

**CANADIAN DRYWALL CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

Made as of September 21, 2018

Between

BOWEN REAL ESTATE HOLDINGS INC.

(the “**Plaintiff**”)

and

GEORGIA-PACIFIC LLC and GP CANADA OPERATIONS HOLDING ULC

(the “**Settling Defendants**”)

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RECITALS

A. WHEREAS the Proceedings have been commenced in Ontario by the Plaintiff and in Quebec by the Quebec Plaintiff;

B. WHEREAS it is alleged in the Proceedings that the Defendants participated in an unlawful conspiracy with other manufacturers of Drywall to, among other things, raise, fix, maintain or stabilize the prices of Drywall sold in Canada and elsewhere as early as September 1, 2011 until at least when the Proceedings were commenced, contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 and the common law and/or the civil law;

C. WHEREAS the Settling Defendants and Releasees do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceedings, or in any Other Actions, and otherwise deny all liability and assert that they have complete defences in respect of the merits of the Proceedings and any Other Actions or otherwise;

D. WHEREAS the Plaintiff, Class Counsel and the Settling Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Releasees or evidence of the truth of any of the Plaintiff's allegations against the Releasees, which allegations are expressly denied by the Settling Defendants;

E. WHEREAS, despite their belief that they are not liable in respect of the claims as alleged in the Proceedings and any Other Actions and have good and reasonable defences in respect of jurisdiction and the merits, the Settling Defendants are entering into this Settlement Agreement

in order to achieve a final and nationwide resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiff and the Settlement Class in the Proceedings and any Other Actions, and to avoid further expense, inconvenience, the distraction of burdensome and protracted litigation, and the risks associated with trials and appeals;

F. WHEREAS Counsel for the Settling Defendants and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement;

G. WHEREAS Class Counsel, on their own behalf and on behalf of the Plaintiff and the proposed Settlement Class, have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiff's claims, having regard to the burdens and expense in prosecuting the Georgia Pacific Proceeding, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiff and the Settlement Class it seeks to represent;

H. WHEREAS the Plaintiff asserts that it is an adequate class representative for the Settlement Class it seeks to represent and will seek to be appointed representative plaintiff in the Georgia Pacific Proceeding;

I. WHEREAS the Settling Defendants do not hereby attorn to the jurisdiction of the Court or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent they have previously done so in the Georgia Pacific Proceeding and as is expressly provided in this Settlement Agreement with respect to the Proceedings;

J. WHEREAS the Parties therefore wish to and hereby finally resolve on a nationwide basis, without admission of liability, the Proceedings and any Other Actions as against the Releasees;

K. WHEREAS the Parties consent to certification: (i) of the Georgia Pacific Proceeding as a class proceeding; (ii) of the Settlement Class; and (iii) of a Common Issue in respect of the Georgia Pacific Proceeding as against the Settling Defendants for the sole purpose of implementing this Settlement Agreement and contingent on approvals by the Court as provided for in this Settlement Agreement, on the express understanding that such certification shall not derogate from the respective rights of the Parties in the event that the Court denies (without leave to resubmit) a motion to approve this Settlement Agreement, or this Settlement Agreement is terminated or otherwise fails to take or remain in effect for any reason;

L. WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendants and the Plaintiff have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendants and the Plaintiff, both individually and on behalf of the Settlement Class it seeks to represent, subject to approval of the Court; and

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Georgia Pacific Proceeding be settled and dismissed as to the Settling Defendants, all without costs as to the Plaintiff, the Settlement Class it seeks to represent or the Settling Defendants, subject to the approval of the Court, on the following terms and conditions:

SECTION 1 - DEFINITIONS

For the purposes of this Settlement Agreement only, including the recitals and schedules hereto:

- (1) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiff, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices.
- (2) ***Approval Hearing*** means the hearing for the Court's approval of the settlement provided for in this Settlement Agreement.
- (3) ***Class Counsel*** means Siskinds LLP.
- (4) ***Class Period*** means September 1, 2011 to March 17, 2016.
- (5) ***Common Issue*** means: Did the Settling Defendants conspire to fix, raise, maintain, or stabilize the prices of Drywall in Canada and elsewhere during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?
- (6) ***Counsel for the Settling Defendants*** means Lax O'Sullivan Lisus Gottlieb LLP.
- (7) ***Court*** means the Ontario Superior Court of Justice, unless the surrounding words make clear that the reference is to a different court.
- (8) ***Date of Execution*** means the date on the cover page as of which all Parties have executed this Settlement Agreement.

- (9) ***Defendants*** means the entities named as defendants in any of the Proceedings as set out in Schedule A to this Settlement Agreement, and any Persons added as defendants in the Proceedings in the future. For greater certainty, Defendants includes, without limitation, the Settling Defendants and Settled Defendants.
- (10) ***Documents*** means all papers, computer or electronic records, or other materials within the scope of Rule 1.03(1) and Rule 30.01(1) of the Ontario *Rules of Civil Procedure*.
- (11) ***Drywall***, sometimes known as gypsum board, wallboard, green glass, sheetrock or plasterboard, means a panel made of gypsum plaster pressed between two thick sheets of paper.
- (12) ***Effective Date*** means the date when a Final Order has been received from the Court approving this Settlement Agreement.
- (13) ***Excluded Person*** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.
- (14) ***Final Order*** means a final order made by the Court approving this Settlement Agreement that either (i) has not been appealed before the time to appeal such order has expired, if an appeal lies, or (ii) has been affirmed upon a final disposition of all appeals. For further certainty, any order made by the Court approving this Settlement Agreement will not become a Final Order until the time to appeal such an order has expired without any

appeal having been taken or until the order has been affirmed upon a final disposition of all appeals.

