

SETTLEMENT AGREEMENT (GAINES/SDR)

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into as of this 15th day of January, 2008, by and among J. GORDON GAINES, INC. ("Gaines") having a place of business at 300 Riverhills Business Park, Suite 340, Birmingham, Alabama 35242, the TEXAS RECEIVERSHIP ENTITIES (as such term is defined below) and VESTA TIMBER CO., LLC., an Alabama limited liability corporation ("Vesta Timber").

RECITALS

On August 7, 2006 (the "Petition Date"), Gaines filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the case styled In re J. Gordon Gaines, Inc., Case No. 06-02808 (Bankr. N.D. Ala. 2006) (the "Gaines Case").

As of the Petition Date, Gaines was a wholly owned subsidiary of Vesta Insurance Group, Inc ("VIG"). VIG was a publicly held corporation with its principal assets being investments in the capital stock of Vesta Fire Insurance Corporation ("Vesta Fire") and Gaines. Vesta Fire, in turn, owns, *inter alia*, capital stock interests in a variety of other insurance companies and the majority of the membership interest in Vesta Timber. VIG, like Gaines, is the subject of a Chapter 11 case which is styled In re Vesta Insurance Group, Inc., Case No. 06-02517 (Bankr. N.D. Ala. 2006) (the "VIG Case").

The VIG Case and the Gaines Case were jointly administered and each case was the subject of its own, separate confirmed plan of liquidation.

By the year 2006, VIG, Vesta Fire and Vesta Fire's insurance subsidiaries suffered significant deterioration, resulting in increased scrutiny from various state insurance regulators. The ultimate outcome was that VIG and various state insurance commissioners agreed to place Vesta Fire and its insurance subsidiaries in rehabilitation proceedings in Texas, Florida and Hawaii.

On June 28, 2006, the District Court of Travis County, Texas ("Receivership Court") entered an Agreed Order Appointing Rehabilitator and Permanent Injunction (the "Texas Receivership Order") in the action styled The Texas Department of Insurance v. Vesta Fire Insurance Corporation, et al., Cause No. D-1-GN-06-002366 (the "Texas Receivership Action"). The Texas Receivership Order placed Vesta Fire, Vesta Insurance Corporation, Shelby Casualty Insurance Company, The Shelby Insurance Company, Texas Select Lloyds Insurance Company, and Select Insurance Services, Inc. (the "Texas Receivership Entities") into rehabilitation. The Texas Commissioner of Insurance was appointed as the Permanent Receiver ("Receiver") for the Texas Receivership Entities under Tex. Ins. Code §§ 21A.101 *et seq.* The Receiver subsequently appointed Prime Tempus, Inc. as the Special Deputy Receiver (the "SDR") for the Texas Receivership Entities.

On August 1, 2006, the Receivership Court entered an order of liquidation in the Texas Receivership Action (the "Liquidation Order") by which a liquidator was appointed for all of the Texas Receivership Entities except Vesta Insurance Corporation. The Liquidation Order triggered

the process of cancelling policies relating to Vesta Fire and the other subsidiaries. Prime Tempus, Inc. continues to operate as the special deputy receiver for the estates that were the subject of the Liquidation Order.

On behalf of the Texas Receivership Entities, SDR filed in the Gaines bankruptcy case the following proofs of claims: proof of claim number 119 on behalf of Vesta Fire in the amount of \$14,617,006.96 ("Vesta Fire Claim") and proofs of claim 121, 122, 123 and 124 on behalf of various Texas Receivership Entities for an unspecified dollar amount.

By Order entered December 22, 2006, the Court confirmed the Third Amended Chapter 11 Plan of Liquidation of J. Gordon Gaines, Inc. (the "Plan") in the Gaines Case. The Effective Date, as defined in the Plan, was December 26, 2006. In accordance with Section 7.5 of the Plan, Kevin O'Halloran was retained as "Plan Trustee" as defined under the Plan ("Gaines Trustee").

Pursuant to Section 8.4 of the Plan, Gaines Trustee has standing to file an objection to claims. Gaines Trustee, on behalf of the Gaines estate, filed objections to the Vesta Fire Claim and an adversary proceeding seeking to equitably subordinate the claim asserted by Vesta Fire against Gaines ("Gaines Complaint").

