



Court File No. 4367/11 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
Madam Justice Leitch

) Friday, the 12th day
)
) of October, 2012

B E T W E E N:

MARVIN SHEREBRIN and MICHAEL KRAUSE

Plaintiffs

- and -

BUILDING PRODUCTS OF CANADA CORP.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiffs for an Order approving the settlement agreement entered between the Plaintiffs and the Defendant was heard this day at the Court House in London, Ontario.

ON READING the materials filed, including the settlement agreement dated January 19, 2012 attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiffs and the Defendant;

AND ON BEING ADVISED that the Plaintiffs and Defendant consent to this motion:

1. **THIS COURT ORDERS** that for the purposes of this Order, the definitions set out in the Settlement Agreement annexed as Schedule "A" apply to and are incorporated into this Order.
2. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.
3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented in accordance with its terms.
4. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the representative plaintiffs and all Settlement Class Members who have not validly opted out of the Action.
5. **THIS COURT ORDERS** that any Settlement Class Member who has validly opted out of this action:
 - (a) shall be excluded from the Canadian National Class;
 - (b) shall have no rights and be entitled to no relief under this or any subsequent orders in this Action or under the Settlement Agreement (including no payments as provided in the Settlement Agreement); and
 - (c) shall not be bound by the Settlement Agreement, or this Order, if granted.
6. **THIS COURT ORDERS** that any Settlement Class Members who have opted out of the Canadian National Class may withdraw their request to opt out prior to the Effective Date, but only if they accept the benefits and terms of the Settlement Agreement and dismiss with prejudice any other pending action against the Defendants arising from damage to their affected buildings, homes, residences, or other structures caused by any alleged defects in the BP Organic Shingles installed in those properties.

7. **THIS COURT ORDERS** that any Settlement Class Member who has not validly and timely opted out of the Settlement Class, shall be:
- a) deemed Settlement Class Members for all purposes under the Settlement Agreement;
 - b) bound by the terms of the Settlement Agreement (including, without limitation, any and all releases);
 - c) deemed to have submitted to the jurisdiction of the Ontario Court; and
 - d) bound by any subsequent proceedings, orders, and judgment issued by the Court in this Action.
8. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Action and each claim and allegation concerning BP Organic Shingles therein asserted by any Settlement Class Member who has not validly opted out of the Action shall be and is hereby dismissed against the Defendant, without costs and with prejudice.
9. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon each Settlement Class Member who has not validly opted out of the Action 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 Action.
10. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, the Releasing Parties shall be barred from commencing, initiating, continuing, maintaining, asserting, or prosecuting, either directly or indirectly, whether in Canada, the United States or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Released Party in respect of the claims released in the Settlement Agreement.
11. **THIS COURT ORDERS AND DECLARES** that this Court shall retain exclusive jurisdiction over this Action and the parties associated with this Action.

12. **THIS COURT ORDERS** that all disputes, claims, or controversies arising in connection with, pursuant to, or related to the implementation, administration, enforcement, or interpretation of the terms of the Settlement Agreement (including any action or proceeding to enforce the Settlement Agreement or secure damages for its breach) shall be finally resolved by this Court, or if this Court directs, by a referee appointed by this Court, and the Parties submit to the jurisdiction of this Court for purposes of implementing, administering, enforcing, and interpreting the settlement provided for in the Settlement Agreement.
13. **THIS COURT ORDERS** that ADR Chambers be appointed as adjudicator for the purposes of adjudicating Requests for Review in accordance with sections 5.25 to 5.33 of the Settlement Agreement.
14. **THIS COURT ORDERS** that the approval of the Settlement Agreement is contingent upon approval by the Quebec Court and the U.S. Court, and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved by the Quebec Court and the U.S. Court.
15. **THIS COURT DECLARES** 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.
16. **THIS COURT ORDERS AND ADJUDGES** that, except as aforesaid, this Action be and is hereby dismissed against the Defendant without costs and with prejudice.

Date:

November 6, 2012


THE HONOURABLE MADAM JUSTICE LEITCH

ORDER ENTERED

77-72

NOV 0 6 2012

2569

SCHEDULE A
(to Order)

**Marvin Sherebrin et al. v Building Products
of Canada Corp.**
**Diane Fitzsimmons v La Cie Materiaux de
Construction BP Canada**
**Robert S. Melillo et al. v Building Products
of Canada Corp.**

Ontario Superior Court of Justice
Court File No. 4367/11CP
Superior Court of Quebec
Court File No. 500-06-00580-114
Vermont Superior Court, Chittenden Unit,
Court File No. s618-11 cnc

AGREEMENT OF COMPROMISE AND SETTLEMENT

1. RECITALS	2
2. DEFINITIONS.....	4
3. CLASS CERTIFICATION.....	10
4. CLAIMS TO BE COMPENSATED BY THE AGREEMENT	11
5. CLAIMS PROCESS.....	16
6. SETTLEMENT BENEFITS.....	31
7. CLASS COUNSEL FEES AND EXPENSES.....	36
8. PRELIMINARY APPROVAL ORDERS	36
9. NOTICE OF SETTLEMENT	37
10. SETTLEMENT CLASS MEMBERS' RIGHT TO OPT OUT AND DISMISSAL OF OTHER PROCEEDINGS	40
11. SETTLEMENT CLASS MEMBERS' RIGHT TO OBJECT	42
12. FINAL APPROVAL ORDERS	43
13. DEFENDANT'S RIGHT OF TERMINATION.....	44
14. EFFECTIVE DATE	46
15. RELEASE.....	46
16. EXCLUSIVE REMEDY; DISMISSAL OF ACTION; JURISDICTION OF COURT	49
17. OTHER TERMS AND CONDITIONS	51

AGREEMENT OF COMPROMISE AND SETTLEMENT

The Plaintiffs, on behalf of themselves and the Settlement Classes set forth herein, and Building Products of Canada Corp./La Cie Materiaux de Construction BP Canada (the "Defendant"), stipulate and agree, pursuant to the terms and conditions set forth in this Agreement, to settle, dismiss, and compromise fully and finally the Actions.

1. RECITALS

1.1 WHEREAS the Actions have been commenced by the Plaintiffs in Ontario, Quebec and the United States which allege that the Defendant manufactured, distributed, marketed and/or sold BP Organic Shingles in Canada and the United States, which shingles were allegedly defective and prone to premature failure.

1.2 WHEREAS the Defendant denies all allegations of fault, wrongdoing, or liability made by the Plaintiffs and asserts that the BP Organic Shingles were sold without defects; and

1.3 WHEREAS the Parties have engaged in extensive, arms-length negotiations regarding the settlement of claims involving BP Organic Shingles; and

1.4 WHEREAS the Plaintiffs and Class Counsel have evaluated the time and expense that will be necessary to prosecute the Actions to final judgment, the delays that are likely before any judgment might be entered, and the uncertainty inherent in predicting the outcome of any complex litigation such as this and, based upon such evaluation, have concluded that further proceedings in the Actions are likely to be protracted, complex, and expensive, and that the outcome is uncertain; and

1.5 WHEREAS without conceding any lack of merit of any of their claims, Plaintiffs and Class Counsel have concluded that it is in the best interest of the Settlement Classes to settle

the Actions on the terms set forth herein, and that the settlement with the Defendant embodied in this Agreement is fair, reasonable, and adequate to Plaintiffs and the Settlement Classes; and

1.6 WHEREAS this Agreement and the settlement embodied herein shall in no event be construed as or deemed to be evidence of an admission or a concession on the part of the Defendant of any fault, wrongdoing, or liability whatsoever, or that any of the allegations in the Actions are true, and without conceding any infirmity in their defenses, the Defendant considers it desirable to enter into this Agreement in order to avoid further expense, dispose of what would be burdensome and protracted litigation, and avoid the uncertain outcome of proceeding with the Actions;

1.7 WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Agreement, the Parties have consented to certification or authorization of the Actions as class proceedings and have consented to a Settlement Class in each of the Actions; and

1.8 WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Classes and will seek to be appointed representative plaintiffs in their respective Actions;

NOW, THEREFORE, it is hereby agreed by and between the Defendant and the Plaintiffs, acting for themselves and the Settlement Classes, by and through their respective attorneys, that, except as specifically stated to the contrary in this Agreement, all of the allegations, claims, demands, causes of action, and liabilities, which have been or could have been asserted by the Plaintiffs or Settlement Classes Members against any of the Released Parties relating to, arising out of, or in connection with any of the allegations made in the

Actions, shall be settled and compromised, and the Actions shall be dismissed with prejudice, according to the terms and conditions set forth below.

2. DEFINITIONS

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

2.1 “Actions” shall mean the Canadian Actions and the U.S. Action.

2.2 “Adjudicator” shall mean an independent third-party agreed upon by the Parties and approved by the Courts to adjudicate Requests for Review in accordance with sections 5.25 to 5.33.

2.3 “Agreement” shall mean this Agreement of Compromise and Settlement, including the exhibits and notices and other documents contemplated by this Agreement, and any amendments thereto.

2.4 “Applicable Warranty” shall mean the relevant warranty for the particular BP Organic Shingles.

2.5 “Applicable Warranty Period” shall mean the relevant warranty period for the particular BP Organic Shingles, as set out in Exhibit “A”.

2.6 “Approved Repairs” shall have the meaning attributed to it in section 6.4(a).

2.7 “Approved Repairs Amount” shall have the meaning attributed to it in section 6.4(a)(i).

2.8 “BP Organic Shingles” shall mean shingles made with a felt reinforcement base material that is saturated with asphalt, also known as “organic” roofing shingles, manufactured

during the period from 1985 to 2010 under the brand names: Eclipse, Eclipse H/R, Eclipse LS, Super Eclipse, Weather-Tite, Mirage, Rampart, Tradition, Tite-Lok, Esgard Pro-Standard, Pro-Standard, Esgard 20, Esgard 25, Citadel, Tite-On, Roofmaster, Roofmaster Classic, Roofmaster Plus, Elegance, Elegance II, Europa, and Super Lok.

2.9 “Canadian Actions” shall mean the Ontario Action and the Quebec Action.

2.10 “Canadian National Class” shall have the meaning attributed to it in section 3.1.

2.11 “Canadian Class Representatives” shall mean those class representatives known as Marvin Sherebrin, Michael Krause, and Diane Fitzsimmons who are, collectively, the named Plaintiffs in the Canadian Actions, individually and on behalf of members of the Canadian National Class or the Quebec Class, as appropriate.

2.12 “Cash Settlement Option” shall mean the settlement benefit option described in section 6.5.

2.13 “Causation Defense” shall have the meaning attributed to it in section 4.7.

2.14 “Claimant” shall mean a Settlement Class Member who submits a Claims Form under the terms of this Agreement.

2.15 “Claim Decision” shall mean the document used by the Defendant to advise Claimants of whether and to what extent their claims are approved or denied.

2.16 “Claim Form” shall mean the form agreed upon by the Parties, and approved by the Courts for use by Settlement Class Members in making claims under this Agreement.

2.17 “Class Counsel” shall mean counsel for the Plaintiffs in the Canadian Actions and the law firms appointed as lead counsel in the U.S. Action. For purposes of this Agreement, to the extent the duties of Class Counsel are enumerated, Class Counsel in the United States and Canada, respectively, shall only be obligated to act as counsel in their respective jurisdictions

and U.S. counsel shall not act as counsel for the Canadian Classes and Canadian counsel shall not act as counsel for the U.S. Class.

