain Stimson Forestex Siding materials and the number of units of Buildings
14 containing the Siding. Stimson shall notify the former Class Member within thirty days of its
15 receipt of the request for opt-in if it disapproves the request for opt-in. If it does not do so, the
16 former Class Member shall be deemed to have opted back into the Class and will be considered a
17 Class Member for all purposes of this Agreement. Any disputes regarding the timing or validity
18 of discretionary opt-ins shall be resolved by the Special Master.

19 8.2 Except for those former class members who are excluded from or previously
20 opted out, all Class Members will be deemed Class Members for all purposes under this
21 Agreement. Any Class Member who previously opted out of the Class and does not opt back
22 into the Class pursuant to this Section shall not be entitled to relief under or be affected by this
23 Agreement.

24 **9. CLAIMS ADMINISTRATOR**

25 9.1 The Claims Administrator will be selected following a competitive bidding
26 process, although the lowest bidder need not be selected. The Parties shall select the Claims

1 Administrator subject to approval by the Court. If the Parties are unable to agree, the Court shall
2 appoint the Claims Administrator after considering submissions by the Parties.

3 9.2 The Claims Administrator shall, under the supervision of the Court, administer
4 the relief provided by this Settlement Agreement in accordance with the terms of this Agreement
5 and shall resolve Claims in a rational, responsive, cost effective, and timely manner. The Claims
6 Administrator shall maintain the records of its activities in computerized database form and shall
7 provide such reasonable periodic and special reports and such other information as the Court or
8 Stimson and Class Counsel may jointly request. The Claims Administrator shall provide
9 individual claim files to Class Counsel upon request and upon notice to Stimson; it shall also
10 make the individual claim file available to Stimson upon its request.

11 9.3 In the event either Class Counsel or Stimson reasonably believe that the Claims
12 Administrator is not properly applying any of the terms of this Agreement or in the event there is
13 a question concerning the application of the terms of this Agreement by the Claims
14 Administrator, then:

15 (a) The objecting Party's counsel shall notify counsel for the other Parties to
16 this Agreement in writing of the concern;

17 (b) Class Counsel and counsel for Stimson shall meet within 30 days of
18 receipt of the written notification to resolve the concern;

19 (c) In the event that Class Counsel and counsel for Stimson cannot resolve the
20 matter, then the matter may be submitted to the Special Master within thirty days after the notice
21 called for in sub-section 9.3(a).

22 Class Counsel and counsel for Stimson shall meet in person or by telephone conference as is
23 reasonably required to discuss the implementation of this Agreement and to attempt to resolve
24 any concerns of the Parties.

25 **10. SPECIAL MASTER**

26 10.1 The Parties shall jointly propose a Special Master to be appointed by the Court, to

1 preside over implementation of the Settlement Agreement. The Special Master shall have power
2 to make decisions in all matters pertaining to administration and enforcement of the Settlement
3 Agreement, subject to review by the Court upon request of any Party. The Parties will use their
4 best efforts to agree on the Special Master to be proposed to the Court. In the event that the
5 Parties are unable to agree, the Court shall appoint the Special Master.

6 **11. STATUTES OF LIMITATIONS OR REPOSE**

7 11.1 A Class Member shall not be barred from obtaining compensation in accordance
8 with the terms of this Agreement because of a statute of limitations or repose or due to the
9 execution of a prior release.

10 **12. EXCLUSIVE REMEDY; DISMISSAL OF ACTION; JURISDICTION OF COURT**

11 12.1 This Agreement shall be the sole and exclusive remedy for any and all Settled
12 Claims of Class Members against Stimson arising from the installation and incorporation of
13 Stimson Forestex Siding materials, and upon entry of the Final Order and Judgment by the
14 Court, each Class Member shall be barred from initiating, asserting, or prosecuting any Settled
15 Claims against Stimson. In the event that any Class Member attempts to prosecute an action in
16 contravention of the Judgment and Settlement Agreement in this Action, Plaintiffs' Counsel shall
17 forward the Settlement Agreement to such Class Members and advise them of the Release
18 provided pursuant thereto, and as appropriate shall otherwise assist Stimson in ensuring that the
19 Judgment in this Action is given full faith and credit.

20 12.2 On the Settlement Date, the Complaint in this Action and the related
21 *Carr/Dockins* case in California shall be dismissed subject to the reactivation of claims as
22 provided in Section 17 of this Agreement. Except as provided in Section 17 of this Agreement,
23 Class Members may not commence or actively prosecute actions on Settled Claims against
24 Stimson once the Final Order and Judgment is entered.