Gaines Trustee, acting on behalf of Gaines, and SDR wish to avoid the risks and expenses attendant to litigation and disputes among them and, without anyone admitting fault, liability or wrongdoing, to settle once and forever all claims which either of the parties or any other released persons identified herein related thereto has against or may have against the parties.

NOW, THEREFORE, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) in hand paid each to the other, the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. Definitions. In addition to the terms that are defined elsewhere in the Agreement, any capitalized terms shall have the meaning ascribed to them below:

Approval Orders shall mean the Bankruptcy Order and the Receivership Order.

Bankruptcy Case shall mean the case styled In re J. Gordon Gaines, Inc., Case No. 06-02808 (Bankr. N.D. Ala. 2006).

Bankruptcy Code shall mean all applicable provisions of the United States Bankruptcy Code.

Bankruptcy Order shall mean an order entered by the Bankruptcy Court in the Bankruptcy Case approving this Agreement after such notice to creditors and other parties in interest and a hearing as deemed appropriate by the Bankruptcy Court.

Claims shall have the meaning set forth in Section 101(5) of the Bankruptcy Code.

Computer Relocation Contracts shall mean the following contracts: the Hosting Agreement dated December 15, 2006 between Comlanta, LLC and Gaines, the Lease Agreement #521830 between Solarcom, LLC and Gaines, and the Lease Agreement #521879 between Solarcom, LLC and Gaines, and the Lease Agreement between Solarcom Capital LLC and Gaines containing a lease start date of January 1, 2008, including the Presidio Disaster Recovery schedule attached thereto. These contracts relate to the relocation of the Gaines computers and software to an offsite location in Atlanta, Georgia, and the provision of remote location housing for and access to certain computer equipment and data. This definition shall also includes any amendments, addendums, schedules, renewals or substitution contracts relating to any of these contracts, including, without limitation, any contract between Comlanta, LLC or Solarcom, LLC and SDR.

Contingent Assets shall mean the Computer Relocation Contracts, the computer equipment located at the offsite location pursuant to the Computer Relocation Contracts as of the date of this Agreement, warranty and maintenance contracts relating to such equipment, and software licensed by Gaines from Persons (other than Gaines) for use on the equipment at the Offsite Location.

Effective Date of this Agreement is the first date on which both of the Approval Orders are Final Orders.

Excluded VIG Claims shall mean any account receivable, payment intangible, right to payment, Claim or cause of action whatsoever, whether arising by statute, contract, common law or otherwise, in favor of Gaines and against VIG or any other Person, and that arises out of or relates to any of the following four transfers of property by Gaines to VIG:

<u>Date:</u>	<u>Amount:</u>
10/13/2005	\$10,500,000
11/30/2005	\$5,173,410
12/28/2005	\$12,000,000
1/4/2006	\$1,600,000

Final Order shall mean an order of a court approving this Settlement Agreement, as to which the time to file an appeal has expired and no timely appeal is pending, or, if a timely appeal is filed, the Approval Order subject to the appeal has not been stayed.

Gaines Assets shall mean all items of property, real or personal, tangible or intangible, in which Gaines has an interest, including, without limitation, licenses, computer equipment, software, business records (physical or electronic), deposits, phone systems, furniture, equipment, intellectual property, causes of action (whether or not yet asserted), claims subject to proofs of claim filed by Gaines in other bankruptcy or receivership estates, and contract rights.

Gaines Attorneys shall mean Parker, Hudson, Rainer & Dobbs, LLP and Johnston & Barton, LLP, each in its capacity as attorney for Gaines at any time during the period commencing on the Petition Date and continuing thereafter.

Gaines Personnel shall mean and include the following Persons: (a) Kevin O'Halloran, as Gaines Trustee; (b) Newbridge Management, LLC; and any of its agents, representatives or employees in connection with any services rendered to Gaines; and (c) any of the Persons employed by Gaines under the Services Agreement in connection with any services rendered to Gaines after the Petition Date.

Net Recovery shall mean any gross recovery less the direct attorneys fees and direct expenses incurred in connection with such litigation or Claim.

