

**CANADIAN POLYURETHANE FOAM CLASS ACTIONS  
VITAFOAM SETTLEMENT AGREEMENT**

Made as of June 16, 2015

Between

**“HI! NEIGHBOR” FLOOR COVERING CO. LIMITED, MAJESTIC MATTRESS MFG.  
LTD, TRILLIUM PROJECT MANAGEMENT LTD. and OPTION CONSOMMATEURS**

(the "Plaintiffs")

And

**VITAFOAM PRODUCTS CANADA LIMITED and  
VITAFOAM, INC.**

(the "Settling Defendants")

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**CANADIAN POLYURETHANE FOAM CLASS ACTIONS  
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**RECITALS**

A. WHEREAS the Plaintiffs have commenced the Proceedings, which allege that the Defendants, including the Settling Defendants, participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of Foam Products in Canada and/or to allocate markets and customers for the sale and distribution of Foam Products in Canada, contrary to Part VI of the *Competition Act*, common law or Quebec civil law;

B. WHEREAS the deadline for Persons to opt out of the Proceedings has passed as a result of the certification or authorization obtained in respect of a prior approved settlement;

C. WHEREAS there were no opt outs from the Proceedings;

D. WHEREAS the Settling Defendants do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceedings or otherwise;

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

F. WHEREAS the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against them by the Plaintiffs in the Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

G. WHEREAS counsel for the Settling Defendants and counsel for the Plaintiffs have engaged in extensive arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement relating to the sales of Foam Products in Canada;

H. WHEREAS as part of these settlement discussions and negotiations, the Settling Defendants provided some information to the Class Counsel regarding the present finances of the Settling Defendants;

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

J. WHEREAS the Parties and their counsel have reviewed and fully understand the terms of this Settlement Agreement and based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in litigating the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Parties and their counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Settling Defendants, the Plaintiffs and the Settlement Class they seek to represent;

K. WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a national basis, without admission of liability, all of the Proceedings as against the Settling Defendants;

L. WHEREAS for the purposes of settlement only, the Parties now consent to certification or authorization of the Proceedings as class proceedings and now consent to their respective Settlement Class and the Common Issue in respect of each of the Proceedings solely for the purposes of implementing this Settlement Agreement in a coordinated and consistent manner across Canada, and contingent on approvals by the Courts as provided for in this Settlement Agreement, on the express understanding that such certification or authorization shall not derogate from the rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

M. WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Class and will seek to be appointed representative plaintiffs in their respective Proceedings;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by the Parties that the Proceedings be settled and dismissed with prejudice as to the Settling Defendants only, without costs as to the Plaintiffs, the Settlement Class they seek to represent or the Settling Defendants, subject to the approval of the Courts, on the following terms and conditions:

### **Section 1 - Definitions**

For the purposes of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (1) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel, the Settlement Class or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and claims administration but excluding Class Counsel Fees.
- (2) **Assignment** means an assignment, in the form executed and attached hereto as Schedule “C”, whereby Vitafoam Products Canada Limited shall absolutely and unconditionally assign and transfer to the Plaintiffs, in trust for the Settlement Class Members, any potential existing right, title and interest not otherwise assigned that Vitafoam Products Canada Limited may have in respect of the potential distribution proceeds arising from the U.S. Urethane Litigation or the Canadian Urethane Litigation;
- (3) **BC Counsel** means Camp Fiorante Matthews Mogerma and Branch MacMaster LLP.
- (4) **BC Court** means the Supreme Court of British Columbia.
- (5) **BC Plaintiffs** mean Majestic Mattress Mfg. Ltd. and Trillium Project Management Ltd.
- (6) **BC Proceedings** mean the proceedings commenced by Majestic Mattress Mfg. Ltd. in the form of a Notice of Civil Claim filed in the BC Court (Vancouver Registry), Court File No. VLC-S-S-106362, filed on September 24, 2010, and by Trillium Project Management Ltd. in the form of a Notice of Civil Claim filed in the BC Court (Vancouver Registry), Court File No. S-106213, filed on September 15, 2010.

- (7) **BC Settlement Class** means: all Persons resident in British Columbia who purchased Foam Products in Canada during the Settlement Class Period, except Excluded Persons.
- (8) **BC Settlement Class Member** means a member of the BC Settlement Class who has not validly opted out of the BC Settlement Class.
- (9) **Canadian Urethane Litigation** means the class action proceedings pending before the Ontario Court under the title of proceeding *Crosslink Technology Inc. v. BASF Canada et al.*, (London Registry) Court File No. 50305 CP.
- (10) **Carpet Underlay** means scrap polyurethane foam bonded together by various chemicals into a padding material that is placed beneath carpet.
- (11) **Claims Administrator** means the Person proposed by Class Counsel and appointed by the Courts to administer the Settlement Agreement, including the claims process in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such Person.
- (12) **Class Counsel** means Ontario Counsel, Quebec Counsel and BC Counsel.
- (13) **Class Counsel Fees** include the fees, disbursements, costs, interest, and/or charges of Class Counsel, and any GST, HST and other applicable taxes or charges thereon, including any amounts payable by Class Counsel or the Settlement Class Members to any other body or Person, including the Fonds d'aide aux recours collectifs in Quebec.
- (14) **Common Issue** in each Proceeding means: Did the Settling Defendants conspire to harm the Settlement Class Members during the Settlement Class Period? If so, what damages, if any, are payable by the Settling Defendants to the Settlement Class Members?
- (15) **Competition Act** means the *Competition Act*, RSC 1985, c. C-34, as amended.
- (16) **Counsel for the Settling Defendants** means Borden Ladner Gervais LLP.
- (17) **Courts** mean the Ontario Court, the Quebec Court and the BC Court.
- (18) **Date of Execution** means the date on the cover page hereof as of which the Parties have executed this Settlement Agreement.

(19) **Defendants** mean the Persons named as defendants in any of the Proceedings and any Persons added as defendants in the Proceedings in the future. For greater certainty, Defendants includes the Settled Defendants and the Settling Defendants.

(20) **Distribution Protocol** means the plan developed by Class Counsel for distributing the Settlement Amount and accrued interest, in whole or in part, as approved by the Courts.

(21) **Effective Date** means the date when Final Orders have been received from all Courts approving this Settlement Agreement.

(22) **Excluded Person** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates has a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.

(23) **Final Order** means the later of a final judgment entered by a Court in respect of the approval of this Settlement Agreement once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement upon a final disposition of all appeals.

(24) **Foam Products** mean flexible polyurethane foam and any and all products that contain flexible polyurethane foam, including Carpet Underlay.

(25) **Individual Action** means the proceeding commenced by “Hi! Neighbor” Floor Covering Co. Limited by Notice of Action issued August 1, 2012 in the Ontario Court (Windsor Registry), Court File No. CV-10-18219 and Statement of Claim filed on August 31, 2012.

(26) **Non-Settling Defendant** means any Defendant that is not a Settled Defendant or a Settling Defendant, and includes any Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the Date of Execution.

(27) **Ontario Counsel** means Sutts, Strosberg LLP and Andrew J. Morganti.

(28) **Ontario Court** means the Ontario Superior Court of Justice.