2.18 “Courts” shall mean the Ontario Court, the Quebec Court and the U.S. Court.

2.19 “Damage to BP Organic Shingles” shall have the meaning attributed to it in section 4.6.

2.20 “Damaged BP Organic Shingles” shall have the meaning attributed to it in section 4.6.

2.21 “Defendant” shall have the meaning attributed to it in the preamble.

2.22 “Effective Date” shall have the meaning attributed to it in section 14.2.

2.23 “Eligible Claimant” shall have the meaning attributed to it in section 4.1.

2.24 “Final Approval Hearings” shall mean the hearings conducted by the Courts in connection with the determination of the fairness, adequacy, and reasonableness of this Agreement under section 29(2) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, article 1025 of the Quebec *Code of Civil Procedure* and V.R.C.P. 23.

2.25 “Final Approval Order” shall have the meaning attributed to it in section 12.1.

2.26 “Inspector” shall mean IRC Group and/or such other entity or entities as may be agreed upon by the Parties or appointed by the Courts to adjudicate Requests for Review in accordance with sections 5.25 to 5.33, disputes relating to the reasonableness of the Approved Repairs Amount and/or proration of the Approved Repairs Amount in accordance with section 6.4(a)(iv), and disputes relating to Repairs Invoices in accordance with section 6.4(h).

2.27 “Non-Proration Period” shall mean the later of: (i) the end of the period during which the Defendant is obligated to pay the costs of repair or replacement without any proration

pursuant to the terms of the Applicable Warranty; or (ii) five years from the installation of the BP Organic Shingles.

2.28 “Objection Deadline” shall mean the deadline set by the Courts for any Settlement Class Member to object to the Agreement.

2.29 “Ontario Action” shall mean the putative class action lawsuit pending in Ontario under the caption, Marvin Sherebrin et al. v. Building Products of Canada Corp., Ontario Superior Court of Justice Court File No. 4367/11CP.

2.30 “Ontario Court” shall mean the Ontario Superior Court of Justice.

2.31 “Opt-Out Deadline” shall mean the deadline set by the Courts for any Settlement Class Member to opt out of the Settlement Class.

2.32 “Opt-Out Form” shall mean the form agreed upon by the Parties, and approved by the Courts for use by Settlement Class Members to opt out of the Settlement Class.

2.33 “Other Actions” shall mean actions or proceedings, other than the Actions, relating to claims released pursuant to section 15.1, commenced by a Settlement Class Member either before or after the Effective Date.

2.34 “Parties” shall mean the Plaintiffs and the Defendant.

2.35 “Payment of Repairs Settlement Option” shall mean the settlement benefit option described in section 6.4.

2.36 “Plaintiffs” shall mean the named plaintiffs in the Actions.

2.37 “Preliminary Approval Order” shall have the meaning attributed to it in section 8.1.

2.38 “Quebec Action” shall mean the proceeding commenced by motion to obtain authorization to exercise a class action and to obtain the status of representative under the style

of cause Diane Fitzsimmons v. La Cie Materiaux de Construction BP Canada, Quebec Superior Court File No. 500-06-00580-114.

2.39 “Quebec Class” shall have the meaning attributed to it in section 3.2.

2.40 “Quebec Court” shall mean the Superior Court of Quebec.

2.41 “Released Parties” shall have the meaning attributed to it in section 15.1.

2.42 “Releasing Parties” shall have the meaning attributed to it in section 15.1.

2.43 “Repair Dispute Form” shall mean the form agreed upon by the Parties, or as otherwise approved by the Courts, for use by Claimants to request a review of the Defendant’s position that all or part of a Repairs Invoice submitted by the Claimant does not relate to Approved Repairs or that the Repairs Invoice does not establish that the Claimant used roofing shingles manufactured by the Defendant in completing any Approved Repairs.

2.44 “Repairs Invoice” shall mean any invoices, bills, or other documents relating to labour and material expenses incurred by a Claimant in the completion of Approved Repairs. Repairs Invoice shall not include any quotes or bids.

2.45 “Request for Review Form” shall mean the form agreed upon by the Parties, or as otherwise approved by the Courts for use by Claimants to request the review by the Inspector or the Adjudicator, as appropriate, of a Claim Decision issued by the Defendant in respect of their claims.

2.46 “Review Decision” shall mean the document used by the Adjudicator and the Inspector to advise Claimants and the Defendant of the determination made by the Adjudicator or the Inspector as to: (i) the correctness of the Claim Decision; (ii) whether the Claimant has acted in a manner that is fraudulent and/or abusive; (iii) to the extent the Review Decision is issued by the Inspector, whether the shingles at issue were in fact BP Organic Shingles; and (iv)

where the review relates to the reasonableness of the Approved Repairs Amount and/or proration of the Approved Repairs Amount, the appropriate Approved Repairs Amount and/or proration of the Approved Repairs Amount. The Review Decision shall contain a brief explanation of the basis for such determination.

2.47 “Review Materials” shall have the meaning attributed to it in section 5.25(c).

2.48 “Roof Deck” shall mean the layer of material (usually plywood or other similar material) installed on the roof trusses.

2.49 “Settlement Class Members” shall mean members of the Settlement Classes.

2.50 “Settlement Classes” shall mean the Canadian National Class, the Quebec Class and the U.S. Class.

2.51 “Settlement Notice” shall have the meaning attributed to it in section 9.1.

2.52 “Settlement Website” shall have the meaning attributed to it in section 9.7.

2.53 “Settling Parties” shall mean the Defendant, the Plaintiffs and the Settlement Class Members.

2.54 “U.S. Class” shall have the meaning attributed to it in section 3.3.

2.55 “U.S. Class Representatives” shall mean those class representatives known as Robert Melillo and Arthur Mayo Jr., who are collectively, the named Plaintiffs in the U.S. Action, individually and on behalf of members of the U.S. Class.

2.56 “U.S. Court” shall mean the Vermont Superior Court, Chittenden Unit.

2.57 “U.S. Action” shall mean the putative class action lawsuit pending in the State of Vermont under the caption, Robert S. Melillo et al. v. Building Products of Canada Corp., Vermont Superior Court, Chittenden Unit, Court File No. s618-11 enc.

3. **CLASS CERTIFICATION**

3.1 For the purpose of the Ontario Action, the Settling Parties agree that certification for settlement purposes of a settlement class defined as follows is appropriate (the “Canadian National Class”):

All individuals and entities, that own or owned, homes, residences, buildings, or other structures located in Canada whose roofs contain or contained BP Organic Shingles, excluding members of the Quebec Class.

3.2 For the purpose of the Quebec Action, the Settling Parties agree that authorization for settlement purposes of a settlement class defined as follows is appropriate (the “Quebec Class”):

All natural persons, as well as all legal persons established for a private interest, partnerships and associations having no more than 50 persons bound to it by contract of employment under its direction or control during the 12-month period preceding September 28, 2011, that own or owned, homes, residences, buildings, or other structures located in the Province of Quebec whose roofs contain or contained BP Organic Shingles.

3.3 For the purpose of the U.S. Action, the Settling Parties agree that certification of a settlement class for settlement purposes defined as follows is appropriate (the “U.S. Class”):

All individuals and entities, that own or owned, homes, residences, buildings, or other structures located in the United States whose roofs contain or contained BP Organic Shingles.

3.4 Excluded from the Settlement Classes are:

- (a) all persons who timely exercise their rights under section 9 of the *Class Proceedings Act, 1992*, S.O. 1992 c. 6, article 1007 of the *Quebec Code of Civil Procedure* or V.R.C.P. 23 to opt out of the Settlement Class pursuant to the terms of this Agreement;
- (b) all persons who filed a claim concerning their BP Organic Shingles in any court of law and whose claim has been resolved with a final judgment or settlement, whether or not favorable to the person; and

- (c) the Defendant, any entity in which the Defendant has a controlling interest, any entity that has a controlling interest in the Defendant, and the Defendant's legal representatives, assigns, and successors.

3.5 In the event this Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Parties agree that any prior certification or authorization of an Action as a class proceeding pursuant to this Agreement, or any amended certification or authorization of an Action as a class proceeding pursuant to this Agreement, including the definition of the Settlement Class and the statement of any common issue, shall be without prejudice to any position that any of the Parties may later take on any issue in the Actions or any other litigation.

4. CLAIMS TO BE COMPENSATED BY THE AGREEMENT

Eligible Claims

4.1 Subject to section 4.2, a Claimant shall be deemed an "Eligible Claimant" and entitled to settlement benefits under this Agreement if:

- (a) the Claimant is a member of the Settlement Class;
- (b) if the Claimant is a former owner of a home, residence, building or other structure on which BP Organic Shingles are or were installed, the Claimant shall only be an Eligible Claimant if the Claimant: (i) retained from the subsequent property owner the rights and obligations created by this Agreement, in accordance with section 5.35(b) below; and (ii) otherwise satisfies all terms of this Agreement;
- (c) if the Claimant is the current owner of a home, residence, building or other structure on which BP Organic Shingles are or were installed, the Claimant shall only be an Eligible Claimant if: (i) the Claimant has not assigned to the former property owner the rights and obligations created by this Agreement, in accordance with section 5.35(b) below; and (ii) the Claimant otherwise satisfies all terms of this Agreement;
- (d) The Claimant files a duly completed and timely Claim Form in accordance with this Agreement, and prior to the removal of the BP Organic Shingles that are the subject of the claim from the home, residence, building or other structure on which they were installed;

- (e) Damage to BP Organic Shingles has occurred or occurs to the BP Organic Shingles applied to the Claimant's home, residence, building or other structure prior to the expiration of the Applicable Warranty Period; and
- (f) None of the Causation Defenses is established to be the principle cause of the Damage to BP Organic Shingles.

4.2 Any Claimant who has previously resolved a claim against the Defendant in relation to Damaged BP Organic Shingles, whether by settlement, adjudication or resolution of a warranty claim (including as evidenced by a written release of the Defendant, proof of compensation by the Defendant in settlement of the claim or an adjudication decision), relating to Damaged BP Organic Shingles shall not be compensated with respect to the same Damaged BP Organic Shingles, but can claim and be compensated with respect to Damaged BP Organic Shingles that were not the subject of the earlier settlement, adjudication or resolution of a warranty claim. Any Claimant who previously filed a warranty claim with the Defendant, and which warranty claim was denied before June 9, 2009, shall not be considered an Eligible Claimant, unless the conditions of the BP Organic Shingles that were the subject of the warranty claim have worsened, such that the conditions now qualify as Damage to BP Organic Shingles in accordance with section 4.6. This provision does not apply with respect to a Claimant that is claiming with respect to BP Organic Shingles that were not the subject of the previously-filed warranty claim.

4.3 Where a Claimant previously filed a warranty claim with the Defendant and which warranty claim was denied, in whole or in part, after June 9, 2009, and the Claimant has replaced the BP Organic Shingles that were the subject of the denied warranty claim, notwithstanding the requirement in section 5.4 that the Claim Form must be filed before the removal of the BP Organic Shingles, the Claimant shall be considered an Eligible Claimant.

Such claims shall be evaluated based on the information provided by the Claimant pursuant to the terms of this Settlement Agreement and, if reasonably available to the Defendant, the contents of the related warranty claim file, provided that the Defendant has sufficient information and documents to evaluate the claim. The claim may be denied where there is not sufficient information or documents for the Defendant to evaluate the claim.

4.4 Any Claimant who has previously received compensation as a result of an insurance claim or claim against a builder or other third party relating to Damaged BP Organic Shingles can claim under the Agreement for the same Damaged BP Organic Shingles, but any compensation accruable under the terms of the Agreement shall be offset by any amount paid to the Claimant as a result of such claim.

