

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**IN RE: ELK CROSS TIMBERS
DECKING MARKETING, SALES
PRACTICES AND PRODUCTS
LIABILITY LITIGATION**

This Document Applies to: All Cases

No. 15-cv-0018 (JLL)(JAD)

MDL No. 2577

Honorable Jose L. Linares

Honorable Joseph A. Dickson

SETTLEMENT AGREEMENT

September 16, 2016

TABLE OF CONTENTS

	<u>Page</u>
1. Recitals	1
2. Definitions	8
3. Claims Period	13
4. Effective Date	13
5. Class Certification	14
6. Claims to Be Compensated by the Settlement	15
7. Amounts Payable with Respect to Claims	16
8. Release	21
9. Claims Program Procedures	26
10. Attorneys’ Fees and Incentive Payments to the Class.....	39
11. The Preliminary Approval Order	40
12. Notice of Proposed Settlement	41
13. Settlement Class Members’ Right of Exclusion and to Object	43
14. Final Judgment of Dismissal	46
15. Exclusive Remedy; Dismissal of Action; Jurisdiction of Court	47
16. Other Terms and Conditions	48

SETTLEMENT AGREEMENT

IT IS HEREBY AGREED, as of September __, 2016, by, between and among the named plaintiffs in the above-captioned multi-district litigation (hereinafter “Named Plaintiffs”), in their individual and representative capacities on behalf of themselves and a putative Settlement Class (as defined herein), and defendant Building Materials Corporation of America d/b/a GAF Materials Corporation, now known as Standard Industries Inc. (hereinafter “GAF”) (collectively, the “Parties”), by and through their duly authorized counsel, that, in consideration of the promises and covenants set forth in this Settlement Agreement (hereinafter “Agreement”) and upon entry by the United States District Court for the District of New Jersey (the “Court” or “this Court”) of a Final Order and Judgment (as defined herein) approving this Agreement and all of its terms, the claims asserted against GAF in these actions shall be settled, dismissed, released and compromised upon the terms and conditions set forth in this Agreement.

1. RECITALS

1.1 WHEREAS, a putative class action brought by plaintiff Ken Burger on behalf of owners of structures located within the United States, or, alternatively, within Ohio, on which Cross Timbers decking is or has been installed, was filed in 2014 in the United States District Court for the Southern District of Ohio, and transferred to the District of New Jersey under the caption *Ken Burger, individually and on behalf of all others similarly situated, v. Building Materials Corporation of America d/b/a GAF Materials Corporation*, No. 15-cv-00070 (D.N.J.); and

1.2 WHEREAS, a putative class action brought by plaintiff Dorothy Kaiser on behalf of owners of structures located within the United States, or, alternatively, within Colorado, on which Cross Timbers decking is or has been

installed, was filed in 2014 in the United States District Court for the District of Colorado, and transferred to the District of New Jersey under the caption *Dorothy Kaiser, individually and on behalf of all others similarly situated, v. Building Materials Corporation of America d/b/a GAF Materials Corporation*, No. 15-cv-00072 (D.N.J.); and

1.3 WHEREAS, a putative class action brought by plaintiff Jeff Ernst on behalf of owners of structures located within the United States, or, alternatively, within Illinois, on which Cross Timbers decking is or has been installed, was filed in 2014 in the United States District Court for the Northern District of Illinois, and transferred to the District of New Jersey under the caption *Jeff Ernst, individually and on behalf of all others similarly situated, v. Building Materials Corporation of America d/b/a GAF Materials Corporation*, No. 15-cv-00123 (D.N.J.); and

1.4 WHEREAS, a putative class action brought by plaintiff John Stidham on behalf of owners of structures located within the United States, or, alternatively, within Indiana, on which Cross Timbers decking is or has been installed, was filed in 2014 in the United States District Court for the Southern District of Indiana, and transferred to the District of New Jersey under the caption *John Stidham, individually and on behalf of all others similarly situated, v. Building Materials Corporation of America d/b/a GAF Materials Corporation*, No. 15-cv-00124 (D.N.J.); and

1.5 WHEREAS, a putative class action brought by plaintiff Chad Sheridan on behalf of owners of structures located within the United States, or, alternatively, within Iowa, on which Cross Timbers decking is or has been installed, was filed in 2014 in the United States District Court for the Southern District of Iowa, and transferred to the District of New Jersey under the caption *Chad Sheridan, individually and on behalf of all others similarly situated, v. Building*

Materials Corporation of America d/b/a GAF Materials Corporation, No. 15-cv-00122 (D.N.J.); and

1.6 WHEREAS, a putative class action brought by plaintiffs Frederick C. Robertie and Veronica B. Robertie on behalf of owners of structures located within the United States, or, alternatively, within North Carolina, on which Cross Timbers decking is or has been installed, was filed in 2014 in the United States District Court for the Eastern District of North Carolina, and transferred to the District of New Jersey under the caption *Frederick C. Robertie and Veronica B. Robertie, individually and on behalf of all others similarly situated, v. GAF Building Materials Corporation*, No. 15-cv-00067 (D.N.J.); and

1.7 WHEREAS, a putative class action brought by plaintiffs Arnold Williams and Cathy Phillips (incorrectly named as “Kathy Williams” in the complaint) on behalf of owners of structures located within the United States, or, alternatively, within California, on which Cross Timbers decking is or has been installed, was filed in 2014 in the United States District Court for the Southern District of Ohio, and transferred to the District of New Jersey under the caption *Arnold and Kathy Williams, individually and on behalf of all others similarly situated, v. Building Materials Corporation of America d/b/a GAF Materials Corporation*, No. 15-cv-00205 (D.N.J.); and

1.8 WHEREAS, a putative class action brought by plaintiff Michael Narducci and Leanne Claxton on behalf of owners of structures located within the United States, or, alternatively, within Michigan, on which Cross Timbers decking is or has been installed, was filed in 2014 in the United States District Court for the Eastern District of Michigan, and transferred to the District of New Jersey under the caption *Michael Narducci and Leanne Claxton, individually and on behalf of all others similarly situated, v. Building Materials Corporation of America d/b/a GAF Materials Corporation*, No. 15-cv-00169 (D.N.J.); and

1.9 WHEREAS, a putative class action brought by plaintiff John Ross on behalf of owners of structures located within the United States, or, alternatively, within Missouri, on which Cross Timbers decking is or has been installed, was filed in 2014 in the United States District Court for the Western District of Missouri, and transferred to the District of New Jersey under the caption *John Ross, individually and on behalf of all others similarly situated, v. Building Materials Corporation of America d/b/a GAF Materials Corporation*, No. 15-cv-00073 (D.N.J.); and

1.10 WHEREAS, a putative class action brought by plaintiff Harrison Warren on behalf of owners of structures located within the United States, or, alternatively, within Nebraska, on which Cross Timbers decking is or has been installed, was filed in 2014 in the United States District Court for the District of Nebraska, and transferred to the District of New Jersey under the caption *Harrison Warren, individually and on behalf of all others similarly situated, v. Building Materials Corporation of America d/b/a GAF Materials Corporation*, No. 15-cv-00093 (D.N.J.); and

1.11 WHEREAS, a putative class action brought by plaintiff James Wolcott on behalf of owners of structures located within the United States, or, alternatively, within Virginia, on which Cross Timbers decking is or has been installed, was filed in 2014 in the United States District Court for the Eastern District of Virginia, and transferred to the District of New Jersey under the caption *James Wolcott, individually and on behalf of all others similarly situated, v. Building Materials Corporation of America d/b/a GAF Materials Corporation*, No. 15-cv-00170 (D.N.J.); and

1.12 WHEREAS, a putative class action brought by plaintiff Thomas McGovern on behalf of owners of structures located within the United States, or, alternatively, within the states of New Jersey, Michigan, and Indiana, on which

Cross Timbers decking is or has been installed, was filed in 2014 in the United States District Court for the District of New Jersey under the caption *Thomas McGovern, individually and on behalf of all others similarly situated, v. Building Materials Corporation of America d/b/a GAF Materials Corporation*, No. 14-cv-05258 (D.N.J.); and

1.13 WHEREAS, in 2015 after the above cases were consolidated into the Multi-District Litigation *In Re Elk Cross Timbers Decking Marketing, Sales Practices and Products Liability Litigation*, No. 15-cv-00018 (D.N.J.), an Omnibus Amended Master Class Action Complaint was filed in which additional plaintiffs Robert Hoover and Judy Cohen, Charles Denton, Dennis Turcheck, Christine Tuthill, Samir Khanna, Mark Giovannetti, John Shepherd, Donna and Jonathan Mapp, Paul Barker, and Michelle Megerle joined their claims on behalf of owners of structures located within the United States, or, alternatively, within various states, on which Cross Timbers and/or DuraLife decking is or has been installed; and

1.14 WHEREAS, a putative class action brought by plaintiffs Dean Christoffersen, Steven Brown, Mark Law, John Kuropatkin, Randy King, Douglas Smieja and Cheryl Johnson, George Johnson, Robert Aspinwall, and Troy Koster on behalf of owners of structures located within the United States, or, alternatively, within the states of North Dakota, Kansas, Massachusetts, Tennessee, Alabama, Wyoming, and Wisconsin, on which Cross Timbers and/or DuraLife decking is or has been installed, was filed in 2015 in this MDL Litigation in the United States District Court for the District of New Jersey under the caption *Christoffersen et al., individually and on behalf of all others similarly situated, v. Building Materials Corporation of America d/b/a GAF Materials Corporation*, No. 15-cv-05765 (D.N.J.); and

1.15 WHEREAS, a Second Amended Omnibus Master Class Action Complaint and Demand for Jury Trial (“Complaint”) was filed in this MDL Litigation in 2015 in which additional plaintiffs Edgar Rachor, Donald Vinson, and Joseph Campbell joined their claims on behalf of owners of structures located within the United States, or, alternatively, within various states, on which Cross Timbers and/or DuraLife decking is or has been installed; and

1.16 WHEREAS, GAF denies all allegations of fault, wrongdoing, or liability made by Named Plaintiffs in the above listed actions and in this MDL Litigation; and

