

**CANADIAN DRYWALL CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

Made as of April 23, 2019

Between

BOWEN REAL ESTATE HOLDINGS INC. and SYLVIE CLOUTIER

(the “**Plaintiffs**”)

and

PABCO BUILDING PRODUCTS, LLC

(the “**Settling Defendant**”)

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RECITALS

- A. WHEREAS the Proceedings were commenced by the Quebec Plaintiff in Quebec and the Ontario Plaintiff in Ontario;
- B. WHEREAS the Proceedings allege that the Settling Defendant participated in an unlawful conspiracy with other manufacturers of Drywall to 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 a parallel proceeding bearing Court File No. S-153468 was commenced in British Columbia by Dann Hickman and was discontinued on January 9, 2019;
- D. WHEREAS the opt-out period has already run for the Proceedings and no Persons have opted out;
- E. WHEREAS the Settling Defendant 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;
- F. WHEREAS the Plaintiffs, Class Counsel and the Settling Defendant 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 Plaintiffs' allegations against the Releasees, which allegations are expressly denied by the Settling Defendant;

G. WHEREAS, despite its belief that it is not liable in respect of the claims as alleged in the Proceedings and any Other Actions and has good and reasonable defences in respect of jurisdiction and the merits, the Settling Defendant is 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 Plaintiffs and the Settlement Classes 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;

H. WHEREAS the Parties, through Counsel, have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement with respect to the Proceedings and any Other Actions;

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

J. WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Classes they seek to represent and will seek to be appointed representative plaintiffs in the Proceedings, as applicable;

K. WHEREAS the Settling Defendant does not hereby attorn to the jurisdiction of the Courts or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent it has previously done so in the Proceedings and as is expressly provided in this Settlement Agreement with respect to the Proceedings;

L. 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;

M. WHEREAS the Parties consent to certification or authorization: (i) of the Proceedings as class proceedings; (ii) of the Settlement Classes; and (iii) of a Common Issue in respect the Proceedings as against the Settling Defendant for the sole purpose of implementing this Settlement Agreement and contingent on approvals by the Courts as provided for in this Settlement Agreement, on the express understanding that such certification or authorization shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

N. WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendant and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendant and the Plaintiffs, both individually and on behalf of the Settlement Classes they seek to represent, subject to approval of the Courts; and

O. WHEREAS the Parties intend to pursue the approval of this Settlement Agreement first through the Ontario Court;

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 Ontario Proceeding be settled and dismissed as to the Settling Defendant only and the Quebec Proceeding be declared settled out of court as to the Settling Defendant only, all without costs to the Plaintiffs, the Settlement Classes the Plaintiffs seek to represent and the Settling Defendant, subject to the approval of the Courts, 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 Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and the costs of claims administration, but excluding Class Counsel Fees and Class Counsel Disbursements.
- (2) ***Approval Hearings*** means the hearings for the Courts' approval of the settlement provided for in this Settlement Agreement.
- (3) ***Claims Administrator*** means the firm proposed by Class Counsel and appointed by the Courts to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such firm.

- (4) ***Class Counsel*** means Ontario Counsel and Quebec Counsel.
- (5) ***Class Counsel Disbursements*** means the disbursements, and applicable taxes incurred by Class Counsel in the prosecution of the Proceedings, as well as any adverse costs awards issued against the Plaintiffs in any of the Proceedings.
- (6) ***Class Counsel Fees*** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Settlement Class Members to any other body or Person, including the Fonds d'aide aux actions collectives in Quebec, in respect of legal fees.
- (7) ***Class Period*** means September 1, 2011 to March 17, 2016.
- (8) ***Common Issue*** means: Did the Settling Defendant conspire to fix, raise, maintain, or stabilize the prices of Drywall in Canada during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?
- (9) ***Counsel for the Settling Defendant*** means Gowling WLG.
- (10) ***Courts*** means the Ontario Court and the Quebec Court.
- (11) ***Date of Execution*** means the date on the cover page as of which the Parties have executed this Settlement Agreement.
- (12) ***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 Defendant and Settled Defendants.

- (13) ***Distribution Protocol*** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as proposed by Class Counsel and as approved by the Courts.
- (14) ***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*.
- (15) ***Drywall***, sometimes known as gypsum board, wallboard, green glass, sheetrock or plasterboard, means a panel that is typically made of rehydrated gypsum crystals, with or without added products such as fiberglass, polymers or papers, pressed between two sheets of paper.
- (16) ***Effective Date*** means the date of the second Final Order.
- (17) ***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, and any Person who has been deemed to have opted out in accordance with section 580 of the *Civil Code of Quebec*.
- (18) ***Final Order*** means a final order made by the Courts 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 Courts 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.

