

**ACCEPTANCE OF SETTLEMENT, COVENANT TO  
REMEDiate AND RELEASE OF ALL SETTLED CLAIMS**

This Acceptance of Settlement, Covenant to Remediate and Release of all Settled Claims ("Acceptance and Covenant") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between Beazer East, Inc., a Delaware corporation, f/k/a Koppers Co., Inc. ("Beazer") and \_\_\_\_\_ (hereinafter "Roof Owner"). This Acceptance and Covenant is entered into in connection with the Stipulation of Classwide Settlement Between and Defendant Beazer East, Inc. (herein "Stipulation") in the lawsuit entitled Sebago Inc. and Flint Village, LLC, et al. v. Beazer East, Inc., et al., Civil Action Nos. 96-10069-MLW (U.S.D.C. D. Mass) and 96-10656-MLW (U.S.D.C. D Mass).

**1. Recitals**

1.1. WHEREAS, Roof Owner is an Eligible Claimant as that term is defined in the Stipulation;

1.2. WHEREAS, Roof Owner has submitted a Claim to the Claims Office seeking recovery under the terms of the Stipulation for Eligible Property located at \_\_\_\_\_ (hereinafter "Building");

1.3. WHEREAS, the Claims Office has considered the Claim and has submitted an Offer for Settlement Compensation (the "Offer") to the Roof Owner which Offer has been accepted by the Roof Owner (a copy of said Offer Settlement Compensation is attached hereto as Exhibit "A");

1.4. WHEREAS, Beazer and Roof Owner desire to finalize and formalize the resolution of all Claims in connection with the Building by entering into this Acceptance and Covenant as contemplated by the Stipulation;

1.5. WHEREAS, Beazer and Roof Owner intend to adopt all Definitions of the

Stipulation as if they were incorporated into this Acceptance and Covenant in their entirety;

2. **Roof Replacement Compensation.**

2.1. Payment of Roof Replacement Compensation. Beazer agrees to pay to Roof Owner the sum of \_\_\_\_\_ (\$ ) (The "Roof Replacement Compensation"). This sum shall be paid in two installments as contemplated by the Stipulation. Within five (5) business days after the receipt by the Claims Office of this Acceptance and Covenant, the Claims Office will pay fifty percent (50%) of the Roof Replacement Compensation to the Roof Owner, minus twelve and one-half percent (12.5%) of that amount. The remaining fifty percent (50%) of the Roof Replacement Compensation to the Roof Owner, minus twelve and one-half percent (12.5%), will be paid by the Claims Office to Roof Owner within fifteen (15) business days of receipt of written documentation verifying that the currently existing roofing system at the Building has been removed and replaced.

2.2. Attorneys Fees. Beazer and Roof Owner acknowledge and agree that the Roof Replacement Compensation to be paid by the Claims Office to Roof Owner in two installments shall be reduced by twelve and one-half percent (12.5%) for each such installment, and that those amounts deducted as attorneys fees from the Roof Replacement Compensation shall be paid by the Claims Office to Plaintiffs' Class Counsel as set forth in the Stipulation and as ordered by the District Court on December 13, 2000.

3. **Covenant to Remediate.**

3.1. Covenant to Remediate. Roof Owner covenants and agrees that by accepting the Roof Replacement Compensation recited herein, Roof Owner agrees to remove, replace and dispose of the currently existing roof system at the Building and further agrees that said remediation work shall commence within sixty (60) days of receipt of the first installment of Roof Replacement Compensation from the Claims Office without a reasonable extension having been

agreed to by the Eligible Claimant and the Claims Office, assent to which shall not unreasonably be withheld, and Roof Owner shall promptly and faithfully proceed with such work to completion. The failure of the Roof Owner to comply with this shall subject the Roof Owner to all rights and remedies that Beazer and the Claims Office may have at law, in equity, or as provided in the Stipulation.

3.2. Payment of Roof Contractor. Roof Owner covenants and agrees that it will be solely responsible for the payment of all costs, fees and charges associated with the removal, replacement and disposal of the currently existing roof system at the Building, subject to the terms and conditions contained in the Agreement and Stipulation.