- (15) ***Georgia Pacific Proceeding*** means the proceeding commenced by the Plaintiff as against the Settling Defendants before the Court as identified in Schedule A to this Settlement Agreement.
- (16) ***Non-Settling Defendant*** means a Defendant that is not the Settling Defendants or a Settled Defendant.
- (17) ***Notice of Hearing*** means the form or forms of notice, agreed to by the Plaintiff and the Settling Defendants, or such other form or forms of notice as may be approved by the Court, which informs the Settlement Class of: (i) the date and location of the Approval Hearing; (ii) the principal elements of the Settlement Agreement; and (iii) the process by which Settlement Class Members may object to the settlement.
- (18) ***Ontario Proceeding*** means the proceeding commenced by the Plaintiff before the Court as identified in Schedule A to this Settlement Agreement.
- (19) ***Other Actions*** means actions or proceedings, other than the Proceedings, relating to the Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (20) ***Parties*** means the Plaintiff, the Settlement Class Members (where appropriate) and the Settling Defendants.
- (21) ***Person*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust,

trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

- (22) ***Plaintiff***, unless the surrounding words make clear otherwise, means Bowen Real Estate Holdings Inc., which is the plaintiff both in the Georgia Pacific Proceeding and the Ontario Proceeding.
- (23) ***Proceedings*** means the Ontario Proceeding, the Georgia Pacific Proceeding, and the Quebec Proceeding, all as defined in Schedule A to this Settlement Agreement.
- (24) ***Proportionate Liability*** means that proportion of any judgment that, had the Settling Defendants not settled, the Court would have apportioned to the Releasees.
- (25) ***Purchase Price*** means the sale price paid by Settlement Class Members for Drywall purchased in Canada during the Class Period, less any rebates, delivery or shipping charges, taxes and any other form of discounts.
- (26) ***Quebec Counsel*** means Siskinds Desmeules s.e.n.c.r.l.
- (27) ***Quebec Plaintiff*** means Sylvie Cloutier.
- (28) ***Quebec Proceeding*** means the proceeding commenced by the Quebec Plaintiff before the Superior Court of Quebec identified in Schedule A to this Settlement Agreement.
- (29) ***Released Claims*** means any and all claims, demands, actions, suits, injuries, and causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, and damages and liabilities of any nature, whenever or however incurred

(whether actual, compensatory, punitive or otherwise), including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees, known or unknown, suspected or unsuspected, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, relating in any way to any conduct, act or omission of the Releasees (or any of them) during the Class Period concerning any of the facts, occurrences, transactions, agreements, conspiracies, communications, announcements, notices, or other matters alleged in the Proceedings, including, without limitation, any causes of action which have been asserted or could have been asserted, directly or indirectly, whether in Canada or elsewhere regarding the matters alleged in the Proceedings, including, without limitation, any claims for consequential, subsequent, or follow-on harm that arises after the Class Period in respect of any agreement, combination or conduct that occurred during the Class Period. However, nothing herein shall be construed to release any claims, apart from those that may arise as a result of anti-competitive conduct, that involve negligence, personal injury, breach of contract, bailment, failure to deliver lost goods, damaged or delayed goods, product defect, warranty claim, securities, or other similar claims relating to Drywall.

- (30) ***Releasees*** means, jointly and severally, individually and collectively, the Settling Defendants, and all of their present, former and future direct and indirect parents, owners, subsidiaries, divisions, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors,

employees, agents, shareholders, attorneys, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants.

(31) ***Releasors*** means, jointly and severally, individually and collectively, the Plaintiff and the Settlement Class Members and their respective present, former and future parents, subsidiaries, affiliates, predecessors, successors, heirs, executors, administrators, insurers and assigns.

(32) ***Settled Defendants*** means:

(a) TIN Inc.; and

(b) any Defendant that executes its own settlement agreement whether before or after the execution of this Settlement Agreement, which settlement agreement is finally approved by the requisite courts and becomes effective in accordance with its terms.

(33) ***Settlement Agreement*** means this agreement, including the recitals and schedules.

(34) ***Settlement Class*** means all Persons in Canada, other than Excluded Persons, who, during the Class Period, purchased Drywall in Canada.

(35) ***Settlement Class Member*** means a member of the Settlement Class.

(36) ***Settling Defendants*** means Georgia-Pacific LLC and GP Canada Operations Holding ULC.

- (37) **U.S. Litigation** means the class action proceeding pending in the United States District Court for the Eastern District of Pennsylvania, under the caption *In re Domestic Drywall Antitrust Litigation*, 13-MD-2437, and includes all actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all actions pending such transfer, and all actions that may be transferred in the future.

SECTION 2 - SETTLEMENT APPROVAL

2.1 Best Efforts

- (1) The Parties shall use their best efforts to implement this settlement and secure the prompt, complete and final dismissal with prejudice of the Georgia Pacific Proceeding as against the Settling Defendants.

2.2 Motion Approving Notice of Hearing

- (1) The Plaintiff shall bring a motion before the Court, as soon as practicable after the Settlement Agreement is executed, for an order approving the Notice of Hearing.
- (2) The order approving the Notice of Hearing shall be substantially in the form attached hereto as Schedule B.

2.3 Motion for Approval of the Settlement and Consent Certification for Settlement Purposes

- (1) The Plaintiff shall bring a motion before the Court for an order certifying the Georgia Pacific Proceeding for settlement purposes only and approving this Settlement Agreement as soon as practicable after:
- (a) the order referred to in Section 2.2(2) is granted,
 - (b) the Notice of Hearing has been published; and

- (c) the deadline for objecting to the Settlement Agreement has expired.
- (2) The order certifying the Georgia Pacific Proceeding for settlement purposes against the Settling Defendants and approving this Settlement Agreement shall be substantially in the form attached hereto as Schedule C.
- (3) This Settlement Agreement shall only become final on the Effective Date.

2.4 Pre-Motion Confidentiality

- (1) Until the motion required by Section 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of Counsel for the Settling Defendants and Class Counsel, as the case may be, except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law. Notwithstanding the foregoing, the Settling Defendants are permitted to withdraw from any joint defence group and may disclose the existence of the Settlement Agreement to the joint defence group, but shall not disclose any of the terms of the Settlement Agreement.