- (19) ***Non-Settling Defendant*** means a Defendant that is not: (i) the Settling Defendant; (ii) a Settled Defendant; or (iii) a Defendant against whom the Proceedings have been dismissed or discontinued, either before or after the Date of Execution, and includes any Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the Execution Date.
- (20) ***Notice of Hearing*** means the form or forms of notice, agreed to by the Plaintiffs and the Settling Defendant, or such other form or forms of notice as may be approved by the Courts, which informs the Settlement Classes of: (i) the dates and locations of the Approval Hearings; (ii) the principal elements of the Settlement Agreement; and (iii) the process by which Settlement Class Members may object to the settlement.
- (21) ***Ontario Counsel*** means Siskinds LLP.
- (22) ***Ontario Court*** means the Ontario Superior Court of Justice.
- (23) ***Ontario Plaintiff*** means Bowen Real Estate Holdings Inc.
- (24) ***Ontario Proceeding*** means the proceeding commenced by the Ontario Plaintiff before the Ontario Court as identified in Schedule A to this Settlement Agreement and includes any action subsequently consolidated into the Ontario Proceeding, including the Second Ontario Proceeding.
- (25) ***Ontario Settlement Class*** means the settlement class in respect of the Ontario Proceeding that is defined in Schedule A to this Settlement Agreement.

- (26) ***Other Actions*** means actions or proceedings, other than the Proceedings, relating to some or all of the Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (27) ***Parties*** means the Plaintiffs, the Settlement Class Members (where appropriate) and the Settling Defendant.
- (28) ***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.
- (29) ***Plaintiffs*** means the Ontario Plaintiff and the Quebec Plaintiff.
- (30) ***Proceedings*** means the Ontario Proceeding, the Second Ontario Proceeding and the Quebec Proceeding.
- (31) ***Proportionate Liability*** means that proportion of any judgment that, had the Settling Defendant not settled, the Ontario Court would have apportioned to the Settling Defendant.
- (32) ***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.
- (33) ***Quebec Counsel*** means Siskinds Desmeules s.e.n.c.r.l.
- (34) ***Quebec Court*** means the Superior Court of Quebec.

- (35) **Quebec Plaintiff** means Sylvie Cloutier.
- (36) **Quebec Proceeding** means the proceeding commenced by the Quebec Plaintiff before the Quebec Court identified in Schedule A to this Settlement Agreement.
- (37) **Quebec Settlement Class** means the settlement class in respect of the Quebec Proceeding that is identified in Schedule A to this Settlement Agreement.
- (38) **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 (including Class Counsel Fees), known or unknown, foreseen or unforeseen, suspected or unsuspected, actual or contingent, asserted or unasserted, accrued or unaccrued, and liquidated or unliquidated, in law, under statute or in equity, that any of the Releasers ever had, now have or hereafter can, shall or may have, arising from or relating in any way to the purchase, sale, discounting or offering of Drywall sold directly or indirectly in Canada during the Class Period including, but not limited to, those claims that are based on, arise under or relate to allegations of an unlawful or anti-competitive conspiracy to fix, raise, maintain and/or stabilize the price of Drywall or relating to any allegations made or which could have been made, 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. However, nothing herein shall be construed to release any claims for negligence, personal injury, breach of contract, bailment, failure to

deliver lost goods, damaged or delayed goods, product defect, warranty claim, securities, or other similar claim relating to Drywall that does not relate to alleged anti-competitive conduct.

- (39) **Releasees** means, jointly and severally, individually and collectively, the Settling Defendant, and all of its 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.
- (40) **Releasors** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective present, former and future parents, subsidiaries, affiliates, predecessors, successors, heirs, executors, administrators, insurers and assigns.
- (41) **Second Ontario Proceeding** means the Second Ontario Proceeding as defined in Schedule A to this Settlement Agreement.
- (42) **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.
- (43) **Settlement Agreement** means this agreement, including the recitals and schedules.
- (44) **Settlement Amount** means CAD\$75,000.
- (45) **Settlement Classes** means the Ontario Settlement Class and the Quebec Settlement Class.
- (46) **Settlement Class Member** means a member of either of the Settlement Classes.
- (47) **Settling Defendant** means Pabco Building Products, LLC.
- (48) **Trust Account** means a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian financial institution under the control of Ontario Counsel or the Claims Administrator, once appointed, for the benefit of the Settlement Class Members or the Settling Defendant, as provided for in this Settlement Agreement.
- (49) **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 to secure the prompt, complete and final dismissal with prejudice of the Ontario Proceeding as against the Settling Defendant, and a prompt, complete declaration of settlement out of court of the Quebec Proceeding as against the Settling Defendant.