3.3. Further Understanding. Roof Owner and Beazer agree that Beazer shall not be responsible for workmanship, materials, or manner or method of removal, remedial measures, replacement, construction or installation of the roofing systems at the Building, which work is contemplated to be performed by contractors chosen by and contracting with Roof Owner.

4. **Replacement of Decks and Deck Remediation Compensation.**

4.1. Replacement of Decks. The parties understand and agree that all or some portion of the Metal Roof Decks with Damage (hereinafter "Decks") at the Building will require cleaning, painting, restoration, or replacement in order to ensure their continued use and viability, and that it is currently impossible to determine or estimate the extent of such work that will be required. The parties agree that upon removal of the roofing systems, Roof Owner or its representatives or consultants will determine by reference to "coupons" taken from the Roof Deck of the Building (hereinafter "Coupons") what portions of the Roof Deck must be removed and replaced (or painted and overlayed at the option of the Roof Owner), what portions must be painted, and what portions do not need to be remediated.

The Coupons will be selected from the Building by agreement between the Third Party

Inspector and the Roof Owner or its representatives or consultants and designated as Category A and Category B. Portions of the Metal Roof Deck which appear to be in the same condition or worse condition than the Category A Coupon(s) must be removed and replaced (or painted and overlaid at the option of the Roof Owner). Portions of the Metal Roof Deck which appear to be in the same condition or better condition than the Category B Coupon(s) (depicting Metal Roof Deck with no Damage) do not need to be remediated and no compensation will be paid hereunder with respect to any voluntary remediation of such portions. Portions of the Metal Roof Deck which appear to be in better condition than the Category A Coupon(s) but worse condition than the Category B Coupon(s) must be cleaned and painted. Beazer agrees that it will be responsible for the payment of all costs, fees, and charges associated with the removal, replacement, overlayment, repair, and painting, of the Metal Roof Decks, subject to the terms and conditions contained in this Agreement and the Stipulation. If the parties are unable to agree on a set of Coupons then the parties shall advise the Claims Office and shall use one of the sets of Control Coupons previously designated by agreement between Plaintiffs' Lead Counsel and Beazer and which are in the custody of the Claims Office and Plaintiffs' Lead Counsel.

4.2. Roof Owner will contract with necessary contractors of its choice to complete the work on the Decks, at the unit costs set forth in the Offer of Compensation attached hereto as Exhibit "A." The contractors, together with Roof Owner's Consultant, if any, will utilize the Coupons selected or provided pursuant to Paragraph 4.1 of this Acceptance and Covenant to determine which portions of the Decks must be (i) removed and replaced (or painted and overlaid at the option of the Roof Owner), (ii) cleaned and painted or (iii) left in their existing condition. The determinations of the contractor and the Roof Owner's Consultant, if any, will be subject to review by the Independent Claims Adjudicator as set forth in Paragraph 4.4 of this Acceptance and Covenant, provided, however, that any such determination will be upheld by the

Independent Claims Adjudicator unless it is shown by a preponderance of the evidence that the determination of the contractor and the Roof Owner's Consultant, if any, was not properly based upon the selected Coupons or the provided Control Coupons.

4.3. During performance of the work on the Decks, Roof Owner's contractor(s) will submit to the Third Party Inspector on a weekly basis, progress reports which will include photographs of the exposed Deck taken daily (which photographs will depict the Deck areas (a) immediately after opening the Decks, (b) after the areas have been cleaned and before painting and (c) the Decks after the areas have been painted or replaced), and which will specify the quantity of the work performed on the Decks along with a summary itemization showing an approximate amount of the Decks (i) removed and replaced, (ii) cleaned and painted and (iii) left in their existing condition.