Offsite Location shall mean the physical location at which the computer and data is maintained under the Computer Relocation Contracts.

Payment Date shall mean the date eleven (11) days after the date on which the Approval Order becomes a Final Order.

Person shall mean any individual, partnership, corporation, limited liability company, limited liability partnership, joint venture, trust, or unincorporated organization, or association, any "doing business as" entity, any other form of business or commercial entity, or a government or any governmental agency or political subdivision.

Proprietary Software shall mean any software which was either created or owned by Gaines prior to the Settlement Date.

Receivership Assets shall mean all items of property, real or personal, tangible or intangible, in which any of the Texas Receivership Entities or Vesta Timber LLC has an interest.

Receivership Order shall mean an order entered by the Receivership Court in the Texas Receivership Action approving this Agreement after such notice to creditors and other parties in interest and a hearing as deemed appropriate by the Receivership Court.

SDR Attorneys shall mean any attorneys retained by SDR in connection with the Texas Receivership Action and Vesta Timber, excluding Barger & Wolen, LLP and any of its partners, associates or employees ("Barger & Wolen").

SDR Personnel shall mean any employees, agents or representatives of SDR (excluding Barger & Wolen) engaged in activities in connection with the Texas Receivership Entities or Vesta Timber, including, without limitation, the performance of duties as a director, officer or employees of such entities.

SDR Proofs of Claim shall mean the following proofs of claim filed in the Bankruptcy Case:

<u>Claim No.</u>	<u>Claimant</u>	<u>Amount</u>
119	Vesta Fire Insurance Corporation	\$14,617,006.96
122	Shelby Casualty Insurance Company	\$0.00
121	Texas Select Lloyds Insurance Co.	\$0.00
123	The Shelby Insurance Company	\$0.00
124	Vesta Insurance Corp.	\$0.00

Services Agreement shall mean the Post-Confirmation Records Access and Services Agreement made as of December 22, 2006 among VIG, Gaines and SDR.

Settlement Date shall mean the first day on which each of the following has occurred: (a) the Effective Date; and (b) receipt by Gaines in immediately available funds the payment of the Settlement Payment, provided, however, that such receipt must be by no later than the Payment Date.

Settlement Payment shall mean \$1,500,000.

Tenant Deposit shall mean a security deposit in the amount of \$4,683 made by Gaines with Birmingham Realty.

Transferred Assets shall mean the property described in Section 5 excluding the Gaines Retained Assets.

2. Court Approval. This Agreement shall not become effective unless and until the Approval Orders are entered and become Final Orders. The parties shall cooperate in seeking Bankruptcy Court and Receivership Court approval of this Agreement. Gaines further agrees to file a motion seeking the Bankruptcy Order in the Bankruptcy Court by no later than 30 days after the date of this Agreement. SDR further agrees to file a motion seeking the Receivership Order in the Receivership Court by no later than 30 days after the date of this Agreement.

3. Settlement Payment. By no later than the Payment Date, SDR shall pay, or cause to be paid, to Gaines Trustee the Settlement Payment.

4. Vesta Fire Allowed Claim. Effective as of the Settlement Date, the following shall be deemed to have occurred with regard to the SDR Proofs of Claim: (a) Vesta Fire shall be deemed to have an allowed unsecured claim in the Gaines Case in the amount of \$14,617,006.96 ("Vesta Fire Allowed Claim") based on Proof of Claim No. 119; (b) the remaining SDR Proofs of Claim shall be deemed withdrawn with prejudice; and (c) the Vesta Fire Allowed Claim shall be deemed to be satisfied in full based on the transfers under Section 5 of this Agreement.