- (29) ***Ontario Plaintiff*** means “Hi! Neighbor” Floor Covering Co. Limited.
- (30) ***Ontario Proceedings*** mean the proceeding commenced by “Hi! Neighbor” Floor Covering Co. Limited by Notice of Action issued August 19, 2010 in the Ontario Court (Windsor Registry), Court File No. CV-10-15164 and Statement of Claim filed on September 15, 2010, as amended, and the proceeding commenced by “Hi! Neighbor” Floor Covering Co. Limited by Statement of Claim issued on December 30, 2011 in the Ontario Court (Windsor Registry), Court File No. CV-11-17279.
- (31) ***Ontario Settlement Class*** means: all Persons resident in Canada who purchased Foam Products in Canada during the Settlement Class Period, except Excluded Persons and Persons who are included in the BC Settlement Class and the Quebec Settlement Class.
- (32) ***Ontario Settlement Class Member*** means a member of the Ontario Settlement Class who has not validly opted out of the Ontario Proceedings.
- (33) ***Other Actions*** mean actions or proceedings, other than the Proceedings and the Individual Action, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (34) ***Parties*** mean the Settling Defendants, the Plaintiffs, and, where necessary, the Settlement Class Members.
- (35) ***Person*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives or assignees.
- (36) ***Plaintiffs*** mean the Ontario Plaintiff, the BC Plaintiffs and the Quebec Petitioner.
- (37) ***Proceedings*** mean the BC Proceedings, the Quebec Proceeding, and the Ontario Proceedings.
- (38) ***Proportionate Liability*** means the proportion of any judgment that, had they not settled, a Court would have apportioned to the Settling Defendants.

(39) **Purchase Price** means the purchase price paid by Settlement Class Members for Foam Products purchased during the Settlement Class Period, less any rebates, delivery or shipping charges, taxes and any other form of discounts.

(40) **Quebec Civil Code** means the Civil Code of Quebec, S.Q. 1991, C-64, as amended.

(41) **Quebec Code of Civil Procedure** means the Code of Civil Procedure of Quebec, RSQ, c. C-25.

(42) **Quebec Counsel** means Belleau Lapointe LLP.

(43) **Quebec Court** means the Superior Court of Quebec.

(44) **Quebec Petitioner** means Option consommateurs.

(45) **Quebec Proceeding** means the proceeding commenced by Option consommateurs in the form of a motion for authorization to institute a class proceeding (Requête pour autorisation d'exercer un recours collectif) in the Quebec Court, Court File No. 500-06-000524-104, filed on October 1, 2010.

(46) **Quebec Settlement Class** means: all Persons resident in Quebec who purchased Foam Products in Canada during the Settlement Class Period, except Excluded Persons and any legal person established for a private interest, partnership or association which at any time between October 1, 2009 and October 1, 2010 had under its direction or control more than 50 persons bound to it by contract of employment or that is not dealing at arm's length with Option consommateurs.

(47) **Quebec Settlement Class Member** means a member of the Quebec Settlement Class who has not validly opted out of the Quebec Proceeding.

(48) **Released Claims** mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, in law, under statute or in equity, relating in any way to any conduct anywhere, from the beginning of time to

the date hereof, in respect of the purchase, sale, pricing, discounting, marketing or distributing of Foam Products in Canada or relating to any conduct alleged (or which was previously or could have been alleged) in the Proceedings including, without limitation, any such claims which have been asserted or could have been asserted, whether in Canada or elsewhere. However, nothing herein shall be construed to release any claims that are not related to the purchase, sale, pricing, discounting, marketing or distributing of Foam Products in Canada including any claims related to or arising from any alleged product defect, breach of contract, breach of warranty, or similar claims between the Parties relating to Foam Products.

(49) **Releasees** mean, jointly and severally, individually and collectively, the Settling Defendants and all of their present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always Vitafoam UK, the Non-Settling Defendants and the Settled Defendants.

(50) **Releasers** mean, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective parents, subsidiaries, affiliates, predecessors, successors, heirs, executors, administrators, insurers and assigns.

(51) **Settled Defendants** mean Domfoam International, Inc., Valle Foam Industries (1995) Inc., A-Z Sponge & Foam Products Ltd. and Dean Brayiannis.

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

(53) **Settlement Amount** means CDN\$3,250,000.

(54) **Settlement Class** means all Persons included in the Ontario Settlement Class, the BC Settlement Class and the Quebec Settlement Class.

(55) **Settlement Class Member** means a member of a Settlement Class who has not validly opted out of the Proceedings in accordance with the orders of the Courts.

(56) ***Settlement Class Period*** means the period from January 1, 1999 to January 10, 2012.

(57) ***Settling Defendants*** means Vitafoam Products Canada Limited and Vitafoam, Inc.

(58) ***Trust Account*** means an interest-bearing trust account at a Canadian Schedule 1 bank under the control of Counsel for the Settling Defendants until the Effective Date and thereafter Camp Fiorante Matthews Mogergerman for the benefit of the Settlement Class Members, as provided for in this Settlement Agreement.

(59) ***U.S. Litigation*** means the class action proceedings pending before the United States District Court for the Northern District of Ohio under the caption *In re Polyurethane Foam Antitrust Litigation*, Master File No.: 10-MLS-2196 (JZ), MDL No. 2196, and including all class and individual actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all actions pending such transfer, all actions that may be transferred in the future and any other actions involving similar allegations relating to foam products that are pending or that may be commenced before the federal or state courts of the United States.

(60) ***U.S. Urethane Litigation*** means the class action proceedings pending before the United States District Court for the District of Kansas under the caption *In re Urethane Antitrust Litigation*, Master File No.: 04-MD-01616-JWL, MDL No. 1616, and including all class and individual actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all actions pending such transfer, all actions that may be transferred in the future and any other actions involving similar allegations relating to urethane products that are pending or that may be commenced before the federal or state courts of the United States.

***Vitafoam UK*** means Vita Cayman Limited, Caligen Europe BV, Draka Interfoam B.V., ICOA France S.A.S., Koepp Schaum GmbH, Metzeler Schaum GmbH, Tramico S.A.S., UAB Vita Baltic International, Vita Polymers Poland Sp. z o.o., Veenendaal Schaumstoffwerk GmbH, Vita Cellular Foams (UK) Limited and Vita Industrial (UK) Limited.

## **Section 2– Settlement Approval**

### **2.1 Best Efforts**

(1) The Parties shall use their best efforts to effectuate this settlement and to secure the prompt, complete and final dismissal with prejudice of the BC Proceedings and Ontario

Proceedings as against the Settling Defendants, and a prompt, complete and final declaration of settlement out of Court of the Quebec Proceeding.

## **2.2 Motions Approving Notice and Seeking Certification or Authorization**

(1) The Plaintiffs shall bring motions before the Courts, as soon as practicable after the Settlement Agreement is executed, for orders approving the notices described in Section 11 and certifying or authorizing each of the Proceedings commenced in their respective jurisdictions as a class proceeding as against the Settling Defendants for settlement purposes.

(2) The BC order approving the notices described in Section 11 and certifying the BC Proceedings shall be substantially in the form attached hereto as Schedule “A”. The Ontario and Quebec orders approving the notices described in Section 11 and authorizing or certifying those Proceedings shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the BC order.

## **2.3 Motions for Approval of the Settlement**

(1) The Plaintiffs shall bring motions before the Courts for orders approving this Settlement Agreement as soon as practicable after and the orders referred to in Section 2.2(2) are granted, and the notices described in Section 11 have been published.

(2) The BC order approving this Settlement Agreement shall be substantially in the form attached hereto as Schedule “B”. The Ontario and Quebec orders approving this Settlement Agreement shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the BC order.

(3) This Settlement Agreement shall only become final on the Effective Date.

## **2.4 Pre-Motion Confidentiality**

(1) Until the first of the motions required by Section 2.2 is filed, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior written consent of counsel for the Settling Defendants and Class Counsel, as the case may be, except in the discretion of Class Counsel to the Non-Settling Defendants, their counsel and/or

the Courts, or as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements), or as otherwise required by law.