4.4. The Roof Owner agrees to retain at the job site all Damaged Deck that has been removed and replaced for a minimum period of thirty (30) days after photographs of the removed Deck have been mailed to the Third Party Inspector for review pursuant to Paragraph 4.3. In the event that any disputes shall arise regarding the determination of whether any portions of the Decks were to be (i) removed and replaced, or painted and overlaid at the Roof Owner's option, (ii) cleaned and painted or (iii) left in their existing condition, Beazer and Roof Owner agree to attempt in good faith to resolve such dispute by agreement. If a resolution cannot be reached by agreement, the parties agree to jointly submit such dispute(s) for final decision to the Independent Claims Adjudicator. The Independent Claims Adjudicator shall consider and resolve any such dispute as soon as possible. The Independent Claims Adjudicator shall base his review solely upon the Coupons selected jointly by the parties, the photographs submitted to the Third Party Inspector and, where necessary, the Damaged Deck retained at the job site. In the event that Coupons were not agreed upon by the parties, the Independent Claims Adjudicator shall use the

Control Coupons provided to the job site by the Claims Office or Plaintiffs' Class Counsel.

In the event of such a dispute concerning the propriety or necessity of removal, replacement, overlayment, cleaning or painting the parties agree (i) the work will proceed in accordance with the decision of Roof Owner's contractors and/or Consultant, (ii) the sole issue to be determined by the Independent Claims Adjudicator shall be whether Beazer should be required to pay the incremental cost associated with the work in dispute, (iii) if Beazer prevails in the dispute, Roof Owner will be responsible for paying the incremental costs of Roof Owner's contractor(s) associated with the work in dispute which are in excess of the cost of the category of work on the Decks which the Independent Claims Adjudicator determines is applicable, (iv) if Roof Owner prevails in the dispute, the Claims Office will be responsible for paying to Roof Owner all costs associated with the work in dispute not already paid by the Claims Office in accordance with Paragraph 4.4 within five (5) business days of the decision by the Independent Claims Adjudicator, and (v) the losing party in the dispute shall be responsible for payment of the Independent Claims Adjudicator's fees. The decision of the Independent Claims Adjudicator shall be final and not subject to review by any court, arbitrator, or otherwise. In the event of such a dispute, the Claims Office may not withhold payment of any other element of Settlement Compensation otherwise payable pursuant to the terms and conditions of the Stipulation. Each party agrees that (i) neither it nor its contractors, consultants, or representatives will discuss any aspect of the roofing systems, the Decks, the repair, restoration, removal, replacement, remedial measures, cleaning or painting of the roofing systems or Decks with the Independent Claim Adjudicator except in connection with any dispute being presented and resolved pursuant to this subparagraph, (ii) copies of all communications, submissions, and presentations given by either party to the Independent Claims Adjudicator shall be provided to the adverse party at or before the time the same are transmitted to the Independent Claims Adjudicator, and (iii) each party will

cooperate with the other and the Independent Claims Adjudicator in order to ensure, to the greatest extent possible, the efficient, full, fair, and economical presentation and determination of any dispute.

5. **Release.**

5.1 Roof Owner does hereby release and forever discharge Beazer including its predecessors, successors, parents, subsidiaries, divisions, departments, or affiliates, and their officers, directors, employees, shareholders, partners, agents, servants, predecessors, successors, subrogees, past and future assigns, the Claims Office, Johns Manville and respective insurers and indemnitors (the "Beazer Parties"), of and from any and all claims, liabilities, rights, demands, suits, matters, obligations, damages, losses or costs, actions or causes of action, of every kind and description, in law or in equity, that the Roof Owner has, had or may have against Beazer Parties, whether known or unknown, foreseen or unforeseen, accrued or which may hereafter accrue, asserted or unasserted, latent or patent, that is, has been, could reasonably have been or in the future might reasonably be, asserted by the Roof Owner against any Beazer Party, either in this Action, or in any other action or proceeding, in this Court or any other court or forum, regardless of the legal theory, and regardless of the type or amount of relief or damages claimed, arising from or in any way relating to the design, manufacture, distribution, sale, handling, written or oral instructions, specifications, marketing, use, performance or any defects or alleged defects, of Beazer PFRI, and any replacement, repair, treatment, remedial work, removal or disposal of the Roofing System or Deck at the Building, or any part thereof which have accrued or will accrue as a result of having Beazer PFRI on the Roof Owner's Eligible Property ("Settled Claim"). Without limiting the generality of the foregoing, Settled Claim shall include, with regard to the foregoing subject matter:

- A. any claim for breach or violation of any federal, state, common or other law

or statute, regulation or ordinance;

B. any claim for breach of any duty imposed by law, by contract or otherwise;

C. any claim based on strict product liability, negligence, reliance, breach of express or implied warranties, racketeering, fraud, suppression, conspiracy, consumer fraud, conspiracy to commit fraud, unfair and deceptive trade practice, negligent misrepresentation, reckless misrepresentation or intentional misrepresentation, and any other similar claim or cause of action.