SECTION 3 - COOPERATION

3.1 Extent of Cooperation

- (1) Within thirty (30) days of the Effective Date or at a time mutually agreed upon by the Parties, insofar as such production has not already been made, the Settling Defendants agree to use reasonable efforts to provide to Class Counsel:
 - (a) transactional sales data for sales by the Settling Defendants to Canadian customers between January 1, 2010 and January 1, 2015. Available transactional

data shall be provided in Microsoft Excel or such other format as agreed upon by the Parties, and shall be delivered as a separate production from the other Documents to be delivered pursuant to Section 3.1(1) or identified by bates number as part of the production of Documents to be delivered pursuant to Section 3.1(1);

- (b) reasonable assistance in understanding the transactional data produced by the Settling Defendants, including a reasonable number of written and/or telephonic communications with Class Counsel and/or the Plaintiff's experts and between technical personnel;
- (c) oral summaries of any interviews of the Settling Defendants' current or former officers, directors or employees conducted in the U.S. Litigation, including pursuant to any settlement agreement and/or tolling agreement;
- (d) electronic copies of any Documents produced by the Settling Defendants in the U.S. Litigation, including all Documents produced by the Settling Defendants pursuant to any settlement agreement and/or tolling agreement. Such Documents will be provided in the format in which they were produced in the U.S. Litigation, and will include any pre-existing and non-privileged electronic coding. In addition, where the Documents previously produced in the U.S. Litigation contain bates stamps on their face, a field will be produced containing the corresponding bates stamps of the first page of each Document;
- (e) provide to Class Counsel electronic copies of transcripts and video recordings of all depositions or other testimony of current or former employees, officers or

directors of the Releasees, including all exhibits thereto, taken in the U.S. Litigation, within ten (10) business days of said transcripts becoming available; and

- (f) electronic copies of any responses to written interrogatories by the Releasees, including all schedules thereto, in the U.S. Litigation.
- (2) The obligation to produce documents pursuant to section 3.1(1) shall be a continuing obligation to the extent additional documents are identified by the Settling Defendant following the initial productions pursuant to this Settlement Agreement.
 - (3) The Settling Defendants make no representation regarding and shall bear no liability with respect to the accuracy of the description of any documents to be produced or provided pursuant to this Section 3.1, nor do they make any representation that they have, can or will produce a complete set of any of the Documents described in this Section 3.1, and the failure to do so shall not constitute a breach or violation of this Settlement Agreement.
 - (4) Within thirty (30) days of the Effective Date or at a time mutually agreed upon by the Parties, subject to the other provisions of this Settlement Agreement and insofar as such assistance has not already been provided, Counsel for the Settling Defendants will meet with Class Counsel in Canada to assist in identifying key Documents and/or transcripts produced by the Settling Defendants pursuant to this Section and respond to reasonable questions regarding same.

- (5) The Settling Defendants shall, at the request of Class Counsel, upon at least sixty (60) days' notice, and subject to any legal restrictions, make reasonable efforts to make available at a mutually convenient time, Leo Bissonnette or another current or former employee with similar experience, to provide information regarding the allegations raised in the Proceedings in a personal interview with Class Counsel and/or experts retained by Class Counsel. Costs incurred by, and the expenses of, any employee of the Settling Defendants in relation to such an interview shall be the responsibility of the Settling Defendants. If the employee refuses to provide information, or otherwise cooperate, the Settling Defendants shall use all reasonable efforts to make him/her available for an interview with Class Counsel and/or experts retained by Class Counsel. The failure of a current or former employee to agree to make him or herself available, or to otherwise cooperate with the Plaintiff, shall not constitute a breach or violation of this Settlement Agreement.
- (6) Subject to the rules of evidence, the order of any court with respect to confidentiality, and the other provisions of this Settlement Agreement,

 - (a) Settling Defendants agree to use reasonable efforts to make available for testimony at trial or otherwise in the Proceedings appropriate current and/or former officers, directors and/or employees of the Settling Defendants as is reasonably necessary to (i) establish for admission into evidence the Settling Defendants' transactional sales data provided pursuant to Section 3.1(1)(a); and (ii) establish for admission into evidence any of the Settling Defendants' Documents and information provided as cooperation pursuant to Section 3.1(1) that are reasonable and necessary for the prosecution of the Proceedings;

- (b) Costs incurred by, and expenses of, the current and/or former officers, directors and/or employees of the Settling Defendants in relation to the authentication of documents and/or providing the information at trial or otherwise contemplated by this Section shall be the responsibility of the Settling Defendants. The failure of a specific officer, director or employee to agree to make him or herself available, or to otherwise cooperate with the Plaintiff, shall not constitute a breach or violation of this Settlement Agreement.
 - (c) If the Settling Defendants, despite their reasonable efforts, are unable to make available an appropriate current and/or former officer, director and/or employee of the Settling Defendants as is reasonably necessary to submit into evidence the data, Documents and information described in Section 3.1(6)(a), Class Counsel may, following reasonable written notice to Settling Defendants, contact such Persons independently or seek to compel testimony from such Persons through subpoenas or other legal means.
- (7) Nothing in this Settlement Agreement shall be construed to require the Settling Defendants to perform any act, including the transmittal or disclosure of any Documents or information, which would violate the law of this or any jurisdiction.
 - (8) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendants or any representative or employee of the Settling Defendants to disclose or produce any Documents or information prepared by or for Counsel for the Settling Defendants, or that is not within the possession, custody or control of the Settling Defendants, or to disclose or produce any Documents or information in breach of any

order, regulatory directive, rule or law of this or any jurisdiction, or subject to solicitor-client privilege, litigation privilege, or any other privilege, or to disclose or produce any information or Documents they obtained on a privileged or co-operative basis from any party to any action or proceeding who is not a Releasee.

- (9) If any Documents protected by any privilege and/or any privacy law or other rule or law of this or any applicable jurisdiction are accidentally or inadvertently disclosed or produced, such Documents shall be promptly returned to the Settling Defendants and the Documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of the Settling Defendants, and the production of such Documents shall in no way be construed to have waived in any manner any privilege, doctrine, law, or protection attached to such Documents.
- (10) The Settling Defendants' obligations to cooperate as particularized in this Section shall not be affected by the release provisions contained in Section 5 of this Settlement Agreement. The Settling Defendants' obligations to cooperate shall cease at the date of final judgment in the Proceedings against all Defendants, unless the obligations cease earlier pursuant to Section 4.
- (11) The Plaintiffs may exercise any rights they have to seek to obtain discovery in the Proceedings as against the officers, directors and/or employees of the Settling Defendants put forward to provide testimony at trial or otherwise pursuant to Section 3.1(6), if the current or former officer, director or employee of the Settling Defendants fails to cooperate in accordance with that Section and the provisions of this Settlement Agreement.