4.5 In the event that the Defendant becomes aware that it has received multiple claims relating to the same BP Organic Shingles before it has paid compensation on any of the multiple claims, the Defendant shall determine which Claimant, if any, is to be compensated. However, once the Defendant has provided compensation with respect to particular Damaged BP Organic Shingles, the Defendant shall not be obligated to provide any further compensation for the same Damaged BP Organic Shingles.

Damage to BP Organic Shingles

4.6 The following conditions of BP Organic Shingles will be deemed to constitute "Damage to BP Organic Shingles" and BP Organic Shingles that display such conditions will qualify as "Damaged BP Organic Shingles":

- (a) an open hollow bump, $\frac{3}{4}$ " or 19 mm or more in diameter, in the coating layer of the shingle resulting in the underlying asphalt being weathered (that is, oxidized and dirty), also known as "blistering";

- (b) corners and edges of shingle tabs that are curled downward toward the Roof Deck raising the portion of the tab just interior to the edges by more than 1/2" or 12.7 mm, also known as "clawing";
- (c) cracks in the top-coating of the shingle penetrating through the organic felt that present a source for leakage, also known as "cracking";
- (d) tab corners that are raised above the plane of the Roof Deck by at least 1/2" or 12.7 mm for BP Organic Shingles manufactured more than ten years before the submission of the Claim Form, or by at least 3/8" or 9.5 mm for BP Organic Shingles manufactured less than ten years before the submission of the Claim Form, also known as "curling";
- (e) tab corners that are raised above the plane of the Roof Deck by at least 3/4" or 19 mm after being placed in a freezer at 0° Celsius for 15 minutes, also known as "cold weather curling";
- (f) puckers of at least 1/4" or 6.35 mm that appear along the side and bottom edges of the tabs, also known as "fishmouthing"; and
- (g) a loss of top surface of the shingle resulting in an exposure of the substrate equal in size to a dime, also known as "delamination".

Causation Defenses

4.7 The Defendant will not be liable for any Damage to BP Organic Shingles, to the extent that one or more of the following Causation Defenses was the principal cause of the Damage to BP Organic Shingles:

- (a) Damage to BP Organic Shingles caused by and/or resulting from lightning, hurricanes, tornadoes, hailstorms, earthquakes, Act of God, fortuitous events, fire, flood, explosion, earth movement, or other *force majeure* events;
- (b) Damage to BP Organic Shingles caused by settlement, distortion, failure, cracking or movement of the Roof Deck, walls or foundation of the building, as well as flashings or metal work;
- (c) Damage to BP Organic Shingles caused by improper drainage, erosion, ordinary wear and tear, work performed on or to the roof (including the installation of any equipment on the roof), traffic on the roof, impact of foreign objects, or ice backup or ice damming;

- (d) Damage to BP Organic Shingles caused by any defects or failure of the material used as a Roof Deck over which the BP Organic Shingles have been applied;
- (e) Damage to BP Organic Shingles caused by the failure to install in accordance with the Defendant's published application instructions or good roofing practices, including the failure to install the shingles using the Defendant's cements or equivalent cements that meet applicable Can/CGSB or ASTM standards;
- (f) Damage to BP Organic Shingles caused by attic or roof ventilation that is not in compliance with applicable building codes, or by installing BP Organic Shingles directly over Roof Decks insulated with rigid insulation board, if there does not exist at least 1" or 2.54 cm of free-flowing air space between the Roof Deck to which the BP Organic Shingles are applied and the rigid insulation board;
- (g) Damage to BP Organic Shingles caused by the failure, on low slope roofs (between 2:12 and 4:12 pitch), to use appropriate BP Organic Shingles or to install ice and water underlayment or two layers of felt;
- (h) Damage to BP Organic Shingles caused by a design failure of the home or other building or the failure to comply with any applicable local, provincial, state or national building code, including without limitation the National Building Code of Canada and the International Building Code,
- (i) Damage to BP Organic Shingles caused by exposure to or application of paints or any improper cleaning solutions, coatings, or harsh air born or liquid chemicals or modifications of any kind;
- (j) Damage to BP Organic Shingles caused by failure to perform required roof maintenance or by improper roof maintenance such as pressure washing, failure to remove vegetation, moss, algae, fungus, lichens, mold or mildew growth from the roof, or failure to remove tree branches that are in contact with the roof. However, Damage to BP Organic Shingles caused by "blue-green" algae will only constitute a Causation Defense to the extent that the Applicable Warranty does not warrant against "blue-green" algae; and
- (k) Damage to BP Organic Shingles caused by intentional, reckless, or negligent conduct of a party other than the Defendant.

4.8 If the Defendant asserts any of the Causation Defenses described in section 4.7, the Defendant shall bear the burden of establishing that such defense was the principle cause of the Damage to BP Organic Shingles.

5. CLAIMS PROCESS

Role of the Defendant in Administering Claims

5.1 The Defendant will be responsible for administering claims under the Agreement. Claims shall be administered and resolved in a neutral, rational, responsive, cost-effective, and timely manner.

5.2 The Defendants will ensure that the following guidelines are observed throughout the claims administration process:

- (a) The Defendant will assign French-speaking representatives to correspond with French-speaking Settlement Class Members and review Claim Forms filed in French;
- (b) The Defendant will ensure that a dedicated toll-free telephone facility is created and operative in Canada and the United States for the purposes of providing information to Class Members regarding the Agreement and the claims process;
- (c) The Defendant will ensure that the dedicated toll-free telephone facility is staffed with representatives who are bilingual in English and French and available to speak with Class Members weekdays, not including statutory holidays, between 8:30am and 4:00pm EST;
- (d) The Defendant will create an automated message with relevant information for Class Members and will allow Class Members to leave voice messages in the event that a representative is not available between the hours of 8:30am and 4:00pm EST to take the call. To the extent that calls are received outside business hours, the automated message shall advise Class Members to call during business hours in order to speak with a representative or leave a voice message; and
- (e) The Defendant will direct its representatives to use reasonable best efforts to respond to any voice messages within two (2) business days.

Submission of Claim Forms

5.3 Claim Forms shall be submitted by Claimants to the Defendant at the address specified in the Claim Form. Claim Forms sent to an incorrect address will not be considered and will not constitute valid Claim Forms.

5.4 Except as otherwise provided for in this Agreement, Claim Forms must be postmarked no later than 150 days after the later of the Effective Date of this Agreement and the Claimant's discovery of the defect or need for any repairs or replacement and, in any event, no later than the expiry of the Applicable Warranty Period and prior to the removal of the BP Organic Shingles that are the subject of the claim from the home, residence, building or other structure on which they were installed.

5.5 Claim Forms can be filed in the English or French languages. Where a Claimant has filed a Claim Form in the French language, any subsequent correspondence with the Claimant shall be in the French language.

5.6 As part of the Claim Form, Claimants shall be required to provide, as to the property or properties to which the claim regarding BP Organic Shingles relates, all the following information and documents. The failure to provide all of the following information and documents may result in the denial of a claim:

- (a) Name of Claimant and any co-owners.
- (b) Address (including an email address) of Claimant and any co-owners.
- (c) Address of property upon which the BP Organic Shingles that are the subject of the claim are installed (if different than the address of the Claimant and any co-owners).
- (d) Photographs that establish the condition of the shingles in sufficient detail and quality such that evaluation of the claim can be made. All photographs should be labeled by the Claimant with the Claimant's name and identify the slope or area of the roof shown. The Claimant shall make

reasonable best efforts to provide each of the following: (i) one or more photographs showing the structure from a distance sufficient to show the entire structure including views of all roof vents; (ii) one or more photographs showing the inside and outside of all of the soffits; and (iii) a minimum of two photographs of each roof slope showing the slope and the condition of the shingles. The photographs provided must be of sufficient detail and clarity to enable the Defendant to evaluate the claim. Photographs can be submitted either in hard copy or electronically.

- (e) Reliable and contemporaneous documentary proof of purchase and installation of BP Organic Shingles, such as an invoice from a roofer for services already rendered (bids, quotations or estimates shall not be acceptable), or if the BP Organic Shingles are the original installation on the structure, a certificate of occupancy, a final building inspection or an invoice from the builder or roofing contractor stating the date of installation. If the documentary proof of purchase and installation establishes the year but not the month of installation, the installation date shall default to the earliest month of the year.
- (f) A good faith estimate of the number of Damaged BP Organic Shingles.
- (g) The claimant shall make reasonable best efforts to provide information regarding the measurement of the roof including the following:
 - (i) detailed measurements of the roof, on a slope-by-slope basis;
 - (ii) the number of roof bundles or squares installed on the roof. Where the number of roof bundles or squares installed on the roof is not available, the square footage of the relevant roof structure, along with a measurement of the square footage of the ground floor of the structure, the number of stories, and the pitch or pitches of the roof; and
 - (iii) all other relevant information in the Claimant's possession that might assist the Defendant in its determination of the measurements of the roof.
- (h) A statement that the Claimant authorizes an inspection of the structure(s) by the Defendant and/or the Inspector in accordance with the terms of this Agreement.
- (i) Whether the property was the subject of an insurance claim or claim to a builder or other party relating to any Damage to BP Organic Shingles and, if so, evidence of when the claim was made, against whom the claim was made and the amount of any compensation received in respect of the claim.

- (j) Whether there has been an assignment of any claims relating to BP Organic Shingles and documentation of such assignment.
- (k) Whether the Claimant is electing the Payment of Repairs Settlement Option or the Cash Settlement Option.
- (l) A statement that the Claimant agrees to cooperate with the Defendant in providing any reasonably requested additional information required to determine the validity of the claim.
- (m) A declaration by the Claimant and any co-owners, under penalty of perjury, that information or material submitted to the Defendant is true and correct.
- (n) The signature of the Claimant and any co-owners.

5.7 As part of the Claim Form, Claimants may also be required to provide, as to the property or properties to which the claim regarding BP Organic Shingles relates, substantially all the following information and documents:

- (a) Date that each structure was built, if known.
- (b) Builder (if original installation) or roofing contractor (if remodel or replacement), if known.
- (c) Development, neighbourhood, or subdivision, if known.
- (d) Date of purchase of the property.
- (e) Two forms of verification of current or former ownership of the property. Such verification includes a copy of a property deed, property tax record, mortgage statement, property insurance bill, or utility bill. For manufactured homes, such verification can also include a copy of the registration or title.
- (f) Type of structure(s) upon which the BP Organic Shingles that are the subject of the claim are installed.
- (g) A prior communication from the Defendant confirming that the shingles on the structure are BP Organic Shingles, if such communication exists.
- (h) A report from a reputable roofing contractor documenting the condition of the BP Organic Shingles, including any Damage to BP Organic Shingles, will be required. The report must contain sufficient detail such that an evaluation of the claim can be made.

- (i) Whether the property has any features that might interfere with an inspection, such as locked gates or dogs.
- (j) Whether the Claimant or a prior owner previously made a claim to the Defendant with respect to the BP Organic Shingles, the approximate date of such claim, and the outcome of the claim, including the amount of any compensation received.
- (k) Whether the Claimant has previously filed a Claim Form.

Where a Claimant is unable to provide one or more of the items listed above, the Claimant shall be permitted to furnish alternative proof in order to support the claim, provided that the alternative proof is sufficient to enable the Defendant to evaluate the claim. The failure to provide sufficient information and documents to enable the Defendant to evaluate the claim may result in the denial of a claim.