1.17 WHEREAS, this MDL Litigation involves allegations pertaining to Cross Timbers Decking, DuraLife Decking, and Railways Railings manufactured or sold by GAF or Elk, including allegations that such products are or were prone to splitting, warping, swelling, shrinking, or surface decay and to develop pervasive mold, mildew, or fungal or other growth; and

1.18 WHEREAS, GAF is willing to enter into this Agreement to resolve all claims of all Named Plaintiffs and all claims of the Settlement Class (as defined herein); and

1.19 WHEREAS, since at least 2014, Class Counsel have conducted an extensive investigation of facts and circumstances relevant to the allegations made in Named Plaintiffs’ complaints, including consultations with experts, interviewing and deposing potential witnesses, conducting investigations of the properties of certain Named Plaintiffs, including through attendance at inspections conducted by GAF, reviewing information and evidence they have obtained regarding the facts and circumstances alleged in the complaints, and researching and studying the legal principles applicable to issues in the MDL Litigation; and

1.20 WHEREAS, the Parties have engaged in extensive, arm’s-length negotiations regarding the settlement of claims involving Cross Timbers Decking,

DuraLife Decking, and Railways Railings manufactured or sold by GAF or Elk, including at multiple mediation sessions over which the Honorable Magistrate Judge Joseph A. Dickson presided; and

1.21 WHEREAS, Named Plaintiffs and Class Counsel have evaluated the time and expense that will be necessary to prosecute these consolidated multidistrict cases to final judgment, the delays that are likely before any judgment may be entered, and the uncertainty inherent in 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

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

1.23 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 GAF (or any of its predecessors, successors, parent or subsidiary companies, affiliates, officers, directors, employees, 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 correct, and without conceding any infirmity in its defenses, GAF 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; and

1.24 WHEREAS, the parties desire not only to end further burdensome and protracted litigation but also desire to create the claims process that is set forth below in section 9 for the benefit of the members of the Settlement Class.

NOW, THEREFORE, it is hereby agreed by and between GAF and Named Plaintiffs, acting for themselves and the Settlement Class, 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 Named Plaintiffs or any other member of the Settlement Class relating to, arising out of, or in connection with any of the allegations made in the complaints, shall be settled and compromised, and each member of the Settlement Class (other than those who opt out as described in section 13 below) shall release GAF as set forth in section 8 below, and these actions shall be dismissed with prejudice, according to the terms and conditions set forth in this Agreement.

2. DEFINITIONS

As used in this Agreement, its exhibits, and any other documents contemplated by this Agreement, the following terms shall have the meanings set forth below. Terms used in the singular shall be deemed to include the plural and vice versa.

2.1 “Class Counsel” shall mean the law firms on the Plaintiffs’ Steering Committee in the above-captioned MDL Litigation, including their employees:

Daniel K. Bryson
Scott Harris
Jeremy Williams
WHITFIELD BRYSON & MASON, LLP
900 W. Morgan Street
Raleigh, North Carolina 27603
(919) 600-5000

James E. Cecchi
Lindsey H. Taylor
CARELLA, BYRNE, CECCHI, OLSTEIN,
BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, New Jersey 07068
(973) 994-1700

Benjamin F. Johns
CHIMICLES & TIKELLIS LLP
One Haverford Centre
361 West Lancaster Ave.
Haverford, Pennsylvania 19041
(610) 642-8500

Jack Landskroner
LANDSKRONER, GRIECO, MERRIMAN,
LLC
1360 West 9th Street, Suite 200
Cleveland, Ohio 44113
(216) 522-9000

Frank Petosa
Pete Albanis
MORGAN AND MORGAN COMPLEX
LITIGATION GROUP
600 N. Pine Island Rd., Suite 400
Plantation, Florida 33324

2.2 “Agreement” shall mean this Settlement Agreement.

2.3 “Applicable Claims Period” shall have the meaning set forth in section 3.3.

2.4 “Causation Defenses” shall have the meaning set forth in section 7.7.

2.5 “Claim” shall mean a claim opened by a Settlement Class Member in accordance with the procedures set forth in section 9 of this Agreement.

2.6 “Claim Form” shall mean the form that a Settlement Class Member is to submit with the Claim Package as set forth in section 9.5(a).

2.7 “Claim Package” shall mean the information, documents and materials, including the Claim Form, that a Settlement Class Member must submit under the Claims Program to process the Settlement Class Member’s Claim, the contents of which will substantially conform to section 9.5.

2.8 “Claim Opening Date” shall have the meaning set forth in section 9.5.

2.9 “Claims Program” shall mean the procedures set forth in section 9 for the administration of Claims.

2.10 “Completed Claim Package” shall mean a Claim Package that GAF deems to be complete and that enables GAF to determine whether a Settlement Class Member is eligible for compensation pursuant to the terms of this Agreement and, if so, the amount of such compensation.

2.11 “Decking” shall mean Cross Timbers and DuraLife decking products manufactured or sold by GAF or Elk.

2.12 “Decking materials” shall refer collectively to Decking boards, Decking fascia, and Railways handrails.

2.13 “Effective Date” shall have the meaning set forth in section 4.

2.14 “Eligible Claimant” shall mean a Settlement Class Member who submits a Completed Claim Package that is deemed eligible for compensation pursuant to the terms of this Agreement. The Parties agree that, based on the discovery and inspections conducted in this MDL Litigation, Named Plaintiffs are “Eligible Claimants”; however, in order to receive compensation, each Named Plaintiff must submit a Completed Claim Package to enable GAF to determine the amount of compensation to which the Named Plaintiff is entitled pursuant to the terms of this Agreement.

2.15 “Elk” shall mean Elk Corporation a/k/a Elk Composite Building Products, Inc., which GAF acquired in 2007.

2.16 “Lead Class Counsel” shall mean the law firm WHITFIELD BRYSON & MASON, LLP (including its employees), located at 900 W. Morgan Street, Raleigh, North Carolina 27603, (919) 600-5000.

2.17 “MDL Litigation” shall mean the multi-district litigation proceeding in this Court captioned *In Re: Elk Cross Timbers Decking Marketing, Sales*

Practices and Products Liability Litigation, MDL Docket No. 2577, No. 15-cv-0018 (JLL)(JAD) (D.N.J.).

2.18 “Mold Condition” means a pervasive mold, mildew, or fungal or other growth from these foregoing conditions that displays on at least twenty percent (20%) of the top surface area of a board. “Mold Condition” does not mean color fading or color deterioration.

2.19 “Mold Condition Claims Period” shall have the meaning set forth in section 3.2.

2.20 “Notice Date” means the date of publication of the first notice to be published pursuant to section 12.2.

2.21 “Permitted Transferee” means a party to whom the applicable GAF express limited warranty has been transferred: (a) by its original owner, to the extent permitted by, and to the extent there has been compliance with, the warranty’s express terms regarding transfer; or (b) by operation of state law.

2.22 “Qualifying Damage” means Splitting, Warping, Swelling, Shrinking, or Surface Decay. “Qualifying Damage” to any portion of a continuous piece of a board, fascia, or handrail will be deemed “Qualifying Damage” to the entire piece.

2.23 “Qualifying Damage Claims Period” shall have the meaning set forth in section 3.1.

2.24 “Railways” shall mean Railways railing products manufactured or sold by GAF or Elk.

2.25 “Release” shall have the meaning set forth in section 8.

2.26 “Shrinking” means a visible shrinkage of a board, handrail, or fascia such that the length is reduced by more than three-eighths of an inch (3/8”). Gapping between boards, fascia, or at any structure that does not satisfy the foregoing criteria is not Shrinking.

2.27 “Splitting” means visible cracks parallel to the long direction of the board, fascia, or handrail that are at least seven inches (7”) long and one-sixteenth inch (1/16”) wide. “Substructure” means the foundational or supporting structure on which Decking materials are installed.

2.28 “Surface Decay” means an area of a board, fascia, or handrail, not less than 6 square inches that has a visibly noticeable surface flaking, crumbling, chalking, delamination, and/or peeling away of the surface, and expressly includes, but is not limited to, Surface Decay that is accompanied by Mold Condition. “Surface Decay” does not mean color fading or color deterioration.

2.29 “Swelling” means a visible change in shape of a board, fascia, or handrail, such that it is enlarged by more than three eighths of an inch (3/8”) in length or more than one-eighth of an inch (1/8”) in width. Boards, handrails, or fascia that touch each other or a structure without satisfying the foregoing criteria are not Swelling.

2.30 “Warping” means a change in shape so that the board, fascia, or handrail is no longer straight in the long direction. Warping may also be called buckling, bowing, undulating, sagging or wavy boards, fascia, or handrail. A board, fascia, or handrail is not Warping if the shape conforms to the curvature of the framing to which it is fastened. In order to qualify as Warping, a deviation must measure more than one-sixteenth of an inch (1/16”) per linear foot of board, fascia, or handrail, *e.g.*, for a ten (10) foot board, five-eighths of an inch (5/8”) of deviation, and for a twenty (20) foot board, one and one-quarter inches (1 1/4”) of deviation.

3. CLAIMS PERIOD

3.1 Qualifying Damage: Claims for Qualifying Damage must be opened within twenty-four (24) months of the Effective Date (the “Qualifying Damage Claims Period”).

3.2 Mold Condition: Claims for Mold Condition, whether Mold Condition alone or in combination with Qualifying Damage, must be opened within twelve (12) months of the Effective Date (the “Mold Condition Claims Period”).

3.3 Applicable Claims Period: Settlement Class Members who do not open claims within the applicable Qualifying Damage Claims Period or Mold Condition Claims Period (“Applicable Claims Period”) shall be barred from filing claims pursuant to the Settlement. Irrespective of whether a claim is opened within the Applicable Claims Period, all Settlement Class Members shall be subject to the Release discussed below.

4. EFFECTIVE DATE

4.1 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.