- (12) In the event that the Settling Defendants materially breach this Section 3.1, the Plaintiff may move before the Court to enforce the terms of this Settlement Agreement, seek an order setting aside Section 3.1(13) and allowing the Plaintiff to obtain discovery or information from the Settling Defendants as if the Settling Defendants remained party to the action, or seek such other remedy that is available at law.
- (13) Subject to Sections 3.1(6)(c), 3.1(11) and 3.1(12) above, the provisions set forth in this Section 3.1 are the exclusive means by which the Plaintiff, the Settlement Class Members and Class Counsel may obtain discovery, information, or Documents from the Releasees or their current or former officers, directors or employees, and the Plaintiff, Settlement Class Members and Class Counsel agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Releasees or their current or former officers, directors, employees, agents, or counsel, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction in relation to the Released Claims.
- (14) A material factor influencing the Settling Defendants' decision to execute this Settlement Agreement is their desire to limit the burden and expense of this litigation. Accordingly, the Plaintiff and Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendants, agree not to seek information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burden or expense on the Settling Defendants.
- (15) The Parties hereby incorporate into this Settlement Agreement their earlier agreement that Plaintiff, Settlement Class Members, and Class Counsel waive any right to require

that the Releasees or any of their current or former officers, directors or employees preserve, or keep in place any hold on, any Documents beyond those that are subject to production or preservation by this Section 3.1.

3.2 Limits on Use of Documents

- (1) It is understood and agreed that all Documents and information made available or provided by the Settling Defendants and/or Counsel for the Settling Defendants to the Plaintiff and Class Counsel under this Settlement Agreement (including before this Settlement Agreement's Effective Date) shall be used only in connection with the prosecution of the claims in the Proceedings, and shall not be used directly or indirectly for any other purpose. For greater certainty, such information and Documents can be disclosed to the Quebec Plaintiff and Quebec Class Counsel for the purposes of prosecuting the claims in the Quebec Proceeding. All such Documents and information shall be treated as "confidential" and may be disclosed only to the Plaintiff (or the Quebec Plaintiff), Class Counsel (or Quebec Class Counsel), the Court (or the court in the Quebec Proceeding), the author of the Document, persons who had possession of the Document or information before it was produced in the U.S. Litigation or in one of the Proceedings, the Non-Settling Defendants, an expert or consultant engaged in connection with the prosecution of the claims in the Proceedings who agrees in writing to be bound by these disclosure limitations, and any other Persons to whom disclosure is reasonably required for the purposes of prosecuting the Proceedings as against the Non-Settling Defendants provided that such Persons agree in writing to be bound by these disclosure limitations. The restrictions in this Section 3.2(1) do not apply to the extent that

Documents or information were, are or become publicly available, or as otherwise required by law provided that sufficient prior notice be given to the Settling Defendants.

- (2) In the event that a Person applies for an order requiring the Plaintiff to disclose or produce any Documents or other information provided by the Settling Defendants as cooperation under this Settlement Agreement, Class Counsel shall notify the Settling Defendants of such application promptly upon becoming aware of it in order that the Settling Defendants may intervene to oppose such disclosure or production. In no circumstances shall the Plaintiff or Class Counsel apply for or consent to such an application for disclosure or production.
- (3) Within thirty (30) days of the date of final judgment in the Proceedings against all Defendants, Class Counsel shall follow the steps that are set forth in Section 4.2(1)(d) for the destruction of Documents and other materials.
- (4) Notwithstanding section 3.2(3), a court-appointed claims administrator and/or notice provider may maintain the information described in Section 10.1(1) for two (2) years (or such longer period as the Settling Defendants and the Plaintiff may agree) after the completion of the administration of all settlements and/or court awards in the Proceedings, or the final disposition of the Proceedings without a court award being issued, at which time the court-appointed claims administrator and/or notice provider will delete and destroy all such information in its possession, including copies or references thereto.

3.3 Intervention in the U.S. Litigation

- (1) The Settling Defendants shall not oppose any application that may be brought by or on behalf of the Plaintiff to intervene in the U.S. Litigation in order to seek to gain access to discovery Documents produced, deposition or other transcripts, or other Documents that might be filed in the U.S. Litigation, including any discovery that may be subject to a protective order. However, it is understood and agreed that nothing in this Settlement Agreement shall be construed to require the Settling Defendants and other Releasees to bring a motion requesting that the U.S. protective order be lifted.

SECTION 4 - TERMINATION OF SETTLEMENT AGREEMENT

4.1 Right of Termination

- (1) In the event that:
 - (a) the Court declines to certify the Georgia Pacific Proceeding for settlement purposes as against the Settling Defendants or does so in a materially modified form;
 - (b) the Court declines to dismiss the Georgia Pacific Proceeding against the Settling Defendants;
 - (c) the Court declines to approve this Settlement Agreement or any material part hereof;
 - (d) the Court approves this Settlement Agreement in a materially modified form;

- (e) the Court issues a settlement approval order that is materially inconsistent with the terms of the Settlement Agreement or not substantially in the form attached to this Settlement Agreement as Schedule C;
- (f) the Court informs the Parties in advance that it will be taking any of the actions in Section 4.1(1)(a) through (e); or
- (g) any order approving this Settlement Agreement made by the Court does not become a Final Order.

the Plaintiff and the Settling Defendants shall each have the right to terminate this Settlement Agreement (except that only the Settling Defendants shall have the right to terminate under subsection (b) above) by delivering a written notice pursuant to Section 11.17, within thirty (30) days following an event described above.