5. Gaines Transfer of Interest in Property Under Section 363. In satisfaction of the Vesta Fire Allowed Claim and in consideration of the Settlement Payment, Gaines shall be deemed, effective as of the Settlement Date unless otherwise specified, to have transferred pursuant to Section 363 of the Bankruptcy Code to Vesta Fire all of Gaines' right, title and interest ("Transferred Interest") in the following property without warranty or representation of any kind other than the limited warranties or representations contained in Section 11 hereof:

- a. Any interest in Gaines Assets, excluding only the following: (i) the cash on hand at Gaines on the Effective Date of this Settlement Agreement, (ii) Gaines' right to recover on its proof of claim filed by it in the bankruptcy of Florida Select Insurance Agency, Bankruptcy case number 07-1849 pending in the U.S. Bankruptcy Court for the Northern District of Alabama, (iii) the Settlement Payment, (iv) any cause of action against Gaines' present or former directors, officers, or professionals (including accounting, financial advisory and legal professionals), (v) any preference or fraudulent transfer causes of action available to Gaines under chapter 5 of the Bankruptcy Code ("Avoidance Claims"), (vi) any claim by Gaines against Hawaii Insurance & Guaranty Company, (vii) the Excluded VIG Claims, (viii) the Tenant Deposit, (ix) any claim by Gaines against Florida Select Insurance Company, (x) amounts to which Gaines is due under the Services Agreement, and (xi) the Contingent Assets. Items (i) through (xi) above are collectively referred to as the "Gaines Retained Assets."
- b. Without limiting the transfer in subsection (a) above, any interest in the lease of the property located at 300 Riverhills Business Park, Suite 340, Birmingham, Alabama 35242, any equipment lease and Proprietary Software (collectively the "Assigned Contracts").
- c. A 90% interest in the Net Recovery, if any, from any Claim now or hereafter asserted by Gaines or on its behalf against any of its present or former officers, directors or professionals (including accounting, financial advisory and legal professionals but excluding Gaines Attorneys and Gaines Personnel as to which no claim is deemed to exist), or any Avoidance Claim ("Recovery Interest").
- d. 100% interest in the proceeds of the Gaines Retained Assets. The transfer of the proceeds of the Gaines Retained Assets shall be effective on the first day upon which each of the following has occurred: (i) there are no longer any unresolved disputed claims in the Gaines Case; and (ii) Gaines has paid in full all Allowed Unsecured Claims in the Gaines Case and all expenses incurred by the Gaines Trustee in connection with the Gaines Case, including, without limitation, all professional fees and amounts owed to the Gaines Trustee. The transfer will include the Gaines Retained Assets existing when the transfer becomes effective and those that accrue thereafter.
- e. Vesta Fire shall also have the right to receive a transfer of Gaines' right title, and interest in all or any portion of the Contingent Assets upon written notice to Gaines which transfer shall be deemed effective on the first day of the calendar month immediately following the date upon which Gaines is deemed to receive the written notice. From the effective date of the transfer of interest in any item of the Contingent Assets, such transfer shall be deemed thereafter to be a part of the Transferred Interest. Until such time as the transfer of Contingent Assets occurs, Vesta Fire shall advance, or cause others to advance, to Gaines funds necessary to pay all cost and expense of preserving and continuing such Contingent Assets, including, without

limitation, monthly payments and license fees. Such advances shall be made on the first day of each month in an amount equal to Gaines' reasonable estimate of monthly cost for that month. Upon request, Vesta Fire will advance any shortfall that may occur between the Gaines estimated monthly cost and the actual monthly cost experienced by Gaines. Pending Vesta Fire's request for transfer, Gaines shall not transfer or encumber its interest in the Contingent Assets and shall forward to Vesta Fire notices and other communications received from Persons regarding such Contingent Assets.

The Transferred Interest is being transferred by Gaines to Vesta Fire free and clear of any interest a third party may claim or assert in the Transferred Interest, if any, pursuant to Section 363(f) of the Bankruptcy Code. Vesta Fire is receiving this transfer of the Transferred Interest in good faith as such term is used in Section 363(m) of the Bankruptcy Code.

6. Amounts Due Under Assigned Contracts. Gaines shall bring current all amounts due under the Assigned Contracts as of the Settlement Date subject to its right of reimbursement under the Services Agreement.

7. Gaines Trustee's Cooperation. After the Settlement Date, Gaines Trustee promptly shall execute such documents as reasonably requested by the SDR to effect the transfers described in Section 5 above and shall cooperate with the SDR to effect a smooth transition of the operations at the existing Gaines facility and in connection with the Computer Relocation Contracts.