25 12.3 Class Members agree to the dismissal of any action pending against Stimson to
26 the extent any such action seeks recovery for any Settled Claims.

1 12.4 The Court shall, except to the extent that the Special Master is authorized by this
2 Agreement to act in the first instance, retain exclusive and continuing jurisdiction over the
3 Action and all Parties to interpret and enforce the terms, conditions, and obligations of this
4 Agreement.

5 **13. RELEASES**

6 13.1 Upon entry of the Final Order and Judgment, and subject to Section 12 of this
7 Agreement, each Class Member, on behalf of himself and any Person claiming by or through
8 him as his heir, administrator, devisee, predecessor, successor, representative of any kind,
9 shareholder, partner, director, owner or co-tenant of any kind, affiliate, subrogee, assignee, or
10 insurer (the “Releasing Parties”), and regardless of whether any Class Member executes and
11 delivers a written release, shall be deemed to and does hereby release and forever discharge
12 Stimson, including its successors, parents, subsidiaries, divisions, departments, or affiliates, and
13 any and all of its past, present and future officers, directors, employees, attorneys, stockholders,
14 partners, agents, servants, successors, subrogees and assigns and their respective insurers
15 (“Releasees”), of and from any and all Settled Claims and related subrogation claims of the
16 Releasing Party’s subrogees or insurance carriers not protected from waiver of subrogation by
17 the provisions of applicable insurance policies (or assigned or subrogated prior to final approval
18 of this Agreement and not subject to compromise or settlement by the policyholder) except as
19 provided herein. Each Releasing Party, upon entry of the Final Order and Judgment, and subject
20 to Section 12 of this Agreement, shall be deemed to and does hereby release and discharge each
21 Releasee of and from any and all Settled Claims. Releasing Parties specifically reserve any and
22 all other claims and causes of action against any and all other persons or entities not Parties to
23 this Agreement, including builders, architects, distributors, painters and others in the chain of
24 selection, distribution, and application of the Siding. In the event of a conflict between the
25 release of Stimson’s partners, agents, servants and assigns and this reservation, this reservation
26 shall control. The releases provided in this agreement do not extend to claims for personal injury

1 against any person or for claims not related to Siding materials.

2 13.2 Nothing in this Agreement shall prejudice or in any way interfere with the rights
3 of the Class Members and Stimson to pursue all their rights and remedies against any persons or
4 entities not a Party except as released in this Section.

5 13.3 Nothing in this Agreement shall be construed in any way to prejudice or interfere
6 with Stimson's rights under its insurance policies.

7 **14. EXPENSES AND FEES ASSOCIATED WITH CLAIMS ADMINISTRATION**

8 14.1 All reasonable fees and expenses incurred by the Special Master, the Claims
9 Administrator and the Independent Inspector in administering this Agreement, the cost of all
10 Notices provided in this Agreement, and all costs of implementing and administering the Claims
11 Program, shall be paid by Stimson. Any Party may monitor such fees, expenses and other costs.
12 Any dispute concerning the validity of such fees, expenses and any other costs incurred by the
13 Claims Administrator or Independent Inspector shall be resolved by the Special Master.

14 14.2 The Claims Administrator shall establish a fund complying with all applicable
15 statutes and regulations as a qualified settlement fund ("QSF") from which the payments to the
16 Eligible Claimants and the costs in Section 14.1 shall be paid. Stimson's initial deposit into the
17 QSF shall be not less than \$2 million. During the term of this Agreement, the amount of the
18 QSF shall not be reduced below \$1.5 million. If the QSF reaches or is projected by the Claims
19 Administrator to drop below \$1.5 million, Stimson shall provide sufficient funding within 10
20 days to maintain the balance of the fund at at least \$1.5 million. The Claims Administrator shall
21 notify Stimson on a monthly basis of the amounts needed to comply with these obligations.
22 Failure by Stimson to timely pay the amounts determined by the Claims Administrator to
23 maintain the QSF shall be a breach of this Settlement Agreement under Section 15 herein. When
24 all Claims submitted within the Term of the Agreement have been paid, as well as any fees or
25 expenses due the Claims Administrator, the Independent Inspector, the Special Master, and Class
26 Counsel, the balance in the QSF shall be returned to Stimson.