- (2) Except as provided for in Section 4.3, if the Settling Defendants or the Plaintiff exercise their right to terminate, the Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.
- (3) Any order, ruling or determination made (or rejected) by any court with respect to Document confidentiality shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

4.2 If Settlement Agreement is Terminated

(1) If the Court denies (without leave to resubmit) a motion to approve this Settlement Agreement, or if this Settlement Agreement is terminated or otherwise fails to take or remain in effect for any reason:

- (a) no undecided motion to certify the Georgia Pacific Proceeding as a class proceeding on the basis of this Settlement Agreement and no undecided motion to approve this Settlement Agreement shall proceed;
- (b) the Parties will cooperate in seeking to have any issued order certifying the Georgia Pacific Proceeding as a class proceeding on the basis of this Settlement Agreement or approving this Settlement Agreement set aside and declared null and void and of no force or effect, and any Party shall be estopped from asserting otherwise;
- (c) any prior certification of the Georgia Pacific Proceeding as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in the Proceedings or any Other Actions or other litigation;
- (d) within fifteen (15) days of such termination having occurred, Class Counsel shall destroy all Documents or other materials provided by the Settling Defendants and/or Counsel for the Settling Defendants under this Settlement Agreement or containing or reflecting information derived from such Documents or other materials received from the Settling Defendants and/or Counsel for the Settling

Defendants and, to the extent Class Counsel has disclosed any Documents or information provided by the Settling Defendants and/or Counsel for the Settling Defendants to any other Person, shall endeavor to recover and destroy such Documents or information. Class Counsel shall provide Counsel for the Settling Defendants with a written certification by Class Counsel of such destruction. Nothing contained in this Section shall be construed to require Class Counsel to destroy any of their work product. For the purposes of this Section, work product means Documents created by Class Counsel, exercising skill and judgment, in good faith for the purposes of furthering the litigation as against the Non-Settling Defendants. However, any Documents or information provided by the Settling Defendants and/or Counsel for the Settling Defendants, or received from the Settling Defendants and/or Counsel for the Settling Defendants in connection with this Settlement Agreement, may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of the Settling Defendants. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such Documents, information and any work product of Class Counsel derived from such Documents or information; and

- (e) no settlement discussions or any Documents or materials exchanged or prepared in furtherance of any settlement discussions will be used in the Proceedings or will be disclosed to any Person. The parties understand and agree that all of their communications and other exchanges regarding this Settlement Agreement and

the underlying settlement are and have been and will continue to be on a “without prejudice” basis pending approval by the Court of this Settlement Agreement.

4.3 Survival of Provisions After Non Approval of Settlement Agreement

- (1) If the Court denies (without leave to resubmit) a motion to approve this Settlement Agreement, or if this Settlement Agreement is terminated or otherwise fails to take or remain in effect for any reason, the provisions of Sections 3.1(15), 4.1(2), 4.2, 7.1, 7.2, 8.1, 9.1, 10.1(3)(a) and 10.1(4), and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect to the benefit of Plaintiff, the Settlement Class Members, the Settling Defendants, the Releasors, the Releasees and all of their successors and assigns, excluding always the Non-Settling Defendants. The definitions and Schedules, as well as only those provisions in Section 11 having general applicability, shall survive only for the limited purpose of the interpretation of Sections 3.1(15), 4.1(2), 4.2, 7.1, 7.2, 8.1, 9.1, 10.1(3)(a) and 10.1(4), within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 5 - RELEASES AND DISMISSALS

5.1 Release of Releasees

- (1) Upon the Effective Date, subject to Section 5.3, and in consideration of the valuable consideration set forth in this Settlement Agreement, the Releasors forever and absolutely release and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall or may have.

- (2) The Plaintiff and Settlement Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of this Settlement Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of different facts.

5.2 Release by Releasees

- (1) Upon the Effective Date, each Releasee forever and absolutely releases each of the other Releasees from any and all claims for contribution or indemnity with respect to the Released Claims.

5.3 Covenant Not To Sue

- (1) Notwithstanding Section 5.1, upon the Effective Date, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to sue, bring any proceeding or make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

5.4 No Further Claims

- (1) Upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee or any other Person

who may claim contribution or indemnity or other claims over relief from any Releasee, whether pursuant to the *Negligence Act*, RSO 1990, c. N. 1 or other legislation or at common law or equity, in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee. For greater certainty and without limiting the generality of the foregoing, the Releasors shall not assert or pursue a Released Claim, against any Releasee under the laws of any foreign jurisdiction.

5.5 Dismissal of the Georgia Pacific Proceeding

- (1) Upon the Effective Date, the Georgia Pacific Proceeding shall be dismissed, with prejudice and without costs, as against the Settling Defendants.

5.6 Dismissal of Other Actions

- (1) Upon the Effective Date, each member of the Settlement Class shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation, of his, her or its Other Actions against the Releasees.
- (2) Upon the Effective Date, all Other Actions commenced by any Settlement Class Member shall be dismissed against the Releasees, without costs, with prejudice and without reservation.

5.7 Claims Against Other Entities Reserved

- (1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Settlement Class Members against any Person other than the Releasees.

5.8 Material Term

- (1) For the avoidance of doubt and without in any way limiting the ability of the Parties to assert that other terms in this Settlement Agreement are material terms (subject to Section 4.1(3)), the releases, covenants, dismissals, granting of consent, and reservations of rights contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the releases, covenants, dismissals, granting of consent, and reservations of rights, contemplated herein shall give rise to a right of termination pursuant to Section 4.1 of the Settlement Agreement.