5.8 BP can request that the Claimant provide any other information or documents that might be necessary to assist BP in the evaluation of claims. BP can also request that the Claimant provide a sample of at least one full size shingle certified by the Claimant to be from the structure and of sufficient condition such that an evaluation of the claim can be made. The Claimant must also provide photographs indicating the location from which the sample was removed. Photographs must show the location both before and after the removal of the shingle, and must be labeled with the Claimant's name and identify the slope or area of the roof shown. Photographs can be submitted either in hard copy or electronically. Where the Claimant provides invoices establishing expenses incurred in having a roofing professional remove and replace the shingles necessary to provide the sample shingle to the Defendant, including shipping, the Defendant will reimburse Claimants who are members of the Canadian National Class or Quebec Class up to CDN \$50.00 and Claimants who are members of the U.S. Class up to U.S. \$50.00 for such expenses, including shipping costs, provided that the Claimant is found

to be a Settlement Class Member and the shingles, upon inspection and testing, are determined to be BP Organic Shingles. Such reimbursement shall be paid by cheque and shall be included with the Claim Decision.

5.9 The failure of the Claimant to cooperate with the Defendant in a reasonable manner in providing sufficient information and documents for the Defendants to evaluate the claim, including the provision of sample shingles in accordance with section 5.8, shall result in the denial of the claim.

5.10 No materials submitted by any Claimant, including shingle samples and photographs, will be returned to the Claimant.

5.11 Claimants shall provide the Defendant with any change of address or updated or revised contact information.

5.12 Claimants cannot utilize third-party claims services or similar services to file claims. Where Claimants utilize third-party claims services or similar services to file claims, their claims will be treated as deficient and they will be given an opportunity to cure the deficiency in accordance with section 5.16 below. Notwithstanding the foregoing, nothing in this section shall preclude Settlement Class Members from being assisted by Class Counsel or personal counsel of their own choosing in the completion of their Claim Form and pursuit of their claims.

5.13 Where a claim has been denied, the Claimant or any eligible successor may not submit another claim with respect to the BP Organic Shingles that were the subject of the claim for two years from the date of the Claim Decision, unless the Claimant or any eligible successor is experiencing actual water leakage as a result of a worsening of the conditions of the BP Organic Shingles, in which case the Claimant or any eligible successor can file a subsequent

claim immediately upon discovering the leak. Thereafter, the Claimant or eligible successor may file a subsequent claim provided that the subsequent claim is postmarked on or before the expiration of the Applicable Warranty Period. If a subsequent claim is accepted, the settlement benefits accruable to the Claimant shall be calculated based upon the date of the submission of the subsequent claim.

Processing of Claim Forms

5.14 The Defendant shall scan each Claim Form and any supporting documentation into a database established for this Agreement or shall otherwise manage the information in an efficient and accessible manner. The information shall be available to Class Counsel in such form as Class Counsel and the Defendant shall agree.

5.15 Any communications required in the administration of a claim may be sent by email where the Claimant has provided his/her email address.

5.16 The Defendant shall review the Claim Form and any supporting documentation to determine whether the Claimant is a Settlement Class Member and whether the Claim Form is complete and includes all the required supporting documentation necessary to proceed with the processing of the claim. If the Claimant is not a Settlement Class Member, the Defendant shall send a letter to the Claimant notifying the Claimant of that fact. If the Claimant is a Settlement Class Member, but the Claim Form and supporting documentation is deficient, the Defendant shall send a deficiency letter to the Claimant identifying the deficiencies and providing the Claimant 60 days to cure the deficiencies. The letter shall advise the Claimant that if the Claimant does not resolve the identified deficiencies within 60 days from the date of the letter, the claim shall be denied. If the Claimant does not resolve the identified deficiencies within 60 days from the date of the letter, the claim shall be denied, without prejudice to the Claimant's

right to file another Claim Form in accordance with the terms of this Agreement, and the Defendant shall promptly issue a Claim Decision denying the claim. The Claim Decision shall notify the Claimant of the denial of the claim, the Claimant's right to file another Claim Form in accordance with the terms of this Agreement and the Claimant's right to seek a review of the Claim Decision in accordance with the terms of this Agreement.

5.17 Once a completed and timely Claim Form has been received by the Defendant, it shall evaluate the claim and determine whether the Claimant is an Eligible Claimant. The Defendant may contact the Claimant in connection with its processing and evaluation of the claim.

5.18 The Parties anticipate that claims may be evaluated based on the information provided by the Claimant pursuant to sections 5.6, 5.7 and 5.8. However, the Defendant may inspect any BP Organic Shingles that are the subject of a claim if, in the Defendant's determination, such inspection is reasonably necessary. The Defendant shall make reasonable efforts to notify the Claimant of the date and approximate time of the inspection. The Claimant can be present during the inspection, as scheduled by the Defendant. In conducting any inspection, the Defendant shall be permitted interior access to the roof and attic area of the relevant structure. The failure of the Claimant to provide reasonable interior access to the roof and attic area of the relevant structure shall result in the denial of the claim. The Defendant shall have the right to remove such shingles, soffits, vents, fascias, rake boards, or other portions of the structure as may be reasonably necessary to determine whether there exists a Causation Defense, provided, however, that following any such removal the Defendant shall, at its own expense, restore the Claimant's property to the condition that existed prior to the inspection. In the event an inspection is needed, the Defendant shall use reasonable best efforts to schedule

such inspection within 60 days of the receipt of a completed Claim Form, but shall be granted additional time in the event that weather conditions or volume of claims affect the Defendant's ability to timely proceed. Promptly after conducting the inspection, the Defendant shall prepare an inspection report. The Defendant shall indemnify and hold harmless Claimants for any injuries to the Defendant during the course of any inspection pursuant to this section, except where such injuries arise from willful conduct or negligence of the Claimants or other persons on the Claimants' property or otherwise under the Claimants' direction or control.

5.19 Within 120 days of receiving the later of (i) a completed Claim Form, (ii) any additional information requested pursuant to sections 5.7 and 5.8 above, or (iii) an inspection report prepared pursuant to section 5.18, the Defendant shall make a Claim Decision.

5.20 The Defendant shall send a copy of the Claim Decision to the Claimant promptly after making the Claim Decision. In addition, where a claim has been rejected in whole or in part, the Defendant shall promptly send a copy of the Claim Decision by email to Charles Laduca or such other individual as identified by Class Counsel.

5.21 Where a claim has been rejected in whole or in part, the Claim Decision shall include a brief written explanation of the basis of the Claim Decision and information explaining the right of a Claimant to seek a review of the Claim Decision, in accordance with the terms of this Agreement.

5.22 Where a claim has been accepted in whole or in part and the Claimant has elected the Payment of Repairs Settlement Option, the Defendant shall include in the Claim Decision the information required in section 6.4(a) below.

5.23 Where a claim has been accepted in whole or in part and the Claimant has elected the Cash Settlement Option, the Defendant shall include with the Claim Decision, the settlement benefits to which the Claimant is entitled pursuant to section 6.5 below.

5.24 The Defendant shall use reasonable diligence to locate Claimants whose Claim Decision is returned as undeliverable. Any such funds arising or remaining from any undeliverable cheques from any claim shall be the Defendant's property.

Review of Claims Decision

5.25 Where a claim has been denied, in whole or in part, or where the Claimant disputes the extent of Damaged BP Organic Shingles on a roof slope, the reasonableness of the Approved Repairs Amount or the proration of the Approved Repairs Amount, the Claimant has the right to request a review of the Claim Decision. A Claimant shall not have the right to request a review where such request for review relates solely to the interpretation or applicability of a term of this Agreement. The following procedures shall govern all reviews:

- (a) Where the Claimant disputes the Claim Decision, the Claimant can seek a review of the Claims Decision by submitting a fully completed Request for Review Form to the Defendant, postmarked no later than 35 days from the date of the Claim Decision. The Claimant is not permitted to append or include any information or documents that were not submitted by the Claimant with the Claim Form or in response to any requests for additional information from the Defendant.
- (b) Upon receipt of a Request for Review Form, the Defendant shall have the opportunity to re-consider the Claims Decision and to accept all or part of the claim in its sole discretion. If the Defendant accepts all or part of the claim, the Defendant shall issue a new Claim Decision in accordance with the terms of this Agreement.
- (c) Within 45 days of receiving a Receipt for Review Form, if the Defendant does not accept all or part of the claim, the Defendant shall prepare and provide the Inspector or the Adjudicator, as appropriate, with the following "Review Materials": (i) the Claim Form and any supporting documents; (ii) any information or documents that were submitted by the

Claimant in response to requests for additional information from the Defendant; (iii) any inspection report prepared by the Defendant or an agent of the Defendant; (iv) the Claims Decision; (v) the Request for Review Form; and (vi) a response to Request for Review setting out the Defendant's response to any statements contained in the Request for Review Form.

- (d) If the Inspector, in its sole discretion, deems it necessary to inspect a roof, the Inspector can visit the property to inspect the roof. The Inspector shall make reasonable efforts to notify the Claimant of the date and approximate time of the inspection. The Claimant can be present during the inspection, as scheduled by the Inspector. The Inspector shall conduct the inspection within 45 days of receiving the Review Materials, but shall be granted additional time in the event that weather conditions or volume of Requests for Review affect the Inspector's ability to timely proceed. In conducting any inspection, the Inspector shall be permitted interior access to the roof and attic area of the relevant structure. The failure of the Claimant to provide the Inspector reasonable interior access to the roof and attic area of the relevant structure, when requested by the Inspector, shall result in the denial of the claim.
- (e) Where the review is conducted by the Adjudicator, the Adjudicator shall conduct a review of the Claim Decision as expeditiously as possible, and in any event within 45 days of receipt of the Review Materials, to make a Review Decision. The Adjudicator's Review Decision shall be based solely on the terms of this Agreement and the Review Materials.
- (f) Where the review is conducted by the Inspector, the Inspector shall conduct review of the Claim Decision as expeditiously as possible, and in any event within 45 days of receipt of the Review Materials, or if an inspection was conducted, within 45 days of conducting the inspection, to make a Review Decision. The Inspector's Review Decision shall be based solely on the terms of this Agreement, the Review Materials, and the results of any inspection conducted by the Inspector.
- (g) For greater certainty, the Inspector and the Adjudicator have no authority to award to a Claimant any relief other than the settlement benefits provided for in this Agreement.
- (h) Promptly after making a Review Decision, the Inspector or the Adjudicator shall send copies of the Review Decision to the Claimant and the Defendant.
- (i) Where the Claimant has elected the Cash Settlement Option, within 30 days of receipt of the Review Decision, the Defendant shall provide to the

Claimant any settlement benefits due and owing as a result of the Review Decision.

- (j) Where the Claimant has elected the Payment of Repairs Settlement Option, within 120 days after the receipt of the Review Decision, the Defendant shall provide to the Claimant the information required pursuant to section 6.4(a) below.
- (k) The Review Decision shall be final and binding and not subject to any further right of appeal.

5.26 Where a Claimant has filed a Claim Form in the French language, the Review Decision shall be issued in the French language.

5.27 The Inspector may review disputed Claims Decisions, where the dispute relates to: (i) whether the shingles at issue are BP Organic Shingles; (ii) whether there is Damage to BP Organic Shingles; (iii) whether the Defendant has established that a Causation Defense was a principal cause of the Damage to BP Organic Shingles; (iv) measurement of the roof slope; (v) the extent of Damaged BP Organic Shingles on a roof slope; (vi) the reasonableness of the Approved Repairs Amount; and/or (vii) the proration of the Approved Repairs Amount. The Inspector's jurisdiction in reviewing disputed Claims is limited by section 5.25(g).