8. Gaines Trustee's Access to Records. Subject to the Access Conditions, SDR shall provide Gaines Trustee with continued access to: (a) any of the business records in which Gaines is transferring its interest hereunder; and (b) the electronic records and data currently maintained at the Offsite Location until the termination of the Computer Relocation Contracts. Access Conditions include the following: access shall be coordinated through a person designated by the SDR and such access shall not entail any cost or expense to be incurred by the SDR other than the cost and expense being incurred by SDR in generally maintaining such records and the Computer Relocation Contracts in a manner which allows for reasonable access to such data or records by SDR or Gaines ("Maintenance Cost"). Gaines Trustee and Gaines shall not be charged for Maintenance Cost or the act of accessing the property. It is specifically contemplated by the parties that such access by the Gaines Trustee shall be minimal and shall be limited to discharging the remaining bankruptcy obligations under the Plan.

9. Gaines Employees. As of the date of the last signature on the Settlement Agreement, SDR shall be authorized to contact existing employees of Gaines to offer them employment or contracts with the Texas Receivership Entities.

10. Services Agreement. The Services Agreement shall remain in full force and effect according to its terms. Gaines acknowledges, however, that as of the Settlement Date, Gaines' interest in Transferred Assets that are the subject to right and use under the Services Agreement shall be deemed transferred to SDR.

11. Disclaimer and Limited Representations. Except as to the Express Warranties (as defined below), Gaines does not make any warranties or representations, implied or

express, regarding the Transferred Assets and hereby expressly disclaims any warranties as to title, ownership, absence of limitation or encumbrance, existence, quantity, quality, nature, collectability, possession, location, merchantability, or fitness for a particular purpose. The interest of Gaines in the Transferred Assets is being transferred by Gaines and accepted by the Texas Receivership Entities AS IS, WHERE IS, WITH ALL FAULTS subject only to the following express warranties ("Express Warranties"): (a) Gaines warrants that it filed in the VIG bankruptcy case a proof of claim no. 73 in the amount of \$94,926,029.40 (the "VIG Claim"), Gaines has not transferred the VIG Claim, VIG has not objected to the VIG Claim as of the date of this Agreement, the VIG Claim remains of record in the VIG bankruptcy case, and Gaines and VIG have not entered into any agreement or compromise with respect to the VIG Claim as of the date of this Agreement other than an agreement to extend VIG's deadline for objection to the VIG Claim through February 15, 2008; provided, however, that Gaines has disclosed that the VIG Claim may include all or some of the Excluded VIG Claims; (b) Gaines warrants that it has not encumbered or sold its interest in any Gaines Assets since the Petition Date except (i) sales made pursuant to Bankruptcy Court order and (ii) certain sales of personal property, including certain vehicles, chairs, computers and artwork, which sales were for an aggregate purchase price of no more than \$10,000; and (c) without limiting the generality of (b) above, Gaines warrants that it has not encumbered or sold its interest in any of the Proprietary Software.

12. Pursuit of Litigation. At the request of the SDR, Gaines will prosecute any claim or cause of action which is subject to the Recovery Interest provided that the direct attorneys fees and litigation expenses of such pursuit shall be paid by Vesta Fire to the extent, but only to the extent, Vesta Fire has agreed to pay such fees and expenses as to each such claim or cause of action. For any such claim or cause of action, Vesta Fire shall recover from the first, gross proceeds of any recovery all costs and fees theretofore advanced by it prior to any distribution of any of such proceeds to any party for any reason. Gaines shall not settle or release any claim or cause of action subject to a Recovery Interest without the express written approval of the SDR. Gaines agrees to cooperate as requested by the SDR in the pursuit of any such claims or causes of action jointly with the VIG estate. Neither the Texas Receivership Entities nor the SDR shall have any obligation to pursue or request Gaines to pursue any claim or cause of action.

13. No Assumption of Liabilities. Nothing herein shall effect or be construed to effect a transfer to or assumption by any of the Texas Receivership Entities, the SDR, the Receiver or Vesta Timber of the liabilities of Gaines or any other Person, except to the limited extent that Vesta Fire accepts an assignment of rights in a contract or lease, and then only to the extent that the liability was incurred and is attributable to the period commencing on the Settlement Date and continuing thereafter.