2.2 Motions Approving Notice

- (1) The Plaintiffs shall bring motions before the Courts, as soon as practicable after the Settlement Agreement is executed, for orders approving the Notice of Hearing.
- (2) The order approving the Notice of Hearing shall be substantially in the form attached hereto as Schedule B. The Quebec order approving the Notice of Hearing shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order attached as Schedule B.

2.3 Motions for Approval of the Settlement and Certification or Authorization

- (1) The Plaintiffs shall bring motions before the Courts for orders certifying or authorizing the Proceedings, as applicable, and approving this Settlement Agreement as soon as practicable after:
 - (a) the orders referred to in Section 2.2(2) are granted,
 - (b) the Notice of Hearing has been published; and
 - (c) the deadline for objecting to the Settlement Agreement has expired.

- (2) The Ontario order certifying the Ontario Proceeding for settlement purposes against the Settling Defendant and approving this Settlement Agreement shall be substantially in the form attached hereto as Schedule C. The Quebec order seeking consent authorization as against the Settling Defendant and approving this Settlement Agreement shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order. The Ontario motion shall be filed first and, to the extent practicable, heard before the Quebec motion.
- (3) This Settlement Agreement shall only become final on the Effective Date.

2.4 Pre-Motion Confidentiality

- (1) Until the first of the motions 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 Defendant 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 Defendant is 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 - SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

- (1) Within thirty (30) days after the Date of Execution, the Settling Defendant shall pay the Settlement Amount to Ontario Counsel for deposit into the Trust Account.

- (2) The Settling Defendant shall deposit the Settlement Amount into the Trust Account by wire transfer. Ontario Counsel shall provide the necessary wire transfer information to Counsel for the Settling Defendant with reasonable advance notice so that the Settling Defendant has a reasonable period of time to comply with Section 3.1(1) of this Settlement Agreement.
- (3) The Settlement Amount and other valuable consideration set forth in the Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.
- (4) The Settlement Amount shall be all-inclusive of all amounts, including without limitation, interest, costs, Class Counsel Fees and Class Counsel Disbursements.
- (5) There will be no further payment made by the Settling Defendant, or further obligation, in relation to the settlement of the claims or the administration or settlement of the Proceedings, or for any other step or steps taken in the Proceedings.
- (6) Once a Claims Administrator has been appointed, Ontario Counsel may transfer the Settlement Amount and interest earned on the Settlement Amount, less taxes paid and any deductions made in accordance with this Settlement Agreement or an order of the Courts on notice to the Settling Defendant, to the Claims Administrator.
- (7) Ontario Counsel and the Claims Administrator, respectively, shall maintain the Trust Account as provided for in this Settlement Agreement.
- (8) While in control of the Trust Account, each of Ontario Counsel and the Claims Administrator, respectively, shall not pay out all or part of the monies in the Trust

Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Courts obtained after notice to the Parties.

3.2 Taxes and Interest

- (1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Settlement Classes and shall become and remain part of the Trust Account.
- (2) Subject to Section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account. Class Counsel or the Claims Administrator shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.
- (3) The Settling Defendant shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Settling Defendant who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel or the Claims Administrator.

3.3 Cooperation

- (1) In the event that any settlement agreement entered into between the Plaintiffs and another Defendant(s) in the Proceedings terminates in accordance with its terms or otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the Execution Date, the Parties, acting in good faith, shall reach an agreement on reasonable cooperation provisions. Where possible, the cooperation provisions should rely on discovery that has already occurred in the U.S. Litigation.