5.28 The Adjudicator may review any disputed Claim Decisions, where the dispute relates to whether the Claimant has filed a properly completed Claim Form or any matter that is not enumerated in section 5.27. The Adjudicator's jurisdiction in reviewing disputed Claims is limited by section 5.25(g).

5.29 The Adjudicator or Inspector, as the case may be, shall deny a claim where the shingles are not BP Organic Shingles or where the Claimant has engaged in fraudulent and/or abusive practices, including but not limited to submitting false claims, samples or documentation, and shall take such other actions as may be appropriate to prevent such

fraudulent and/or abusive practices in the future. Class Counsel and the Defendant shall cooperate in discouraging any abuse of the claims process.

5.30 Where the Adjudicator or Inspector, as the case may be, determines that a Claimant has engaged in fraudulent practices or that a Claimant requested a review of the Claim Decision where the shingles are not BP Organic Shingles, the Adjudicator or Inspector shall award costs payable forthwith to the Defendant by the Claimant, in the amount of CDN \$250.00 for Claimants who are members of the Canadian National Class or the Quebec Class, and U.S. \$250.00 for Claimants who are members of the U.S. Class. There shall be no right of appeal from a decision awarding costs to the Defendant pursuant to this section.

5.31 The Inspector and the Adjudicator shall maintain records of their activities in a computerized database electronically accessible by Class Counsel and the Defendant in a secure, read-only environment and shall provide such periodic and special reports as the Courts, Class Counsel, or the Defendant may request.

5.32 The Adjudicator and the Inspector shall each have a continuing obligation to be neutral and unbiased in respect of their obligations under this Agreement for the duration of their respective appointments. Defendant and Class Counsel shall have the right to audit independently the work of the Inspector and the Adjudicator. If the Defendant and/or Class Counsel are not satisfied that the Inspector and/or the Adjudicator are resolving Requests for Review in a neutral, fair and prompt manner, they shall work with the Inspector and/or the Adjudicator to resolve any issues. If the issue(s) is not resolved in an appropriate manner, the Defendant and/or Class Counsel can ask for the appointment of a new entity, to be agreed upon by the Parties, to perform the duties of the Inspector and/or the Adjudicator under this Agreement. If the Defendant and Class Counsel are unable to reach agreement on whether it is

necessary to replace the Inspector and/or the Adjudicator or who should be appointed as a replacement for the Inspector and/or the Adjudicator, the Party seeking to replace the Inspector and/or the Adjudicator shall seek directions from the Ontario Court in this regard. The Ontario Court's decision in this respect shall not be subject to any right of appeal.

5.33 In no event shall any Released Party have any liability for claims of wrongful or negligent conduct on the part of the Inspector, the Adjudicator or their respective agents.

Assignment of Claims and Disclosure to Subsequent Property Owners

5.34 Unless the relevant Damaged BP Organic Shingles have been removed and replaced, any Claimant who has received settlement benefits pursuant to the Cash Settlement Option, in respect of a claim, shall advise any subsequent purchaser of the property in respect of which the claim was made of: (i) the fact that settlement benefits have been received; (ii) that no additional claim can be made under the Agreement with respect to those Damaged BP Organic Shingles for which settlement benefits have been received; and (iii) such other disclosures as may be required by law.

5.35 Except as provided in this section, Settlement Class Members may not assign their claims.

- (a) Subject to subsection (b) and to the terms of the applicable warranty, upon the sale of a property with a building with BP Organic Shingles, the purchaser shall succeed to the rights of the Settlement Class Member by acquiring such property and will receive and succeed to all rights and obligations created by this Agreement.
- (b) Upon the sale of a property with a building with BP Organic Shingles, a Settlement Class Member who sells the property may retain, pursuant to a written assignment agreement executed contemporaneously with the sale of the property, all rights and obligations created by this Agreement. In these circumstances, the Settlement Class Member must submit a Claim Form postmarked no later than 60 days after the later of the Effective Date

or the sale of the property and include evidence of the assignment with the Claim Form.

Costs of Administering Claims

5.36 Except as otherwise provided by this Agreement, the Defendant shall be solely responsible for and shall pay all reasonable fees and expenses incurred by the Inspector and the Adjudicator in administering Requests for Review and disputes relating to Repair Invoices pursuant to section 6.4(h) as well as all costs of the Defendant incurred in administering claims.

Reporting and Audit Rights

5.37 On the first anniversary of the Effective Date, and annually thereafter until one year after the expiration of the last of the Applicable Warranty Periods, the Defendant shall serve on a designee of Class Counsel a report identifying the Claimants whose claims have been resolved in the prior 12 months and the settlement benefits distributed to each Eligible Claimant.

5.38 Class Counsel shall have the right to audit, on an annual basis, the processing and disposition of claims by the Defendant. In connection with such an audit, Class Counsel shall have the right to examine all books and records maintained by the Defendant related to the processing of claims covered by this Agreement, including any Claim Forms, inspection reports and correspondence with Claimants.

5.39 The Defendant shall maintain a copy of all paper and electronic documents or records maintained by the Defendant in respect of claims submitted until two years after the relevant claim has been finally resolved. However, where a claim has been allowed in full, the Defendant can immediately dispose of any shingle samples submitted by the Claimant. Where a claim has been denied, in whole or in part, the Defendant must retain a 1 foot square exemplar of any shingle samples submitted by the Claimant until 45 days after the issuance of a Claim

Decision, or, if the Claimant has filed a timely Request for Review, until 45 days after the disposition of the independent review.

5.40 Class Counsel and counsel for the Defendant shall meet in person or by telephone conference, as reasonably necessary, to discuss the implementation of this Agreement and attempt to resolve any concerns of the Parties. If the Parties are unable to resolve their concerns in accordance with this section, such disputes shall be resolved in accordance with section 16.6.

Confidentiality of Claimant Information

5.41 Information and documents about individual claims, claims processing and inspections is confidential and shall only be disclosed in accordance with the terms of this Agreement, any order of the Courts, or as otherwise required by the law.

6. SETTLEMENT BENEFITS

6.1 If the Defendant, the Inspector or the Adjudicator determines that the Claimant is an Eligible Claimant, settlement benefits shall be issued pursuant to sections 6.2 to 6.6 below.

6.2 The number of squares on which settlement benefits shall be calculated is based on the size of the roof slope and the extent of Damaged BP Organic Shingles on a roof slope, as follows:

- (a) If the Damaged BP Organic Shingles comprise five (5%) percent or more of a roof slope, settlement benefits will be calculated based on the total number of squares on the entire roof slope.
- (b) If the Damaged BP Organic Shingles comprise less than five (5%) percent of a roof slope, settlement benefits will be calculated based on the number of Damaged BP Organic Shingles.
- (c) If an Eligible Claimant receives settlement benefits for less than the entire roof slope and the Claimant suffers additional Damage to BP Organic Shingles to other portions of the roof slope, the Claimant can submit further claims with respect to such other portions of the roof slope in accordance with the terms of this Agreement.

While the number of squares forms the basis on which settlement benefits are calculated, settlement benefits will be prorated, if applicable, in accordance with sections 6.4(b), 6.5 and 6.6 below.

6.3 Eligible Claimants shall have two settlement benefit options: the Payment of Repairs Settlement Option and the Cash Settlement Option.

6.4 Under the Payment of Repairs Settlement Option, subject to section 4.3, the Defendant shall provide settlement benefits to Eligible Claimants, in accordance with the following provisions:

- (a) The Claim Decision or Review Decision shall state the extent to which repair or replacement of the Damaged BP Organic Shingles will be compensated pursuant to the terms of this Agreement. In particular, the Claim Decision or Review Decision shall state the number of squares (calculated in accordance with section 6.2) with respect to which the Defendant shall be required to pay all or part of the costs of repairing or replacing the Damaged BP Organic Shingles (the "Approved Repairs"). The Claim Decision or notice provided in accordance with section 5.25(j) shall also state:
 - (i) the Defendant's estimate of the costs of repair or replacement in Canadian (CDN) dollars for members of the Canadian National Class or the Quebec Class and American (U.S.) dollars for members of the U.S. Class. Such estimate shall be calculated based on the following principles:
 - (1) Subject to the other provisions of this section 6.4(1)(a)(i), the estimate shall be calculated in accordance with the terms of the Applicable Warranty and, for greater clarity, shall not include costs in respect of repairs or replacement that are not specifically provided for under the terms of the Applicable Warranty.
 - (2) During the proration period only, such estimate shall be based on the costs of repairing or replacing the Damaged BP Organic Shingles at the time that the claim was filed in accordance with the terms of this Agreement and not at the time of the original installation of the Damaged BP Organic Shingles.

- (3) In accordance with the terms of the Applicable Warranty, notwithstanding the foregoing, for BP Organic Shingles installed on or after January 1, 2006, such estimate shall be no greater than the original costs of installing the Damaged BP Organic Shingles.

The estimate calculated in accordance with this section 6.4(a)(i) shall represent the total possible settlement benefits payable under the Payment of Repairs Settlement Option (the "Approved Repairs Amount");

- (ii) the portion of the Approved Repairs Amount that will be reimbursed by the Defendants, provided that the Claimant otherwise satisfies the requirements of this Agreement;
 - (iii) instructions on submitting Repairs Invoices for reimbursement; and
 - (iv) instructions on how to request a review with respect to the reasonableness of the Approved Repairs Amount and/or the proration of the Approved Repairs Amount. Any disputes regarding the reasonableness of the Approved Repairs Amount or the proration of the Approved Repairs Amount shall be resolved by the Inspector in accordance with section 5.25 above.
- (b) During the Non-Proration Period, the Defendant shall reimburse the Claimant for the full Approved Repairs Amount. After the Non-Proration Period, the Defendant shall reimburse the Claimant for the Approved Repairs Amount on a prorated basis, calculated in accordance with section 6.6 below. Except as provided for in this subsection, the Defendant shall have no responsibilities in respect to costs incurred by the Claimant in repairing and/or replacing the Damaged BP Organic Shingles.
 - (c) The Claimant must complete the Approved Repairs within one year of the date of the Claim Decision or notice provided in accordance with section 5.25(j). In completing the Approved Repairs, the Eligible Claimant can select the roofer of his/her/its choice. However, the Eligible Claimant must use roofing shingles manufactured by the Defendant. The failure by the Eligible Claimant to use roofing shingles manufactured by the Defendant will result in a forfeiture of settlement benefits in respect of the BP Organic Shingles that are the subject of the claim and will relieve the Defendant of its obligation to pay any portion of Approved Repairs Amount.
 - (d) The Eligible Claimant must submit to the Defendant copies of Repairs Invoices immediately upon receipt of such Repairs Invoices and in any

event no later than 15 days after receipt of such Repairs Invoices. The Repairs Invoices must clearly indicate the type of shingles installed on the structure. The failure by the Eligible Claimant to provide adequate documentation establishing that the Eligible Claimant used roofing shingles manufactured by the Defendant will result in a forfeiture of settlement benefits in respect of the BP Organic Shingles that are the subject of the claim and will relieve the Defendant of its obligation to pay any portion of Approved Repairs Amount.