SECTION 6 - BAR ORDER

6.1 Ontario Bar Order

- (1) Class Counsel shall seek a bar order from the Court providing for the following:
 - (a) to the extent such claims are recognized at law, all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or any Other Actions, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any

Settled Defendant, or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Section;

- (b) If the Court ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:
 - (i) the Plaintiff and Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
 - (ii) the Plaintiff and Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include only, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, those claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, and interest, and costs (including investigative costs claims pursuant to section 36 of the *Competition Act*) attributable to the aggregate of the several liability of the

Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the Plaintiff and Settlement Class Members, if any, and, for greater certainty, the Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and

(iii) the Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Proceeding whether or not the Releasees appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Proceeding and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Proceeding and shall not be binding on the Releasees in any other proceeding;

(c) a Non-Settling Defendant may, on application to the Court, determined as if the Settling Defendants are parties to the Ontario Proceeding, and on at least thirty (30) days' notice to Counsel for the Settling Defendants, and not to be brought until after all appeals or times to appeal certification have been exhausted, seek orders for the following:

(i) documentary discovery and an affidavit of documents from the Settling Defendants in accordance with the Ontario *Rules of Civil Procedure*;

- (ii) oral discovery of a representative(s) of the Settling Defendants, the transcript of which may be read in at trial;
 - (iii) leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or
 - (iv) the production of a representative(s) of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
- (d) the Settling Defendants retain all rights to oppose any application brought pursuant to Section 6.1(1)(c), including any such application brought at trial seeking an order requiring the Settling Defendants to produce a representative to testify at trial. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of Documents to be produced and/or for information obtained from discovery in accordance with Section 6.1(1)(c);
- (e) on any application brought pursuant to Section 6.1(1)(c), the Court may make such orders as to costs and other terms as it considers appropriate;
- (f) to the extent that such an order is granted and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendants to Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant;

- (g) the Court will retain an ongoing supervisory role over the discovery process and the Settling Defendants will attorn to the jurisdiction of the Court for these purposes; and
- (h) a Non-Settling Defendant may effect service of the application(s) referred to in Section 6.1(1)(c) on a Settling Defendant by service on Counsel for the Settling Defendants.

6.2 Material Term

- (1) For the avoidance of doubt and without in any way limiting the ability of the Parties to assert that other terms in this Settlement Agreement are material terms (subject to Section 4.1(3)), the Parties acknowledge that the bar order contemplated herein shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the bar order contemplated herein shall give rise to a right to termination pursuant to Section 4.1 of the Settlement Agreement.

SECTION 7 - EFFECT OF SETTLEMENT

7.1 No Admission of Liability

- (1) The Plaintiff and the Releasees expressly reserve all of their rights if the Court denies (without leave to resubmit) a motion to approve this Settlement Agreement, or if this Settlement Agreement is terminated, or otherwise fails to take or remain in effect for any reason. Further, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take or remain in effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action

taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations contained in the Proceedings or any Other Actions, or any other pleading filed by the Plaintiff.

7.2 Agreement Not Evidence

- (1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take or remain in effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, or as otherwise required by law or as provided in this Settlement Agreement.

7.3 No Further Litigation

- (1) No Class Counsel, nor anyone currently or hereafter employed by, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person against the Settling Defendants that relates to or arises from the Released Claims, except in relation to the continued prosecution of the Proceedings against any Non-Settling Defendant or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual

basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Releasee. Moreover, neither Class Counsel, nor anyone currently or hereafter employed by, or a partner with Class Counsel, may divulge to anyone for any purpose, or use for any purpose, any information obtained in the course of the Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent that such information is or becomes otherwise publicly available or unless ordered to do so by a court in Canada, or in the case of information obtained in the course of the Proceedings, for the purposes of the continued prosecution of the Proceedings against any Non-Settling Defendant or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Releasee.

SECTION 8 - CERTIFICATION FOR SETTLEMENT ONLY

8.1 Settlement Class and Common Issue

- (1) The Parties agree that the Georgia Pacific Proceeding shall be certified as a class proceeding as against the Settling Defendants solely for purposes of settlement of the Georgia Pacific Proceedings and the approval of this Settlement Agreement by the Court. If the Court denies (without leave to resubmit) a motion to approve this Settlement Agreement, or if this Settlement Agreement is terminated, or otherwise fails to take or remain in effect, the Parties' stipulation to class certification as part of the Settlement Agreement shall become null and void. The Settling Defendants expressly reserve their rights to oppose class certification if the Court denies (without leave to resubmit) a

motion to approve this Settlement Agreement, or if this Settlement Agreement is terminated, or otherwise fails to take or remain in effect.

- (2) The Plaintiff agrees that, in the motions for certification of the Georgia Pacific Proceeding as a class proceeding for settlement purposes and for the approval of this Settlement Agreement, the only common issue that it will seek to define is the Common Issue and the only class that it will assert is the Settlement Class.
- (3) The Parties agree that the certification of the Georgia Pacific Proceeding as against the Settling Defendants for the purpose of implementing this Settlement Agreement shall not derogate in any way from the rights of the Plaintiff as against the Non-Settling Defendants or any other Person that is not a Releasee, except as expressly set out in this Settlement Agreement.

SECTION 9 - NOTICE TO SETTLEMENT CLASS

9.1 Notices Required

- (1) The proposed Settlement Class shall be given the following notices: (i) Notice of Hearing; (ii) notice of the Court's denial (without leave to resubmit) of a motion to approve this Settlement Agreement; (iii) notice that this Settlement Agreement is terminated or otherwise fails to take or remain in effect; and (iv) such further notice as may be directed by the Court.

9.2 Form and Distribution of Notices

- (1) The notices shall be in a form agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Court.

- (2) The notices shall be disseminated by a method agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated by a method ordered by the Court.

SECTION 10 - ADMINISTRATION AND IMPLEMENTATION

10.1 Information and Assistance

- (1) To the extent they have the information in their possession and it is reasonably accessible, the Settling Defendants will make reasonable best efforts to compile a list of the names and addresses of those Persons in Canada who purchased Drywall from them during the Class Period and the Purchase Price paid by each such Person for such purchases. The information may be delivered in Microsoft Excel or such other format as may be agreed upon by Counsel for the Settling Defendants and Class Counsel, and shall be delivered as a separate production from the Documents to be delivered pursuant to Section 3.1 or identified by bates number as part of the production of Documents to be delivered pursuant to Section 3.1. The Settling Defendants may elect to provide the information required by both this Section 10.1(1) and Section 3.1(1)(a) at the same time, and in the same document or documents, if the information is provided by the earlier of the applicable due dates in Sections 3.1 and 10.1.
- (2) The available name and address information required by Section 10.1(1) shall be delivered to Class Counsel within thirty (30) days of Date of Execution. The Purchase Price information required by Section 10.1(1) shall be delivered to Class Counsel within thirty (30) days of the Effective Date.
- (3) Class Counsel may use the information provided under Section 10.1(1):