SECTION 4 - NON APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT

4.1 Right of Termination

- (1) In the event that:
 - (a) the Ontario or Quebec Court declines to certify or authorize the Ontario or Quebec Proceedings, as applicable, for settlement purposes as against the Settling Defendant or does so in a materially modified form;
 - (b) the Ontario Court declines to dismiss the Ontario Proceeding against the Settling Defendant or the Quebec Court declines to declare settled out of court the Quebec Proceeding against the Settling Defendant;
 - (c) the Ontario or Quebec Court declines to approve this Settlement Agreement or any material part hereof;
 - (d) the Ontario or Quebec Court approves this Settlement Agreement in a materially modified form;

- (e) the Ontario or Quebec 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) any orders approving this Settlement Agreement made by the Courts do not become Final Orders; or
- (g) the Settlement Amount is not paid in accordance with Section 3.1,

the Plaintiffs and the Settling Defendant shall each have the right to terminate this Settlement Agreement (except that only the Settling Defendant shall have the right to terminate under subsection (b) above and only the Plaintiffs shall have the right to terminate under subsection (g) above) by delivering a written notice pursuant to Section 12.18, within thirty (30) days following an event described above.

- (2) Except as provided for in Section 4.4, if the Settling Defendant or the Plaintiffs 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 Class Counsel Fees or Class Counsel Disbursements 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 this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) no motion to certify or authorize the Ontario or Quebec Proceedings as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
- (b) the Parties will cooperate in seeking to have any issued order certifying or authorizing the Ontario or Quebec Proceedings 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 Person shall be estopped from asserting otherwise;
- (c) any prior certification or authorization of the Ontario or Quebec Proceedings as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Classes 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 Defendant under this Settlement Agreement or containing or reflecting information derived from such Documents or other materials received from the Settling Defendant and, to the extent Class Counsel has disclosed any Documents or information provided by the Settling Defendant to any other Person, shall endeavor to recover and destroy such Documents or information. Class Counsel shall provide Counsel for the Settling Defendant 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 Defendant 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 Defendant. 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 always will be subject to settlement privilege.

4.3 Allocation of Settlement Amount Following Termination

- (1) If the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, Ontario Counsel shall, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, return to the Settling Defendant the Settlement Amount, plus all accrued interest thereon and less any taxes paid on interest, and any costs actually incurred or

payable with respect to the notices required by Section 9.1(1), and any costs of translation required by Section 12.12 that have actually been incurred or are payable.

4.4 Survival of Provisions After Non Approval of Settlement Agreement

- (1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.2(3), 4.1(2), 4.2, 4.3, 7.1, 7.2, 8.1, 9.1, 10.3(3)(a) and 10.3(4) and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect to the benefit of Plaintiffs, the Settlement Class Members, the Settling Defendant, the Releasors, the Releasees and all of their successors and assigns, excluding always the Non-Settling Defendants. The definitions and Schedules shall survive only for the limited purpose of the interpretation of Sections 3.2(3), 4.1(2), 4.2, 4.3, 7.1, 7.2, 8.1, 9.1, 10.3(3)(a) and 10.3(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 payment of the Settlement Amount and for other 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 Releasors 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, provide assistance for, 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 action, 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 Proceedings

- (1) Upon the Effective Date, the Ontario Proceeding shall be dismissed, with prejudice and without costs, as against the Settling Defendant.
- (2) Upon the Effective Date, the Quebec Proceeding shall be declared settled out of court, with prejudice and without costs, as against the Settling Defendant, and the Parties shall sign and file a notice of settlement out of court with the Quebec Court.

5.6 Dismissal of Other Actions

- (1) Upon the Effective Date, each member of the Ontario 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, to the extent such Other Actions relate to the Released Claims.
- (2) Upon the Effective Date, all Other Actions commenced by any Ontario Settlement Class Member shall be dismissed against the Releasees, to the extent such Other Actions relate to the Released Claims, without costs, with prejudice and without reservation.

- (3) Each member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be deemed to irrevocably consent to the dismissal, without costs and without reservation, of his, her or its Other Actions against the Releasees, to the extent such Other Actions relate to the Released Claims.
- (4) Class Counsel shall seek an order from the Quebec Court providing that each Other Action commenced in Quebec by a member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be dismissed as against the Releasees, to the extent such Other Actions relate to the Released Claims, without costs 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 any 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 AND DECLARATION OF RENUNCIATION

6.1 Ontario Bar Order

(1) The Plaintiffs, Class Counsel and the Settling Defendant agree that the Ontario order approving this Settlement Agreement must include a bar order from the Ontario Court providing for the following:

(a) 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, or could in the future be brought on the basis of the same events, actions and omissions underlying the Proceedings, 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 Ontario 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 Ontario Plaintiff and Ontario 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 Settling Defendant proven at trial or otherwise;

- (ii) the Ontario Plaintiff and Ontario 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 Ontario Plaintiff and Ontario Settlement Class Members, if any, and, for greater certainty, the Ontario 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 Ontario Court shall have full authority to determine the Proportionate Liability of the Settling Defendant at the trial or other disposition of the