4.2 The Effective Date shall occur on the first date 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 a Final Order and Judgment; and

b. The Final Order and Judgment has become final. The Final Order and Judgment shall become final when (i) all periods within which to file an appeal from the Final Order and Judgment have expired without the filing of any

appeal; (ii) in the event that an appeal from the Final Order and Judgment is filed, a final order has been entered fully disposing of the appeal on the merits, and any time for further appeal, including any time to file a petition for writ of certiorari, has expired; or (iii) in the event that a writ of certiorari is granted, a final order has been entered fully disposing of the appeal on the merits.

5. CLASS CERTIFICATION

5.1 The Parties agree that in order to effectuate this Settlement, they will ask the Court to certify a Settlement Class, defined as follows:

All purchasers (and Permitted Transferees of the underlying warranties) of: (a) Decking manufactured or sold by GAF or Elk between January 1, 2002 and December 31, 2012 and installed on their property on the Notice Date, or (b) Railways manufactured or sold by GAF or Elk between January 1, 2005 and December 31, 2012 and installed on their property on the Notice Date (“Settlement Class Members”).

5.2 Excluded from the Settlement Class are:

- a. Any persons who previously executed and returned a release, or endorsed a check bearing a release, with regard to their Decking materials; and
- b. All persons and entities who timely exercise their rights under Federal Rule of Civil Procedure 23 to opt out of the Settlement; and
- c. GAF or any of its predecessors, successors, parent or subsidiary companies, affiliates, officers, directors, employees, agents, attorneys, representatives, insurers, suppliers, distributors or vendors; and
- d. Class Counsel and any member of Class Counsels’ immediate family; and

- e. The Judges, including Magistrates, to whom the cases within the MDL Litigation were assigned in the transferor courts, the Judges, including Magistrates, to whom the MDL Litigation is assigned, and any member of those Judges', including Magistrates', immediate family.

6. CLAIMS TO BE COMPENSATED BY THE SETTLEMENT

6.1 GAF will provide compensation to Eligible Claimants pursuant to and in accordance with the terms of this Agreement.

6.2 A Settlement Class Member shall be an Eligible Claimant if:

- a. the Settlement Class Member submits a Completed Claim Package containing the materials required by section 9.5 within the time periods set forth herein, which establish:
 - i. that the Settlement Class Member owns the property on which the Decking materials are installed; and
 - ii. that the Settlement Class Member purchased the Decking materials, or is a Permitted Transferee of the applicable GAF express limited warranty; and
 - iii. that the Decking materials are installed on the Settlement Class Member's property on the Claim Opening Date; and
 - iv. the existence and extent of Qualifying Damage or Mold Condition; and
- b. GAF does not establish that any Causation Defense, as defined in section 7.7, was the principal cause of any Qualifying Damage or Mold Condition.

6.3 Notwithstanding the foregoing, a Settlement Class Member shall not be an Eligible Claimant if: (i) the Settlement Class Member fails to open a Claim

during the Applicable Claims Period; or (ii) the Settlement Class Member's Claim is denied pursuant to section 9.12.

7. AMOUNTS PAYABLE WITH RESPECT TO CLAIMS

7.1 To resolve all Settlement Class Members' claims, GAF will provide compensation to Eligible Claimants as follows.

7.2 Scope of Compensation for Qualifying Damage.

- a. **Qualifying Damage to Decking boards.** Eligible Claimants with Qualifying Damage to Decking boards are entitled to compensation under one of the provisions set forth below in (i), (ii), or (iii) as follows:
 - i. Qualifying Damage on less than 30% of boards: If less than thirty percent (30%) of the Decking boards installed on the Eligible Claimant's property display Qualifying Damage, then the Eligible Claimant shall be entitled to receive payment, in the amounts set forth below, based on the total number of Decking boards, calculated in linear feet, that display Qualifying Damage.
 - ii. Qualifying Damage on 30% or more of boards: If thirty percent (30%) or more of the Decking boards installed on the Eligible Claimant's property display Qualifying Damage, then the Eligible Claimant shall be entitled to receive payment, in the amounts set forth below, based on the total number of Decking boards, calculated in linear feet, that are installed.
 - iii. Combination of Qualifying Damage and Mold Condition on 40% or more of boards: If (a) twenty percent (20%) or more but less than thirty percent (30%) of the Decking boards installed on the Eligible Claimant's property display Qualifying Damage ***and*** (b) the sum of the percentage of Decking boards displaying Qualifying Damage ***plus*** the percentage of all Decking boards on the deck that display Mold Condition equals at least forty

percent (40%), then the Settlement Class Member shall be entitled to receive payment, in the amounts set forth below, based on the total number of Decking boards, calculated in linear feet, that are installed; provided, however, that no board in this calculation may be “double counted,” *i.e.*, each board in this calculation may be treated as displaying only Mold Condition or Qualifying Damage.

If an Eligible Claimant owns and seeks compensation for more than one deck on which Decking boards are installed, including but not limited to on the same property, the percentage threshold calculations set forth above shall be calculated separately for each deck.

- b. **Qualifying Damage to Decking fascia.** Eligible Claimants with Qualifying Damage to Decking fascia are entitled to receive payment, in the amounts set forth below, based on the linear feet of Decking fascia that display Qualifying Damage.
- c. **Qualifying Damage to handrails.** Eligible Claimants with Qualifying Damage to Railways handrails are entitled to receive payment, in the amounts set forth below, calculated based on the linear feet of handrails that display Qualifying Damage, but only if the handrails are of the type that were made of the same composite material as the Decking boards installed on the deck.

7.3 **Rate of Compensation for Qualifying Damage.**

- a. **Materials:**
 - i. Boards and fascia: GAF shall pay a fixed rate of \$2.51 per linear foot of boards and fascia that have been approved for a payment as set forth above, reduced by any applicable deduction for proration as set forth in the applicable GAF express limited warranty.

- ii. Handrails: GAF shall pay a fixed rate of \$5.00 per linear foot of handrails that have been approved for a payment as set forth above, reduced by any applicable deduction for proration as set forth in the applicable GAF express limited warranty. Qualifying Damage that displays on a handrail will constitute Qualifying Damage to that continuous piece of handrail only (*e.g.*, a handrail that displays Qualifying Damage and that is six (6) feet in length will be compensated for Qualifying Damage by multiplying \$5.00 by six (6)).
- b. **Labor**. Eligible Claimants who show Qualifying Damage to boards or fascia will also qualify for payment for labor costs at a fixed rate of \$2.37 per linear foot of boards or fascia that have been approved for a payment as set forth above.
 - i. If the applicable express limited warranty provides for coverage for the cost of labor, then for claims opened within the period in which labor is covered under the applicable express limited warranty, the fixed rate for labor costs will not be subject to proration, and for claims opened after the expiration of the period in which labor is covered by the applicable express limited warranty, the fixed rate for labor costs will be prorated by dividing the number of months that have elapsed since the date on which the Decking materials were installed by the total number of months that the applicable warranty provides for materials coverage.
 - ii. If the applicable express limited warranty does not provide any coverage for the cost of labor, then the fixed rate for labor costs will be prorated by dividing the number of months that have elapsed since the date on which the Decking materials were installed by the total number of months that the applicable warranty provides for materials coverage.
- c. **Other**. Eligible Claimants who show Qualifying Damage to boards will also qualify for payment for other costs at a fixed

rate of \$0.65 per linear foot of boards that have been approved for a payment as set forth above. The fixed rate for this “other” payment will be prorated by dividing the number of months that have elapsed since the date on which the Decking boards were installed by the total number of months that the applicable warranty provides for materials coverage.

- d. All proration provided for pursuant to this section 7.3 shall be calculated based upon the date on which the Eligible Claimant opens a claim; provided, however, that for any Eligible Claimant who opens a claim within six (6) months after the Effective Date, the period in which proration runs for that claim will end on the date the MDL Litigation was established (December 12, 2014).

7.4 Mold Condition. Eligible Claimants with Mold Condition that displays on more than fifty percent (50%) of the top surface area of the total surface area of all Decking boards installed on the deck are entitled to a payment at a fixed rate of \$1.26 per linear foot of boards for all of the Decking boards installed on the deck, reduced by any applicable deduction for proration as set forth in the applicable GAF express limited warranty. If an Eligible Claimant owns and seeks compensation for more than one deck on which Decking boards are installed, including but not limited to on the same property, the percentage threshold calculations set forth in this section 7.4 shall be calculated separately for each deck. Proration provided for pursuant to this section 7.4 shall be calculated based upon the date on which the Eligible Claimant opens a claim; provided, however, that for any Eligible Claimant who opens a claim within six (6) months after the Effective Date, the period in which proration runs for that claim will end on the date the MDL Litigation was established (December 12, 2014). No board may be

compensated for both (i) Mold Condition and (ii) Qualifying Damage; a board may be compensated only for one or the other.

7.5 Claims for Qualifying Damage and Mold Condition. Settlement Class Members may open not more than one Claim for Qualifying Damage during the Qualifying Damage Claims Period and not more than one Claim for Mold Condition during the Mold Condition Claims Period. Settlement Class Members may not open Claims for both Qualifying Damage and Mold Condition on the same particular board (*e.g.*, Settlement Class Members have the option of opening a Claim for either Qualifying Damage (including a combination of Qualifying Damage and Mold Condition on 40% or more of boards pursuant to section 7.2(a)(iii) or Mold Condition, but not both, for any board). These limitations apply irrespective of whether the Claim is approved or denied and the amount of any payment; thus, a Class Member whose Claim for Qualifying Damage is denied may not subsequently open a Claim for Mold Condition on the same board(s), and a Class Member whose Claim for Mold Condition is denied may not subsequently open a Claim for Qualifying Damage on the same board(s).

7.6 Prior Compensation. No compensation will be paid or awarded for Qualifying Damage or Mold Condition for any individual Decking materials for which the Class Member previously received any compensation from GAF or Elk (or from any past and present parent companies, subsidiaries, predecessors, successors, divisions, affiliates, and assigns of GAF or Elk), and no such materials may be utilized to satisfy any of the percentage threshold calculations set forth above.