- (a) to facilitate the dissemination of the notices required in Section 9.1;
 - (b) to advise Persons in Canada who purchased Drywall from the Settling Defendants during the Class Period of any subsequent settlement agreement reached in the Proceedings, any related approval hearings, and any other major steps in the Proceedings;
 - (c) to facilitate the claims administration process with respect to any other settlement agreement and/or court award achieved in the Proceedings; and
 - (d) as otherwise authorized in Section 3.
- (4) All information provided by the Settling Defendants pursuant to Section 10.1(1) shall be dealt with in accordance with Section 3, except that Class Counsel may disclose all information provided by the Settling Defendants pursuant to Section 10.1(1) to any Court-appointed notice provider and/or any Court-appointed claims administrator, to the extent reasonably necessary for the purposes enumerated in Section 10.1(3). Any such Person shall be bound by the same confidentiality obligations set out in Section 3. If this Settlement Agreement is terminated, all information provided by the Settling Defendants pursuant to Section 10.1(1) shall be dealt with in accordance with Section 4.2(1)(d) and no record of the information so provided shall be retained by Class Counsel, any Court-appointed notice provider and/or any Court-appointed claims administrator in any form whatsoever.
- (5) The Settling Defendants, through their counsel, will make themselves reasonably available to respond to questions respecting the information provided pursuant to Section

10.1(1) from Class Counsel, any Court-appointed notice provider and/or any Court-appointed claims administrator. The Settling Defendants' obligations to make themselves reasonably available to respond to questions as particularized in this Section shall not be affected by the release provisions contained in Section 5 of this Settlement Agreement. Unless the Court denies (without leave to resubmit) a motion to approve this Settlement Agreement, or this Settlement Agreement is terminated or otherwise fails to take or remain in effect for any reason, the Settling Defendants' obligations to cooperate pursuant to this Section 10.1 shall cease when the Proceedings are resolved as against all Defendants and all settlement funds or court awards have been distributed.

SECTION 11 - MISCELLANEOUS

11.1 Motions for Directions

- (1) Class Counsel or the Settling Defendants may apply to the Court as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

11.2 Releasees Have No Liability for Administration

- (1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement or the costs incurred or payable in connection therewith.

11.3 Headings, etc.

- (1) In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms “this Settlement Agreement”, “hereof”, “hereunder”, “herein”, and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

11.4 Computation of Time

- (1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,
 - (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
 - (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

11.5 Ongoing Jurisdiction

- (1) The Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiff, Settlement Class Members and Settling Defendants attorn to the jurisdiction of the Court for such purposes.

11.6 Governing Law

- (1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

11.7 Entire Agreement

- (1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

11.8 Amendments

- (1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Court.

11.9 Binding Effect

- (1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Settling Defendants, the Settlement Class Members, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.

11.10 Counterparts

- (1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or electronic/PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

11.11 Negotiated Agreement

- (1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

11.12 Transaction

- (1) This Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the Parties are hereby renouncing any errors of fact, of law and/or of calculation.

11.13 Recitals

- (1) The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

11.14 Schedules

- (1) The schedules annexed hereto form part of this Settlement Agreement.

11.15 Acknowledgements

- (1) Each of the Parties hereby affirms and acknowledges that:
 - (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
 - (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
 - (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
 - (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

11.16 Authorized Signatures

- (1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

11.17 Notice

- (1) Where this Settlement Agreement requires a Party to provide notice or any other communication or Document to another, such notice, communication or Document shall

be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff:

Charles M. Wright and Linda Visser
SISKINDS LLP
Barristers and Solicitors
680 Waterloo Street
London, ON N6A 3V8
Tel: 519.672.2121
Fax: 519.672.6065
Email: charles.wright@siskinds.com
linda.visser@siskinds.com

For the Settling Defendants:

Eric R. Hoaken
LAX O'SULLIVAN LISUS GOTTLIEB LLP
145 King Street West, Suite 2750
Toronto, ON M5H 1J8
Tel: 416.645.5075
Fax: 416.598.3730
Email: ehoaken@counsel-toronto.com

11.18 Date of Execution

(1) The Parties have executed this Settlement Agreement as of the date on the cover page.

BOWEN REAL ESTATE HOLDINGS INC. on its own behalf and on behalf of the Settlement Class, by its counsel

Name of Authorized Signatory:

Linda Visser

Signature of Authorized Signatory:


Siskinds LLP

GEORGIA-PACIFIC LLC AND GP CANADA OPERATIONS HOLDING ULC by their
counsel

Eric R. Hoaken

Name of Authorized Signatory:

Signature of Authorized Signatory:


Lax O'Sullivan Lisus Gottlieb LLP

SCHEDULE “A”

Proceedings

Court and File No.	Plaintiffs' Counsel	Plaintiff	Defendants
Ontario Superior Court of Justice Court File No. CV-13-4003CP	Siskinds LLP	Bowen Real Estate Holdings Inc.	USG Corporation, United States Gypsum Company, CGC Inc., New NGC, Inc., Lafarge North America Inc., Lafarge Canada Inc., Certainteed Corporation, Certainteed Gypsum, Inc., Certainteed Gypsum Canada, Inc., TIN Inc. d/b/a Temple-Inland Inc., and Pabco Building Products, LLC
Ontario Superior Court of Justice Court File No. CV-15-2856-CP	Siskinds LLP	Bowen Real Estate Holdings Inc.	Georgia-Pacific LLC and GP Canada Operations Holding ULC
Superior Court of Quebec (District of Québec), File No. 200-06-000167-133	Siskinds Desmeules s.e.n.c.r.l.	Sylvie Cloutier	USG Corporation, United States Gypsum Company, CGC Inc., New NGC, Inc., Lafarge North America Inc., Lafarge Canada Inc., Certainteed Corporation, Certainteed Gypsum, Inc. Certainteed Gypsum Canada, Inc., TIN Inc. d/b/a Temple-Inland Inc., and Pabco Building Products, LLC

SCHEDULE “B”

Court File No. CV-15-2856-CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) , THE DAY
JUSTICE SPROAT) OF , 2018

BETWEEN:

BOWEN REAL ESTATE HOLDINGS INC.