Ontario Proceeding, whether or not the Settling Defendant remains in the Ontario Proceeding or appears at the trial or other disposition, and the Proportionate Liability of the Settling Defendant shall be determined as if the Settling Defendant is party to the Ontario Proceeding and any determination by the Ontario Court in respect of the Proportionate Liability of the Settling Defendant shall only apply in the Ontario Proceeding and shall not be binding on the Settling Defendant in any other proceeding;

- (c) a Non-Settling Defendant may, on application to the Ontario Court, determined as if the Settling Defendant remained a party to the Ontario Proceeding, and on at least thirty (30) days' notice to Counsel for the Settling Defendant, 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 Defendant in accordance with the Ontario *Rules of Civil Procedure*;
 - (ii) oral discovery of a representative of the Settling Defendant, the transcript of which may be read in at trial;
 - (iii) leave to serve a request to admit on the Settling Defendant in respect of factual matters; and/or
 - (iv) the production of a representative of the Settling Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

- (d) the Settling Defendant retains 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 Defendant to produce a representative to testify at trial. Moreover, nothing herein restricts the Settling Defendant 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 Ontario 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 Defendant to Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant, excluding copies of any Documents or information already provided by the Settling Defendant to Class Counsel;
- (g) the Ontario Court will retain an ongoing supervisory role over the discovery process and the Settling Defendant will attorn to the jurisdiction of the Ontario Court for this purpose; and
- (h) a Non-Settling Defendant may effect service of the application(s) referred to in Section 6.1(1)(c) on the Settling Defendant by service on Counsel for the Settling Defendant.

6.2 Quebec Waiver or Renunciation of Solidarity Order

(1) The Plaintiffs, Class Counsel and the Settling Defendant agree that the Quebec order approving the Settlement Agreement must include a declaration by the Quebec Court that the Quebec Plaintiff and Quebec Settlement Class Members have renounced the benefit of solidarity. The declaration obtained will provide the following:

- (a) the Quebec Plaintiff and Quebec Settlement Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of the Releasees relating to the Released Claims;
- (b) the Quebec Plaintiff and Quebec Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, interest and costs (including without limitation, judicial fees pursuant to the *Code of Civil Procedure of Quebec*, and investigative costs claimed pursuant to section 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Defendants;
- (c) any claims in warranty, recursory action, forced intervention or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Proceeding; and
- (d) the ability of Non-Settling Defendants to seek discovery from the Settling Defendant shall be determined according to the provisions of the *Code of Civil*

Procedure of Quebec, and the Settling Defendant shall retain and reserve all of its rights to oppose such discovery under the *Code of Civil Procedure of Quebec*.

6.3 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 orders and renunciation of the benefit of solidarity contemplated herein shall be considered a material term of the Settlement Agreement and the failure of the Courts to approve the bar orders or renunciation of the benefit of solidarity 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 Plaintiffs and the Releasees expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take 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 Plaintiffs.

7.2 Agreement Not Evidence

- (1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take 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 Defendant 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 OR AUTHORIZATION FOR SETTLEMENT ONLY

8.1 Settlement Classes and Common Issue

- (1) The Parties agree that the Proceedings shall be certified or authorized as class proceedings as against the Settling Defendant solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts, and such certification or authorization shall not be used or relied on as against the Settling Defendant for any other purpose. If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the Parties' stipulation to class certification as part of the Settlement Agreement shall become null and void. The Settling Defendant expressly reserves its rights to oppose class certification if this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect.
- (2) The Plaintiffs agree that, in the motions for certification or authorization of the Proceedings as class proceedings for settlement purposes and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Settlement Classes.
- (3) The Parties agree that the certification or authorization of the Proceedings as against the Settling Defendant for the purpose of implementing this Settlement Agreement shall not

derogate in any way from the rights of the Plaintiffs 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 CLASSES

9.1 Notices Required

- (1) The proposed Settlement Classes shall be given the following notices: (i) Notice of Hearing; (ii) notice if this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect; and (iii) such further notice as may be directed by the Courts.

9.2 Form and Distribution of Notices

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

SECTION 10 - ADMINISTRATION AND IMPLEMENTATION

10.1 Mechanics of Administration

- (1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and the Distribution Protocol shall be determined by the Courts on motions brought by Class Counsel.