14. Release by Gaines. As a further material inducement to the Texas Receivership Entities entering into this Agreement, but excepting any obligations imposed upon the Texas Receivership Entities by this Agreement, and effective upon the Settlement Date, Gaines, on behalf of itself and its agents, representatives, successors and assigns and all other Persons claiming by, through or under Gaines, hereby **REMISES, RELEASES, ACQUITTS AND FOREVER DISCHARGES** each of Receiver (both as Rehabilitator and Liquidator), the Texas Department of Insurance and its employees, the SDR, SDR Personnel, SDR Attorneys, Texas Receivership Entities,

Vesta Timber and any of their successors and assigns (collectively, the "Receivership Released Persons"), and the Receivership Assets of and from all manner of Claims which Gaines ever had, now has, or claims to have, either directly or indirectly, in whole or in part, including, but not limited to, any Claims related to or arising out of the Bankruptcy Case or the Texas Receivership Action; and Gaines hereby covenants that it will not sue any of the Receivership Released Persons for, or raise in any way against any of the Receivership Released Persons, any such Claims; provided, however, that nothing in this section is intended, or shall be deemed, to release: (a) any Claim arising from a breach of this Agreement by any Receivership Released Person, which breach such Receivership Released Person fails to cure within ten (10) days upon receiving written notice from Gaines of the breach; (b) any Claim Gaines may have against any Person other than the Receivership Released Persons, including Barger & Wolen; or (c) any Claim arising out of the SDR or Texas Receivership Entities' failure to perform its or their obligations under the Services Agreement.

15. Release by Texas Receivership Entities. As a further material inducement to Gaines entering into this Agreement, but excepting any obligations imposed upon Gaines by this Agreement, and effective upon the Settlement Date, the Texas Receivership Entities and SDR, and their respective agents, representatives, successors and assigns and all other Persons claiming by, through or under the SDR or any of the Texas Receivership Entities hereby **REMISE, RELEASE, ACQUIT AND FOREVER DISCHARGE** each of Gaines, Gaines Attorneys, Gaines Attorney, Gaines Personnel and any of their successors and assigns (collectively, the "Gaines Released Persons"), of and from all manner of Claims which any of the Texas Receivership Entities or SDR had, now has, or claims to have, either directly or indirectly, in whole or in part, against any of the Gaines Released Persons including, but not limited to, any Claims related to or arising out of the Bankruptcy Case or the Texas Receivership Action, and each of the Texas Receivership Entities or SDR hereby covenants that it will not sue any of the Gaines Released Persons for, or raise in any way against any of the Gaines Released Persons any such Claims; provided, however, that nothing in this section is intended, or shall be deemed, to release: (a) any Claim arising from Gaines' breach of this Agreement which breach Gaines fails to cure within ten (10) days upon receiving written notice from SDR of the breach; (b) the Vesta Fire Allowed Claim; (c) any Claim the Texas Receivership Entities or SDR may have against any Person other than Gaines Released Persons; (d) any defense or offset which SDR or the Texas Receivership Entities have to any Claim by Gaines arising out of the SDR or Texas Receivership Entities' failure to perform its or their obligations under the Services Agreement; or (e) as to Gaines only, any Claim seeking recovery against a Person other than a Gaines Released Person ("Third Party Claim") as to which Claim Gaines may be deemed a necessary party provided that the Texas Receivership Entities and the SDR covenant and agree that such Third Party Claim shall be non-recourse as to any assets or property of Gaines and that the Texas Receivership Entities and the SDR shall not seek to collect from any Gaines Released Person any damages, judgment, award or other right of recovery on such Third Party Claim.

16. Release by Vesta Timber. As a further material inducement to Gaines entering into this Agreement, but excepting any obligations imposed upon Gaines by this Agreement, and effective upon the Settlement Date, Vesta Timber, on behalf of itself and its agents, representatives, successors and assigns and all other Persons claiming by, through or under Vesta Timber, hereby **REMISES, RELEASES, ACQUIT AND FOREVER DISCHARGES** each of the Gaines Released Persons, of and from all manner of Claims which Vesta Timber had, now has, or claims to have, either directly or indirectly, in whole or in part, against any of the Gaines Released Persons

including, but not limited to, any Claims related to or arising out of the Bankruptcy Case, and Vesta Timber hereby covenants that it will not sue any of the Gaines Released Persons for, or raise in any way against any of the Gaines Released Persons any such Claims; provided, however, that nothing in this section is intended, or shall be deemed, to release any Claim arising from Gaines' breach of this Agreement which breach Gaines fails to cure within ten (10) days upon receiving written notice from Vesta Timber of the breach.