Plaintiff

- and -

GEORGIA-PACIFIC LLC and GP CANADA OPERATIONS HOLDING ULC

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiff for an Order approving the publication, abbreviated and long-form notices of settlement approval hearing (“Notice of Hearing”), and the plan of dissemination of said notices, was heard by teleconference this day at the Courthouse, 7755 Hurontario Street, Brampton, Ontario.

ON READING the materials filed, including the settlement agreement with Georgia-Pacific LLC and GP Canada Operations Holding ULC (collectively, the “Settling Defendants”) dated ●, 2018 attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiff and Counsel for the Settling Defendants;

AND ON BEING ADVISED that the Plaintiff and the Settling Defendants consent to this Order and that the Non-Settling Defendants take no position on this motion:

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the publication, abbreviated and long-form Notice of Hearing are hereby approved substantially in the form attached hereto as Schedules “B” to “D”.
3. **THIS COURT ORDERS** that the plan of dissemination of the Notice of Hearing to Settlement Class Members (the “Notice Plan”) is hereby approved in the form attached hereto as Schedule “E” and that the Notice of Hearing shall be disseminated in accordance with the Notice Plan.

The Honourable Justice Sproat

SCHEDULE “C”

Court File No. CV-15-2856-CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) , THE DAY
JUSTICE SPROAT) OF , 2018

BETWEEN:

BOWEN REAL ESTATE HOLDINGS INC.

Plaintiff

- and -

GEORGIA-PACIFIC LLC and GP CANADA OPERATIONS HOLDING ULC

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiff for an Order certifying this proceeding as a class proceeding for settlement purposes as against Georgia-Pacific LLC and GP Canada Operations Holding ULC (collectively, the “Settling Defendants”) and approving the settlement agreement entered into with Settling Defendants and dismissing this action as against the Settling Defendants, was heard this day at the Courthouse, 7755 Hurontario Street, Brampton, Ontario.

AND ON READING the materials filed, including the settlement agreement dated ●, 2018 attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiff and counsel for the Settling Defendants;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there have been ● objections to the Settlement Agreement;

AND ON BEING ADVISED that the deadline for opting-out of the Proceedings has passed and there were no opt-outs;

AND ON BEING ADVISED that the Plaintiff and the Settling Defendants consent to this Order and that the Non-Settling Defendants take no position on this motion:

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that the Georgia Pacific Proceeding be and is hereby certified as a class proceeding as against the Settling Defendants for settlement purposes only.
4. **THIS COURT ORDERS** that the “Settlement Class” be defined as:

All Persons in Canada, other than Excluded Persons who, during the Class Period, purchased Drywall in Canada.

5. **THIS COURT ORDERS** that Bowen Real Estate Holdings Inc. is appointed as the representative plaintiff for the Settlement Class.
6. **THIS COURT ORDERS** that the following issue is common to Settlement Class Members:

Did the Settling Defendants conspire to fix, raise, maintain, or stabilize the price of Drywall in Canada and elsewhere during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?

7. **THIS COURT ORDERS** that the approval of the Settlement Agreement and paragraphs 1 and 3 to 6 of this Order, including the certification of the Georgia Pacific Proceeding as against the Settling Defendants for settlement purposes and the definitions of the Settlement Class and the Common Issue, and any reasons given by the Court in connection with the approval of the Settlement Agreement (except any reason given in connection with paragraphs 17-22) or paragraphs 1 and 3 to 6 of this Order, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Proceedings and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Proceedings, as against the Non-Settling Defendants.
8. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each member of the Settlement Class including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Ontario Proceeding.
9. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.

10. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
11. **THIS COURT ORDERS** that, upon the Effective Date, each Settlement Class Member shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
12. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced in Ontario by any Settlement Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
13. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 15, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
14. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee, whether pursuant to the *Negligence Act*, RSO 1990, c. N. 1 or other legislation or at common law or equity in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized with respect to the Non-Settling Defendants, the continuation of the claims

asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee.

15. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
16. **THIS COURT ORDERS** that, upon the Effective Date, each Settlement Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
17. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or any Other Actions or otherwise, by any Non-Settling Defendant, any Settled Defendant, any named or unnamed co-conspirator that is not a Releasee or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, any Settled Defendant, any named or unnamed co-conspirator that is not a Releasee or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Order.

18. **THIS COURT ORDERS** that if this Court ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:

- (a) the Plaintiff and Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
- (b) the Plaintiff and Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include only, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, only those claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest, and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the Plaintiff and Settlement Class Members, if any, and, for greater certainty, Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-

conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and

- (c) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Proceeding, whether or not the Releasees appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Proceeding and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Proceeding and shall not be binding on the Releasees in any other proceeding.

- 19. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) or judgment against them in favour of Settlement Class Members in the Georgia Pacific Proceeding or the rights of the Plaintiff and the Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.
- 20. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court determined as if the Settling Defendants are parties to the Ontario Proceeding, and on at least thirty (30) days' notice to Counsel for the Settling Defendants, and not to be brought unless and until the Ontario Proceeding against the Non-Settling Defendants has been

certified and all appeals or times to appeal have been exhausted, seek orders for the following:

- (a) documentary discovery and an affidavit of documents from the Settling Defendants in accordance with the Ontario *Rules of Civil Procedure*;
- (b) oral discovery of a representative(s) of the Settling Defendants, the transcript of which may be read in at trial;
- (c) leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or
- (d) the production of a representative(s) of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

21. **THIS COURT ORDERS** that the Settling Defendants retain all rights to oppose such motion(s) brought under paragraph 20. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of Documents to be produced and/or for information obtained from discovery in accordance with paragraph 20. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 20, the Court may make such orders as to costs and other terms as it considers appropriate.

22. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 20 above by service on Counsel for the Settling Defendants.

23. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
24. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any Settlement Class Member has or may have in the Ontario Proceeding against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees.
25. **THIS COURT ORDERS** that this Order shall be declared null and void on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.
26. **THIS COURT ORDERS** that the Georgia Pacific Proceeding be and is hereby dismissed as against the Settling Defendants, without costs and with prejudice.

The Honourable Justice Sproat