10.2 Distribution Protocol

- (1) After the Effective Date, at a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendant, Class Counsel will make an application seeking orders from the Courts approving the Distribution Protocol.
- (2) The Distribution Protocol shall require Settlement Class Members seeking compensation to give credit for any compensation received through other proceedings or in private out-of-class settlements, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

10.3 Information and Assistance

- (1) To the extent the Settling Defendant has the information in its possession and such information is reasonably accessible, the Settling Defendant will make reasonable best efforts to compile a list of the names and addresses of those Persons in Canada who purchased Drywall from it between September 2011 and September 2013 and the Purchase Price paid by each such Person for such purchases. The information may be delivered in the form in which it currently exists or such other format as may be agreed upon by Counsel for the Settling Defendant and Class Counsel.
- (2) The available name and address information required by Section 10.3(1) shall be delivered to Class Counsel within thirty (30) days of Date of Execution. The Purchase Price information required by Section 10.3(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 10.3(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 Defendant 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; and
 - (c) to facilitate the claims administration process with respect to this Settlement Agreement and any other settlement agreement and/or court award achieved in the Proceedings.
- (4) All information provided by the Settling Defendant pursuant to Section 10.3(1) may be disclosed to any Court-appointed notice provider and/or the Claims Administrator, to the extent reasonably necessary for the purposes enumerated in Section 10.3(3). Any Court-appointed notice provider and/or the Claims Administrator shall be bound by any reasonable confidentiality terms agreed to by the Parties. If this Settlement Agreement is terminated, all information provided by the Settling Defendant pursuant to Section 10.3(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 in any form whatsoever.
- (5) The Settling Defendant, through its counsel, will make itself reasonably available to respond to questions respecting the information provided pursuant to Section 10.3(1) from Class Counsel or any Court-appointed notice provider and/or the Claims Administrator. The Settling Defendant's obligations to make itself 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 this

Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendant's obligations to cooperate pursuant to this Section 10.3 shall cease when the Proceedings are resolved as against all Defendants and all settlement funds or court awards have been distributed.

SECTION 11 - CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES

11.1 Court Approval for Class Counsel Fees and Class Counsel Disbursements

- (1) Class Counsel may seek the Courts' approval to pay Class Counsel Disbursements and Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Disbursements and Class Counsel Fees shall be reimbursed and paid solely out of the Trust Account after the Effective Date.
- (2) In the event that some of the funds remain in the Trust Account after payment of Class Counsel Disbursements, Class Counsel Fees and Administration Expenses, Class Counsel shall seek direction from the Courts regarding the distribution of the remaining funds.
- (3) Class Counsel reserve the right to bring motions to the Courts for reimbursement out of the Trust Account for any future Class Counsel Disbursements.

11.2 Responsibility for Fees, Disbursements and Taxes

- (1) The Settling Defendant shall not be liable for any Class Counsel Fees, Class Counsel Disbursements or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiffs or the Settlement Class Members, any amounts which the Fonds d'aide aux actions collectives in Quebec may be entitled to, or any lien of any Person on any payment to any Settlement Class Member from the Settlement Amount.

11.3 Administration Expenses

- (1) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.
- (2) Notwithstanding Section 11.3(1), Class Counsel shall pay the costs of the notices required by Section 9.1(1) and any costs of translation required by Section 12.12 from the Trust Account, as they become due. Subject to Section 4.3(1), the Settling Defendant shall not have any responsibility for the costs of the notices or translation.

SECTION 12 - MISCELLANEOUS

12.1 Motions for Directions

- (1) Class Counsel or the Settling Defendant may apply to the Courts as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. Unless a Court orders otherwise, motions for directions that do not relate solely to the matters affecting the Quebec Proceeding shall be determined by the Ontario Court.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

12.2 Releasees Have No Liability for Administration

- (1) The Releasees have no responsibility, financial obligations or liability whatsoever with respect to (i) the administration of the Settlement Agreement, including the Distribution Protocol, and (ii) the investment, distribution or administration of monies in the Trust Account including, but not limited to, Administration Expenses and Class Counsel Fees, except as provided for in Section 4.3(1).

12.3 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.

12.4 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.

12.5 Ongoing Jurisdiction

- (1) Each of the Courts shall retain exclusive jurisdiction over the Proceeding commenced in its jurisdiction, the Parties and the Class Counsel Fees in that Proceeding.

- (2) No Party shall ask a Court to make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.

- (3) Notwithstanding Section 12.5(1) and (2), the Ontario Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiffs, Settlement Class Members and the Settling Defendant attorn to the jurisdiction of the Ontario Court for such purposes. Issues related to the administration of this Settlement Agreement, the Trust Account, and other matters not specifically related to the Quebec Proceeding shall be determined by the Ontario Court.