7.7 Causation Defenses. No compensation will be paid or awarded for Qualifying Damage or Mold Condition caused by or resulting from any one or more of the below defenses (“Causation Defenses”):

- a. any action of a party other than GAF;

- b. settlement, distortion, failure, or cracking of the structure to which the Decking materials are attached or the foundation or ground on which it is supported;
- c. natural disaster;
- d. failure to install the Decking materials in strict accordance with GAF's applicable installation instructions;
- e. inadequate ventilation (i.e., inadequate or obstructed gapping between boards and/or space beneath the deck, as set forth in installation and maintenance instructions);
- f. abuse, or public use resulting in heavy foot traffic, such as use for commercial purposes, or, for Mold Condition only, a substantial failure to maintain the Decking materials in accordance with instructions published by GAF or Elk.

If GAF asserts any of the Causation Defenses described above, GAF shall bear the burden of establishing that such defense more likely than not was the primary cause of the Qualifying Damage or Mold Condition.

8. RELEASE

8.1 Except as set forth in section 8.2 below, upon the Court's entry of the Final Order and Judgment, all Settlement Class Members, on behalf of themselves and their agents, heirs, executors and administrators, successors, attorneys, representatives, and assigns ("Releasing Parties") who have not properly and timely opted out of the Agreement pursuant to its terms shall be conclusively deemed to have fully, finally, and forever released the Released Parties (as defined in section 8.1(a) below) from any and all Released Claims (as defined in section 8.1(b) below), and further shall permanently bar and enjoin the Settlement Class

Members (and their agents, heirs, executors and administrators, successors, attorneys, representatives, and assigns) from asserting such claims directly or indirectly against any Released Party.

a. “Released Parties” or “Released Party” means GAF and any and all past, present, and future parent companies, subsidiaries, predecessors, successors, divisions, affiliates, assigns, and their respective past, present, and future officers, stockholders, directors, agents, employees, attorneys, insurers, or representatives. “Released Parties” or “Released Party” also includes any and all past, present, and future vendors, distributors, retailers, dealers, contractors, and any other person or entity who sold, distributed and/or installed Decking materials, except to the extent that GAF denies a claim based on a causation defense contained in section 7.7 that was caused by a contractor or other entity, such as improper ventilation or installation, in which case this Release will not apply to the contractor or entity who installed the Claimant’s decking.

b. “Released Claims” means and includes, in addition to all claims set forth in the Complaint, any and all claims, demands, rights, liabilities, actions, causes of action, proceedings, judgments, liens, obligations, damages, equitable, legal and administrative relief, interest, attorneys’ fees, expenses and costs, disbursements, losses, consequential damages, penalties, punitive damages, exemplary damages, damages based on a multiplication of compensatory damages, damages based on emotional distress and mental anguish, demands, obligations, rights, liens, entitlements, indemnities, and contributions of any kind or nature whatsoever related to Decking or Railways, whether known, unknown or presently unknowable, suspected or unsuspected, latent or patent, accrued or unaccrued, asserted or unasserted, fixed or contingent, liquidated or unliquidated, matured or unmatured, and whether based on federal or state statute, regulation, ordinance, contract, common law, or any other source that has been, could have been, may be,

or could be directly or indirectly alleged, asserted, described, set forth or referred to now, in the past, or in the future by the Settlement Class either in this MDL Litigation, or in any other court action or proceeding, or before any administrative or regulatory body, tribunal or arbitration panel. The “Released Claims” include, without limitation, all causes of action related to the design, specification, manufacture, production, promotion, advertising, sale, representation, distribution, or installation of Decking or Railways, or related to Qualified Damage or Mold Condition, without regard to whether such cause of action is or could be brought pursuant to common law, or any federal or state statute, regulation, or ordinance, including but not limited to federal or state statutes or regulations concerning unfair competition; unfair or deceptive methods of competition; unfair, deceptive, fraudulent, unconscionable, false or misleading conduct, acts, advertising or trade practices; consumer protection; or under the common law of any state as a claim for breach of contract, breach of express and implied warranties, reformation of warranty, breach of fiduciary duty, fraud, intentional misconduct, unjust enrichment, misrepresentation (negligent or otherwise), tort, negligence, breach of constructive trust, breach of the implied covenant of good faith and fair dealing, or any other common law or statutory basis. It is further agreed that the “Released Claims” include, without limitation, any and all claims for Mold Condition or color fading or color deterioration of Decking or Railways. The Parties understand and agree that GAF’s express limited warranties do not cover Mold Condition or color fading or color deterioration of Decking and Railways, and Settlement Class Members release any claim or assertion of such warranty rights. Except notwithstanding the foregoing, Released Claims do not include any claims that a claimant could assert against a contractor or entity for a successful causation defense asserted by GAF, i.e. improper ventilation or installation.

8.2 Notwithstanding the foregoing:

- a. This Release does not release GAF from claims for bodily injury, including claims for pain and suffering, emotional distress, mental anguish, or similar damages suffered as the result of such bodily injury.
- b. Settlement Class Members will retain their rights, if any, under the terms of the applicable GAF express limited warranty under the following circumstances:
 - i. Settlement Class Members who have a claim for a manufacturing defect other than Qualifying Damage or Mold Condition, but only with respect to boards, handrail, or fascia for which they did not receive compensation under the settlement; or
 - ii. Settlement Class Members who discover Qualifying Damage that did not exist until after the Qualifying Damage Claims Period and who did not receive compensation for the particular boards, handrail, or fascia at issue under the settlement.
- c. If a Settlement Class Member's Claim is denied, in whole or in part, based on improper installation (including improper ventilation due to improper installation) of the Decking materials, as set forth in section 7.7(b), (d) or (e) this Release shall not release any person or entity who installed the Decking materials on that Settlement Class Member's property.
- d. For any claims that may be submitted pursuant to a Settlement Class Member's retention of his or her limited warranty rights, the fixed materials rate and the fixed labor rate (as identified above) for the Decking materials will apply under the applicable limited warranty, subject to any proration that may apply pursuant to the terms of the applicable limited warranty.

8.3 Upon the Court's entry of the Final Order and Judgment, all Settlement Class Members (on behalf of themselves and their agents, heirs, executors and administrators, successors, attorneys, representatives, and assigns), who have not properly and timely opted out of the Agreement pursuant to its terms shall be conclusively deemed to have waived and released any and all provisions, rights and benefits conferred by § 1542 of the California Civil Code, which reads:

Section 1542. General Release – Claims Extinguished. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor;

or by any law of any state or territory of the United States or any other jurisdiction or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code, including, without limitation, Mont. Code Ann. § 28-1-1602, S.D. Codified Laws § 20-7-11, N.D. Cent Code § 9-13-02, and 18 Guam Code Ann. § 82602. Settlement Class Members acknowledge that they may hereafter discover facts or law other than or different from those which they know or believe to be true with respect to the claims which are the subject matter of this section. Nevertheless, it is the intention of each Named Plaintiff and each Settlement Class Member to fully, finally, and forever settle and release any and all known or unknown, suspected or unsuspected, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts or law.

9. CLAIMS PROGRAM PROCEDURES

9.1 The Parties will implement the Claims Program in accordance with the terms and conditions of this Agreement no later than thirty (30) days after the Effective Date.

9.2 GAF, at its cost and expense, will engage Heffler Claims Group (the “Third Party Claims Administrator”) to:

- a. establish and maintain an internet website and call center concerning the Settlement; and
- b. perform the claim intake process; and
- c. perform the Claim Package completion process; and
- d. transmit Claim Packages to GAF for determination.

9.3 It is understood and agreed that certain Claims may be directed to GAF for administrative handling prior to receipt of a Completed Claim Package as GAF determines is reasonably necessary to properly handle such a Claim (*e.g.*, as to any Class Member who purchased an enhanced warranty from GAF).

9.4 Any Settlement Class Member who desires to make a claim under the terms of the Agreement shall contact the Third Party Claims Administrator, via the above-described internet website or call center, and provide substantially the following information:

- a. Settlement Class Member’s name and, if applicable, the names of any co-owners of the subject property; and
- b. Settlement Class Member’s address and, if applicable, the addresses of any co-owners of the subject property; and
- c. Settlement Class Member’s contact information including telephone number, email address and preferred means of contact; and

- d. The type of property (e.g., single-family or multiple unit dwelling) where the Decking materials are installed; and
- e. The Address of the property at which the Decking materials that are the subject of the Claim are installed; and
- f. Whether the Settlement Class Member either (i) purchased the Decking materials that are the subject of the Claim, or (ii) is a Permitted Transferee of the underlying warranty; and
- g. Date of purchase of the Decking materials that are the subject of the Claim.

9.5 Once the above information has been provided, the Third Party Claims Administrator will open a Claim (such date being the “Claim Opening Date”) and assign a Claim number. The Third Party Claims Administrator will thereafter send such Settlement Class Member a Claim Form that is substantially similar to that attached to this Agreement as Exhibit 1, and accompanying documentation (collectively, a “Claim Kit”) identifying the respective Claim number and containing information and instructions on the submission of the Claim. The Claim Kit will require a Settlement Class Member to provide the following materials (collectively, a “Claim Package”), which Claimants may submit by electronic mail, regular mail, or some combination thereof:

- a. A completed Claim Form that states, *inter alia*:
 - i. The number of decks (i.e., separate, non-contiguous structures on which Decking materials are installed) on the property; and
 - ii. the dimensions of the deck (or decks) on which Decking materials are installed; and
 - iii. the number and length of the boards, handrails, and/or fascia that the Settlement Class Member contends display Qualifying Damage or Mold Condition; and

- iv. whether the property was the subject of an insurance claim or claim to a builder or other party relating to damage to Decking materials and, if so, when and to whom made and the amount of any compensation received; and
 - v. whether the Settlement Class Member or a prior owner previously made a claim to GAF regarding Decking materials currently installed on the property and, if so, the resolution of that claim.
- b. A reliable document contemporaneous with the installation of the Decking materials (*e.g.*, sales receipt or contractor invoice) identifying:
- i. the date of purchase or installation of the Decking materials; and
 - ii. the product identification by brand of each component of the Decking materials (*i.e.*, boards, fascia, and/or handrails) that may be the subject of the Claim.
- c. A reliable document (*e.g.*, title, deed, tax bill, mortgage bill) verifying ownership of the property on which the Decking materials are installed;
- d. A reliable document or documents showing that the Claimant was either the original purchaser of the Decking materials that are the subject of the Claim or a Permitted Transferee of the GAF express limited warranty for those Decking materials.
- e. Photographic evidence demonstrating the condition of the deck. These photographs shall be taken during the day, and shall include at minimum:
- i. at least three (3) photographs that capture the top surface of the deck, taken from three different vantage points; and