### **Section 3 - Settlement Amount**

#### **3.1 Payment of Settlement Amount**

- (1) Within thirty (30) days of the Execution Date, the Settling Defendants shall pay the Settlement Amount to Counsel for the Settling Defendants to be held in the Trust Account in accordance with the terms of this Settlement Agreement.
- (2) On the Effective Date, Counsel for the Settling Defendants shall transfer the Trust Account to Camp Fiorante Matthews Mogerman.
- (3) Counsel for the Settling Defendants and Camp Fiorante Matthews Mogerman, respectively, shall maintain the Trust Account as provided for in this Settlement Agreement.
- (4) Counsel for the Settling Defendants and Camp Fiorante Matthews Mogerman, respectively, shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Courts obtained after notice to the Parties.
- (5) The cost of disseminating the notices contemplated in Section 11 and the translations contemplated in Section 14.12 of this Settlement Agreement shall be paid out of the Settlement Amount in the Trust Account.

#### **3.2 Assignment of Certain Claims**

- (1) On the Execution Date, the Vitafoam Products Canada Limited shall deliver an Assignment to Camp Fiorante Matthews Mogerman to be held in escrow until such time as the Final Orders have been granted and the Effective Date has occurred.
- (2) The Parties agree that to the extent that there is a distribution of funds payable to Vitafoam Products Canada Limited prior to the Effective Date from the U.S. Urethane Litigation or the Canadian Urethane Litigation, the Parties shall jointly request that such funds be forwarded to Counsel for the Settling Defendants for addition to and deposit into the Trust Account.

(3) Vitafoam Products Canada Limited does not make any representation, covenant or promises in respect of the validity or enforceability of the Assignment or the collectability of the proceeds from the Assignment, and the Plaintiffs and the Settlement Class shall bear any and all risk relating to the validity or enforceability of the Assignment or the collectability of the proceeds from the Assignment. In the event that the Assignment is not valid or enforceable, is terminated, is not approved or otherwise fails to come into effect, the Parties agree that such event shall not give rise to any right of termination under this Settlement Agreement. However, nothing in this section shall be treated as a waiver, forbearance, or abandonment of the Plaintiffs' rights and/or interests accruing under the Assignment.

(4) Vitafoam Products Canada Limited agrees that in no event will it challenge the validity or enforceability of the Assignment.

(5) Vitafoam Products Canada Limited agrees to make reasonable best efforts and provide cooperation to assist in the implementation of the Assignment, including the provision of documents, contracts, purchase information, execution of claims documentation for the purpose of exercising any existing rights.

### **3.3 No Further Settlement Payments, Transfers or Assignments**

(1) Subject to Sections 3.1(1) and 3.2(1), the Settling Defendants shall have no obligation to pay any amount in addition to the Settlement Amount or to pay, assign or transfer any amount beyond the proceeds contemplated by the Assignment, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceedings.

(2) The Settlement Amount shall be paid and the Assignment shall be given in full satisfaction of the Released Claims against the Releasees.

### **3.4 Taxes and Interest**

(1) Except as hereinafter provided, all interest earned on the Settlement Amount and the proceeds of the Assignment, if any, shall accrue from the date of deposit to the benefit of the Settlement Class and shall become and remain part of the Trust Account.

(2) Subject to Section 3.4(5), all Canadian taxes payable on any interest which accrues on the Settlement Amount or the proceeds of the Assignment in the Trust Account or otherwise in

relation to the Settlement Amount or the proceeds of the Assignment shall be paid from the Trust Account.

(3) Before the Effective Date, Counsel for the Settling Defendants shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount or the proceeds of the Assignment in the Trust Account, including any obligation to report taxable income and make tax payments. After the Effective Date, Camp Fiorante Matthews Mogerman, shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount or the proceeds of the Assignment in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount or proceeds of the Assignment shall be paid from the Trust Account.

(4) After the Effective Date, the Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or the proceeds of the Assignment or pay any taxes on the monies in the Trust Account.

(5) Notwithstanding Sections 3.4(2), 3.4(3) and 3.4(4), if this Settlement Agreement is terminated the interest earned on the Settlement Amount or the proceeds of the Assignment in the Trust Account shall be paid to the Settling Defendants which, in such case, shall be responsible for the payment of all taxes on such interest.

## **Section 4 - Cooperation**

### **4.1 Extent of Cooperation**

(1) Within thirty (30) days of the Date of Execution, or at a time mutually agreed upon by the Parties, the Settling Defendants shall make reasonable best efforts to:

- (a) provide to Class Counsel existing electronic transactional data for sales by the Settling Defendants of Foam Products delivered in Canada during the Settlement Class Period, to the extent that such data exists and is in the Settling Defendants' power, possession or control, and to the extent that such data has not previously been provided pursuant to Section 12.2(1). Counsel for the Settling Defendants

agrees to be reasonably available as necessary to respond to Class Counsel's questions regarding the electronic transactional data produced by the Settling Defendants;

- (b) provide to Class Counsel the transcript of the 30(b)(6) examination of the Settling Defendants in the U.S. Litigation, and if requested by Class Counsel, and at Class Counsel's expense, any transcripts or video recordings of depositions of the Settling Defendants' employees, directors or officers taken in the course of the U.S. Litigation;
- (c) provide to Class Counsel any documents produced by the Settling Defendants in the U.S. Litigation, other than productions from the Urethane Litigation produced in the U.S. Litigation, together with indices or a production log, if such exists and is in the Settling Defendants' power, possession or control, failing which the Settling Defendants will not oppose any motion brought in the U.S. litigation for such production , and if requested by Class Counsel, and at Class Counsel's expense, any productions by the Settling Defendants from the Urethane Litigation also produced in the U.S. Litigation;
- (d) to the extent not included in production under Section 4.1(1)(c), provide any records provided by the Settling Defendants to the United States Department of Justice, or the Canadian Competition Bureau, concerning the allegations raised in the Proceedings, including if available any indexes or listing of "hot documents";
- (e) through a meeting between counsel for the Settling Defendants and Class Counsel, that shall take place on a single day and last no more than five (5) hours, provide an evidentiary proffer, which will include information originating with the Settling Defendants and being within its possession relating to the allegations in the Proceedings including, without limitation, information with respect to dates, locations, subject matter, and participants in any meetings or discussions between competitors relating to the purchase, sale, pricing, discounting, marketing or distributing of Foam Products in Canada;

- (f) make reasonable best efforts to make available up to three (3) current or former directors, officers or employees of the Settling Defendants, selected by the Settling Defendants in good faith consultation with Class Counsel, which individuals shall have knowledge of the allegations in the Proceedings to provide information relating to the allegations in the Proceedings in a personal interview with Class Counsel and/or experts retained by Class Counsel in the Proceedings, at a location to be reasonably agreed. Each such interview shall take place on a single day and shall last no more than eight (8) hours, except for good cause, and counsel for the Settling Defendants shall be entitled to attend such interviews. The failure or refusal of any such current or former director, officer or employee to agree to make him or herself available or to otherwise cooperate with the Plaintiffs, shall not constitute a breach or violation of the obligations of the Settling Defendants under this Settlement Agreement, and shall not provide any basis for the termination of this Settlement Agreement, so long as the Settling Defendants comply with their obligations under this Section. In the event of such a failure or refusal, the Plaintiffs may seek orders from the appropriate Court requiring such current or former director, officer and/or employee to provide such information or otherwise cooperate pursuant to this Settlement Agreement; and
- (g) where there is a reasonable necessity for the evidence of the current or former directors, officers or employees of the Settling Defendants in the prosecution of the Proceedings as determined by Class Counsel, make reasonable best efforts to make up to three (3) current or former directors, officers or employees of the Settling Defendants who have knowledge of the allegations in the Proceedings available to provide evidence at trial of the Proceedings in Canada, or to provide an affidavit or declaration and attend at a cross-examination in support of the certification or authorization motion or a summary judgment motion in the Proceedings. The failure or refusal of any such current or former director, officer or employee to agree to make him or herself available, to provide testimony, to provide an affidavit or declaration, to attend at a cross-examination or to otherwise cooperate with the Plaintiffs shall not constitute a breach or violation of the obligations of the Settling Defendants under this Settlement Agreement, and

shall not provide any basis for the termination of this Settlement Agreement, so long as the Settling Defendants comply with their obligations under this Section. In the event of such failure or refusal, the Plaintiffs may seek orders from the appropriate Court requiring such current or former director, officer and/or employee to provide such information or otherwise cooperate pursuant to this Settlement Agreement.