12.6 Governing Law

- (1) Subject to Section 12.6(2), 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.

- (2) Notwithstanding Section 12.6(1), for matters relating specifically to the Quebec Proceeding, the Quebec Court shall apply the law of its own jurisdiction and the laws of Canada applicable therein.

12.7 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.

12.8 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 Courts with jurisdiction over the matter to which the amendment relates.

12.9 Binding Effect

- (1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settling Defendant, the Settlement Class Members, the Releasers, 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 Plaintiffs shall be binding upon all Releasers and each and every covenant and agreement made herein by the Settling Defendant shall be binding upon all of the Releasees.

12.10 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.

12.11 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.

12.12 Language

- (1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, if required by a Court, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of this Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

12.13 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.

12.14 Recitals

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

12.15 Schedules

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

12.16 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.

12.17 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.

12.18 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 Plaintiffs and Class Counsel:

**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

**Caroline Perrault
SISKINDS DESMEULES s.e.n.c.r.l.**

Les promenades du Vieux-Quebec
43 rue Buade, bureau 320
Quebec City, QC GIR 4A2
Tel: 418.694.2009
Fax: 418.694.0281
Email: caroline.perrault@siskindsdesmeules.com

For Settling Defendant:

**John Callaghan and Scott Kugler
GOWLING WLG**

First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5
Telephone: 416.367.7107
Facsimile: 416.862.7661
Email: john.callaghan@gowlingwlg.com
scott.kugler@gowlingwlg.com

12.19 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 Ontario Settlement Class, by its counsel

Name of Authorized Signatory:

Linda Visser

Signature of Authorized Signatory:

[Handwritten Signature]

Siskinds LLP

Ontario Counsel

SYLVIE CLOUTIER, on her own behalf and on behalf of the Quebec Settlement Class, by her counsel

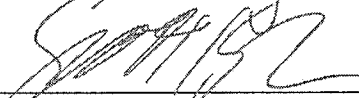
Name of Authorized Signatory: Linda Visser

Signature of Authorized Signatory: ^{Per} 

Siskinds Desmeules s.e.n.c.r.l.
Quebec Counsel

PABCO BUILDING PRODUCTS, LLC by its counsel

Name of Authorized Signatory: Scott Kugler

Signature of Authorized Signatory: 

Gowling WLG

SCHEDULE “A”

Proceedings

Court and File No.	Plaintiffs’ Counsel	Plaintiff	Named Defendants	Settlement Class
Ontario Proceeding				
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	All Persons in Canada, other than Excluded Persons and Persons who are in the Quebec Settlement Class, who, during the Class Period, purchased Drywall in Canada.
Second Ontario Proceeding				
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	Not applicable.
Quebec Proceeding				
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	All Persons in Quebec, other than Excluded Persons, who, during the Class Period, purchased Drywall in Canada.

SCHEDULE "B"

Court File No. CV-13-4003CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) , THE DAY
JUSTICE SPROAT) OF , 2019

BETWEEN:

BOWEN REAL ESTATE HOLDINGS INC.

Plaintiff

- and -

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

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 Pabco Building Products, LLC (the "Settling Defendant") dated April ●, 2019 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 Defendant;

AND ON BEING ADVISED that the Plaintiff and the Settling Defendant 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 “Plan of Dissemination”) is hereby approved in the form attached hereto as Schedule “E” and that the Notice of Hearing shall be disseminated in accordance with the Plan of Dissemination.
4. **THIS COURT ORDERS** that this Order is contingent upon a parallel order being made by the Quebec Court, and the terms of this Order shall not be effective unless and until such an order is made by the Quebec Court.

The Honourable Justice Sproat

SCHEDULE “C”

Court File No. CV-13-4003CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) , THE DAY
JUSTICE SPROAT) OF , 2019

BETWEEN:

BOWEN REAL ESTATE HOLDINGS INC.

Plaintiff

- and -

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

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 Pabco Building Products, LLC (the “Settling Defendant”) and approving the settlement agreement entered into with Settling Defendant and dismissing this action as against the Settling Defendant, was heard this day at the Courthouse, 7755 Hurontario Street, Brampton, Ontario.