- ii. at least three (3) photographs, taken from three different vantage points, that collectively capture the entire outer perimeter of the deck's Substructure; and
 - iii. one (1) photograph of each board, fascia, or handrail that displays Qualifying Damage or Mold Condition, with at least six inches of a ruler or tape measure visible in the photograph.
- f. Videographic evidence demonstrating the condition of the deck. Video shall be taken during the day with a video camera, including but not limited to a cellular phone or tablet video camera, and shall include at minimum 30 seconds, and at maximum 180 seconds, of footage that captures the entire surface and Substructure of the deck.
- g. The photographic and videographic evidence described above must be sufficient to depict:
 - i. the existence of Qualifying Damage or Mold Condition; and
 - ii. the type of Qualifying Damage or Mold Condition; and
 - iii. the number and length of the boards, handrails, and/or fascia that display Qualifying Damage or Mold Condition; and
 - iv. satisfaction of any threshold percentages set forth in section 7.2 that the Settlement Class Member claims to have satisfied; and
 - v. for Claims for handrails, depicting that the Railways handrails were made of the same composite material as the Decking boards installed on the Settlement Class Member's property.

9.6 No materials submitted by any Settlement Class Member will be returned to such Settlement Class Member. GAF shall not be required to retain

any materials submitted by a Settlement Class Member once it determines that no appeal may be filed, the time limit for filing an appeal has expired, or an appeal has been resolved.

9.7 A Settlement Class Member who opens a Claim shall cooperate to provide such other information as is reasonably needed to evaluate the Claim and efficiently determine whether the Claim qualifies for compensation, and shall make their Decking materials available for inspection as provided in section 9.14.

9.8 A Settlement Class Member who submits a Claim Package shall be required to declare under penalty of perjury that information or material submitted to GAF or the Third Party Claims Administrator is true and correct and that the photographs and videos submitted are typical and representative of the condition of the Decking materials for which the Settlement Class Member seeks compensation. Settlement Class Members shall be required to sign the Claim Form, either in writing or electronically, under penalty of perjury and, in so doing, further agree to cooperate with GAF and the Third Party Claims Administrator and authorize inspection of the Decking materials if requested by GAF pursuant to section 9.13.

9.9 GAF and the Third Party Claims Administrator shall each have the power to implement reasonable procedures designed to detect and prevent payment of fraudulent Claims, and otherwise to assure an acceptable level of reliability and quality control in Claims processing. GAF and the Third Party Claims Administrator shall each have authority to reduce or altogether deny a Claim on which the Settlement Class Member or any person acting on behalf of the Settlement Class Member has engaged in fraudulent and/or abusive practices, including but not limited to submitting false claims or documentation, and to take such other actions as may be appropriate to prevent such practices in the future. Class Counsel and GAF shall cooperate to discourage any abuse of the Claims process.

9.10 Only a Settlement Class Member or his/her contractor may open a Claim under this Agreement. A Settlement Class Member may not utilize third-party claims services or similar services to submit a Claim under this Agreement.

9.11 The Third Party Claims Administrator shall review a Settlement Class Member's Claim, including any supporting materials, to determine if the Claim includes the information set forth in section 9.5 necessary to proceed with the processing of the Claim within twenty (20) days of receipt. If information relevant to the Claim is missing, the Third Party Claims Administrator shall notify the Settlement Class Member in writing (each, a "Request for Information") of the deficiency or deficiencies and provide an opportunity to cure the Claim as follows.

- a. First Request: If the Settlement Class Member submits any information or documentation within ninety (90) days after the Claim Opening Date, the first Request for Information shall advise the Settlement Class Member that it must submit any missing information within sixty (60) days of the request, that failure to do so will result in dismissal of the non-qualifying portion of the Claim, and that Class Counsel may be contacted for assistance.
- b. Second Request: Sixty (60) days after a first Request for Information, the Third Party Claims Administrator shall determine whether there are any remaining deficiencies. If so, the Third Party Claims Administrator shall issue a second Request for Information identifying the remaining deficiency or deficiencies and advising the Settlement Class Member that it must submit the missing information within forty-five (45) days and that failure to do so will result in dismissal of the non-qualifying portion of the Claim.

- c. Third Request: If the Settlement Class Member provides a response within forty-five (45) days after a second Request for Information, and the response cures at least one deficiency identified in the second Request for Information, the Third Party Claims Administrator shall determine whether there are any remaining deficiencies. If so, the Third Party Claims Administrator shall issue a third Request for Information identifying the remaining deficiency or deficiencies and advising the Settlement Class Member that it must submit all missing information within forty-five (45) days and that failure to do so will result in dismissal of the non-qualifying portion of the Claim.
- d. It is understood that, if the missing information identified in a Request for Information is necessary to evaluate the entirety of a Claim, failure to submit the missing information within the latest applicable time limit set forth in this section 9.11 will result in dismissal of the entire Claim.

9.12 The Third Party Claims Administrator shall notify GAF, and GAF will deny a Settlement Class Member's Claim, if a Settlement Class Member:

- a. does not provide any information or documentation within ninety (90) days after the Claim Opening Date; or
- b. does not submit a Completed Claim Package, including the Claim Form, within one hundred eighty (180) days from the Claim Opening Date; or
- c. does not submit a response to a second Request for Information that cures at least one deficiency identified therein, or does not

submit a complete response to a third Request for Information, within the time periods set forth in section 9.11.

9.13 Upon determining that a Settlement Class Member's Claim Package includes the information set forth in section 9.5 necessary to proceed with the processing of the Claim, the Third Party Claims Administrator shall transmit the Claim Package to GAF. GAF shall then determine whether the Settlement Class Member qualifies as an Eligible Claimant. GAF may contact the Settlement Class Member to request information that GAF in good faith believes is reasonably necessary to determine whether the Settlement Class Member qualifies as an Eligible Claimant; however, GAF may not contact any Settlement Class Member more than once for this purpose. GAF may also contact the Settlement Class Member to arrange for an inspection. If GAF requests an inspection, GAF and the Claimant will attempt in good faith to schedule and complete the inspection within sixty (60) days of the request. If a scheduled inspection does not occur due to weather conditions, GAF and the Claimant shall reschedule the inspection to occur within a reasonable time after the previously scheduled date.

9.14 The Parties anticipate that a Claim may be evaluated by GAF based on photographs, videos, and information provided by a Settlement Class Member. GAF is entitled to rely on the information and materials submitted by a Settlement Class Member, and is not obligated to affirmatively investigate damage or the extent of damage not specifically claimed or addressed in such materials. GAF may inspect, or cause to be inspected, any location where Decking materials that are the subject of a Claim are installed if, in GAF's sole discretion, such inspection is reasonably necessary to process and evaluate the Claim; however, it is understood and agreed that GAF has no affirmative obligation to conduct or cause to be conducted such inspection. In that event, Settlement Class Members shall make their Decking materials available for inspection at a mutually agreeable and

reasonable time. GAF, at its own expense, shall have the right to remove such Decking materials or other portions of the property as may be reasonably necessary, provided, however, that following any such removal GAF shall, at its own expense, either: restore the Settlement Class Member's property to the condition that existed prior to the inspection; or provide a replacement for the item(s) that were removed and pay for the cost of installing such replacement item(s); or provide compensation for the removed materials and labor at the rates set forth in section 7.3(a)-(b). It is understood and agreed that the appearance of replacement items may not match the appearance of removed items, and failure of replacement items to match the appearance of removed items shall not affect GAF's right to remove those materials reasonably necessary to evaluate the claim. In evaluating the Claim of any Named Plaintiff, GAF at its sole discretion may rely in whole or in part on any discovery previously provided or inspections previously conducted.

9.15 GAF shall provide written notice to a Settlement Class Member submitting a Claim, of whether and to what extent the Claim has been approved or denied. The notice shall include a reasonably clear explanation of what portions of the Claim were approved, what portions were denied, and why they were denied, sufficient for the Claimant to make an informed decision as to whether to accept the determination or to appeal. Individual claim determinations, with accompanying original underlying Claim Package and supporting materials, shall be made available to Class Counsel upon request. If the Claim has been denied, GAF shall include instructions with its written notice explaining the appeal process set forth in section 9.17. GAF will provide such written notice within forty-five (45) days after receiving the Completed Claim Package, subject to the following exceptions:

- a. During the first six (6) months of the Applicable Claims Period, GAF may take up to ninety (90) days after receiving the Completed Claim Package to make its determination.
- b. If GAF elects to inspect a Settlement Class Member's Decking materials as set forth in section 9.14, GAF will make its determination within thirty (30) days after the inspection is complete.
- c. If GAF receives a volume of Claims in a given period that renders compliance with the above timeframes not reasonably practicable, GAF will make its initial determination within a reasonable time not to exceed one hundred twenty (120) days after receiving the Completed Claim Package.
- d. Claimants may request expedited Claim review by GAF for special circumstances (e.g., repairs in process or property subject to a contract of sale) upon submission of adequate supporting documentation of such special circumstances to the Third Party Claims Administrator. GAF will work to make its determination of the Claim within a shorter period of time, than would otherwise be required under this section 9.15. It being understood that expedited Claim review shall not relieve or discharge the Claimant from any of the Claimant's obligations under this Agreement, including the obligation to submit a Completed Claim Package.

9.16 If GAF determines that a Settlement Class Member is an Eligible Claimant, GAF will provide compensation, calculated in accordance with section 7, by issuing a check to the Eligible Claimant within forty-five (45) days after making such determination. However, if an Eligible Claimant appeals the amount of

compensation pursuant to section 9.17, GAF will instead issue a check to the Eligible Claimant within thirty (30) days after the Third Party Administrator makes a written determination of the appeal.