(2) In addition to the other obligations to cooperate set out in this Section, the Settling Defendants shall also, within thirty (30) days of the Date of Execution or at a time mutually agreed upon by the Parties, make reasonable best efforts to provide existing expert reports commissioned by the Settling Defendants to assess the effect or impact of the conduct alleged in the Proceedings, including any data underlying those reports.

(3) The obligation to provide documents pursuant to this Section shall be a continuing obligation to the extent documents are produced by the Settling Defendants in the U.S. Litigation or to the United States Department of Justice, or the Canadian Competition Bureau, following the initial productions pursuant to this Settlement Agreement.

(4) Nothing in this Settlement Agreement shall be construed to require the Settling Defendants to perform any act, including the transmittal or disclosure of any information, which would violate the law of this or any applicable jurisdiction.

(5) Except as provided in Section 4.1(1) and (2), nothing in this Section shall require, or shall be construed to require, the Settling Defendants to disclose or produce any documents or information prepared by or for Counsel for the Settling Defendants, or to disclose or produce any documents or information in breach of any order, regulatory directive, rule or law of this or any jurisdiction, or subject to solicitor-client privilege, litigation privilege, or any other privilege, or to disclose or produce any information or documents they obtained on a privileged or co-operative basis from any party to any action or proceeding who is not a Releasee.

(6) If any documents protected by any privilege and/or any privacy law or other rule or law of this or any applicable jurisdiction are accidentally or inadvertently disclosed or produced, such documents shall be promptly returned to the Settling Defendants and the documents and the information contained therein shall not be disclosed or used directly or indirectly, except

with the express written permission of the Settling Defendants, and the production of such documents shall in no way be construed to have waived in any manner any privilege or protection attached to such documents.

(7) The Settling Defendants' obligations to cooperate as particularized in this Section shall not be affected by the release provisions contained in Section 7 of this Settlement Agreement. The Settling Defendants' obligations to cooperate shall cease at the date of final judgment in the Proceedings against all Defendants. In the event the Settling Defendants materially breach this Section 4, Class Counsel may move before the Courts to either enforce the terms of this Settlement Agreement or set aside the approval of this Settlement Agreement or part thereof.

(8) A material factor influencing the Settling Defendants' decision to execute this Settlement Agreement is its desire to limit the burden and expense of this litigation. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendants and to avoid seeking information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burdens or expense on the Settling Defendants.

(9) Subject to the rules of evidence, any court order with respect to confidentiality and the other provisions of this Settlement Agreement, the Settling Defendants agree to produce at trial or through acceptable affidavits or other testimony in the Proceedings (including in relation to the certification and authorization motions), representatives qualified to establish for admission into evidence any of the Settling Defendants' documents and information provided as cooperation pursuant to this Settlement Agreement, and agree to authenticate documents produced by the Defendants that were created by, sent to, or received by the Settling Defendants.

#### **4.2 Limits on Use of Documents**

(1) It is understood and agreed that all documents and information made available or provided by the Settling Defendants and all documents and information provided by Counsel for the Settling Defendants to Plaintiffs and Class Counsel under this Settlement Agreement, shall be used only in connection with the prosecution of the claims in the Proceedings and the Individual Action and shall not be used directly or indirectly for any other purpose.

#### **4.3 Intervention in the U.S. Litigation**

(1) The Settling Defendants shall not oppose any application by or on behalf of the Plaintiffs to intervene in the U.S. Litigation in order to gain access to discovery documents and other documents and other documents and information subject to any protective order.

### **Section 5 – Distribution of the Settlement Amount and Accrued Interest**

#### **5.1 Distribution Protocol**

(1) At a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendants, Class Counsel will make an application seeking orders from the Courts approving the Distribution Protocol.

(2) The Distribution Protocol shall require Settlement Class Members seeking compensation to give credit for any compensation received through other proceedings or in private out-of-class settlements, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

#### **5.1 No Responsibility for Administration or Fees**

(1) After the Effective Date, the Settling Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account.

### **Section 6 - Termination of Settlement Agreement**

#### **6.1 Right of Termination**

(1) In the event that:

(a) any Court declines to approve this Settlement Agreement or any material part hereof;

(b) any Court approves this Settlement Agreement in a materially modified form; or

- (c) any orders approving this Settlement Agreement made by the Ontario Court, the BC Court or the Quebec Court do not become Final Orders;

Settling Defendants, Class Counsel, and the Plaintiffs shall have the right to terminate this Settlement Agreement.

(2) In addition, the Plaintiffs shall have the right to terminate this Settlement Agreement in the event that the Settling Defendants fail to pay the Settlement Amount or Vitafoam Products Canada Limited fails to make the Assignment provided for in Sections 3.1 and 3.2.

(3) Except as provided for in Section 6.4, if the Settling Defendants, Class Counsel or the Plaintiffs exercise their right to terminate, the Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(4) Any order, ruling or determination made (or rejected) by any Court with respect to Class Counsel's fees and disbursements, the Distribution Protocol or the provisions of the bar order set out in Section 8.1(1), shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

(5) To exercise a right of termination, a terminating party shall deliver a written notice of termination pursuant to Section 14.18 within twenty (20) days of the ground for termination becoming known to the terminating party.

## **6.2 If Settlement Agreement is Terminated**

(1) If this Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect:

- (a) no motion to certify or authorize any of the Proceedings as a class proceeding on the basis of this Settlement Agreement or to approve this Settlement Agreement, which has not been heard, shall proceed;
- (b) any order certifying or authorizing a Proceeding as a class proceeding on the basis of this Settlement Agreement or approving this Settlement Agreement shall be set

aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;

- (c) any prior certification or authorization of a Proceeding as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties may later take on any issue in the Proceedings or any other litigation;
- (d) except as provided in Section 6.4, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation; and
- (e) within ten (10) days of such termination having occurred, Class Counsel shall destroy all documents or other materials provided by the Settling Defendants under this Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Settling Defendants and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendants to any other Person, shall recover and destroy such documents or information. Class Counsel shall provide Counsel for the Settling Defendants with a written certification by Class Counsel of such destruction. Nothing contained in this paragraph shall be construed to require Class Counsel to destroy any of their work product.

### **6.3 Allocation of Monies in the Trust Account Following Termination**

- (1) If the Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect, Counsel for the Settling Defendants or Camp Fiorante Matthews Mogerman, as applicable, shall return to the Settling Defendants all monies in the Trust Account including interest, but less the costs of notice and translations incurred in accordance with Section 11, Section 12, and Section 13 within thirty (30) business days of the relevant termination event in Section 6.1.

#### **6.4 Survival of Provisions After Termination**

(1) If this Settlement Agreement is terminated, the provisions of Sections 3.1(3), 3.1(4), 3.1(5), 3.4(5), 4.1(6), 6.1(3), 6.2(1), 6.3(1), 6.4(1), 9.1(1), 9.2(1), 12.2(4), 13.1, 14.1, 14.5 and 14.6, and the definitions and Schedules applicable thereto 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 3.1(3), 3.1(4), 3.1(5), 3.4(5), 4.1(6), 6.1(3), 6.2(1), 6.3(1), 6.4(1), 9.1(1), 9.2(1), 12.2(4), 13.1, 14.1, 14.5 and 14.6, within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

### **Section 7– Releases and Dismissals**

#### **7.1 Release of Releasees**

(1) Upon the Effective Date, and in consideration of payment of the Settlement Amount and the making of the Assignment, and for other valuable consideration set forth in the Settlement Agreement, the Releasers forever and absolutely release the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have.