17. **Effectiveness of Releases.** The releases of Claims in Sections 14 through 16 of this Agreement are intended to be mutual, and, notwithstanding anything to the contrary set forth in this Agreement, no release by one party (the "Releasing Party") of any Claims shall be effective and enforceable as to another party until the release by such other party of Claims against the Releasing Party is effective and enforceable.

18. **Dismissal of Gaines Complaint.** By no later than 10 Business Days after the Settlement Date, Gaines Trustee shall dismiss with prejudice the Gaines Complaint.

19. **Rejection of the Agreement.** In the event that the Bankruptcy Court or Receivership Court rejects or disapproves this Settlement Agreement or, if the Approval Orders were stayed pending appeal and a court of competent jurisdiction enters a Final Order reversing or vacating the Approval Orders, this Agreement, including the releases set forth in Sections 14 through 16, shall be of no force or effect.

20. **No Admission of Liability.** This Agreement shall not in any way be construed as an admission by any party of any acts of misconduct whatsoever against another party or any other Person, and all parties specifically disclaim any liability to another party or any other Person, except as otherwise stated herein.

21. **Authority.** Texas Receivership Entities and SDR represent and warrant to Gaines that they have full power and authority to enter into this Agreement and that this Agreement, once fully executed and delivered and approved by the Bankruptcy and Receivership Courts, will be a valid and binding obligation of them, enforceable against them in accordance with this Agreement's terms. Gaines represents and warrants to Texas Receivership Entities and SDR that Gaines has full power and authority to enter into this Agreement and that the Agreement, once fully executed and delivered and approved by the Bankruptcy and Receivership Courts, will be a valid and binding obligation of Gaines, enforceable against it in accordance with the Agreement's terms.

22. **Mutual Representations and Warranties.** Each of the parties represents and warrants to the others, as an inducement for the other to enter into this Agreement, that:

- a. Such party has read and understands all of the terms and conditions set forth in this Agreement;
- b. Such party has had the benefit of legal counsel of its own choosing in deciding to execute this Agreement;

c. Such party, without promise of benefit other than as set forth herein, is voluntarily entering into this settlement;

d. There is good and valid consideration to support such party's entering into this Agreement and to bind such party by the terms and conditions of this Agreement; and

e. Such party was not coerced, threatened or otherwise forced to sign this Agreement, and its signature appearing hereinafter is voluntary and genuine and was duly and validly authorized and given.

23. **Notices.** All notices, requests and demands to or upon a party shall be in writing and sent by certified mail, return receipt requested, personal delivery against receipt or by telecopier or other facsimile transmission (but not by e-mail) and, unless otherwise expressly provided herein, shall be deemed to have been validly served, given or delivered when delivered against receipt or one business day after deposit in the United States mail, postage pre-paid, or, in the case of facsimile transmission, when received at the office of the noticed party, addressed as follows:

If to Gaines: J. Gordon Gaines, Inc.
 Kevin O'Halloran, as Plan Trustee
 Post Office Box 723657
 Atlanta, Georgia 31139
 Telecopy: (770) 432-2189

With a copy to: Rufus T. Dorsey, IV, Esq.
 Parker Hudson Rainer & Dobbs LLP
 285 Peachtree Center Avenue
 1500 Marquis Two Tower
 Atlanta, Georgia 30303
 Telecopy: (404) 522-8409

If to SDR/Texas Receivership Entities:

Prime Tempus, Inc.
Vesta Receiverships
Attn: Craig Koenig
27310 Ranch Road 12
Dripping Springs, TX 78620
Telecopy: (512) 894-3725

With a copy to: George Tarpley, Esq.
 Cox Smith Matthews Incorporated
 1201 Elm Street, Suite 3300
 Dallas, TX 75270
 Telecopy: (214) 698-7899

Any party may change the address at which that party shall receive notice or the name of the person receiving a copy of such notice by furnishing the other party a change of address or change of person receiving copies of notices in the manner set forth herein for the giving of notices. A notice of change of address or change of person receiving copies shall become effective ten (10) days after delivery.