9.17 If GAF denies a Settlement Class Member's Claim, the Settlement Class Member has the right to appeal the denial to the Third Party Claims Administrator. The following procedures will govern any such appeal:

- a. The Settlement Class Member will have thirty (30) days from the date of such denial to open an appeal by sending a letter to the Third Party Claims Administrator ("Notice of Appeal") setting forth the reason for the appeal and the grounds on which it is challenging GAF's determination of the Claim. The scope of issues preserved for appeal shall be limited to those raised in the Notice of Appeal. The Third Party Claims Administrator shall promptly send a copy of the Notice of Appeal to GAF.
- b. The Third Party Claims Administrator shall review the Claim, the Claim Package, and any related documentation of the Claim to the extent included in the Completed Claim Package, as well as any additional information requested by GAF (including any inspection report of the property requested by GAF), considered by GAF in its determination of the Claim. The Third Party Claims Administrator shall not consider documentation submitted for the first time on appeal.
- c. The Third Party Claims Administrator shall make a written determination as to whether he or she concurs with GAF's determination of the Claim within thirty (30) days of receipt of the Notice of Appeal; however, if the Third Party Claims Administrator receives a volume of Claims in a given period

that renders compliance with the above timeframe not reasonably practicable, the Third Party Claims Administrator will make its determination within a reasonable time not to exceed ninety (90) days after receiving the Notice of Appeal.

- d. The Third Party Claims Administrator's determination of the Claim shall be binding on both parties.
- e. If a Claimant appeals from the complete denial of a Claim, the Claimant shall not be charged an appellate fee. If an Eligible Claimant appeals the amount of compensation determined by GAF, and the Third Party Administrator concurs with GAF's determination of the Claim, then an appellate fee of \$150 shall be deducted from the compensation provided to the Eligible Claimant. If the Third Party Administrator alters GAF's determination of the amount of compensation in the Eligible Claimant's favor, then no such fee shall be deducted.
- f. All parties reserve the right to bring any nonperformance by the Third Party Claims Administrator to the Court's attention, provided that counsel for GAF and Class Counsel shall meet and confer before doing so. Neither Claimants nor GAF shall be prejudiced by the failure of the Third Party Claims Administrator to meet the deadlines set forth herein.

9.18 GAF shall file, under seal, with the Court and serve on Class Counsel a report concerning claims made and claims denied. Such reports will be filed with the Court within sixty (60) days after each of the following dates: (a) six (6) months after the Effective Date, (b) one (1) year after the Effective Date, (c) eighteen (18) months after the Effective Date, (d) two (2) years after the Effective Date, and (e) three (3) years after the Effective Date. Such reports shall provide

summary information regarding the number of Claims approved, the amounts distributed, the number of Claims denied, and the bases for such denials, during each relevant period. Forty-five (45) days after the end of each quarter, beginning six (6) months after the Effective Date and continuing until three (3) years after the Effective Date, the Third Party Claims Administrator and GAF shall provide Class Counsel with an electronic copy of a report that includes the following information: (1) the name and address of each putative Settlement Class Member who submitted a Claim; (2) the status of the Claim, i.e., whether the Claim is open, paid, denied, or on appeal; and (3) the bases for any denials; it being understood that the foregoing information may be submitted by the Third Party Claims Administrator and GAF in separate reports. The Third Party Claims Administrator shall, for a period of two years, provide biweekly reports regarding the number of claims opened, the number of claims transmitted to GAF, and the number of claims appealed. Upon a request for assistance from any Claimant, Class Counsel may request and shall have the right to receive from the Third Party Claims Administrator that Claimant's entire electronic Claim file.

9.19 A Settlement Class Member who has submitted a Claim Package shall provide GAF with any change of address or updated or revised contact information. GAF shall use reasonable diligence to locate any Eligible Claimant whose check is returned as undeliverable. Any funds arising or remaining from any returned or uncashed check shall be GAF's property. GAF will notify Class Counsel of any check that is returned to GAF as undeliverable.

9.20 Each Eligible Claimant who receives payment on a Claim shall advise any subsequent purchaser of the structure on which the Claim was made of that fact and that no additional Claim can be opened for such Decking materials.

9.21 All information relating to the Claims Program, processing, and inspections is confidential and proprietary and shall not be disclosed, except as

necessary to GAF, the Third Party Claims Administrator, Class Counsel, and the Court in accordance with the terms of this Agreement. Any personal information acquired as the result of this Agreement shall be used solely for purposes of evaluating and paying Claims under this Agreement.

10. ATTORNEYS' FEES AND INCENTIVE PAYMENTS TO THE CLASS

10.1 Within thirty (30) days after the Effective Date, GAF will pay to an account designated by Lead Class Counsel the total sum awarded by the Court in fees and expenses. GAF agrees not to oppose any application by Class Counsel for attorneys' fees, costs and expenses up to \$3.5 million in the aggregate. GAF retains the right to object to any application for attorneys' fees, costs and expenses above that amount. Other than as set forth in this section, Class Counsel waives, discharges and releases GAF and any other Released Party from any and all claims for Attorneys' Fees and Costs, by lien, statute, equity or otherwise, in connection with this action. Subject to the approval of the Court, GAF will pay incentive awards to Named Plaintiffs as follows:

- a. \$4,000 for each property, and
- b. an additional \$500 if the Decking materials on the Named Plaintiff's property were inspected in these MDL Litigation proceedings.

10.2 A Named Plaintiff pair, *e.g.*, a husband and wife, may receive only one incentive award payment, *i.e.*, either a total of \$4,000, or if the deck was inspected in these proceedings, \$4,500.

10.3 No portion of the compensation made available to Named Plaintiffs or qualifying Claimants pursuant to this settlement shall be reduced in any way to pay fees, costs, interest, or expenses of Class Counsel.

11. THE PRELIMINARY APPROVAL ORDER

11.1 Within ten (10) days of execution of this Agreement, the Parties shall submit a motion for Preliminary Approval and draft Order to the Court. The Parties will then ask the Court to enter an Order of Preliminary Approval.

11.2 If approved, 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 Named Plaintiffs as the representatives of the Class; and
- b. Provide for notice to be given to the Settlement Class; and
- c. Prescribe periods of time during which the 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 Named Plaintiffs; and
- d. Schedule a 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 all actions that are part of 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 the incentive payment to Named 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.

12. NOTICE OF PROPOSED SETTLEMENT

12.1 The cost of notice to Settlement Class Members shall be paid by GAF pursuant to section 12.5. Class Counsel and GAF agree that reasonable notice consistent with the due process requirements of the United States Constitution shall be given to the Settlement Class pursuant to orders of the Court that so provide. To effectuate such notice, Class Counsel and GAF have agreed to engage Angeion Group 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 section 12.2 and mailing of long-form notices as set forth in section 12.3. The text of the notices and the mechanisms for distributing the notices shall be subject to approval of the Court. The detailed Notice Plan prepared by Angeion Group is described in the Declaration of Steven Weisbrot, Esq.

12.2 Summary notices, including through print media and Internet, shall be published in accordance with the directions of the Court.

12.3 A long-form notice shall be mailed, first class postage prepaid, to each member of the Settlement Class specifically identified by the Parties through reasonable efforts, including each member of the Settlement Class whose identity becomes known as a result of the summary notice published pursuant to section 12.2.

12.4 The long-form and summary notices (other than the summary notice for the Internet), as well as any 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 GAF a written statement of objections clearly specifying the grounds for objection and providing the information required by section 13.1 and that all such objections must be filed and served no later than forty-five (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; and (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 GAF involving the Decking materials.

12.5 All of the costs of the notice (such as the costs of printing, mailing, and postage) shall be paid by GAF.

12.6 On or before the date of the Final Approval Hearing, Angeion Group shall file proof, by affidavit, of the aforesaid publications and Angeion Group and/or Heffler Claims Group shall file proof, by affidavit, of the aforesaid mailings.

12.7 A toll-free telephone number ([TO COME]) shall be included in the published notice. There, the Third Party Claims Administrator can (a) receive requests to open Claims or to obtain the long-form notice of this Settlement or any other materials described in this section, (b) provide general information concerning deadlines for opting out of the Settlement, opening a Claim, and the dates of relevant Court proceedings, including the Final Approval Hearing, and (c) obtain the necessary information to mail materials to Settlement Class Members as provided in this Agreement. The costs associated with maintaining the toll-free telephone number shall be paid by GAF.

12.8 No later than the Notice Date, GAF shall cause the Third Party Claims Administrator to establish and maintain an Internet website

(www.deckingsettlement.com) concerning the Settlement. The website shall be maintained while GAF is processing Claims under this Agreement. The Internet address of the website shall be included in the published notice. The website shall provide (a) general information concerning deadlines for opting out of the Settlement, opening a Claim, and the dates of relevant Court proceedings, including the Final Approval Hearing; (b) the toll-free telephone number; and (c) a copy of this Agreement, the long-form notices and information concerning the submission of a Claim Package. The costs associated with establishing and maintaining the internet website shall be paid by GAF.

13. SETTLEMENT CLASS MEMBERS' RIGHT OF EXCLUSION AND TO OBJECT

13.1 A Settlement Class Member may opt out of the Settlement Class within a specified period to be set by the Court. To exercise this exclusion right, the Settlement Class Member must send written notification of the request for exclusion via first class mail to Class Counsel. The request for exclusion must bear the signature of the Settlement Class Member (even if represented by counsel), state the address of the structure(s) that may contain Decking materials, and specify (a) the total number of Decking boards, calculated in linear feet, that allegedly display Qualifying Damage and/or Mold Condition, (b) the total linear feet of Decking fascia that allegedly display Qualifying Damage, and (c) the total linear feet of Railways handrails that allegedly display Qualifying Damage. If the Settlement Class Member is represented by counsel, the request for exclusion shall also be signed by the attorney who represents the Settlement 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 thirty (30) days after the publication of the final notice to be published pursuant to section

12.2. Requests for exclusions sent by any Settlement Class Member to incorrect addresses or after expiration of the deadline shall not be valid. Any Settlement Class Member who fails to submit a timely request for exclusion shall not be permitted to object to the Settlement.