- (e) Within 30 days of receipt of Repairs Invoices, where the Defendant is satisfied that all or part of the Repairs Invoices relates to Approved Repairs and the Eligible Claimant used roofing shingles manufactured by the Defendant, the Defendant shall reimburse the Eligible Claimant for the portion of the Approved Repairs Amount that is payable by the Defendant pursuant to sections 6.4(b) and 6.6. Payments shall be issued in Canadian (CDN) dollars for members of the Canadian National Class or the Quebec Class and in American (U.S.) dollars for members of the U.S. Class.
- (f) Within 30 days of receipt of Repairs Invoice, where the Defendant takes the position that all or part of a Repairs Invoice does not relate to Approved Repairs or the Repairs Invoices do not adequately establish that the Eligible Claimant used roofing shingles manufactured by the Defendant, the Defendant shall notify the Claimant of the following:
 - (i) The Defendant's position that all or part of the Repairs Invoice does not relate to Approved Repairs or the Repairs Invoice does not adequately establish that the Eligible Claimant used roofing shingles manufactured by the Defendant; and
 - (ii) the Claimant has the right to seek review of the Defendant's position by submitting a Repair Dispute Form to the Defendant, postmarked no later than 15 days of the notice.
- (g) Upon receipt of a Repair Dispute Form, the Defendant shall have the opportunity to re-consider the Repairs Invoices and to reimburse the Eligible Claimant for all or part of the Repairs Invoice in its sole discretion. If the Defendant only accepts part of the Repairs Invoice, the Defendant shall issue a notice to the Eligible Claimant in accordance with section 6.4(f).
- (h) Within 15 days of receipt of a Repair Dispute Form, if the Defendant does not reimburse the Eligible Claimant for all or part of the Repairs Invoice in accordance with section 6.4(g), the Defendant shall forward the Repair Dispute Form to the Inspector, along with a copy of the Claim Decision or Review Decision, the notice referred to in section 6.4(f) and the Repairs Invoice. The Inspector shall promptly and, in any event within 30 days of

receipt of such material, resolve such disputes based solely on a review of the Claim Decision or Review Decision, the notice referred to in section 6.4(f) and the Repairs Invoice and the terms of this Agreement. The Inspector shall promptly notify the Defendant and the Claimant of its decision regarding the eligibility of the repairs. Where the Inspector determines that the Repairs Invoice relates to Approved Repairs or that the Repairs Invoice adequately establishes that the Eligible Claimant used roofing shingles manufactured by the Defendant, the Defendant shall within 45 days of receipt of the Inspector's decision reimburse the Claimant in respect of the Repairs Invoice in accordance with the Inspector's decision and the terms of this Agreement. The Inspector's decision shall be final and binding and subject to no further right of appeal.

6.5 Under the Cash Settlement Option, subject to section 4.3, the Defendant shall provide settlement benefits to Eligible Claimants in accordance with the following provisions:

- (a) The Claim Decision or Review Decision shall state the number of squares (calculated in accordance with section 6.2) with respect to which the Defendant shall be required to pay;
- (b) During the Non-Proration Period, the Defendant shall pay Eligible Claimants \$75/square, which amount constitutes compensation for the costs of replacement shingles and any labour expenses associated with removing and replacing the Damaged BP Organic Shingles. Payments shall be issued in Canadian (CDN) dollars for members of the Canadian National Class or the Quebec Class, and in American (U.S.) dollars for members of the U.S. Class; and
- (c) After the Non-Proration Period, the Defendant shall pay Eligible Claimants \$75/square on a prorated basis, calculated in accordance with section 6.6 below, which amount constitutes compensation for the costs of replacement shingles and any labour expenses associated with removing and replacing the Damaged BP Organic Shingles. Payments shall be issued in Canadian (CDN) dollars for members of the Canadian National Class or the Quebec Class, and in American (U.S.) dollars for members of the U.S. Class.

6.6 After the Non-Proration Period, all compensation to be calculated pursuant to sections 6.4(b) and 6.5 will be prorated based on the proration percentages contained in the Applicable Warranty. The proration shall be calculated based on the date that a completed Claim Form is received by the Defendant, except in circumstances where the Claimant has previously

filed a warranty claim with the Defendant, which previously filed warranty claim was rejected in whole or in part, and it is determined that, had the previously filed warranty claim been determined in accordance with the terms of this Settlement Agreement, the Claimant would have been entitled to compensation, in which circumstances the proration shall be calculated based on the date that the previously-filed warranty claim was received, in full, by the Defendant.

7. CLASS COUNSEL FEES AND EXPENSES

7.1 The Defendant shall pay the reasonable legal fees, disbursements and applicable Canadian provincial and federal sales taxes of all counsel for the Plaintiffs in the Actions in the amount of Cdn \$2,400,000, subject to the approval of the Courts. The Defendant shall have no further obligation in respect of the present or future legal fees, disbursements, or taxes of counsel for the Plaintiffs in the Actions.

8. PRELIMINARY APPROVAL ORDERS

8.1 Class Counsel shall file motions for "Preliminary Approval Orders" as soon as practical after the execution of this Agreement, requesting that the Courts enter Preliminary Approval Orders sequentially, first in the Ontario Court, and then in the Quebec Court and then in the U.S. Court, that:

- (a) Provide for the conditional certification or authorization of the Settlement Classes, as applicable, for settlement purposes only, pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 in respect of the Canadian National Class, the *Quebec Code of Civil Procedure* in respect of the Quebec Class and V.R.C.P. 23 in respect of the U.S. Class, and approval of one or more of the Canadian Class Representatives to act as the representative plaintiffs for the Canadian National Class or the Quebec Class, as appropriate, and one or more of the U.S. Class Representatives to act as representative plaintiff(s) for the U.S. Class;
- (b) Approve the form and content of the Settlement Notice and the method of disseminating the Settlement Notice;

- (c) Approve the process and set the deadline for Settlement Class Members to opt out of the applicable Settlement Class or object to the Agreement; and
- (d) Schedule dates for Final Approval Hearings.

8.2 Prior to and as a condition precedent to filing with the Courts, Class Counsel shall obtain the signed, written approval of counsel for the Defendant as to the form and content of the motion materials and orders contemplated by section 8.1.

9. NOTICE OF SETTLEMENT

9.1 The summary and long-form "Settlement Notices" shall be in a form to be agreed upon by the Parties or in such other form as approved by the Courts, and shall: (i) advise Settlement Class Members of the contingent certification or authorization of the Settlement Classes; (ii) state that the Agreement is contingent upon the Courts' final approval; (iii) advise Settlement Class Members of their rights to opt out of the Settlement Class, object to the Agreement, file a claim under the settlement, or do nothing, and the timelines, process and consequences of each; (iv) advise Settlement Class Members of the dates, times and locations of the Final Approval Hearings; and (v) provide instructions as how to obtain additional information about the Agreement and Settlement Class Members' options with respect to the Agreement. Prior to and as a condition precedent to seeking the approval of the Courts of the Settlement Notices, Class Counsel shall obtain the signed, written approval of Counsel for the Defendant as to the form and content of such Settlement Notices.

9.2 The summary Settlement Notice shall be published in such newspaper and other publications as agreed upon by the Parties or as otherwise ordered by the Courts.

9.3 The long-form Settlement Notice shall be mailed, first class postage prepaid, to Settlement Class Members identified by the Parties through reasonable efforts and reasonably

9.7 No later than the publication of the first Settlement Notice pursuant to section 9.2, the Defendant shall cause an internet website concerning the Agreement to be established (the "Settlement Website"). The internet address of the Settlement Website shall be included in the Settlement Notices. The Settlement Website shall provide: (i) general information concerning deadlines for opting out of the Settlement Class, objecting to the Agreement, or filing a Claim Form; (ii) the dates, times and locations of relevant Court proceedings, including the Final Approval Hearings; (iii) a listing of the toll-free phone number to be established pursuant to section 9.6; (iv) copies of this Agreement, the long-form Settlement Notice, the Claim Form, and the Opt-Out Form; and (v) information concerning the submission of Claim Forms. The Settlement Website shall be maintained until the expiration of the last of the Applicable Warranty Periods. A similar website shall be available in the French language. The Settlement Website can be a webpage within the Defendant's website, currently www.bpcan.com.

9.8 The costs associated with establishing and maintaining the Settlement Website and toll-free telephone facility shall be paid by the Defendant.

9.9 The Defendant shall include in the section of its website concerning warranty claims for roofing shingles (in English and French): (i) a statement to the effect that a settlement has been entered into in relation to BP Organic Shingles; and (ii) a link to the Settlement Website. Such information shall be maintained on the Defendant's website until the expiration of the last of the Applicable Warranty Periods.

9.10 All Settlement Notices, Claim Forms and Opt-Out Forms disseminated in the Province of Quebec or sent to residents of Quebec, shall be available in both the English and French languages, or, where appearing in a publication that is in either the English or French language, shall appear in the language of that publication.

10. SETTLEMENT CLASS MEMBERS' RIGHT TO OPT OUT AND DISMISSAL OF OTHER PROCEEDINGS

10.1 A Settlement Class Member may opt out of or request exclusion from the Settlement Class. To exercise this right, members of the Canadian National Class must submit a fully completed Opt-Out Form to Canadian Class Counsel at an address to be specified in the Opt-Out Form postmarked no later than the Opt-Out Deadline, members of the Quebec Class must submit a fully completed Opt-Out Form to Canadian Class Counsel and the Quebec Court at addresses to be specified in the Opt-Out Form postmarked no later than the Opt-Out Deadline, and members of the U.S. Class must submit a fully completed Opt-Out Form to U.S. Class Counsel and the U.S. Court at addresses to be specified in the Opt-Out Form postmarked no later than the Opt-Out Deadline. Opt-Out Forms sent to an incorrect address or postmarked after the Opt-Out Deadline shall not be valid.

10.2 In seeking the Preliminary Approval Orders, the Plaintiffs and the Defendant will request that the Opt-Out Deadline be set on a date that is at least 60 days after the initial dissemination of the summary Settlement Notice.

10.3 The Opt-Out Form shall require the signature of the Settlement Class Member and any counsel who the Settlement Class Member has retained in respect of this litigation. The Opt-Out Form shall also require the Settlement Class Member to state the address of the property(ies) of the Settlement Class Member that might contain BP Organic Shingles, and specify the number of units of residential property or other structures at each address containing BP Organic Shingles owned by the Settlement Class Member opting-out of the settlement.

10.4 Settlement Class Members who have validly and timely opted out of the Settlement Class shall not be entitled to relief under or be affected by this Agreement.

10.5 Settlement Class Members who have opted out of the Settlement Class can withdraw their opt-out requests prior to the Effective Date, but only if they accept the benefits and terms of this Agreement and dismiss without costs and with prejudice any pending Other Action against the Released Parties.

10.6 Within seven (7) days after the Opt-Out Deadline, Class Counsel shall provide counsel for the Defendant, by electronic mail, facsimile, and/or hand delivery, with a list identifying each person who has submitted a complete and timely Opt-Out Form and attaching copies of all such Opt-Out Forms.

10.7 In the sole discretion of the Defendant, this Agreement may be unilaterally terminated if the number of Settlement Class Members opting out reaches a level that, in the Defendant's judgment, threatens to frustrate the essential purpose of this Agreement. The Defendant shall advise Class Counsel and the Courts, in writing, of this election within thirty (30) days of receiving the list of opt outs pursuant to section 10.6.

10.8 Each member of the Canadian National Class and the U.S. Class, who does not opt-out, shall be deemed to consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions, to the extent that the Other Actions relate to claims released pursuant to section 15.1, against the Released Parties.