24. **Parties to Bear Own Costs.** Except as stated in this Agreement, each party to this Agreement shall bear its own costs (including attorneys' fees) incurred in connection with the Bankruptcy Case or the Texas Receivership Action, and the negotiation, preparation and execution of this Agreement and any other agreements or instruments executed in accordance with the terms of this Agreement.

25. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully-executed counterparts. Counterparts of this Agreement also may be exchanged via electronic facsimile machines, and an electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

26. **Entire Agreement.** This Agreement sets forth all of the promises, covenants, agreements, conditions and understandings between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied. Each party specifically warrants that this Agreement is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

27. **Amendment.** The terms of this Agreement shall not be altered, amended, modified or otherwise changed in any respect except by a writing duly executed by all the parties hereto.

28. **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

29. **Binding Agreement.** On the Effective Date, this Agreement shall be binding upon the parties, and their respective heirs, representatives, executors, successors and assigns, and shall similarly inure to the benefit of their respective heirs, representatives, executors, successors and assigns.

30. **No Third-Party Beneficiaries.** No Person other than the parties hereto and their respective successors, assigns, representatives, executors, and heirs, and any other Person identified or referred to in Sections 14 through 16 of this Agreement, and only as to those Sections, is intended to be a beneficiary of this Agreement.

31. **Construction.** Should any provision of this Agreement require interpretation, the parties agree that the judicial body or arbitration forum interpreting or construing such provision shall not apply any assumption that the terms of this Agreement shall be more strictly construed against any party because of the rule of construction that an instrument is to be construed more strictly against the drafting party, each party hereby acknowledging and agreeing that all parties and their respective agents have participated in the preparation of this Agreement.

32. **Section Headings; References; Gender and Number.** The titles of the Sections herein have been inserted as a matter of convenience and for reference only and shall not control or affect the meaning or construction of any of the terms of the provisions herein. Whenever reference is made in this Agreement to any Section, such reference shall be deemed to apply to the specified Section of this Agreement. Words of any gender used in this Agreement shall be deemed to include the other gender or the neuter, and words in the singular shall be deemed to include the plural and the plural to include the singular when the sense requires.

33. **Governing Law.** This Agreement shall be construed under and governed by the internal laws of the State of Alabama, except to the extent superseded by applicable receivership law of the State of Texas or the Bankruptcy Code.

34. **No Waiver.** No failure of a party to notify the other party of any default shall prejudice any remedy for any subsequent defaults. No failure of a party to insist on strict compliance by another party with its obligations under this Agreement and no custom or practice of the parties in variance with the terms of this Agreement shall constitute a waiver of the party's right to demand exact compliance with the Agreement's terms. Any waiver by a party of a default shall be limited to the particular instance and shall not operate or be deemed to waive any further default.

[Remainder of page intentionally left blank; signatures begin on following page.]

IN WITNESS WHEREOF, the parties have set their hands and seals, or their appropriate officer or agent has executed this Agreement, as of the date first written above.

VESTA FIRE INSURANCE CORPORATION

VESTA INSURANCE CORPORATION

**SHELBY CASUALTY INSURANCE
COMPANY**

THE SHELBY INSURANCE COMPANY

**TEXAS SELECT LLOYDS INSURANCE
COMPANY**

SELECT INSURANCE SERVICES, INC.

By PRIME TEMPUS, INC., in its
capacity as Special Deputy Receiver
under contract to the Receiver

By: S D

Craig Koenig,
Title: President

VESTA TIMBER CO., LLC

By: S D

Name: Craig Koenig

Title: President, Prime Tempus, Inc. As Special Deputy
Receiver of Vesta Fire Insurance Corporation As
Majority Owner of Vesta
Timber Co., LLC

J. GORDON GAINES, INC.

By: K

Name: Kevin T. O'Halloran

Title: Plan Trustee