D. any claim based on alleged defects or inadequacies in or otherwise related to in the design, manufacture, advertising, product literature, sale, distribution, marketing or performance of Beazer PFRI or any part thereof;

E. any claim for emotional distress or mental anguish associated with any of the above;

F. any claim for declaratory or injunctive relief;

G. any claim for direct, indirect, special, incidental, business interruption, economic loss, actual or consequential damages or attorneys fees and costs, or for penalties, punitive damages, exemplary damages, or any claim for damages based upon a multiplication of compensatory damages associated with the above, whether allowed by federal or state statute or common law; and

H. related subrogation claims of the Roof Owner's subrogee or insurance carriers not protected from waiver of subrogation by the provisions of applicable insurance policies (or assigned or subrogated prior to the execution of this Acceptance and Covenant and not subject to compromise or settlement by the policyholder).

5.2. The term "Settled Claim" does not include the following:

A. any claim for bodily or personal injury, wrongful death and associated

emotional distress and mental anguish;

B. any claim wholly unrelated to the specification, use or presence of Beazer PFRI on the roof of the Roof Owner's Building asserted against Persons other than Beazer Parties for improper installation, design, manufacture or maintenance of any roofing system; and

C. any claim with respect to any property, or portion thereof, that does not fall within the definition of Eligible Property.

5.3. This Agreement represents a conclusive, binding and final resolution of all disputed claims and all Settled Claims. Roof Owner and the Beazer Parties conclusively resolve any legal, contractual, commercial, warranty, and similar claims, however characterized, based on tort, equity, law, or statute, relating to the purchase, installation, replacement, repair, treatment, remedial labor or expense, transport, use and disposal of or to the Roofing Systems or Decks and any alleged consequences therefrom.

5.4. Neither this Agreement nor any statement, whether orally or in writing made prior to or in connection with the execution of this Agreement, shall be construed as an admission, or evidence of liability, fault, breach of warranty, or admission of any commercial, legal, or equitable responsibility or obligation, except as specifically set forth or reserved in this Acceptance and Covenant.

5.5. No promise has been made to pay any further or additional consideration except as set forth in this Acceptance and Covenant or in writing, as an amendment or rider hereto. The releases set forth in this Acceptance and Covenant do not constitute, and are not intended as, releases of claims, obligations, or performance under this document or any such amendment or rider.

5.6. Roof Owner represents and acknowledges that this Agreement has been executed after Roof Owner has had sufficient time and opportunity to investigate existing and potential

damage or loss, and that this Acceptance and Covenant is intended to and does include any damage, injury, commercial, incidental, or other economic loss not presently known to Roof Owner but which may later occur, arise, develop, or be discovered.

5.7. The Beazer Parties admit no liability to the Roof Owner, nor to anyone whomsoever, nor to any issue of fact, law, or commercial responsibility of the Beazer Parties other than the obligations set forth in or arising under this Acceptance and Covenant.

5.8. The Roof Owner and Beazer specifically reserve any and all other claims, defenses and causes of action against any and all other Persons not parties to this Agreement.

6. **Indemnification.**

6.1. Beazer agrees to defend, indemnify and hold harmless Roof Owner from any and all damages, settlements, payments or expenses (including reasonable attorney fees) incurred in the event that Beazer pursues a claim or cause of action against a person or entity not a Party to this Agreement for recovery of all or any portion of the Settlement Compensation paid to the Roof Owner and where said claim or cause of action results in the filing of a claim for contribution, indemnity, apportionment, or equitable apportionment (or any similar damages sharing or shifting theory) against Roof Owner in such suit or action or otherwise, provided, however, that in no event shall Beazer's liability for such indemnification exceed the Settlement Compensation amounts paid to Roof Owner pursuant to this Settlement.