10.9 All Other Actions, to the extent that the Other Actions relate to claims released pursuant to section 15.1, that were commenced in Canada (except Quebec) or the United States by any Settlement Class Member who does not opt out shall be dismissed against the Released Parties without costs and with prejudice.

10.10 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, to the extent that the Other Actions relate to claims released pursuant to section 15.1, against the Released Parties.

10.11 Each Other Action, to the extent that the Other Actions relate to claims released pursuant to section 15.1, commenced in Quebec by a member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be dismissed against the Released Parties, without costs and without reservation.

11. SETTLEMENT CLASS MEMBERS' RIGHT TO OBJECT

11.1 A Settlement Class Member may object to the Agreement. To exercise this right, members of the Canadian National Class or Quebec Class must submit written notification of the objections to Canadian Class Counsel at an address to be specified in the long-form Settlement Notice postmarked no later than the relevant Objection Deadline, and members of the U.S. Class must submit written notification of the objections to U.S. Class Counsel and the U.S. Court at the addresses to be specified in the long-form Settlement Notice postmarked no later than the relevant Objection Deadline. Objections sent to an incorrect address shall not be considered. Forthwith upon receiving an objection, Class Counsel shall forward a copy of such written objection to counsel for the Defendant.

11.2 To be valid and therefore considered by the appropriate Court, the written objection must bear the signature of the Settlement Class Member and must specify: (i) the Settlement Class Member's current address and telephone number; (ii) the address of the property(ies) that may contain BP Organic Shingles; (iii) the number of units of residential property or other structures at each address owned by the Settlement Class Member containing BP Organic Shingles; (iv) the exact nature of the objection; and (v) whether or not the Settlement

Class Member intends to appear at the appropriate Final Approval Hearing. If the Settlement Class Member is represented by counsel, the objection shall also be signed by counsel.

11.3 Objections that are sent to an incorrect address or do not contain the required information shall not be valid and will not be considered by the Courts.

11.4 In seeking the Preliminary Approval Orders, the Plaintiffs and the Defendant will request that the Objection Deadline be set on a date that is at least 60 days after the initial dissemination of the summary Settlement Notice.

12. FINAL APPROVAL ORDERS

12.1 This Agreement is subject to and conditioned upon the Courts granting final approval of the settlement embodied in this Agreement, and entering orders approving the Agreement and dismissing the Actions in accordance with the terms of this Agreement (the "Final Approval Orders").

12.2 The motions for final approval of this Agreement shall be scheduled sequentially, first in the Ontario Court, then in the Quebec Court and then in the U.S. Court.

12.3 If the Canadian Courts grant final approval of the Agreement, the Canadian Final Approval Orders shall, among other things:

- (a) Approve finally this Agreement and its terms as being a fair, reasonable and in the best interests of Settlement Class Members within the meaning of section 29 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (or, in the case of Quebec, approve and homologate the Agreement as a transaction pursuant to section 1025 of the Quebec Code of Civil Procedure) and direct that the Agreement be implemented in accordance with its terms;
- (b) Dismiss the relevant Canadian Action; and
- (c) Provide that the applicable Court shall not make any order or give any direction in respect of any matter unless that order is conditional upon a

complementary order or direction being made or given by the other Courts with which it shares jurisdiction over that matter, as applicable.

12.4 If the U.S. Court grants final approval of the Agreement, the Final Approval Order shall, among other things:

- (a) Approve finally this Agreement and its terms as being a fair, reasonable and adequate settlement as to the Settlement Class Members within the meaning of V.R.C.P. 23, the *Class Action Fairness Act*, and other applicable law, and direct that the Agreement be implemented in accordance with its terms;
- (b) Dismiss the U.S. Action;
- (c) Provide that the form and manner of notice given to the Settlement Class Members fairly and adequately informed them of all material elements of the U.S. Action and the proposed Agreement and constituted sufficient notice to the Settlement Class Members in accordance with V.R.C.P. 23 and due process requirements; and
- (d) Provide that the U.S. Court shall not make any order or give any direction in respect of any matter unless that order is conditional upon a complementary order or direction being made or given by the other Courts with which it shares jurisdiction over that matter.

12.5 Prior to and as a condition precedent to filing with the Courts, Class Counsel shall obtain the signed, written approval of counsel for the Defendant as to the form and content of any motions materials and draft orders filed with the Courts in respect of the Final Approval Hearings.

13. DEFENDANT'S RIGHT OF TERMINATION

13.1 The Defendant's willingness to settle on a class-action basis and not to contest the accompanying certification of the Settlement Classes is dependent upon achieving finality and the desire to avoid the expense of this and other related litigation. Consequently, the Defendant has the unilateral right to terminate this Agreement by delivering a written notice of termination to Class Counsel if any of the following conditions subsequently occurs:

- (a) The Courts do not enter the Preliminary Approval Orders sought pursuant to section 8.1 or the Courts enter Preliminary Approval Orders in a materially modified form from that which was agreed upon by the Defendant in accordance with section 8.2. Materiality shall be determined by the Defendant, in its sole discretion, acting reasonably;
- (b) The Courts do not enter the Final Approval Orders sought pursuant to section 12 or the Courts enter Final Approval Orders in a materially modified form from that which was agreed upon by the Defendant in accordance with section 12.5. Materiality shall be determined by the Defendant, in its sole discretion, acting reasonably;
- (c) Any Preliminary Approval Order or Final Approval Order is not upheld on appeal, including review by any appellate court in the United States or Canada, or such Order is approved by any appellate court in a materially modified form from that which was agreed upon by the Defendant in accordance with section 12.5. Materiality shall be determined by the Defendant, in its sole discretion, acting reasonably;
- (d) The Effective Date has not occurred by December 31, 2012; or
- (e) The Defendant exercises its option under section 10.7 above to terminate the Agreement on account of opt-outs.

13.2 In the event that this Agreement does not become effective or is terminated for any reason:

- (a) the provisional certification of the Settlement Classes shall cease;
- (b) this Agreement shall become null and void and of no further force and effect;
- (c) the Agreement and all negotiations, statements, communications, proceedings, and documents relating thereto, and the fact that the Parties agreed to the Agreement, shall be without prejudice to the rights of any Settling Party and shall not be used for any purpose whatsoever in any subsequent proceeding in the Actions or in any other action in any court or tribunal, and shall not be construed as an admission or concession by any Party of any fact, matter, allegation, or proposition of law; and
- (d) the Settling Parties shall be restored without prejudice to their respective positions as if the Agreement had not been negotiated, made, or filed with any of the Courts, including but not limited to reservation of defenses including improper service and lack of personal jurisdiction.

13.3 If this Agreement is terminated or otherwise fails to take effect for any reason, the provisions of sections 3.5, 13.2 and 17.1 shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of sections 3.5, 13.2 and 17.1 within the meaning of this Agreement, but for no other purposes. All other provisions of this Agreement and all other obligations pursuant to this Agreement shall cease immediately.

14. EFFECTIVE DATE

14.1 The Agreement and the obligations of the Parties under this Agreement shall not become effective until, and are expressly conditioned upon, the occurrence of the Effective Date.

14.2 The “Effective Date” shall occur when the Courts have issued the Final Approval Orders and the Final Approval Orders have become final. The Final Approval Orders shall become final when: (i) all periods within which to file an appeal from the Final Approval Orders have expired without the filing of any appeals; or (ii) in the event that an appeal from the Final Approval Orders is filed, a final order has been entered disposing of the appeal, and any time for further appeal has expired.

15. RELEASE

15.1 Upon the Effective Date, all Settlement Class Members who have not timely opted out of the Settlement Class pursuant to the terms of this Agreement shall be conclusively deemed to have released and forever discharged (as by an instrument under seal without further act by any person, and upon good and sufficient consideration), on behalf of themselves and their agents, heirs, executors and administrators, successors, attorneys, representatives, and assigns (collectively, the “Releasing Parties”), each of the Defendant, and its predecessors, successors, present or former parents or subsidiaries, affiliates, related parties, officers, directors, employees,

agents, attorneys, representatives, suppliers, distributors, vendors and assigns, which for greater certainty includes, without limitation, Emco Corporation, Emco Limited and BPCO Corp. (collectively, the "Released Parties"), from each and every claim of liability, including relief under federal law or the law of any province, territory or state, which arises out of Damage to BP Organic Shingles, including without limitation all claims or liability on account of or related to Damage to BP Organic Shingles, which were alleged or could have been alleged in the Actions and all claims (whether arising prior to the Effective Date or thereafter) for penalties, punitive damages, exemplary damages, statutory damages, damages based upon a multiplication of compensatory damages, court costs, or attorneys' fees or expenses, which might otherwise have been made in connection with any claim relating to Damaged BP Organic Shingles. The Releasing Parties specifically reserve any and all other claims and causes of action relating to personal injury and/or damage to the interior of the house or other structure caused by the Damaged BP Organic Shingles. In addition, the Releasing Parties specifically reserve any and all other claims and causes of action against any and all other persons or entities who are not Released Parties. The Releasing Parties acknowledge and agree that such reservation creates no basis for a claim of indemnification or contribution, however denominated, by the non-party against the Released Parties, as Releasing Parties have released all claims on which liability could be found against the Released Parties, and is solely intended to preserve a Releasing Party's ability to seek relief against the non-party. This release shall apply to all related subrogation claims of the Settlement Class Members' subrogees or insurance carriers.

15.2 It is the intent of the Parties that no Releasing Party shall recover, directly or indirectly, any sums for claims released by operation of this Agreement from the Released Parties, other than sums received under this Agreement and that the Released Parties shall have

no obligation to make any payments to any non-parties for liability arising out of claims released by operation of this Agreement.

- (a) Releasing Parties agree that in any action brought by a Releasing Party against any non-party arising out of or related to Damage to BP Organic Shingles, should any such non-party file a claim against any Released Party for contribution or indemnification, however denominated, arising out of or related to Damage to BP Organic Shingles, the Releasing Parties shall reduce any judgment against the non-party by the percentage, amount, or share necessary under applicable law to fully discharge and relieve the Released Parties of liability to the non-party for claims for contribution and indemnification, however denominated.
- (b) The Releasing Parties agree that the provisions of this Agreement and any claim thereunder constitute a good faith settlement under California Civil Code §§ 877 and 877.6 and comparable laws in other states, that Class Counsel and the Releasing Parties shall cooperate fully in any effort of the Released Parties to establish such good faith settlement before any court (including, without limitation, by joining in any motion or other procedure and providing declarations and other evidence to establish such good faith settlement where requested by any Released Party) and that all payments made under this Agreement relate to claims arising out of or related to BP Organic Shingles.
- (c) If notwithstanding the intention of the Parties expressed therein, any release given by the Releasing Parties is not given its full effect by operation of law, then the Releasing Parties shall be deemed to have and do hereby transfer and assign to Released Parties all claims, if any, that were deemed not released, to the extent necessary to effectuate the intent of the release.
- (d) Class Counsel shall cooperate with Released Parties to ensure that the releases set forth in this section are given their full force and effect and that Releasing Parties comply with their obligations set forth in this Agreement.

15.3 In the event that any Releasing Party seeks to invoke California Civil Code § 1542, which provides that “a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known to him must have materially affected his settlement with the debtor” (or any other like provision of law) in connection with BP Organic Shingles, the Releasing Parties and each of them now

expressly waive the provision of California Civil Code § 1542 (and all other like provisions of law) to the full extent that these provisions may be applicable to this release. Each of the Releasing Parties hereby does, and shall be deemed to, assume the risk that facts additional, different, or contrary to the facts, which each believes or understands to exist, may now exist or may be discovered after this Agreement becomes effective. Each of the Releasing Parties agrees that any such additional, different, or contrary facts shall in no way limit, waive, or reduce the foregoing release, which shall remain in full force and effect.