13.2 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 judgments in the MDL Litigation. Any Settlement Class Member who elects to opt out of the Settlement Class pursuant to this Agreement shall not be entitled to relief under or be affected by this Agreement.

13.3 Settlement Class Members who have elected to opt out of the Settlement Class may withdraw their requests for exclusion prior to the Effective Date, but only if they accept in writing the benefits and terms of this Settlement and dismiss with prejudice any pending action against GAF arising from or pertaining in any way to the Decking materials.

13.4 Class Counsel shall have the right to contact persons who file requests for exclusion and to challenge the timeliness and validity of any request for exclusion, 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 are valid.

13.5 On a rolling basis, Class Counsel shall notify GAF, by electronic mail, of each person who has requested exclusion from the Settlement Class and shall provide copies of all such requests for exclusion. Within ten (10) days of the closing of the opt out period, Class Counsel shall provide counsel for GAF, by electronic mail, with a list identifying each person who has requested exclusion from the Settlement Class and attaching copies of all such requests for exclusion,

as well as all other information and documents received by Class Counsel from all persons who have requested exclusion from the Settlement Class.

13.6 GAF, in its sole discretion, may terminate this Agreement prior to the Final Approval Hearing if the number of opt-outs from the Settlement that are received from Settlement Class Members during the Opt-Out Period exceeds the number previously agreed to by the Parties (as set forth in a side letter dated of even date as this Agreement) (the “opt-out number”). If GAF elects to terminate the Settlement pursuant to this provision, GAF shall advise Class Counsel and the Court, in writing, prior to the date of the Final Approval Hearing and shall submit to the Court, under seal, the number of Settlement Class Members who have requested exclusion from the Settlement Class. In such event, this Agreement may not be offered or received into evidence or utilized for any other purpose in this action or in any other action, suit, or proceeding.

13.7 A Settlement Class Member may object to the Settlement within a specified period to be set by the Court. To exercise this objection right, the Settlement Class Member must provide written notice of the objection via first class mail to the Court, Class Counsel, and GAF’s counsel. The objection must bear the signature of the Settlement Class Member (even if represented by counsel), the Settlement Class Member’s current address and telephone number, state the address of the structure(s) that may contain Decking materials, and specify (a) the total number of Decking boards, calculated in linear feet, that allegedly display Qualifying Damage and/or Mold Condition, (b) the total linear feet of Decking fascia that allegedly display Qualifying Damage, (c) the total linear feet of Railways handrails that allegedly display Qualifying Damage, (d) the exact nature of the objection, and (e) whether or not the Settlement Class Member intends to appear at the Final Approval Hearing. If the Settlement Class Member is represented by counsel, the notice of objection shall also be signed by the attorney

who represents the Settlement Class Member. Such notice of objection 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 any notice of objection be thirty (30) days after the publication of the final notice to be published pursuant to section 12.2. Notice of objections sent by any Settlement Class Member to incorrect locations or after expiration of the deadline shall not be valid.

14. FINAL JUDGMENT OF DISMISSAL

14.1 At least fourteen (14) days before the Final Approval Hearing, unless the Agreement is terminated earlier by GAF pursuant to section 13.6 of the Agreement, 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 a Final Order and Judgment.

14.2 If the Court grants final approval of the Settlement, the Final Order and 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; and
- b. dismiss this action, with prejudice; and
- c. explicitly restate the terms of the Release provided in section 8 of this Agreement and give immediate effect to such Release; and
- d. approve an award of attorneys' fees and expenses for Class Counsel and/or incentive payments to Named Plaintiffs as the Court deems proper, or reserve jurisdiction to make any such an award; and

- e. provide that the form and manner of notice given to the Settlement Class Members fairly and adequately informed them of all material elements of the above-captioned actions and the proposed Settlement and constitute sufficient notice to the Settlement Class Members in accordance with Federal Rule of Civil Procedure 23 and due process requirements; and
- f. reserve jurisdiction over consummation and performance of the Agreement and administration of the Settlement; and
- g. enjoin any and all pending or future actions involving settled matters as to persons or entities that have not opted out of the settlement.

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

15.1 Each and every member of the Settlement Class who does not request 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, section 8).

15.2 Settlement Class Members who do not opt out shall have no claim against GAF arising from or pertaining in any way to the Decking or Railways. Upon entry of the Final Order and Judgment by the Court, each Settlement Class Member shall be barred from initiating, asserting, or prosecuting any such claims against GAF, except for (1) claims relating to any obligations under this Agreement; and (2) obligations incurred by GAF in settlements it has made with Settlement Class Members prior to the Effective Date. Notwithstanding the foregoing, Settlement Class Members will retain the rights set forth in section 8.2.

15.3 Upon the entry of the Final Order and Judgment, this action and all claims and allegations involving the Decking and Railways will be dismissed with prejudice.

15.4 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. The Court may exercise all equitable powers over the Parties to enforce this Agreement and the Final Order and Judgment. The Court may enjoin all pending or future actions involving settled matters as to persons or entities that have not opted out of the settlement.

16. OTHER TERMS AND CONDITIONS

16.1 This Agreement is for settlement purposes only. Neither the fact of, nor any provision contained in, this Agreement or its Exhibits, nor any action taken hereunder, shall constitute or be construed as an admission of any claim, allegation, or assertion of fact or law made in this MDL Litigation or in any other action or proceeding, and shall not be offered or admissible in evidence for such purpose in any action or proceeding of any kind whatsoever, civil, criminal or otherwise, before any court, administrative agency, regulatory body or any other body or authority, present or future. GAF specifically denies any wrongdoing or liability alleged in this MDL Litigation.

16.2 The Parties, their counsel, and anyone acting on their behalf or at their request shall not, directly or indirectly, initiate communication with, or encourage communication from, the media regarding the negotiation, existence, terms, or proceedings related to the Agreement or the MDL Litigation, or cause any aspect of the MDL Litigation or the negotiation, existence, terms, or proceedings related to the Agreement to be reported in the media including, but not limited to, electronic media (e.g., blogs, Twitter, YouTube, or other internet vehicles),

television, radio, or news reporting services (the “Media”). In the event of a Media contact to any of the Parties or their counsel, the Parties or their counsel will not make any oral or written statements to the Media, directly or indirectly, other than the statement attached as Exhibit 2. Notwithstanding the foregoing, GAF may make such disclosures regarding the MDL Litigation and this Agreement as may be required by law or the terms of any agreements applicable to it.

16.3 In the event that GAF terminates this Agreement pursuant to section 13.6 or 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 Named Plaintiffs or GAF or any Settlement Class Member, shall not be used for any purpose whatsoever in any subsequent proceeding in these actions or in the MDL Litigation or in any other action in any court or forum, and shall not be construed as an admission or concession by any Party of any fact, matter, or allegation. In the event that GAF terminates this Agreement pursuant to section 13.6 or this Settlement does not become effective for any reason, Named Plaintiffs, GAF, 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 if, on appeal, an appellate court fails to affirm the Final Order and Judgment entered pursuant to this Agreement, then the Parties may (but are not obligated to) agree in writing to amend this 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 sections 10.1 and 10.2, nor an award of attorneys’ fees, costs, and disbursements to Class

Counsel in an amount less than that set forth in section 10.1, 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 section.

16.4 GAF 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 GAF; (iii) its signatories to the Agreement have full authority to sign on behalf of and to bind GAF to its terms; and (iv) this Agreement has been duly and validly executed and delivered by GAF and constitutes its legal, valid, and binding obligation.

16.5 Named Plaintiffs, GAF, and their respective 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.

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

16.7 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.

16.8 This Agreement, its Exhibits, and the side letter referenced in section 13.6, 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.

16.9 The Exhibits attached hereto are incorporated as if fully set forth in the body of this Agreement.

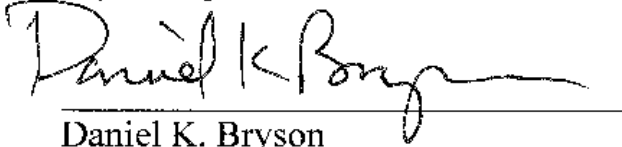
16.10 The waiver by any Party to this Agreement of any breach of its terms shall not be deemed or construed to be a waiver of any other breach of this Agreement, whether prior, subsequent, or contemporaneous.

16.11 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.

16.12 This Agreement shall be governed by the laws of the State of New Jersey without regard to its conflict of laws principles whether set forth in rules, precedent, or case law.

16.13 Class Counsel and counsel for GAF have materially participated in the drafting of this Agreement. None of the Parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

WHEREFORE, the undersigned have executed this Agreement on the 16th
day of September, 2016.