1 14.3 If the Court does not issue the Final Order and Judgment, Stimson shall bear the
2 costs of the Notice of Proposed Class Action Settlement and any expenses associated with this
3 Settlement incurred to such point by a Special Master, Claims Administrator, Independent
4 Inspector or R.S. Means Company, and any associated shutdown expenses, including any notices
5 as the Court may direct, excluding attorneys' fees, and Stimson shall not have the right to recoup
6 such funds, subject only to Stimson's right to seek that portion of those expenses which is
7 recoverable as costs of the action in the event it ultimately obtains a judgment in its favor in this
8 Action.

9 **15. ENFORCEMENT OF AGREEMENT**

10 15.1 In the event Stimson fails to perform under the Agreement or to make a payment
11 due and owing under the terms of this Agreement, Class Counsel shall first provide Stimson with
12 written notice of breach. If an alleged breach is not resolved within 20 days of the notice, Class
13 Counsel may apply to the Court for relief.

14 15.2 In the event of a breach by Class Members or Stimson under this Agreement, the
15 Court may exercise all equitable powers over the breaching Party(ies) to enforce this Agreement
16 and the Final Order and Judgment irrespective of the availability or adequacy of any remedy at
17 law. Such powers include, among others, the power of specific performance and injunctive
18 relief.

19 15.3 Neither Plaintiffs nor Defendant shall appeal from a Final Order and Judgment
20 approving this Agreement. In the event of an appeal from a Final Order and Judgment approving
21 the settlement by someone other than Plaintiffs or Defendant, the Parties agree to implement this
22 Agreement notwithstanding the appeal, unless and until the appeal is resolved in such a way that
23 results in a disapproval of the Settlement as not fair, reasonable, or in the interests of the Class.

1 **16. REPRESENTATIONS AND WARRANTIES**

2 16.1 Stimson represents and warrants that (i) it has all requisite corporate power and
3 authority to execute, deliver, and perform this Agreement and to consummate the transactions
4 contemplated hereby, (ii) the execution, delivery, and performance of this Agreement and the
5 consummation by it of the actions contemplated herein have been duly authorized by all
6 necessary corporate action on the part of Stimson; and (iii) this Agreement has been duly and
7 validly executed and delivered by Stimson and constitutes its legal, valid and binding obligation.

8 **17. TERMINATION OF THE AGREEMENT**

9 17.1 The performance of this Agreement is expressly contingent upon entry of the
10 Final Order and Judgment. If the Court fails to enter such Order and Judgment approving this
11 Agreement following conclusion of the Fairness Hearing(s), the Agreement will be terminated,
12 having no force or effect whatsoever, null and void, *ab initio*, and not admissible as evidence for
13 any purpose in any pending or future litigation in any jurisdiction involving any of the Parties.
14 Stimson will use commercially reasonable efforts to implement the Claims Program in
15 accordance with the terms and conditions of this Agreement as soon as practicable after the entry
16 of Final Order and Judgment, even if there is an appeal by someone other than Plaintiffs or
17 Defendant.

18 17.2 Notwithstanding any other provision of this Agreement, if this Agreement is
19 terminated for any reason, Stimson hereby stipulates and agrees that, to the extent legally
20 permissible, the Plaintiffs may pursue their claims by proceeding with the certified class action,
21 and the appropriateness of the Plaintiffs to act as representative Plaintiffs shall be based on their
22 status as of the date of Preliminary Approval, even if one or more of the Plaintiffs' individual
23 claims will thereafter have been paid under this Agreement.

24 17.3 Until the Term of this Agreement has expired, Stimson agrees to use its best
25 efforts to preserve all records and evidence which indicate who may be a Class Member or have
26 Stimson Forestex Siding materials.

1 **18. FEES AND EXPENSES OF CLASS COUNSEL**

2 18.1 Stimson shall pay the reasonable attorneys' fees and expenses of Class Counsel
3 through the date of the final approval hearing. No Class Member's recovery will be reduced to
4 pay the attorneys' fees or expenses of Class Counsel. The amount of such fees and expenses
5 through final approval shall be determined by agreement of the Plaintiffs and Defendant; in the
6 event that Plaintiffs and Defendant cannot agree, the amount shall be determined by binding
7 arbitration, the hearing of which shall be completed on or before July 31, 2004. The protocol for
8 the binding arbitration shall be agreed upon between the Parties with the aid of mediator Hon.
9 Coleman Fannin (Ret.). If the Parties are unable to agree to such a protocol, the protocol shall be
10 established by Judge Fannin after considering submissions by the Parties. Stimson shall
11 reimburse Class Counsel for the entire amount of their out-of-pocket litigation expenses and
12 make an initial payment of fees and expenses within five days of the arbitration award. Any
13 expenses which are not available for reimbursement as of the date of the arbitration award (e.g.,
14 telephone charges incurred or not billed until after the award) may be reimbursed pursuant to
15 Section 18.2.