AND ON READING the materials filed, including the settlement agreement dated April 10, 2019 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 Defendant;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there have been no 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 Defendant 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 Ontario Proceeding be and is hereby certified as a class proceeding as against the Settling Defendant for settlement purposes only.
4. **THIS COURT ORDERS** that the “Ontario Settlement Class” be defined as:

All Persons in Canada, other than Excluded Persons and Persons who are in the Quebec Settlement Class, 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 Ontario Settlement Class.

6. **THIS COURT ORDERS** that the following issue is common to Ontario Settlement Class Members:

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

7. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each member of the Ontario 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.

8. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario Settlement Class.

9. **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.

10. **THIS COURT ORDERS** that, upon the Effective Date, each Ontario 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, to the extent such Other Actions relate to the Released Claims, without costs and with prejudice.

11. **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.
12. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 14, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
13. **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.
14. **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 Ontario Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.

15. **THIS COURT ORDERS** that, upon the Effective Date, each Ontario 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.
16. **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, or could in the future be brought on the basis of the same events, actions and omissions underlying the Proceedings, 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.
17. **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 Ontario Plaintiff and Ontario 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 Settling Defendant proven at trial or otherwise;

- (b) the Ontario Plaintiff and Ontario 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, 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 Ontario Plaintiff and Ontario Settlement Class Members, if any, and, for greater certainty, Ontario 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 Settling Defendant at the trial or other disposition of the Ontario Proceeding, whether or not the Settling Defendant remains in the Ontario Proceeding or appears at the trial or other disposition, and the Proportionate Liability of the Settling Defendant shall be determined as if the Settling Defendant is a party to

the Ontario Proceeding and any determination by this Court in respect of the Proportionate Liability of the Settling Defendant shall only apply in the Ontario Proceeding and shall not be binding on the Settling Defendant in any other proceeding.

18. **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 Ontario Settlement Class Members in the Ontario Proceeding or the rights of the Ontario Plaintiff and the Ontario Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.

19. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court determined as if the Settling Defendant remained a party to the Ontario Proceeding, and on at least thirty (30) days' notice to Counsel for the Settling Defendant, and not to be brought unless and until the Ontario Proceeding against the Non-Settling Defendants has been certified (not including certification for settlement purposes) 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 Defendant in accordance with the Ontario *Rules of Civil Procedure*;
 - (b) oral discovery of a representative of the Settling Defendant, the transcript of which may be read in at trial;

- (c) leave to serve a request to admit on the Settling Defendant in respect of factual matters; and/or
 - (d) the production of a representative of the Settling Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
20. **THIS COURT ORDERS** that the Settling Defendant retains all rights to oppose such motion(s) brought under paragraph 19. Moreover, nothing herein restricts the Settling Defendant 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 19. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 19, the Court may make such orders as to costs and other terms as it considers appropriate.
21. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 19 above by service on Counsel for the Settling Defendant.
22. **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 Defendant will 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.

23. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any Ontario 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.
24. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement; to administration, investment, or distribution of the Trust Account; or to the Distribution Protocol.
25. **THIS COURT ORDERS** that the Settlement Amount shall be held in the Trust Account by Ontario Counsel for the benefit of Settlement Class Members and after the Effective Date the Settlement Amount may be used to pay Class Counsel Disbursements incurred for the benefit of the Settlement Classes in the continued prosecution of the litigation against the Non-Settling Defendants. This paragraph shall not be interpreted as affecting the rights of the Plaintiff or the Settlement Classes to claim such Class Counsel Disbursements in the context of a future costs award in their favour against the Non-Settling Defendants, or the rights of the Non-Settling Defendants to oppose and resist any such claim.
26. **THIS COURT ORDERS** that in the event that some of the Settlement Amount remains in the Trust Account after payment of Class Counsel Disbursements, Class Counsel Fees and Administration Expenses, Class Counsel shall seek direction from this Court regarding the distribution of the remaining funds.
27. **THIS COURT ORDERS** that the approval of the Settlement Agreement is contingent upon approval by the Quebec Court, and the terms of this Order shall not be effective

unless and until the Parties have signed and filed a notice of settlement out of court with the Quebec Court. If such relief is not secured in Quebec, this Order shall be null and void and without prejudice to the rights of the Parties to proceed with the Ontario Proceeding and any agreement between the parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.

28. **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.
29. **THIS COURT ORDERS** that the Ontario Proceeding be and is hereby dismissed as against the Settling Defendant, without costs and with prejudice.
30. **THIS COURT ORDERS** this Order, including but not limited to the approval of the Settlement Agreement and any reasons given by the Court in relation thereto, except as to paragraphs 16-21 of the Order, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario Proceeding.

The Honourable Justice Sproat