Daniel K. Bryson
Scott Harris
Jeremy Williams
WHITFIELD BRYSON & MASON, LLP
900 W. Morgan Street
Raleigh, North Carolina 27603
(919) 600-5000

Plaintiffs' Lead Counsel

James E. Cecchi
Lindsey H. Taylor
CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, New Jersey 07068
(973) 994-1700

Plaintiffs' Liaison Counsel

Benjamin F. Johns
CHIMICLES & TIKELLIS LLP
One Haverford Centre
361 West Lancaster Ave.
Haverford, Pennsylvania 19041
(610) 642-8500

Jack Landskroner
LANDSKRONER, GRIECO, MERRIMAN,
LLC
1360 West 9th Street, Suite 200
Cleveland, Ohio 44113
(216) 522-9000

Frank Petosa
Pete Albanis
MORGAN AND MORGAN COMPLEX
LITIGATION GROUP
600 N. Pine Island Rd., Suite 400
Plantation, Florida 33324



Andrew J. Rossman
Michael J. Lyle
Douglas E. Fleming
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010
Telephone: 212.849.7000
Facsimile: 212.849.7100
andrewrossman@quinnemanuel.com
mikelyle@quinnemanuel.com
douglasfleming@quinnemanuel.com

Ronald J. Levine
HERRICK FEINSTEIN LLP
One Gateway Center
Newark, New Jersey 07102
Telephone: 973.274.2001
Facsimile: 973.274.2500
Email: rlevine@herrick.com

*Attorneys for Building Materials
Corporation of America d/b/a GAF
Materials Corporation*

Exhibit

1

CROSSTIMBERS, DURALIFE AND RAILWAYS CLASS ACTION SETTLEMENT CLAIM FORM

Claim Number: «GAFClaimNo»

I. CLAIMANT INFORMATION

Name:	Co-Owner's Name:
Street Address:	Apt. Number:
City:	State / Zip:
Daytime Phone:	Alternate Phone:
E-mail:	Do you consent to receive official information about the claim via e-mail? <div style="text-align: right;">YES / NO</div>
Do you currently own the property? <div style="text-align: right;">YES / NO</div>	
<p style="text-align: center;">Original Owner or Permitted Transferee:</p> <p>Did you own the property at the time the Decking materials were installed? YES / NO</p> <p>IF you answered NO:</p> <p>Was the warranty for the Decking Materials transferred to you? YES / NO</p> <p>Did you provide the required notification of the transfer and pay the required fee? YES / NO</p> <p>If so, please enclose any documentation that you provided to GAF or Elk.</p>	

II. DESCRIPTION OF PROPERTY AND INSTALLATION OF DECKING MATERIALS (Please fill out a separate copy of this section for each property and deck.)

Number of decks that are the subject of this claim:	Name of Current Occupant (If different from Claimant):
Street Address of property with Decking materials (If different from Claimant's Address):	Apt. Number:
City:	State / Zip:
Month and Year when the Decking Materials were installed:	Dimensions (length, width, and height) and square footage of the deck:

PROPERTY TYPE: What type of property was or are the Decking materials installed on? (Select one.)		
<input type="checkbox"/> Single Family Residence	<input type="checkbox"/> Apartment Building	<input type="checkbox"/> Commercial
<input type="checkbox"/> Condominium	<input type="checkbox"/> Duplex	<input type="checkbox"/> Other/ Describe:

III. IDENTIFICATION AND CONDITION OF DECKING MATERIALS

Please fill out the section(s) below that apply to your claim. (Fill out Section A if you are making a claim for CrossTimbers and DuraLife brand decking boards. Fill out Section B if you are making a claim for CrossTimbers and DuraLife brand decking fascia. Fill out Section C if you are making a claim for Railways brand handrails.)

For definitions of any of the bold capitalized terms referred to below, please refer to www.deckingsettlement.com

A. CrossTimbers and DuraLife Decking Boards
What brand of decking boards were installed? (Only CrossTimbers and DuraLife brand decking boards are covered by this settlement.) <div style="display: flex; justify-content: space-around;"> <input type="checkbox"/> CrossTimbers <input type="checkbox"/> DuraLife <input type="checkbox"/> Other </div>
Total number and lengths of decking boards installed:
Total numbers and lengths of decking boards that have SPLITTING, WARPING, SWELLING, SHRINKING, or SURFACE DECAY , separately stated for each of these conditions (see website glossary for definitions of each of these capitalized terms):
Total Number and Lengths of decking boards that have MOLD CONDITION (do not include boards here that are identified in the previous question as having SPLITTING, WARPING, SWELLING, SHRINKING, or SURFACE DECAY) (see website glossary for definitions of each of these capitalized terms):
Describe your specific concern with the CrossTimbers or DuraLife brand decking boards:
Have you repaired or replaced any decking boards or any portion(s) of the deck on which the boards are installed as a result of the problems described above? <div style="text-align: center;">YES / NO</div>
If you answered YES, describe the repairs, specify the reason the repairs were made, indicate when the repairs were made and by whom. <i>(In the alternative, you may provide documentation of such repairs in the form of an invoice from the contractor who performed them.)</i>

B. CrossTimbers and DuraLife Decking Fascia
What brand of decking fascia were installed? (Only CrossTimbers and DuraLife brand decking fascia are covered by this settlement.) <div style="display: flex; justify-content: space-around;"> <input type="checkbox"/> CrossTimbers <input type="checkbox"/> DuraLife <input type="checkbox"/> Other </div>

Total numbers and lengths of decking fascia that have **SPLITTING, WARPING, SWELLING, SHRINKING, or SURFACE DECAY**, separately stated for each of these conditions (see website glossary for definitions of each of these capitalized terms):

Describe your specific concern with the CrossTimbers or DuraLife brand decking fascia:

Have you repaired or replaced any decking fascia or any portion(s) of the deck on which the fascia are installed as a result of the problems described above?

YES / NO

If you answered YES, describe the repairs, specify the reason the repairs were made, indicate when the repairs were made and by whom. *(In the alternative, you may provide documentation of such repairs in the form of an invoice from the contractor who performed them.)*

C. Railways Handrails

What brand of handrails were installed? (Only Railways brand handrails are covered by this settlement.)

☐ Railways

☐ Other

Total Numbers and Lengths of Railways brand handrails that have **SPLITTING, WARPING, SWELLING, SHRINKING, or SURFACE DECAY**, separately stated for each of these conditions (see website glossary for definitions of each of these capitalized terms):

Describe your specific concern with the Railways brand handrails:

Have you repaired or replaced any handrails or any portion(s) of the deck on which the handrails are installed as a result of the problems described above?

YES / NO

If you answered YES, describe the repairs, specify the reason the repairs were made, indicate when the repairs were made and by whom. *(In the alternative, you may provide documentation of such repairs in the form of an invoice from the contractor who performed them.)*

IV. OTHER CLAIMS

Have you (or to your knowledge any prior owner) ever made a warranty claim to GAF regarding the Decking Materials that are the subject of this claim?

YES / NO

If you answered YES, please provide the GAF Warranty Claim Number, if known:

Have you (or to your knowledge any prior owner) ever made an insurance claim regarding the Decking Materials that are the subject of this claim?

YES / NO

If you answered YES, please provide: (1) date of the claim; (2) Name of the insurance carrier; and (3) amount of compensation received. Please also provide the insurance claim number, if known:

V. INSPECTION

If GAF determines that the property should be inspected, do you wish to be present for the inspection?

YES / NO

VI. SUPPORTING DOCUMENTATION

Please enclose documentation supporting your claim as described below. **Failure to provide any of the documents requested below may result in a denial of your Claim.**

- ☐ **Proof of Ownership:** Enclose a document showing that you are the current owner of the property on which the subject Decking Materials were installed. While there may be other acceptable documents, some of the most common examples include copies of your property deed, most recent property tax bill, or most recent mortgage statement.
- ☐ **Proof of Purchase or Warranty Transfer:** If you purchased the Decking Materials installed on the property, enclose a document verifying the purchase and demonstrating the product identification and quantity purchased. The document must be dated no more than thirty (30) days after the date of purchase. While there may be other acceptable documents, some of the most common examples include copies of your Decking Materials sales receipt, Decking Materials invoice, or contractor's invoice, estimate (plus proof of payment), or contract. If you did not purchase the Decking Materials installed on the property, enclose documents verifying that you are a Permitted Transferee of the applicable warranty, including documents showing that you notified GAF of the transfer and paid the applicable transfer fee.
- ☐ **Photographs:** Photographs may be uploaded to the claim website or submitted by mail. If submitted by mail, all photographs should be at least 3 inches by 5 inches and have the property address or claim number written clearly on the back.

NOTE: Color photographs taken during the day are better able to depict the condition of your deck, and therefore more likely to meet the requirements set forth below:

- ☐ At least 3 (three) photographs that capture the entire top surface of the deck, taken from three different vantage points;
 - ☐ At least 3 (three) photographs that collectively capture the entire outer perimeter of the deck's substructure, taken from three different vantage points; and
 - ☐ 1 (one) photograph of each board, fascia, or handrail that allegedly displays the Qualifying Damage or Mold Condition, with at least six inches of a ruler or tape measure visible in the photograph.
- ☐ **Video:** Video must be uploaded to the claim website. Video must be taken during the day with an iPhone or Android cell phone video camera, and must include at minimum 30 seconds, and at maximum 180 seconds of footage that captures the entire deck surface and the outer perimeter of the deck's substructure. Video taken with an iPhone or Android cell phone camera is preferred.

Please note that all items submitted for the evaluation of this claim become the property of GAF and cannot be returned to you regardless of the disposition of this claim.

If you need to repair or replace your Decking materials before your claim is resolved, you **MUST** provide GAF with reasonable notice. If you have already repaired or replaced your Decking materials without notifying GAF about this claim **or** before GAF has completed its evaluation, your claim may be denied.

VII. CERTIFICATION

This document is signed under penalties of perjury. Per my signature below, I authorize the Claims Administrator and GAF to verify the Claim, including by retaining an Inspector to inspect the GAF Decking materials on the Property, if GAF determines an inspection is necessary. I certify that the information provided above is true and correct to best of my knowledge and that any documents submitted have not been doctored to misrepresent any of the information reflected in them. I further certify that all photographs and videos that I have supplied (or will supply) are from the deck that is the subject of this claim and reflect the damage to the Decking materials for which I seek compensation.

Signature of Claimant

Date

Exhibit

2

MEDIA STATEMENT

Plaintiffs' counsel for a class of individuals, and GAF Materials Corporation, announced on September 16, 2016 that they have entered into a Settlement Agreement that, if approved, will resolve a class action lawsuit alleging that CrossTimbers, DuraLife, and Railways outdoor composite decking materials manufactured or sold by Elk Corporation and Building Materials Corporation of America were defective. GAF Materials Corporation claims the decking materials were not defective. Elk ceased manufacturing decking materials in 2007. Building Materials Corporation of America ceased manufacturing decking materials in 2011 and sold its decking business in 2012. The terms of the settlement and claims process are set forth in the Settlement Agreement and described in the class notice. In resolving this litigation, GAF Materials Corporation did not admit any liability or plaintiffs' allegations but rather entered into the Settlement Agreement to avoid the expense and burden of costly litigation and for the benefit of the class.