15.4 It shall be a condition of receipt of settlement benefits under this Agreement that each Settlement Class Member receiving settlement benefits execute a written release in favour of the Released Parties in respect of all claims released pursuant to section 15.1, in a form to be approved by the Defendant. Such written release shall be contained in the body of the Claim Form to be filed by Settlement Class Members.

16. EXCLUSIVE REMEDY; DISMISSAL OF ACTION; JURISDICTION OF COURT

16.1 Settlement Class Members who have not validly and timely opted out of the Settlement Class, shall be:

- (a) deemed Settlement Class Members for all purposes under this Agreement;
- (b) bound by the terms of this Agreement (including, without limitation, any and all releases);
- (c) deemed to have submitted to the jurisdiction of the Court in which they are a member of the Settlement Class; and
- (d) bound by any subsequent proceedings, orders, and judgment issued by the Court in the applicable Action.

16.2 Upon the Effective Date, the Releasing Parties shall be barred from commencing, initiating, continuing, maintaining, asserting, or prosecuting, either directly or indirectly, whether in Canada, the United States or elsewhere, on their own behalf or on behalf of any class or any

other person, any action, suit, cause of action, claim or demand against any Released Party in respect of the claims released pursuant to section 15.1 or any matter related thereto, except in accordance with this Agreement.

16.3 Upon the Effective Date, the Actions and all claims and allegations concerning BP Organic Shingles therein asserted by the Settlement Class Members will be dismissed without costs and with prejudice.

16.4 Each of the Courts shall retain exclusive jurisdiction over the Action commenced in its jurisdiction and the parties thereto.

16.5 The Parties agree that no Court shall 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.

16.6 Notwithstanding the above, the Parties agree that all disputes, claims, or controversies arising in connection with, pursuant to, or related to the implementation, administration, enforcement, or interpretation of the terms of this Agreement (including any action or proceeding to enforce this Agreement or secure damages for its breach) shall be finally resolved by the Ontario Court, or if the Ontario Court directs, by a referee appointed by the Ontario Court, and the Parties submit to the jurisdiction of the Ontario Court for purposes of implementing, administering, enforcing, and interpreting the settlement provided for in this Agreement. However, matters relating specifically to members of the Quebec Class or the U.S. Class shall be determined by the Quebec Court or U.S. Court, as appropriate. To the extent necessary, the referee appointed under this section shall have the authority to conduct a reference in accordance with the Ontario Rules of Civil Procedure. The Parties shall each bear their own

costs of such Court hearing or reference, unless the Ontario Court or referee in its, his or her discretion finds it reasonable to assess such costs solely to the Plaintiffs or the Defendant. The Plaintiffs and the Defendant shall each be responsible for one half of the fees and disbursements of the referee, as fixed by the Ontario Court.

16.7 In considering the reasonableness of any request made pursuant to the provisions of this Agreement, the Ontario Court or the referee shall weigh the burden and expense of complying with the request against the importance of the subject matter of the request, as well as the corresponding interest of the Defendant in achieving a full resolution and closure of the Actions.

17. OTHER TERMS AND CONDITIONS

17.1 The Plaintiffs, Class Counsel and the Defendant agree that, whether or not it is terminated, this Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Agreement, and any action taken to carry out this Agreement, shall not be referred to, offered as evidence or received in evidence in any present, pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Agreement, or to defend against the assertion of claims released pursuant to section 15.1, or as otherwise required by law or as provided in this Agreement.

17.2 The Defendant represents and warrants that: (i) it has all requisite corporate power and authority to execute, deliver, and perform this Agreement and to consummate the transactions contemplated hereby; (ii) the execution, delivery, and performance of this Agreement have been duly authorized by all necessary corporate action on the part of the Defendant; (iii) its signatories to the Agreement have full authority to sign on behalf of and to

bind the Defendant to its terms; and (iv) this Agreement has been duly and validly executed and delivered by the Defendant and constitutes its legal, valid, and binding obligation.

17.3 Plaintiffs, Defendant, and Class Counsel agree to cooperate fully in seeking court approval of this Agreement and to use their best efforts to effect the consummation of the settlement provided for herein. They further agree to execute all such additional documents as shall be reasonably necessary to carry out the provisions of this Agreement.

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

17.5 This Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement and to all members of the Settlement Class and their respective agents, heirs, executors, administrators, successors or assigns.

17.6 This Agreement and its exhibits constitute the entire agreement of the Parties with respect to the subject matter thereof. The settlement contemplated by this Agreement is not subject to any condition not expressly provided for herein, and there exist no collateral or oral agreements relating to the subject matter of the Agreement. In entering this Agreement, no Party is relying on any promise, inducement, or representation other than those set forth herein. Any agreement purporting to change or modify the terms of this Agreement or the exhibits hereto must be in writing and be signed by counsel for each of the Parties.

17.7 All of the exhibits attached hereto or referred to herein are incorporated as if fully set forth in the body of this Agreement.

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

17.9 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original. All counterparts shall constitute one Agreement, binding on all Parties hereto, regardless of whether all Parties are signatories to the same counterpart, but the Agreement will be without effect until and unless all Parties to this Agreement have executed a counterpart.

17.10 This Agreement shall be governed by the laws of the Province of Ontario.

17.11 This 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 Agreement shall have no force and effect.

17.12 Any headings, subheadings, or titles herein are used for purposes of convenience only and have no other legal force, meaning, or effect.


17.13 The Recitals and Schedules to this Agreement are material and integral parts hereof and are fully incorporated into, and form part of, this Agreement.

17.14 In the computation of time in this Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, they 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 defined by the Ontario *Rules of Civil Procedure*), the act may be done on the next day that is not a holiday.

17.15 This Agreement constitutes a transaction in accordance with *Civil Code of Québec* art. 2631 et seq., and the Plaintiffs and the Defendant are hereby renouncing any errors of fact, of law, and/or of calculation.

WHEREFORE, the undersigned have executed this Agreement on the 18th day of January, 2012.



HARRISON PENSA LLP
Jonathon Foreman
Attorneys for Ontario Plaintiffs

SISKINDS LLP
Charles Wright
Canadian Attorney for Defendant

**LAUZON BÉLANGER LESPÉRANCE
INC.**
Eric Lafreniere
Attorneys for Quebec Plaintiffs


SEDGWICK LLP
Michael Tanenbaum
U.S. Attorney for Defendant

AUDET & PARTERS, LLP
Michael McShane
Attorneys for U.S. Plaintiffs

17.15 This Agreement constitutes a transaction in accordance with *Civil Code of Québec* art. 2631 et seq., and the Plaintiffs and the Defendant are hereby renouncing any errors of fact, of law, and/or of calculation.

WHEREFORE, the undersigned have executed this Agreement on the 18th day of January, 2012.

HARRISON PENZA LLP
Jonathon Foreman
Attorneys for Ontario Plaintiffs



SISKINDS LLP
Charles Wright
Canadian Attorney for Defendant

**LAUZON BÉLANGER LESPÉRANCE
INC.**
Eric Lafreniere
Attorneys for Quebec Plaintiffs

SEDGWICK LLP
Michael Tanenbaum
U.S. Attorney for Defendant

AUDET & PARTERS, LLP
Michael McShane
Attorneys for U.S. Plaintiffs

17.15 This Agreement constitutes a transaction in accordance with *Civil Code of Québec* art. 2631 et seq., and the Plaintiffs and the Defendant are hereby renouncing any errors of fact, of law, and/or of calculation.

WHEREFORE, the undersigned have executed this Agreement on the 18th day of January, 2012.

HARRISON PENSA LLP
Jonathon Foreman
Attorneys for Ontario Plaintiffs

SISKINDS LLP
Charles Wright
Canadian Attorney for Defendant



**LAUZON BELANGER LESPERANCE
INC.**
Eric Lafreniere
Attorneys for Quebec Plaintiffs

SEDGWICK LLP
Michael Tanenbaum
U.S. Attorney for Defendant

AUDET & PARTERS, LLP
Michael McShane
Attorneys for U.S. Plaintiffs

17.15 This Agreement constitutes a transaction in accordance with *Civil Code of Québec* art. 2631 et seq., and the Plaintiffs and the Defendant are hereby renouncing any errors of fact, of law, and/or of calculation.

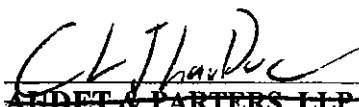
WHEREFORE, the undersigned have executed this Agreement on the 18th day of January, 2012.

HARRISON PENZA LLP
Jonathon Foreman
Attorneys for Ontario Plaintiffs

SISKINDS LLP
Charles Wright
Canadian Attorney for Defendant

**LAUZON BÉLANGER LESPÉRANCE
INC.**
Eric Lafreniere
Attorneys for Quebec Plaintiffs

SEDGWICK LLP
Michael Tanenbaum
U.S. Attorney for Defendant



AUDET & PARTERS, LLP
Michael McShane
Attorneys for U.S. Plaintiffs

CUNEO GILBERT & LADUCA, LLP
Charles J. Laduca

Exhibit “A” – Applicable Warranty Periods

Shingle Name	Applicable Warranty Period
Citadel	Sold 1994-2008: 20 years
Eclipse	Sold 1995-2001: 30 years Sold 2002-2003: original purchaser of shingles: lifetime; subsequent property owner: 30 years Sold 2004-2010: original purchaser of shingles: lifetime; subsequent property owner: 35 years
Eclipse HR	Sold 1994-2000: 30 years
Eclipse LS	Sold 2004-2006: 35 years
Elegance	Sold 1991-1993: 30 years Sold 1994-1997: 35 years
Elegance II	Sold 1996-1997: 30 years
Esgard 20	Sold 1992-1994: 20 years
Esgard 25	Sold 1987-1994: 25 years
Esgard Pro-Standard	Sold 1995-2000: 25 years
Europa	Sold 2001-2006: 25 years
Mirage	Sold 1998-2007: 25 years
Pro-Standard	Sold 1995-2005: 25 years
Rampart	Sold 1992-1993: 20 years Sold 1994-2010: 25 years
Roofmaster	Sold 1992-1993: 20 years Sold 1994-2008: 25 years
Roofmaster Classic	Sold 1996-2004: 25 years
Roofmaster Plus	Sold 1991-1993: 25 years Sold 1994-1996: 30 years
Super Eclipse	Sold 1995-1997: 35 years
Super Lok	Sold 1991-1993: 25 years Sold 1994-1998: 30 years
Tite Lok	Sold 1992-1993: 20 years Sold 1994-2007: 25 years
Tite On	Sold 1994-2004: 20 years
Tradition	Sold 1991-1993: 25 years Sold 1994-2009: 30 years
Weather-Tite	Sold 2004-2007: 25 years

SHEREBRIN and KRAUSE

-and-

BUILDING PRODUCTS OF CANADA CORP.

Court File No.: 4367/11CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at LONDON.

ORDER

HARRISON PENSEA ^{LLP}
Barristers & Solicitors
450 Talbot Street
London, ON N6A 4K3

Jonathan J. Foreman (LSUC #45087H)
Genevieve Meisenheimer (LSUC #59191U)
Tel: (519) 679-9660
Fax: (519) 667-3362

Lawyers for the Plaintiffs

File No: 148924