#### **7.2 Release by Releasees**

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

#### **7.3 Covenant Not To Sue**

(1) Notwithstanding Section 7.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasers do not release the Releasees but instead covenant and undertake not to make any claim in any way or to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

#### **7.4 No Further Claims**

(1) The Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Individual Action and the Proceedings against the Non-Settling Defendants or unnamed co-conspirators who are not Releasees.

#### **7.5 Dismissal of the Proceedings**

(1) Upon the Effective Date, the BC Proceedings and the Ontario Proceedings shall be dismissed with prejudice and without costs as against the Settling Defendants.

(2) Upon the Effective Date, the Quebec Proceeding shall be settled, without costs and without reservation as against the Settling Defendants, and the Parties shall sign and file a declaration of settlement out of court with the Quebec Court.

#### **7.6 Dismissal of Other Actions**

(1) Upon the Effective Date, each Ontario Settlement Class Member and BC Settlement Class Member shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.

(2) Upon the Effective Date, all Other Actions commenced in British Columbia or Ontario by any Settlement Class Member shall be dismissed against the Releasees, without costs and with prejudice.

(3) Each Quebec Settlement Class Member who makes a claim under this Settlement Agreement shall be deemed to irrevocably consent to the dismissal, without costs and without reservation, of his, her or its Other Actions against the Releasees.

(4) Each Other Action commenced in Quebec by a Quebec Settlement Class Member who makes a claim under this Settlement Agreement shall be dismissed as against the Releasees, without costs and without reservation.

## **7.7 Claims Against Other Entities Reserved**

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

## **Section 8- Bar Orders, Waiver of Solidarity Order and Other Claims**

### **8.1 British Columbia and Ontario Bar Orders**

(1) Bar orders shall be granted by the BC Court and the Ontario Court providing for the following:

- (a) all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings, by any Non-Settling Defendant or any other Person or party, against a Releasee, or by a Releasee against any Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this Section 8 ;
- (b) if the BC Court or the Ontario Court, as applicable, ultimately determine that there is a right of contribution and indemnity among the Defendants, the BC Plaintiffs or the Ontario Plaintiffs and the BC Settlement Class Members or the Ontario Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators who are not Releasees that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise, in respect of the relevant Proceeding or otherwise, and the relevant Court shall have full authority to determine the Proportionate Liability of the Releasees at trial or other disposition of the relevant Proceeding, whether or not the Releasees appear at trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Proceeding and any determination by the relevant Court in respect of the

Proportionate Liability of the Releasees shall only apply in the relevant Proceeding and shall not be binding on the Releasees in any other proceedings;

- (c) a Non-Settling Defendant may, on motion to the relevant Court, on at least sixty (60) days notice to Counsel for the Settling Defendants, and not to be brought unless and until the relevant Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:
  - (A) documentary discovery and an affidavit of documents in accordance with that Court's rules of procedure;
  - (B) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
  - (C) leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or
  - (D) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants;
- (d) the Settling Defendants retain all rights to oppose any motion brought pursuant to Section 8.1(1)(c), including any such motion brought at trial seeking an order requiring the Settling Defendants to produce a representative to testify at trial;
- (e) on any motion brought pursuant to Section 8.1(1)(c), the relevant Court may make such orders as to costs and other terms as it considers appropriate;
- (f) to the extent that such an order is granted and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall timely be provided by the Settling Defendants to the Plaintiffs and Class Counsel to the extent and on the terms set out in the order;
- (g) the BC and Ontario Courts will retain an ongoing supervisory role over the discovery process and the Settling Defendants in the relevant Proceeding; and

- (h) a Non-Settling Defendant may effect service of the motion(s) referred to in Section 8.1(1)(c) on the Settling Defendants by service on Counsel for the Settling Defendants in the relevant Proceeding.

## **8.2 Quebec Declaration or Renunciation of Benefit of Solidarity and Effects**

(1) A declaration that the Quebec Petitioner and the Quebec Settlement Class Members have renounced the benefit of solidarity shall be made by the Quebec Court. The declaration will provide for the following:

- (a) the Quebec Petitioner and the Quebec Settlement Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the Released Claims;
- (b) the Quebec Petitioner and the Quebec Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, interests and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Defendants;
- (c) any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Proceeding; and
- (d) the ability of Non-Settling Defendants to seek discovery from the Settling Defendants shall be determined according to the provisions of the *Code of Civil Procedure of Quebec*, and the Settling Defendants shall retain and reserve all of their rights to oppose such discovery under the *Code of Civil Procedure of Quebec*.

## **Section 9 – Effect of Settlement**

### **9.1 No Admission of Liability**

(1) Whether or not this Settlement Agreement is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and

proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Settling Defendants, or of the truth of any of the claims or allegations contained in the Proceedings or any other pleading filed by the Plaintiffs.

## **9.2 Agreement Not Evidence**

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

## **9.3 No Further Litigation**

(1) No Class Counsel, nor anyone currently employed by, associated with, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to or arises from the Released Claims, except in relation to the continued prosecution of the Individual Action and the Proceedings against any Non-Settling Defendant or unnamed co-conspirators who are not Releasees. Moreover, these Persons may not divulge to anyone for any purpose any information obtained in the course of the Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent permitted pursuant to the provisions of this Settlement Agreement, such information is otherwise publicly available or unless ordered to do so by a court. However, this Section 9.3(1) shall not be operative to the extent that it is inconsistent with BC Counsel's obligations under Rule 4-7 of the *British Columbia Professional Conduct Handbook*.

**Section 10 – Certification or Authorization  
for Settlement Only**

(1) The Parties agree that the Proceedings shall be certified or authorized as class proceedings as against the Settling Defendants solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts.

(2) The Plaintiffs agree that, in the motions for certification or authorization of the Proceedings as class proceedings and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Settlement Class.

**Section 11- Notice to Settlement Class**

**11.1 Notices Required**

(1) The proposed Settlement Class shall be given a single notice of (i) the certification or authorization of the Proceedings as class proceedings as against the Settling Defendants for settlement purposes, (ii) the hearings at which the Courts will be asked to approve the Settlement Agreement, and (iii) if they are brought with the hearings to approve the Settlement Agreement, the hearings to approve Class Counsel Fees.

**11.2 Form and Distribution of Notices**

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

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

## **Section 12 – Administration and Implementation**

### **12.1 Mechanics of Administration**

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

### **12.2 Information and Assistance**

(1) The Settling Defendants will make reasonable best efforts to compile a list of the names and addresses of Persons, if any, in Canada who purchased Foam Products in Canada from them or from the Releasees during the Settlement Class Period and the Purchase Price paid by each such Person for such purchases.

(2) The information required by Section 12.2(1) shall be delivered to the Class Counsel at least five (5) days in advance of the first publication of the notices required in Section 11.1(1), whichever is earlier.

(3) Class Counsel may use the information provided under Section 12.2(1) to advise Settlement Class Members of this Settlement Agreement and the date of the approval hearings before the Courts, to facilitate the claims administration process established in accordance with Section 5 of this Settlement Agreement, or as otherwise authorized in Section 4.

(4) All information provided by the Settling Defendants pursuant to Section 12.2(1) shall be dealt with in accordance with Section 4. If this Settlement Agreement is terminated, all information provided by the Settling Defendants pursuant to Section 12.2(1) shall be dealt with in accordance with Section 6.2(1)(e) and no record of the information so provided shall be retained by Class Counsel in any form whatsoever.