6.2. Roof Owner agrees to defend, indemnify and hold harmless Beazer from any and all damages, settlements, payments or expenses (including reasonable attorney fees) incurred in the event that Roof Owner pursues a claim or cause of action against a person or entity not a party to this Agreement for recovery of any additional damages (beyond the Settlement Compensation set forth in this Agreement) in connection with the roofing system or Metal Roof Deck at the Building, and where said claim or cause of action results in the filing of a claim for contribution, indemnity,

apportionment, or equitable apportionment (or any similar damages sharing or shifting theory) against Beazer in such suit or action or otherwise, provided, however, that in no event shall the Roof Owner's liability for such indemnification exceed the Settlement Compensation amounts paid to Roof Owner pursuant to this Settlement.

6.3. Beazer agrees to defend, indemnify and hold harmless Roof Owner from and against any and all damages, settlements, payments or expenses (including reasonable attorney fees) incurred by Roof Owner on account of any and all claims, suits and causes of action for personal injuries, including wrongful death, and property or other damages which may occur at the Building and which are caused by Beazer PFRI, provided that such injuries and/or damage occur at any time after the Date of the Claim and before payment to Roof Owner of any portion of the Settlement Compensation.

6.4. Roof Owner agrees to defend, indemnify and hold harmless Beazer from and against any and all damages, settlements, payments or expenses (including reasonable attorney fees) incurred by Beazer on account of any and all claims, suits and causes of action for personal injuries, including wrongful death, and property or other damage which may occur at the Building provided that such injuries and/or damage occur at any time after the Roof Owner has done all of the following: (i) executed this Acceptance and Covenant, and (ii) received any portion of the Settlement Compensation, and (iii) breached its obligations under this Acceptance and Covenant and/or otherwise under the terms of Stipulation to properly and timely replace the roofing system containing Beazer PFRI in direct or indirect contract with a Metal Roof Deck and/or to remediate the Metal Roof Deck.

## 7. **Insurance.**

7.1. Roof Owner agrees to require its roofing contractor to provide to the Claims Office a Certificate of Insurance for a Comprehensive General Liability policy which names Beazer East,

Inc. as an Additional Insured, and not a mere certificate holder. This Certificate of Insurance shall be obtained and provided prior to the commencement of the work at the Building. The inability or failure of Beazer to obtain this Certificate of Insurance shall not be deemed a waiver of this requirement and shall not obviate the contractual requirement that the Certificate of Insurance be provided to Beazer.

8. **Notices.**

All notices required under this Acceptance and Covenant shall be governed by the provisions relating to Notice of the Stipulation.

9. **Construction and Interpretation.**

9.1. This Acceptance and Covenant shall be construed, interpreted, and enforced according to the laws of the Commonwealth of Massachusetts. The headings to the various paragraphs of this document have been used for convenience and ease of reference, and shall not be considered apart of this Agreement for purposes of interpretation or construction. This Acceptance and Covenant including this provision, may not be revised, amended, rescinded, or modified except in writing signed by all parties.

10. **Counterparts.**

10.1. This Agreement may be executed in counterparts, and each executed counterpart shall be deemed to be an original instrument, but all counterparts together shall constitute one and the same instrument. This Acceptance and Covenant shall not be binding or enforceable against any party until an original or counterpart has been executed by each party.

11. **Authority.**

11.1. Each party represents that the person executing this Acceptance and Covenant on its behalf is expressly authorized to do so and to bind the party by such execution.

IN WITNESS WHEREOF, we have executed this Acceptance and Covenant as of the date first set forth above, intending ourselves to be bound by the terms of this Agreement.

\_\_\_\_\_  
By: \_\_\_\_\_

BEAZER EAST, INC., a Delaware  
corporation,

By \_\_\_\_\_  
Authorized Representative

THE CLAIMS OFFICE

By: \_\_\_\_\_  
Authorized Representative