16 18.2 Stimson shall also pay the reasonable attorneys' fees and costs of Class Counsel
17 for their reasonable and necessary work on the claims administration process. Such fees and
18 expenses shall be reimbursed on a semi-annual basis with any disputes regarding reasonableness
19 to be resolved by the Special Master.

20 **19. MISCELLANEOUS PROVISIONS**

21 19.1 Subject to Court approval, Stimson shall pay within ten (10) days of the
22 Settlement Date the sum of \$75,000 to be distributed to the Class Representatives and other
23 homeowners who previously participated in the prosecution of this Action in an equitable way in
24 recognition of their efforts on behalf of the Class. Class Counsel shall submit a plan for
25 distribution of such amounts to the Class Representatives and other Class Members. Such
26 payment shall not reduce the compensation under this Agreement for the affected persons for the

1 Siding materials on their Building.

2 19.2 This Agreement, including all attached Exhibits hereto, shall constitute the entire
3 Agreement among the Parties with regard to the subject matter of this Agreement and shall
4 supersede any previous agreements and understandings between the Parties. This Agreement
5 may not be changed, modified, or amended except in writing signed by Class Counsel and
6 Stimson and subject to Court approval. The Parties contemplate that the exhibits may be
7 modified by subsequent agreement of the Parties prior to dissemination to the Class Members.

8 19.3 This Agreement may be executed by the Parties in one or more counterparts, each
9 of which shall be deemed an original but all of which together shall constitute one and the same
10 instrument.

11 19.4 This Agreement shall be binding upon and inure to the benefit of the Class, the
12 Parties, and their representatives, heirs, successors, and assigns.

13 19.5 The headings of the sections of this Agreement are included for convenience only
14 and shall not be deemed to constitute part of this Agreement or to affect its construction. The
15 decimal numbering of provisions herein is intended to designate subsections where applicable.

16 19.6 This Agreement shall be construed and enforced in accordance with the laws of
17 the State of Washington.

18 19.7 Any notice, instruction, application for Court approval or application for Court
19 order sought in connection with this Agreement or other document to be given by any Party to
20 any other Party shall be in writing and delivered personally or sent by registered or certified
21 mail, postage prepaid, if to Stimson, to the attention of Stimson's respective representatives and
22 to Class Counsel on behalf of Class members, or to other recipients as the Court may specify. As
23 of the date of this Agreement, the respective representatives are as follows:

1 For Stimson: Kirk J. Wolden, c/o Gurnee Wolden & Daniels, 2240 Douglas Blvd, Suite 150,
2 Roseville, CA 95661

3 For the Plaintiff Class: Bennet A. McConaughy, Sandler Ahern & McConaughy PLLC, 1200 5th
4 Avenue, Suite 1900, Seattle, WA 98101

5
6 Dated this 15th day of June, 2004.

7
8 STIMSON LUMBER COMPANY:

9 By: _____

10 Its: _____

11 COUNSEL FOR DEFENDANT STIMSON LUMBER COMPANY:

12
13 _____
14 Stephen Gurnee
15 Kirk Wolden
16 Gurnee Wolden & Daniels LLP
2240 Douglas Blvd Ste 150
Roseville, CA 95661

13 _____
14 Mark Honeywell
15 Joan C. Foley
16 Gordon Thomas Honeywell Malanca &
Daheim
600 University Ave Ste 2100
Seattle, WA 98101-4185

17 CLASS COUNSEL:

18
19
20 _____
21 Bennet A. McConaughy
22 Paul L. Ahern, Jr.
23 Linda R. Larson
24 Michael D. Sandler
25 SANDLER AHERN & McCONAUGHY
26 PLLC
1200 Fifth Avenue, Suite 1900
Seattle, WA 98101-3135

20 _____
21 Michael F. Ram
22 Suzanne Solomon
23 LEVY RAM & OLSON LLP
24 639 Front Street, Fourth Floor
25 San Francisco, CA 94111

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