## **Section 13 – Class Counsel Fees and Administration Expenses**

### **13.1 Class Counsel Fees and Administration Expenses**

(1) Notwithstanding any other provision of this Settlement Agreement, the costs of the notices referred to in Section 11 and the costs of translation referred to in Section 14.12 of this Settlement Agreement shall be paid out of the Trust Account by Counsel for the Settling

Defendants or Camp Fiorante Matthews Mogergerman, as applicable, as they are incurred and irrespective of whether the Effective Date has passed.

(2) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and/or Administration Expenses contemporaneous with seeking approval of this Settlement Agreement or at such other time as they may determine in their sole discretion.

(3) Except as provided in Section 13.1, Class Counsel Fees and Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(4) The Settling Defendants shall not be liable for any fees, disbursements or taxes of any of Class Counsel's, the Plaintiffs' or Settlement Class Members' respective lawyers, experts, advisors, agents, or representatives.

## **Section 14 - Miscellaneous**

### **14.1 Motions for Directions**

(1) The Parties may apply to the Courts for directions in respect of this Settlement Agreement.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties except for those motions concerned solely with the implementation and administration of the Distribution Protocol.

### **14.2 Releasees Have No Liability for Administration**

(1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement or Distribution Protocol.

### **14.3 Headings, etc.**

(1) In this Settlement Agreement:

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

#### **14.4 Computation of Time**

- (1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,
  - (a) where there is a reference to a number of days between two (2) events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
  - (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

#### **14.5 Ongoing Jurisdiction**

- (1) Each of the Courts shall retain exclusive jurisdiction over each Proceeding commenced in its jurisdiction, the Parties thereto and the Class Counsel Fees in those Proceedings.
- (2) No Party shall ask a Court to make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complimentary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.
- (3) Notwithstanding Sections 14.5(1) and 14.5(2), the BC Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement. Issues related to the administration of this Settlement Agreement, the Trust Account, and other matters not specifically related to the claim of an Ontario

Settlement Class Member or a Quebec Settlement Class Member shall be determined by the BC Court.

#### **14.6 Governing Law**

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

#### **14.7 Entire Agreement**

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

#### **14.8 Amendments**

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto and any such modification or amendment must be approved by the Courts with jurisdiction over the matter to which the amendment relates.

#### **14.9 Binding Effect**

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

#### **14.10 Counterparts**

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

#### **14.11 Negotiated Agreement**

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

#### **14.12 Language**

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. If a French translation of the Settlement Agreement and/or any notices, orders or other documents contemplated by this Settlement Agreement is prepared, the cost of such shall be paid from the Settlement Amount. The Parties agree that such translation is for convenience only. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

#### **14.13 Transaction**

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

#### **14.14 Recitals**

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

#### **14.15 Schedules**

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

#### **14.16 Acknowledgements**

(1) Each of the Parties hereby affirms and acknowledges that:

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

**14.17 Authorized Signatures**

- (1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

**14.18 Notice**

- (1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

**For the Plaintiffs and for Class Counsel in the Proceedings:**

J. J. Camp, Q.C. and  
Reidar Mogerman

Heather Rumble Peterson

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Tel: 514-987-6700  
Fax: 514-987-6886  
Email: dbelleau@belleaulapointe.com  
mnasr@belleaulapointe.com

Tel: 604-654-2966  
Fax: 604-684-3429  
Email: wbranch@branmac.com  
lbrasil@branmac.com

**For the Settling Defendants:**

Robert Russell

BORDEN LADNER GERVAIS LLP  
Scotia Plaza, 40 King Street West  
Toronto, ON M5H 3Y4

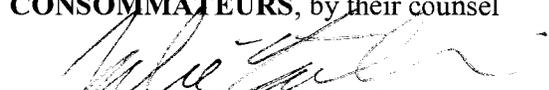
Tel: 416.367.6256  
Fax: 416.361.7060  
Email: rrussell@blgcanada.com

**Date of Execution**

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

**“HI! NEIGHBOR” FLOOR COVERING CO.  
LIMITED, MAJESTIC MATTRESS MFG. LTD,  
TRILLIUM PROJECT MANAGEMENT LTD., and  
OPTION CONSOMMATEURS, by their counsel**

By:

  
Name: Camp Fiorante Matthews Mogeraman  
Title: Counsel in the BC Proceedings

By:

  
Name: Sutts, Strosberg LLP  
Title: Counsel in the Ontario Proceedings

By:

  
Name: Law office of Andrew J. Morganti

Title: Counsel in the Ontario Proceedings

By:

  
Name: Branch MacMaster LLP  
Title: Counsel in the BC Proceedings

By:

Name: Belleau Lapointe  
Title: Counsel in the Quebec Proceeding

VITAFOAM PRODUCTS CANADA LIMITED and  
VITAFOAM, INC., by their counsel

By:

Name: Borden Ladner Gervais LLP  
Title: Canadian Counsel



Title: Counsel in the Ontario Proceedings

By:

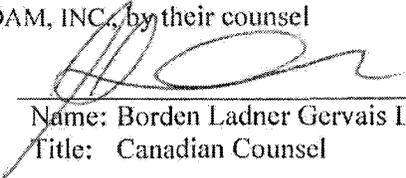
\_\_\_\_\_  
Name: Branch MacMaster LLP  
Title: Counsel in the BC Proceedings

By:

\_\_\_\_\_  
Name: Belleau Lapointe  
Title: Counsel in the Quebec Proceeding

VITAFOAM PRODUCTS CANADA LIMITED and  
VITAFOAM, INC. by their counsel

By:

  
\_\_\_\_\_  
Name: Borden Ladner Gervais LLP  
Title: Canadian Counsel



ON READING the materials filed, including the Settlement Agreement attached to this Order as Schedule “A” (the “Settlement Agreement”);

AND WHEREAS the deadline for opting out of the BC Proceedings has passed, and no BC Settlement Class Member has validly opted out;

AND ON BEING ADVISED that the Plaintiffs and the Settling Defendants consent to this Order;

THIS COURT ORDERS that:

1. Except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement attached as **Schedule “A”** apply to and are incorporated into this Order;

**Certification for Settlement**

2. The BC Proceedings are certified as class proceedings for settlement purposes only as against the Settling Defendants;
3. The BC Settlement Class in each of the BC Proceedings is defined as:

All Persons resident in British Columbia who purchased Foam Products in Canada during the Settlement Class Period, except Excluded Persons;

4. Majestic Mattress Mfg, Ltd. is appointed as the representative plaintiff for the BC Settlement Class in the Majestic Action and Trillium Project Management Ltd. is appointed as the representative plaintiff for the BC Settlement Class in the Trillium Action;
5. The following issue is common to the BC Settlement Class in each of the BC Proceedings:

Did the Settling Defendants conspire to harm the BC Settlement Class Members during the Settlement Class Period? If so, what damages, if any, are payable by the Settling Defendants to the BC Settlement Class Members?

6. This Order, including the Settlement Agreement, is binding upon each and every BC Settlement Class Member including those persons who are minors or mentally incapable, and the requirements of Rule 20-2 of the Supreme Court Civil Rules are dispensed with in respect of the BC Proceeding;

**Notices of Certification for Settlement and Settlement Approval Hearing**

7. The Notice of Certification or Authorization and Settlement Approval Hearings (the “Pre-Approval Notice”) is hereby approved substantially in the form attached hereto as **Schedule “B”**;
8. The plan of dissemination of the Pre-Approval Notice (the “Plan of Dissemination”) is hereby approved in the form attached as **Schedule “C”**;
9. The Pre-Approval Notice shall be disseminated in accordance with the Plan of Dissemination approved as part of this Order;
10. This Order, including without limiting the generality of the foregoing, the certification of the BC Proceedings against the Settling Defendants for settlement purposes pursuant to this Order, and the definitions of the BC Settlement Class, Settlement Class Period and Common Issue, is without prejudice to any position a Non-Settling Defendant may take in this or any other proceeding on any issue, including any issue of appropriate forum or abuse of process, the issue of whether the Settlement Agreement should be approved and the issue of whether the BC Proceedings should be certified as class proceedings as against the Non-Settling Defendants. Except as set out below, no person may rely, cite or refer to all or any part of this Order or any reasons given by the Court in support of this Order as authority against any of the Non-Settling Defendants in this or any other proceeding. For greater certainty, this Order, the Court’s reasons in support of this Order and the certification of the BC Proceedings against the Settling Defendants for settlement purposes only are not binding and shall have no effect on this Court’s ruling in this or any other proceeding as against the Non-Settling Defendants. Notwithstanding the foregoing, the Non-Settling Defendants may not rely, cite or refer to all or any part of this Order or any reasons given by the Court

in support of this Order, and may not assert a deficiency in the notice plan set out in this Order and/or the unavailability of a further opt out opportunity as a basis for opposition to approval of the Settlement Agreement, including without limitation as a basis for opposition of the proposed bar order contained in the Settlement Agreement; and

11. This Order is contingent upon orders being made by the Ontario Court and the Quebec Court in the Proceedings in their jurisdictions that also provide for certification or authorization and notice in relation to the Settlement Agreement and the terms of this Order shall not be effective unless and until such orders are made.

12. Endorsement of this Order by the Non-Settling Defendants and Settled Defendants is dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

<insert all signatures>

By the Court

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Registrar

**SCHEDULE "B"**

Court File No. VLC-S-S-106362	
<i>In the Supreme Court of British Columbia</i>	
Between	<b>Majestic Mattress Mfg. Ltd.</b>
	Plaintiff
and	<b>Vitafoam Products Canada Limited, Vitafoam Incorporated, Hickory Springs Manufacturing Company, The Carpenter Company, Woodbridge Foam Corporation, Flexible Foam Products, Inc., Scottdel Inc., Foamex Innovations, Inc. and Future Foam, Inc.</b>
	Defendants
BROUGHT UNDER THE <i>CLASS PROCEEDINGS ACT</i> , R.S.BC 1996, c. 50	

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Court File No. S-106213	
<i>In the Supreme Court of British Columbia</i>	
Between	<b>Trillium Project Management Ltd.</b>
	Plaintiff
and	<b>Hickory Springs Manufacturing Company, Carpenter Co., Carpenter Canada Co., The Woodbridge Group, Flexible Foam Products, Inc., Scottdel Inc., Foamex Innovations, Inc., Foamex Innovations Canada, Inc., Future Foam, Inc., Vitafoam Products Canada Limited and Vitafoam, Inc.</b>
	Defendants
BROUGHT UNDER THE <i>CLASS PROCEEDINGS ACT</i> , R.S.BC 1996, c. 50	

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**ORDER MADE AFTER APPLICATION FOR APPROVAL OF SETTLEMENT AGREEMENT**

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BEFORE THE HONOURABLE MR. JUSTICE )  
 BOWDEN ) dd/mm/yyyy  
 )

ON THE APPLICATION of the BC Plaintiffs coming on for hearing at the Courthouse at 800 Smithe Street, Vancouver, BC, on dd/mmm/yyyy and on hearing J.J. Camp, Q.C. and Reidar Mogerman, counsel for the BC Plaintiffs, **[Insert Counsel]** for Vitafoam

Products Canada Limited, Vitafoam Incorporated, and Vitafoam Inc., counsel for the Settling Defendants;

ON READING the materials filed, including the Settlement Agreement attached to this Order as Schedule "A" (the "Settlement Agreement");

AND WHEREAS the deadline for opting out of the BC Proceedings has passed, and no BC Settlement Class Member has validly opted out;

AND ON BEING ADVISED that the BC Plaintiffs and the Settling Defendants consent to this Order;

THIS COURT ORDERS that:

1. The definitions set out in the Settlement Agreement attached as **Schedule "A"** apply to and are incorporated into this Order;
2. The Settlement Agreement is fair, reasonable and in the best interests of the BC Settlement Class in each BC Proceeding;
3. The Settlement Agreement is approved pursuant to s. 35 of the *Class Proceedings Act*, RSBC 1996, c. 50 and shall be implemented in accordance with its terms;
4. The Settlement Agreement is incorporated by reference into and forms part of this Order;
5. This Order, including the Settlement Agreement, is binding upon the representative plaintiffs and each and every BC Settlement Class Member in the BC Proceedings, including those persons who are minors or mentally incapable, and the requirements of Rule 20-2 of the Supreme Court Civil Rules are dispensed with in respect of the BC Proceedings;
6. Upon the Effective Date, each BC Settlement Class Member in each BC Proceeding shall consent and shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice;

7. Upon the Effective Date, any Other Action commenced in British Columbia by any BC Settlement Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice;
8. Instead of releasing the claims against the Releasees, upon the Effective Date, in accordance with Section 7.3(1) of the Settlement Agreement, each Releasor resident in British Columbia covenants not to sue and undertakes not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims, except for the continuation of the Individual Action and the BC Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees. The use of the terms "Releasors", "Releasees" and "Released Claims" in this Order is a matter of form only for consistency with the Settlement Agreement;
9. Each Releasor shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity, or other claims over for relief, from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Individual Action and the BC Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees;
10. All claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the BC Proceedings, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirators who are not Releasees or any other person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, or any named or unnamed co-conspirators who are not Releasees, are barred, prohibited and enjoined in accordance with the terms of this Order;

11. If, in the absence of paragraph 10 hereof, the Court determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:

- a. the BC Plaintiffs and the BC Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators who are not Releasees that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the Competition Act) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
- b. this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the relevant BC Proceeding, whether or not the Releasees remain in the relevant BC Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the relevant BC Proceeding and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the relevant BC Proceeding and shall not be binding on the Releasees in any other proceedings;

12. If, in the absence of paragraph 10 hereof, the Non-Settling Defendants would have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in the relevant BC Proceeding;

13. A Non-Settling Defendant may, on application to this Court on at least sixty (60) days' notice to counsel for a Settling Defendant, and not to be brought unless and until the relevant BC Proceeding against the Non-Settling Defendants has

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

- a. documentary discovery and a list of documents in accordance with the *Supreme Court Civil Rules* from a Settling Defendant;
  - b. oral discovery of a representative of a Settling Defendant, the transcript of which may be read in at trial;
  - c. leave to serve a notice to admit on a Settling Defendant in respect of factual matters; and/or
  - d. the production of a representative of a Settling Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants;
14. The Settling Defendants retain all rights to oppose such application(s) brought under paragraph 13. Notwithstanding any provision in this Order, on any application brought pursuant to paragraph 13, the Court may make such orders as to costs and other terms as it considers appropriate;
15. A Non-Settling Defendant may effect service of the application(s) referred to in paragraph 13 above on a Settling Defendant by service on counsel of record for that Settling Defendant in the relevant BC Proceeding;
16. For purposes of administration of this Order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge the jurisdiction of this Court for the purpose of implementing, administering and enforcing the Settlement Agreement, and subject to the terms and conditions set out in the Settlement Agreement;
17. Except as provided herein, this Order does not affect any claims or causes of action that any BC Settlement Class Member has or may have against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees in the relevant BC Proceeding;

18. After the Effective Date, the Settling Defendants shall have no responsibility or liability relating to the administration, investment, or distribution of the Trust Account;
19. Camp Fiorante Matthews Mogerma shall hold the Settlement Amount, plus any accrued interest, in trust and make only such payments therefrom as provided for in the Settlement Agreement, pending further orders of the Courts;
20. Approval of the Settlement Agreement is contingent upon approval by the Ontario Court and the Quebec Court in the Proceedings in their jurisdictions, and the terms of this Order shall not be effective unless and until such approval orders are made;
21. 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;
22. Except as aforesaid, the BC Proceedings are hereby dismissed against the Settling Defendants without costs and with prejudice; and
23. Endorsement of this Order by the Non-Settling Defendants and Settled Defendants is dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

<insert signatures>

By the Court

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Registrar

**SCHEDULE “C”**

**ASSIGNMENT OF PROCEEDS**

**THIS ASSIGNMENT** is dated the \_\_\_\_ day of June, 2015,

**BETWEEN:**

**VITAFOAM PRODUCTS CANADA LIMITED**

(the “Assignor”)

**AND:**

**“HI NEIGHBOR” FLOOR COVERING CO. LIMITED,  
MAJESTIC MATTRESS MFG. LTD, TRILLIUM PROJECT  
MANAGEMENT LTD. And OPTION CONSOMMATEURS,**

(the “Assignee”)

**WHEREAS:**

A. The Assignee has commenced the Proceedings alleging that the Assignor, amongst others, participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of Foam Products in Canada and/or to allocate markets and customers for the sale and distribution of Foam Products in Canada, contrary to Part VI of the *Competition Act*, common law, or Quebec civil law;

B. The Assignor and Assignee have entered into a Settlement Agreement, (attached hereto) which includes, *inter alia*, a clause on Assignment of Certain Claims, as described in s. 3.2 of the Settlement Agreement;

C. The Assignor is one of the class plaintiffs in both the U.S. Urethane Litigation and the Canadian Urethane Litigation (**collectively “Urethane Litigation”**); and

D. The Assignor has agreed to assign to the Assignee all of the Assignor’s right, title and interest in and to any proceeds which may be receivable by the Assignor as a result of the judgement or settlement of the U.S. Urethane Litigation and the Canadian Urethane Litigation (**collectively “Urethane Litigation Proceeds”**).

**NOW, THEREFORE, THIS ASSIGNMENT WITNESSES** that in consideration for the settlement of the Proceedings and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the Assignor), the parties agree and covenant each with the other as follows:

1. **Assignment and Authority.** The Assignor does hereby assign, transfer and set over to the Assignee, with immediate effect, all the Assignor's right, title and interest in and to the Urethane Litigation Proceeds, to have and to hold unto the Assignee absolutely, with full power and authority to demand and collect the Urethane Litigation Proceeds either in the name of and as agent for the Assignor, or in the name of the Assignee.

2. **Covenants of the Assignor.** The Assignor covenants and agrees with the Assignee as follows:

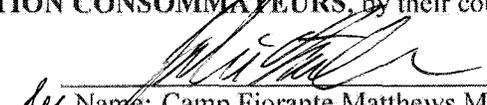
- (a) to make reasonable best efforts and provide cooperation to provide the Assignee with all pleadings and other documents in any way relating to the Urethane Litigation and the Urethane Litigation Proceeds;
- (b) to deliver this Assignment Agreement to Camp Fiorante Matthews Mogerma to be held in escrow on the Execution Date of the Settlement Agreement; and
- (c) that if the amount of any of the Urethane Litigation Proceeds be paid to the Assignor, the Assignor hereby agrees to receive same as agent of and in trust for the Assignee and forthwith to pay over the same to the Assignee.

3. **Representation, Warranties, and Other Assurances.**

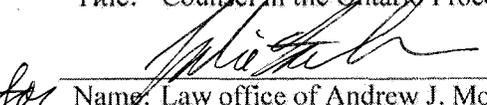
- (a) The Assignor does not make any representation, warranty, covenant or promise in respect of the collectability or amount of Urethane Litigation Proceeds.
- (b) The Assignor does not make any representation, warranty, covenant or promise that it has any right, title, or interest in or to the Urethane Litigation Proceeds, or any portion thereof.
- (c) The Assignor does not make any representation, covenant or promise in respect of the validity or enforceability of this Assignment or the collectability of the proceeds from this Assignment, and the Assignee and the Settlement Class shall bear any and all risk relating to the validity or enforceability of this Assignment or the collectability of the proceeds from this Assignment.
- (d) In the event that this Assignment is not valid or enforceable, is terminated, is not approved or otherwise fails to come into effect, or in the event the Assignor has no right, title or interest in the Urethane Litigation Proceeds, or any portion thereof, the Parties agree that the Settlement Agreement shall remain valid and enforceable.
- (e) The Assignee acknowledges and agrees that if the Assignee does not recover any Urethane Litigation Proceeds or if it has no right to recover any Urethane Litigation Proceeds, this shall not invalidate or affect the Settlement Agreement in any way.

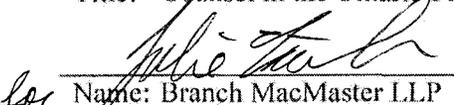
IN WITNESS WHEREOF the parties hereto have duly executed this agreement as of the day and year first above written.

**“HI! NEIGHBOR” FLOOR COVERING CO.  
LIMITED, MAJESTIC MATTRESS MFG. LTD,  
TRILLIUM PROJECT MANAGEMENT LTD., and  
OPTION CONSOMMATEURS, by their counsel**

By:   
for Name: Camp Fiorante Matthews Mogerman  
Title: Counsel in the BC Proceedings

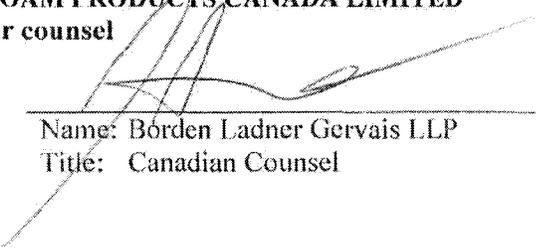
By:   
for Name: Sutts, Strosberg LLP  
Title: Counsel in the Ontario Proceedings

By:   
for Name: Law office of Andrew J. Morganti  
Title: Counsel in the Ontario Proceedings

By:   
for Name: Branch MacMaster LLP  
Title: Counsel in the BC Proceedings

By: \_\_\_\_\_  
Name: Belleau Lapointe  
Title: Counsel in the Quebec Proceeding

**VITAFOAM PRODUCTS CANADA LIMITED  
by their counsel**

By:   
Name: Borden Ladner Gervais LLP  
Title: Canadian Counsel

IN WITNESS WHEREOF the parties hereto have duly executed this agreement as of the day and year first above written.

**"HI! NEIGHBOR" FLOOR COVERING CO.  
LIMITED, MAJESTIC MATTRESS MFG. LTD,  
TRILLIUM PROJECT MANAGEMENT LTD., and  
OPTION CONSOMMATEURS, by their counsel**

By:

\_\_\_\_\_  
Name: Camp Fiorante Matthews Mogerman  
Title: Counsel in the BC Proceedings

By:

\_\_\_\_\_  
Name: Sutts, Strosberg LLP  
Title: Counsel in the Ontario Proceedings

By:

\_\_\_\_\_  
Name: Law office of Andrew J. Morganti  
Title: Counsel in the Ontario Proceedings

By:

\_\_\_\_\_  
Name: Branch MacMaster LLP  
Title: Counsel in the BC Proceedings

By:

Belleau Lapointe S.e.n.c.r.l.  
Name: Belleau Lapointe  
Title: Counsel in the Quebec Proceeding

**VITAFOAM PRODUCTS CANADA LIMITED  
by their counsel**

By:

\_\_\_\_\_  
Name: Borden Ladner Gervais LLP  
Title: Canadian Counsel